

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, FOLLOWING A DULY ADVERTISED PUBLIC HEARING, ACCEPTING THE RECOMMENDATION OF THE FINANCE AND CITYWIDE PROJECTS COMMITTEE AND THE WRITTEN RECOMMENDATION OF THE CITY MANAGER (AS SET FORTH IN THE CITY COMMISSION MEMORANDUM ACCOMPANYING THIS RESOLUTION), AND WAIVING, BY 5/7TH VOTE, THE COMPETITIVE BIDDING REQUIREMENT, FINDING SUCH WAIVER TO BE IN THE BEST INTEREST OF THE CITY; AND APPROVING, IN SUBSTANTIAL FORM, THE LEASE AGREEMENT ATTACHED TO THIS RESOLUTION, BETWEEN THE CITY AND SOBE TOSCANA LLC (TENANT), INVOLVING THE USE OF APPROXIMATELY 2,216 SQUARE FEET OF CITY-OWNED UNIMPROVED LAND, LOCATED AT 22 WASHINGTON AVENUE, MIAMI BEACH, FLORIDA, CURRENTLY USED AS AN OUTDOOR SEATING AREA; SAID LEASE HAVING AN INITIAL TERM OF FIVE (5) YEARS, COMMENCING ON AUGUST 1, 2017, WITH ONE (1) RENEWAL TERM OF FOUR (4) YEARS AND NINE (9) MONTHS, AT THE CITY'S SOLE DISCRETION, AND TO RUN CONCURRENT WITH THE TENANT'S LEASE/USE OF AN ADJACENT EXISTING RESTAURANT LOCATED AT 816 COMMERCE STREET; AND FURTHER AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE FINAL NEGOTIATED LEASE AGREEMENT, SUBJECT TO REVIEW AND FORM APPROVAL BY THE CITY ATTORNEY.

**WHEREAS**, on November 9, 2016, the City Commission adopted Resolution No. 2016-29638 approving and authorizing a new lease agreement with Florida Food District Inc., involving the use of approximately 2,216 square feet of City owned unimproved land, located at 22 Washington Avenue, Miami Beach, Florida (Property); and

**WHEREAS**, the Property is adjacent to an existing restaurant space located at 816 Commerce Street, Miami Beach, Florida (Restaurant), and is currently used as an outdoor seating area, concurrent with the lease/use of the Restaurant; and

**WHEREAS**, on May 16, 2017, Florida Foods District Inc. requested the assignment of their lease agreement to Sobe Toscana LLC (Tenant); and

**WHEREAS**, since Florida Food District Inc. has ceased operations and vacated the Property, the City Attorney's Office has recommended that a new lease agreement be executed with Tenant; and

**WHEREAS**, the discussion of a new lease with Tenant, based upon the same terms and conditions previously approved for Florida Food District Inc., was submitted to the Finance and Citywide Projects Committee (FCWPC) at its June 30, 2017 meeting, and the FCWPC recommended approving a new lease agreement with Tenant, based upon the same terms, for a period of five (5) years, with one (1) renewal option for an additional four (4) years and nine (9) months, at the City's sole discretion; and

**WHEREAS,** subsequent to Tenant's request to remove the termination for convenience clause, the FCWPC further recommended, in the event the City exercises the termination for convenience, reimbursing Tenant for the unamortized upfront costs of its concurrency and DERM fees; and

**WHEREAS,** the City Manager recommends the termination for convenience shall not apply to the first three (3) years of the initial five (5) year term and, in the event the termination for convenience is exercised by the City after the first three (3) years of the initial term, or throughout the renewal term, there shall be no reimbursement to Tenant for any costs whatsoever.

**WHEREAS,** the Administration recommends that the Mayor and City Commission approve, in substantial form, the proposed lease with Tenant, incorporated herein by reference and attached as Exhibit "A" to this Resolution.

**NOW, THEREFORE, BE IT DULY RESOLVED THAT THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA,** that the Mayor and City Commission, following a duly advertised public hearing, hereby accept the recommendation of the Finance and Citywide Projects Committee and the written recommendation of the City Manager (as set forth in the City Commission Memorandum accompanying this Resolution), and waive, by 5/7th vote, the competitive bidding requirement, finding such waiver to be in the best interest of the City; and approve, in substantial form, the lease agreement attached to this Resolution, between the City and Sobe Toscana LLC (Tenant), involving the use of approximately 2,216 square feet of City-owned unimproved land, located at 22 Washington Avenue, currently used as an outdoor seating area; said lease having an initial term of five (5) years, commencing on August 1, 2017, with one (1) renewal term of four (4) years and nine (9) months, at the City's sole discretion, and to run concurrent with the Tenant's lease/use of an adjacent existing restaurant located at 816 Commerce Street; and further authorize the Mayor and City Clerk to execute the final negotiated lease agreement, subject to review and form approval by the City Attorney.

**PASSED and ADOPTED** this \_\_\_\_ day of \_\_\_\_\_ 2017.

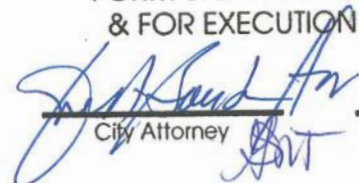
**ATTEST:**

\_\_\_\_\_  
**RAFAEL E. GRANADO, CITY CLERK**

\_\_\_\_\_  
**PHILIP LEVINE, MAYOR**

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APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

  
\_\_\_\_\_  
City Attorney

7/18/17  
\_\_\_\_\_  
Date

# LEASE AGREEMENT

**THIS LEASE AGREEMENT** (the "Lease"), made this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between the **CITY OF MIAMI BEACH, FLORIDA**, a municipal corporation organized and existing under the laws of the State of Florida (hereinafter referred to as "City"), and **SOBE TOSCANA LLC**, a Florida 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", located at 22 Washington Avenue, Miami Beach, Florida 33139, and more fully described as follows:

Approximately two thousand two hundred sixteen (2,216) square feet of land with any existing improvements. Such Demised Premises are specified in Exhibit A, which is hereby made a part of this Lease.

