

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement") made this _____ day of _____, 2023 ("Effective Date"), by and between the **CITY OF MIAMI BEACH, FLORIDA**, a Florida municipal corporation, (hereinafter referred to as "City" or "Landlord"), and **SOBE CATS SPAY & NEUTER, INC.**, a Florida not-for-profit corporation (hereinafter referred to as "Tenant").

1. Demised Premises.

The City, in consideration of the rentals hereinafter reserved to be paid and of the covenants, conditions and agreements to be kept and performed by the Tenant, hereby leases, lets and demises to the Tenant, and Tenant hereby leases and hires from the City, those certain premises hereinafter referred to as the "Demised Premises" and more fully described as follows:

A parcel of land having approximately 17,500 square feet, together with a building having approximately 2,440 square feet, located at 8128 Collins Avenue, Miami Beach, Florida, 33141, and as more specifically delineated in "Exhibit 1", attached hereto and incorporated herein.

2. Term.

2.1 Tenant shall be entitled to have and to hold the Demised Premises for an initial term of three (3) years, commencing on the 1st day of April 2024 (the "Commencement Date"), and ending on the 30th day of March 2027.

2.2 Termination for Convenience.

Notwithstanding anything in this subsection, or any other term or condition in this Agreement, Landlord reserves the right, through the City Manager, to terminate this Agreement, without cause and without liability to Landlord, upon providing Tenant with ninety (90) days prior written notice.

Tenant reserves the right to terminate this Agreement, without cause, upon providing Landlord with ninety (90) days prior written notice. Following the effective date of the termination for convenience and Tenant's complete surrender of the Demised Premises in compliance with Section 37, Tenant shall be relieved of liability under the Agreement; provided however, that Tenant shall not be relieved of any liability that accrued during the term of the Agreement or any liability intended to survive expiration or termination of the Agreement including, without limitation, any indemnification provisions contained in the Agreement.

3. Rent.

3.1 Base Rent:

Base Rent for the Demised Premises shall begin to accrue on the Commencement Date.

3.1.1 Throughout the Term herein, the Base Rent for the Demised Premises shall be One Dollar (\$1.00) per year, payable on the Commencement Date and,

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thereafter, on each first day of April of each subsequent year.

3.2 Additional Rent.

In addition to the Base Rent, as set forth in Subsection 3.1, Tenant shall also pay the following Additional Rent as provided below:

3.2.1 Utilities:

Tenant will be responsible for payment of utilities (Electric, Atlantic Broadband, Water and Sewer) expenses funded from the City's TNVR Budget; said funding being subject to funding approval each fiscal year during the City's budgetary process.

3.2.2 Trash Removal:

Landlord shall be responsible for establishing and maintaining all trash removal for its business operations.

3.2.3 Pest Control Services:

Landlord shall contract with a licensed and insured vendor to provide needed pest control services to the Demised Premises (including insect, rodent, flea and tick, etc.), as Landlord deems appropriate for the Demised Premises, twice for the first month of the term and thereafter once per month.

3.2.4 Lawn Care: Landlord shall continue to provide lawn care with the same frequency as it currently provides other City facilities.

3.2.5 Property Taxes:

City acknowledges that this lease is to a not-for-profit charitable organization and no real estate taxes should be assessed against the Demised Premises, The Property Tax Payment, if real estate taxes are assessed, shall be paid by the Tenant.

3.2.6 Insurance:

Landlord shall be responsible for securing, and paying for, the hazard insurance for the Demised Premises. Tenant shall be responsible for maintaining the Tenant insurance requirements set forth in Section 10.

3.3 Enforcement.

Tenant agrees to pay the Base Rent, and any other amounts as may be due and payable by Tenant under this Agreement, at the time and in the manner provided herein, and should said rents and/or other additional amounts due herein provided, at any time remain due and unpaid for a period of thirty (30) days after the same shall become due, the City may exercise any or all options available to it hereunder, which options may be exercised concurrently or separately, or the City may pursue any other remedies enforced by law.

4. Location for Payments.

All rents or other payments due hereunder shall be paid to the City at the following address:

City of Miami Beach
Finance Department
1700 Convention Center Drive, 3rd Floor
Miami Beach, Florida 33139

or at such other address as the City may, from time to time, designate in writing.

