

ATTACHMENT

A

LANDLORD:

City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139

and

TENANT:

1 Washington Avenue Corp.
1 Washington Avenue
Miami Beach, Florida 33139

DATE OF EXECUTION:

_____, 2021

**1 WASHINGTON AVENUE
Miami Beach, FL 33139
Smith & Wollensky
AMENDED AND RESTATED RESTAURANT LEASE**

LEASE SUMMARY

The following is a summary of basic lease provisions with respect to the Lease. It is an integral part of the Lease, and terms defined or dollar amounts specified in this Summary shall have the meanings or amounts as stated, unless expanded upon in the text of the Lease and its Exhibits, which are attached to and made a part of this Summary.

1. Lease Execution Date: _____, 2021
2. "Landlord" or "City": City of Miami Beach, a municipal corporation of the State of Florida
3. Landlord 's Address:
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139
Attention: Asset Manager

with a copy to:

City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139
Attention: City Attorney

City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139
Attention: City Manager
4. "Tenant": 1 Washington Avenue Corp., a Florida corporation
5. Tenant's Address:
1 Washington Avenue
Miami Beach, Florida 33139

with copies to:

Smith & Wollensky Restaurant Group, Inc.
101 Station Lndg.
Medford, MA 02155

Shutts & Bowen LLP
200 South Biscayne Blvd., Suite 4100
Miami, Florida 33131
Attention: Alexander I. Tachmes, Esq.
6. Premises (Section 1.1):
1 Washington Avenue
Miami Beach, Florida 33139

All of the land described on **Exhibit "A"** attached hereto (the "Land"), together with all of the improvements, that is, a two-story restaurant structure and amenities, located thereon (the

"Restaurant Space", together with the Land, the "Premises") all as shown on **Exhibit "A-1"**.

7. Concession Space: That certain concession area that is subject to that separate Concession Agreement is not included in Premises square footage.
8. Gross Square Footage of Premises: Premises consist of approximately 24,010 gross square feet as also shown in **Exhibit "A-1"**.
9. Seat count: Aggregate seat count (inside and outside, and including the Concession Agreement) shall not exceed 600 seats, which shall consist of the following maximum seat counts: (i) 400 seats in the enclosed area of the Premises, (ii) 125 seats in the exterior of the Premises, and (iii) 125 seats in the concession area. Tenant shall be permitted to reallocate the number of seats in each of the preceding areas provided that the aggregate seat count at any one time shall not exceed 600 seats.
10. Permitted Use of Premises (Section 3.1): The main/primary use of the Premises shall be for the operation of a first-class, high quality restaurant, dining facility and cocktail lounge comparable to the Smith & Wollensky existing as of the Lease Execution Date. Tenant shall also be entitled to use the Premises for incidental retail sale of good and merchandise to patrons on the Premises and, subject to Landlord's sole consent, additional uses consistent with the business operations of Tenant and/or its owner; all to be further subject to the prohibited uses described in Section 3.6 of the Lease.
11. "Existing Lease": That certain Lease Agreement between Landlord and Specialty Restaurant Corp., dated Feb. 8, 1985, as amended and assigned to 1 Washington Avenue Corp., pursuant to the Consent of Assignment dated October 4, 1993, for the Premises, which is currently set to expire on November 7, 2025 ("Existing Lease Current Expiration Date").
12. Term of Lease (Section 1.1.2): Subject to approval of the Lease by Landlord's electorate at a referendum, as set forth in Section 15.20 of this Lease, this Lease shall supersede and replace the Existing Lease as of January 1, 2022 ("Lease Commencement Date"). The initial term of this Lease shall be twenty-four (24) years, and shall commence on the Lease Commencement Date and shall expire on December 31, 2045 ("Lease Expiration Date"),

which is approximately twenty (20) years from the date of the Existing Lease Current Expiration Date.

13. Renewal Term(s) (Section 1.1.3):

Tenant shall have, at its sole discretion, two (2) consecutive options of ten (10) years each to extend the term (each, a "Renewal Term"), provided that Tenant is not in default of the Lease and is otherwise in good standing with Landlord, and provided further that Tenant must exercise each Renewal Term option by notifying Landlord's City Manager, in writing, of Tenant's election at least two (2) years prior to the date that such Term or Renewal Term, as applicable ("Expiration Date"), expires.

14. "Annual Rent" (Section 2.2):

Commencing on the Lease Commencement Date, the Annual Rent shall be the **GREATER** of: (i) the Lease Minimum Guarantee; and (ii) Percentage Rent.

Notwithstanding the foregoing, the Annual Rent in the first four (4) Lease Years shall be subject to the following maximum not-to-exceed amounts set forth below.

The total payment by the Tenant for Annual Rent under both the Lease and the payments made by Tenant under the separate Concession Agreement, in the aggregate, shall be capped as follows (the "Annual Cap"):

\$1,250,000 Lease Year 2022,

\$1,500,000 Lease Year 2023,

\$1,750,000 Lease Year 2024, and

\$2,000,000 Lease Year 2025.

15. "Lease Minimum Guarantee":

\$1,042,550 per year.

The Lease Minimum Guarantee shall be subject to a 2.5% annual escalator starting on the Lease Commencement Date.

16. "Percentage Rent":

The sum of 9% of "gross sales" (section 2.3).

17. Additional Rent:

See Section 2.1.

18. First Month's Rent:

See Section 12 hereof, "Lease Commencement Date".

19. Security Deposit (Section 2.6): Landlord will continue to hold the security deposit provided under the Existing Lease.
20. Cost Pass-Throughs (Section 3.11): This is a net lease to Landlord so Tenant shall be responsible for One Hundred Percent (100%) of all types of costs and expenses, including Common Area Maintenance (CAM), property taxes, and insurance during the term and all Renewal Term(s).
21. Renewal Term(s) Rent: The Annual Rent for the initial term of this Lease shall continue in effect during the Renewal Term(s), if any; provided, however, that the Lease Minimum Guarantee shall continue to be adjusted in accordance with the 2.5% annual escalator set forth in Section 15 of the Lease Summary.
22. Comprehensive General Liability Insurance (Section 7.1): \$2,000,000.00
23. Broker(s) (Section 15.12): None
24. Trade Name (Section 3.1): Smith & Wollensky
25. Tenant's Parking (Section 3.13): Except as limited herein, during the Term and any Renewal Term, Tenant shall have the continuous, unfettered right at all times to use 105 parking spaces in the Parking Area as shown on **Exhibit "B"** (the "Parking Area"), which consists of a portion of the required parking for the operation of the restaurant pursuant to the City Code. Except for temporary, emergency repairs Landlord may need to make and as otherwise provided in this Lease, the Parking Area shall be available continuously and exclusively 24 hours a day, seven (7) days per week, to be used by Tenant, its employees, guests, customers and invitees. This is a material inducement to Tenant entering into this Lease.
- As of the Lease Commencement Date, Landlord may designate up to 50 of the 105 spaces for general public parking during off-peak hours (Monday-Thursday, 8:00AM to 4:00PM, excluding holidays ("Off-Peak")), unless Tenant advises Landlord in writing five (5) days in advance that it anticipates needing the spaces due to an event or similar reason. Landlord shall be responsible for placing signage on the designated Off-Peak parking spots, to identify the availability of those spaces for general public parking during Off-Peak times, and for the enforcement thereof.

Considering the City of Miami Beach's zoning parking requirement is 138 spaces, Tenant shall be responsible to pay the Landlord's parking impact fee for 33 spaces; provided that one-half (½) of such fee shall be credited against Annual Rent.

26. Parking Impact Fee (Section 3.13.4):

Landlord shall be responsible to pay all parking impact fees, if any, for the remaining 105 parking spaces.

27. Exclusivity:

The only other allowed permanent food and beverage establishment in South Pointe Park shall be a food and beverage concession with counter service only located in the area shown on **Exhibit "F"** attached hereto.

28. Community benefit proffers by Tenant:

Reimbursement for City's installation of electric gates at entry to park parking lot at a cost not to exceed \$60,000; monthly free lunch for Rebecca Towers residents; monthly mentorship program for Miami Beach start-up restaurants and bars, as set forth in **Exhibit "H"**

29. Minimum required days/hours of operation of restaurant:

Tenant shall cause the restaurant to be open 7 days per week; 11:00 A.M. – 10:00 P.M.

30. Maximum permitted closing time:

1:00 A.M. interior and 12:00 midnight exterior.

THIS AMENDED AND RESTATED LEASE (the "Lease"), dated the ____ day of _____, 2021 ("Lease Execution Date"), is made by and between the City of Miami Beach, Florida, a municipal corporation ("Landlord"), and 1 Washington Avenue Corp., a Florida corporation ("Tenant").

RECITALS:

A. Landlord is the owner of (i) a property located in the City of Miami Beach, Miami-Dade County, Florida, as more particularly described in Exhibit "A", attached hereto and made a part hereof (the "Land"), (ii) a two-story restaurant structure constructed thereon as shown in Exhibit "A-1", attached hereto and made a part hereof (the "Restaurant Space"), and (iii) the Parking Area as shown on Exhibit "B" (the "Parking Area").

B. Landlord and Tenant desire to (i) enter into this Lease for the Premises, as defined in Section 6 of the Lease Summary, and Exhibits "A" – "A-1" attached hereto and made a part hereof, and (ii) provide Tenant with an exclusive continuous right to use the Parking Area as defined in Section 25 of the Lease Summary and as shown on Exhibit "B" attached herein during the Term and any Renewal Term, all on the terms and conditions hereinafter set forth.

C. On February 8, 1985, the City entered a lease with Specialty Restaurant Corporation for the operation of a restaurant at 1 Washington Avenue, Miami Beach, Florida (the "Existing Lease"), and on September 22, 1993, the Mayor and City Commission adopted Resolution No. 93-20899, approving an assignment of the Existing Lease to Tenant, as assignee.

D. The Tenant has been the long-term operator for the Smith & Wollensky restaurant at the Premises, and the Existing Lease contains an initial 20-year term and provides for two (2) 10-year renewal options. The first renewal term commenced on November 7, 2005 and expired on November 6, 2015. Subsequently, 1 Washington Avenue Corp. exercised the second and final renewal term, commencing on November 7, 2015 that is currently set to expire on November 6, 2025 ("Existing Lease Current Expiration Date").

E. Landlord and Tenant desire to enter into this Lease to supersede and replace the Existing Lease as of January 1, 2022, on the terms set forth herein, and the parties desire to extend the term until December 31, 2045, which is approximately twenty (20) years from the date of the Existing Lease Current Expiration Date. Additionally, Tenant shall have two (2) 10-year renewal term options, as set forth in the terms of this Lease.

F. This Lease replaces the Existing Lease as defined in Section 11 of the Lease Summary, concerning which neither party is aware of any defaults thereunder by the other party.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

ARTICLE I. TERM.

1.1 Grant; Term.

1.1.1 Grant. In consideration of the performance by Tenant of its obligations under this Lease, (i) Landlord leases to Tenant, and Tenant leases from Landlord, for the Term and any Renewal Term, the Land and the Restaurant Space shown on Exhibits "A" and "A-1", respectively, and (ii) Landlord grants to Tenant a continuous, right to use the one hundred and five (105) parking spaces as set forth in Section 3.13 and in Section 25 of the Lease Summary, in the Parking Area shown on Exhibit "B".

1.1.2 Term. The "Term" of the Lease shall commence on the Lease Commencement Date and expire on the Lease Expiration Date as specified in the Lease Summary, except if renewed pursuant to 1.1.3 below.

1.1.3 Renewal Term(s). Tenant shall have, at its sole discretion, two (2) consecutive options of ten (10) years each to extend the Term (each, a "Renewal Term"). Each Renewal Term, if and when exercised by Tenant, shall commence the day after the expiration of the preceding Term or Renewal Term, as applicable. With respect to each Renewal Term option, such option can be exercised in the sole discretion of Tenant provided that Tenant is not in default of the Lease and is otherwise in good standing with Landlord, and provided further that the Tenant must exercise each Renewal Term option by notifying Landlord's City Manager, in writing, of Tenant's election at least two (2) years prior to the applicable Expiration Date as defined in Section 13 of the Lease Summary. All of the terms and conditions of this Lease shall apply during each Renewal Term.

1.1.4 Rent During Renewal Term(s). The Annual Rent for the initial term of this Lease shall continue in effect during the Renewal Term(s), if any; provided, however, that the Lease Minimum Guarantee shall continue to be adjusted in accordance with the 2.5% annual escalator set forth in Section 15 of the Lease Summary.

1.1.5 Landlord's Work. Except as stated in Section 5.3, Tenant acknowledges and agrees that it is accepting possession of the Premises and Parking Area in their **AS-IS WHERE-IS** condition and that Landlord has no other obligation to furnish, render, or supply any money, work, labor, material, fixture, equipment, or decoration with respect to the Premises.

1.1.6 Costs Association with Tenant's Work. Tenant is responsible for any and all costs, including any utility impact fees and connection fees, permit fees, charges, and/or deposits as may be required of any kind or nature in connection with Tenant's Work (as defined in Section 5.2(a)) or Tenant's use of the Premises.

ARTICLE II. RENT.

2.1 Covenant to Pay. Tenant shall pay to Landlord all sums due hereunder as set forth in this Lease prior demand, together with all applicable Florida sales tax thereon; however, unless otherwise provided in this Lease, payments other than Tenant's regular monthly payments of Annual Rent shall be payable by Tenant to Landlord within five (5) days following demand. All rent or other charges that are required to be paid by Tenant to Landlord shall be payable at Landlord's address indicated on the Lease Summary. Annual Rent and additional rent (which is all sums payable to Landlord other than Annual Rent) for any "Lease Year" consisting of less than twelve (12) months shall be prorated on a per diem basis, based upon a period of 365 days. "Lease Year" means the twelve (12) full calendar months commencing on the Lease Commencement Date. However, the final Lease Year may contain less than twelve (12) months due to expiration or sooner termination of the Term. Tenant agrees that its covenant to pay rent and all other sums under this Lease is an independent covenant and that all such amounts are payable without counterclaim, set-off, deduction, abatement, or reduction whatsoever, except as expressly provided for in this Lease.