Tenant is leasing the Demised Premises concurrently with the restaurant space, adjacent to the Demised Premises, having a physical address of 816 Commerce Street, Miami Beach, Florida 33139 ("Restaurant at 816 Commerce Street").

2. Term.

2.1 Tenant shall be entitled to have and to hold the Demised Premises for an initial term of five (5) years, commencing on August 1, 2017 (Commencement Date), and ending on July 31, 2022.

2.2 The City, at its sole discretion, may grant Tenant an option to renew this Lease for one additional term of four (4) years and nine (9) months, based upon Tenant's agreement to pay the Renewal Rent, as more particularly described in subsection 3.1.2. In the event Tenant wishes to request said renewal option, Tenant shall communicate said request, in writing, to the City no earlier than 180 days and at least 120 days prior to the end of the initial term.

2.3 Termination for Convenience.

This Lease may be terminated, in whole or in part, by the City, for convenience and without cause, upon the furnishing of sixty (60) days prior written notice to Tenant. Notwithstanding the foregoing, the City shall not exercise this Termination for Convenience within the first three (3) years of the Term.

In the event of termination by the City pursuant to this subsection, Tenant 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 Tenant for any indirect, incidental, special, lost profits or consequential damages.

EXHIBIT

A



3. Rent.

3.1 Base Rent:

Base Rent for the Demised Premises during the initial term shall begin to accrue as of the Commencement Date; based upon the total leasable space of 2,216 square feet as follows:

The Base Rent for the Demised Premises shall be as follows:

<b>Months of Term</b>	<b>Base Rent Rate</b>	<b>Monthly Base Rent</b>	<b>Period Base Rent</b>
August 1, 2017 - July 31, 2018	\$ 22.51	\$ 4,156.85	\$ 49,882.20
August 1, 2018 - July 31, 2019	\$ 23.19	\$ 4,282.42	\$ 51,389.04
August 1, 2019 - July 31, 2020	\$ 23.89	\$ 4,411.69	\$ 52,940.28
August 1, 2020 - July 31, 2021	\$ 24.61	\$ 4,544.65	\$ 54,535.80
August 1, 2021 - July 31, 2022	\$ 25.35	\$ 4,681.30	\$ 56,175.60
<b>Total Base Rent</b>			<b>\$ 264,922.92</b>

3.1.1 Base Rent shall be due and payable on the first day of each month throughout the Term of this Lease, along with applicable sales tax.

3.1.2 Notwithstanding anything in this Section 3 or in this Lease, the City reserves the right to re-negotiate the Base Rent amount, concurrent with Tenant's right to exercise and City's approval (if at all), of the renewal term ("Renewal Rent"). The Renewal Rent may be based upon a percentage of gross receipts or may continue to be assessed as a fixed annual rent, based upon the fair market rent at the time, to be escalated annually by 3%; however, at no time will the Base Rent during the renewal term be less than the rent for the previous lease year plus the 3% escalation.

3.2 Late Payment.

It is expressly agreed and understood by and between the parties hereto that any installments of rent accruing under the provisions of this Lease 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. In addition, there will be a late charge of \$50.00 for any payments submitted after the due date.

3.3 Sales and Use Tax.

It is also understood that Tenant shall also include and forward to the City any and all additional sums for all applicable sales and use tax, now or hereafter prescribed by State, Federal or local law, and now described by Florida Statute 212.031. It is the City's intent that it is to receive all payments due from Tenant as net of such Florida State Sales and Use Tax.



3.4 Location for Payments.

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

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

4. Maintenance and Examination of Records.

Tenant shall maintain current, accurate, and complete financial records on an accrual basis of accounting related to its operations pursuant to this Lease, including such records and accounting related to the Restaurant at 816 Commerce Street. Systems and procedures used to maintain these records shall include a system of internal controls and all accounting records shall be maintained in accordance with generally accepted accounting principles and shall be open to inspection and audit by the City Manager or his designee upon reasonable prior request and during normal business hours. Such records and accounts shall include a breakdown of gross receipts, expenses, and profit and loss statements, and such records shall be maintained as would be required by an independent CPA in order to audit a statement of annual gross receipts and profit and loss statement pursuant to generally accepted accounting principles.

5. Inspection and Audit.

Tenant shall maintain its financial records pertaining to its operation pursuant to this Lease and including the Restaurant at 816 Commerce Street for a period of three (3) years after the conclusion of the initial term, or (if approved) the last renewal term, and such records shall be open and available to the City Manager or his designee, as deemed necessary by the City Manager or his designee. Tenant shall maintain all such records at its principal office, currently located at 816 Commerce Street, Miami Beach, Florida, 33139 or, if moved to another location, all such records shall be relocated, at Tenant's expense, to a location within the City of Miami Beach, within ten (10) days' written notice from the City Manager or his designee that the City desires to review said records.

6. Taxes, Assessments, and Utilities.

6.1 Tenant agrees to and shall pay before delinquency all taxes (including but not limited to Resort Taxes) and assessments of any kind assessed or levied upon Tenant by reason of this Lease or by reason of the business or other activities and operations of Tenant upon or in connection with the Demised Premises and/or the adjoining Restaurant at 816 Commerce Street.

Tenant shall also pay for any fees imposed by law for licenses or permits for any business, activities, or operations of Tenant upon the Demised Premises and/or the adjoining ground level restaurant at 816 Commerce Street, and shall maintain same current and in good standing throughout the Term of this Lease.

6.2 Utilities.

The City shall not be responsible for providing electrical or water service, or any and all other utilities to and/or for, and/or in connection with, the Demised Premises.

Requests for installation of electrical, water and /or any and all other utilities shall be submitted in writing to the City Manager or his designee. Installation and connection of any and all utilities, as and if approved by the City, will be performed at Tenant's sole cost and expense.

