

# TASTE BAKERY CAFE, LLC

## Concession Agreement

**CONCESSION AGREEMENT BETWEEN  
CITY OF MIAMI BEACH AND  
TASTE BAKERY CAFE, LLC  
FOR MANAGEMENT AND OPERATION OF A FOOD & BEVERAGE CONCESSION  
IN THE OUTDOOR SPACE ADJACENT TO 773 17<sup>th</sup> Street**

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_, 2022, between the **CITY OF MIAMI BEACH**, a municipal corporation of the State of Florida (hereinafter called "City"), having its principal address at 1700 Convention Center Drive, Miami Beach, Florida, 33139, and **TASTE BAKERY CAFE, LLC**, a Florida Limited Liability Company, having its principal place of business at 773 17<sup>th</sup> Street, Miami Beach, Florida, 33139 (hereinafter called "Concessionaire").

The City hereby grants to the Concessionaire, and the Concessionaire hereby accepts from the City, the rights to maintain, manage, and operate a food and beverage concession within the Concession Area (as hereinafter defined), in accordance with the purpose(s) and for the term(s) stated herein, and subject to all the terms and conditions herein contained.

**SECTION 1. TERM.**

- 1.1 This Agreement shall commence on the 1<sup>st</sup> day of March 2023 (the "Commencement Date"), and terminate on the 28<sup>th</sup> day of February 2028 ("Term").

For purposes of this Agreement, a "Contract Year" shall be defined as that certain period commencing on the 1<sup>st</sup> day of January, and ending on the 31<sup>st</sup> day of December.

Provided Concessionaire is in good standing and free from default(s) under Section 13 hereof, and upon written notice from Concessionaire, which notice shall be submitted to the City Manager no earlier than one hundred eighty (180) days, but in any case no later than one hundred twenty (120) days prior to the expiration of the initial Term, this Agreement may be extended for one (1), four (4) year and 364 days renewal term. Any extension, if approved, shall be memorialized in writing and signed by the parties hereto (with the City hereby designating the City Manager as the individual authorized to execute such extensions on its behalf).

In the event that the City Manager determines, in his/her sole discretion, not to extend or renew this Agreement (upon expiration of the initial term or of the first renewal term), the City Manager shall notify Concessionaire of same in writing, which notice shall be provided to Concessionaire within thirty (30) business days of the City Manager's receipt of Concessionaire's written notice.

**It is the intent of the parties hereto that, unless otherwise terminated pursuant to the provisions of this Agreement, the Term of this Agreement is intended to run concurrent with the term, including any extensions thereof, of the Lease Agreement, as referenced on Page 1 of this Agreement.**

**The City shall have the right to terminate this Agreement, without cause and for convenience, and without any liability to the City, upon providing thirty (30) days written notice to Concessionaire.**

**If, at any time during the Term of this Agreement, the Lease Agreement is terminated or otherwise ceases to be of any legal force and effect, for whatever reason whatsoever, then this Agreement shall automatically terminate, and shall be null and void and of no further force and effect, and the City shall have no further liability with respect to same.**

## **SECTION 2. CONCESSION AREA.**

The City hereby grants to Concessionaire the right, during the Term herein, to maintain, manage and operate an outdoor seating area in the following Concession Area:

### **2.1 Concession Area:**

The City and Concessionaire are parties to a Lease Agreement, dated \_\_\_\_\_ (the "Lease Agreement") relating to 734 square feet of restaurant space located at 773 17<sup>th</sup> Street, Miami Beach, Florida 33139 (the "Leased Premises"). The concession area shall consist of 507 square feet of outdoor space adjacent to and east of the Leased Premises (the "Concession Area"); which outdoor space is further delineated in "Exhibit 2.1", attached hereto and incorporated herein.

Concessionaire shall have the right to place up to twenty six (26) chairs (with associated tables) and five (5) umbrellas within the Concession Area, subject to approval of a site plan by the City, and compliance with applicable ADA requirements. The proposed site plan is also delineated in Exhibit 2.1. No material change in the proposed site plan (or in Exhibit 2.1) shall be permitted without prior written consent of the City Manager or his/her designee, which consent (if given at all) shall be at the City Manager's (or his/her designee's) sole and reasonable judgment and discretion.

### **2.2**

Concessionaire hereby agrees and acknowledges that the Concession Area shall be open and available to all members of the general public choosing to enjoy Concessionaire's food and beverage services.

### SECTION 3. USE(S).

3.1 The Concession Area shall be used by the Concessionaire solely as an outdoor seating area for the patrons and guests of the Leased Premises. The Concession Area shall have minimum days and hours of operation from Monday through Friday, commencing at 7:00 AM, and ending at 5:00 PM and Saturday and Sunday from 8:00AM to 2:00PM. Nothing herein contained shall be construed to authorize hours contrary to the laws governing such operations. Any change in the minimum days or hours of operation shall require the prior written consent of the City Manager. In no event shall the hours of operation extend earlier than 7:00 AM, or later than 11:00 PM. **Notwithstanding the preceding hours of operation, the Concession Area shall only be open when the Leased Premises are open for business (and, conversely, shall be closed when the Leased Premises is closed).**

3.2 **Concessionaire and the tenant of the Leased Premises shall at all times throughout the Term of this Agreement be one and the same and cannot exist independently of each other. Concessionaire acknowledges and agrees that its use of the Concession Area shall be, and remain at all times throughout the Term, an ancillary use to the Leased Premises.**

The number of seating in the Concession Area shall be included in the overall seating count of the Leased Premises. There shall be no bar counter of any kind as part of the Concession Area and all food served shall be prepared within the interior kitchen of the Leased Premises. There shall be no alcoholic beverages permitted on the Concession Area. All tables, chairs, and umbrellas will be removed and stored each night at close of business. Any exception to this requirement shall be at the sole and absolute discretion of the City Manager or his/her designee. Concessionaire shall further maintain the Concession Area and abide by the conditions set forth in "Exhibit 3.2" (the "Additional Requirements"), attached hereto and incorporated herein.

3.2.1. Removal of Concessionaire's Property during Emergency Situations. The City Manager or his/her designee may direct or require the Concessionaire to immediately remove, relocate and/or store all or part of the Concession Area Improvements or any of Concessionaire's equipment located at the Park ("Concessionaire's Property") for public safety considerations in emergency situations, including, without limitation, a threatened tropical storm or hurricane. Upon written and/or verbal notification by the City Manager of a tropical storm/hurricane warning or alert, or other major weather event that may adversely impact the City, or upon the designation by the United States National Weather Service or National Hurricane Center of a tropical storm/hurricane warning or alert, whichever occurs first, the Concessionaire shall, within no more than two hours of same, remove and store all of

Concessionaire's Property to secure Concessionaire's Property in response to the threatened storm or other emergency, and shall take all other measures which may be necessary for the protection of the public with respect thereto. The notification by the City Manager of a hurricane or other major weather event, or the issuance of a hurricane warning, shall constitute a public emergency situation. The failure of the City to direct the Concessionaire to remove or safety store Concessionaire's Property shall not relieve the Concessionaire of its obligation to remove and store Concessionaire's Property in response to a threatened storm event as outlined herein.