2.2 Annual Rent. Subject to any escalation which may be provided for in this Lease and the maximum amounts for the first four (4) Lease Years as described in Section 14 of the Lease Summary, Tenant shall pay Annual Rent for the Term in the initial amount specified in the Lease Summary, which, except for the first installment, shall be paid as follows, the monthly Minimum Guarantee shall be payable throughout the Term in equal monthly installments in advance on the first day of each calendar month of each year of the Term, such monthly installments to be in the amounts (subject to escalation) specified in the Lease Summary. Additionally, in the event the Percentage Rent for any month exceeds the Minimum Guarantee for said month, Tenant shall pay to City the difference between Percentage Rent and the Minimum Guarantee on or before the 15th of the subsequent month. The first monthly installment of Annual Rent shall be due on the date specified in Section 18 of the Lease Summary. The Lease Minimum Guarantee described above shall be adjusted during the Term of this Lease as provided in the Lease

Summary. It is also agreed and understood that the applicable Florida State sales and use tax shall be added to Tenant's payment of Annual Rent and forwarded to Landlord as part of said payments. It is the intent of Landlord that it is to receive Annual Rent, and any other additional rental amounts due, as net, free and clear of all costs and charges arising from, or relating to, the Premises. Notwithstanding anything to the foregoing, in the event the aggregate amount due under the Concession Agreement and Annual Rent under the Lease in those Lease Years exceed the Annual Cap, such amounts shall only be credited to Tenant against the amounts otherwise due by Tenant pursuant to the Concession Agreement. In no event shall the Annual Cap impact the amounts due pursuant to the Minimum Guarantee herein.

2.3 Gross Sales. The following shall apply with respect to Percentage Rent:

2.3.1 Defined. The term "gross sales" as used herein shall include all receipts, whether collected or accrued, derived by Tenant (or any licensee, concessionaire, or sub-tenant of Tenant), from all business conducted upon or from the Premises including, without limitation, receipts from the sale of food, beverage, alcoholic beverages, merchandise, rental of space, or from any other source whatsoever; provided, however, that gross sales shall not include gratuities (tips) and taxes.

2.3.2 Exclusions. The following items are excluded from gross sales:

- (1) The cost or value of meals or discounts given to employees of Tenant;
- (2) The cost or value of food and beverage used for entertainment and business promotion purposes by officers and employees of Tenant. No trade outs may be deducted from gross sales under this provision; and
- (3) Receipts from off-site retail sales.

2.3.3 Records, Accounts, Statements, Audits. Tenant shall keep on the Premises, or such other place approved by Landlord, true, accurate, and complete records and accounts of all sales, gross sales, rentals, and business being transacted upon or from the Premises and shall give Landlord or Landlord's representative access during reasonable business hours, with advance notice, to examine and audit such records and accounts.

Within thirty (30) days after each month of the term hereof, Tenant shall deliver to Landlord a written monthly statement of the gross sales for such month certified by Tenant to be true, accurate, and complete.

Within sixty (60) days after each fiscal year, Tenant shall deliver to Landlord a written annual statement of the gross sales for such fiscal year. Said statement shall be certified as true, accurate and complete by Tenant, by and through a duly authorized officer of Tenant. The Landlord's City Auditor or his/her designee shall have the right, during regular business hours and upon the Landlord's written request to Tenant to audit, inspect, examine and copy the Tenant's fiscal and financial records, books, ledgers, statements, reports, tax returns and documents relating to this Lease and the Tenant's revenues thereunder through the Term and Renewal Term(s), if any, of this Lease and for three (3) years following its expiration or cancellation. The Tenant agrees to have such audit(s) conducted at such locations within Miami-Dade County, Florida as are mutually convenient to the parties.

2.4 Payment of Personal Property Taxes; Sales Tax Reports. Tenant shall pay, when due, all taxes attributable to the personal property, trade fixtures, business, occupancy, or sales of Tenant or any other occupant of the Premises and to the use of the Premises by Tenant or such other occupant. Tenant shall provide Landlord with copies of Tenant's sales tax reports provided to the State of Florida, as and when such reports are provided to the State.

2.5 Rent Past Due. If any payment due from Tenant shall be overdue more than five (5) days, a late charge of five (5%) percent of the delinquent sum may be charged by Landlord. If any payment due

from Tenant shall remain overdue for more than fifteen (15) days, an additional late charge in an amount equal to the lesser of the highest rate permitted by law or one and one-half (1 1/2%) percent per month eighteen (18%) percent per annum) of the delinquent amount may be charged by Landlord, such charge to be computed for the entire period for which the amount is overdue and which shall be in addition to and not in lieu of the five (5%) percent late charge or any other remedy available to Landlord.

2.6 Security Deposit.

2.6.1 Landlord acknowledges that it is in possession of the full security deposit from the Existing Lease as set forth in Section 19 of the Lease Summary. Such security deposit shall remain unchanged and shall continue to be held by Landlord, without any liability for interest thereon, as security for the performance by Tenant of all its obligations under this Lease. Landlord shall be entitled to commingle the security deposit with Landlord's other funds. If Tenant defaults in any of its obligations under this Lease, Landlord may at its option, but without prejudice to any other rights which Landlord may have, apply all or part of the security deposit to compensate Landlord for any loss, damage, or expense sustained by Landlord as a result of such default. If all or any part of the security deposit is so applied, Tenant shall restore the security deposit to its original amount on demand of Landlord. Within thirty (30) days following termination of this Lease, if Tenant is not then in default, the security deposit will be returned by Landlord to Tenant.

2.7 Landlord's Lien. To secure the payment of all rent and other sums of money due and to become due hereunder and the faithful performance of this Lease by Tenant, Tenant hereby gives to Landlord an express first and prior contract lien and security interest on all property now or hereafter acquired (including fixtures, equipment, chattels, and merchandise) which may be placed in the Premises and also upon all proceeds of any insurance which may accrue to Tenant by reason of destruction of or damage to any such property. Such property shall not be removed therefrom without the written consent of Landlord's City Manager until all arrearages in rental and other sums of money then due to Landlord hereunder shall first have been paid; provided, Tenant may operate its business in the ordinary course and the removal of food, merchandise and inventory from the Premises shall not be a default under this section. All exemption laws are hereby waived in favor of said lien and security interest. This lien and security interest is given in addition to Landlord's statutory lien and shall be cumulative thereto. Landlord shall, in addition to all of its rights hereunder, also have all of the rights and remedies of a secured party under the Uniform Commercial Code as adopted in the State in which the Premises are located. To the extent permitted by law, this Lease shall constitute a security agreement under Article 9 of the Florida Uniform Commercial Code. Notwithstanding anything in the foregoing to the contrary, to the extent Tenant's lender requires a lien on property and subordinates its lien to the above-referenced Landlord's lien, Landlord shall act reasonably and in good faith to permit the same.

ARTICLE III. USE OF PREMISES.

3.1 Permitted Use(s). The Premises shall be used and occupied solely and exclusively for the purposes specified in Section 10 of the Lease Summary with a seat count as provided in Section 9 of the Lease Summary. Tenant shall operate the Premises under the trade name "Smith and Wollensky" and shall use the Premises solely for the purpose of conducting the business of a first-class, fine dining steak house restaurant, commensurate to the current operation under the Existing Lease, and for no other purpose whatsoever except as set forth herein. Tenant shall not change the trade name of the restaurant without the prior approval of the City Commission. Tenant shall carry on its business on the Premises in a reputable manner and shall not do, omit, permit, or suffer to be done or exist upon the Premises anything which shall result in a nuisance, hazard, or bring about a breach of any provision of this Lease or any applicable municipal or other (i.e. federal, State, or County) governmental law or regulation, or would otherwise be inconsistent with a first-class restaurant. Tenant shall observe all reasonable rules and regulations established by Landlord from time to time for the Premises. The rules and regulations in effect as of the date hereof are attached to and made a part of this Lease as **Exhibit "E"**. Landlord will provide a copy of any amendments to the rules and regulations at least seven (7) days prior to the effective date of any such amendments. Notwithstanding the foregoing, Landlord consents to all uses of the Premises being made under the Existing Lease as of the Lease Execution Date of this Lease.

3.2 Compliance with Laws. The Premises shall be used and occupied in a safe, careful, and proper manner so as not to contravene any present or future laws, rules, regulations, constitutions, orders, ordinances, charters, statutes, codes, executive orders, and requirements of all governmental authorities having jurisdiction over the Premises, or any street, road, avenue, or sidewalk comprising a part of, or lying in front of, the Premises, or any vault in or under the Premises (including, without limitation, any of the foregoing relating to handicapped access or parking, the local building codes, and the laws, rules, regulations, orders, ordinances, statutes, codes, and requirements of any applicable Fire Rating Bureau or other body exercising similar functions), the temporary and/or permanent Certificates of Occupancy issued for the Premises as then in force, and any and all provisions and requirements of any property, casualty, or other insurance policy required to be carried by Tenant under this Lease. If due to Tenant's use of the Premises, repairs, improvements, or alterations are necessary to comply with any of the foregoing, Tenant shall pay the entire cost thereof.

3.3 Signs. Tenant, at Tenant's expense, shall erect and maintain signage upon the exterior of the Premises. The design and specification of such signage shall be subject to Landlord's sign criteria as adopted from time to time and such design and specification (including camera-ready artwork) shall be submitted for Landlord's prior approval. Except with the prior written consent of Landlord's City Manager, Tenant shall not erect, install, display, inscribe, paint, or affix any signs, lettering, or advertising medium upon or above any exterior portion of the Premises or in or on Tenant's storefront or storefront window. Landlord's signage criteria is attached hereto and made a part hereof as **Exhibit "D"**. Notwithstanding the foregoing, Landlord hereby consents to all signage on the existing premises as of the Lease Execution Date.

3.4 Environmental Provisions.

(a) The parties acknowledge and agree that they have obtained that certain Phase I Environmental Site Assessment Report, dated October 23, 2020, prepared by Aptim Environmental & Infrastructure, LLC (the "Environmental Report") concerning the Premises. The Environmental Report reflects no issues concerning Hazardous Materials. Each party hereto represents and warrants to the other, without further investigation, it has no actual knowledge of Hazardous Materials not set forth in the Environmental Report.

(b) Tenant shall not knowingly incorporate into, use, or otherwise place or dispose of at the Premises (or allow others to incorporate into, use, or otherwise place or dispose of at the Premises) any Hazardous Materials, as hereinafter defined, unless (i) such Hazardous Materials are for use in the ordinary course of business (i.e., as with office or cleaning supplies), (ii) notice of and a copy of the current material safety data sheet is provided to Landlord for each such Hazardous Material (except for Hazardous Materials used by Tenant in the ordinary course of business (i.e., as with office or cleaning supplies)), and (iii) such materials are handled and disposed of in accordance with all applicable governmental laws, rules, and regulations. If Landlord or Tenant ever has knowledge of the presence at the Premises of Hazardous Materials which affect the Premises, such party shall notify the other thereof in writing promptly after obtaining such knowledge. For purposes of this Lease, "Hazardous Materials" shall mean: (a) petroleum and its constituents; (b) radon gas, asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of federal, state or local safety guidelines, whichever are more stringent; (c) any substance, gas, material or chemical which is or may hereafter be defined as or included in the definition of "hazardous substances," "hazardous materials," "hazardous wastes," "pollutants or contaminants," "solid wastes," or words of similar import under any applicable governmental laws, rules, and regulations including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9061 et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, et seq.; and Florida Statutes, Chapters 376 and 403; and (d) any other chemical, material, gas, or substance, the exposure to or release of which is regulated by any governmental or quasi-governmental entity having jurisdiction over the Premises or the operations thereon.

(c) If Tenant or its employees, agents, contractors, or assigns shall ever violate the provisions of subsection (b), above, then Tenant shall clean-up, remove, and dispose of the Hazardous Material causing the violation, in compliance with all applicable governmental standards, laws, rules, and regulations and repair any damage to the Premises within such period of time as may be reasonable under the circumstances after written notice by Landlord, provided that such work shall commence not later than thirty (30) days from such notice and be diligently and continuously carried to completion by Tenant or Tenant's designated contractors. Tenant shall notify Landlord of its method, time, and procedure for any clean-up or removal of Hazardous Materials under this provision; and Landlord shall have the right to require reasonable changes in such method, time, or procedure or to require the same to be done after normal business hours or when the Premises is otherwise closed (i.e., holidays) if reasonably required for the protection of Tenant's patrons.

(d) Tenant agrees to defend, indemnify and hold harmless Landlord against any and all claims, costs, expenses, damages, liability, and the like, which Landlord may hereafter be liable for, suffer, incur, or pay arising under any applicable environmental laws, rules, and regulations and resulting from or arising out of any breach of the covenants contained in this Section 3.4, or out of any act, activity, or violation of any applicable environmental laws, rules, and regulations on the part of Tenant, its employees, agents, contractors, or assigns. Tenant's liability under this Section 3.4 shall survive the expiration or any termination of this Lease.

(e) With respect to the Parking Area, Tenant shall have no responsibility to pay for, assist with, contribute to, or remediate any environmental issues concerning the Parking Area unless it is the cause of same. Any and all responsibility for the Parking Area being the responsibility of Landlord are hereby disclaimed by Tenant.