6.3 Procedure If Ad Valorem Taxes Assessed.

During the term of this Lease, Tenant shall be solely responsible for all taxes of whatever nature lawfully levied upon or assessed against the Demised Premises and improvements, sales, or operations thereon, including but not limited to, Ad Valorem taxes.

7. Security Deposit.

7.1 On or prior to the Commencement Date, Tenant shall pay the City a Security Deposit, in the sum of Twelve Thousand Four Hundred Seventy and 55/100 Dollars (\$12,470.55). Said Security Deposit is to ensure the full and faithful performance by the Tenant of each and every term, covenant and condition of this Lease. In the event that Tenant defaults with respect to any of the terms, provisions, covenants and conditions of this Lease, including but not limited to, the payment of any rent, the City may use, apply or retain the whole or any part of the Security Deposit for the payment of such rents in default or any other sum which the City may expend or be required to expend by reason of the Tenant's default, including any damages or deficiency in the re-letting of the Demised Premises, whether such damages or deficiency may accrue or after summary proceedings or other re-entry by City.

7.2 In the event that the Tenant shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this Lease, the Security Deposit or any balance thereof shall be returned to the Tenant, without interest, upon the expiration of the Lease and peaceful surrender of the Demised Premises.

7.3 City shall not be required to keep the Security Deposit in a segregated account and the Security Deposit may be commingled with other funds of City and in no event shall the Tenant be entitled to any interest on the Security Deposit.

7.4 In the event of a bona fide sale of the Demised Premises, as delineated in this Lease, the City shall have the right to transfer the Security Deposit to the purchaser for the benefit of the Tenant and the City shall be considered by the Tenant free from all liability for the return of such Security Deposit, and the Tenant agrees to look to the new owner/landlord solely for the return of the Security Deposit, if such Security Deposit is actually transferred, and it is agreed that this shall apply to every transfer or assignment made of the Security Deposit to any new owner/landlord.

It is expressly understood that the issuance of a warrant and the lawful re-entry to the Demised Premises by the City for any default on the part of the Tenant, prior to the expiration of the term of this Lease, shall not be deemed such termination of this Lease as to entitle the Tenant to recovery of the Security Deposit and the Security Deposit shall be retained and remain the possession of the City.

7.5 Tenant shall provide an Unconditional Guaranty by the principal of SOBE TOSCANA LLC, Catherine Arrighi Guitera, for the entire Term of this Lease including any Renewal Terms, equal to the last six (6) months' of Base Rent, in the amount of Twenty Eight Thousand Eighty-Seven and 80/100 Dollars (**\$28,087.80**), a copy of which is attached as Exhibit "C" hereto.

8. Use and Possession of Demised Premises.

8.1 The Demised Premises shall be used by the Tenant solely as an outdoor café to serve the patrons and guests of Tenant's adjoining Restaurant at 816 Commerce Street. The outdoor café shall have days and hours of operation from Sunday through Thursday commencing on 11:30 a.m., and ending no later than 11:00 p.m., and Friday through Saturday, commencing on 11:30 a.m., and ending no later than midnight. Notwithstanding the preceding hours of operation, the outdoor café on the Demised Premises shall only be open when the restaurant at 816 Commerce Street is open for business (and, conversely, shall be closed when the restaurant is closed).

8.2 Tenant and owner/tenant of the Restaurant at 816 Commerce Street shall at all times throughout the Term of the Lease be one and the same and cannot exist independently of each other. Tenant acknowledges and agrees that its use of the Demised Premises shall be, and remain at all times throughout the Term, an ancillary use to Tenant's restaurant at 816 Commerce Street. Additionally, Tenant's operation will not interfere with pedestrian traffic.

The number of seating on the Demised Premises shall not exceed 65 and shall be included in the overall seating count of Tenant's Restaurant at 816 Commerce Street. There shall be no bar counter of any kind as part of the Demised Premises and all food served shall be prepared within the interior kitchen of the Tenant's restaurant and only when the interior kitchen is operational. Any and all alcoholic beverages served at the outdoor café shall be serviced by Tenant's restaurant. All tables and chairs 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 designee. Tenant shall further maintain the Demised Premises and abide by the conditions set forth in Exhibit "B" of the Lease.

8.3 Tenant hereby warrants and represents that SOBE TOSCANA LLC is the owner of the Restaurant at 816 Commerce Street and shall, throughout the Term of the Lease, 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.



- 8.4 Tenant agrees not to place any television, speakers, or any other device used to amplify sound, on or around the Demised Premises. Tenant further agrees to not attach any televisions, speakers, or any other device used to amplify sound, to the exterior of the Restaurant building at 816 Commerce Street. Furthermore, Tenant shall in no manner use the Demised Premises, or Tenant's restaurant at 816 Commerce Street, as an outdoor entertainment or open air entertainment establishment, and hereby acknowledges that such uses are prohibited (whether as main or accessory uses).
- 8.5 Tenant agrees that any (i) valet parking and/or a taxi cab stand; (ii) Take-out service; and (iii) any Sidewalk Café permit, if approved by the City in conjunction with the Tenant's restaurant operation at 816 Commerce Street shall not utilize Washington Avenue and will be limited to Commerce Street. Furthermore, any and all deliveries to the restaurant shall be limited to the alley located on the south side of 816 Commerce Street.
- 8.6 Tenant shall be permitted to apply to the City of Miami Beach for one (1) special event permit for the sole and express purpose of hosting an opening event for the restaurant. At no time thereafter, throughout the remaining term of the Lease, shall the Tenant be permitted to submit an application for a special event to be held on the Demised Premises.
- 8.7 It is understood and agreed that the Demised Premises shall be used by the Tenant during the term of this Lease only for the uses contemplated herein, and for no other purpose or use whatsoever. Tenant will not make or permit any use of the Demised Premises that, directly or indirectly, is forbidden by public law, ordinance or government regulation, or that may be dangerous to life, limb or property. Tenant may not commit waste on the Demised Premises, use the Demised Premises for any illegal purpose, or commit a nuisance on the Demised Premises. In the event that the Tenant uses the Demised Premises for any purpose not expressly permitted herein, then the City may declare this Lease in default pursuant to Section 18, or without notice to Tenant, restrain such improper use by injunction or other legal action.
- 8.8 **Notwithstanding anything to the contrary contained herein, in the event of a breach by Tenant of any conditions in this Section 8, the City Manager, in his sole determination and judgment, shall have the right to automatically terminate this Lease, without any liability to the City; said termination effective upon three (3) days written notice to Tenant. By executing the Lease, Tenant hereby agrees to this condition, and further voluntarily and knowingly waives and releases any and all rights now or hereinafter conferred upon Tenant 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 Lease pursuant to this Subsection.**