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5. Parking.
The Demised Premises includes four (4) parking spaces accessible through the west entrance.
6. Security Deposit. Intentionally Omitted
7. Use and Possession of Demised Premises.
 - 7.1 The Demised Premises shall be used by the Tenant solely for the purpose(s) of:
 - 7.1.1 Facilitate the City' TNVR and adoption program.
 - 7.1.2 TNVR Staging. Cats are typically trapped at night or very early in the morning, during hours when surgery locations are closed. The Premises would act as a staging location to house the cats until the surgery locations are open.
 - 7.1.3 TNVR Tools. The inventory of TNVR tools would be housed at the Premises, to include traps that are loaned to residents and trappers, sheets to cover traps, and trap cleaning equipment.
 - 7.1.4 TNVR Events. Trapping events with Miami Dade Animal Services (MDAS) occur throughout the year. MDAS will bring their Mobile Animal Clinic (MAC) truck to the Demised Premises. Surgeries will be held inside the MAC truck and under MDAS purview. Spay and neuter surgeries will NOT take place inside the Demised Premises. All surgeries will take place at a participating veterinarian offices, Miami Dade Animal Services, Humane Society, and other participating agencies.
 - 7.1.5 Adoption. A key focus of the program is to help get adoptable community cats off the beach and into loving homes. In order to accomplish this goal, cats need to be quarantined, given certain medications, or placed with approved fosters. The quarantine process will take place at the Demised Premises.
 - 7.1.6 Socialization. There would be a cat socialization room where cats can meet and play with prospective adopters.
 - 7.1.7 Demised Premises shall be open for operation daily with normal hours from 9:30 am to 12:00 pm and 6:00 pm to 7:30 pm, and by appointment. Tenant shall not otherwise modify the days or hours of operation without the prior written approval of the City Manager. Nothing herein contained shall be construed to authorize hours contrary to the laws governing such operations.
 - 7.1.8 Self-Funded Program. The Tenant will fund the program through the collaboration of various nonprofits associated with the Tenant. Other than the contributions set forth in this Agreement, the City will not be obligated to contribute any additional costs toward Tenant's operation.
 - 7.2 It is understood and agreed that the Demised Premises shall be used by the Tenant during the Term of this Agreement only for the above purpose(s)/use(s), and for no other purpose(s) and/or use(s) whatsoever. Tenant will not make or permit any use of the Demised Premises that, directly or indirectly, is forbidden by law, ordinance or government regulation, or that may be dangerous to life, limb or property. Tenant may not commit (nor permit) waste on the Demised Premises; nor permit the use of the Demised Premises for any illegal purposes; nor commit a nuisance on the

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Demised Premises. In the event that the Tenant uses the Demised Premises (or otherwise allows the Demised Premises to be used) for any purpose(s) not expressly permitted herein, or permits and/or allows any prohibited use(s) as provided herein, then the City may declare this Agreement in default pursuant to Section 18 or, without notice to Tenant, restrain such improper use by injunction or other legal action.

- 7.3 Tenant agrees to remain a not-for-profit corporation at all times during the Term of the Agreement.

8. Improvements.

8.1 Landlord Improvements.

The City agrees to make the following repairs and improvements ("Landlord Improvements") Landlord would be responsible for the installation of new hurricane impact windows; one (1) additional electrical outlet, drain, plumbing and ventilation as needed for a second set of washer/dryers in the kitchen (washer/dryer to be provided by Tenant); one (1) additional water supply and drain for a kitchen style wash sink (sink to be provided by Tenant) in the back room. These projects will be submitted for approval as a capital expenditure during the City's 2025/2026 budget process, in the amount not-to-exceed \$120,000.00, and subject to budget approval, the City will use reasonable efforts to complete the repairs within the City's 2025/2026 fiscal year.

- 8.2 Except with respect to the Landlord Improvements, Tenant accepts the Demised Premises in their present "**AS IS**" condition and may construct or cause to be constructed, such interior and exterior improvements and maintenance to the Demised Premises, as reasonably necessary for it to carry on its permitted use(s), as set forth in Section 7; provided, however, that any plans for such improvements shall be first submitted to the City Manager for his prior written consent, which consent, if granted at all, shall be at the City Manager's sole and absolute discretion. Additionally, any and all approved improvements shall be made at Tenant's sole expense and responsibility. All permanent (fixed) improvements to the Demised Premises shall remain the property of the City upon termination and/or expiration of this Agreement. Upon termination and/or expiration of this Agreement, all personal property and non-permanent trade fixtures may be removed by the Tenant from the Demised Premises, provided that they can be (and are) removed without damage to the Demised Premises. Tenant will permit no liens to attach to the Demised Premises arising from, connected with, or related to the design and construction of any improvements. Moreover, such construction shall be accomplished through the use of licensed, reputable contractors who are acceptable to the City. Any and all permits and or licenses required for the installation of improvements shall be the sole cost and responsibility of Tenant.

- 8.3 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 8.3 only, shall also include improvements as necessary for Tenant's maintenance and repair of the Demised Premises) which do not exceed Five Hundred (\$500.00) Dollars, provided that the work is not structural, and provided that it is permitted by applicable law.

9. City's Right of Entry.

- 9.1 The City Manager, and/or his authorized representatives, shall have the right to enter upon the Demised Premises at all reasonable times for the purpose of inspecting same;

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preventing waste; making such repairs as the City may consider necessary; and for the purpose of preventing fire, theft or vandalism. The City agrees that, whenever reasonably possible, it shall use reasonable efforts to provide notice (whether written or verbal), unless the need to enter the Demised Premises is an emergency, as deemed by the City Manager, in his sole discretion, which if not immediately addressed could cause property damage, loss of life or limb, or other injury to persons. Nothing herein shall imply any duty on the part of the City to do any work that under any provisions of this Agreement the Tenant may be required to perform, and the performance thereof by the City shall not constitute a waiver of the Tenant's default.