3.5 Hours; Continued Occupancy. During the Term, Tenant shall conduct its business in and on the Premises, at a minimum, of seven (7) days a week with the exception of Christmas Eve and other such days as are approved in advance by Landlord's City Manager. The minimum hours shall be 11:00 a.m. to 10:00 p.m. and the maximum permitted closing time shall be 1:00 a.m. for the interior and 12 midnight for the exterior. Tenant acknowledges that its continued occupancy of the Premises and the regular conduct of its business therein are of utmost importance to Landlord. Tenant acknowledges that Landlord is executing this Lease in reliance thereupon and that the same is a material element inducing Landlord to execute this Lease. Except as set forth in Section 10 of the Lease Summary, Tenant shall not sell, advertise, conduct, or solicit business anywhere other than in and on the Premises and as set forth in the separate Concession Agreement. Tenant shall ship and receive supplies, fixtures, equipment, furnishings, wares, and merchandise only through the appropriate service and delivery facilities provided by Landlord; and shall not park its trucks or other delivery vehicles or allow suppliers or others making deliveries to or receiving shipments from the Premises to park in the parking areas, except in those parts thereof as may from time to time be allocated by Landlord for such purpose. Tenant shall maintain available a substantial stock of goods, wares, and merchandise adequate to ensure successful operation of Tenant's business, and shall employ and maintain sales and other personnel sufficient at all times for proper service to customers.

3.6 Prohibited Uses. The restrictive covenants contained in paragraphs (A) – (FF) of this Section 3.6 are intended and designed to bind Landlord and Tenant and their respective successors and assigns, and be binding upon and run with the Premises throughout the Term. Notwithstanding any other provisions of this Lease, Tenant shall not use the Premises nor permit them to be used for any of the following purposes ("Prohibited Uses"): (A) for the sale by Tenant, as its principal business purpose, of any merchandise which Tenant, in the course of its normal business practice, purchases at manufacturers' clearances or purchases of ends-of-runs, bankruptcy stock, seconds, or other similar merchandise; (B) for the sale of second-hand goods, war surplus articles, insurance salvage stock, fire sale stock, merchandise damaged by or held out to be damaged by fire, except merchandise damaged by fire or smoke occurring in the Premises, and then only for thirty (30) days after the date of any such damage; (C) as an auction or flea market; (D) for a bankruptcy sale or going-out-of-business sale or liquidation sale or any similar sale, unless Tenant is in fact in bankruptcy or is going out of business or is in liquidation, in which case such sale

shall not continue beyond thirty (30) days; (E) a business primarily used for an order office, mail order office, or catalogue store; (F) any business in which Tenant is engaged in intentionally deceptive or fraudulent advertising or selling practices or any other act or business practice contrary to honest retail practices; (G) amusement centers (as defined in § 33.1 of the Code of Miami-Dade County or its successor provision); (H) coinbox entertainment (pinball, video games, moving pictures operated by coins); (I) casino gambling or games of chance or reward (provided, however, that the sale of State of Florida lottery tickets shall not be prohibited); (J) any unlawful or illegal business, use or purpose, or for any business, use or purpose which is immoral or disreputable (including "adult entertainment establishments" and "adult" bookstores) or extra-hazardous, or in such manner as to constitute a nuisance of any kind (public or private), or for any purpose or in any way in violation of Tenant's Certificate(s) of Occupancy (or other similar approvals of applicable governmental authorities); (K) movie theatre; (L) medical facilities and offices; (M) check cashing facilities; (N) pawn shops; (O) the sale of firearms; (P) tattoo parlors, fortune tellers, psychics, palm readers, body piercing shops; (Q) printing or duplicating other than as an incidence to the operation of some other business; (R) the sale of religious artifacts and books; (S) places of worship; (T) political offices; (U) military recruiting; (V) consular, legation or any other offices of foreign governments; (W) tire sales; (X) the sale of animals or birds of any kind and/or products of a nature typically sold in pet shops; (Y) offices for the practice of veterinary medicine; (Z) the sale of major appliances as a primary business; (AA) housing or sleeping quarters; (BB) grocery stores (other than specialty gourmet shops); (CC) second hand stores; (DD) any theatre or performing arts activity; or (EE) dinner theatre; and/or (FF) in any manner that will violate any Certificate of Occupancy or Certificate of Use for the Premises, or which will violate any laws, ordinances, or other rules or regulations applicable to the Premises. Immediately upon its discovery of any Prohibited Use by, through or under Tenant, Tenant shall take all reasonably necessary steps, legal and equitable, to compel discontinuance of such business or use including, if necessary, the removal from the Premises of any subtenants, licensees, invitees or concessionaires.

3.7 Exclusive Use. Landlord agrees that the only additional permanent food and beverage establishment within the boundary of South Pointe Park shall be a food and beverage concession, and located approximately in the area shown in **Exhibit "F"** attached hereto.

3.8 Intentionally Omitted.

3.9 Property Taxes. During the term hereof, Tenant shall pay all taxes of whatever nature lawfully levied upon or assessed against the Premises and improvements, property, sales, rentals or operations thereon, including but not limited to, ad valorem sales and use taxes.

3.10 Licenses and Permits. Unless otherwise already obtained, Tenant shall obtain, pay for, maintain and comply with all licenses, permits and fees necessary for Tenant to conduct Tenant's business on the Premises, including liquor license.

3.11 Common Area Maintenance (CAM). This is intended to be a net lease to Landlord. Tenant shall contract for and pay directly all maintenance, use, operation and all other types of cost or fees with respect to the Premises.

3.12 Intentionally Omitted.

3.13 Tenant's Parking.

3.13.1 Except as limited herein, during the Term and any Renewal Term, Tenant shall have the continuous right to use 105 exclusive parking spaces in the parking lot shown on **Exhibit "B"** (the "Parking Area") as further set forth in Section 25 of the Lease Summary. Except for exclusive temporary, emergency repairs Landlord may need to make and as otherwise provided in this Lease, the parking spaces shall be available continuously 24 hours per day, seven (7) days per week, to be used by Tenant, its employees, guests, customers and invitees, except as provided in 3.13.2 below.

3.13.2 As of the Lease Commencement Date, Landlord may designate up to 50 of the 105 spaces for general public parking during off-peak hours (Monday-Thursday, 8:00AM to 4:00PM, excluding holidays ("Off-Peak")), unless Tenant advises Landlord in writing five (5) days in advance that it anticipates needing the spaces due to an event or similar reason. Landlord shall be responsible for placing signage on the designated Off-Peak parking spots, to identify the availability of those spaces for general public parking during Off-Peak times, and for the enforcement thereof.

3.13.3 Considering the City of Miami Beach's zoning parking requirement is 138 spaces, Tenant shall be responsible to pay the Landlord's parking impact fee for 33 spaces; provided that one-half (½) of such fee shall be credited against Tenant's monthly Annual Rent payments as set forth in 2.1 of the Lease. Landlord hereby agrees that Tenant shall not be responsible or liable for any and all parking impact fees, if any, for the remaining 105 parking spaces.

3.14 Service and Loading Area. The loading area and all garbage containers, at a minimum, shall be adequately screened from public view, subject to the City's reasonable approval, sufficient garbage collection containers shall be maintained so that garbage is not overflowing, employee rest area's shall be outside of view from the public, and enclosures shall remain closed at all times unless garbage is actively being disposed or collected or there is active loading. The service and loading area shall be subject to the Maintenance Standards and fines set forth in Exhibit E.

ARTICLE IV. ACCESS AND ENTRY.

4.1 Right of Examination. Landlord, through its City Manager and/or such other individuals as he/she may designate, in his/her reasonable discretion, from time to time, shall be entitled at all reasonable times and upon reasonable notice (but no notice is required in emergencies) to enter the Premises to examine them if Landlord reasonably believes that Tenant is not complying with any of its obligations hereunder. Landlord shall exercise its rights under this section, to the extent possible in the circumstances, in such manner so as to minimize interference with Tenant's use and enjoyment of the Premises.

4.2 Right to Show Premises. Landlord and its agents (including, without limitation, Landlord's City Manager and such other individuals as he/she may designate, in his/her reasonable discretion, from time to time) shall have the right during the last twelve (12) months of the Term if no option, if applicable, was exercised to enter the Premises at reasonable times and upon reasonable notice to show them to prospective purchasers, lenders, or anyone having a prospective interest in the Premises. Landlord shall exercise its rights under this section, to the extent possible in the circumstances, in such manner so as to minimize interference with Tenant's use and enjoyment of the Premises.

ARTICLE V. TENANT'S INVESTMENT AND WORK, ALTERATIONS, MAINTENANCE AND REPAIRS.

5.1 Tenant Investment. As an added inducement to have Landlord enter into this Lease, Tenant covenants and agrees that it will:

(a) Invest, or cause to be invested, an amount not less than \$3,305,970.00 in hard and soft costs in the aggregate on/to the Premises as part of the Approved Tenant's Work (as defined in Section 5.2(a)). Tenant shall achieve Substantial Completion (as defined in Section 5.2(i)) of the Approved Tenant's Work within five (5) years following the Lease Commencement Date, subject to Force Majeure as described in section 15.17, and shall be subject to Article 5.2.

(b) Complete any and all work necessary to timely obtain the required 40-year recertification of the Restaurant Space at its sole cost and expense, including all repairs and replacements required for such recertification, and also timely obtain all recertifications required thereafter.

5.2 Tenant's Work.

(a) Landlord hereby approves, in its proprietary capacity only, the list of improvements to the Premises to be made by Tenant as set forth and identified on **Exhibit "C"** attached hereto and

incorporated by reference ("Approved Tenant's Work"). Nothing contained herein shall or is deemed to limit the City's inspection rights or design review in its governmental and/or regulatory capacity. Subject to the provisions hereof, Tenant may, but shall not be obligated to, at its sole cost and expense, cause the construction and installation of additional improvements, alterations and modifications to the Premises in accordance with Tenant's Plans (as defined below) and as necessary to permit Tenant to occupy same and conduct normal business operations. Any such additional improvements, alterations or modifications costing more than \$10,000.00 shall be referred to herein as "Additional Tenant's Work" and shall trigger the application of the balance of this Section 5.2. Any Additional Tenant's Work shall require the prior approval of Landlord, which such approval shall not be unreasonably withheld or delayed, conditioned, or delayed. "Approved Tenant's Work" and "Additional Tenant's Work" shall be collectively referred to as "Tenant's Work." Additionally, Tenant's maintenance and repair obligations pursuant to Section 5.4 below costing more than \$10,000 dollars shall be referred as ("Tenant's Maintenance Work") and shall also trigger the application of the balance of this section 5.2.

(b) To the extent that Tenant desires to perform any of Tenant's Work or performs any of the required Tenant's Maintenance Work, then Tenant, at Tenant's expense, agrees to furnish to Landlord's City Manager or his/her designee, who, for purposes of this Article, shall be the Landlord's Asset Manager, a preliminary schedule of finishes and values, as well as a conceptual plan for any improvements and/or alterations to the Premises any of Tenant's Work or Tenant's Maintenance Work. The preliminary schedule of finishes and values, as well as the conceptual plan shall be subject to Landlord's City Manager's review and approval, not to be unreasonably withheld or delayed. Landlord's City Manager (or his/her designee) shall notify Tenant in writing of its acceptance or of its objections to the preliminary schedule of finishes and conceptual plan within ten (10) business days after such preliminary schedule has been provided to him/her.

(c) Once the preliminary schedule of finishes and values, as well as a conceptual plan, have been approved by Landlord pursuant to Section 5.2(b), then Tenant, at Tenant's expense, agrees to furnish to Landlord's City Manager (or his/her designee) a set of schematic drawings (including an initial space plan) plan for any improvements and/or alterations to the Premises, which shall also include as an attachment a schedule of finishes and Tenant's proposed construction budget (the "Schematic Drawings") for Tenant's Work or Tenant's Maintenance Work. The construction budget shall include detailed descriptions of the scope of work and provide for a minimum expenditure for Tenant's Work or Tenant's Maintenance Work. The Schematic Drawings shall be subject to Landlord's City Manager's (or his/her designee) review and approval, not to be unreasonably withheld or delayed. Landlord's City Manager (or his/her designee) shall use best efforts to notify Tenant in writing of its acceptance or of its objections to the Schematic Drawings within ten (10) business days after the Schematic Drawings have been provided to him/her.

(d) Once the Schematic Drawings have been approved by Landlord pursuant to Section 5.2(c), then Tenant, at Tenant's expense, agrees to furnish to Landlord's City Manager (or his/her designee) a complete, detailed set of plans and specifications through the design development stage ("Tenant's Plans") for Tenant's Work or Tenant's Maintenance Work, which shall include, without limitation, all working drawings, elevations, finish selections, and signage schematics, along with a separate schedule detailing Tenant's estimated expenditures in connection with Tenant's Work or Tenant's Maintenance Work (based on the construction budget described above as supplemented to reflect the approved Schematic Drawings) and a list of the proposed architect and engineer(s), interior design team, general contractor, and subcontractors. Tenant's Plans shall be prepared by Tenant's architect and engineer(s), which architect and engineer(s) shall be subject to Landlord's City Manager's (or his/her designee's) prior written approval, not to be unreasonably withheld or delayed. Tenant's Plans shall be subject to Landlord's City Manager's (or his/her designee's) reasonable review and approval, which approval shall not be unreasonably withheld or delayed. Landlord's City Manager (or his/her designee) shall notify Tenant in writing of its acceptance or of its objections to Tenant's Plans within ten (10) business days after the Tenant's Plans have been provided to Landlord. Notwithstanding Landlord's City Manager's (or his/her designee's) review and approval of Tenant's Plans, Landlord assumes no responsibility whatsoever, and shall not be liable, for the manufacturer's, architect's, or engineer's design or performance of any structural, mechanical, electrical, or plumbing systems or equipment of Tenant.

(e) Once Tenant's Plans have been approved by Landlord pursuant to Section 5.2(d), then Tenant shall provide Landlord's City Manager (or his/her designee) with two (2) sets of Tenant's Plans (and any changes to Tenant's Plans and/or the approved construction budget shall be made only by written addendum signed by both parties). Tenant's Plans, as approved by Landlord's City Manager (or his/her designee), shall be incorporated herein by reference and made part of this Lease.