9. Improvements.

9.1 Any improvements on the Demised Premises shall be subject to the prior written approval of the City Manager, which approval, if given at all, shall be at their sole discretion. As part of such approval, the City Manager may require a Performance Bond for any proposed Improvements. All permanent (fixed) improvements to the Demised Premises shall become the property of the City upon termination of the Lease. Notwithstanding the preceding sentence, the City may require that Tenant, upon termination of the Lease, remove all permanent (fixed) improvements to the Demised Premises (at his/her sole discretion), without damage to the Demised Premises or cost to the City. Furthermore, upon the lawful termination of the Lease, all personal property and trade fixtures may be removed by the Tenant from the Demised Premises 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 construction of any improvements. Moreover, such construction shall be properly permitted and done in compliance with all applicable Municipal, County, State and Federal regulatory requirements, and shall be accomplished through the use of licensed, reputable contractors who are acceptable to the City. Any and all costs, permits and or licenses required for the installation and maintenance of improvements shall be the sole responsibility of Tenant.

9.2 Performance Bond.

INTENTIONALLY OMITTED

City's Right of Entry.

9.3 The City, or its authorized agent or agents, shall have the right to enter upon the Demised Premises at all reasonable times for the purpose of inspecting same, preventing waste, making such repairs as the City may consider necessary and for the purpose of preventing fire, theft or vandalism. However, the City agrees that whenever possible, the City shall provide reasonable notice, in writing, to Tenant, unless the need to enter the Demised Premises is an emergency, as deemed by the City at its 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 Lease the Tenant may be required to perform, and the performance thereof by the City shall not constitute a waiver of the Tenant's default.

9.4 If the Tenant shall not be personally present to permit entry onto the Demised Premises at any time, for any reason, and any entry thereon shall be necessary or permissible, the City, or its agents, may enter the Demised Premises, including, without limitation, forcibly entering the Demised Premises, without rendering the City or such agents liable therefore.

10. Tenant's Insurance Requirements.

- 10.1 Before beginning any work and throughout the term of the Lease (including renewal periods), Tenant shall, at its sole cost and expense, 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 coverage have been reviewed and approved by the City's Risk Manager. All insurance policies required below shall be issued by companies authorized to do business under the laws of the State of Florida. Provider shall indicate that insurance coverage has been obtained which meets the requirements as outlined below by submitting original certificates of insurance to the City's Risk Manager and Asset Manager respectively:
- 10.1.1 Worker's Compensation for all employees of the provider as required by Florida Statute 440 and Employer's Liability coverage in accordance with the Florida Statutory requirements.
- 10.1.2 Commercial General Liability on a comprehensive basis in an amount not less than \$1,000,000 combined single limit per occurrence, for bodily injury and property damage. City of Miami Beach must be shown as an additional insured with respect to this coverage. Additionally, this insurance coverage shall include a waiver of subrogation in favor of the City.
- 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 Lease).
- 10.2 The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the provider.
- 10.3 The company must be rated no less than "B+" as to management, and no less than "Class VII" as to financial strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the City Risk Management Division.

CERTIFICATE HOLDER MUST READ:

C/O Insurance Tracking Services, Inc. (ITS)  
P.O. Box 20270  
Long Beach, CA 90801

- 10.3.1 Updated COI must be submitted to ITS via email with the following:  
I. Email address: [miamibeach.contracts@instracking.com](mailto:miamibeach.contracts@instracking.com)



II. Copy Andrew Bejel at AndrewBejel@miamibeachfl.gov and Febe Perez at febepererez@miamibeachfl.gov on the submittal to ITS

- 10.4 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 Lease.
- 10.5 City reserves the right to impose additional reasonable insurance requirements as the City may deem necessary or in accordance with common practice.
- 10.6 The policies of insurance referred to above shall not be subject to cancellation or changing coverage except upon at least thirty (30) days written notice to City and then subject to the prior written approval of the City's Risk Manager. Should Tenant fail to obtain, maintain or renew the policies of insurance referred to above, in the required amounts, the City may, at its sole discretion, obtain such insurance, and any sums expended by City in obtaining said insurance, shall be repaid by Tenant to City, plus ten percent (10%) of the amount of premiums paid to compensate City for its administrative costs. If Tenant does not repay City's expenditures within fifteen (15) days of demand, the total sum owed shall accrue interest at the rate of twelve percent (12%) until paid and such failure shall be deemed an event of default hereunder.
11. Assignment and Subletting.
- 11.1 Tenant shall not have the right to assign or sublet the Demised Premises, in whole or in part, without the prior written consent of City which shall not be unreasonably withheld. Such written consent is not a matter of right and 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 Lease. A sale or transfer of a majority interest of the stock of Tenant's corporate entity shall be deemed an assignment, and for purposes of this Lease, the City shall have the right to approve the new majority owner. Said approval shall be provided in writing. Tenant is prohibited from assigning or subletting this Lease to any person or entity which is not of the same or higher financial responsibility as Tenant, as shall be determined by City, in its sole judgment and discretion. Further, Tenant shall be prohibited from any changes in ownership, whether in the Demised Premises or the restaurant located at 816 Commerce Street, as set forth in Subsections 8.2 and 8.3.
- 11.2 Any consent by the City to any act of assignment shall apply only to the specific transaction thereby authorized. Such consent shall not be construed as a waiver of the duty of the Tenant or the legal representatives or assigns of the Tenant, to obtain from the City consent to any other or subsequent assignment, or as modifying or limiting the rights of the City under the foregoing covenants of the Tenant not to assign without such consent.
- 11.3 Any violation of the provisions of this Lease, whether by act or omissions, by assignee, sub-tenant, or under-tenant or occupant, shall be deemed a violation of such provision by the Tenant, it being the intention and meaning of the parties hereto, that the Tenant shall assume and be liable to the City for any and all acts and omissions of any and all assignees, sub-tenants, or under-tenants or occupants. If the Lease be assigned, the