Should Concessionaire fail to remove Concessionaire's Property within said two (2) hour period, or in the event the City Manager or his/her designee determines, at his/her sole discretion, that Concessionaire's removal, storage and other efforts are otherwise not satisfactory, Concessionaire shall thereafter be assessed a fee of \$50.00 per hour, until such time as all of Concessionaire's Property have been removed to the City Manager's satisfaction. In addition, the City Manager, without any obligation to do so, may immediately proceed to remove, relocate, and/or store the Concessionaire's Property that has otherwise not been removed by the Concessionaire, at the Concessionaire's sole cost and expense, , with payment to the City for all such costs due within thirty (30) days of City's invoice to Concessionaire.

Concessionaire shall be solely responsible for any damage to City property or other property resulting from Concessionaire's failure to remove and store Concessionaire's property, or otherwise implement appropriate measures in response to a threatened storm or hurricane.

Concessionaire's failure to comply with this section shall constitute a default under this Agreement. The remedies identified herein for Concessionaire's failure to comply with this section are cumulative, and in addition to, all remedies that may be available to the City at law and in equity.

3.3 **Concessionaire hereby warrants and represents to City that Concessionaire is the owner of the restaurant at the Leased Premises and shall, throughout the Term of the Lease Agreement, remain as the owner of said restaurant, unless any change in ownership is approved by the City Manager, in writing, prior to such change taking place. Change of ownership for purposes hereof shall include, without limitation, a sale, exchange, assignment, transfer or other disposition by tenant of all or a portion of tenant's interest in the restaurant, whether by operation of law or otherwise.**

3.4 Concessionaire agrees not to place any speakers, or any other device used to amplify sound, in or around the Concession Area. Concessionaire further agrees to not attach any televisions, speakers, or any other device used to

amplify sound, to the exterior of the Leased Premises. Furthermore, Concessionaire shall in no manner use the Concession Area, or Concessionaire's restaurant at the Leased Premises, as an outdoor entertainment or open air entertainment establishment, and hereby acknowledges that such uses are prohibited (whether as main or accessory uses).

- 3.5 It is understood and agreed that the Concession Area shall be used by the Concessionaire during the term of this Agreement only for the uses contemplated herein, and for no other purpose or use whatsoever. Concessionaire will not make or permit any use of the Concession Area that, directly or indirectly, is forbidden by public law, ordinance or government regulation, or that may be dangerous to life, limb or property. Concessionaire may not commit waste on the Concession Area, use the Concession Area for any illegal purpose, or commit a nuisance on the Concession Area. In the event that the Concessionaire uses the Concession Area for any purpose not expressly permitted herein, then the City may declare this Agreement in default pursuant to Section 13, or without notice to Concessionaire, restrain such improper use by injunction or other legal action.
- 3.6 **Notwithstanding anything to the contrary contained herein, in the event of a breach by Concessionaire of any conditions in this Section 3, the City Manager, in his/her sole determination and judgment, shall have the right to automatically terminate this Agreement, without any liability to the City; said termination effective upon three (3) days written notice to Concessionaire. By executing this Agreement, Concessionaire hereby agrees to this condition, and further voluntarily and knowingly waives and releases any and all rights now or hereinafter conferred upon Concessionaire pursuant to Florida Statutes including, without limitation, the procedures set forth in Chapter 83, Florida Statutes' for removal in nonresidential tenancies; the Miami-Dade; and the Miami Beach Code (respectively); to the extent this and applicable law(s) would have the effect of limiting or modifying the City's rights to terminate this Agreement pursuant to this Subsection.**
- 3.7 Concessionaire shall obtain, at its sole expense and responsibility, any business tax receipts required by the City for the proposed use(s) contemplated herein.

#### SECTION 4. CONCESSION FEES.

4.1 Intentionally Omitted

4.2 Intentionally Omitted

4.3 Interest for Late Payment.

Any payment which Concessionaire is required to make to the City which is not paid on or before the respective date provided for in this Agreement shall be subject to a late charge of Fifty and 00/100 (\$50.00), plus interest at the rate of eighteen (18%) percent per annum, or the maximum amount allowable under Florida law, whichever is lesser, from the due date of payment until such time as payment is actually received by the City.

4.4 Sales and Use Tax.

It is also understood that the required Florida State Sales and Use Tax shall be added to Concessionaire's payments and forwarded to the City as part of said payments. It is the City's intent that it is to receive all payments due from Concessionaire as net of such Florida State Sales and Use Tax.

#### SECTION 5. Intentionally Omitted

#### SECTION 6. Intentionally Omitted

#### SECTION 7. TAXES, ASSESSMENTS, AND UTILITIES.

Concessionaire agrees and shall pay, before delinquency, all taxes and assessments of any kind (including, without limitation, ad valorem taxes, if assessed, and/or Resort Taxes) levied or assessed upon Concessionaire and/or the Concession Area including, without limitation, any such taxes and/or assessments that may be levied and/or assessed against Concessionaire and/or the Concession Area by reason of this Agreement, or by reason of the business or other operations and/or activities of Concessionaire upon or in connection with the Concession Area.

Concessionaire will have the right, at its own expense, to contest the amount or validity, in whole or in part, of any tax and/or assessment by appropriate proceedings, which Concessionaire shall conduct diligently and continuously, in good faith. Concessionaire may refrain from paying a tax to the extent it is contesting the imposition of same in a manner that is in accordance with law; provided, however, if, as a result of such contest, additional delinquency charges become due, Concessionaire shall be responsible for such delinquency charges, in addition to payment of the contested tax (if so ordered).

Concessionaire shall be solely responsible for and shall promptly pay when due all charges for utility service(s) provided to the Concession Area (including all hook-up fees and impact fees) for gas, electricity, water, sewer, cable, telephone, trash collection, etc., if applicable.

In addition to other rights and remedies hereinafter reserved to the City, upon the failure of Concessionaire to pay for such utility services when due, the City may elect to pay same and Concessionaire shall promptly reimburse the City upon demand. In no event shall the City be liable, whether to Concessionaire or to third parties, for an interruption or failure in the supply of any utilities services to the Concession Area.

## SECTION 8. EMPLOYEES AND INDEPENDENT CONTRACTORS.

8.1 Concessionaire shall select, train, employ (or otherwise hire or retain) such number of employees and/or independent contractors as is necessary and appropriate for Concessionaire to satisfy its responsibilities hereunder, and as necessary to maintain the same levels of service as exist in similar first class concession facilities and operations. Concessionaire's employees and/or independent contractors shall be employees and/or independent contractors of Concessionaire and not of the City, and Concessionaire shall be solely responsible for their supervision and daily direction and control. Concessionaire shall be solely responsible for, and have the sole authority to hire, terminate and discipline any and all personnel and/or contractors employed or retained by Concessionaire.