(f) Once Tenant complies with Section 5.2(e), then Tenant, at Tenant's expense, agrees to furnish to Landlord's City Manager (or his/her designee) a complete and detailed set of construction documents in AIA form, including all exhibits ("Tenant's Construction Documents") for Tenant's Work or Tenant's Maintenance Work, which shall be prepared by Tenant's architects. Tenant's Construction Documents shall be subject to Landlord's City Manager's (or his/her designee's) prior written approval, which approval shall not be unreasonably withheld or delayed, and Tenant shall receive written notification of Landlord's approval or objections to Tenant's Construction Documents, which Landlord will use best efforts to provide to Tenant within ten (10) business days after Tenant's Construction Documents have been provided to Landlord's City Manager. Notwithstanding Landlord's review of Tenant's Construction Documents, Landlord assumes no responsibility whatsoever and shall not be liable with respect to any item contained therein.

(g) Once Tenant's Construction Documents have been approved by Landlord pursuant to Section 5.2(f), then Tenant shall provide Landlord's City Manager (or his/her designee's) with two (2) sets of Tenant's Construction Documents (and any changes to Tenant's Construction Documents and/or the approved construction budget shall be made only by written addendum signed by both parties).

(h) Tenant shall use only licensed contractors and subcontractors approved, in writing, by Landlord's City Manager (or his/her designee) to complete the construction and installation of Tenant's Work or Tenant's Maintenance Work, which approval shall not be unreasonably withheld or delayed. Tenant shall provide to Landlord's City Manager (or his/her designee) certificates of insurance evidencing that Tenant's general contractor has in effect (and shall maintain at all times during the course of the work hereunder) workers' compensation insurance to cover full liability under workers' compensation laws of the State of Florida with employers' liability coverage; comprehensive general liability and builder's risk insurance for the hazards of operations, 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 (if any) 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 \$1,000,000.00. Landlord and Tenant are to be included as an additional insured for insurance coverages required of the general contractor. Tenant shall inform its contractor, subcontractors, and material suppliers that Landlord's interest in the Premises shall not be subject to any lien to secure payment for work done or materials supplied to the Premises on Tenant's behalf. All inspections and approvals necessary and appropriate to complete Tenant's Work or Tenant's Maintenance Work in accordance with Tenant's Plans and as necessary to obtain a certificate of use and occupancy as hereinafter provided are the responsibility of Tenant and its general contractor. 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 Tenant's Work or Tenant's Maintenance Work.

(i) Once Tenant's Plans have been approved by Landlord's City Manager (or his/her designee), Tenant shall diligently pursue the issuance of a full building permit therefor. Tenant shall commence Tenant's Work or Tenant's Maintenance Work (and shall be required to diligently pursue same) upon receipt of the full building permit. If Tenant has not achieved Substantial Completion of the Approved Tenant's Work in accordance with Tenant's Plans, as approved by Landlord's City Manager (or his/her designee), within five (5) years following the Lease Commencement Date, subject to Force Majeure as described in section 15.17, then, in such event, Tenant shall be in default under this Lease, and Landlord

shall have the option to declare this Lease null and void and exercise any remedies available under this Lease. Should this Lease be declared null and void pursuant to this paragraph, Tenant shall forfeit all rights to any deposits, advance rent, and any other payments made under this Lease, and Landlord shall have no further liability to Tenant under this Lease. "Substantial Completion" shall mean that the Approved Tenant's Work has been completed in accordance with the approved Tenant's Plans and that the Premises are approved for use and occupancy by the appropriate governmental authorities and are in suitable condition for the operation of Tenant's business. Compliance with the immediately preceding sentence shall be evidenced by the issuance of, as applicable, a Temporary Certificate of Completion, Temporary Certificate of Occupancy, Certificate of Completion, or Certificate of Occupancy.

(j) All of Tenant's Work or Tenant's Maintenance Work shall be completed in a good and workmanlike manner and shall be in conformity with the City's building codes and the Florida Building Code, and in accordance with Landlord's construction rules and regulations pertaining to contractors. Upon completion of Tenant's Work or Tenant's Maintenance Work, Tenant shall furnish Landlord's City Manager (or his/her designee):

(1) a certificate of use and/or occupancy issued by the City and other evidence satisfactory to Landlord's City Manager (or his/her designee) that Tenant has obtained the governmental approvals necessary to permit occupancy; and

(2) a notarized affidavit from Tenant's contractor(s) that all amounts due for work done and materials furnished in completing Tenant's Work or Tenant's Maintenance Work have been paid; and

(3) releases of lien from any subcontractor or material supplier that has given Landlord a Notice to Owner pursuant to Florida law; and

(4) as-built drawings of the Premises, with a list and description of all work performed by the contractors, subcontractors, and material suppliers.

(k) Any damage to the existing finishes of the Premises shall be patched and repaired by Tenant, at its expense, and all such work shall be done to Landlord's satisfaction. If any patched and painted area does not match the original surface, then the entire surface shall be repainted at Tenant's expense. Tenant agrees to indemnify and hold harmless Landlord, its employees, contractors, and agents, from and against any and all costs, expenses, damage, loss, or liability, including, but not limited to, reasonable attorneys' fees and costs, which arise out of, is occasioned by, or is in any way attributable to the build-out of the Premises or any subsequent improvements or alterations by Tenant pursuant to this Lease. Tenant, at its expense, shall be responsible for the maintenance, repair, and replacement of any and all items constructed by Tenant's contractor.

(l) Tenant shall obtain a performance bond and a payment bond for all of Tenant's Work or Tenant's Maintenance Work that exceeds an estimated cost of \$200,000, in compliance with Florida Statutes Section 713.23, and otherwise in form and content approved by the City Manager, or such other security as is reasonably acceptable to the City Manager, after consultation with the City Attorney.

(m) In the event that: (i) Landlord objects to any item submitted by Tenant pursuant to this Section 5.2, and (ii) Tenant provides Landlord with such item revised to address Landlord's objection(s), then the timeframes provided herein for Landlord to notify Tenant of its acceptance or objection to such original item(s) shall also apply to the revised item(s).

(n) Landlord's failure to timely respond to any construction, alteration or modification items or plans submitted by Tenant anywhere under this Lease within the specified time period provided herein shall be deemed a default by Landlord under this Lease, following the expiration of the thirty (30) day cure period.

5.3 Maintenance and Repairs by Landlord. It is hereby acknowledged and agreed that Landlord, at its sole cost and expense, is responsible to maintain and repair the Parking Area, roads including landscaping and lighting), electricity lines, water lines, sanitary sewer lines, gas lines and telephone facility from the outside to the connection points of the Premises. Landlord shall use all reasonable efforts to fulfill its maintenance and repair obligations. Tenant will notify Landlord in writing of any necessary repairs that are the obligation of Landlord. Notwithstanding any other provisions of this Lease, if any part of the Premises is damaged or destroyed or requires repair, replacement, or alteration as a result of the act or omission of Tenant, its employees, agents, invitees, licensees, or contractors, Landlord shall have the right to perform same and the cost of such repairs, replacement, or alterations shall be paid by Tenant to Landlord upon demand. In addition, if, in an emergency, it shall become necessary to make promptly any repairs or replacements required to be made by Tenant, Landlord may proceed forthwith to have the repairs or replacements made and pay the costs thereof. Within ten (10) days after written demand, Tenant shall reimburse Landlord for the cost of making the repairs.

5.4 Maintenance and Repairs by Tenant.

5.4.1 Tenant shall maintain or cause to be maintained, at its own cost and expense, the Premises substantially equal in quality and class to the original quality of improvements, both inside and out, including, without limiting the generality of the foregoing, Tenant is specifically required to maintain and make repairs to: (i) all pipes, lines, ducts, wires, or conduits contained within the Premises; (ii) windows, plate glass, doors, and any fixtures or appurtenances composed of glass (including, without limitation, interior and exterior washing of windows and plate glass); (iii) Tenant's sign; (iv) any heating or air conditioning equipment serving the Premises ("HVAC") (which shall include, without limitation, a preventive maintenance HVAC service contract that include, without limitation, preventive HVAC maintenance no less than semi-annually); (v) all or any portion of Tenant's Work including, without limitation, any materials, machinery, finishings, fixtures, and equipment related thereto; and (vi) emergency water and fire sprinkler system, ceilings, stairways, floor slabs and floor coverings, sidewalks, walkways, hallways, corridors, landscaping (irrigation system), canopies (awnings and frames), loading dock/service areas, utility rooms, electric rooms, building structure including roof, siding, painting, structural integrity (collectively, the "Maintenance Standards"). The Maintenance Standards shall also include Tenant's obligation to: (x) furnish, maintain, and replace all electric light bulbs, tubes, and tube casings located within or serving the Premises and Tenant's signage, all at Tenant's sole cost and expense; and (y) maintain sufficient garbage collection areas so that garbage is not overflowing and enclosures remain closed at all times unless garbage is actively being disposed or collected. The Premises shall further be kept in good order, condition and repair by Tenant, and in a clean, sanitary and safe condition in accordance with all laws, including without limitation, the ADA, and directions, rules and regulations of the health officer, fire marshal, building inspector or other officers of any governmental agencies having jurisdiction, all at the sole cost and expense of Tenant. Tenant shall also be responsible for replacing all fixtures and equipment which are stolen damaged beyond repair or worn out. The interior wall finishes, interior flooring finishes, fixtures, and furniture in the Premises shall be repaired, replaced, and/or maintained by Tenant, at Tenant's sole cost and expense, periodically as to keep the Premises in good condition.

5.4.2 All repair and maintenance performed by Tenant shall be performed by contractors or workmen approved by Landlord's City Manager, which approval shall not be unreasonably withheld or delayed.

5.4.3 Tenant's compliance with the Maintenance Standards shall be subject to Landlord's reasonable discretion. Tenant and Landlord shall inspect the physical structure of the Premises every five (5) years, at the expense of the Tenant, and using a contractor mutually agreed upon by the parties, to identify deferred maintenance items and develop a schedule of renewal and replacement projects for the following five (5) years.

5.4.4 If Tenant fails to comply with any of the Maintenance Standards and Tenant does not commence and continue to diligently work to comply with such Maintenance Standard(s) within five (5) business days after written notice by Landlord to Tenant specifying the nature of such failure to comply, then Landlord's sole and exclusive remedy for Tenant's failure to comply with such Maintenance

Standard(s) herein shall be limited to the fines set forth in the fine schedule set forth in Exhibit "G". For the avoidance of doubt, such fines shall neither commence nor accrue until and unless Tenant fails to cure such failure within the time period set forth herein.

5.4.5 At the expiration or earlier termination of the Term, Tenant shall surrender the Premises to Landlord in as good condition and repair as Tenant is required to maintain the Premises throughout the Term, reasonable wear and tear excepted.

5.5 Intentionally Omitted.

5.6 Ownership of Improvements and Fixtures; Removal. All leasehold improvements, furnishings, and equipment constructed or installed on the Premises by Tenant shall be personal property and Tenant shall have legal title thereto during the term of this Lease. Upon the expiration or termination of the Lease, title to all permanent improvements constructed on the Premises shall vest in Landlord. Title to all supplies, furnishings, inventories, and removable equipment and other personal property shall remain in Tenant, and Tenant shall have the right to remove such items, excepting licenses, from the Premises without damaging the Premises unless Tenant is in default under the Lease. Tenant may, during the Term, in the usual course of its business, remove its trade fixtures, provided that Tenant is not in default under this Lease; and Tenant shall, at the expiration or earlier termination of the Term, at its sole cost, remove such of the leasehold improvements and trade fixtures in the Premises as Landlord shall require to be removed and restore the Premises to the condition existing prior to such removal. Tenant shall at its own expense repair any damage caused to the Premises by such removal. If Tenant does not remove its trade fixtures at the expiration or earlier termination of the Term, the trade fixtures shall, at the option of Landlord, become the property of Landlord and may be removed from the Premises and sold or disposed of by Landlord in such manner as it deems advisable without any accounting to Tenant.

5.7 Liens. Tenant shall promptly pay for all materials supplied and work done in respect of the Premises by, through, or under Tenant so as to ensure that no lien is recorded against any portion of the Premises or against Landlord's or Tenant's respective interests therein. If a lien is so recorded, Tenant shall discharge it promptly by payment or bonding. If any such lien against the Premises is recorded and not discharged by Tenant as above required within thirty (30) days following written notice to Tenant, Landlord shall have the right to remove such lien by bonding or payment and the cost thereof shall be paid immediately from Tenant to Landlord. Landlord and Tenant expressly agree and acknowledge that no interest of Landlord in the Premises shall be subject to any lien for improvements made by Tenant in or for the Premises, and Landlord shall not be liable for any lien for any improvements made by Tenant, such liability being expressly prohibited by the terms of this Lease. Tenant hereby agrees to inform all contractors and material suppliers performing work in or for or supplying materials to the Premises of the requirements of this Section.

5.8 Utilities. Tenant shall contract for and shall pay for all gas, electricity, water, sewer, stormwater, telephone and other utility charges applicable to the Premises.

5.9 License and Permits. Tenant shall, at its sole cost and expense, obtain and maintain in good standing all required licenses, and permits.