City may and is hereby empowered to collect rent from the assignee; if the Demised Premises or any part thereof be underlet or occupied by any person, other than the Tenant, the City, in the event of the Tenant's default, may, and is hereby empowered to, collect rent from the under-tenant or occupants; in either of such events, the City may apply the net amount received by it for rent herein reserved, and no such collection shall be deemed a waiver of the covenant herein against assignment or the acceptance of the assignee, under-tenant or occupant as tenant, or a release of the Tenant from the further performance of the covenants herein contained on the part of the Tenant.

12. Maintenance and Repair.

- 12.1 Tenant shall maintain the Demised Premises and any fixtures and appurtenances thereon, and, at its sole cost and expense, shall make all repairs thereto as and when needed to preserve them in good working order and condition. This shall include, but not be limited to, Tenant being responsible for maintenance and repair of any and all improvements, such as fences, walkways, pavers, ground-coverings, landscaping, and gates.
- 12.2 All damage or injury of any kind to the Demised Premises shall be the obligation of Tenant, and shall be repaired, restored or replaced promptly by Tenant at its sole cost and expense to the satisfaction of the City.
- 12.3 All of the aforesaid repairs, restorations and replacements shall be in quality and class equal to the original work or installations and shall be done in good and workmanlike manner.
- 12.4 If Tenant fails to make such repairs or restorations or replacements, the same may be made by the City, at the expense of the Tenant, and all sums spent and expenses incurred by the City shall be collectable and shall be paid by the Tenant within ten (10) days after rendition of a bill or statement thereof.
- 12.5 It shall be Tenant's obligation to insure 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.
- 12.6 **THE DEMISED PREMISES ARE BEING LEASED IN THEIR PRESENT "AS IS" CONDITION.** Tenant may construct or cause to be constructed, such exterior improvements to the Demised Premises, as reasonably necessary for it to carry on its permitted use(s); provided, however, that any plans for such improvements shall be first submitted to the City Manager for his prior received written approval, which approval, 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 cost and expense. All permanent (fixed) improvements to the Demised Premises shall remain the property of the City upon termination and/or expiration of this Lease. Upon termination and/or expiration of this Lease, 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 Manager. Any and all permits and or licenses required for the construction and/or installation of improvements shall be the sole cost and responsibility of Tenant.

13. Governmental Regulations.

The 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 cost and expense. Tenant shall pay all costs, expenses, claims, fines, penalties, and damages that may be imposed because of Tenant's failure to comply with this Section, and shall indemnify and hold harmless the City from all liability arising from each non-compliance.

14. Intentionally Omitted.

15. Condemnation.

15.1 If at any time during the term of this Lease all or any part or portion of the Demised Premises are taken, appropriated, or condemned by reason of Eminent Domain proceedings (except if the Eminent Domain proceedings are initiated by the City of Miami Beach), then this Lease 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 Lease or anything contained therein, except that any rent prepaid beyond the date of such taking shall be prorated to such date, and the Tenant shall pay any and all rents, additional rents, utility charges, or other costs including excess taxes for which it is liable under the terms of this Lease, up to the date of such taking.

15.2 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, the 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.

16. Default.

16.1 Default by Tenant.

At the City's option, any of the following shall constitute an Event of Default under this Lease:

16.1.1 Rent, or any installment thereof is not paid promptly when and where due within fifteen (15) days of due date and if Tenant shall not cure such failure within five (5) days after receipt of written notice from the City specifying such default;



- 16.1.2 Any other payment provided for under this Lease is not paid promptly when and where due;
- 16.1.3 Demised Premises shall be deserted, abandoned, or vacated;
- 16.1.4 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 City specifying any such default; or such longer period of time acceptable to the City, at its sole discretion;
- 16.1.5 Receipt of notice of violation from any governmental authority having jurisdiction dealing with a code, regulation, ordinance or the like, which remains uncured within the time specified in such notice of violation or such period of time acceptable to the City Manager, at his sole discretion;
- 16.1.6 Any petition is filed by or against Tenant under an 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 extending the time for payment of debts;
- 16.1.7 Tenant shall become insolvent;
- 16.1.8 Tenant shall make an assignment for benefit of creditors;
- 16.1.9 A receiver is appointed for Tenant by any court and shall not be dissolved within thirty (30) days thereafter; or
- 16.1.10 The leasehold interest is levied on under execution.
- 16.1.11 Tenant's violation of the provision of Subsection 8.8 herein, which shall result in an automatic termination of the Lease, as further provided in said subsection.

17. Rights on Default.

17.1 Rights on Default.

- 17.1.1 In the event of any default by Tenant as provided herein, the 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 Lease;
- 17.1.2 Terminate this Lease, 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 Demised Premises and expel or remove Tenant and his 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

termination, whether through inability to re-let the Demised Premises, or through decrease in rent, or otherwise.

- 17.1.3 Declare the entire amount of the rent which would become due and payable during the remainder of the term of this Lease 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 Lease; 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.
- 17.1.4 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, 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 deficiency as aforesaid.
- 17.1.5 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 the Tenant liable for the deficiency, if any.
- 17.1.6 It is expressly agreed and understood by and between the parties hereto that any installments of rent accruing under the provisions of this Lease 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 of the due date. In addition, there will be a late charge of fifty (\$50.00) dollars for any payments submitted after the grace period.
- 17.1.7 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 City on the first day of the month following the payment of the expense by the City.