- 9.2 If the Tenant shall not be personally present to open and permit entry into the Demised Premises at any time, for any reason, and any entry thereon shall be necessary or permissible, the City Manager, and/or his authorized representatives, may enter the Demised Premises by master key, or may forcibly enter the Demised Premises without rendering the City or such agents liable therefore.
- 9.3 Tenant shall furnish the City with duplicate keys to all locks including exterior and interior doors prior to (but no later than by) the Commencement Date of this Agreement. Tenant shall not change the locks to the Demised Premises without the prior written consent of the City Manager, and in the event such consent is given, Tenant shall furnish the City with duplicate keys to said locks in advance of their installation.
10. Tenant's Insurance.
- 10.1 Tenant shall, at its sole expense and responsibility, comply with all insurance requirements of the City. It is agreed by the parties that Tenant shall not occupy the Demised Premises until proof of the following insurance coverages have been reviewed and approved by the City's Risk Manager:
- 10.1.1 Comprehensive General Liability, in the minimum amount of One Million (\$1,000,000) Dollars (subject to adjustment for inflation) per occurrence for bodily injury and property damage. The City of Miami Beach must be named as an additional insured on this policy.
- 10.1.2 Workers Compensation and Employers Liability coverage in accordance with Florida statutory requirements.
- 10.1.3 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 Tenant and including without limitation all of Tenant's personal property in the Demised Premises (including, without limitation, inventory, trade fixtures, floor coverings, furniture, and other property removable by Tenant under the provisions of this Agreement).
- 10.2 Proof of these coverages must be provided by submitting original certificates of insurance to the City's Risk Manager and Asset Manager respectively. All policies must provide thirty (30) days written notice of cancellation to both the City's Risk Manager and Asset Manager (to be submitted to the addresses set forth in Section 27 hereof). All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida and must have a rating of B+:VI or better per A.M. Best's Key Rating Guide, latest edition, and certificates are subject to the approval of the City's Risk Manager.

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10.3 Certificates must be sent directly to certificates-miamibeach@riskworks.com. Please ask vendors to include the following information when sending the insurance certificates:

- Include the Contract's # and the Vendor's name in the subject line of the email.
- COI must include that the City of Miami Beach is an "Additional Insured" with respect to the General Liability coverage.
- Certificate Holder on all COI shall read:
City of Miami Beach
c/o Exigis Insurance Compliant Services
P.O. Box 947
Murrieta, CA 92564

11. Property Taxes and Assessments.

For the purposes of this Section and other provisions of this Agreement:

- 11.1 The term "Property Taxes" shall mean (i) real estate taxes, assessments, and special assessments of any kind which may be imposed upon the Demised Premises, and (ii) any expenses incurred by the City in obtaining a reduction of any such taxes or assessments.
- 11.2 The term "Property Tax Year" shall mean the period of twelve (12) calendar months, beginning on January 1st of each year.
- 11.3 Although no Tax liability should be implicated on the Tenant as a result of the Tenant's status as a non-profit entity, if any real estate tax that is assessed against the Demised Premises for folio numbers 02-3202-004-0830 and 023202004-0820 during the Term of the Agreement ("Property Tax Payment"), the Property Tax Payment shall be payable by Tenant.

12. Assignment and Subletting.

Tenant shall not have the right to assign or sublet the Demised Premises, in whole or in part, without the prior written consent of the City Manager, which consent, if granted at all shall be at the City Manager's sole and absolute discretion. Such written consent is not a matter of right and the City is not obligated to give such consent. If granted as provided herein, the making of any assignment or sublease will not release Tenant from any of its obligations under this Agreement.

13. Operation, Maintenance and Repair.

- 13.1 Tenant shall be solely responsible for the operation and day-to-day housekeeping, janitorial services, and routine maintenance of the Demised Premises, and all improvements, fixtures, and equipment thereon. Tenant shall, at its sole expense and responsibility, maintain the Demised Premises, and all fixtures and appurtenances therein, and shall make all repairs thereto, as and when needed, to preserve them in good working order and condition and will not suffer or permit any strip or waste of the Demised Premises. Tenant shall be responsible for maintaining clean all interior walls and the interior and exterior of all windows and doors, as well as immediate replacement of any and all plate glass or other glass in the Demised Premises which may become broken, using glass of the same or better quality.

The City shall be responsible for the maintenance of the roof, the exterior of the Building, all heating/ventilation/air conditioning (HVAC) equipment servicing the Demised Premises, touch ups and full painting as needed, the structural, electrical and plumbing, including sinks and/or toilet(s) fixture(s), but excluding plumbing problems caused by Tenant, its officers, employees, agents, contractors, invitees or guests, and chilled water supply system.

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Tenant shall also be responsible for the purchase and maintenance of fixtures, furniture and equipment needed to operate within these premises.