8.2 All employees and/or independent contractors shall observe all the graces of personal grooming. Concessionaire shall hire people to work in its operation who are neat, clean, well groomed, and comport themselves in a professional and courteous manner. Concessionaire and any persons hired and/or retained by Concessionaire shall never have been convicted of a felony.

Concessionaire shall have an experienced manager or managers overseeing the concession operations at all times.

## SECTION 9. Intentionally Omitted

## SECTION 10. IMPROVEMENTS, MAINTENANCE, REPAIR and OPERATION.

Concessionaire accepts the use of the Concession Area in its "**AS IS**" "**WHERE IS**" condition. Concessionaire assumes sole responsibility and expense for maintenance of the Concession Area (including all furniture, fixtures, equipment and any other improvements thereon). This shall include, without limitation, daily (i.e. 365 days) removal of litter, garbage and debris. Concessionaire shall also be responsible for all garbage disposal generated by its operations.

### 10.1 Improvements.

10.1.1. Any improvements to the Concession Area shall be at Concessionaire's sole expense and responsibility; provided, however, that any plans for such improvements shall be submitted to the City Manager or his/her designee for prior written approval. Upon termination and/or expiration



of this Agreement, all personal property and non-permanent trade fixtures may be removed by Concessionaire without causing damage to the Concession Area.

All permanent (fixed) improvements to the Concession Area shall remain the property of the City upon termination and/or expiration of this Agreement, except as provided in Subsection 10.1.3.

Concessionaire will permit no liens to attach to the Concession Area arising from, connected with, or related to, the design, construction, and installation of any improvements.

Construction of any approved improvements shall be diligently prosecuted to completion and accomplished through the use of licensed, reputable contractors who are acceptable to the City Manager or his/her designee. In addition to obtaining the prior approval of the City Manager or his/her designee (acting on behalf of the City, in a proprietary capacity), Concessionaire shall also be solely responsible for obtaining, at its sole cost and expense, any and all permits, licenses, and/or regulatory approvals; such regulatory approvals which may include, without limitation, land use board and/or the approvals of other required regulatory agencies having jurisdiction) required for the construction of improvements.

- 10.1.2. Notwithstanding Subsection 10.1.2 hereof, upon termination and/or expiration of this Agreement, Concessionaire shall immediately remove any permanent improvements made to the Concession Area during the Term, at Concessionaire's sole expense and responsibility. In such event, Concessionaire shall also restore the Concession Area to its original condition prior to the improvements being made, reasonable wear and tear excepted.
- 10.1.3. The above requirements for submission of plans and the use of specific contractors shall not apply to improvements (which term, for purposes of this Subsection 10.1.4 only, shall also include improvements necessary for Concessionaire's ongoing maintenance and repair of the Concession Area) which do not exceed Five Hundred (\$500.00) Dollars; provided that the work is not structural, and provided further that it is permitted by applicable law.

10.2

Garbage Receptacles.

With respect to litter, garbage and debris removal, Concessionaire shall provide, at its sole expense, a sufficient number of trash receptacles for its own use and for the use of its patrons. Determination of the "number" of receptacles shall at all times be within the City Manager or his/her designee's sole discretion. Disposal of the contents of said receptacles (and removal of litter, garbage and debris within the Concession Area), shall be done on a daily (i.e. 365 days) basis. Any costs for removal of the contents of said trash receptacles by the City, because of the Concessionaire's failure to do so, will be assessed to, and become the responsibility of, the Concessionaire.

The dumping or disposal of any refuse, discards, trash or garbage, generated by, or as a result of Concessionaire's operations, into any of the City's trash dumpster shall be prohibited.

10.3

Maintenance/Repair.

Concessionaire shall maintain, at its sole expense and responsibility, all furniture, fixtures, and equipment (FFE) and any other improvements (whether permanent or not) required to operate the concession. In the event any FFE and/or other improvement(s) is lost, stolen, or damaged, it shall be replaced or repaired promptly, at the sole expense of Concessionaire.

- 10.3.1. All damage or injury of any kind to the Concession Area, and/or to any improvements and/or FFE thereon, except damage caused by the willful misconduct or gross negligence of the City, shall be the sole obligation of Concessionaire, and shall be repaired, restored and/or replaced promptly by Concessionaire, at its sole expense, to the satisfaction of the City Manager or his/her designee.
- 10.3.2. All of the aforesaid repairs, restoration and replacement shall be in quality and class equal to or better than the original work (or FFE, as the case may be) and shall be done in good and workmanlike manner.
- 10.3.3. If Concessionaire fails to make any repairs, restoration and/or replacement, the same may be made by the City, at the expense of Concessionaire, and all sums spent and expenses incurred by the City shall be collectable by the City and shall be paid by Concessionaire within ten (10) days after receipt of a bill or statement thereof. Notwithstanding that the City may elect to make such repairs, restoration, and/or replacement, the City shall have no obligation and/or affirmative duty to do so.
- 10.3.4. It shall be Concessionaire's sole obligation to ensure that any renovations, repairs and/or improvements made by Concessionaire to the Concession Area comply with all applicable permitting, building codes and life safety codes of governmental authorities having jurisdiction.

10.4

No Dangerous Materials.

Concessionaire agrees not to use or permit in the Concession Area the storage and/or use of gasoline, fuel oils, diesel, illuminating oils, oil lamps, combustible powered electricity producing generators, turpentine, benzene, naphtha, propane, natural gas, or other similar substances, combustible materials, or explosives of any kind, or any substance or thing prohibited in the standard policies of fire insurance companies in the State of Florida. Any such substances or materials found within the Concession Area shall be immediately removed.

In consideration of a separate and specific consideration of Ten (\$10.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Concessionaire shall indemnify and hold the City harmless from any loss, damage, cost, or expense of the City, including, without limitation, reasonable attorney's fees, incurred as a result of, arising from, or connected with the placement by Concessionaire of any "hazardous substance" or "petroleum products" on, under, in or upon the Concession Area as those terms are defined by applicable Federal and State statutes, or any environmental rules and environmental regulations promulgated thereunder. The provisions of this subsection 10.4 shall survive the termination or earlier expiration of this Agreement.

10.5

Security.

Concessionaire shall be responsible for and provide such reasonable security measures as may be required to protect the Concession Area and any improvements and FFE thereon. Under no circumstances shall the City be responsible for any stolen or damaged FFE; damage to or loss of any improvements; or any stolen, lost, or damaged personal property of Concessionaire's employees, contractors, patrons, guests, invitees, and/or any other third parties.

10.6

Inspection.

Concessionaire agrees that the Concession Area (and operations thereon) may be inspected at any time during hours of operation by the City Manager or his/her designee, or by any other municipal, County or State officer, or other agency having responsibility and/or jurisdiction for inspection of such operations. Concessionaire hereby waives all claims against the City for compensation for loss or damage sustained by reason of any interference with the concession operations, whether by the City or by any public agency or official, in enforcing their respective duties, or enforcing compliance with any applicable laws, or ordinances, or regulations.

## SECTION 11. Concessionaire's Insurance Requirements.

- 11.1. Concessionaire shall maintain throughout the term, at its sole cost and expense, the following insurance requirements:
  - 11.1.1 Worker's Compensation Insurance for all employees of the vendor as required by Florida Statute 440, and Employer Liability Insurance for bodily injury or disease. Should the Tenant be exempt from this Statute, the Concessionaire and each employee shall hold the City harmless from any injury incurred during performance of the Agreement. The exempt Concessionaire shall also submit (i) a written statement detailing the number of employees and that they are not required to carry Workers' Compensation insurance and do not anticipate hiring any additional employees during the term of this Agreement or (ii) a copy of a Certificate of Exemption.
  - 11.1.2 Commercial General Liability Insurance on an occurrence basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence, and \$2,000,000 general aggregate.
  - 11.1.3 All-Risk property and casualty insurance, written at a minimum of eighty (80%) percent of replacement cost value and with replacement cost endorsement, covering all leasehold improvements installed in the Demised Premises by or on behalf of Concessionaire and including without limitation all of Concessionaire's personal property in the Demised Premises (including, without limitation, inventory, trade fixtures, floor coverings, furniture, and other property removable by Concessionaire under the provisions of this Agreement).
  - 11.1.4 Business interruption insurance, sufficient to insure Concessionaire 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.
  - 11.1.5 Additional Insured - City of Miami Beach must be included by endorsement as an additional insured with respect to all liability policies (except Professional Liability and Workers' Compensation) arising out of work or operations performed on behalf of the Concessionaire including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired or borrowed in the form of an endorsement to the Concessionaire's insurance.
  - 11.1.6 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.
  - 11.1.7 Waiver of Subrogation – Concessionaire agrees to obtain any endorsement that may be necessary to affect the waiver of subrogation on the coverages required. However, this provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer.

- 11.1.8 Acceptability of Insurers – Insurance must be placed with insurers with a current A.M. Best rating of A:VII or higher. If not rated, exceptions may be made for members of the Florida Insurance Funds (i.e. FWCIGA, FAJUA). Carriers may also be considered if they are licensed and authorized to do insurance business in the State of Florida.
- 11.1.9 Verification of Coverage – Contractor shall furnish the City with original certificates and amendatory endorsements, or copies of the applicable insurance language, effecting coverage required by this contract. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

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

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.

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

## SECTION 12. INDEMNITY.

- 12.1 In consideration of a separate and specific consideration of Ten (\$10.00) Dollars and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Concessionaire shall indemnify, hold harmless and defend the City, its officers, employees, contractors, agents or servants from and against any claim, demand or cause of action of whatsoever kind or nature arising out of error, omission, or negligent act of Concessionaire, its officers, employees, contractors, agents or servants in the performance of services under this Agreement.
- 12.2 In addition, and in consideration of a separate and specific consideration of Ten (\$10.00) Dollars and other good and valuable consideration the receipt

and sufficiency of which are hereby acknowledged, Concessionaire shall indemnify, hold harmless and defend the City, its officers, employees, contractors, agents or servants from and against any claim, demand or cause of action of whatever kind or nature arising out of any misconduct of Concessionaire, its officers, employees, contractors, sub concessionaire(s), agents or servants not included in Subsection 12.1 herein and for which the City, its officers, employees, contractors, sub concessionaire(s), agents or servants are alleged to be liable.

- 12.3 Subsections 12.1 and 12.2 shall survive the termination or expiration of this Agreement. Subsections 12.1 and 12.2 shall not apply, however, to any such liability, that arises as a result of the willful misconduct or gross negligence of the City, its officers, employees, contractors, agents or servants.

- 12.4 Intentionally Omitted

- 12.5 Force Majeure.

Whenever a period of time is herein prescribed for the taking of any action by the City or Concessionaire (as applicable), the City or Concessionaire (as applicable), shall not be liable or responsible for, and there shall be excluded from the computation of such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, or governmental laws, regulations, or restrictions in the nature of a prohibition or moratorium, or any bona fide delay beyond the reasonable control of City or Concessionaire (as applicable). The foregoing shall not apply to any payments of money due under this Agreement.

- 12.6 Waiver of Loss from Hazards.

Concessionaire hereby expressly waives all claims against the City for loss or damage sustained by the Concessionaire resulting from an event of Force Majeure (as defined herein), and the Concessionaire hereby expressly waives all rights, claims, and demands against the City and forever releases and discharges the City from all demands, claims, actions and causes of action arising from any of the aforesaid causes.

### SECTION 13. DEFAULT AND TERMINATION.

Subsections 13.1 through 13.4 shall constitute events of default under this Agreement. An event of default by Concessionaire shall entitle the City to exercise any and all remedies described as the City's remedies under this Agreement, including but not limited to those set forth in Subsection 13.5. An event of default by the City shall entitle Concessionaire to exercise any and all remedies described as Concessionaire's remedies under this Agreement, including but not limited to those set forth in Subsection 13.6.

- 13.1 Bankruptcy.

If either the City or Concessionaire shall be adjudged bankrupt or insolvent, or if any receiver or trustee of all or any part of the business property of either party shall be appointed, or if any receiver of all or any part of the

business property shall be appointed and shall not be discharged within sixty (60) days after appointment, or if either party shall make an assignment of its property for the benefit of creditors, or shall file a voluntary petition in bankruptcy, or insolvency, or shall apply for reorganization or arrangement with its creditors under the bankruptcy or insolvency laws now in force or hereinafter enacted, Federal, State, or otherwise, or if such petitions shall be filed against either party and shall not be dismissed within sixty (60) days after such filing, then the other party may immediately, or at any time thereafter, and without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract.

13.2 Default in Payment.

If any payment and accumulated penalties are not received within fifteen (15) days after the payment due date, and such failure continues three (3) days after written notice thereof, then the City may, without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract.

13.3 Non-Monetary Default.

In the event that Concessionaire or the City fails to perform or observe any of the covenants, terms or provisions under this Agreement, and such failure continues thirty (30) days after written notice thereof from the other party hereto, such non-defaulting party may immediately or at any time thereafter, and without further demand or notice, terminate this Agreement. In the event that a default is not reasonably susceptible to being cured within such period, the defaulting party shall not be considered in default if it shall, within such period, commence with due diligence and dispatch to cure such default and thereafter completes with dispatch and due diligence the curing of such default, but in no event shall such extended cure period exceed ninety (90) days from the date of written notice thereof. In the event Concessionaire cures any default pursuant to this subsection, it shall promptly provide the City with written notice of same.

13.4 Default Under Lease Agreement.

In the event that Concessionaire is in default under the Lease Agreement (as referenced in Page 1 of this Agreement) then the City may, without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract.

13.5 City's Remedies for Concessionaire's Default.

If any of the events of default, as set forth in this Section, shall occur, the City may, after notice (if required) and the expiration of cure periods, as provided above, at its sole option and discretion, institute such proceedings as in its opinion are necessary to cure such default(s) and to compensate the City for damages resulting from such default(s), including but not limited to the right to give to Concessionaire a notice of termination of this Agreement. If such notice is given, the Term of this Agreement shall

terminate upon the date specified in such notice from the City to Concessionaire. On the date so specified, Concessionaire shall then quit and surrender the Concession Area to the City pursuant to the provisions of Subsection 13.8. Upon the termination of this Agreement by the City, all rights and interest of Concessionaire in and to the Concession Area and to this Agreement, and every part thereof, shall cease and terminate and the City may, in addition to any other rights and remedies it may have, retain all sums paid to it by Concessionaire under this Agreement, including but not limited to, beginning procedures to collect the Performance Bond in Section 14 herein.

In addition to the rights set forth above, the City shall have the rights to pursue any and all of the following:

- a. The right to injunction or other similar relief available to it under Florida law against Concessionaire; and/or
- b. the right to maintain any and all actions at law or suits in equity or other proper proceedings to obtain damages resulting from Concessionaire's default.

13.6 Concessionaire's Remedies for City's Default.

If an event of default, as set forth in this Section, by the City shall occur, Concessionaire may, after the expiration of the cure period, terminate this Agreement upon written notice to the City. Said termination shall become effective upon receipt of the written notice of termination by the City. On the date specified in the notice, Concessionaire shall quit and surrender the Concession Area to the City pursuant to the provisions of Subsection 13.8.

13.7 Termination for Convenience.

- 13.7.1. Notwithstanding any other provision of this Section 13, this Agreement may be terminated, in whole or in part, by the City, for convenience and without cause, upon the furnishing of thirty (30) days prior written notice to Concessionaire.
- 13.7.2. In the event of termination by the City pursuant to this subsection, Concessionaire herein acknowledges and agrees that it shall not have any claim, demand, or cause of action of whatsoever kind or nature, against the City, its agents, servants and employees (including, but not limited to, claims for any start-up costs, interference in business or damages for interruption of services, or interference in its concession operations). In no event shall the City be liable to Concessionaire for any indirect, incidental, special, lost profits or consequential damages.

13.8 Surrender of Concession Area.

At the expiration of this Agreement, or earlier termination in accordance with the terms of this Agreement, Concessionaire shall surrender the Concession Area in the same condition as the Concession Area was prior



to the Commencement Date of this Agreement, reasonable wear and tear excepted. Concessionaire shall remove all its personal property, upon forty-eight (48) hours written notice from the City Manager or his/her designee unless a longer time period is agreed to by the City. Concessionaire's obligation to observe or perform this covenant shall survive the expiration or other termination of this Agreement. Continued occupancy of the Concession Area after termination of the Agreement shall constitute trespass by the Concessionaire, and may be prosecuted as such. In addition, the Concessionaire shall pay to the City One Thousand (\$1,000.00) Dollars per day as liquidated damages for such trespass and holding over.

#### SECTION 14. Intentionally Omitted

#### SECTION 15. Intentionally Omitted

#### SECTION 16. SPECIAL EVENTS / SPONSORSHIPS.

##### 16.1 City Special Events.

Notwithstanding Subsection 16.1 herein, and in the event that the City, at its sole discretion, deems that it would be in the best interest of the City, the City reserves the right to displace the Concessionaire for City produced and/or sponsored special events and/or City produced and/or sponsored productions. Additionally, the aforesaid events may also require additional time for load-in and load-out of the event. In such cases, the City may request that Concessionaire cease and desist operations during the term of, and in the area of, the special event and/or production, and Concessionaire shall cease and desist during such time. To the extent that Concessionaire is displaced, and/or required to cease and desist operations, City shall provide, calculated on a per diem basis for the period of time the Concession Area is non-operational, a credit against Concessionaire's Concession Fee, prorated on a per diem basis, to be calculated by dividing the monthly Concession Fee by 30 and multiplying said figure by the number of days the Concessionaire was displaced.. If the Concessionaire is not required to close, or the City Manager or his/her designee determines that Concessionaire may remain open in such a manner as prescribed by the City, that will not interfere with the special event and/or production, Concessionaire shall use its best efforts, in either case, in cooperating with the City. If Concessionaire is allowed to remain open during special events and/or productions, Concessionaire may be allowed to have in operation its normal daily complement of equipment and staff. "Normal" shall be defined as equipment and staff that the Concessionaire customarily has available to service its patrons within the Concession Area on a normal business day (during its hours of operation).

##### 16.2 Sponsorships.

The City reserves unto itself all present and future rights to negotiate all forms of endorsement and/or sponsorship agreements based on the marketing value of any City trademark, property, brand, logo and/or

reputation. Any and all benefits derived from an endorsement and/or sponsorship agreement based on the marketing value of a City trademark, property, brand, logo and/or reputation, shall belong exclusively to the City. Concessionaire shall be specifically prohibited from entering into, or otherwise creating any, sponsorships and/or endorsements with third parties which are based solely or in any part on the marketing value of a City trademark, property, brand, logo and/or reputation.

#### SECTION 17. NO IMPROPER USE.

Concessionaire will not use, nor suffer or permit any person to use in any manner whatsoever, the Concession Area for any improper, immoral or offensive purpose, or for any purpose in violation of any Federal, State, County, or municipal ordinance, rule, order or regulation, or of any governmental rule or regulation now in effect or hereafter enacted or adopted. Concessionaire will protect, indemnify, and forever save and keep harmless the City, its officers, employees, contractors, agents or servants, from and against damage, penalty, fine, judgment, expense or charge suffered, imposed, assessed or incurred for any violation, or breach of any law, ordinance, rule, order or regulation occasioned by any act, neglect or omission of Concessionaire, or any of its officers, employees, contractors, agents or servants. In the event of any violation by Concessionaire, or if the City shall deem any conduct on the part of Concessionaire to be objectionable or improper, the City Manager or his/her designee shall have the right to suspend the concession operations should the Concessionaire fail to correct any such violation, conduct, or practice to the satisfaction of the City Manager or his designee within twenty-four (24) hours after receiving written or verbal notice of the nature and extent of such violation, conduct, or practice; such suspension to continue until the violation is cured. Concessionaire further agrees not to commence operations during the suspension until the violation has been corrected to the satisfaction of the City Manager or his/her designee.

#### SECTION 18. Intentionally Omitted

#### SECTION 19. NOTICES.

All notices from the City to Concessionaire shall be deemed duly served upon receipt, if mailed by registered or certified mail with a return receipt to Concessionaire at the following addresses:

Rohit Thakore  
TASTE BAKERY CAFE, LLC  
773 17<sup>th</sup> Street  
Miami Beach, Florida 33139

All notices from Concessionaire to the City shall be deemed duly served upon receipt, if mailed by registered or certified mail return receipt requested to the City of Miami Beach at the following addresses:

City Manager

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

With copy to:

Asset Manager  
Facilities and Fleet Management Department

City of Miami Beach  
1833 Bay Road, Second Floor  
Miami Beach, FL 33139

Concessionaire and the City may change the above mailing addresses at any time upon giving the other party written notification. All notices under this Agreement must be in writing.

## SECTION 20. LAWS.

### 20.1 Compliance.

Concessionaire shall comply with all applicable City, County, State, and Federal ordinances, statutes, rules and regulations (including but not limited to all applicable environmental City, County, State, and Federal ordinances, statutes, rules and regulations, as same may be amended from time to time.

### 20.2 No Discrimination.

Concessionaire hereby agrees hereby agrees to comply with City of Miami Beach Human Rights Ordinance, as codified in Chapter 62 of the City Code, as may be amended from time to time, prohibiting discrimination in employment, including independent contractors, housing, public accommodations, public services, and in connection with its membership or policies because of actual or perceived race, color, national origin, religion, sex, intersexuality, sexual orientation, gender identity, familial and marital status, age, ancestry, height, weight, hair texture and/ or hair style, domestic partner status, labor organization membership, familial situation, political affiliation, or disability.

## 21. PROHIBITIONS REGARDING SALE OR USE OF EXPANDED POLYSTYRENE FOOD SERVICE ARTICLES OR PLASTIC STRAWS.

Pursuant to Section 82-7 of the City Code, as may be amended from time to time, effective August 2, 2014, the City has prohibited the use of expanded polystyrene food service articles by City Contractors, in connection with any City contract, lease, concession agreement or Special event permit. Additionally, pursuant to Section 82-385 of the City Code, as may be amended from time to time, no polystyrene food service articles will be allowed in the right-of-way, and no polystyrene food service articles can be provided to sidewalk café patrons.

*“Expanded polystyrene”* is a petroleum byproduct commonly known as Styrofoam. Expanded polystyrene is more particularly defined as blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials

utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead foam), injection molding, foam molding, and extrusion-blown molding (extruded foam polystyrene).

*“Expanded polystyrene food service articles”* means plates, bowls, cups, containers, lids, trays, coolers, ice chests, and all similar articles that consist of expanded polystyrene.

Concessionaire agrees not to sell, use, provide food in, or offer the use of expanded polystyrene food service articles at the Demised Premises or in connection with this Lease. Concessionaire shall ensure that all vendors operating in the Demised Premises abide by the restrictions contained in this Section 39. A violation of this section shall be deemed a default under the terms of this Lease. This subsection shall not apply to expanded polystyrene food service articles used for prepackaged food that have been filled and sealed prior to receipt by the Concessionaire or its vendors.

Additionally, Concessionaire agrees to comply (and ensure compliance by its vendors) with Section 46-92 (c) of the City Code, which states that it is unlawful for any person to carry **any** expanded polystyrene product onto any beach or into any park within the City or for any business to provide plastic straws with the service or delivery of any beverage to patrons on the beach.

## 22. NON-ALCOHOLIC PRODUCT EXCLUSIVITY.

The City reserves the right to execute exclusive product agreements and/or sponsorship agreements with third parties from time to time. Concessionaire agrees to be subject to the terms and conditions of those agreements, even if executed after the date of this Agreement. The City is in the process of negotiating exclusive pouring rights agreements with Pepsi, as the exclusive non-alcoholic beverage supplier (excluding energy drinks), and Red Bull for the energy drink category. Upon execution, Concessionaire will be notified and provided with the purchasing agent for the exclusive non-alcoholic beverage supplier. Upon receipt of written notification from the City, which could be pursuant to an e-mail, Concessionaire will not be permitted to purchase, sample or sell competitive products. Additionally, Concessionaire will be required to remove any equipment with the logo or name of any competitor of these sponsors.

## 23. INSPECTOR GENERAL AUDIT RIGHTS.

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 Concessionaire, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption. Pursuant to Section 2-378 of the City Code, the City is allocating a percentage of its overall annual contract expenditures to fund the activities and operations of the Office of Inspector General.

c) Upon ten (10) days written notice to the Concessionaire, the Concessionaire 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 Concessionaire 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 Concessionaire'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 subcontractors 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 Concessionaire 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 Agreement, for examination, audit, or reproduction, until three (3) years after final payment under this Agreement or for any longer period required by statute or by other clauses of this Agreement. In addition:

i. If this Agreement is completely or partially terminated, the Concessionaire shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and

ii. The Concessionaire shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this Agreement

until such appeals, litigation, or claims are finally resolved.

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

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 Concessionaire or third parties.

#### 24. CONCESSIONAIRE'S COMPLIANCE WITH FLORIDA'S PUBLIC RECORDS LAW.

Tenant shall comply with Florida Public Records law under Chapter 119, Florida Statutes, as may be amended from time to time.

(A) The term "public records" shall have the meaning set forth in Section 119.011(12), which means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the City.

(B) Pursuant to Section 119.0701 of the Florida Statutes, if the Concessionaire meets the definition of "Contractor" as defined in Section 119.0701(1)(a), the Concessionaire shall:

Keep and maintain public records required by the City to perform the service;

Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;

Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the contract term and following completion of the Agreement if the Concessionaire does not transfer the records to the City;

Upon completion of the Agreement, transfer, at no cost to the City, all public records in possession of the Concessionaire or keep and maintain public records required by the City to perform the service. If the Concessionaire transfers all public records to the City upon completion of the Agreement, the Concessionaire shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Concessionaire keeps and maintains public records upon completion of the Agreement, the

Concessionaire shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

(C) Request for Records; Noncompliance.

A request to inspect or copy public records relating to the City's contract for services must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify the Concessionaire of the request, and the Concessionaire must provide the records to the City or allow the records to be inspected or copied within a reasonable time.

Concessionaire's failure to comply with the City's request for records shall constitute a breach of this Agreement, and the City, at its sole discretion, may: (1) unilaterally terminate the Agreement; (2) avail itself of the remedies set forth under the Agreement; and/or (3) avail itself of any available remedies at law or in equity.

A Concessionaire who fails to provide the public records to the City within a reasonable time may be subject to penalties under s. 119.10.

(D) Civil Action.

If a civil action is filed against a Concessionaire to compel production of public records relating to the City's contract for services, the court shall assess and award against the Concessionaire the reasonable costs of enforcement, including reasonable attorneys' fees, if:

- i. The court determines that the Concessionaire unlawfully refused to comply with the public records request within a reasonable time; and
- ii. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Concessionaire has not complied with the request, to the City and to the Concessionaire.

A notice complies with subparagraph (1)(b) if it is sent to the City's custodian of public records and to the Concessionaire at the Concessionaire's address listed on its contract with the City or to the Concessionaire's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

A Concessionaire who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

(E) If the Concessionaire has questions regarding the application of Chapter 119, Florida Statutes, to the Concessionaire's duty to provide public records relating to this Agreement, contact the custodian of public records at:

**CITY OF MIAMI BEACH  
ATTENTION: RAFAEL E. GRANADO, CITY CLERK  
1700 CONVENTION CENTER DRIVE  
MIAMI BEACH, FLORIDA 33139  
E-MAIL: RAFAELGRANADO@MIAMIBEACHFL.GOV  
PHONE: 305-673-7411**

SECTION 25. MISCELLANEOUS.

25.1 No Partnership.

Nothing contained in this Agreement shall constitute or be construed to be or create a partnership or joint venture between the City and Concessionaire.

25.2 Modifications.

This Agreement cannot be changed or modified except by agreement in writing executed by all parties hereto. Concessionaire acknowledges that no modification to this Agreement may be agreed to by the City unless approved by the Mayor and City Commission except where such authority has been expressly provided herein to the City Manager.

25.3 Complete Agreement.

This Agreement, together with all exhibits incorporated hereto, constitutes all the understandings and agreements of whatsoever nature or kind existing between the parties with respect to Concessionaire's operations, as contemplated herein.

25.4 Headings.

The section, subsection and paragraph headings contained herein are for convenience of reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement.

25.5 Binding Effect.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

25.6 Clauses.

The illegality or invalidity of any term or any clause of this Agreement shall not affect the validity of the remainder of the Agreement, and the Agreement shall remain in full force and effect as if such illegal or invalid term or clause were not contained herein unless the elimination of such provision detrimentally reduces the consideration that either party is to receive under this Agreement or materially affects the continuing operation of this Agreement.



25.7

Severability.

If any provision of this Agreement or any portion of such provision or the application thereof to any person or circumstance shall be held to be invalid or unenforceable, or shall become a violation of any local, State, or Federal laws, then the same as so applied shall no longer be a part of this Agreement but the remainder of the Agreement, such provisions and the application thereof to other persons or circumstances, shall not be affected thereby and this Agreement shall be so modified.

25.8

Right of Entry.

The City, at the direction of the City Manager, shall at all times during hours of operation, have the right to enter into and upon any and all parts of the Concession Area for the purpose of examining the same for any reason relating to the obligations of parties to this Agreement.

25.9

Not a Lease.

**It is expressly understood and agreed that no part, parcel, building, structure, equipment or space is leased to Concessionaire; that this Agreement is a concession agreement and not a lease, and that Concessionaire's right to operate, manage, and maintain the concession shall continue only so long as Concessionaire complies with the undertakings, provisions, agreements, stipulations and conditions of this Agreement.**

**Accordingly, Concessionaire hereby agrees and acknowledges that in the event of termination of this Agreement, whether due to a default by Concessionaire or otherwise, Concessionaire shall surrender and yield unto the City the Concession Area, in accordance with Subsection 13.7 hereof, and the City shall in no way be required to evict and/or otherwise remove Concessionaire from the Concession Area as if this were a tenancy under Chapter 83, Florida Statutes, nor shall Concessionaire be afforded any other rights afforded to nonresidential tenants pursuant to said Chapter (the parties having herein expressly acknowledged that this Agreement is intended to be a concession agreement and is in no way intended to be a lease).**

25.10

Signage.

Concessionaire shall provide, at its sole expense and responsibility, any required signs at its concession. All advertising, signage and postings shall be approved by the City, and shall be in accordance with all applicable Municipal, County, State and Federal laws and regulations. Any signage posted by Concessionaire shall be subject to the prior approval of the City as to size, shape and placement of same.

25.11

Conflict of Interest.

Concessionaire shall perform its services under this Agreement and conduct the concession operation(s) contemplated herein, in a manner so as to show no preference for other concession operations/facilities owned, operated, managed, or otherwise controlled by Concessionaire.

25.12            No Waiver.

25.12.1            It is mutually covenanted and agreed by and between the parties hereto that the failure of the City to insist upon the strict performance of any of the conditions, covenants, terms or provisions of this Agreement, or to exercise any option herein conferred, will not be considered or construed as a waiver or relinquishment for the future of any such conditions, covenants, terms, provisions or options but the same shall continue and remain in full force and effect.

25.12.2            A waiver of any term expressed herein shall not be implied by any neglect of the City to declare a forfeiture on account of the violation of such term if such violation by continued or repeated subsequently and any express waiver shall not affect any term other than the one specified in such waiver and that one only for the time and in the manner specifically stated.

25.12.3            The receipt of any sum paid by Concessionaire to the City after breach of any condition, covenant, term or provision herein contained shall not be deemed a waiver of such breach, but shall be taken, considered and construed as payment for use and occupation (and not as rent), unless such breach be expressly waived in writing by the City.

25.13            No Third Party Beneficiary.

Nothing in this Agreement shall confer upon any person or entity, other than the parties hereto and their respective successors and permitted assigns, any rights or remedies by reason of this Agreement.

26    LIMITATION OF LIABILITY.

The City desires to enter into this Agreement placing the management and operation of the Concession Area in the hands of a private management entity only if so doing the City can place a limit on its liability for any cause of action for breach of this Agreement, so that its liability for any such breach never exceeds the sum of Ten Thousand (\$10,000.00) Dollars. Concessionaire hereby expresses its willingness to enter into this Agreement with a Ten Thousand (\$10,000.00) Dollar limitation on recovery for any action for breach of contract. Accordingly, and in consideration of the separate consideration of Ten Thousand (\$10,000.00) Dollars, the receipt of which is hereby acknowledged, the City shall not be liable to Concessionaire for damages to Concessionaire in an amount in excess of Ten Thousand (\$10,000.00) Dollars, for any action for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of limitation placed upon the City's liability as set forth in Florida Statutes, Section 768.28.

27    VENUE.

This Agreement shall be deemed to have been made and shall be construed and interpreted in accordance with the laws of the State of

Florida. This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any and all the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida. **THE CITY AND CONCESSIONAIRE HEREBY KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING THAT THE CITY AND CONCESSIONAIRE MAY HEREIN AFTER INSTITUTE AGAINST EACH OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE CONCESSION AREA.**

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**IN WITNESS WHEREOF**, the parties hereto have caused their names to be signed and their seals to be affixed, all as of the day and year first above written, indicating their agreement.

**FOR CITY:**

**CITY OF MIAMI BEACH, FLORIDA**

**ATTEST:**

**By:**

\_\_\_\_\_  
**Rafael E. Granado, City Clerk**

\_\_\_\_\_  
**Alina T. Hudak, City Manager**

\_\_\_\_\_  
**Date**

**FOR CONCESSINAIRE:**

**TASTE BAKERY CAFE, LLC**

**ATTEST:**

**By:**

\_\_\_\_\_  
**Witness**

\_\_\_\_\_  
**Managing Member**

\_\_\_\_\_  
**Print Name**

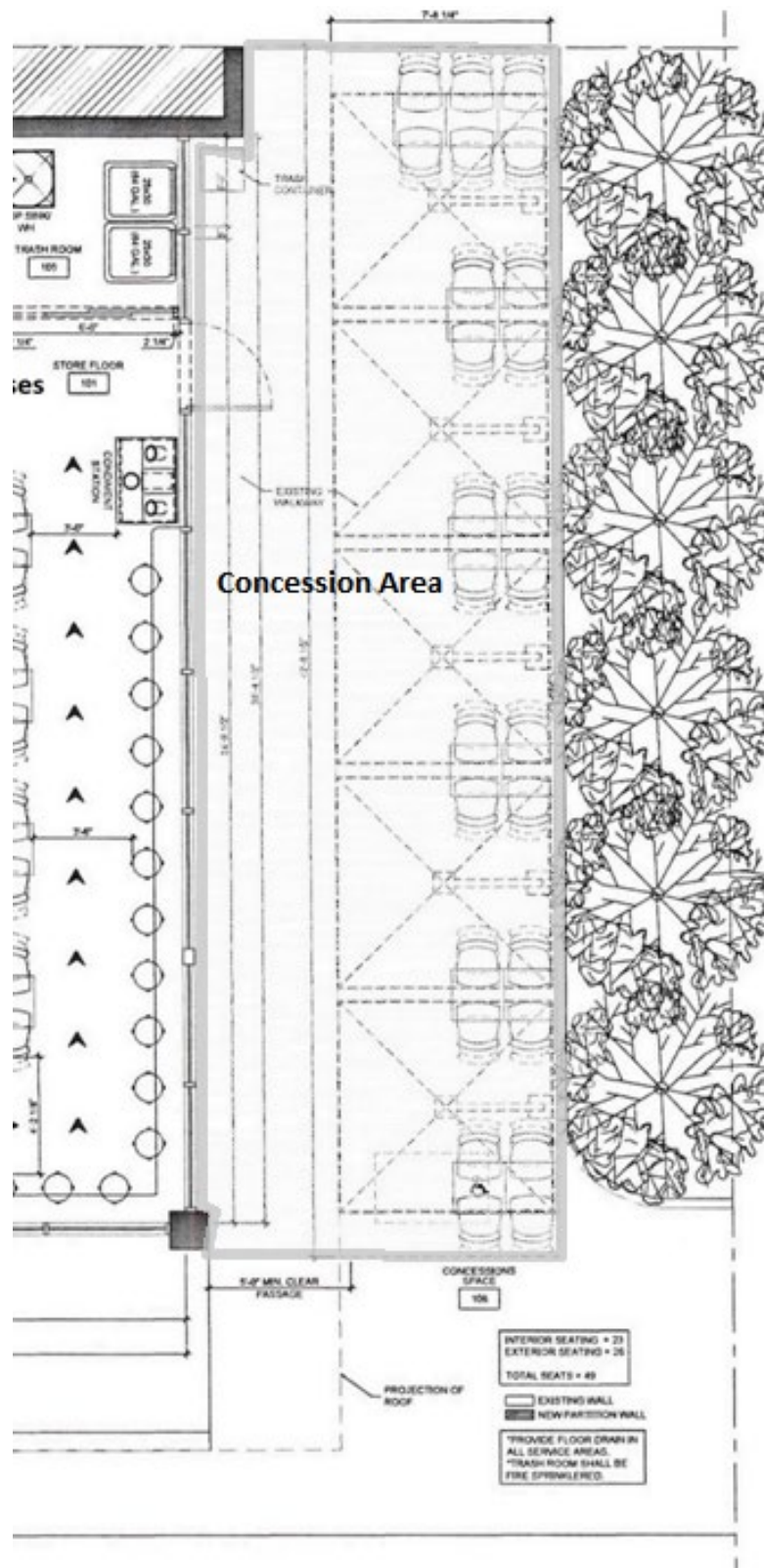
\_\_\_\_\_  
**Rohit Thakore**

\_\_\_\_\_  
**Print Name**

\_\_\_\_\_  
**Date**

# EXHIBIT 2.1

## Concession Area



## **EXHIBIT 3.2**

### **Additional Requirements**

The Concession Area shall be maintained in a clean, neat and orderly appearance at all times by the Concessionaire. The area of the sidewalk, curb and gutter immediately adjacent to the Concession Area shall be cleared of all debris during hours of operation, and again at the close of each business day, or as may otherwise be determined by the City Manager.

The Concessionaire shall be responsible for cleaning the floor surface on which the outdoor seating is located at the close of each business day. In addition, the following conditions shall apply:

- a. Tables, chairs, umbrellas and any other outdoor cafe furniture shall be maintained in a clean, attractive, and orderly appearance, and shall be maintained and kept in good repair at all times;
- b. All outdoor furniture shall be of high quality, design, materials, and workmanship so as to ensure the safety and convenience of the public;
- c. Only the outdoor cafe furniture specifically shown on the approved site plan shall be allowed on the Concession Area;
- d. All tables, chairs, umbrellas, and any other outdoor furniture shall be readily removable, and shall not be physically attached, chained, or in any other manner affixed to any public structure, street furniture, signage, and/or other public fixture, or to a curb and/or public right-of-way;
- e. The stacking or piling up of chairs shall be prohibited on the Concession Area;
- f. At close of business, all tables, chairs and any other outdoor furniture shall be removed from the Concession Area and stored in a non-visible location from the public right-of-way. Any exception to this requirement shall be at the sole and absolute discretion of the City Manager and/or his/her designee.
- g. No storage of dishes, silverware or other similar restaurant equipment shall be allowed on the Concession Area, or on any other portion of the public right-of-way, or outside the structural confines of the building in which the restaurant is located, during non-business hours;
- h. There shall be no live entertainment or speakers placed on the Concession Area;
- i. No menu board(s) shall be permitted to be displayed on the Concession Area;
- j. No food preparation, food storage, refrigeration apparatus or equipment, or fire apparatus or equipment, shall be allowed on the Concession Area;
- k. No food displays shall be permitted on the Concession Area. No advertising signs or business identification signs shall be permitted, except that the restaurant name and/or its logo may be permitted on umbrellas but such logos and/or lettering may not exceed six inches in height;

- l. Plants shall be properly maintained. Distressed plants shall be promptly replaced. Plant fertilizers which contain material that can stain the sidewalks shall not be allowed;
- m. The City Manager or his/her designee may cause the immediate removal, relocation and/or storage of all or part of any furniture located on the Concession Area in emergency situations or for public safety considerations. Upon written and/or verbal notification by the City Manager of a hurricane or other major weather event, or the issuance of a hurricane warning by Miami-Dade County, whichever occurs first, the Concessionaire shall, within no more than four hours of same, remove and place indoors all tables, chairs and any other outdoor furniture located on the Concession Area. The notification by the City Manager of a hurricane or other major weather event, or the issuance of a hurricane warning, shall constitute a public emergency situation as referenced in this division. The City Manager may remove, relocate, and/or store any outdoor furniture found on the Concession Area that has otherwise not been removed by the Concessionaire pursuant to this subsection. Any and all costs incurred by the City for removal, relocation and/or storage of Concessionaire's furniture shall be the responsibility of the Concessionaire.