17.1.8 The rights of the City under this Lease 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.

17.2 Default by City.

Failure of the City to perform any of the covenants, conditions and agreements of the Lease 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 the Tenant, then such failure to perform (regardless of circumstances beyond its control) as indicated above, shall constitute a default by the City.

17.3 Tenant's Rights on Default:

If an event of the City's default shall occur, Tenant, to the fullest extent permitted by law, shall have the right and option to terminate this Lease and all of its obligations hereunder by giving written notice of such election to the City, and shall further have the right to pursue any actions at law or suits in equity to obtain damages resulting from the City's default. Notwithstanding anything in this Section 17.3 or the Lease, in the event of a default by the City, Tenant hereby agrees and acknowledges that in no event shall the City be liable for any incidental, indirect, special or consequential damages, including without limitation loss of revenue and lost profits, of Tenant which may be alleged as a result of the City's default.

18. Indemnity Against Costs and Charges.

18.1 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 the Tenant's breach of any of the provisions of this Lease. 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.

18.2 If Tenant shall at any time be in default hereunder, and if the City shall deem it necessary to engage an attorney to enforce the City's rights and Tenant's obligations hereunder, Tenant will reimburse the City for the reasonable expenses incurred thereby, including, but not limited to, court costs and reasonable attorney's fees, whether suit be brought or not and if suit be brought, then Tenant shall be liable for expenses incurred at both the trial and appellate levels.



19. Indemnification Against Claims.

- 19.1 Tenant shall indemnify and save the City harmless from and against any and all claims or causes of action (whether groundless or otherwise) by or on behalf of any person, firm, or corporation, for personal injury or property damage occurring upon the Demised Premises or upon any parking lot or other facility or appurtenance used in connection with the Demised Premises, occasioned in whole or in part by any of the following:
- 19.1.1 An act or omission on the part of the Tenant, or any employee, agent, invitee, or guest, assignee or sub-tenant of the Tenant;
  - 19.1.2 Any misuse, neglect, or unlawful use of the Demised Premises or the building in which the Demised Premises is located or any of its facilities by the Tenant, or any employee, agent, invitee, or guest, assignee or sub-tenant or the Tenant, but not to include trespassers upon the Demised Premises;
  - 19.1.3 Any breach, violation, or non-performance of any undertaking of the Tenant under this Lease;
  - 19.1.4 Anything growing out of the use or occupancy of the Demised Premises by the Tenant or anyone holding or claiming to hold through or under the Lease.
- 19.2 Tenant agrees to pay all damages to the Demised Premises or other facilities used in connection therewith, caused by the Tenant or any employee, guest, or invitee of the Tenant.

20. Signs and Advertising.

Without the prior written consent of the City, at the City's sole 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

21. Damage to the Demised Premises and/or Restaurant at 816 Commerce Street.

- 21.1 If the Demised Premises and/or restaurant at 816 Commerce Street 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, in whole or in part (hereinafter referred to as "such occurrence"), Tenant shall as soon as possible after such occurrence, utilize its insurance proceeds to cause such damage to be repaired and the rent for the Demised Premises shall not be abated. If by reason of such occurrence, the Demised Premises and/or restaurant at 816 Commerce Street shall be rendered untenable, as determined by the City, only in part, Tenant shall as soon as possible utilize its insurance proceeds to cause the damage to be repaired, and the rent for the Demised Premises shall be abated proportionately as to the portion of the Demised Premises rendered untenable; provided however, if either the Demised Premises and/or restaurant at 816 Commerce Street are by reason of such occurrence, rendered more than 50% but less than 100% untenable, as determined by the City, Tenant shall promptly obtain a good faith estimate, from a licensed contractor

acceptable to the City, of the time required to render the Demised Premises and/or restaurant at 816 Commerce Street tenable. **If such time exceeds sixty (60) days, the City and/or Tenant shall have the option of canceling this Lease, which option shall be exercised by the requesting party in writing within ten (10) days of the end of the sixty (60) day period, and the Lease shall be terminated within thirty (30) days from the date thereof.**

21.2 If the Demised Premises and/or restaurant at 816 Commerce Street shall be rendered wholly untenable by reason of such occurrence, Tenant shall utilize its insurance proceeds to cause such damage to be repaired and the rent for the Demised Premises shall be abated in whole; provided, however, that the Tenant shall have the right, to be exercised by notice in writing delivered to the City within sixty (60) days from and after said occurrence, to elect not to reconstruct the destroyed Demised Premises and/or restaurant, and in such event, this Lease 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, the City and/or Tenant shall have the right, to be exercised by notice in writing, delivered to the other party within thirty (30) days from and after said occurrence, to elect to terminate this Lease, the rent to be adjusted accordingly.

22. 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 Lease.

23. Waiver.

23.1 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 Lease, 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.

23.2 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.

23.3 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.

24. Notices.

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

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

With copies to: Asset Manager  
Office of Real Estate  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139

TENANT: SOBE TOSCANA LLC  
816 Commerce Street  
Miami Beach, Florida 33139  
Attn: Catherine Arrighi Guitera

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

25. Entire and Binding Agreement.

This Lease 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 Lease.

26. Provisions Severable.

If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, 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 Lease shall be valid and be enforced to the fullest extent permitted by law.

27. Captions.

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

28. 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.

29. Governing Law.

This Lease shall be governed by and construed in accordance with the law of the State of Florida.

30. Limitation of Liability.

The City desires to enter into this Lease 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 Lease, so that its liability for any such breach never exceeds the sum of Ten Thousand (\$10,000.00) Dollars and no/100. Tenant hereby expresses its willingness to enter into this Lease with the Tenant's recovery from the City for any damage action for breach of contract to be limited to a maximum amount of Ten Thousand (\$10,000.00) Dollars. Accordingly, and notwithstanding any other term or condition of this Lease, Tenant hereby agrees that the City shall not be liable to Tenant for damage in an amount in excess of Ten Thousand (\$10,000.00) Dollars 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 Lease. Nothing contained in this Section or elsewhere in this Lease is in any way intended to be a waiver of the limitation placed upon City's liability as set forth in Florida Statutes, Section 768.28.