- 13.2 All damage or injury of any kind to the Demised Premises, and including without limitation its fixtures, glass, appurtenances, and equipment (if any), or to the building fixtures, glass, appurtenances, and equipment, if any, except damage caused by the gross negligence and/or willful misconduct of the City, shall be the sole obligation of Tenant, and shall be repaired, restored or replaced promptly by Tenant, at its sole expense and to the satisfaction of the City.
- 13.3 All of the aforesaid repairs, restorations and replacements shall be in quality and class equal to or better than the original work or installations and shall be done in good and workmanlike manner.
- 13.4 If Tenant fails to make such repairs or restorations or replacements, the same may be made by the City, at the expense of Tenant, and all sums spent and expenses incurred by the City shall be collectable by the City and shall be paid by Tenant within three (3) days after submittal of a bill or statement therefore.
- 13.5 It shall be Tenant's sole obligation and responsibility to ensure that any renovations, repairs and/or improvements made by Tenant to the Demised Premises comply with all applicable building codes and life safety codes of governmental authorities having jurisdiction.
- 13.6 **EXCEPT AS TO LANDLORD IMPROVEMENTS, TENANT HEREBY ACKNOWLEDGES AND AGREES THAT THE DEMISED PREMISES ARE BEING LEASED IN THEIR PRESENT "AS IS" CONDITION.**
14. Governmental Regulations.
Tenant covenants and agrees to fulfill and comply with all statutes, ordinances, rules, orders, regulations, and requirements of any and all governmental bodies, including but not limited to Federal, State, Miami-Dade County, and City governments, and any and all of their departments and bureaus applicable to the Demised Premises, and shall also comply with and fulfill all rules, orders, and regulations for the prevention of fire, all at Tenant's own expense and responsibility. Tenant shall pay all cost, expenses, claims, fines, penalties, and damages that may be imposed because of the failure of Tenant to comply with this Section and shall indemnify and hold harmless the City from all liability arising from each non-compliance.
15. Liens.
Tenant will not permit any mechanics, laborers, or materialman's liens to stand against the Demised Premises or improvements for any labor or materials to Tenant or claimed to have been furnished to Tenant's agents, contractors, or sub-tenants, in connection with work of any character performed or claimed to have performed on said Premises, or improvements by or at the direction or sufferance of the Tenant; provided however, Tenant shall have the right to contest the validity or amount of any such lien or claimed lien. In the event of such contest, Tenant shall give the City reasonable security as may be demanded by the City to ensure payment thereof and prevent sale, foreclosure, or forfeiture of the Premises or improvements by reasons of such non-payment. Such security need not exceed one and one half (1½) times the amount of such lien or such claim of lien. Such security shall be posted by Tenant within ten (10) days of written notice from the City, or Tenant may "bond off" the lien according to statutory procedures. Tenant will immediately pay any judgment rendered with all proper costs and charges and shall have such lien released or judgment satisfied at Tenant's own expense.

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16. Intentionally Omitted.
17. Condemnation.
- 17.1 If at any time during the Term of this Agreement (including any renewal term hereunder) all or any part or portion of the Demised Premises is taken, appropriated, or condemned by reason of Eminent Domain proceedings, then this Agreement shall be terminated as of the date of such taking, and shall thereafter be completely null and void, and neither of the parties hereto shall thereafter have any rights against the other by reason of this Agreement or anything contained therein, except that any rent prepaid beyond the date of such taking shall be prorated to such date, and Tenant shall pay any and all rents, additional rents, utility charges, and/or other costs for which it is liable under the terms of this Agreement, up to the date of such taking.
- 17.2 Except as hereunder provided, Tenant shall not be entitled to participate in the proceeds of any award made to the City in any such Eminent Domain proceeding, excepting, however, Tenant shall have the right to claim and recover from the condemning authority, but not from the City, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all damage to Tenant's business by reasons of the condemnation and for or on account of any cost or loss which Tenant might incur in removing Tenant's furniture and fixtures.
18. Default.
- 18.1 Default by Tenant:
At the City's option, any of the following shall constitute an Event of Default under this Agreement:
- 18.1.1 The Base Rent, Additional Rent, or any other amounts as may be due and payable by Tenant under this Agreement, or any installment thereof, is not paid promptly when and where due within fifteen (15) days of due date, and Tenant shall not have cured such failure within five (5) days after receipt of written notice from the City specifying such default;
- 18.1.2 The Demised Premises shall be deserted, abandoned, or vacated;
- 18.1.3 Tenant shall fail to comply with any material term, provision, condition or covenant contained herein other than the payment of rent and shall not cure such failure within thirty (30) days after the receipt of written notice from the City specifying any such default; or such longer period of time acceptable to the City, at its sole discretion;
- 18.1.4 Receipt of notice of violation from any governmental authority having jurisdiction dealing with a law, code, regulation, ordinance or the like, which remains uncured for a period of thirty (30) days from its issuance, or such longer period of time as may be acceptable and approved in writing by the City Manager, at his sole discretion;
- 18.1.5 Any petition is filed by or against Tenant under any section or chapter of the Bankruptcy Act, as amended, which remains pending for more than sixty (60) days, or any other proceedings now or hereafter authorized by the laws of the United States or of any state for the purpose of discharging or

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extending the time for payment of debts;

18.1.6 Tenant shall become insolvent;

18.1.7 Tenant shall make an assignment for benefit of creditors;

18.1.8 A receiver is appointed for Tenant by any court and shall not be dissolved within thirty (30) days thereafter; or

18.1.9 The leasehold interest is levied on under execution.

18.1.10 Tenant fails to remain a not-for-profit corporation at all times during the Term of the Agreement.

19. Rights on Default.

19.1 Rights on Default:

In the event of any default by Tenant as provided herein, City shall have the option to do any of the following, in addition to and not in limitation of, any other remedy permitted by law or by this Agreement;

19.1.1 Terminate this Agreement, in which event Tenant shall immediately surrender the Demised Premises to the City, but if Tenant shall fail to do so the City may, without further notice, and without prejudice to any other remedy the City may have for possession or arrearages in rent or damages for breach of contract, enter upon the Demised Premises and expel or remove Tenant and its effects in accordance with law, without being liable for prosecution or any claim for damages therefore, and Tenant agrees to indemnify and hold harmless the City for all loss and damage which the City may suffer by reasons of such Agreement termination, whether through inability to re-let the Demised Premises, or otherwise.

19.1.2 Declare the entire amount of the Base Rent and Additional Rent which would become due and payable during the remainder of the term of this Agreement to be due and payable immediately, in which event Tenant agrees to pay the same at once, together with all rents therefore due, at the address of the City, as provided in the Notices section of this Agreement; provided, however, that such payment shall not constitute a penalty, forfeiture, or liquidated damage, but shall merely constitute payment in advance of the rents for the remainder of said term and such payment shall be considered, construed and taken to be a debt provable in bankruptcy or receivership.

19.1.3 Enter the Demised Premises as the agent of Tenant, by force if necessary, without being liable to prosecution or any claim for damages therefore; remove Tenant's property there from; and re-let the Demised Premises, or portions thereof, for such terms and upon such conditions which the City deems, in its sole discretion, desirable, and to receive the rents therefore, and Tenant shall pay the City any deficiency that may arise by reason of such re-letting, on demand at any time and from time to time at the office of the City; and for the purpose of re-letting, the City may (i) make any repairs, changes, alterations or additions in or to said Demised Premises that may be necessary or convenient; (ii) pay all costs and expenses therefore from rents resulting from re-letting; and (iii) Tenant shall pay the City any

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deficiency as aforesaid.

19.1.4 Take possession of any personal property owned by Tenant on said Demised Premises and sell the same at public or private sale, and apply same to the payment of rent due, holding Tenant liable for the deficiency, if any.

19.1.5 It is expressly agreed and understood by and between the parties hereto that any installments of rent accruing under the provisions of this Agreement which shall not be paid when due shall bear interest at the maximum legal rate of interest per annum then prevailing in Florida from the date when the same was payable by the terms hereof, until the same shall be paid by Tenant. Any failure on the City's behalf to enforce this Section shall not constitute a waiver of this provision with respect to future accruals of past due rent. No interest will be charged for payments made within the grace period, such grace period to be defined as within five (5) days from the due date. In addition, there will be a late charge of Fifty (\$50.00) Dollars for any payments submitted after the grace period.

19.1.6 If Tenant shall default in making any payment of monies to any person or for any purpose as may be required hereunder, the City may pay such expense, but the City shall not be obligated to do so. Tenant, upon the City's paying such expense, shall be obligated to forthwith reimburse the City for the amount thereof. All sums of money payable by Tenant to the City hereunder shall be deemed as rent for use of the Demised Premises and collectable by the City from Tenant as rent, and shall be due from Tenant to the City on the first day of the month following the payment of the expense by the City.

19.1.7 The rights of the City under this Agreement shall be cumulative but not restrictive to those given by law and failure on the part of the City to exercise promptly any rights given hereunder shall not operate to waive or to forfeit any of the said rights.

19.2 Default by City:

The failure of the City to perform any of the covenants, conditions and agreements of this Agreement which are to be performed by the City and the continuance of such failure for a period of thirty (30) days after notice thereof in writing from Tenant to the City (which notice shall specify the respects in which Tenant contends that the City failed to perform any such covenant, conditions and agreements) shall constitute a default by the City, unless such default is one which cannot be cured within thirty (30) days because of circumstances beyond the City's control, and the City within such thirty (30) day period shall have commenced and thereafter shall continue diligently to prosecute all actions necessary to cure such defaults.

However, in the event the City fails to perform within the initial thirty (30) day period provided above, and such failure to perform prevents Tenant from operating its business in a customary manner and causes an undue hardship for Tenant, then such failure to perform (regardless of circumstances beyond its control) as indicated above, shall constitute a default by the City.

19.3 Tenant's Rights on Default:

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If an event of the City's default shall occur, Tenant, to the fullest extent permitted by law, shall have the right to pursue any and all remedies available at law or in equity, including the right to sue for and collect damages, including reasonable attorney fees and costs, to terminate this Agreement; provided however, that Tenant expressly acknowledges and agrees that any recovery by Tenant shall be limited to the amount set forth in Section 36 of this Agreement.

20. Indemnity Against Costs and Charges.

20.1 Tenant shall be liable to the City for all costs and charges, expenses, reasonable attorney's fees, and damages which may be incurred or sustained by the City, by reason of Tenant's breach of any of the provisions of this Agreement. Any sums due the City under the provisions of this item shall constitute a lien against the interest of the Tenant and the Demised Premises and all of Tenant's property situated thereon to the same extent and on the same conditions as delinquent rent would constitute a lien on said premises and property.

20.2 In connection with the enforcement of this Agreement by either party, each party shall be responsible for their own costs and attorneys' fees.

21. Indemnification Against Claims.

21.1 Tenant agrees to indemnify, defend and hold harmless the City and its officers, employees, agents, and contractors, from and against any and all actions (whether at law or in equity), claims, liabilities, losses, and expenses, including, but not limited to, attorneys' fees and costs, for personal, economic or bodily injury, wrongful death, loss of or damage to property, which may arise or be alleged to have arisen from the negligent acts, errors, omissions or other wrongful conduct of the Tenant, its officers, employees, agents, contractors, invitees or guests; or in connection with, related to, or as a result of Tenant's use of the Demised Premises. To that extent, Tenant shall pay all such claims and losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses, and shall pay all costs and attorneys' fees expended by the City in the defense of such claims and losses, including appeals.

21.2 Tenant agrees to pay for all damages to the Demised Premises and/or other facilities used in connection therewith, caused by Tenant or any employee, agent, contractor, guest, or invitee of Tenant.

22. Signs and Advertising.

Without the prior written consent of the City Manager, which consent, if given at all, shall be at the City Manager's sole and absolute discretion, Tenant shall not permit the painting and display of any signs, plaques, lettering or advertising material of any kind on or near the Demised Premises. All additional signage shall comply with signage standards established by the City and comply with all applicable building codes, and any other municipal, County, State and Federal laws.

23. Effect of Conveyance.

The term "City" and/or "Landlord" as used in the Agreement means only the owner for the time being of the land and building containing the Demised Premises, so that in the event of any sale of said land and building, or in the event of a lease of said building, the City shall be and hereby is entirely freed and relieved of all covenants and obligations of the City hereunder, and it shall be deemed and construed without further agreement between the parties, or between the parties and the purchaser at such sale, or the lease of this building,

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that the purchaser or Tenant has assumed and agreed to carry out all covenants and obligations of the City hereunder.

24. Damage to the Demised Premises.

24.1 If the Demised Premises shall be damaged by the elements or other casualty not due to Tenant's negligence, or by fire, but are not thereby rendered untenable, as determined by the City Manager, in his sole discretion, in whole or in part, and such damage is covered by the City's insurance, if any, (hereinafter referred to as "such occurrence"), the City, shall, as soon as possible after such occurrence, utilize the insurance proceeds to cause such damage to be repaired and the Rent (Base Rent and Additional Rent) shall not be abated. If by reason of such occurrence, the Demised Premises shall be rendered untenable, as determined by the City Manager, in his sole discretion, only in part, the City shall as soon as possible utilize the insurance proceeds to cause the damage to be repaired, and the Rent meanwhile shall be abated proportionately as to the portion of the Demised Premises rendered untenable; provided however, that the City shall promptly obtain a good faith estimate of the time required to render the Demised Premises tenantable and if such time exceeds sixty (60) days, either party shall have the option of canceling this Agreement.

24.2 If the Demised Premises shall be rendered wholly untenable by reason of such occurrence, the City shall have the option, but not the obligation, in its sole discretion, to utilize the insurance proceeds to cause such damage to be repaired and the Rent meanwhile shall be abated. However, the City shall have the right, to be exercised by notice in writing delivered to Tenant within sixty (60) days from and after said occurrence, to elect not to reconstruct the destroyed Demised Premises, and in such event, this Agreement and the tenancy hereby created shall cease as of the date of said occurrence, the Rent to be adjusted as of such date. If the Demised Premises shall be rendered wholly untenable, Tenant shall have the right, to be exercised by notice in writing, delivered to the City within thirty (30) days from and after said occurrence, to elect to terminate this Agreement, the Rent to be adjusted accordingly.

24.3 Notwithstanding any clause contained in this Section 24, if the damage is not covered by the City's insurance, then the City shall have no obligation to repair the damage, but the City shall advise Tenant in writing within thirty (30) days of the occurrence giving rise to the damage and of its decision not to repair, and the Tenant may, at any time thereafter, elect to terminate this Agreement, and the Rent shall be adjusted accordingly.

25. Quiet Enjoyment.

Tenant shall enjoy quiet enjoyment of the Demised Premises and shall not be evicted or disturbed in possession of the Demised Premises so long as Tenant complies with the terms of this Agreement.

26. Waiver.

26.1 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.

26.2 A waiver of any term expressed herein shall not be implied by any neglect of the City to

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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.

- 26.3 The receipt of any sum paid by Tenant 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.

27. Notices.

The addresses for all notices required under this Agreement shall be as follows, or at such other address as either party shall be in writing, notify the other:

LANDLORD:

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

With copy to:

Asset Manager
City of Miami Beach
1833 Bay Road, 2nd Floor
Miami Beach, Florida 33139

TENANT:

President
Sobe Cats Spay & Neuter, Inc.
c/o Linda Diamond
428 Childers Street, PMB 24180
Pensacola, FL 32534

All notices shall be hand delivered and a receipt requested, or by certified mail with Return receipt requested, and shall be effective upon receipt.

28. Tenant's Compliance with Florida Public Records Law.

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

- 28.2 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.

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

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

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- 28.3.2 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;
- 28.3.3 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 Tenant does not transfer the records to the City;
- 28.3.4 Upon completion of the Agreement, transfer, at no cost to the City, all public records in possession of Tenant or keep and maintain public records required by the City to perform the service. If Tenant transfers all public records to the City upon completion of the Agreement, Tenant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Tenant keeps and maintains public records upon completion of the Agreement, Tenant 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.

28.4 Request for Records; Noncompliance.

- 28.4.1 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 Tenant of the request, and Tenant must provide the records to the City or allow the records to be inspected or copied within a reasonable time.
- 28.4.2 Tenant'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, following written notice to Tenant, pursuant to the notice provisions of the Agreement, and Tenant failing to comply with the Public Records Request within eight (8) business days; (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.
- 28.4.3 If Tenant fails to provide the public records to the City within a reasonable time may be subject to penalties under s. 119.10.

28.5 CIVIL ACTION.

- 28.5.1 If a civil action is filed against a Tenant to compel production of public records relating to the City's contract for services, the court shall assess and award against Tenant the reasonable costs of enforcement, including reasonable attorneys' fees, if:
 - 28.5.1.1 The court determines that Tenant unlawfully refused to comply with the public records request within a reasonable time; and
 - 28.5.1.2 At least 8 business days before filing the action, the plaintiff provided written

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notice of the public records request, including a statement that Tenant has not complied with the request, to the City and to Tenant.

28.5.2 A notice complies with subparagraph 28.5.1.2 if it is sent to the City's custodian of public records and to Tenant at Tenant's address listed on its contract with the City or to Tenant's registered agent. Such notices must be sent by common carrier delivery service or by registered, Tenant 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.

28.5.3 If Tenant complies with a public records request within 8 business days after the notice is sent, Tenant shall not be liable for the reasonable costs of enforcement.

28.6 **IF TENANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO TENANT'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

29. **Prohibitions Regarding Sale or Use of Expanded Polystyrene Food Service Articles, Single-Use Plastic Beverage Straws, and Single-Use Plastic Stirrers.**

29.1 Tenant hereby agrees and acknowledges that, pursuant to Section 82-7 of the City Code, as may be amended from time to time, Tenant shall not sell, use, provide food in, or offer the use of expanded polystyrene food service articles (as defined in City Code Section 82-7) in City facilities or on City property, in connection with any services performed pursuant to this Agreement. A violation of this section shall be deemed a default under the terms of this Agreement. Notwithstanding the above, this section shall not apply to expanded polystyrene food service articles used for prepackaged food that have been filled and sealed prior to receipt by Tenant.

29.2 Additionally, Tenant agrees and acknowledges that, pursuant to Section 82-8 of the City Code, as may be amended from time to time, Tenant shall not sell, use, provide food in, or offer the use of single-use plastic beverage straws or single-use plastic stirrers (as defined in City Code Section 82-8) in City facilities or on City property, in connection with any services performed pursuant to this Agreement. A violation of this section shall be deemed a default under the terms of this Agreement. Notwithstanding the above, the requirements of Section 82-8 shall not restrict Tenant from providing a beverage with, or offering the use of, a single-use plastic beverage straw or single-use plastic stirrer to an individual with a disability or medical condition that impairs the consumption of beverages without a single-use plastic beverage straw or single-use plastic stirrer.

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- 29.3 Additionally, Tenant agrees to comply with Section 46-92(c) of the City Code, which provides that it is unlawful for any person to carry any expanded polystyrene product, single-use plastic beverage straw, or single-use plastic stirrer onto any beach or park within the City, or onto any city marina, pier, dock, or boat ramp. It is also unlawful for any business to provide single-use plastic beverage straws or single-use plastic stirrers with the service or delivery of any beverage to patrons on any beach within the City. Notwithstanding the above, the provisions in Section 46-92(c) that pertain to single-use plastic beverage straws and single-use plastic stirrers shall not apply to a person or patron with a disability or medical condition that impairs the consumption of beverages without a single-use plastic beverage straw or single-use plastic stirrer.
- 29.4 As additional consideration for this Agreement, independent of the requirements set forth in Sections 82-7, 82-8 and 46-92(c) of the City Code, Tenant agrees:
- 29.4.1 not sell, use, provide food in, or offer the use of expanded polystyrene food service articles in any Facility. A violation of this section shall be deemed a default under the terms of this Agreement. Notwithstanding the above, this section shall not apply to expanded polystyrene food service articles used for prepackaged food that have been filled and sealed prior to receipt by Tenant; and
- 29.4.2 not sell, use, provide food in, or offer the use of single-use plastic beverage straws or single-use plastic stirrers in any Facility. A violation of this section shall be deemed a default under the terms of this Agreement. Notwithstanding the above, Tenant shall be permitted to provide a beverage with, or offering the use of, a single-use plastic beverage straw or single-use plastic stirrer to an individual with a disability or medical condition that impairs the consumption of beverages without a single-use plastic beverage straw or single-use plastic stirrer; and
- 29.4.3 not carry any expanded polystyrene product, single-use plastic beverage straw, or single-use plastic stirrer onto any beach or park within the City, or onto any city marina, pier, dock, or boat ramp.
30. No Discrimination.
- 30.1 In connection with the performance of the Services, Tenant shall not exclude from participation in, deny the benefits of, or subject to discrimination anyone on the grounds of race, color, national origin, sex, age, disability, religion, income or family status.
- 30.2 Additionally, Tenant shall comply fully with the City of Miami Beach Human Rights Ordinance, codified in Chapter 62 of the City Code, as may be amended from time to time, prohibiting discrimination in employment, housing, public accommodations, public services, and in connection with its membership or policies on account of actual or perceived race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, hair texture and/or hairstyle, domestic partner status, labor organization membership, familial situation, or political affiliation.

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31. Inspector General Audit Rights.

- 31.1 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.
- 31.2 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. 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.
- 31.3 Upon ten (10) 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.
- 31.4 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 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.
- 31.5 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 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:

31.5.1 If this Agreement is completely or partially terminated, the Tenant shall make

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available records relating to the work terminated until three (3) years after any resulting final termination settlement; and

31.5.2 The Tenant 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.

31.6 The provisions in this section shall apply to the Tenant, its officers, agents, employees, subcontractors 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 Agreement.

31.7 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.

32. Entire and Binding Agreement.

This Agreement contains all of the agreements between the parties hereto, and it may not be modified in any manner other than by agreement in writing signed by all the parties hereto or their successors in interest. The terms, covenants and conditions contained herein shall inure to the benefit of and be binding upon the City and Tenant and their respective successors and assigns, except as may be otherwise expressly provided in this Agreement.

33. Provisions Severable.

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

34. Captions.

The captions contained herein are for the convenience and reference only and shall not be deemed a part of this Agreement or construed as in any manner limiting or amplifying the terms and provisions of this Agreement to which they relate.

35. Number and Gender.

Whenever used herein, the singular number shall include the plural and the plural shall include the singular, and the use of one gender shall include all genders.

36. Limitation of Liability.

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of Ten Thousand (\$10,000.00) Dollars. Tenant hereby expresses its willingness to enter into this Agreement with Tenant's recovery from the City for any damage action for breach of contract to be limited to a maximum amount of \$10,000.00. Accordingly, and notwithstanding any other term or condition of this Agreement, Tenant hereby agrees that the City shall not be liable to Tenant for damage in an amount in excess of \$10,000.00 for any action or claim 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 section or elsewhere in this Agreement is in any way intended to be a waiver of the

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limitation placed upon the City's liability as set forth in Florida Statutes, Section 768.28.

37. Surrender of the Demised Premises.

Tenant shall, on or before the last day of the Term herein demised, or the sooner termination thereof, peaceably and quietly leave, surrender and yield upon to the City the Demised Premises, together with any and all equipment, fixtures, furnishings, appliances or other personal property, if any, located at or on the Demised Premises and used by Tenant in the maintenance, management or operation of the Demised Premises, excluding any trade fixtures or personal property, if any, which can be removed without material injury to the Demised Premises; free of all liens, claims and encumbrances and rights of others; broom-clean; together with all structural changes, alterations, additions, and improvements which may have been made upon the Demised Premises, in good order, condition and repair, reasonable wear and tear excepted, subject, however, to the subsequent provisions of this section. Any property which pursuant to the provisions of this section is removable by Tenant on or at the Demised Premises upon the termination of this Agreement and is not so removed may, at the option of the City, be deemed abandoned by Tenant, and either may be retained by the City as its property or may be removed and disposed of at the sole cost of the Tenant in such manner as the City may see fit. If the Demised Premises and personal property, if any, are not surrendered at the end of the Term as provided in this section, Tenant shall make good to the City all damages which the City shall suffer by reason thereof, and shall indemnify and hold harmless the City against all claims made by any succeeding tenant or purchaser, so far as such delay is occasioned by the failure of Tenant to surrender the Demised Premises as and when herein required.

38. Time is of the Essence.

Time is of the essence in every particular and particularly where the obligation to pay money is involved.

39. 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.

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

40. Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of Radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding Radon and Radon testing may be obtained from your County Public Health Unit.

41. No Dangerous Materials.

Tenant agrees not to use or permit in the Demised Premises 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 Demised Premises shall be immediately

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removed.

Tenant shall indemnify, defend, 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 Tenant of any "hazardous substance" or "petroleum products" on, in or upon the Demised Premises as those terms are defined by applicable Federal and State Statute, or any environmental rules and environmental regulations promulgated thereunder. The provisions of this Section 42 shall survive the termination or earlier expiration of this Agreement.

42. No Third Party Beneficiaries. The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement.

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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.

Attest:

CITY OF MIAMI BEACH, FLORIDA

Rafael E. Granado, City Clerk

Dan Gelber, Mayor

Signature

Print Name

Date

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Attest:

SOBE CATS SPAY & NEUTER, INC.

Signature / Corporate Secretary

Linda Diamond, President

Print Name

Signature

Print Name

Date

CORPORATE SEAL
(affix seal here)

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EXHIBIT 1 Demised Premises

Lots 1 and 2, Block 18, "Corrected Plat of Altos Del Mar No. 1", according to the Plat thereof, as recorded in Plat Book 31, Page 40, of the Public Records of Miami-Dade County, Florida.