ARTICLE VI. MORTGAGE OR PLEDGE OF TENANT LEASEHOLD INTEREST

6.1 Mortgaging/Pledging Tenant's Leasehold Interest.

6.1.1 With the prior written consent of Landlord, not to be unreasonably withheld or delayed, Tenant may from time to time pledge or mortgage Tenant's leasehold interest (but not the fee) as security for any bona fide loan or loans from reputable lenders, but not beyond the original term plus any previously exercised renewal term, upon the condition that all rights acquired under any such financing or re-financing shall be subject to each of the provisions set forth in this Lease, and to all rights and interests of the City herein (a "Permitted Leasehold Mortgage"), and provided, further that:

6.1.1.1 any such secured financing of the Lease exclusively secures debt of the Tenant to the Lease;

6.1.1.2 any Permitted Leasehold Mortgage or other encumbrance executed by the Tenant in connection with a Permitted Leasehold Mortgage or otherwise will not extend to or be a lien or encumbrance upon Landlord's interest in the Lease or Property or in any rights appurtenant to Landlord's interests;

6.1.1.3 any Permitted Leasehold Mortgage or other encumbrance executed by the Tenant in connection with a Permitted Leasehold Mortgage shall at all times, without the necessary for the execution of any further documents, be subject and subordinate to the interest of the Landlord in the Premises, and the rights of the Landlord in the Premises and arising out of the Lease shall not be affected by any Permitted Leasehold Mortgagee, nor shall the Landlord be deprived in any other way of its rights in the Premises or under this Lease, except to the extent provided in this Section or in any subordination, non-disturbance and recognition agreement between the Landlord and the Primary Leasehold Mortgagee that is consistent with the terms of this Lease; and

6.1.1.4 Tenant shall at all times remain liable hereunder for the all payment obligations pursuant to the Lease, including Annual Rent, and the performance of all covenants and conditions of this Lease as provided in this Lease

6.1.2 Copies of all loan applications, commitments and loan agreements must be supplied to Landlord for its approval in advance.

6.1.3 Landlord and Tenant acknowledge, and agree to accept, customary and reasonable amendments or documents that lenders typically require and agree to the following typical Lender provisions:

- (i) Lender shall be supplied copies of any notices of default by Landlord,
- (ii) Landlord shall give to Lender reasonable additional time to cure Tenant default,
- (iii) Lender shall have no liability with respect to defaults occurring prior to the time lender takes possession and there shall be no set offs, holdbacks for such periods,
- (iv) Landlord shall consent to a new direct replacement lease with lender or its transferee,
- (v) Landlord and Lender shall enter into customary Subordination, Nondisturbance and Attornment Agreement.

6.1.4 The Landlord agrees that in the event of a termination hereof by reason of the occurrence of any Event of Default, and subject to the rights herein granted to leasehold mortgagees, the Permitted Leasehold Mortgage which is a senior/first lien on Tenant's interest in this Lease and the leasehold interest created hereby ("Primary Leasehold Mortgagee"), shall have the option, but not the obligation, to enter into a Mortgagee Lease, with the Primary Leasehold Mortgagee, as lessee, for the remainder of the Term with the same covenants, conditions and agreements (except for any requirements which have been fully satisfied by Tenant or Landlord prior to termination) ("Mortgagee Lease"); provided:

- (i) The Primary Leasehold Mortgagee shall enter into a Mortgagee Lease, within the six (6) month period following the date in which notice is given by Landlord to lender of the Event of Default referred to in Section 6.1.4, with Landlord's obligation to enter into a Mortgagee Lease

conditioned upon, on the date the Mortgagee Lease is executed, (a) Landlord receiving payment of all Rent due hereunder through the date of such Mortgagee Lease; (b) all monetary defaults having been cured; (iii) all non-monetary defaults susceptible to cure having been remedied and cured or Primary Leasehold Mortgagee, as lessee, having commenced such cure and continuing to diligently complete the cure; and (iv) the Landlord receiving payment of all expenses, including reasonable attorneys' fees and disbursements and court costs, incurred by the Landlord in connection with such Event of Default, the termination of this Lease and the preparation of the new Mortgagee Lease, together with interest thereon at the lesser of the Default Rate or the highest rate permitted by law, from the due date or the date expended by the Landlord, as the case may be, to the date of actual payment from Primary Leasehold Mortgagee.

(ii) Landlord's delivery of the Mortgagee Lease shall be (a) made without representation or warranty of any kind or nature whatsoever either express or implied; (b) Primary Leasehold Mortgagee, as lessee, shall take such Premises "as-is" in its then current condition; and (c) upon execution and delivery of such Mortgagee Lease, Primary Leasehold Mortgagee, as lessee, at its sole cost and expense, shall be responsible for taking such action as shall be necessary to cancel and discharge this Lease and to remove Tenant from the Premises.

(iii) The Primary Leasehold Mortgagee, as lessee under the Mortgagee Lease, shall perform and observe all covenants contained in the Mortgagee Lease on the Tenant's part to be performed during such period of time commencing with the date of the execution of the Mortgagee Lease and terminating upon the abandonment or surrender of possession of the Premises under the said Mortgagee Lease.

(iv) The Primary Leasehold Mortgagee, as lessee under the Mortgagee Lease shall have the same right, title and interest in and to the Premises and the right to use the Improvements thereon as the Tenant had under this Lease.

6.1.5 No Mortgages of Fee or Landlord's Interest. Tenant shall have no right whatsoever to pledge or mortgage the fee interest of Landlord's leasehold estate.

6.1.6. City Manager Approval. Landlord's consent referenced in Section 6.1.1, the new Mortgagee Lease referenced in Section 6.1.4, and the related actions of Landlord under this Article VI may be exercised by the City Manager.

ARTICLE VII. INSURANCE AND INDEMNITY.

7.1 Tenant's Insurance. Tenant shall, throughout the Term (and any other period when Tenant is in possession of the Premises), maintain at its sole cost the following insurance:

(A) All risks property insurance against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.

(B) Comprehensive General liability insurance on an occurrence basis, including products and completed operations, property damage, bodily injury and property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate applies, either the general aggregate limit shall apply separately to this location or the general aggregate limit shall be twice the required occurrence limit. The policy must be endorsed to include Liquor Liability.

(C) Worker's compensation and employer's liability insurance in compliance with applicable legal requirements.

(D) Business interruption insurance, sufficient to insure Tenant for no less than one (1) full year of loss of business, with the Landlord named thereon as loss payee to the extent permitted by applicable law.

(E) Any other form of insurance which Landlord, acting reasonably, requires from time to time in form, in amounts, and for risks against which a prudent tenant would insure, but in any event not less than that carried by comparable restaurant establishments in Miami-Dade County, Florida.

(F) **Building Improvements.** All policies referred to above shall: (i) be taken out with insurers licensed to do business in Florida and reasonably acceptable to Landlord's City Manager; (ii) be in a form reasonably satisfactory to Landlord's City Manager; (iii) be non-contributing with, and shall apply only as primary and not as excess to any other insurance available to Landlord; (iv) contain an undertaking by the insurers to notify Landlord by certified mail not less than thirty (30) days prior to any material change, cancellation, or termination, and (v) with respect to subsection (A), contain replacement cost, demolition cost, and increased cost of construction endorsements. Certificates of insurance on Landlord's standard form or, if required by Landlord's City Manager, copies of such insurance policies certified by an authorized officer of Tenant's insurer as being complete and current, shall be delivered to Landlord's City Manager promptly upon request. If Tenant fails to take out or to keep in force any insurance referred to in this Section 7.1, or should any such insurance not be approved by Landlord, and Tenant does not commence and continue to diligently cure such default within two (2) business days after written notice by Landlord to Tenant specifying the nature of such default, then Landlord has the right, without assuming any obligation in connection therewith, to effect such insurance at the sole cost of Tenant and all outlays by Landlord shall be paid by Tenant to Landlord as additional rent without prejudice to any other rights or remedies of Landlord under this Lease. Tenant shall not keep or use in the Premises any article which may be prohibited by any fire or casualty insurance policy in force from time to time covering the Premises

(G) Additional insurance requirements:

(i) Additional Insured

City of Miami Beach, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of operations performed by or on behalf of the Tenant including materials, parts, or equipment furnished in connection with such operations.

(ii) Primary Coverage

For any claims related to this contract, the Tenant's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City of Miami Beach, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Miami Beach, its officers, officials, employees, or volunteers shall be excess of the Tenant's insurance and shall not contribute with it.

(iii) Legal Liability Coverage

The property insurance is to be endorsed to include Legal Liability Coverage with a limit equal to the replacement cost of the leased property.

(iv) Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice to the City of Miami Beach c/o EXIGIS Insurance Compliance Services.

(v) Waiver of Subrogation

Tenant hereby grants to the City of Miami Beach a waiver of any right to subrogation which any insurer of said Tenant may acquire against the City by virtue of the payment of any loss under such insurance. Tenant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies whether or not a waiver of subrogation endorsement has been issued by the insurer, and each party shall indemnify the other against any loss or expense, including reasonable attorneys' fees, resulting from the failure to obtain such waiver.

(vi) Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City. The City may require the Tenant to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

(vii) Acceptability of Insurers

Insurance must be placed with insurers authorized to do business in the State of Florida with a current A.M. Best rating of A:VII or higher, unless otherwise acceptable to the City.

(viii) Verification of Coverage

Tenant shall furnish the City with original certificates and all amendatory endorsements, or copies of the applicable insurance language, effecting coverage required by this contract. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

(ix) Special Risks or Circumstances

The City of Miami Beach reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

(x) CERTIFICATE HOLDER MUST READ:

CITY OF MIAMI BEACH
c/o EXIGIS Insurance Compliance Services
P.O. Box 4668 – ECM #35050
New York, NY 10163-4668

Kindly submit all certificates of insurance, endorsements, exemption letters to our servicing agent, EXIGIS, at:

Certificates-miamibeach@riskworks.com

Compliance with the foregoing requirements shall not relieve the Tenant of his liability and obligation under this section or under any other section of this Agreement.

7.2 Loss or Damage. Tenant acknowledges that the Landlord will not be performing any maintenance and repairs. Landlord shall not be liable for any death or injury arising from or out of any occurrence in, upon, at, or relating to the Premises, or damage to property of Tenant or of others located in the Premises, nor shall it be responsible for any loss of or damage to any property of Tenant or others from any cause, unless such death, injury, loss, or damage results from the gross negligence or willful misconduct of Landlord. Without limiting the generality of the foregoing, Landlord shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, falling ceiling tile, falling fixtures, steam, gas, electricity, water, rain, flood, or leaks from any part of the Premises or from the pipes, sprinklers, appliances, plumbing works, roof, windows, or subsurface of any floor or ceiling of the Restaurant Space, or from the street or any other place or by dampness, or by any other cause whatsoever, unless resulting from the gross negligence or willful misconduct of Landlord. Tenant agrees to indemnify Landlord and hold it harmless from and against any and all loss (including loss of Annual Rent and additional rent payable in respect to the Premises), claims, actions, damages, liability, and expense of any kind

whatsoever (including attorneys' fees and costs at all tribunal levels), unless caused by the gross negligence or willful misconduct of Landlord, arising from any occurrence in, upon, or at the Premises, or the occupancy, use, or improvement by Tenant or its agents or invitees of the Premises, or occasioned wholly or in part by any act or omission of Tenant its agents, employees, and invitees or by anyone permitted to be in the Premises by Tenant.

7.3 Lawsuit. In the event of any lawsuit, action or proceeding challenging the validity, execution or effectiveness of the Lease, any tort or other claim related to any of the foregoing, or any such challenge relating to any approval required under the City Code and/or the City Charter ("Lawsuit"), Tenant shall defend any such Lawsuit at their sole cost and expense using legal counsel reasonably acceptable to the City. Tenant shall further indemnify and hold the City harmless from and against all claims of any and every kind arising out of, relating to or resulting from any Lawsuit. The terms of this paragraph shall become effective upon execution of the Lease and shall survive the expiration or any earlier termination of the Lease. This Section 7.3 shall apply only to a Lawsuit brought by a third party.

7.4 Waiver of Subrogation. Landlord and Tenant each hereby waives on behalf of itself and its insurers (none of which shall ever be assigned any such claim or be entitled thereto due to subrogation or otherwise) any and all rights of recovery, claim, action, or cause of action, against the other, its agents, officers, or employees, for any loss or damage that may occur to the Premises, or any improvements thereto, or any improvements to any of the aforesaid, or any personal property of such party therein, by reason of fire, the elements, or any other causes which are, or could or should be insured against under the terms of the standard fire and extended coverage insurance policies referred to in this Lease, regardless of whether such insurance is actually maintained and regardless of the cause or origin of the damage involved, including negligence of the other party hereto, its agents, officers, or employees. Tenant shall obtain from its insurers, under all policies of fire, theft, public liability, worker's compensation, and other insurance maintained by it at any time during the Term hereof insuring or covering the Premises or any portion thereof or operations therein, a waiver of all rights of subrogation which the insurer of Tenant have against the Landlord, and Tenant shall indemnify, defend, and hold harmless Landlord against any loss or expense, including reasonable attorneys' fees (appellate or otherwise) resulting from the failure to obtain such waiver.

ARTICLE VIII. DAMAGE AND DESTRUCTION.

8.1 Damage to Premises. Tenant acknowledges that if the Premises are partially or totally destroyed due to fire or other casualty, the Tenant, except as hereafter provided in this subsection, shall, at its sole cost and expense within (i) thirty (30) days after receiving insurance proceeds with respect to any such casualty or (ii) within one hundred eighty (180) days from the date of such casualty, commence the work of repair, reconstruction, restoration, or replacement and shall prosecute the work with all reasonable dispatch, so as to fully complete such work as expeditiously as reasonably possible consistent with the nature and extent of the casualty, with such Improvements to be repaired, reconstructed, or restored as nearly as practicable to the same condition as prior to such casualty. Annual Rent shall abate proportionately to the portion of the Premises, if any, rendered untenable from the date of destruction or damage until the repairs have been substantially completed. Upon being notified that the repairs have been substantially completed, Tenant shall diligently perform all other work required to fully restore the Premises for use in Tenant's business, in every case at Tenant's cost and without any contribution to such cost by Landlord except in the case of gross negligence or willful misconduct by Landlord. Tenant agrees that during any period of reconstruction or repair of the Premises, it will continue the operation of its business within the Premises to the extent practicable. If neglect of Tenant or Tenant's employees, contractors, agents, guest, or invitees, rent and all other charges shall not abate.

8.2 Termination for Damage. Notwithstanding Section 8.1, if damage or destruction which has occurred to the Premises is such that, in the reasonable opinion of Landlord or Tenant, such reconstruction or repair cannot be completed within three hundred and sixty (360) days of the happening of the damage or destruction, Landlord or Tenant may, at its sole option, terminate this Lease on notice given within sixty (60) days after such damage or destruction and Tenant shall immediately deliver vacant possession of the Premises in accordance with the terms of this Lease.

ARTICLE IX. ASSIGNMENT, LEASES, AND TRANSFERS.

9.1 Transfer by Tenant. Tenant shall not enter into, consent to, or permit any Transfer, as hereinafter defined, without the prior written consent of Landlord in each instance. For purposes of this Lease, "Transfer" means an assignment of this Lease in whole or in part; a sublease of all or any part of the Premises; any transaction whereby the rights of Tenant under this Lease or to the Premises are transferred to another; any mortgage or encumbrance of this Lease or the Premises or any part thereof or other arrangement under which either this Lease or the Premises become security for any indebtedness or other obligations; and if Tenant is a corporation or a partnership, the transfer of a controlling interest in the stock of the corporation or partnership interests, as applicable. If there is a permitted Transfer, Landlord may collect rent or other payments from the transferee and apply the net amount collected to the rent or other payments required to be paid pursuant to this Lease but no acceptance by Landlord of any payments by a transferee shall be deemed a waiver of any provisions hereof regarding tenant. Notwithstanding any Transfer, Tenant shall not be released from any of its obligations under this Lease. Landlord's consent to any Transfer shall be subject to the further condition that if the Annual Rent and additional rent pursuant to such Transfer exceeds the Annual Rent and additional rent payable under this Lease, the amount of such excess shall be paid to Landlord. If, pursuant to a permitted Transfer, Tenant receives from the transferee, either directly or indirectly, any consideration other than Annual Rent and additional rent for such Transfer, either in the form of cash, goods, or services, Tenant shall, upon receipt thereof, pay to Landlord an amount equivalent to such consideration.

9.2 In addition, Tenant shall not grant any purchase money security interest in its furniture, fixtures, and equipment in the Premises, without prior written consent of the Landlord's City Manager. Notwithstanding anything in the foregoing to the contrary, to the extent that any purchase money security interests are required by Tenant's lender, Landlord shall act reasonably and in good faith to permit the same.

9.3 Permitted Transfers. Notwithstanding anything to the contrary above, Transfers by Tenant are permitted without Landlord consent in connection with (i) intercorporate restructure, and (ii) assignments to wholly-owned affiliates of Tenant.

ARTICLE X. DEFAULT.

10.1 Defaults. A default by Tenant shall be deemed to have occurred hereunder, if and whenever: (i) any monthly payment of the Annual Rent is not paid when due whether or not any notice or demand for payment has been made by Landlord; (ii) any other additional rent is in arrears and is not paid within fifteen (15) days after written demand by Landlord; (iii) Tenant has breached any of its obligations in this Lease (other than the payment of rent) and Tenant fails to remedy such breach within thirty (30) days after written notice from Landlord detailing such breach, or if such breach cannot reasonably be remedied within thirty (30) days (or such shorter period), then if Tenant fails to reasonably commence, or, in the event of a breach reasonably related to a life safety issue concerning the Premises, immediately commence, to remedy and thereafter proceed diligently to remedy such breach, in each case after notice in writing from Landlord; (iv) Tenant becomes bankrupt or insolvent; (iv) the business operated by Tenant in the Premises shall be closed by governmental or court order or for any reason for more than forty-five (45) consecutive days, other than governmental orders ordering such closure in connection with public health issues such as COVID-19 or other pandemics; (v) Tenant abandons or vacates the Premises prior to the expiration of the Term; (vi) Tenant fails to obtain all necessary permits for Tenant's Work or Tenant's Maintenance Work within the timeframe provided in this Lease or achieve Substantial Completion the Approved Tenant's Work within five (5) years following the Lease Commencement Date, subject to Force Majeure as described in section 15.17; (vii) timely obtain all required recertifications for the Restaurant Space as provided in Article 5.1(b); and/or (viii) failure to comply with the Community Benefits as set forth in Exhibit "H", as may be amended (each, an "Event of Default"). Tenant shall not at any time have any personal liability under this Lease. In the event of any breach or default by Tenant of any term or provision of this Lease, Landlord agrees to look solely to the equity or interest then-owned by Tenant in the Premises, and in no event shall any deficiency judgment be sought or obtained against Tenant. It is expressly understood that the

obligations of Tenant under this Lease are solely corporate obligations, and that, except for conversion, fraud, or willful misconduct, no personal liability will attach to, or is or shall be incurred by, the officers, directors, or employees, as such, of the Tenant, or of any successor corporation, or any of them, under or by reason of the obligations, covenants, or agreements of Tenant contained in this Lease or implied therefrom; and, except for conversion, fraud, or willful misconduct, that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such officer, director, or employee, as such, or under or by reason of the obligations, covenants or agreements contained in this Lease or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Lease.

10.2 **Remedies.** In the event of any default hereunder by Tenant, then without prejudice to any other rights which it has pursuant to this Lease or at law or in equity, Landlord, through its City Manager, shall have the following rights and remedies, which are cumulative and not alternative:

(A) Landlord may cancel this Lease by notice to Tenant and retake possession of the Premises for Landlord's account, or may terminate Tenant's right to possession of the Premises without terminating this Lease. In either event, Tenant shall then quit and surrender the Premises to Landlord. If Landlord terminates Tenant's right to possession of the Premises without terminating this Lease, Tenant's liability under all of the provisions of this Lease shall continue notwithstanding any expiration and surrender, or any re-entry, repossession, or disposition hereunder.

(B) Landlord may enter the Premises as agent of Tenant to take possession of any property of Tenant on the Premises, to store such property at the expense and risk of Tenant or to sell or otherwise dispose of such property in such manner as Landlord may see fit without notice to Tenant. Re-entry and removal may be effectuated by summary dispossession proceedings, by any suitable action or proceeding, or otherwise. Landlord shall not be liable in any way in connection with its actions pursuant to this section, to the extent that its actions are in accordance with law.

(C) If Landlord terminates Tenant's right to possession of the Premises without terminating this Lease under subsection (A) above, Tenant shall remain liable (in addition to accrued liabilities) to the extent legally permissible for all rent and all of the charges Tenant would have been required to pay until the date this Lease would have expired had such cancellation not occurred. Tenant's liability for rent shall continue notwithstanding re-entry or repossession of the Premises by Landlord. In addition to the foregoing, Tenant shall pay to Landlord such sums as the court which has jurisdiction thereover may adjudge as reasonable attorneys' fees with respect to any successful lawsuit or action instituted by Landlord to enforce the provisions of this Lease.

(D) Landlord shall have the obligation to mitigate damages and may relet all or any part of the Premises for all or any part of the unexpired portion of the Term of this Lease or for any longer period, and may accept any rent then attainable; grant any concessions of rent, and agree to paint or make any special repairs, alterations, and decorations for any new tenant as it may deem advisable, in its sole and absolute discretion.

10.3 **Prevailing Party Attorneys' Fees.** In the case of litigation, the prevailing party's attorney's fees and costs shall be paid by the other party (including attorneys' fees and disbursements, marshal's fees, and brokerage fees, in so doing); and any other expenses reasonably incurred by the prevailing party.

10.4 **Additional Remedies; Waiver.** The rights and remedies of the parties set forth herein shall be in addition to any other right and remedy now and hereinafter provided by law. All rights and remedies shall be cumulative and exclusive of each other. No delay or omission by the parties in exercising a right or remedy shall exhaust or impair the same or constitute a waiver of, or acquiescence to a default. If either party excuses or condones any default by the other party of any obligation under this Lease, this shall not be a waiver of such obligation in respect of any continuing or subsequent default and no such waiver shall be implied. No waiver of either party's rights under this Lease shall be effective unless reduced to a written document signed by the party to be charged.

10.5 Default by Landlord. A default by Landlord shall be deemed to have occurred hereunder, if and whenever, Landlord has breached any of its obligations in this Lease and Landlord fails to remedy such breach within thirty (30) days after written notice from Tenant detailing such breach, or if such breach cannot reasonably be remedied within thirty (30) days (or such shorter period), then if Landlord fails to reasonably commence to remedy and thereafter proceed diligently to remedy such breach. In the event of any default by Landlord, Tenant's exclusive remedy shall be an action for damages or injunction. Notwithstanding the foregoing, in the event Landlord fails to cure or respond to two (2) notices from Tenant of the same default, Tenant shall, after a final third notice specifying activation of its self-help authority, have the rights after ten (10) days have lapsed to cure the alleged default and offset against Rent, the cost of such curative action. Landlord shall not at any time have any personal liability under this Lease. In the event of any breach or default by Landlord of any term or provision of this Lease, Tenant agrees to look solely to the equity or interest then-owned by Landlord in the Premises, and in no event shall any deficiency judgment be sought or obtained against Landlord. It is expressly understood that the obligations of Landlord under this Lease are solely corporate obligations, and that, except for conversion, fraud, or willful misconduct, no personal liability will attach to, or is or shall be incurred by, the officers, directors, or employees, as such, of the Landlord, or of any successor corporation, or any of them, under or by reason of the obligations, covenants, or agreements of Landlord contained in this Lease or implied therefrom; and, except for conversion, fraud, or willful misconduct, that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such officer, director, or employee, as such, or under or by reason of the obligations, covenants or agreements contained in this Lease or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Lease.

ARTICLE XI. ESTOPPEL CERTIFICATE; SUBORDINATION.

11.1 Estoppel Certificate. Within fifteen (15) days after written request by either party to the other, such party shall deliver an estoppel certificate as to the status of this Lease, including:

- (a) whether this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified and identifying the modification agreements);
- (b) the amount of Annual Rent and additional rent then being paid and the dates to which same have been paid; and
- (c) whether or not there is any existing or alleged default by either party with respect to which a notice of default has been served, or any facts exist which, with the passing of time or giving of notice, would constitute a default and, if there is any such default or facts, specifying the nature and extent thereof.

11.2 Subordination; Attornment. 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 Premises, from time to time in existence against the Premises, whether now existing or hereafter created. Such subordination shall not require any further instrument to evidence such subordination. However, on request, Tenant shall further evidence its agreement to subordinate this Lease and its rights under this Lease to any and all documents and to all advances made under such documents. The form of such subordination shall be made as required by Landlord's City Manager. Tenant shall, if requested by Landlord, or a mortgagee, owner, or purchaser, or by any person succeeding to the interest of such mortgagee, owner, or purchaser, as the result of the enforcement of the remedies provided by law or the applicable instrument held by Landlord, such mortgagee, owner, or purchaser, automatically attorn to and become the tenant of Landlord or any such mortgagee, owner, purchaser, or successor-in-interest, without any change in the terms or other provisions of this Lease; provided, however, that Landlord, said mortgagee, owner, purchaser, or successor shall not be bound by (a) any payment of rent or additional rent for more than one (1) month in advance, or (b) any security deposit or the like not actually received by Landlord, such mortgagee, owner, or purchaser,

or successor, or (c) any amendment or modification in this Lease made without the consent of Landlord, such mortgagee, owner, purchaser, or successor, or (d) any construction obligation, free rent, or other concession or monetary allowance, or (e) any set-off, counterclaim, or the like otherwise available against Landlord, or (f) any act or omission of any prior landlord (including Landlord). Upon request by Landlord, said mortgagee, owner, or purchaser, or successor, Tenant shall execute and deliver an instrument or instruments confirming its attornment.

Notwithstanding the foregoing, the above subordination and any future subordination of this Lease shall be conditioned on the Landlord obtaining a nondisturbance agreement in favor of Tenant from all mortgagees and ground Landlords (if any) regarding any financings or leases entered into by Landlord with respect to the Premises, and no subordination shall be effective without a corresponding nondisturbance agreement.

ARTICLE XII. CONTROL BY LANDLORD.

12.1 Intentionally Omitted.

12.2 Alterations by Landlord. Landlord shall make no modifications to the utilities servicing the Premises or the Parking Area which would lessen, reduce or deprive Tenant of its use as contemplated hereunder.

ARTICLE XIII. CONDEMNATION.

13.1 Total or Partial Taking. If the whole of the Premises, or such portion thereof or the Parking Area as will make the Premises unusable for the purposes leased hereunder, shall be taken by any public authority under the power of eminent domain or sold to public authority under threat or in lieu of such taking, the Term shall cease as of the day possession or title shall be taken by such public authority, whichever is earlier ("Taking Date"), whereupon the rent and all other charges shall be paid up to the Taking Date with a proportionate refund by Landlord of any rent and all other charges paid for a period subsequent to the Taking Date. If less than the whole of the Premises, or less than such portion thereof as will make the Premises unusable in Tenant's reasonable judgment for the purposes leased hereunder, the Term shall cease only as to the part so taken as of the Taking Date, and Tenant shall pay rent and other charges up to the Taking Date, with appropriate credit by Landlord (toward the next installment of rent due from Tenant) of any rent or charges paid for a period subsequent to the Taking Date. Annual Rent and other charges payable to Landlord shall be reasonably reduced in proportion to or as may be reasonably required to reflect the value loss of the Premises taken.

13.2 Award. All compensation awarded or paid upon a total or partial taking of the Premises including the value of the leasehold estate created hereby shall belong to and be the property of Landlord without any participation by Tenant; Tenant shall have no claim to any such award based on Tenant's leasehold interest. However, nothing contained herein shall be construed to preclude Tenant, at its cost, from independently prosecuting any claim directly against the condemning authority in such condemnation proceeding for damage to, or cost of removal of, stock, trade fixtures, furniture, and other personal property belonging to Tenant and for Tenant's moving expenses; provided, however, that no such claim shall diminish or otherwise adversely affect Landlord's award or the award of any mortgagee and Tenant may not prosecute any claim for leasehold value.

ARTICLE XIV. INTENTIONALLY OMITTED.

ARTICLE XV. GENERAL PROVISIONS.

15.1 Intentionally Omitted.

15.2 Holding Over. If Tenant remains in possession of the Premises after the end of the Term without having executed and delivered a new lease or an agreement or written notice extending the Term,

there shall be no tacit renewal of this Lease or the Term, and Tenant shall be deemed to be occupying the Premises as a Tenant from month to month at a monthly Annual Rent payable in advance on the first day of each month equal to twice the monthly amount of Annual Rent payable during the last month of the Term, and otherwise upon the same terms as are set forth in this Lease, so far as they are applicable to a monthly tenancy.

15.3 Partial Invalidity. All of the provisions of this Lease are to be construed as covenants even though not expressed as such. If any provision of this Lease is held or rendered illegal or unenforceable it shall be considered separate and severable from this Lease and the remaining provisions of this Lease shall remain in force and bind the parties as though the illegal or unenforceable provision had never been included in this Lease.

15.4 Recording. Tenant shall record this Lease or any memorandum hereof in any public records.

15.5 Notices. Any notice, consent, or other instrument required or permitted to be given under this Lease shall be in writing and shall be delivered in person, or sent by certified mail, return receipt requested, or overnight express mail courier, postage prepaid, addressed (i) if to Landlord, at the address: set forth in the Lease Summary; and (ii) if to Tenant, at the Premises and addresses set forth in the Lease Summary. Any such notice or other instruments shall be deemed to have been given and received on the day upon which personal delivery is made or, if mailed, then forty-eight (48) hours following the date of mailing. Either party may give notice to the other of any change of address and after the giving of such notice, the address therein specified is deemed to be the address of such party for the giving of notices. If postal service is interrupted or substantially delayed, all notices or other instruments shall be delivered in person or by overnight express mail courier.

15.6 Successors; Joint and Several Liability. The rights and liabilities created by this Lease extend to and bind the successors and assigns of Landlord and the permitted successors and assigns of Tenant. No rights, however, shall inure to the benefit of any transferee unless such Transfer complies with the provisions of Article VIII. If there is at any time more than one Tenant or more than one person constituting Tenant, their covenants shall be considered to be joint and several and shall apply to each and every one of them.

15.7 Captions and Section Numbers. The captions, section numbers, article numbers, and table of contents appearing in this Lease are inserted only as a matter of convenience and in no way affect the substance of this Lease.

15.8 Extended Meanings. The words "hereof," "hereto," "hereunder," and similar expressions used in this Lease relate to the whole of this Lease and not only to the provisions in which such expressions appear. This Lease shall be read with all changes in number and gender as may be appropriate or required by the context. Any reference to Tenant includes, when the context allows, the employees, agents, invitees, and licensees of Tenant and all others over whom Tenant might reasonably be expected to exercise control. This Lease has been fully reviewed and negotiated by each party and their counsel and shall not be more strictly construed against either party.

15.9 Entire Agreement; Governing Law; Time. This Lease and the Exhibits and Riders, if any, attached hereto are incorporated herein set forth the entire agreement between Landlord and Tenant concerning the Premises and there are no other agreements or understandings between them. This Lease and its Exhibits and Riders may not be modified except by agreement in writing executed by Landlord and Tenant. This Lease shall be construed in accordance with and governed by the laws of the State of Florida. Time is of the essence of this Lease.

15.10 No Partnership. The parties hereby acknowledge that it is not their intention under this Lease to create between themselves a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership, or agency relationship. Accordingly, notwithstanding any expressions or provisions contained herein, nothing in this Lease, whether based on the calculation of rental or otherwise, shall be

construed or deemed to create, or to express an intent to create, a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership or agency relationship of any kind or nature whatsoever between the parties hereto. The provisions of this section shall survive expiration of the Term.

15.11 Quiet Enjoyment. If Tenant pays rent and other charges and fully observes and performs all of its obligations under this Lease, Tenant shall be entitled to peaceful and quiet enjoyment of the Premises for the Term without interruption or interference by Landlord or any person claiming through Landlord.

15.12 Brokerage. Landlord and Tenant each represent and warrant one to the other that 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 with respect to any claims for commissions or brokerage fees arising from or out of any breach of the foregoing representation and warranty.

15.13 Radon Notice. Section 404.056(5), Florida Statutes, requires the following notice to be provided with respect to the contract for sale and purchase of any building, or a rental agreement for any building:

"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 health department."

15.14 Intentionally Omitted.

15.15 TRIAL BY JURY. LANDLORD AND TENANT HEREBY KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING THAT THE LANDLORD AND TENANT MAY HEREIN AFTER INSTITUTE AGAINST EACH OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT.

15.16 Reference to "Approvals" or "Consent," etc. Except when expressly provided otherwise, all references in this Lease to the terms "approval," "consent," and words of similar import shall mean "reasonable written approval" or "reasonable written consent."

15.17 Delay; Force Majeure. The performance of any act by Landlord or Tenant hereunder may be delayed or suspended at any time while, but only so long as, such party is hindered in or prevented from performance of its obligations under this Lease by riots, acts of God, pandemic, COVID-19, war, rebellion, lockouts, governmental law, regulatory or restrictions in the nature of a moratorium or prohibition, or any other bona fide causes beyond the reasonable control of such party (each a "Force Majeure"), provided, however, if such condition persists for more than two hundred forty (240) consecutive days, Landlord and Tenant may in their sole discretion renegotiate the terms of this Lease. If the performance of the contractual obligations is prevented or delayed by an event believed by to be Force Majeure, such party shall immediately upon learning of the occurrence of the event or of the commencement of any such delay, but in no case later than fifteen (15) business days thereof, provide notice of (i) of the occurrence of event of Force Majeure, (ii) of the nature of the event and the cause thereof, (iii) of the anticipated impact on the Agreement, (iv) of the anticipated period of the delay, and (v) of what course of action such party plans to take in order to mitigate the detrimental effects of the event. The timely delivery of the notice of the occurrence of a Force Majeure event is a condition precedent to allowance of any relief pursuant to this section; however, receipt of such notice shall not constitute acceptance that the event claimed to be a Force Majeure event is in fact Force Majeure, and the burden of proof of the occurrence of a Force Majeure event shall be on the requesting party. In no event shall "Force Majeure" include the following instances, unless caused by Force Majeure: economic hardship, financial inability to perform specific to the party, technological impossibility, or failure to secure any of the required permits pursuant to this Lease.

15.18 Federal Approval. To the extent applicable, this Lease shall be subject to receiving written approval from the Federal Agencies having jurisdiction over development, construction and operations of South Pointe Park. This Lease shall not be effective until Tenant has been notified by registered mail that all applicable Federal Agency approvals have been obtained.

15.19 No Third-Party Beneficiaries. There exist no third-party beneficiaries, whether express or implied, with respect to this Lease.

15.20 Subject to Approval. The effectiveness of this Lease is subject to approval by the Landlord's electorate at a referendum. In the event the Lease is not approved by the Landlord's electorate by receiving at least 50% plus 1 vote, this Lease shall become null and void, and in such case, the Existing Lease shall remain in full force and effect. Provided that the Mayor and City Commission adopt a resolution accepting the certification of the official results of the November 2, 2021, City referendum approving this Lease, in accordance with Section 1.03(b)(1) of the City Charter, the Lease will take effect on the Lease Commencement Date.

15.21 Special Circumstances. To the extent Tenant's use and enjoyment of the Premises is temporarily or permanently hampered or reduced on account of the existence of work necessitated due to the construction of a stormwater pump or sea level rise or other flooding or other work to South Pointe Park, then Rent will be reduced or abated by Landlord and Tenant negotiating reasonably and in good faith.

15.22 Intellectual Property Rights. All intellectual property rights, including the name Smith & Wollensky, trademarks logos, marks or comparable items are the sole and exclusive property of Tenant and shall never be used by Landlord or anyone by, through or under Landlord.

15.23 Community Proffers. Tenant agrees to provide the community proffers as described on **Exhibit "H"** attached hereto.

15.24 City Inspector General.

(a) Pursuant to section 2-256 of the Code of the City of Miami Beach, the City has established the office of the inspector general which may, on a random basis, perform reviews, audits, inspections and investigations on all City contracts, throughout the duration of said contracts. This random audit is separate and distinct from any other audit performed by or on behalf of the City.

(b) The office of the inspector general is authorized to investigate City affairs and empowered to review past, present and proposed City programs, accounts, records, contracts and transactions. In addition, the inspector general has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor City projects and programs. Monitoring of an existing City project or program may include a report concerning whether the project is on time, within budget and in conformance with the contract documents and applicable law. The inspector general shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including, but not limited to, project design, bid specifications, (bid/proposal) submittals, activities of the Tenant, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.

(c) Upon ten days' written notice to the Tenant, the Tenant shall make all requested records and documents available to the inspector general for inspection and copying. The inspector general is empowered to retain the services of independent private sector auditors to audit, investigate, monitor, oversee, inspect and review operations activities, performance and procurement process including, but not limited to, project design, bid specifications, (bid/proposal) submittals, activities of the Tenant, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.

(d) The inspector general shall have the right to inspect and copy all documents and records in the Tenant's possession, custody or control which in the inspector general's sole judgment, pertain to performance of the contract, including, but not limited to, original estimate files, change order estimate files, worksheets, proposals and agreements from and with successful subtenants and suppliers,

all project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.

(e) The Tenant shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid preparation) and performance of this contract, for examination, audit, or reproduction, until three years after final payment under this contract or for any longer period required by statute or by other clauses of this contract. In addition:

(1) If this contract is completely or partially terminated, the Tenant shall make available records relating to the work terminated until three years after any resulting final termination settlement; and

(2) The Tenant shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(f) The provisions in this section shall apply to the Tenant, its officers, agents, employees, subtenants and suppliers. The Tenant shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the Tenant in connection with the performance of this contract.

(g) Nothing in this section shall impair any independent right to the City to conduct audits or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the City by the Tenant or third parties and does not create rights in any third parties.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

EXECUTED as of the Lease Execution Date.

WITNESSES:

Witness Name: _____

Witness Name: _____

Witness Name: _____

Witness Name: _____

LANDLORD:

**City of Miami Beach, a municipal corporation
of the State of Florida**

By: _____

Name: _____

Title: _____

TENANT:

**1 Washington Avenue Corp.,
a Florida corporation**

By: _____

Name: _____

Title: _____

EXHIBITS

Exhibit "A":	Land
Exhibit "A-1":	Restaurant Space
Exhibit "B":	Parking Area
Exhibit "C":	Approved Tenant's Work
Exhibit "D":	Sign Criteria
Exhibit "E":	Rules and Regulations
Exhibit "F":	Permitted Food and Beverage Area
Exhibit "G":	Fine Schedule for Maintenance Standard(s)
Exhibit "H":	Community Proffers

EXHIBIT "A"

Legal Description of Land

Restaurant Site being a part of South Pointe Park described hereon:

Commence at the above mentioned Monument "C" and run South 65°36'16" East, along the Northerly line of South Pointe Park, for a distance of 697.058 feet to a point of intersection with the State of Florida Coastal Construction Control line; thence run South 10°23'21" West, along the Coastal Construction Control Line for a distance of 382.005 feet to an intersection with the Northerly line of a 50.00 feet maintenance easement of Government Cut; thence run North 65°35'19" West, along the Northerly line of said maintenance easement for a distance of 52.74 feet to the POINT OF BEGINNING (P.O.B.); thence continue North 65°35'19" West for a distance of 171.60 feet to a point; thence run North 24°24'41" East for a distance of 140.00 feet to a point; thence run South 65°35'19" East for a distance of 171.50 feet to a point; thence South 24°24'41" West for a distance of 140.00 feet to the POINT OF BEGINNING.

Said lands located, lying and being in the City of Miami Beach, Florida.

Restaurant Space

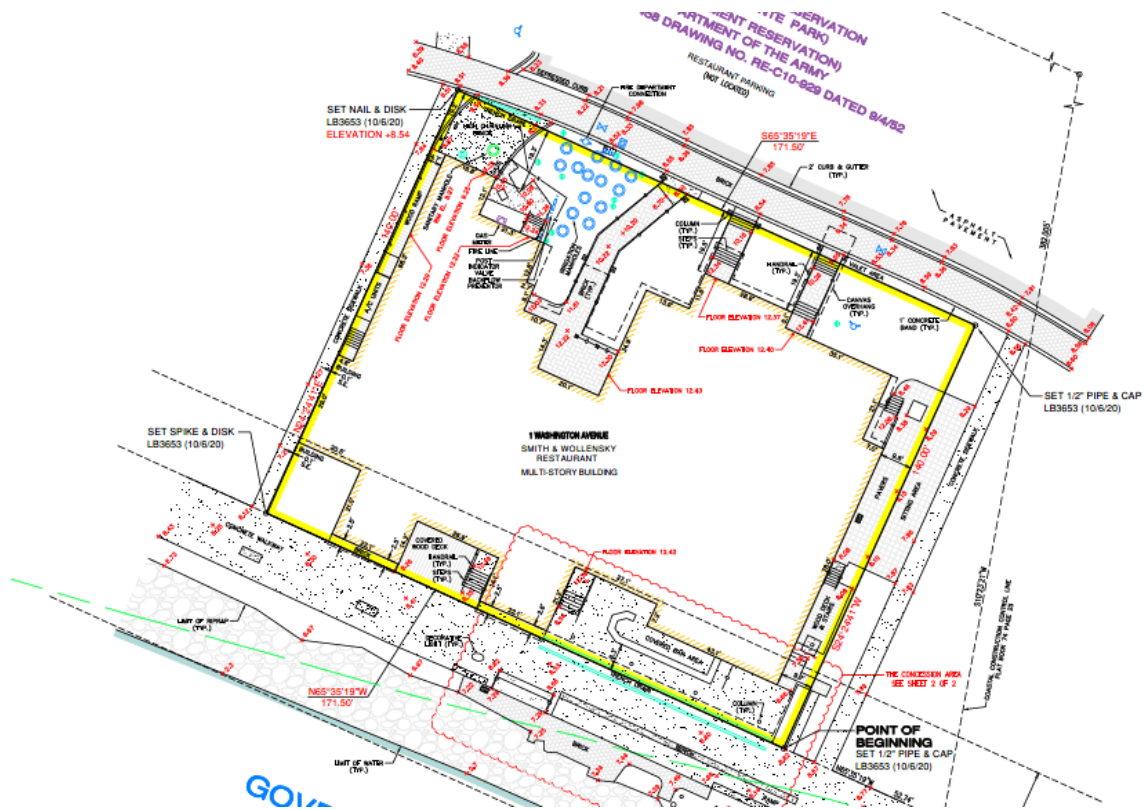


EXHIBIT "B"

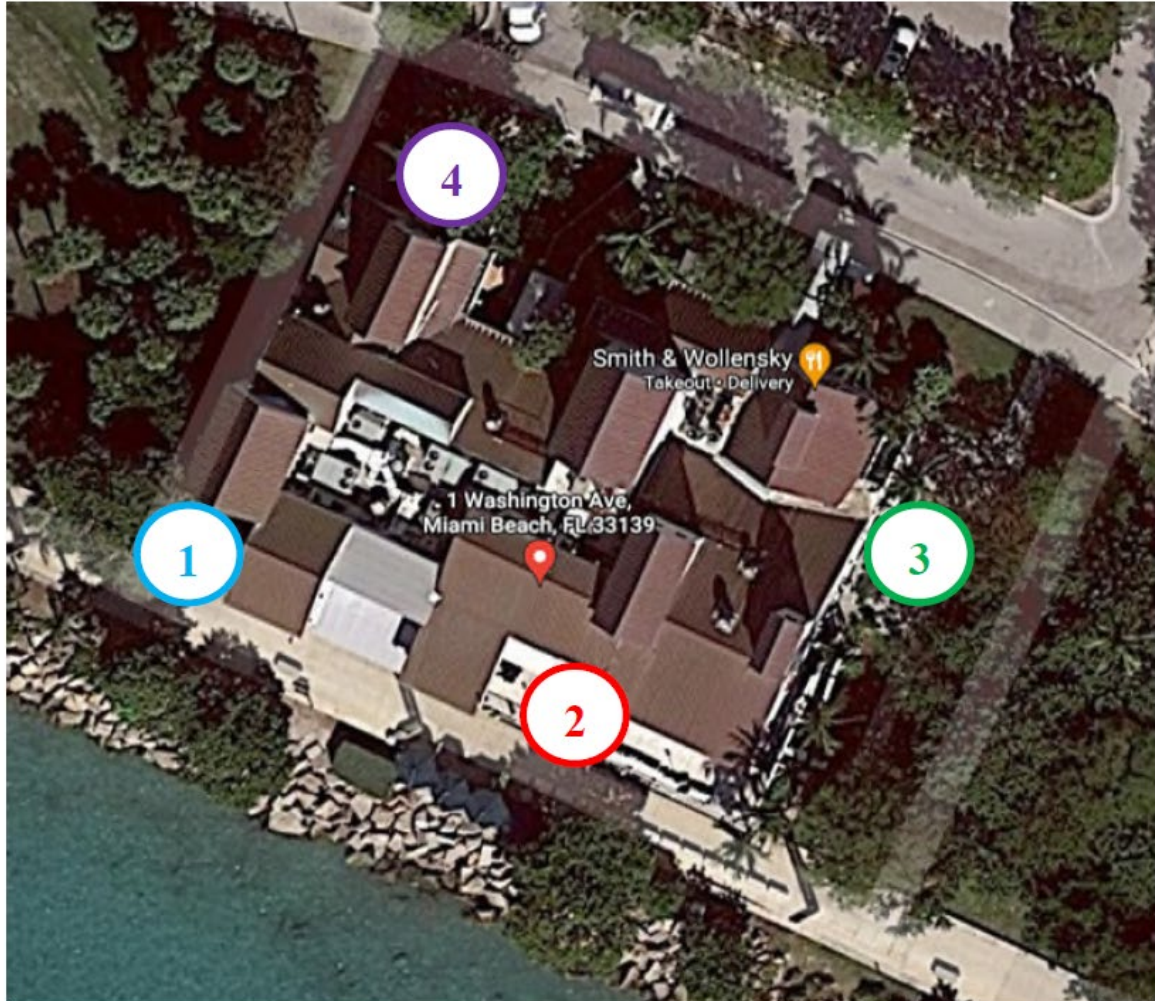
Parking Area (Outlined in Red)



EXHIBIT "C"

Approved Tenant's Work

Proposed Tenant's Work Location Map and Description



- 1 – Improvements to exterior southwest corner
- 2 – Improvements to southern façade patio dining area
- 3 – New seating area on eastern terrace, including the installation of pavers and other work
- 4 – Beautification and buffering of service area

Additional Proposed Tenant's Work Not Reflected on Location Map Above

- Repair and/or replacement of various mechanical, electrical, and plumbing equipment;
- Technology upgrades;
- Repair and/or replacement of furniture, fixtures and equipment; and
- Work to roof.

EXHIBIT "C" (Continued)

SMITH & WOLLENSKY
AMERICA'S STEAKHOUSE

MIAMI BEACH PRELIMINARY RENOVATION ESTIMATE				
Category				Estimate
Construction Hard Costs *				\$ 1,884,070
Food Service Equipment				\$ 632,400
Technology Costs				\$ 127,000
FF&E Costs				\$ 202,500
Consultants				\$ 260,000
Contingency				\$ 200,000
TOTAL				\$ 3,305,970

Estimates are preliminary and subject to adjustment.

EXHIBIT "D"

Sign Criteria

All building signage shall be consistent in type, composed of flush mounted non-plastic, individual letters and shall require a separate permit. Based on the design of the building and its lighting scheme, signage should be located in the window transom at the ground level of the structure, in a manner to be reviewed and approved by the City's Planning Department.

EXHIBIT "E"

Rules and Regulations

1. Security. Landlord may from time to time adopt appropriate systems and procedures for the security or safety of the Premises, any persons occupying, using, or entering the same, or any equipment, furnishings, or contents thereof, and Tenant shall comply with Landlord's reasonable requirements relative thereto.
2. Return of Keys. At the end of the Term, Tenant shall promptly return to Landlord all keys for the Restaurant Space which are in the possession of Tenant. In the event any Tenant fails to return keys, Landlord may retain \$100.00 of Tenant's security deposit for locksmith work and administration.
3. Bicycles, Animals. Tenant shall not bring any animals or birds into the Premises, and shall not permit bicycles or other vehicles inside or on the sidewalks outside the Premises except in areas designated from time to time by Landlord for such purposes.
4. Deliveries. Tenant shall ensure that deliveries of supplies, fixtures, equipment, furnishings, wares, and merchandise to the Premises are made through such entrances, elevators, and corridors and at such times as may from time to time be designated by Landlord, and shall promptly pay or cause to be paid to Landlord the cost of repairing any damage in the Premises caused by any person making improper deliveries.
5. Solicitations. Landlord reserves the right to restrict or prohibit canvassing, soliciting, or peddling in the Premises.
6. Refuse. Tenant shall place all refuse in proper receptacles provided by Tenant at its expense in the Premises or in receptacles (if any) provided by Landlord for the Premises, and shall keep sidewalks and driveways outside the Premises, and lobbies, corridors, stairwells, ducts, and shafts of the Premises, free of all refuse.
7. Obstructions. Tenant shall not obstruct or place anything in or on the sidewalks or driveways outside the Premises or in the lobbies, corridors, stairwells, or other common areas, or use such locations for any purpose except access to and exit from the Premises without Landlord's prior written consent. Landlord may remove at Tenant's expense any such obstruction or thing caused or placed by Tenant (and unauthorized by Landlord) without notice or obligation to Tenant.
8. Proper Conduct. Tenant shall not conduct itself in any manner which is inconsistent with the character of the Premises as a first quality restaurant/dining facility or which will impair the comfort and convenience of other patrons in the Premises.
9. Employees, Agents, and Invitees. In these Rules and Regulations, "Tenant" includes the employees, agents, invitees, and licensees of Tenant and others permitted by Tenant to use or occupy the Premises.
10. Pest Control. In order to maintain satisfactory and uniform pest control, Tenant shall engage for the Premises and at its sole cost, a qualified pest extermination contractor either designated or approved by Landlord, who shall perform pest control and extermination services in the Premises at such intervals as reasonably required or as may be directed by Landlord.

EXHIBIT "F"

Permitted Food and Beverage Area



EXHIBIT "G"

FINE SCHEDULE FOR MAINTENANCE STANDARDS

INFRACTION	FINE
Failure to perform any scheduled renewal and replacement projects for the Premises <u>identified by the contractor mutually agreed by both parties in accordance with Section 5.4.4 of the Lease.</u>	20 percent of the cost of renewal and replacement projects not completed per year, and each additional year thereafter, as determined by the City.
Failure to maintain sufficient garbage collection areas so that garbage is not overflowing and enclosures remain closed <u>and screened from view</u> at all times unless garbage is actively being disposed or collected.	\$1000 per violation
Major: Priority conditions or practices create or have the potential to exert a significant impairment to resident, visitor or employee health and safety, City resources, resident and visitor services or enjoyment, leased facilities, or associated personal property. <u>Example:</u> <u>Failure to perform unscheduled necessary maintenance of the following items in Section 5.4</u> (i) all pipes, lines, ducts, wires, or conduits contained within the Premises; (ii) windows, plate glass, doors, and any fixtures or appurtenances composed of glass (including, without limitation, interior and exterior washing of windows and plate glass); (iii) Tenant's sign; (iv) any heating or air conditioning equipment serving the Premises ("HVAC") (which shall include, without limitation, a preventive maintenance HVAC service contract that include, without limitation, preventive HVAC maintenance no less than semi-annually); (v) all or any portion of Tenant's Work including, without limitation, any materials, machinery, finishings, fixtures, and equipment related thereto; and (vi) emergency water and fire sprinkler system, ceilings, stairways, floor slabs and floor coverings, sidewalks, walkways, hallways, corridors, landscaping (irrigation system), canopies (awnings and frames), loading dock/service areas, utility rooms, electric rooms, building structure including roof, siding, painting, structural integrity. Failure to maintain sidewalks or driveway pursuant to Exhibit E, Section 7.	\$1000 per day.
Moderate: Second Priority conditions or practices create or have the potential to exert a	\$500 per week.

moderate impairment to resident, visitor or employee health and safety, park resources, resident and visitor services or enjoyment, leased facilities, or associated personal property. Example: <u>Failure to furnish, maintain, and replace all electric light bulbs, tubes, and tube casings located within or serving the Premises and Tenant's signage</u>	
Minor: Third Priority conditions or practices create or have a potential to exert a minor impairment to resident, visitor or employee health and safety, park resources, resident and visitor services or enjoyment, the Premises, or associated personal property. Example: <u>Failure to repair, replace or maintain interior wall finishes, interior flooring finishes, fixtures, and furniture in the Premises</u> <u>Failure to operate in accordance with all other rules and regulations provided in Exhibit E (with the exception of Section 7).</u>	\$100 per week.

EXHIBIT "H"

COMMUNITY PROFFERS

- i. Reimbursement of the City's cost for the design, permitting, and construction of electric gates at entry to South Pointe Park parking lot, at an aggregate cost (soft and hard costs) not to exceed \$60,000.
 - a. The electric gates shall be designed, permitted, installed and maintained by the City, at the City's sole cost and expense.
 - b. Following the Lease Commencement Date of the Lease, City shall provide the Tenant with an invoice containing the backup for the City's incurred costs for the design, permitting, installation and construction of electric gates at entry to South Pointe Park, and Tenant shall reimburse the City within fifteen (15) days from receipt of said invoice.

- ii. Monthly free lunch for Rebecca Towers residents:

Tenant will provide once monthly, appropriate and nutritional congregate meals to residents of Rebecca Towers. The City and persons receiving meals will be asked to sign a liability waiver that is customarily used when free food is donated. There are approximately 240 residents, the demographic of which is primarily Hispanic. A sample menu is provided below:

<u>Appetizer</u>	
Garden Salad	1.5 cups
Cesar Salad	1.5 cups
Vegetable Soup	1 cup
Pea Soup	1 cup
Seasonal Soup	1 cup
<u>Entrée</u>	
Cesar w Chicken	6 oz
Steak Sandwich	6 oz
Chicken Sandwich	6 oz
Fish and Chips	6 oz
Beef Stew	7 oz
Pasta Primavera	7 oz
Spaghetti Bolognese	8 oz
Roasted Chicken w vegetables	6oz
Lasagna	8 oz
<u>Dessert</u>	
Fresh Fruit Cup	1 cup
Baked Cookies	2 oz
Chef's Choice Cake	4 oz
Chocolate Brownie	3 oz

- iii. Monthly mentorship program for Miami Beach start-up restaurants and bars within five years of opening, as set forth below.

The brand Smith & Wollensky has successfully been in business for over four decades domestically and is gaining international recognition as it continues to expand in major cities around the world. Smith & Wollensky Miami Beach will offer a mentorship program as a complimentary resource for restaurants in the City of Miami Beach that are the first restaurant or bar ever opened or operated by the owner anywhere in the world. It is not the intention of the mentorship program to apply to chain restaurants/bars or establishments with ownership groups or management that are highly-experienced in the food service industry. The goal of the program is to assist businesses facing operational difficulties successfully overcome challenges. Smith & Wollensky will offer a one (1) hour Zoom session each month for eligible restaurants in Miami Beach. If any eligible business needs individualized mentorship rather than group Zoom sessions, then such operators in need of assistance will get reasonable one-on-one guidance from Smith & Wollensky's Miami Beach Senior Managers once a month. Help

topics include: Menu development, purchasing, budgeting and forecasting, restaurant financials, staff development and training programs, fast track management program, beverage programs and Corporate Citizenship.