31. 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 or 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 Article. 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 Lease and is not so removed may, at the option of the City, be deemed abandoned by the 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, be not surrendered at the end of the term as provided in this Section, the Tenant shall make good 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 the Tenant to surrender the Demised Premises as and when herein required.

32. Time is of the Essence.

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



33. Venue.

This Lease 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 LEASE.**

34. 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.

Tenant 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. Tenant shall ensure that all vendors operating in the Demised Premises abide by the restrictions contained in this Section 35. 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 Tenant or its vendors.

Additionally, Tenant 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.

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**IN WITNESS WHEREOF**, the parties hereto have caused these presents to be signed by the respective duly authorized officers and the respective corporate seals to be affixed this \_\_\_\_ day of \_\_\_\_\_, 2017.

**ATTEST:**

**CITY:**

**CITY OF MIAMI BEACH, FLORIDA**

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

BY: \_\_\_\_\_  
Philip Levine, Mayor

Dated: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
(Print Name)

Dated: \_\_\_\_\_

**ATTEST:**

**TENANT:**

**SOBE TOSCANA LLC**

\_\_\_\_\_  
\_\_\_\_\_  
(Print Name)

BY: \_\_\_\_\_

**Catherine Arrighi Guitera**  
as President of Lychee SoBe Corp,  
as Manager of Sobe Toscana LLC

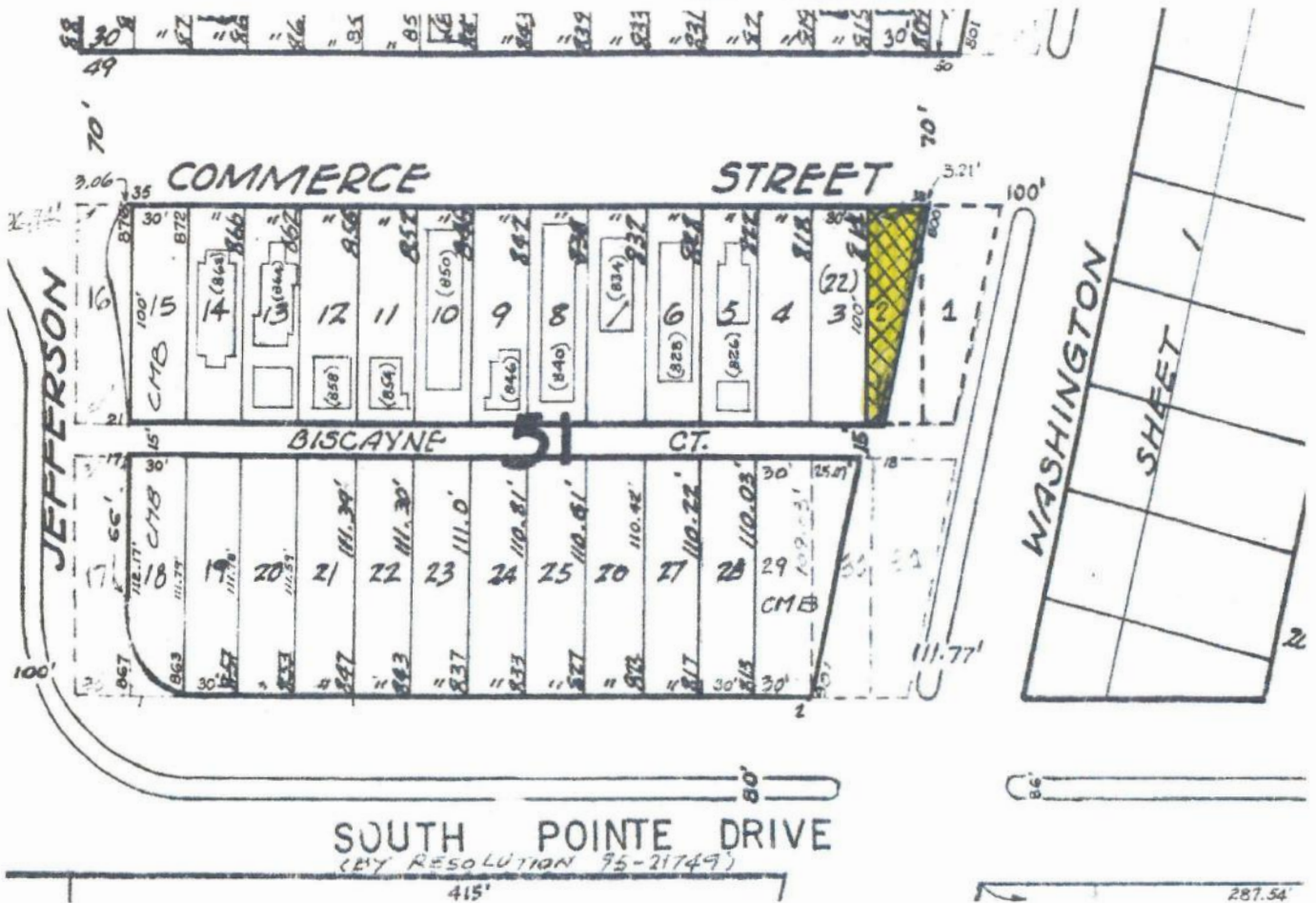
\_\_\_\_\_  
\_\_\_\_\_  
(Print Name)

Dated: \_\_\_\_\_

# EXHIBIT A

## Description of Demised Premises

A portion of Lots 1 and 2, Block 51, Ocean Beach Addition No. 3, according to the plat thereof, recorded in Plat Book 2, at page 81, of the Public Records of Dade County, Florida, being more particularly described as follows: Bounded on the North by the South RW line of Commerce St.; Bounded on the West by the East line of Lot 2; Bounded on the South by the North RW line of Biscayne Court; Bounded on the East by a line that is a perpendicular distance of 100 feet westerly and parallel to the East RW line of Washington Avenue.



# EXHIBIT B

## Additional Requirements

The Demised Premises shall be maintained in a clean, neat and orderly appearance at all times by the Tenant. The area of the sidewalk, curb and gutter immediately adjacent to the Demised Premises 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 Tenant 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. Tenant must obtain approvals from the Planning Department and the City Administration in the design and layout of the outdoor cafe pavers, tables, chairs and umbrellas. Only the outdoor cafe furniture specifically shown on the approved site plan shall be allowed in the Demised Premises;
- 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 Demised Premises;
- f. At close of business, all tables, chairs and any other outdoor furniture shall be removed from the Demised Premises 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, bussing stations or other similar restaurant equipment shall be allowed in the Demised Premises, or in 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 in the Demised Premises;
- i. Only one menu board shall be permitted to be displayed on the Demised Premises, the location of which shall be set back next to the main entrance door of the enclosed area of the restaurant;
- j. No food preparation, food storage, refrigeration apparatus or equipment, or fire apparatus or equipment, shall be allowed on the Demised Premises;
- k. No food displays shall be permitted on Demised Premises. 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;



- I. 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 Demised Premises 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 Tenant shall, within no more than four hours of same, remove and place indoors all tables, chairs and any other outdoor furniture located on the Demised Premises. 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 Demised Premises that has otherwise not been removed by the Tenant pursuant to this subsection. Any and all costs incurred by the City for removal, relocation and/or storage of Tenant's furniture shall be the responsibility of the Tenant.

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## **EXHIBIT C**

### **UNCONDITIONAL GUARANTY**

**THIS UNCONDITIONAL GUARANTY** (the "Guaranty") is made as of this \_\_\_\_ day of \_\_\_\_\_, 2017, by Catherine Arrighi Guitera, individually (the "Guarantor"), in favor of CITY OF MIAMI BEACH, FLORIDA, a municipal corporation organized and existing under the laws of the State of Florida (the "City"), and is executed pursuant to that certain Lease Agreement, dated \_\_\_\_\_, 2017 (the "Lease"), between the City and SOBE TOSCANA LLC (the "Tenant") , involving unimproved city-owned land as defined in the Lease as the Demised Premises, having a physical address of 22 Washington Avenue, Miami Beach, Florida 33139 (the "Demised Premises"). All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Lease.

**FOR VALUE RECEIVED**, the receipt whereof is hereby acknowledged, in consideration of, and as an inducement to the City's entering into the Lease with Tenant, the undersigned Guarantor, in consideration of the benefits to flow to the Tenant and to the undersigned as stockholder, officer, and/or director of said Tenant, do hereby irrevocably and unconditionally guarantee to the City the full and faithful performance of all of the obligations, duties and liabilities of the Tenant under that certain Lease for the Demised Premises, equal to the last six months of Rent (as defined in the Lease), currently in the amount of \$28,087.80, for the entire term of the Lease, including the renewal term, which, if granted at all, shall be at the City's sole discretion (the "Guaranty Term").

This Guaranty is a guarantee of payment and not of collectability is not in any way conditional or contingent and constitutes a valid obligation of Guarantor, and shall not be terminated, affected or impaired by reason of the assertion by the City against Tenant of any of the rights and remedies reserved to the City pursuant to the provisions of the Lease. The validity of this Guaranty shall not be terminated, affected or impaired by reason of any action which the City may take or fail to take against Tenant or by reason of any waiver of or failure to enforce any of the rights or remedies reserved to the City in the Lease or for any other cause or circumstance whatsoever, including but not limited to any subletting of the Demised Premises, assignment of the Lease or waiver of any breach by the Tenant.

This liability of Guarantor hereunder shall be primary and independent of the obligations of Tenant, and the City may proceed against Guarantor without commencing any action against Tenant. The City shall not be required to make any demand upon or pursue and exhaust any of its rights or remedies against Tenant, before, simultaneously with, or after enforcing its rights or remedies against Guarantor under this Guaranty; and Guarantor agrees that the City may enforce any or all of its remedies hereunder at such time or times or in such manner as it shall deem appropriate.

This Guaranty shall remain and continue in full force and effect during the Guaranty Term, notwithstanding any modification, amendment, renewal or extension of the Lease or any provision thereof and notwithstanding any assignment of interest therein.

The Guarantor consents to all of the terms and provisions of the Lease, as the same may be from time to time hereafter amended, and expressly waive (i) any and all notices of proof of non-

payment, non-performance or non-observance by Tenant of any covenant or provision of the Lease, (ii) any and all demands, notices, rights or remedies of any kind which may be required to be given or which may inure to the benefit of Guarantor under applicable law, and (iii) any and all notices of default or events of default hereunder or under the Lease.

The City and Guarantor agree that in any action or proceeding brought by either the City or Guarantor against the other on any matters whatsoever arising out of, under, or by virtue of this Guaranty ("Legal Proceeding"), the City and Guarantor shall and do hereby waive trial by jury. In addition, the venue, in connection with any such Legal Proceeding, shall be in Miami-Dade County, Florida. Should it become necessary to enforce the terms and conditions of this Guaranty, the prevailing party shall be entitled to collect court costs and attorney's fees in connection with said prosecution, including any appeals resulting from said Legal Proceeding.

Following the expiration of the Guaranty Term, upon written request by Tenant, the original of this Guaranty shall be marked as "cancelled" and returned to Guarantors. This Guaranty shall inure to the benefit of the City, its heirs, executors, successors and assigns and shall bind the heirs, executors, successors and assigns of Guarantors.

**EXECUTED** as of the day and year first above written, to be effective as of the date of the Lease.

GUARANTOR:

\_\_\_\_\_  
Catherine Arrighi Guitera  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF FLORIDA     )  
  )ss:  
MIAMI-DADE COUNTY    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by \_\_\_\_\_ personally known to me or \_\_\_\_\_ who has produced a valid driver's license as identification.

\_\_\_\_\_  
Notary Public, State of Florida

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

My commission expires: