

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Planning Board

TO: Chairperson and Members
Planning Board

DATE: April 17, 2018

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **Planning Board File 18-0198. 8108, 8128, & 8140 Collins Avenue - North Beach Yard Waiver of Development Regulations.**

REQUEST

Planning Board File 18-0198. 8108, 8128, & 8140 Collins Avenue - North Beach Yard Waiver of Development Regulations. The applicant, the City of Miami Beach, is requesting a recommendation to the City Commission from the Planning Board, to waive the Land Development regulations for the construction of a cultural and community entrepreneurial hub and outdoor venue with entertainment. The waivers include but are not limited to the following: the requirements for a Neighborhood Impact Establishment and Outdoor Entertainment Establishment, to include waiver of Planning Board review; waiver of the design review process; front, side, sum of the side yard and rear setback requirements for structures, fences, walkways, decks, and parking; fence material requirements; rear yard open space requirements; yard elevation requirements; lot coverage limitations; non-visibility requirements for outdoor bar counters; hours of operation for an outdoor bar counter adjacent to a residential use; seating requirements for individual establishments selling beer, wine and/or liquor; size, location, and number signs; corner visibility requirements; store enclosure requirements, including visibility of mechanical equipment; the location requirements for the storage and parking of commercial vehicles; for the allowance of mobile storage containers; parking requirements; landscape requirements; and lot aggregation limitations of the City Code.

RECOMMENDATION

Transmit the proposed Waiver of Development Regulations to the City Commission with a favorable recommendation.

HISTORY

November 20, 2017: North Beach Yard LLC executed an operational lease agreement with the City of Miami Beach for the property at 8108-8140 Collins Avenue (See attached lease). The lease agreement outlined the terms of the lease which included operational standards including hours of operation (page 12 of the attached lease,) prohibited uses (page 13,) outdoor entertainment parameters (pages 13-14,) and repercussions of noise violations (page 13.)

March 7, 2018: At the request of Commissioner Ricky Arriola, the City Commission referred

an Ordinance to the Land Use and Development Committee (LUDC) and the Planning Board (Item R9J) to allow for the waiver of the Design Review Board (DRB) process for the North Beach Government Use (GU) lots.

March 14, 2018: The LUDC recommended that the Planning Board transmit the ordinance to allow for the waiver of the DRB process to the City Commission with a favorable recommendation, and with the following modifications:

- Require that applicable GU waivers only be considered for temporary uses and structures that will exist for a period of less than 10 years.
- Require that the City Commission, as part of any DRB waiver process, evaluate and consider all applicable Design Review requirements and criteria in Chapter 118 of the City Code.

March 27, 2018: The Planning Board transmitted the ordinance to allow for the waiver of the DRB process to the City Commission with a favorable recommendation.

ZONING / SITE DATA

Future Land Use: PF – Public Facility

Zoning: GU – Government Use Zoning District

Legal Description: All of Block 18, Corrected Plat Altos Del Mar No. 1, According to the Map or Plat Thereof as Recorded in Plat Book 31, Page 40, Public Records of Miami-Dade County, Florida.

Land Uses: See Zoning/Site map at the end of this report.

North: Surface parking lot
South: Surface parking lot
East: Atlantic Ocean, public park and beach area
West: Multi-family structures

BACKGROUND

The subject development project is proposed for existing lots located on the west side of Collins Avenue, between 81st and 82nd Streets. These lots, part of a group of lots commonly referred to as the “West Lots,” are City owned and zoned Government Use (GU). To the immediate west the lots are adjacent (separated by the Collins Court alley) to the RM-1 residential multifamily, low intensity zoning district and recently designated North Shore Local Historic District.

In 2017, the City Comprehensive Plan was amended to change the Future Land Use Map (FLUM) category of the west lots from RM-1 to *Public Facility (PF)*. Additionally, the *Public Facility (PF)* portion of the Comprehensive Plan was amended to allow for commercial uses as a permitted use. This change brought previously approved uses (e.g. Ocean Rescue) into compliance with the comprehensive plan, and provided more flexibility for future uses.

Further, in 2017, Sec. 142-425(d) of the City Code, pertaining to waivers for GU properties, was amended to provide the City Commission the authority to consider waivers for certain private uses located on the west lots. Specifically, for private uses approved by the City Commission for a period of less than ten years, the City Commission is now able to consider a waiver of development regulations. Prior to this amendment, GU waivers on the west lots were limited to government facilities/uses, cultural organizations and not-for-profits.

THE PROJECT

The applicant has submitted plans entitled "NOBE YARD", as prepared by CDS Architecture and Planning, which are dated, signed and sealed March 3, 2018. The applicant is requesting approval for a variety of uses within repurposed shipping containers and an existing structure on site. The proposal is modeled after the 'Wynwood Yard', located in the City of Miami.

From the submitted drawings, a rough estimate of the total amount of seating and the total square footage is as follows:

- 544 restaurant and bar seats (174 seats indoors and 370 seats outdoors)
- 14,288 square feet of area not utilized for seating
- A total occupancy projection of 2,120 persons.

ANALYSIS

The North Beach Yard LLC is requesting the following waivers of the Land Development Regulations of the City Code:

1. Waiver of the following applicable **Development Regulations in Chapter 142**:
 - a. Front, side, sum of the side yard and rear setback requirements for structures.
 - b. Allowable fence heights and fencing material requirements.
 - c. Widths of walkways and decks in required yards.
 - d. Off-Street Parking and Loading space requirements.
 - e. Parking space size and setbacks.
 - f. The location requirements for the storage and parking of commercial vehicles.
 - g. Rear yard open space requirements.
 - h. Yard elevation requirements.
 - i. Lot coverage limitations.
 - j. Non-visibility requirements for outdoor bar counters.
 - k. Hours of operation for an outdoor bar counter adjacent to a residential use.
 - l. Seating requirements for individual establishments selling beer, wine and/or liquor.
 - m. Size, location, and number signs.
 - n. Corner visibility requirements.
 - o. Store enclosure requirements.
 - p. Visibility of mechanical equipment.
 - q. The time span of allowable mobile storage containers.
 - r. Landscape requirements.
 - s. Lot aggregation limitations of the City Code.

2. Waiver of the requirement for **Conditional Use Approval (CUP) for a Neighborhood Impact Establishments (NIE) in Chapter 142**. The NOBE Yard meets the threshold of an NIE, as the capacity of the facility exceeds 200 persons, and also is an outdoor open air entertainment establishment.
3. Waiver of the requirement for **Conditional Use Approval (CUP) for an Outdoor Entertainment Establishment (OEE) in Chapter 142**. The NOBE Yard meets the threshold of an outdoor open air entertainment establishment.
4. Waiver of the requirements for the review of **Sea Level Rise and Resiliency review criteria for all Land Use Boards in Chapter 133**.
5. Waiver of the requirements for **review by the Design Review Board (DRB) in Chapter 118**.

Pursuant to Section 142-425(d) of the City Code, the City Commission can waive the above noted development regulations and requirements for GU properties. For more specific information regarding the NOBE Yard operations and parking, please see the submitted documents and the executed lease, which are attached to the application.

Staff believes that the extent of operational conditions contained within the executed lease, as well as the temporary nature of the proposal, are consistent with the aforementioned development regulations and requirements. Additionally, as a City owned property, the City will have ultimate control over any code transgressions or operational issues that may arise in the future.

For informational purposes, the following are the applicable guidelines and criteria related to the aforementioned waivers:

1. Guidelines for the review of the Planning Board for a Conditional Use Permit (CUP) found in Chapter 118, Article IV:
 - a. The use is consistent with the comprehensive plan or neighborhood plan if one exists for the area in which the property is located; and
 - b. The intended use or construction will not result in an impact that will exceed the thresholds for the levels of service as set forth in the comprehensive plan; and
 - c. Structures and uses associated with the request are consistent with these land development regulations; and
 - d. The public health, safety, morals, and general welfare will not be adversely affected; and
 - e. Adequate off-street parking facilities will be provided; and
 - f. Necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values; and
 - g. The concentration of similar types of uses will not create a negative impact on the surrounding neighborhood. Geographic concentration of similar types of conditional uses should be discouraged; and
 - h. The structure and site complies with the sea level rise and resiliency review

criteria in Chapter 133, Article II, as applicable.

2. Requirements and supplemental review criteria for the review of the Planning Board for Neighborhood Impact Establishments (NIE) and Outdoor Entertainment Establishment (OEE) from Chapter 142, Article V, Division 6:
 - a. An operational/business plan which addresses hours of operation, number of employees, menu items, goals of business, and other operational characteristics pertinent to the application; and
 - b. A parking plan which fully describes where and how the parking is to be provided and utilized, e.g., valet, selfpark, shared parking, after-hour metered spaces and the manner in which it is to be managed; and
 - c. An indoor/outdoor crowd control plan which addresses how large groups of people waiting to gain entry into the establishment, or already on the premises will be controlled; and
 - d. A security plan for the establishment and any parking facility, including enforcement of patron age restrictions; and
 - e. A traffic circulation analysis and plan which details the impact of projected traffic on the immediate neighborhood and how this impact is to be mitigated; and
 - f. A sanitation plan which addresses on-site facilities as well as off-premises issues resulting from the operation of the establishment; and
 - g. A noise attenuation plan which addresses how noise will be controlled to meet the requirements of the noise ordinance; and
 - h. Proximity of proposed establishment to residential uses; and
 - i. Cumulative effect of proposed establishment and adjacent pre-existing uses.
3. Requirements for the review of sea level rise and resiliency review criteria for all Land Use Boards in Chapter 133, Article II:
 - a. Criteria for development orders:
 - (1) A recycling or salvage plan for partial or total demolition shall be provided; and
 - (2) Windows that are proposed to be replaced shall be hurricane proof impact windows; and
 - (3) Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided; and
 - (4) Whether resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) will be provided; and
 - (5) Whether adopted sea level rise projections in the Southeast Florida Regional Climate Action Plan, as may be revised from time to time by the Southeast Florida Regional Climate Change Compact, including a study of land elevation and elevation of surrounding properties were considered; and
 - (6) The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-way and adjacent land; and
 - (7) Where feasible and appropriate, all critical mechanical and electrical systems shall be located above base flood elevation; and
 - (8) Existing buildings shall be, where reasonably feasible and appropriate, elevated

- to the base flood elevation; and
 - (9) When habitable space is located below the base flood elevation plus City of Miami Beach Freeboard, wet or dry floodproofing systems will be provided in accordance with chapter 54 of the City Code ; and
 - 10) Where feasible and appropriate, water retention systems shall be provided.
4. Review criteria of the Design Review Board (DRB) from Chapter 118, Article VI:
- a. The existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, trees, drainage, and waterways; and
 - b. The location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping structures, signs, and lighting and screening devices; and
 - c. The dimensions of all buildings, structures, setbacks, parking spaces, floor area ratio, height, lot coverage and any other information that may be reasonably necessary to determine compliance with the requirements of the underlying zoning district, and any applicable overlays, for a particular application or project; and
 - d. The color, design, selection of landscape materials and architectural elements of exterior building surfaces and primary public interior areas for developments requiring a building permit in areas of the city identified in section 118-252; and
 - e. The proposed site plan, and the location, appearance and design of new and existing buildings and structures are in conformity with the standards of this article and other applicable ordinances, architectural and design guidelines as adopted and amended periodically by the design review board and historic preservation board and all pertinent master plans; and
 - f. The proposed structure, and/or additions or modifications to an existing structure, indicates a sensitivity to and is compatible with the environment and adjacent structures, and enhances the appearance of the surrounding properties; and
 - g. The design and layout of the proposed site plan, as well as all new and existing buildings shall be reviewed so as to provide an efficient arrangement of land uses. Particular attention shall be given to safety, crime prevention and fire protection, relationship to the surrounding neighborhood, impact on contiguous and adjacent buildings and lands, pedestrian sight lines and view corridors ; and
 - h. Pedestrian and vehicular traffic movement within and adjacent to the site shall be reviewed to ensure that clearly defined, segregated pedestrian access to the site and all buildings is provided for and that all parking spaces are usable and are safety and conveniently arranged; pedestrian furniture and bike racks shall be considered. Access to the site from adjacent roads shall be designed so as to interfere as little as possible with traffic flow on these roads and to permit vehicles a rapid and safe ingress and egress to the site; and
 - i. Lighting shall be reviewed to ensure safe movement of persons and vehicles and reflection on public property for security purposes and to minimize glare and reflection on adjacent properties. Lighting shall be reviewed to assure that it enhances the appearance of structures at night; and
 - j. Landscape and paving materials shall be reviewed to ensure an adequate relationship with and enhancement of the overall site plan design; and
 - k. Buffering materials shall be reviewed to ensure that headlights of vehicles, noise,

- and light from structures are adequately shielded from public view, adjacent properties and pedestrian areas; and
- l. The proposed structure has an orientation and massing which is sensitive to and compatible with the building site and surrounding area and which creates or maintains important view corridor(s); and
 - m. The building has, where feasible, space in that part of the ground floor fronting a street or streets which is to be occupied for residential or commercial uses; likewise, the upper floors of the pedestal portion of the proposed building fronting a street, or streets shall have residential or commercial spaces, shall have the appearance of being a residential or commercial space or shall have an architectural treatment which shall buffer the appearance of the parking structure from the surrounding area and is integrated with the overall appearance of the project; and
 - n. The building shall have an appropriate and fully integrated rooftop architectural treatment which substantially screens all mechanical equipment, stairs and elevator towers; and
 - o. An addition on a building site shall be designed, sited and massed in a manner which is sensitive to and compatible with the existing improvement(s); and
 - p. All portions of a project fronting a street or sidewalk shall incorporate an architecturally appropriate amount of transparency at the first level in order to achieve pedestrian compatibility and adequate visual interest; and
 - q. The location, design, screening and buffering of all required service bays, delivery bays, trash and refuse receptacles, as well as trash rooms shall be arranged so as to have a minimal impact on adjacent properties; and
 - r. In addition to the foregoing criteria, subsection [118-]104(6)(t) of the city Code shall apply to the design review board's review of any proposal to place, construct, modify or maintain a wireless communications facility or other over the air radio transmission or radio reception facility in the public rights-of-way; and
 - s. The structure and site complies with the sea level rise and resiliency review criteria in chapter 133, article II, as applicable.
5. Requirements for authorization of variances from the City Code under Chapter 118, Article VIII:

In order to authorize any variance from the terms of these land development regulations the applicable board shall find that:

- (1) Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district; and
- (2) The special conditions and circumstances do not result from the action of the applicant; and
- (3) Granting the variance requested will not confer on the applicant any special privilege that is denied by these land development regulations to other lands, buildings, or structures in the same zoning district; and
- (4) Literal interpretation of the provisions of these land development regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these land development regulations and would work unnecessary and undue hardship on the applicant; and

- (5) The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure; and
- (6) The granting of the variance will be in harmony with the general intent and purpose of these land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare; and
- (7) The granting of this request is consistent with the comprehensive plan and does not reduce the levels of service as set forth in the plan. The planning and zoning director may require applicants to submit documentation to support this requirement prior to the scheduling of a public hearing or any time prior to the board voting on the applicant's request; and
- (8) The granting of the variance will result in a structure and site that complies with the sea level rise and resiliency review criteria in chapter 133, article II, as applicable.

RECOMMENDATION

In view of the foregoing analysis, staff recommends that the Planning Board transmit the proposed waivers to the City Commission with a favorable recommendation.

TRM/MAB/TUI

F:\PLAN\PLB\2018\4-17-18\PB 18-0198 - North Beach Yard Waivers\PB18-0198 North Beach Yard GU Waiver - RPT.docx

ZONING/SITE MAP



2017-29942

LANDLORD:

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

TENANT:

NORTH BEACH YARD LLC

DATE OF EXECUTION:

November 20, 2017

LEASE AGREEMENT FOR THE OPERATION OF THE
"NORTH BEACH YARD"
AT
8108-8140 COLLINS AVENUE

LEASE SUMMARY

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

1. Date of Lease Execution: November 20, 2017
2. "Landlord": The City of Miami Beach
3. Landlord's Address:
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139
Attention: Asset Manager

with a copy to:

City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139
Attention: City Attorney's Office
4. "Tenant": North Beach Yard, LLC
5. Tenant's Address: 3 Island Avenue, No. 8D
Miami Beach, Florida 33139
6. Premises (Section 1.1(b)): 8108-8140 Collins Avenue, Miami Beach, Florida
with a legal description as more particularly described in Exhibit "A," (the "Premises").
7. Gross Rentable Area of Premises (Section 1.1): Approximately, but not more than, 52,500 square feet
8. Permitted Use of Premises (Section 3.1):
The Premises shall solely be used as an open air food and beverage and entertainment pavilion, to include (i) up to 20 stationary food trucks (whether in truck, trailer, or "container" format); (ii) up to four (4) container restaurants other than food trucks/trailers; (iii) a main bar pavilion for the sale of alcoholic beverages (subject to Tenant obtaining, and maintaining in full force and effect throughout the Term, all licenses and/or governmental approvals necessary to sell and serve alcoholic beverages at the Premises; (iv) a main stage for music and other performances; (v) an organic garden; (vi) a farmer's market; (vii) up to 20 market stalls to include food/beverage or retail vendors, such as, sundries, flowers, holistic/beauty products or essential oils,

artisanal or handmade products, locally sourced products, boutique/local clothing products, or similar retail uses focusing on locally sourced or sustainable products; and (viii) a venue for cultural/community programming or entertainment offerings, such as, without limitation, fitness classes, workshops, music, art classes, culinary classes, and other programming for the general public. Any other use shall be subject to the prior written approval of the City Commission, at its sole discretion, and all of the foregoing shall be further subject to the prohibited uses described in Section 3.6 of the Lease.

9. Term of Lease (Section 1.1(c)):

The initial term of this Lease is for a period of five (5) years, commencing on the Commencement Date (as specified herein) and expiring on the Expiration Date (as specified herein).

"Commencement Date": The earlier of (i) the date of issuance of a Building Permit to Tenant (or its contractor) for the Premises, for the construction of the Tenant's Work; or (ii) 60 days following issuance of a Temporary Certificate of Occupancy for the Landlord Improvements.

"Rent Commencement Date": The earlier of (i) 30 days from the issuance by the City of a Temporary Certificate of Occupancy (TCO) for the Tenant's Work (as defined in Article 5 of this Lease); (ii) Tenant opening for business; or (iii) 240 days following the Commencement Date.

"Expiration Date": Five years after the "Commencement Date."

"Renewal Options": Two (2) renewal options, for a period of two (2) years for each renewal term (each, a "Renewal Term"). Any renewal shall be in accordance with the notice provisions set forth in Section 1.1(c) of this Lease and at Landlord's option, and provided that Tenant is in good standing and free of any defaults under the Lease. The financial terms of any such Renewal Term shall be subject to negotiation and mutual agreement of the Landlord and Tenant.

10. "Base Rent" (Section 2.2):

<u>LEASE YEAR</u>	<u>ANNUAL BASE RENT*</u>	<u>QUARTERLY PAYMENT (PLUS SALES TAX)</u>
1	\$ 1.00	
2	\$71,656.00	
3	\$75,188.00	
4	\$78,912.00	
5	\$81,771.00	

11. Additional Rent: See Item 16 of this Lease Summary, entitled "Cost Pass-Throughs".
12. Percentage Rent (Sections 2.3 and 3.15): 5% of Rental Income (as defined in Section 2.3) and 7% of Buyout Income for Private/Corporate Events (as defined in Section 3.15).
13. First Month's Rent: See Item 9 hereof, "Rent Commencement Date".
14. Security Deposit (Section 2.7): \$17,914.00, due upon the Effective Date.
15. Performance Bond and Payment Bond (Section 5.2(n)): Tenant shall obtain a Performance Bond and Payment Bond for Tenant's Work, and shall name City as co-obligee. The form of the bonds shall be subject to review and approval by City Manager and City Attorney, which approval shall not be unreasonably withheld.
16. Cost Pass-Throughs (Sections 2.4 and 2.5): Property Taxes and any expenses incurred by City, as specified in Section 2.4
17. Comprehensive General Liability Insurance (Section 6.1): \$1,000,000.00 per occurrence, \$2,000,000 aggregate
Liquor Liability Insurance (Section 6.1): \$2,000,000 per occurrence, \$5,000,000 aggregate
18. Broker(s) (Section 14.12): No brokers utilized for this Lease.
19. Estimated Completion Date for Tenant's Work (Article I, Section 5): 12 months following Commencement Date.
20. Trade Name (Section 3.1): North Beach Yard

21. Tenant's Parking (Section 3.13):

Tenant's employees (and employees of Vendors working at the Premises, as defined in Section 3.9) shall be permitted to purchase monthly parking permits from the City at prevailing rates, to be used solely for employee parking purposes. The location of any designated parking areas for Tenant, if any, shall be determined by the City's Parking Director, at his or her sole discretion.

22. Lease Contingencies: (Section 1.1(a))

The Lease shall be subject to and contingent upon Tenant obtaining the following: (a) approval of a waiver of the competitive bidding requirements by a 5/7th vote of City Commission; (b) compliance and/or waiver of applicable requirements of Sections 82-37 through 82-40 of the City of Miami Beach Code of Ordinance ("City Code"); and (c) any and all approvals as required in the Lease, including, without limitation, any approvals required by the City in its proprietary capacity, as Owner of the Property); and in the City's regulatory capacity (e.g., including, without limitation, any and all amendments, as may be required to the City Code, the City's Land Development Regulations and Comprehensive Plan, and any final non-appealable approvals from the applicable City land use boards).

THIS LEASE (the "Lease"), dated the 20th day of November, 2017, is made and entered into between City of Miami Beach, Florida, a municipal corporation of the State of Florida (the "City" or "Landlord"), and NORTH BEACH YARD LLC, a Florida limited liability company (the "Tenant") (each, a "Party" and collectively, the "Parties").

RECITALS:

A. The Landlord is the fee simple owner of that certain real property located at 8108-8140 Collins Avenue, City of Miami Beach, Miami-Dade County, Florida, with a legal description as more particularly described in Exhibit "A" attached hereto and made a part hereof (collectively, the land and facilities thereon, shall be referred to herein as the "Premises").

B. Landlord and Tenant desire to enter into this Lease for the Premises, on the terms and conditions hereinafter set forth.

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

ARTICLE I. GRANT OF LEASE; TERM

1.1 Lease Contingencies; Grant of Lease; Term.

(a) This Lease shall be effective as of the date executed by Landlord and Tenant (the "Effective Date"), subject to and contingent upon Tenant obtaining the following: (a) approval of a waiver of the competitive bidding requirements by a 5/7th vote of City Commission; (b) compliance and/or waiver of applicable requirements of Sections 82-37 through 82-40 of the City Code; and (c) any and all approvals as required in the Lease, including, without limitation, any approvals required by the City in its proprietary capacity as Landlord); and in the City's regulatory capacity (e.g., including, without limitation, any and all amendments, as may be required to the City Code, the City's Land Development Regulations and Comprehensive Plan, and any final non-appealable approvals from the applicable City land use boards). If any of the foregoing Lease contingencies specified herein are not satisfied, this Lease shall be deemed null and void, and Landlord and Tenant shall have no further obligations or liabilities of any kind or nature whatsoever hereunder.

(b) In consideration of the performance by Tenant of its obligations under this Lease, Landlord, as of the Commencement Date as specified in the Lease Summary, demises and leases to Tenant, and Tenant leases and takes possession from Landlord, for the Term, the Premises. A site plan showing the description and location of the Premises and the Tenant's proposed retail, food and beverage and other facilities thereon, is attached hereto and made a part hereof as Exhibit "B" respectively.

(c) The "Term" of the Lease is the period from the Commencement Date as specified in the Lease Summary, through the Expiration Date, as specified in the Lease Summary. Landlord shall have two (2) options to extend the Term of the Lease for an additional period of two years (each, a "Renewal Term"), provided that Tenant is in good standing and free of any defaults under the Lease. At least twelve (12) months prior to the expiration of the initial Term, Landlord shall provide Tenant with written notice of its intent to renew, along with the Landlord's proposed Base Rent, Percentage Rent, and other proposed financial terms for the Renewal Term. At least six (6) months prior to the end of the first Renewal Term, if any, Landlord shall provide Tenant with written notice of its intent to renew for a second Renewal Term, along with the Landlord's proposed Base Rent, Percentage Rent, and other proposed financial terms for the second Renewal Term. The financial terms of the Lease for each Renewal Term, including, without limitation, the Rent (as that term is defined in Article II hereof), shall be subject to negotiation and mutual agreement of the Landlord and Tenant. For all purposes in this Lease, references to the "Term" shall include any Renewal Term, if any such Renewal Term is agreed upon by both Tenant and Landlord.

(d) Within thirty (30) days following the Commencement Date, Landlord and Tenant shall execute a commencement date memorandum in such form as will enable them to be recorded among the Public Records of Miami-Dade County, in each case, setting forth the Commencement Date and the Expiration Date, determined

according to this Lease, and recording any such other documents as may be required under this Lease.

1.2. No Representation or Warranties By Landlord. Tenant acknowledges and agrees that it has been given the opportunity to perform all inspections and investigations concerning the Premises to its satisfaction, and that Landlord shall further provide Tenant with the additional opportunity to conduct any such additional inspections or investigations concerning the Premises that Tenant may desire to perform prior to the Commencement Date. Landlord shall provide the Tenant with a copy of the environmental Phase I site investigation report for the Premises (or any Phase 2 report, if any is required to be undertaken pursuant to the results of the Phase I Site Investigation Report). Except as specifically provided in this Lease, Tenant acknowledges and agrees that (i) Landlord is not making and has not made any representations or warranties, express or implied, of any kind whatsoever with respect to the Premises, including any representation or warranty of any kind with respect to title, survey, physical condition, suitability or fitness for any particular purpose, the financial performance or financial prospects of the Tenant's or any Vendor's operations at the Premises, its value, or any other economic benefit that can be realized or expected from the use or operation of the Premises, the presence or absence of Hazardous Substances, the tenants and occupants thereof, the zoning or other Governmental Requirements applicable thereto, taxes, the use that may be made of the Premises, or any other matters with respect to this transaction or Lease); (ii) Tenant has relied on no such representations, statements or warranties, and (iii) Landlord will in no event whatsoever be liable for any latent or patent defects in the Premises (including any subsurface conditions).

Tenant further acknowledges and agrees that it is accepting possession of the Premises in its **AS-IS WHERE-IS** condition and that, except as otherwise expressly hereinafter set forth with respect to certain improvements the Landlord has agreed to undertake, as described more fully in Exhibit "C" attached hereto (the "Landlord Improvements") subject to the provisions of Article 5 of this Lease, Landlord has no other obligation to furnish, render, or supply any money, work, labor, material, fixture, equipment, or decoration with respect to the Premises.

Notwithstanding anything to the contrary herein, Landlord hereby represents and warrants that it is the fee simple owner of the Premises and, except as otherwise expressly set forth herein, it has all requisite powers and approvals necessary to enter into this Lease.

1.3. Removal of the Log Cabin Building. Prior to the Commencement Date, the City, at its sole cost and expense, shall remove from the Premises the approximately 1,100 square foot building depicted in Exhibit A as the "Log Cabin."

ARTICLE II. RENT.

2.1 Covenant to Pay. Tenant shall pay to Landlord all sums due hereunder from time to time from the Rent Commencement Date without prior demand, together with all applicable Florida sales tax thereon; however, unless otherwise provided in this Lease, payments other than Tenant's regular monthly payments of Base Rent shall be payable by Tenant to Landlord within five (5) business days following demand. All Base Rent or other charges that are required to be paid by Tenant to Landlord shall be payable at Landlord's address indicated on the Lease Summary. Base Rent and all sums payable to Landlord under this Lease other than Base Rent, including, without limitation, Additional Rent as defined in Sections 2.4 and 2.5 below, and Percentage Rent as defined in Section 2.3 below (collectively, the "Rent") for any "Lease Year" consisting of less than twelve (12) months shall be prorated on a per diem basis, based upon a period of 365 days. "Lease Year" means the twelve (12) full calendar months commencing on the Commencement Date. However, the final Lease Year may contain less than twelve (12) months due to expiration or sooner termination of the Term. Tenant agrees that its covenant to pay Rent and all other sums under this Lease is an independent covenant and that all such amounts are payable without counterclaim, set-off, deduction, abatement, or reduction whatsoever, except as expressly provided for in this Lease.

2.2 Base Rent. Subject to any escalation which may be provided for in this Lease, Tenant shall pay Base Rent for the Term in the initial amount specified in the Lease Summary, which, except for the first installment, shall be payable throughout the Term in equal quarterly installments in advance on the first day of January, April,

July, and October of each Lease Year, such quarterly installments to be in the amounts (subject to escalation) specified in the Lease Summary. The first quarterly installment of the Base Rent shall be due on the date specified in Item 10 of the Lease Summary. If the Rent Commencement Date is not the first day of January, April, July, and October, then the Base Rent shall be prorated from the Rent Commencement Date until the first day of the following quarter on a per diem basis, and Tenant shall pay Landlord such prorated installment of the Base Rent on the Rent Commencement Date. The Base Rent described above shall be adjusted during the Term of this Lease as provided in the Lease Summary. It is also agreed and understood that the applicable Florida State Sales and Use Tax shall be added to Tenant's payment of Base Rent and forwarded to Landlord as part of said payments. It is the intent of Landlord that it is to receive Base Rent, and any other additional rental amounts due, as net, free and clear of all costs and charges arising from, or relating to, the Premises.

2.3. Percentage Rent.

(a) Commencing with the second Lease Year, and for each Lease Year thereafter, in the event that the amount equal to five (5%) percent of the Rental Income, as defined herein (the "Percentage Rent") exceeds the Base Rent applicable for that Lease Year, then Tenant shall also pay to the Landlord the difference between the Percentage Rent amount for that Lease Year and the Base Rent applicable for that Lease Year, which payment shall be received no later than sixty (60) days after the end of each Lease Year.

The term "Rental Income" means all revenue, payments, income received, rental and operating cost reimbursements (including any reimbursements for operating expenses or common area maintenance for the use and occupancy of the Premises) reserved under any lease, sublease, license, concession, or other arrangement related to (i) the privilege of use or rental of the Premises, including, without limitation, any such revenue, payments, income received, rental and operating cost reimbursements received from Vendors, Affiliate(s) (as defined below) or any person or entity engaged in any commercial activity on the Premises; and (ii) event rentals, venue arrangements, or exhibitor or sponsorship arrangements, where any such arrangements involve the use or rental of the Premises, and, and provided, however, that if any space in the Premises is used by Tenant or any Affiliate(s) (as defined herein), at a rental which is less than fair market rental value of such space, the rent shall be increased by an amount equal to the difference between the rent being paid and the fair market value rental.

The term "Affiliate(s)" for purposes herein, means any individual(s) or entity or entities of any kind that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, Tenant or any principal, director, officer, member or person or entity with any ownership interest thereof, including Ms. Della Helman and Mr. Ken Lyon, and shall specifically include any person or entity operating the establishments at the Premises described in Exhibit "B" as The Bar, The Morning Glory Café, Charcoal, Della's Bowls, and Catering, and any successors-in-interest thereof. Tenant shall not charge rent to any Affiliate, including with respect to the operations of The Bar, The Morning Glory Café, Charcoal, Della's Bowls, or Catering (or successors thereof) at any amount that is less than the amounts specified for such establishments in Exhibit "F".

(b) In addition to the Base Rent and any Percentage Rent pursuant to Section 2.3(a) or other amounts due to Landlord under this Lease, commencing as of the Rent Commencement Date, Tenant shall pay Landlord, as additional Rent hereunder, an amount equal to seven percent (7%) of all of the Buyout Income (as defined in Section 3.15) for Private/Corporate Events (as defined in Section 3.15), on the Premises.

Notwithstanding anything to the contrary herein, the term "Rental Income" shall specifically exclude all gross revenues Tenant or any Vendor or operator derives from food and beverage, alcoholic beverage, retail sales, catering receipts, valet parking sales, advertising, and sponsorship revenues at the Premises.

2.4 Operating Expenses. Tenant shall pay for all maintenance expenses, utilities charges, insurance premiums, and operating expenses incurred in connection with the use or operation of the Premises. Tenant shall remit to the Landlord, together with regular monthly payments of Base Rent and other Rent, payment for all such expenses or cost pass-throughs if incurred by the Landlord, as additional rent ("Additional Rent"), it being expressly understood and agreed that Landlord does not anticipate incurring expenses with respect to maintenance or insurance premiums, and accordingly, no such cost-pass throughs will be charged to Tenant to the extent Tenant directly pays for such maintenance expenses and insurance premiums, as otherwise required by this Lease.

2.5 Payment of Taxes and Other Public Charges. In addition to the Base Rent and all other Rent due to Landlord hereunder, Tenant covenants and agrees timely to pay and discharge, as Additional Rent, before any fine, penalty, interest or cost may be added, all real and personal property taxes, all ad valorem real property taxes, all taxes on Rents payable hereunder and under subleases, licenses or use agreements, sales taxes, City resort taxes, all taxes attributable to the personal property, trade fixtures, business, occupancy, or sales of Tenant or any other occupant of the Premises or related to the use of the Premises by Tenant or such other occupant, and public assessments (including, without limitation, permit fees, impact fees, special assessments, and other public charges). Tenant shall provide Landlord with copies of Tenant's sales tax reports provided to the State of Florida, as and when such reports are provided to the State.

2.6 Rent Past Due. If any payment due from Tenant shall be overdue more than five (5) business days, a late charge of three (3%) percent of the delinquent sum may be charged by Landlord. If any payment due from Tenant shall remain overdue for more than fifteen (15) days, an additional late charge in an amount equal to the lesser of the highest rate permitted by law or one and one-half (1 1/2%) percent per month (eighteen (18%) percent per annum) of the delinquent amount may be charged by Landlord, such charge to be computed for the entire period for which the amount is overdue and which shall be in addition to and not in lieu of the three (3%) percent late charge or any other remedy available to Landlord.

2.7 Security Deposit. Landlord acknowledges receipt of a security deposit in the amount specified on the Lease Summary to be held by Landlord, without any liability for interest thereon, as security for the performance by Tenant of all its obligations under this Lease. Landlord shall be entitled to commingle the security deposit with Landlord's other funds. If Tenant defaults in any of its obligations under this Lease, Landlord may at its option, but without prejudice to any other rights which Landlord may have, apply all or part of the security deposit to compensate Landlord for any loss, damage, or expense sustained by Landlord as a result of such default. If all or any part of the security deposit is so applied, Tenant shall restore the security deposit to its original amount on demand of Landlord. Within thirty (30) days following termination or expiration of this Lease, if Tenant is not then in default of the terms herein, the security deposit will be returned by Landlord to Tenant.

Notwithstanding the foregoing, for purposes of the security deposit described in the Lease Summary and the above paragraph, Tenant, at its option, shall have the right to post an irrevocable, unconditional, and transferable Letter of Credit, in such form as shall reasonably be approved by Landlord's City Manager. If Tenant delivers the Letter of Credit to Landlord, and provided Landlord's City Manager approves the form of such Letter of Credit, then Landlord will return the cash security deposit promptly after Landlord's receipt of the Letter of Credit.

2.8 Landlord's Lien. Except as provided herein, to secure the payment of all Rent and other sums of money due and to become due hereunder and the faithful performance of this Lease by Tenant, Tenant hereby gives to Landlord an express first and prior contract lien and security interest on all property now or hereafter acquired (including fixtures, equipment, chattels, and merchandise) which may be placed in the Premises and also upon all proceeds of any insurance which may accrue to Tenant by reason of destruction of or damage to any such property. Such property shall not be removed therefrom without the written consent of Landlord's City Manager until all sums of money then due to Landlord hereunder shall first have been paid; provided, Tenant may operate its business in the ordinary course and the removal of merchandise from the Premises by customers of Tenant shall not be a default under this section. All exemption laws are hereby waived in favor of said lien and security interest. This lien and security interest is given in addition to Landlord's statutory lien and shall be cumulative thereto. Landlord shall, in addition to all of its rights hereunder, also have all of the rights and remedies of a secured party under the Uniform Commercial Code as adopted in the State in which the Premises are located. To the extent permitted by law, this Lease shall constitute a security agreement under Article 9 of the Florida Uniform Commercial Code. With respect to Tenant's proposed equipment lease/financing for the "container" structures, Landlord, by and through its City Manager, agrees that upon request of the equipment lessor or other entity providing senior secured equipment financing to the Tenant with respect to the "container" structures, Landlord shall waive the Landlord's superior lien rights set forth herein, but solely with respect to the "container" equipment structures, and Landlord shall retain a subordinate lien with respect to the "container" structures. Notwithstanding the foregoing, Tenant shall not grant to any equipment lessor, or to other party providing any equipment financing, any security

interest or other interest in and to the Premises or Tenant's leasehold interest in the Premises. Tenant shall ensure that its agreement with respect to any such equipment lease/financing shall require the equipment lessor/lender to provide the City with a copy of any notice of default that the lessor/lender provides to the Tenant.

ARTICLE III. USE OF PREMISES.

3.1 Permitted Use(s). The Premises shall be used and occupied solely and exclusively for the purposes specified in the Lease Summary. The business of Tenant in the Premises shall be carried on under the name specified in the Lease Summary and under no other name unless first approved by Landlord's City Manager in writing. Tenant shall carry on its business on the Premises in a commercially reasonable manner and shall not do, omit, permit, or suffer to be done or exist upon the Premises anything which shall result in a nuisance, hazard, excessive noise, excessive vibration or other disturbance in violation of any applicable provision of the City Code, or bring about a breach of any provision of this Lease or any applicable municipal or other (i.e. federal, State, or County) governmental law or regulation, or would otherwise be inconsistent with a open-air entertainment and food and beverage pavilion. Tenant shall observe all reasonable rules and regulations reasonably established by Landlord from time to time for the Premises. The rules and regulations in effect as of the date hereof are attached to and made a part of this Lease as **Exhibit "E."** Landlord will provide a copy of any amendments to the rules and regulations at least seven (7) business days prior to the effective date of any such amendments. Tenant shall display the name "North Beach Yard" or any such other name as Landlord may from time to time approve for the Premises, and in material which is given, visible, or available to customers of Tenant. Tenant shall promote such name in any advertisements or promotional material published or initiated by Tenant in regard to its business from the Premises. The name for the Premises shall be used by Tenant only in association with the business carried on in the Premises during the Term and Tenant's use thereof shall be subject to such reasonable regulation as Landlord may from time to time reasonably impose.

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

(a) Without limiting the foregoing, Tenant shall, at all times during the Term, strictly comply with, and cause all Vendors to comply with, all laws and governmental requirements involving the sale or service of alcoholic beverages, and food safety and handling requirements, as applicable to Tenant or any Vendor's use of the Premises. Tenant represents and warrants to Landlord that Tenant (and all Vendors involved in the sale or service of food) shall comply with all mandated food service and handling laws, and further represents and warrants Tenant (and all Vendors serving or selling alcoholic beverages at the Premises), shall comply with the Florida Beverage Law and all federal, state, and local, laws, and ordinances involving the sale or service of alcoholic beverages. Tenant shall annually provide training to its employees and Vendors, consistent with the requirements of the Florida vendor qualification act contained in § 561.705, Florida Statutes.

(b) Prior to the Commencement Date, Tenant shall obtain and pay for, and/or cause any Vendor (as applicable to its services on the Premises), to obtain any pay for, all licenses, permits and approvals that may be required by any governmental authority in connection with its use, operation of, or activities on the Premises, including without limitation, (i) any license required by the State of Florida with respect to the sale or service of alcoholic beverages; (ii) any license that may be required for the sale or service of food; (iii) City of Miami Beach and Miami-Dade County Business Tax Receipt; and (iv) all licenses required by any performing arts societies such

as ASCAP, BMI and SESAC for music or other copyrighted works to be performed or otherwise broadcasted or exhibited on the Premises.

(c) Tenant shall defend, indemnify and hold harmless Landlord from any and all claims, fees, expenses, costs or damages, including reasonable attorneys' fees and court costs, suffered or incurred by Landlord in connection with any breach of this paragraph.

3.3 Signs. Tenant, at Tenant's expense, shall erect and maintain identification signage within the Premises, including, without limitation, temporary banners and exterior signage. The design and specification of such signage shall be subject to Landlord's sign criteria as adopted from time to time and such design and specification (including camera-ready artwork) shall be submitted for review and approval by the City's Planning and Zoning Department and the Landlord's City Manager or designee. All signage shall be consistent in type, composed of flush mounted non-plastic, individual letters and shall require a separate permit. Tenant's sponsors shall be prohibited from placing any promotional or other materials on the Premises (or on websites or other promotional formats or platforms) implying any endorsement by the City of the sponsor's products or services. Any sponsorship names recognized in Tenant's signage shall be subject to approval as required by the City's Naming Ordinance, as codified in Chapter 82, Article VI, Sections 82-501 through 82-505 of the City Code, as shall be amended from time to time. In no event may any approved interior or exterior signage include the names of any company selling the following types of products: guns, tobacco products, casinos, medical marijuana. Except with the prior written consent of Landlord's City Manager, Tenant shall not erect, install, display, inscribe, paint, or affix any signs, lettering, or advertising medium upon or above any exterior portion of the Premises. Any signs, lettering or advertisement medium erected *within* the Premises shall not require consent from the City, nor a separate permit, so long as such complies with the remainder of the foregoing.

3.4 Environmental Provisions.

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

(b) If Tenant or its employees, agents, contractors, or assigns shall ever violate the provisions of subsection (a), above, then Tenant shall clean-up, remove, and dispose of the Hazardous Material causing the violation, in compliance with all applicable governmental standards, laws, rules, and regulations and repair any damage to the Premises within such period of time as may be reasonable under the circumstances after written notice by Landlord, provided that such work shall commence not later than thirty (30) days from such notice and be

diligently and continuously carried to completion by Tenant or Tenant's designated contractors. Tenant shall notify Landlord of its method, time, and procedure for any clean-up or removal of Hazardous Materials under this provision; and Landlord shall have the right to require reasonable changes in such method, time, or procedure or to require the same to be done after normal business hours or when the Premises is otherwise closed (i.e., holidays) if reasonably required for the protection of other occupants or invitees at the Premises.

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

(d) In the event (i) the results of the environmental Phase I report or other site investigations undertaken with respect to the Premises are unsatisfactory to Landlord or Tenant for any reason whatsoever, then either Landlord or Tenant may terminate this Lease for their convenience, at either Party's sole discretion. In the event of any such termination for convenience pursuant to this Section 3.4(d), neither Party shall have or owe any further obligation or liability to the other Party.

3.5 Hours; Continued Occupancy. During the Term, Tenant shall conduct its business in and on the Premises, at a minimum, on all days and during all hours reasonably established by Landlord's City Manager from time to time. However, except as specified herein for the portion of the Premises that will consist of the "Morning Glory" coffee shop operation, as depicted more fully in Exhibit "B" hereof, Tenant shall generally open for business Monday through Sunday, no earlier than 7 A.M. each day. Tenant shall be permitted to open the portion of the Premises identified in Exhibit "B" for the "Morning Glory" coffee shop no earlier than 6 A.M. each day. Tenant shall cease all sales (including, without limitation, food, beverages, alcoholic beverages, and retail items) no later than 11 P.M. on Monday through Thursday, and shall close no later than 11:30 P.M. on Monday through Thursday, and shall cease all sales (including, without limitation, food, beverages, alcoholic beverages, and retail items) no later than midnight on Friday, Saturday, and Sunday, and shall close no later than 1 A.M. on Friday, Saturday and Sunday. The hours established herein shall be further subject to modification by the City pursuant to any Conditional Use Approval that may be required for the Premises (or waiver thereof by the City Commission, at its sole discretion).

(a) Notwithstanding the foregoing, and subject to the approval of the Landlord's City Manager at his or her sole discretion, Tenant may request an extension of the normal operating hours specified in Section 3.5, for up to six (6) days per Lease Year (with any such extended hours solely applying on a Thursday, Friday or Saturday), to permit Tenant to cease all sales (including, without limitation, food, beverages, alcoholic beverages, and retail items) no later than 1:00 A.M., and to close no later than 2 A.M., on such dates.

(b) Tenant shall open the whole of the Premises for business to the public, reasonably fixtured, stocked, and staffed, and shall continuously, actively, and diligently carry on the business specified in Section 3.1 on the whole of the Premises during the Term, during such hours and upon such days as are herein required, except when prevented from doing so by force majeure (as the term is described in Section 14.1). Tenant acknowledges that its continued occupancy of the Premises and the regular conduct of its business therein are of utmost importance to Landlord, as the activation of the area in the vicinity of the Premises is integral to this Lease. Tenant shall, at a minimum, at all times during the Term, maintain in operation at least one (1) restaurant establishment, one (1) bar establishment; eight (8) food trucks or trailers, and two (2) containers; at least one (1) weekly entertainment offering; and the community programming required pursuant to Section 3.11 of this Lease. Tenant acknowledges that Landlord is executing this Lease in reliance thereupon and that the same is a material element inducing Landlord to execute this Lease. Tenant shall ship and receive supplies, fixtures, equipment, furnishings, wares, and merchandise only through the appropriate service and delivery loading areas or zones provided by Landlord, and shall not park its trucks or other delivery vehicles or allow suppliers or others making deliveries to or receiving shipments from the Premises, except in those parts thereof as may from time to time be allocated by Landlord for such purpose. Tenant shall maintain available a reasonable stock of goods, wares, and merchandise adequate to ensure successful operation of Tenant's business, and shall employ and maintain sales

and other personnel sufficient at all times for proper service to customers.

(c) Tenant further agrees that, during the Term, neither Tenant, or any Affiliate parent, or subsidiary of Tenant, shall own, lease, or operate another restaurant, bakery, or bar/café located within one (1) mile of any point in the Premises within the geographical boundaries of the City of Miami Beach, conducting any of the same businesses and/or operations as described in Item 8 of the Lease Summary.

3.6 Prohibited Uses. The restrictive covenants contained in paragraphs (A) – (Z) of this Section 3.6 are intended and designed to bind Landlord and Tenant and their respective successors and assigns, and be binding upon and run with the Premises throughout the Term. Notwithstanding any other provisions of this Lease, Tenant shall not use the Premises nor permit them to be used for any of the following purposes ("Prohibited Uses"): (A) for the sale by Tenant, as its principal business purpose, of any merchandise which Tenant, in the course of its normal business practice, purchases at manufacturers' clearances or purchases of ends-of-runs, bankruptcy stock, seconds, or other similar merchandise; (B) for the sale of insurance salvage stock, fire sale stock, merchandise damaged by or held out to be damaged by fire; ; (C) for a bankruptcy sale or going-out-of-business sale or liquidation sale or any similar sale, unless Tenant is in fact in bankruptcy or is going out of business or is in liquidation, in which case such sale shall not continue beyond thirty (30) days; (D) for the sale of medical marijuana or paraphernalia incidental thereto; (E) for any business in which Tenant is engaged in intentionally deceptive or fraudulent advertising or selling practices or any other act or business practice contrary to honest retail practices; (F) for coinbox entertainment (pinball, video games, moving pictures operated by coins); (G) casino gambling or games of chance or reward; (H) any unlawful or illegal business, use or purpose, or for any business, use or purpose which is immoral or disreputable (including "adult entertainment establishments" and "adult" bookstores) or extra-hazardous, or in such manner as to constitute a nuisance of any kind (public or private), or for any purpose or in any way in violation of Tenant's Certificate(s) of Occupancy (or other similar approvals of applicable governmental authorities); (I) movie theatre as a primary business; (J) medical facilities and offices; (K) check cashing facilities; (L) pawn shops; (M) the sale of firearms; (N) tattoo parlors, fortune tellers, psychics, palm readers, body piercing shops; (O) the sale of religious artifacts and religious books; (P) places of worship; (Q) political offices; (R) military recruiting; (S) consular, legation or any other offices of foreign governments; (T) tire sales; (U) the sale of animals or birds of any kind and/or products of a nature typically sold in pet shops; (V) offices for the practice of veterinary medicine; (W) the sale of major appliances as a primary business; (X) housing or sleeping quarters; (Y) grocery stores (other than specialty gourmet or "artisanal" products); or (Z) in any manner that will violate any Conditional Use Approval, Certificate of Occupancy or Certificate of Use for the Premises, or which will violate any laws, ordinances, or other rules or regulations applicable to the Premises.

Immediately upon its discovery of any Prohibited Use, Tenant shall take all reasonable necessary steps, legal and equitable, to compel discontinuance of such business or use including, if necessary, the removal from the Premises of any subtenants, licensees, invitees or concessionaires.

3.7 Exclusive Use. So long as Tenant is (1) in actual occupancy of the Premises, (2) in good standing and free of any defaults under this Lease, and (3) using the Premises for the permitted use(s) set forth in the Lease Summary, Landlord agrees not to enter into any leases for space in the Premises until the expiration or earlier termination of this Lease.

3.8 Noise. Tenant shall not cause or produce or permit to be produced on or in the Premises any noises, sound, amplification, vibration, resonance levels that (i) is in excess of any levels permitted under, or otherwise fails to comply with, any provision or requirement of the City Code, as same may be amended from time to time, including, without limitation, Chapter 46 of the City Code (provided, however, that in the event of any conflict between the provisions of Section 46-152(b) of the City Code and Section 3.8(a) of this Lease, the provisions of Section 3.8(a) of this Lease shall control); or (ii) creates any other form of disturbance in or on the Premises which is, or is likely to be, considered a nuisance to residents of adjacent or neighboring properties in the vicinity of the Premises.

(a) In accordance with the City Code, outdoor entertainment shall cease no later than 10:00 p.m. on Sundays through Thursdays, and midnight on Fridays and Saturdays. Outdoor entertainment shall be limited to

string instruments, solo vocalists, or disk jockeys playing recorded music, and provided, that amplified sound shall not exceed ambient, background levels. Tenant agrees that no outdoor entertainment shall be permitted in the early mornings (prior to 11:00 a.m.), with programming prior to 11:00 a.m. limited to breakfast, coffee and exercise programs. In addition to the foregoing, Tenant further agrees to minimize amplified sound at the Premises by regularly incorporating "silent disco" programming whereby, as an alternative to the use of loudspeakers, sound or music is broadcast via wireless headphone receivers worn by invitees at the Premises. In the event the Tenant receives more than one (1) notice from Landlord that noise on the Premises exceeds ambient, background levels for the outdoor entertainment areas at the Premises, such an incident shall be deemed to be a violation of this Section 3.8(a) of this Lease.

(b) In addition to any other rights or remedies that may be available to the Landlord under any applicable law (either in the Landlord's proprietary capacity as owner of the Premises, or in its regulatory capacity with respect to enforcement of the City Code), the issuance of more than one (1) notice of violation pursuant to Section 46-158 of the City Code shall constitute an event of default of this Lease, provided, however, that if the notice of violation is appealed, the notice of violation shall be deemed an event of default under the Lease if a special master finds that a violation has occurred. Tenant shall provide a copy to Landlord's designee of any notice of violation issued to Tenant.

(c) **Tenant acknowledges that Landlord would not enter into this Lease unless Tenant assured Landlord that under no circumstances will Tenant fail to comply with the requirements set forth herein or otherwise contained in the City Code with respect to noise and the non-disturbance of residents in the vicinity of the Premises.**

3.9 Vendors Selling Goods, Food/Beverages, or Services at the Premises. Tenant shall select the vendors that will operate and engage in the sale of goods, food/beverages, services or any other commercial activities at the Premises, with a focus on small business operators (entities with less than 25 employees, small brands/non-franchised) (together with the Affiliates, collectively the "Vendors"). With respect to the selection of Vendors at the Premises, Tenant shall provide first priority for Miami Beach-based businesses (or owners residing in Miami Beach), and shall exercise good-faith diligent efforts for at least 25% of all retail/food Vendors to be Miami Beach-based businesses/owners (other than Affiliates). All Vendors must have all licenses required for their respective operations (state licenses, local Business Tax Receipts, and any other governmental approval that may be required in connection with that Vendor's operations). All Vendors shall be of first rate quality and comparable to quality and pricing of goods and services provided by an affiliate of the Tenant at the Wynwood Yard.

3.10 Operation of Premises. Tenant shall be responsible for the management, operation and programming at the Premises in accordance with the approved uses set forth in this Lease. Tenant shall coordinate and supervise all Vendor and event/entertainment curation and activities at the Premises; maintain and provide for the day-to-day maintenance and housekeeping for the Premises; supervise and direct all employees, personnel and Vendors consistent with the provisions of this Lease; maintain and supervise detailed, accurate and complete financial and other records of all its activities under this Lease in accordance with generally accepted accounting principles. Tenant shall provide and maintain, at its sole cost and expense, all labor, personnel, materials, equipment, and furnishings, as reasonably required, to operate the Premises in accordance with the approved uses set forth herein.

3.11 Community Programming. Tenant agrees to execute a minimum of seven (7) cultural and community events each week, which shall be offered to the general public at no charge, including gardening/urban farming classes, live local music, non-profit events, cooking workshops, fitness classes, and the like. In addition, Tenant will offer at least five (5) additional classes, activities or events each week at moderate prices, with the price schedule for the events or activities (or changes in the programming offerings) to be subject to the advance written approval of the City Manager. Tenant shall offer Miami Beach residents a discount of fifteen percent (15%) (and residents must show proof of Miami Beach residency prior to participation in activity or event) and U.S. Armed Forces veterans a discount of 25% off the regular price for the classes, activities, or events. At the end of each Lease Year, Tenant shall provide the City Manager or his designee a detailed report reasonably summarizing

community activities that took place throughout the year (including attendance figures and, wherever possible, attendance by Miami Beach residents), and outlining its programmatic plan for the upcoming Lease Year, detailing the then-known (planned) uses, activities, events, and operations, and the number of participants expended to attend and benefit from such activities.

3.11 Tenant Improvements. Except for the City Improvements referenced in Section 5.1(b) of this Lease, Tenant, at Tenant's sole cost and expense, shall build-out the entire Premises in order to make the Premises usable for its intended purpose, which will include, without limitation, design, permitting and construction/installation of all temporary or permanent facilities for operation of the Premises at its sole expense, including lighting, electricity, flooring, and life safety systems (i.e. sprinklers) as required by the Landlord, subject to City's approval of the concept, design and plans and specifications, and pursuant to all requisite governmental approvals (including without limitation, any City regulatory boards and agencies having jurisdiction).

3.12 Flood Panels. Tenant acknowledges that in the event that Landlord's City Manager determines, in his/her sole and reasonable discretion, that a condition arises that requires the installation of flood panels on the Premises, then Tenant will assume sole responsibility for installation of same in a commercially reasonable timeframe. Once Landlord's City Manager determines (also in his/her sole and reasonable discretion) that the condition necessitating the installation has passed, Tenant shall also assume sole responsibility for removal and storage of the flood panels in a commercially reasonable timeframe.

3.13 Parking. Tenant's employees (and employees of Vendors working at the Premises) shall be permitted to purchase monthly parking permits from the City at prevailing rates, to be used solely for employee parking purposes. The location of any designated parking areas for Tenant, if any, shall be determined by the City's Parking Director, at his or her sole discretion.

3.14. Security. Tenant shall be responsible for and provide reasonable security measures which may be required to protect the Premises and any of the materials, equipment, and furnishings thereon. Under no circumstances shall the City be responsible for any stolen or damaged materials, equipment, and furnishings, nor shall the City be responsible for any stolen or damaged personal property of Tenant's employees, contractors, patrons, guests, invitees, and/or other third parties.

3.15. "Buy Out" of Premises for Private/Corporate Events. If Tenant desires to suspend the regular operations of the Premises for the purpose of using the Premises for ticketed/hosted events, functions, including private or corporate events, for a period not-to-exceed a total of six (6) days per each Lease Year ("Private/Corporate Events"), any such use shall be subject to the advance written approval of the City Manager, at his sole discretion. At least 2 months prior to the proposed event, Tenant shall provide the Landlord with all pertinent details concerning the activities and activation contemplated for such event. If the City Manager approves any such event, Tenant shall pay Landlord, as provided in Section 2.3(b), as additional Rent (and without any deduction against Base Rent, Percentage Rent or any other amount due to Landlord hereunder), an amount equal to seven percent (7%) of all the revenue, payments, income received, rental and operating cost reimbursements (including any reimbursements for operating expenses or common area maintenance for the use and occupancy of the Premises) received under any lease, sublease, license, concession, or other arrangement related to the privilege of use or rental of the Premises with respect to the Private/Corporate Events (the "Buyout Income").

ARTICLE IV. ACCESS AND ENTRY.

4.1 Right of Examination. Landlord, through its City Manager and/or such other individuals as he/she may designate, in his/her reasonable discretion, from time to time, shall be entitled at all reasonable times and upon reasonable notice (but no notice is required in emergencies) to enter the Premises to examine them if Landlord reasonably believes that Tenant is not complying with any of its obligations hereunder; to make such repairs, alterations, or improvements thereto as Landlord considers necessary or reasonably desirable pursuant to the terms herein; to have access to underfloor facilities and access panels to mechanical shafts and to check, calibrate, adjust, and balance controls and other systems at the Premises. Landlord reserves to itself (and others acting on behalf of Landlord including, without limitation, Landlord's City Manager and/or such individuals as he/she may designate, in

his/her reasonable discretion, from time to time) the right to install, maintain, use, and repair pipes, ducts, conduits, vents, wires, and other installations leading in, through, over, or under the Premises and for this purpose, Landlord may take all material into and upon the Premises which is required therefor. Tenant shall not unduly obstruct any pipes, conduits, or mechanical or other electrical equipment so as to prevent reasonable access thereto. Landlord reserves the right to use all exterior walls and roof area of any buildings located on the Premises. Landlord shall exercise its rights under this section, to the extent possible in the circumstances, in such manner so as to minimize interference with Tenant's use and enjoyment of the Premises.

4.2 Right to Show Premises. Landlord and its agents (including, without limitation, Landlord's City Manager and such other individuals as he/she may designate, in his/her reasonable discretion, from time to time) shall have the right to enter the Premises at all reasonable times and upon reasonable notice to show them to prospective purchasers, lenders, or anyone having a prospective interest in the Premises and, during the last six (6) months of the Term, to show them to prospective tenants. Landlord shall exercise its rights under this section, to the extent possible in the circumstances, in such manner so as to minimize interference with Tenant's use and enjoyment of the Premises.

ARTICLE V. CONSTRUCTION; MAINTENANCE, REPAIRS, AND ALTERATIONS.

5.1 Improvements.

(a) Tenant Investment. As an added inducement to have City enter into this Lease, Tenant covenants and agrees that it will invest, or cause to be invested, no less than \$1,750,000 in improvements it requires for the operation of the Premises, including, without limitation, the fixed, non-removable improvements, set forth in Exhibit "D" to this Lease. As a condition of the City of Miami Beach's issuance of a Temporary Certificate of Occupancy (TCO) for the Premises, Tenant shall first certify, in writing, to Landlord that it has, in fact, expended, or has caused to be expended, not less than the required aforesated amount(s) in improvement costs for the operation of the Premises.

(b) Landlord Improvements. Landlord agrees to fund the improvements specified in Exhibit "C" attached hereto (the "Landlord Improvements"), not less than, and up to the maximum not-to-exceed amount of, **\$553,467.00** (the "Landlord's Not to Exceed Amount"), and to design and construct the Landlord Improvements, subject to the Landlord's Not to Exceed Amount or other available funding, if any, as specified herein.. Except as to the Landlord's obligations for the Landlord Improvements up to the Landlord's Not to Exceed Amount, Tenant shall be responsible for funding and completing all other temporary or permanent improvements that may be required in connection with the operation of the Premises, including but not limited to the Tenant's Work specified in Exhibit "D" attached hereto and as delineated more fully below, and any amounts in excess of the Landlord's Not to Exceed Amount that may be required for the operation of the Premises. In no event shall Landlord have any obligation to fund or pay any amounts in excess of the Landlord's Not to Exceed Amount.

1. In the event the Landlord's estimates to design/construct the Landlord Improvements exceed the Landlord's Not to Exceed Amount, or in the event cost overruns with respect to the Project Costs are anticipated or experienced during the construction of the Landlord Improvements (and such cost overruns are not due to the Landlord's negligence or the negligence or intentional misconduct of Landlord's contractors), Landlord shall inform Tenant of the estimated additional costs with respect to the Landlord Improvements, and Tenant may elect to either (1) identify the funding sufficient to cover all such amounts in excess of the Landlord's Not to Exceed Amount, or (2) work with the Landlord to adjust the project scope, as necessary, to complete the Landlord Improvements within the Landlord's Not to Exceed Amount and any additional funding that may be identified by Tenant. If sufficient funding to design and construct the Landlord Improvements is not identified as contemplated herein, or if the Landlord and Tenant cannot agree on project scope reductions sufficient for the purposes of opening the North Beach Yard to the public, then either Landlord or Tenant may terminate this Lease for their convenience, and neither Party shall have or owe any further obligation or liability to the other Party.

2. Landlord shall have no obligation to proceed with any Landlord Improvements prior to Tenant obtaining all regulatory approvals required under this Lease and until Tenant has reasonably demonstrated that it has obtained the funding or financing required for the Tenant's Work.

5.2 Tenant's Construction Obligations.

(a) Except for the construction of the City Improvements and subject to the provisions hereof, Tenant shall, at its sole cost and expense, cause the construction and installation of any and all improvements, alterations and/or repairs to the Premises in accordance with Tenant's Plans, as hereinafter defined, and as necessary to permit Tenant to occupy same and conduct normal business operations (such improvements being referred to herein as "Tenant's Work"). Any waiver of concurrency fees, if any, shall be at the City Commission's sole discretion. All other fees and charges imposed by agencies having jurisdiction (including, without limitation, the Miami Beach Building Department fees and Miami Beach Fire Department fees) shall apply at standard rates.

(b) Tenant, at Tenant's expense, agrees to furnish to Landlord's City Manager or his/her designee, who, for purposes of this Article, shall be the City's Asset Manager, a preliminary schedule of finishes and values, as well as a conceptual plan for any improvements and/or alterations to the Premises ("Concept Plan"). Landlord's City Manager (or his/her designee), acting in the City's proprietary capacity as Landlord, shall notify Tenant in writing of its acceptance or of its reasonable objections to the preliminary schedule of finishes and Concept Plan within ten (10) business days after such preliminary schedule and Concept Plan has been provided to him/her. Should Tenant fail to submit the preliminary schedule of finishes and Concept Plan within the time period set forth above, or should Tenant fail to make any reasonable modifications Landlord's City Manager (or his/her designee) may require, within five (5) business days of notice thereof, then either such event shall be deemed to be a default under this Lease. The Concept Plan shall be subject to regulatory review and approval by the City's Design Review Board, and any other City land use board and agencies having jurisdiction over the Premises. Following approval by the Design Review Board and any other applicable board or agency having jurisdiction, the preliminary schedule of finishes and values, as well as the Concept Plan, shall be subject to the City Commission's final approval, at its sole discretion.

(c) Following the City Commission's approval of the Concept Plan, the Tenant, at Tenant's expense, agrees to furnish to Landlord's City Manager (or his/her designee) a set of schematic drawings (including an initial space plan) plan for any improvements and/or alterations to the Premises, which shall also include as an attachment a schedule of finishes and Tenant's proposed construction budget (the "Schematic Drawings") for Tenant's Work. The construction budget shall include detailed descriptions of the scope of work and provide for a minimum expenditure for Tenant's Work. The Schematic Drawings shall be consistent with the Concept Plan approved by the City Commission, and shall be subject to Landlord's City Manager's (or his/her designee) review and approval, in its proprietary capacity as Landlord, with such approval not to be unreasonably withheld or delayed. Landlord's City Manager (or his/her designee) shall notify Tenant in writing of its acceptance or of its objections to the Schematic Drawings. Should Tenant fail to submit the Schematic Drawings within the time period set forth above, or should Tenant fail to make any reasonable modifications Landlord may require within ten (10) business days of notice thereof, then either such event shall be deemed to be a default under this Lease. Tenant acknowledges that submission of satisfactory Schematic Drawings is a condition to Landlord's entering into this Lease with Tenant, and that if Tenant fails to furnish Schematic Drawings reasonably acceptable to Landlord within the time periods set forth herein, then, in such event, Tenant shall be in default under this Lease. The Schematic Drawings, as approved by Landlord's City Manager (or his/her designee) in his or her reasonable discretion, shall be incorporated herein by reference and made part of this Lease.

(d) Within ten (10) business days after the date Landlord's City Manager (or his/her designee) has approved the Schematic Drawings, Tenant, at Tenant's expense, agrees to furnish to Landlord's City Manager (or his/her designee) a complete, detailed set of plans and specifications through the design development stage ("Tenant's Plans") for Tenant's Work, which shall include, without limitation, all working drawings, elevations, finish selections, and signage schematics, along with a separate schedule detailing Tenant's estimated expenditures in connection with Tenant's Work (based on the construction budget described above as supplemented to reflect the

approved Schematic Drawings) and a list of the proposed architect and engineer(s), interior design team, general contractor, and subcontractors. City acknowledges that the Tenant's proposed "container" structures are pre-fabricated and the underlying plans/drawings for those container structures may not be required as part of the Tenant's Plans, provided, however, that the Tenant's site plan or Schematic Drawings shall depict the location of the container structures and Tenant's Plans shall include any footings or ancillary material required with respect to the installation of the container structures. Tenant's Plans shall be based on the approved Schematic Drawings and shall be in a form sufficient to obtain a building permit from the City of Miami Beach. Tenant's Plans shall be prepared by Tenant's architect and engineer(s), which architect and engineer(s) shall be subject to Landlord's City Manager's (or his/her designee's) prior written approval, which shall not be unreasonably withheld or delayed. Tenant's Plans shall be subject to Landlord's City Manager's (or his/her designee's) reasonable review and approval, which approval shall not be unreasonably withheld or delayed. Landlord's City Manager (or his/her designee) shall notify Tenant in writing of its acceptance or of its objections to Tenant's Plans within ten (10) business days after the Tenant's Plans have been provided to Landlord. Should Tenant fail to submit Tenant's Plans within the time period set forth above, or should Tenant fail to make any reasonable modifications Landlord may require within ten (10) business days of notice thereof, then either such event shall be deemed to be a default under this lease. Notwithstanding Landlord's City Manager's (or his/her designee's) review and approval of Tenant's Plans, Landlord assumes no responsibility whatsoever, and shall not be liable, for the manufacturer's, architect's, or engineer's design or performance of any of Tenant's Work or any structural, mechanical, electrical, or plumbing systems or equipment of Tenant.

(e) Once Landlord approves Tenant's Plans, Tenant shall, within five (5) business days, provide Landlord's City Manager (or his/her designee) with two (2) sets of Tenant's Plans (and any changes to Tenant's Plans and/or the approved construction budget shall be made only by written addendum signed by both parties). Tenant's Plans, as approved by Landlord's City Manager (or his/her designee), shall be incorporated herein by reference and made part of this Lease.

(f) Within ten (10) business days after the date Landlord's City Manager (or his/her designee) has approved Tenant's Plans, Tenant, at Tenant's expense, agrees to furnish to Landlord's City Manager (or his/her designee) a complete and detailed set of construction documents in AIA form, including all exhibits ("Tenant's Construction Documents") for Tenant's Work, which shall be prepared by Tenant's architects. Tenant's Construction Documents shall be subject to Landlord's City Manager's (or his/her designee's) prior written approval, which approval shall not be unreasonably withheld or delayed, and Tenant shall receive written notification of Landlord's approval or objections to Tenant's Construction Documents. Should Tenant fail to submit Tenant's Construction Documents with the period set forth above or should Tenant fail to make any reasonable modifications, Landlord may request within ten (10) business days of notice hereof, then either such event shall be deemed a default under this Lease. Notwithstanding Landlord's review of Tenant's Construction Documents, Landlord assumes no responsibility whatsoever and shall not be liable with respect to any item contained therein.

(g) Once Landlord's City Manager (or his/her designee) approves Tenant's Construction Documents, Tenant shall, within five (5) days, provide Landlord's City Manager (or his/her designee's) with two (2) sets of Tenant's Construction Documents (and any changes to Tenant's Construction Documents and/or the approved construction budget shall be made only by written addendum signed by both parties).

(h) Tenant shall use only experienced contractors and subcontractors holding all of the requisite licenses that may be required in the State of Florida to construct the Tenant's Work, provided such contractors are approved, in writing, by Landlord's City Manager (or his/her designee) to complete the construction and installation of Tenant's Work, which approval shall not be unreasonably withheld or delayed. Within ten (10) business days after the date hereof, Tenant shall provide to Landlord's City Manager (or his/her designee) certificates of insurance evidencing that Tenant has the required comprehensive general liability insurance required of Tenant under the Lease. In addition, Tenant shall provide to Landlord's City Manager (or his/her designee) certificates of insurance evidencing that Tenant's general contractor has in effect (and shall maintain at all times during the course of the work hereunder) workers' compensation insurance to cover full liability under workers' compensation laws of the State of Florida with employers' liability coverage; comprehensive general liability and builder's risk insurance for the hazards of operations, independent contractors, products and completed operations

(for two (2) years after the date of acceptance of the work by Landlord and Tenant); and contractual liability specifically covering the indemnification provision in the construction contract, such comprehensive general liability to include broad form property damage and afford coverage for explosion, collapse and underground hazards, and "personal injury" liability insurance and an endorsement providing that the insurance afforded under the contractor's policy is primary insurance as respects Landlord and Tenant and that any other insurance maintained by Landlord (if any) or Tenant is excess and non-contributing with the insurance required hereunder, provided that such insurance may be written through primary or umbrella insurance policies with a minimum policy limit of \$1,000,000.00. Landlord and Tenant are to be included as an additional insured for insurance coverages required of the general contractor. Tenant shall inform its contractor, subcontractors, and material suppliers that Landlord's interest in the Premises shall not be subject to any lien to secure payment for work done or materials supplied to the Premises on Tenant's behalf, and Tenant shall cause for the general contractor to (i) indemnify the Landlord for its negligent or willful misconduct in connection with the performance of the Tenant's Work, and (ii) to secure a Performance Bond and Payment Bond in a penal sum sufficient to cover the full contract valued of the Tenant's Work, with such Performance Bond and Payment Bond to name the Tenant and the Landlord as co-obligees. All inspections and approvals necessary and appropriate to complete Tenant's Work in accordance with Tenant's Plans and as necessary to obtain a certificate of use and occupancy as hereinafter provided are the responsibility of Tenant and its general contractor. Tenant shall arrange a meeting prior to the commencement of construction between Landlord and Tenant's contractors for the purpose of organizing and coordinating the completion of Tenant's Work.

(i) Once Tenant's Plans have been approved by Landlord's City Manager (or his/her designee), Tenant shall diligently pursue the issuance of a full building permit therefor. Tenant shall commence Tenant's Work (and shall be required to diligently pursue same) upon receipt of the full building permit. If Tenant has not achieved Substantial Completion of Tenant's Work in accordance with Tenant's Plans, as approved by Landlord's City Manager (or his/her designee), by the date that is twelve (12) months after the Commencement Date, then, in such event, Tenant shall be in default under this Lease, and Landlord shall have the option to declare this Lease null and void and exercise any remedies available under this Lease. Should this Lease be declared null and void pursuant to this paragraph, Tenant shall forfeit all rights to any deposits, advance Rent, and any other payments made under this Lease, and Landlord shall have no further liability to Tenant under this Lease. "Substantial Completion" of Tenant's Work shall mean that Tenant's Work has been materially completed in accordance with the approved Tenant's Plans and that the Premises are approved for use and occupancy by the appropriate governmental authorities and are in suitable condition for the operation of Tenant's business.

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

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

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

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

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

(k) Any damage to the existing finishes of the Premises or any portion thereof shall be patched and repaired by Tenant within a commercially reasonable timeframe, at its expense, and all such work shall be done to Landlord's reasonable satisfaction. If any patched and painted area does not match the original surface,

then the entire surface shall be repainted at Tenant's expense. Tenant agrees to indemnify and hold harmless Landlord, its employees, contractors, and agents, from and against any and all costs, expenses, damage, loss, or liability, including, but not limited to, reasonable attorneys' fees and costs, which arise out of, is occasioned by, or is in any way attributable to the build-out of the Premises or any subsequent improvements or alterations by Tenant pursuant to this Lease. Tenant, at its expense, shall be responsible for the reasonable maintenance, repair, and replacement of any and all items constructed by Tenant's contractor.

(l) Tenant shall not alter the existing fire alarm system in the building located on the Premises or the Landlord Improvements. Tenant's Plans shall include detailed drawings and specifications for the design and installation of Tenant's fire alarm (and security) system(s) for the Premises. Such system(s) shall meet all appropriate building code requirements, and the fire alarm system shall, at Tenant's expense, be integrated into Landlord's fire alarm system for the existing facility located at the Premises. Landlord's electrical contractor and/or fire alarm contractor shall, at Tenant's expense, make all final connections between Tenant's and Landlord's fire alarm systems. Tenant shall insure that all work performed on the fire alarm system shall be coordinated at the job site with the Landlord's representative.

(m) the above requirements for submission of plans and the use of specific contractors shall not apply to maintenance or repairs which do not exceed \$2,500.00, provided that the work is not structural, and provided that it is permitted by applicable law.

(n) No later than 365 days following the Effective Date, Tenant shall provide the City with written evidence reasonably satisfactory to the City of the existence of (1) the equipment lease or financing arrangements for the "container" structures; (2) financing secured by the Tenant to cover any portion of the Tenant's Work; and (3) the availability of liquid assets, which may include (i) cash on hand or on deposit in any federal or state chartered commercial bank or national bank or any of its subsidiaries, (ii) readily marketable securities, (iii) readily marketable commercial paper rated A-1 by Standard & Poor's Corporation, (iv) certificates of deposit issued by commercial banks operating in the United States with maturities of one year or less, (v) money market mutual funds, or (vi) the uncommitted amount of any available line(s) of credit ("Liquid Assets"), which, in combination, such equipment lease(s), financing and Liquid Assets, as referenced in Subsection 5.2(n)(1) through (3) hereof, together are sufficient to fund the construction and completion of the Tenant's Work within the time and in the manner set forth herein. Further, Tenant shall provide City with evidence of its contract with the licensed general contractor that Tenant shall utilize for the Tenant's Work, along with the Performance Bond and Payment Bond covering the full amount of the Tenant's Work, and both of which shall name the City as co-obligee. Tenant shall ensure that, in exchange for payment to its general contractor, the general contractor shall provide the Tenant with lien waivers or releases of lien from the persons or entities performing the work or furnishing the materials referred to therein. As part of its obligation to obtain a final Certificate of Occupancy (CO), Tenant shall provide proof that all permits have been closed, together with final lien waivers and contractor's affidavit reflecting that all contractors, subcontractors, laborers and materialmen have been paid in full. In the event Tenant fails to substantially complete Tenant's Work in accordance with the final plans and as required herein, such failure shall constitute a default.

The parties agree and acknowledge that the foregoing conditions are intended to be conditions subsequent to Landlord's approval of this Lease. Accordingly, in the event that Tenant does not satisfy the Subsection 5.2(n), then Landlord's City Manager may immediately, without further demand or notice, terminate this Lease without being prejudiced as to any remedies which may be available to him/her for breach of contract.

(o) Tenant's Work shall be completed no later than twelve (12) months following the Commencement Date. In the event Tenant has failed to achieve substantial completion of the Tenant's Work and obtain a temporary certificate of occupancy no later than twelve (12) months following the Commencement Date, Landlord may, at its sole option and discretion, terminate this Lease without liability or penalty of any kind whatsoever.

5.3 Maintenance and Repairs by Tenant. It is hereby acknowledged and agreed that Tenant is solely responsible to maintain and repair the whole of the Premises and each of the facilities thereon (excluding the Log Cabin building), at its sole cost and expense, including roof, structural, mechanical, plumbing, electrical and general maintenance and upkeep. Tenant shall, within a reasonable timeframe, make any repairs required to correct any

code violations or notices of violation issued by any agency having jurisdiction over the Premises, the Tenant, or any Vendor. Tenant will notify Landlord in writing of any necessary repairs that it is undertaking on the Premises that exceed a cost amount of \$5,000. Landlord shall not be responsible for any damages caused to Tenant by reason of failure of any equipment or facilities serving the Premises or delays in the performance of any work for which the Landlord is responsible to perform pursuant to this Lease. Notwithstanding any other provisions of this Lease, if any part of the Premises is damaged or destroyed or requires repair, replacement, or alteration as a result of the act or omission of Tenant, its employees, agents, invitees, licensees, or contractors, Landlord shall have the right to perform same and the cost of such repairs, replacement, or alterations shall be paid by Tenant to Landlord within five (5) business days after Tenant's receipt of demand from Landlord. In addition, if, in an emergency, it shall become necessary to make promptly any repairs or replacements required to be made by Tenant, Landlord may re-enter the Premises and proceed forthwith to have the repairs or replacements made and pay the costs thereof. Within ten (10) days after written demand, Tenant shall reimburse Landlord for the cost of making the repairs. All repair and maintenance performed by Tenant shall be performed by contractors or workmen designated or approved by Landlord's City Manager, which approval shall not be unreasonably withheld or delayed. At the expiration or earlier termination of the Term, Tenant shall surrender the Premises to Landlord in as good condition and repair as Tenant is required to maintain the Premises throughout the Term, reasonable wear and tear excepted. Tenant shall be responsible for all trash removal for its business operations, including, without limitation, that Tenant shall keep all wet garbage under refrigeration.

5.4 Approval of Tenant's Alterations. No material alterations (including, without limitation, improvements, additions, or modifications to the Premises) shall be made by Tenant to the Premises without City Manager's prior written approval, which, as to exterior or structural alterations to the building containing the Landlord Improvements, may be withheld in Landlord's sole discretion. Any alterations by Tenant shall be performed at the sole cost of Tenant, by contractors and workmen approved by Landlord's City Manager, which approval shall not be unreasonably withheld or delayed, in a good and workmanlike manner, and in accordance with all applicable laws and regulations. Notwithstanding the foregoing, nonstructural alterations which do not require a building permit may be made without Landlord's City Manager's consent, but Tenant shall notify Landlord's City Manager in writing prior to making any such alterations.

5.5 Removal of Improvements and Fixtures. All leasehold improvements and fixtures (other than unattached, movable trade fixtures installed by Tenant which can be removed without damage to the Premises) shall at the expiration or earlier termination of this Lease become Landlord's property. Following the Rent Commencement Date, Tenant and Landlord shall execute a memorandum listing the unattached, movable trade fixtures installed by the Tenant. Tenant may, during the Term, in the usual course of its business, remove its trade fixtures, provided that Tenant is not in default under this Lease; and Tenant shall, at the expiration or earlier termination of the Term, at its sole cost, remove such of the leasehold improvements (except for improvements installed by Landlord prior to the Commencement Date) and trade fixtures in the Premises as Landlord shall require to be removed and restore the Premises to the condition existing prior to such removal. Tenant shall at its own expense reasonably repair any damage caused to the Premises by such removal. If Tenant does not remove its trade fixtures at the expiration or earlier termination of the Term, the trade fixtures shall, at the option of Landlord, become the property of Landlord and may be removed from the Premises and sold or disposed of by Landlord in such manner as it deems advisable without any accounting to Tenant.

5.6 No Liens or Encumbrances.

(a) The right, title and interest of the Landlord in the Premises shall not be subject to liens or claims of liens for improvements made by Tenant. Tenant shall promptly pay for all materials supplied and work done in respect of the Premises so as to ensure that no lien or encumbrance of any kind is recorded or filed against the Premises or any portion thereof, or against Landlord's or Tenant's respective interests therein. If a lien is so recorded, Tenant shall discharge it promptly by payment or bonding. If any such lien against the Premises is recorded and not discharged by Tenant as above required within thirty (30) days following written notice to Tenant, Landlord shall have the right to remove such lien by bonding or payment and the cost thereof shall be paid immediately from Tenant to Landlord. Landlord and Tenant expressly agree and acknowledge that no interest of Landlord in the Premises shall be subject to any lien for improvements made by Tenant in or for the Premises, and

Landlord shall not be liable for any lien for any improvements made by Tenant, such liability being expressly prohibited by the terms of this Lease. Tenant hereby agrees to inform all contractors and material suppliers performing work in or for or supplying materials to the Premises of the requirements of this Section.

(b) In no event shall Tenant create, incur, secure or allow any leasehold mortgage or other encumbrance affecting the Premises or any portion thereof, or otherwise pledge Tenant's interest in the Premises for any purpose whatsoever, including, without limitation, any debt or other financing.

(c) Any purported encumbrance that is not in accordance with this Lease shall be, to the fullest extent permitted by law, null and void.

5.7 Utilities and Other Expenses Related to Operation of Premises. Tenant shall be solely responsible for, and shall directly pay for, or pay to Landlord (or as Landlord directs), all gas, electricity, water, heating, cooling, sewer, telephone, as separately metered, and other charges and expenses associated with the operation of the Premises. In addition, Tenant's electrical equipment and lighting shall be restricted to that equipment and lighting which individually does not have a rated capacity and/or design load greater than the rated capacity and/or design load of the Premises. If Tenant's consumption of electrical services exceeds either the rated capacity and/or design load of the Premises, then Tenant shall remove the equipment and/or lighting to achieve compliance within ten (10) days after receiving written notice from Landlord, or such equipment and/or lighting may remain in the Premises, so long as (a) Tenant shall pay for all costs of installation and maintenance of submeters, wiring, air-conditioning, and other items required by Landlord, in Landlord's City Manager's reasonable discretion, to accommodate Tenant's excess design loads and capacities; and (b) Tenant shall pay to Landlord, within thirty (30) days after rendition of a bill, the cost of the excess consumption of electrical service at the rates charged to Landlord by Florida Power & Light, which shall be in accordance with any applicable laws.

5.8. General Maintenance/Cleaning. Tenant shall maintain the Premises in a neat, clean, orderly, sanitary and presentable condition which, at a minimum, satisfies the City's Level 2 cleanliness standards set forth in **Exhibit "G."** Tenant shall, at its sole cost and expense, be responsible for janitorial services, and storing, disposition, and daily removal from the Premises of all trash, litter, debris and refuse which might accumulate and arise from the use of the Premises. Tenant shall provide its own garbage receptacles and shall be solely responsible for all arrangements and costs related to dumping. Tenant shall promptly undertake any maintenance or cleaning required to correct any code violations or notices of violation issued by any agency having jurisdiction over the Premises, the Tenant, or any Vendor at the Premises. Tenant shall be solely responsible for all industrial wastes on the Premises caused or produced by Tenant, its Vendors, licensees, invitees, or third-parties operating on the Premises, and shall be responsible for the proper disposal thereof, in accordance with applicable laws and governmental requirements. An annual assessment of the condition of the Premises shall be undertaken by Landlord, with Tenant's participation and cooperation, to identify any necessary repairs or improvements that Tenant may need to undertake during the Term. Tenant further agrees that while Landlord has made available certain air-conditioning unit(s) at facilities located within the Premises, Tenant shall obtain, and continuously maintain in good standing, at Tenant's expense, throughout the Term, a maintenance and repair contract, approved by the Landlord, with a service company previously approved in writing by the City, providing for the preventative maintenance and repair of all air conditioning units servicing the Premises. Tenant shall provide the Landlord, in writing, within ten (10) business days, the name(s) and telephone number(s) of service company(ies) for Landlord's review and approval. Tenant shall provide a copy of a current, enforceable and fully executed maintenance and repair contract, no later than ten (10) business days after receipt of the Landlord's approval of the service company, as proof of Tenant's compliance with this Section.

5.9. Failure of Tenant to Maintain/Repair Premises. If Tenant has failed to properly clean, remove trash and debris, maintain, repair, replace and refurbish the Premises as required by this Article V, Landlord shall provide to the Tenant a written list of deficiencies, reflecting the amount of time to be reasonably allowed for the Tenant to correct same. If the Tenant fails to correct or commence to correct such deficiencies within the time allowed, then Tenant shall be in default under this Lease, and Landlord shall have the option to either terminate this Lease pursuant to Article IX, or correct any or all of such deficiencies, in which case, the Landlord shall give Tenant five (5) days further written notice of its intention to do so, and if the Tenant has not corrected or commenced to correct

the same within such additional five (5) day period, the Landlord may enter upon the Premises and perform all work, which, in the reasonable judgment of the Landlord, is necessary and the Landlord shall add the cost of such work, plus twenty-five percent (25%) for administrative costs, to the Rent due hereunder on the first day of the month following the date of such work, and such cost shall be and constitute a part of the Rent.

5.10. Penalties in Lieu of Default. Notwithstanding Landlord's right to declare Tenant in default pursuant to this Lease, as an alternative means of ensuring compliance with certain non-monetary terms of this Lease for which the Tenant hereby agrees and acknowledges that the cure period provided for defaults herein is an inadequate remedy, the Landlord's City Manager or designee may issue a fine to the Tenant for violations of the items listed in **Exhibit "H"** attached hereto, and in the amounts specified therein for each violation.

ARTICLE VI. INSURANCE; LIMITATION OF LIABILITY; AND INDEMNITY.

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

(A) All risks property insurance, containing a waiver of subrogation rights which Tenant's insurers may have against Landlord and against those for whom Landlord is in law responsible including, without limitation, its directors, officers, agents, and employees, and (except with respect to Tenant's chattels) incorporating a standard Florida mortgagee endorsement (without contribution). Such insurance shall insure property of every kind owned by Tenant in an amount not less than the full replacement cost thereof (new), with such cost to be adjusted no less than annually. Such policy shall include Landlord as an additional insured.

(B) Comprehensive general liability insurance. Such policy shall contain inclusive limits per occurrence of not less than the amount specified in the Lease Summary; provide for severability of interests; and include Landlord as an additional insured.

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

(D) Automobile Liability Insurance, covering owned, non-owned, leased or hired automobiles, with a minimum combined single limit of \$1,000,000 Each Accident;

(E) Liquor Liability Insurance with minimum limits of \$2,000,000 per occurrence and \$5,000,000 in the aggregate.

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

All policies referred to above shall: (i) be taken out with insurers licensed to do business in Florida and reasonably acceptable to Landlord's City Manager; (ii) be in a form reasonably satisfactory to Landlord's City Manager; (iii) be non-contributing with, and shall apply only as primary and not as excess to any other insurance available to Landlord; (iv) contain an undertaking by the insurers to notify Landlord by certified mail not less than thirty (30) days prior to any material change, cancellation, or termination, and (v) with respect to subsection (A), contain replacement cost, demolition cost, and increased cost of construction endorsements. Certificates of insurance on Landlord's standard form or, if required by Landlord's City Manager, copies of such insurance policies certified by an authorized officer of Tenant's insurer as being complete and current, shall be delivered to Landlord's City Manager promptly upon request. If Tenant fails to take out or to keep in force any insurance referred to in this Section 6.1, or should any such insurance not be approved by Landlord, and Tenant does not commence and continue to diligently cure such default within five (5) business days after written notice by Landlord to Tenant specifying the nature of such default, then Landlord has the right, without assuming any obligation in connection therewith, to effect such insurance at the sole cost of Tenant and all outlays by Landlord shall be paid by Tenant to

Landlord as Additional Rent without prejudice to any other rights or remedies of Landlord under this Lease. Tenant shall not keep or use in the Premises any article which may be prohibited by any fire or casualty insurance policy in force from time to time covering the Premises, or the Facility.

6.2 Loss or Damage. Tenant acknowledges that the Tenant will be performing any maintenance and repairs required hereunder. Landlord shall not be liable for any death, injury or property damage arising from or out of any occurrence in, upon, at, or relating to the Premises, or damage to property of Tenant or of others located in the Premises, nor shall it be responsible for any loss of or damage to any property of Tenant or others from any cause, unless such death, injury, loss, or damage results from the gross negligence or willful misconduct of Landlord. Without limiting the generality of the foregoing, Landlord shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, falling ceiling tile, falling fixtures, steam, gas, electricity, water, rain, flood, or leaks from any part of the Premises or from the pipes, sprinklers, appliances, plumbing works, roof, windows, or subsurface of any floor or ceiling of the Premises, or from the street or any other place or by dampness, or by any other cause whatsoever, unless resulting from the gross negligence or willful misconduct of Landlord. Tenant agrees to indemnify Landlord and hold it harmless from and against any and all loss (including loss of any Rent payable in respect to the Premises), claims, actions, damages, liability, and expense of any kind whatsoever (including attorneys' fees and costs at all tribunal levels), unless caused by the gross negligence or willful misconduct of Landlord, arising from any occurrence in, upon, or at the Premises, or the occupancy, use, or improvement by Tenant or its agents or invitees of the Premises, or occasioned wholly or in part by any act or omission of Tenant its agents, employees, and invitees or by anyone permitted to be in the Premises by Tenant.

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

6.4. Limitation of Landlord's Liability. Landlord desires to enter into this Lease only if in so doing the Landlord can place a limit on its liability for any cause of action for money damages due to an alleged breach by the Landlord of this Lease, so that its liability for any such breach never exceeds the sum of \$10,000. Tenant hereby expresses its willingness to enter into this Lease 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. Accordingly, and notwithstanding any other term or condition of this Lease, Tenant hereby agrees that the Landlord shall not be liable to the Tenant for damages in an amount in excess of \$10,000, which amount shall be reduced by the amount actually paid by the Landlord to Tenant pursuant to this Lease, for any action or claim for breach of contract arising out of the performance or non-performance of any obligations imposed upon the Landlord by this Lease. Nothing contained in this paragraph or elsewhere in this Lease is in any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Section 768.28, Florida Statutes

6.5. Indemnity Against Costs and Charges. Tenant shall be liable to Landlord 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. As provided in Section 2.8 of this Lease, any sums due the Landlord under the provisions of this item shall constitute a lien against the interest of the Tenant and the 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. Tenant agrees to pay all damages to the Premises if

caused by the Tenant or any employee, guest, or invitee of the Tenant. If Tenant shall at any time be in default hereunder, and if the Landlord shall deem it necessary to engage an attorney to enforce the Landlord's rights and Tenant's obligations hereunder, the 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.

6.6 Indemnification Against Claims. Tenant shall indemnify, defend and save the City harmless from and against any and all claims or causes of action by or on behalf of any person, firm, or corporation, for personal injury or property damage occurring upon the Premises or upon any other land or other facility or appurtenance used in connection with the Premises, occasioned in whole or in part by any of the following: (i) any act or omission on the part of the Tenant, or any employee, agent, contractor, invitee, guest, assignee, sub-tenant or subcontractor of the Tenant; (ii) any misuse, neglect, or unlawful use of the Premises by Tenant, or any employee, agent, contractor, invitee, guest, assignee, sub-tenant or subcontractor of the Tenant, but not to include trespassers upon the Premises; (iii) any breach, violation, or non-performance of any undertaking of the Tenant under this Lease; or (iv) Any event arising out of the use or occupancy of the Premises by the Tenant.

ARTICLE VII. DAMAGE AND DESTRUCTION.

7.1 Damage to Premises. Tenant acknowledges that if the Premises are partially or totally destroyed due to fire or other casualty, any repairs to or rebuilding of the damaged portions of the Premises will be performed by Landlord but, in any event, only to the extent that Landlord is required to repair or rebuild the Premises to the condition Landlord was required to turn over the Premises to Tenant as of the Commencement Date. If Landlord repairs or rebuilds, Base Rent shall abate proportionately to the portion of the Premises, if any, rendered untenable from the date of destruction or damage until the repairs have been substantially completed. Upon being notified that the repairs have been substantially completed, Tenant shall diligently perform all other work required to fully restore the Premises for use in Tenant's business, in every case at Tenant's cost and without any contribution to such cost by Landlord. Tenant agrees that during any period of reconstruction or repair of the Premises, it will continue the operation of its business within the Premises to the extent practicable. If all or any part of the Premises shall be damaged by fire or other casualty and the fire or other casualty is caused by the fault or neglect of Tenant or Tenant's employees, contractors, agents, guest, or invitees, Rent and all other charges shall not abate.

7.2 Termination for Damage. Notwithstanding Section 7.1, if damage or destruction which has occurred to the Premises is such that, in the sole reasonable opinion of Landlord's City Manager, such reconstruction or repair cannot be completed within one hundred twenty (120) days of the happening of the damage or destruction, Landlord may, at its sole option, terminate this Lease on notice to Tenant given within thirty (30) days after such damage or destruction and Tenant shall immediately deliver vacant possession of the Premises in accordance with the terms of this Lease.

In addition, if Landlord undertakes the reconstruction or repair, and does not complete same within nine (9) months after the date of the fire or other casualty (subject to the time required to prepare plans for reconstruction, to obtain building permits, to receive distribution of insurance proceeds, and to complete the likely contract bidding process and all other relevant factors, but not to exceed an additional ninety (90) days), then Tenant shall have the right to terminate this Lease by written notice to Landlord's City Manager delivered within thirty (30) days after the expiration of such nine (9) month period (or as extended), whereupon both parties shall be relieved of all further obligations hereunder, except as otherwise expressly set forth herein.

ARTICLE VIII. ASSIGNMENT, LEASES, AND TRANSFERS.

8.1 Transfer by Tenant. Tenant shall not enter into, consent to, or permit any Transfer, as hereinafter defined, without the prior written consent of Landlord in each instance, which consent may be granted or withheld in Landlord's sole and absolute discretion for any reason or for no reason. For purposes of this Lease, "Transfer" means an assignment of this Lease in whole or in part; any transaction whereby the rights of Tenant under this

Lease or to the Premises are transferred to another; any mortgage or encumbrance of this Lease or the Premises or any part thereof or other arrangement under which either this Lease or the Premises become security for any indebtedness or other obligations; and if Tenant is a corporation or a partnership, the transfer of a controlling interest in the stock of the corporation or partnership interests, as applicable. If there is a permitted Transfer, Landlord may collect Rent or other payments from the transferee and apply the net amount collected to the Rent or other payments required to be paid pursuant to this Lease, but no acceptance by Landlord of any payments by a transferee shall be deemed a waiver of any provisions hereof regarding Tenant. Notwithstanding any Transfer, Tenant shall not be released from any of its obligations under this Lease. Landlord's consent to any Transfer shall be subject to the further condition that if the Rent pursuant to such Transfer exceeds the Rent payable under this Lease, the amount of such excess shall be paid to Landlord. If, pursuant to a permitted Transfer, Tenant receives from the transferee, either directly or indirectly, any consideration other than Rent for such Transfer, either in the form of cash, goods, or services, Tenant shall, upon receipt thereof, pay to Landlord an amount equivalent to such consideration. Tenant shall provide the Landlord with a copy of the form of the license or concession agreements that Tenant shall use with Vendors providing their services or goods at the Premises. In no event shall any of Tenant's license agreements or other agreements with Vendors at the Premises convey or grant any leasehold interest or other interest in and to the Premises.

In addition, Tenant shall not grant any purchase money security interest in its furniture, fixtures, and equipment in the Premises, without prior written consent of the Landlord's City Manager.

ARTICLE IX. DEFAULT AND TERMINATION.

9.1 Defaults. A default by Tenant shall be deemed to have occurred hereunder, if and whenever: (i) any Base Rent or Percentage Rent is not paid within five (5) days after it's due whether or not any notice or demand for payment has been made by Landlord; (ii) any other Additional Rent or Rent is in arrears and is not paid within five (5) days after written demand by Landlord; (iii) Tenant has breached any of its obligations in this Lease (other than the payment of Rent) and Tenant fails to remedy such breach within fifteen (15) days (or such shorter period as may be provided in this Lease), or if such breach cannot reasonably be remedied within fifteen (15) days (or such shorter period), then if Tenant fails to immediately commence to remedy and thereafter proceed diligently to remedy such breach, in each case after notice in writing from Landlord; (iv) Tenant becomes bankrupt or insolvent; (v) Tenant fails to maintain any of the insurance required under this Lease, and fails to remedy such breach within the time period specified in Section 9.1(iii), or if any of Landlord's policies of insurance (if any) with respect to the Premises are canceled or adversely changed as a result of Tenant's use or occupancy of the Premises; (vi) the business operated by Tenant in the Premises shall be closed by governmental or court order for any reason; (vii) Tenant fails to obtain a Temporary Certificate of Occupancy for Tenant's Work no later than twelve (12) months following the Commencement Date; (viii) Tenant fails to open the North Beach Yard to the general public no later than twelve (12) months following the Commencement Date; (ix) Tenant conducts any business or other activity on the Premises that is not expressly permitted under this Lease; (x) Tenant fails to maintain the Premises or meet any of its obligations in Article V, including, without limitation, with respect to the Cleanliness Standards in Exhibit "G", and fails to remedy such breach within the time period specified in Section 9.1(iii) herein; (xi) If Tenant fails to resolve any code violations issued by any governmental entity jurisdiction over the Premises, including, without limitation, any health-related violations, within a commercially reasonable time period; (xii) Tenant is generally not paying its debts, as such debts become due, and fails to remedy such breach within the time specified in Section 9.1(iii); or (xiii) Tenant fails to continuously operate the Premises. Further, if the Tenant shall have defaulted in the performance of any (but not necessarily the same) term or condition of this Lease for three or more times during any twelve month period during the Term hereof, then such conduct shall, at the election of the Landlord, represent a separate event of default which cannot be cured by the Tenant. Tenant acknowledges that the purpose of this provision is to prevent repetitive defaults by the Tenant under the Lease, which work a hardship upon the Landlord, and deprive the Landlord of the timely performance by the Tenant hereunder.

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

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

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

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

(D) Landlord may relet all or any part of the Premises for all or any part of the unexpired portion of the Term of this Lease or for any longer period, and may accept any Rent then attainable; grant any concessions of Rent, and agree to paint or make any special repairs, alterations, and decorations for any new tenant as it may deem advisable, in its sole and absolute discretion. Landlord shall be under no obligation to relet or to attempt to relet the Premises, except as expressly set forth below.

(E) If Landlord terminates Tenant's right to possession of the Premises without terminating this Lease under subsection (A) above, and Landlord so elects, the Rent hereunder shall be accelerated and Tenant shall pay Landlord damages in the amount of any and all sums which would have been due for the remainder of the Term (reduced to present value using a discount factor equal to the stated prime lending rate on the date of Tenant's default. Prior to or following payment in full by Tenant of such discounted sum promptly upon demand, Landlord shall use good faith efforts to relet the Premises. If Landlord receives consideration as a result of a reletting of the Premises relating to the same time period for which Tenant has paid accelerated Rent, such consideration actually received by Landlord, less any and all of Landlord's reasonable cost of repairs, alterations, additions, redecorating, and other expenses in connection with such reletting of the Premises, shall be a credit against such discounted sum, and such discounted sum shall be reduced if not yet paid by Tenant as called for herein, or if Tenant has paid such discounted sum, such credited amount shall be repaid to Tenant by Landlord (provided said credit shall not exceed the accelerated amount).

(F) Landlord may remedy or attempt to remedy any default of Tenant under this Lease for the account of Tenant and to enter upon the Premises for such purposes. No notice of Landlord's intention to perform such covenants need be given Tenant unless expressly required by this Lease. Landlord shall not be liable to Tenant for any loss or damage caused by the reasonable acts of Landlord in remedying or attempting to remedy such default and Tenant shall pay to Landlord all expenses incurred by Landlord in connection with remedying or attempting to remedy such default. Any expenses incurred by Landlord shall accrue interest from the date of payment by Landlord until repaid by Tenant at the highest rate permitted by law.

9.3 Costs. Tenant shall pay to Landlord on demand all costs incurred by Landlord, including attorneys' fees and costs at all tribunal levels, incurred by Landlord in enforcing any of the obligations of Tenant under this Lease. In addition, upon any default by Tenant, Tenant shall be also liable to Landlord for the expenses to which Landlord may be put in re-entering the Premises; repossessing the Premises; painting, altering, or dividing the Premises; re-configuring the Premises (including, without limitation, subdividing the Premises) for any new tenant;

putting the Premises in proper repair; protecting and preserving the Premises by placing watchmen and caretakers therein; reletting the Premises (including attorneys' fees and disbursements, marshal's fees, and brokerage fees, in so doing); and any other expenses reasonably incurred by Landlord.

9.4 Additional Remedies; Waiver. The rights and remedies of Landlord set forth herein shall be in addition to any other right and remedy now and hereinafter provided by law. All rights and remedies shall be cumulative and non-exclusive of each other. No delay or omission by Landlord in exercising a right or remedy shall exhaust or impair the same or constitute a waiver of, or acquiescence to a default.

9.5 Default by Landlord. In the event of any default by Landlord, Tenant's exclusive remedy shall be an action for damages or injunction, but prior to any such action Tenant will give Landlord's City Manager written notice specifying such default with particularity, and Landlord shall have a period of fifteen (15) days following the date of such notice in which to cure such default (provided, however, that if such default reasonably requires more than fifteen (15) days to cure, Landlord shall have a reasonable time to cure such default, provided Landlord commences to cure within such fifteen (15) day period and thereafter diligently prosecutes such cure to completion). Notwithstanding any provision of this Lease, Landlord shall not at any time have any personal liability under this Lease, and Landlord's maximum liability shall be as provided for in Section 6.4 of this Lease. It is expressly understood that the obligations of Landlord under this Lease are solely corporate obligations, and that, except for conversion, fraud, or willful misconduct, no personal liability will attach to, or is or shall be incurred by, the officers, directors, or employees, as such, of the Landlord, or of any successor corporation, or any of them, under or by reason of the obligations, covenants, or agreements of Landlord contained in this Lease or implied therefrom; and, except for conversion, fraud, or willful misconduct, that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such officer, director, or employee, as such, or under or by reason of the obligations, covenants or agreements contained in this Lease or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Lease.

9.6. Landlord's Termination for Convenience.

(a) During the initial Term, Landlord shall have the right to terminate this Lease for its convenience, solely to the limited extent provided in (i) Section 3.4 of this Lease, in the event the results of the environmental Phase I report or other site investigations undertaken with respect to the Premises are unsatisfactory to Landlord or, if environmental remediation is required for the Premises, or (ii) Section 5.1 of this Lease, in the event the costs for the Landlord Improvements exceeds the Landlord's Not To Exceed Amount, and sufficient funding (or project scope reductions) cannot be identified to complete the Landlord Improvements.

(b) Notwithstanding any other provision of this Article IX, Landlord, by and through the City Commission, may also terminate this Lease for its convenience during any Renewal Term and without cause, upon the furnishing of nine (9) months prior written notice to Tenant.

(c) In the event of termination for convenience by Landlord pursuant to this Section 9.6, Tenant herein acknowledges and agrees that it shall not have any claim, demand, or cause of action of whatsoever kind or nature, against the Landlord, 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) and in no event shall the Landlord be liable to Tenant for any indirect, incidental, special, lost profits or consequential damages arising from or related to such termination.

9.7. Tenant's Termination for Convenience.

(a) Tenant shall have the right to terminate the Lease for its convenience, at any time prior to issuance of a building permit to Landlord for the Landlord Improvements if Tenant determines, at its discretion, that (1) the regulatory requirements associated with the operation of the Premises render such operations economically unfeasible; (2) as provided in Section 3.4 of this Lease, the results of the environmental Phase I report or other site investigations undertaken with respect to the Premises are unsatisfactory to Tenant or, if environmental remediation is required for the Premises; or (3) as provided in Section 5.1, in the event the costs for the Landlord Improvements

exceeds the Landlord's Not To Exceed Amount, and sufficient funding (or project scope reductions) cannot be identified to complete the Landlord Improvements. In such event, Landlord and Tenant shall bear their own costs and fees, and neither Tenant nor Landlord shall have or owe any further obligation or liability to the other with regard to this Lease.

(b) In the event Tenant otherwise terminates this Lease following Landlord's commencement of the Landlord Improvements, Tenant shall reimburse the Landlord, as liquidated damages, an amount equal to:

(i) 100% of the Landlord Improvements costs specified in Section 5.1(a), if Tenant terminates the Lease prior to the end of the first year of the Term;

(ii) 66% of the Landlord Improvements costs specified in Section 5.1(a), if Tenant terminates prior to the conclusion of the second year of the Term; or

(iii) 33% of the Landlord Improvements costs specified in Section 5.1(a), if Tenant terminates prior to the conclusion of the third year of the Term.

ARTICLE X. ESTOPPEL CERTIFICATE; SUBORDINATION.

10.1 **Estoppel Certificate.** Within ten (10) days after written request by Landlord's City Manager, Tenant shall deliver in a form supplied by Landlord, an estoppel certificate to Landlord as to the status of this Lease, including whether this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified and identifying the modification agreements); the amount of Base Rent and other Rent then being paid and the dates to which same have been paid; whether or not there is any existing or alleged default by either party with respect to which a notice of default has been served, or any facts exist which, with the passing of time or giving of notice, would constitute a default and, if there is any such default or facts, specifying the nature and extent thereof; and any other matters pertaining to this Lease as to which Landlord shall request such certificate. Landlord, and any prospective purchaser, lender, or ground lessor shall have the right to rely on such certificate.

10.2 **Subordination; Attornment.** This Lease and all rights of Tenant shall be subject and subordinate to any and all agreements or security instruments resulting from any financing, refinancing, or collateral financing (including renewals or extensions thereof), of Landlord's interests in all or any part of the Premises, from time to time in existence against the Premises, whether now existing or hereafter created. Such subordination shall not require any further instrument to evidence such subordination. However, on request, Tenant shall further evidence its agreement to subordinate this Lease and its rights under this Lease to any and all documents and to all advances made under such documents. The form of such subordination shall be made as reasonably required by Landlord's City Manager. Tenant shall, if requested by Landlord, automatically attorn to and become the tenant of Landlord or any subsequent owner, purchaser, or successor-in-interest, of the Premises, without any change in the terms or other provisions of this Lease; provided, however, that Landlord, said owner, purchaser, or successor shall not be bound by (a) any payment of Rent for more than one (1) month in advance, or (b) any security deposit or the like not actually received by Landlord, such owner, or purchaser, or successor, or (c) any amendment or modification in this Lease made without the consent of Landlord, such owner, purchaser, or successor. Upon request by Landlord, said owner, or purchaser, or successor, Tenant shall execute and deliver an instrument or instruments confirming its attornment.

Notwithstanding the foregoing, any such subordination of this Lease shall be conditioned on the Landlord obtaining a nondisturbance agreement in favor of Tenant from any party providing any financing, refinancing or collateral financing as noted above, and no subordination shall be effective without a corresponding nondisturbance agreement.

ARTICLE XI. ALTERATIONS BY LANDLORD.

11.1 Landlord may (but shall not be obligated to) (i) alter, add to, subtract from, construct improvements on, re-arrange, and construct additional facilities adjoining, or proximate to the Premises; (ii) do such things on or in the Premises as required to comply with any laws, by-laws, regulations, orders, or directives of the City Commission or agencies having jurisdiction affecting the Premises; and (iii) do such other things on or in the Premises as Landlord, in the use of good business judgment determines to be advisable, provided that notwithstanding anything contained in this Section 11.1, access to the Premises shall be available at all times. Landlord shall not be in breach of its covenants for quiet enjoyment or liable for any loss, costs, or damages, whether direct or indirect, incurred by Tenant due to any of the foregoing; provided, Landlord shall exercise its rights under this section in a commercially reasonable manner so as to minimize any disruption or interference with the operation of Tenant's business and property.

ARTICLE XII. CONDEMNATION.

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

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

ARTICLE XIII. SALE OR USE OF EXPANDED POLYSTYRENE

13.1 Prohibition 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 selling, using, providing food in, or offering the use of expanded polystyrene food service articles by City contractors or special event permittees in City facilities or on City property. Additionally, pursuant to Section 82-385 (p) 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.

(a) *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).

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

13.2 Tenant agrees not to sell, use, provide food in, or offer the use of expanded polystyrene food service articles at the Premises or in connection with this Lease. Tenant shall ensure that all Vendors operating in the Premises abide by the restrictions contained in this section *. 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 48-92 (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.

ARTICLE XIV. GENERAL PROVISIONS.

14.1 Delay. Whenever a period of time is herein prescribed for the taking of any action by Landlord or Tenant, as applicable, Landlord or Tenant, as applicable, shall not be liable or responsible for, and there shall be excluded from the computation of such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, or governmental laws, regulations, or restrictions in the nature of a prohibition or moratorium, or any bona fide delay beyond the reasonable control of Landlord or Tenant, as applicable. The foregoing shall not apply to any payments of money due under this Lease, unless foregoing events have a materially adverse effect on the ability to transact and/or transfer monies.

14.2 Holding Over. If Tenant remains in possession of the Premises after the end of the Term without having executed and delivered a new lease or an agreement extending the Term, there shall be no tacit renewal of this Lease or the Term, and Tenant shall be deemed to be occupying the Premises as a Tenant from month to month at a monthly Rent payable in advance on the first day of each month equal to twice the monthly amount of Rent payable during the last month of the Term, and otherwise upon the same terms as are set forth in this Lease, so far as they are applicable to a monthly tenancy.

14.3 Waiver; Partial Invalidity. If Landlord excuses or condones any default by Tenant of any obligation under this Lease, this shall not be a waiver of such obligation in respect of any continuing or subsequent default and no such waiver shall be implied. All of the provisions of this Lease are to be construed as covenants even though not expressed as such. If any provision of this Lease is held or rendered illegal or unenforceable it shall be considered separate and severable from this Lease and the remaining provisions of this Lease shall remain in force and bind the parties as though the illegal or unenforceable provision had never been included in this Lease.

14.4 Recording. Neither Tenant nor anyone claiming under Tenant shall record this Lease or any memorandum hereof in any public records without the prior written consent of Landlord.

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

14.6 Successors; Joint and Several Liability. The rights and liabilities created by this Lease extend to and bind the successors and assigns of Landlord and the heirs, executors, administrators, and permitted successors and assigns of Tenant. No rights, however, shall inure to the benefit of any transferee unless such Transfer complies with the provisions of Article VIII. If there is at any time more than one Tenant or more than one person

constituting Tenant, their covenants shall be considered to be joint and several and shall apply to each and every one of them.

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

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

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

14.10 No Partnership. The parties hereby acknowledge that it is not their intention under this Lease to create between themselves a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership, or agency relationship. Accordingly, notwithstanding any expressions or provisions contained herein, nothing in this Lease, whether based on the calculation of rental or otherwise, shall be construed or deemed to create, or to express an intent to create, a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership or agency relationship of any kind or nature whatsoever between the parties hereto. The provisions of this section shall survive expiration of the Term.

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

14.12 Brokerage. Landlord and Tenant each represent and warrant one to the other that neither of them has employed any broker in connection with the negotiations of the terms of this Lease or the execution thereof. Tenant hereby agrees to indemnify and to hold harmless Landlord against any loss, expense, or liability with respect to any claims for commissions or brokerage fees arising from or out of any breach of the foregoing representation and warranty.

14.13 Radon Notice. Chapter 88-285, Laws of Florida, requires the following notice to be provided with respect to the contract for sale and purchase of any building, or a rental agreement for any building:

"RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit."

14.14 Inspection and Audit. Tenant shall maintain its financial records pertaining to its operation pursuant to this Lease, and records with respect to the community programming required pursuant to Section 3.11 for a period of three (3) years after the conclusion of the 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, upon ten (10) business days' written notice from the City Manager or his designee that the City desires to review said records. Tenant shall maintain its records relating to the operation of the Premises within Miami-Dade County, Florida.

14.15 Execution. This Lease has been submitted for discussion purposes only and shall not be deemed an offer by either party to the other to enter into this Lease unless and until this Lease shall have been executed by both parties, indicating their acceptance of the terms and conditions contained herein.

14.16 WAIVER OF TRIAL BY JURY. LANDLORD 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 AGREEMENT.

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

14.18 City's Governmental Capacity. In all respects hereunder, City's obligations and its performance as the Landlord under this Lease is pursuant to its position as the owner of the Premises acting in its proprietary capacity. In the event City exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, laws and ordinances (including through the exercise of the City's building, fire, code enforcement, police department or otherwise) shall be deemed to have occurred pursuant to City's regulatory authority as a governmental body and shall not be attributable in any manner to City as a party to this Lease or in any way be deemed in conflict with, or a default under, the City's obligations hereunder, or to otherwise restrict or limit the City in the exercise of its regulatory, police or other governmental powers.

14.19. City Manager's Delegated Authority. Notwithstanding any provision to the contrary in this Lease, nothing herein shall preclude the City Manager from seeking direction from or electing to have the City Commission determine any matter arising out of or related to this Lease, including, without limitation, any approval contemplated under this Lease, any proposed amendment or modification to this Lease, or any separate agreement relating to the Premises or otherwise referenced in this Lease.

14.20. Nondiscrimination. Tenant shall not discriminate against any employee, applicant for employment, Vendor, or invitee because of actual or perceived race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, or political affiliation. Further, Tenant shall comply with the City of Miami Beach Human Rights Ordinance, set forth in Chapter 62 of the City Code, as may be amended from time to time, prohibiting discrimination in employment, housing, public accommodations, and public services 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, domestic partner status, labor organization membership, familial situation, or political affiliation.

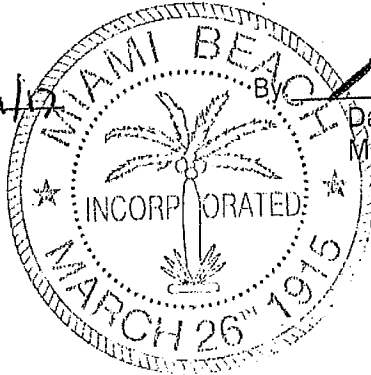
[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

EXECUTED as of the day and year first above written.

ATTEST:

LANDLORD:
City of Miami Beach

By: [Signature] 12/11/17
Rafael Granado
City Clerk



By: [Signature]
Dan Gelber
Mayor

Attest:

[Signature]
Beth G. Kaplan

TENANT:
NORTH BEACH YARD LLC

By: [Signature]
Name: Danielle Heimann
Title: Manager

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

EXHIBITS:

- Exhibit "A": Legal Description and Survey of Premises
- Exhibit "B": Tenant's Site Plan
- Exhibit "C": Landlord Improvements
- Exhibit "D": Tenant's Work
- Exhibit "E": Rules and Regulations
- Exhibit "F": Rent Structure
- Exhibit "G": Cleanliness Standards
- Exhibit "H": Penalties in Lieu of Default

[Signature] 11/17/17
City Attorney RAP Date

EXHIBIT "A"

Legal Description and Survey of Premises

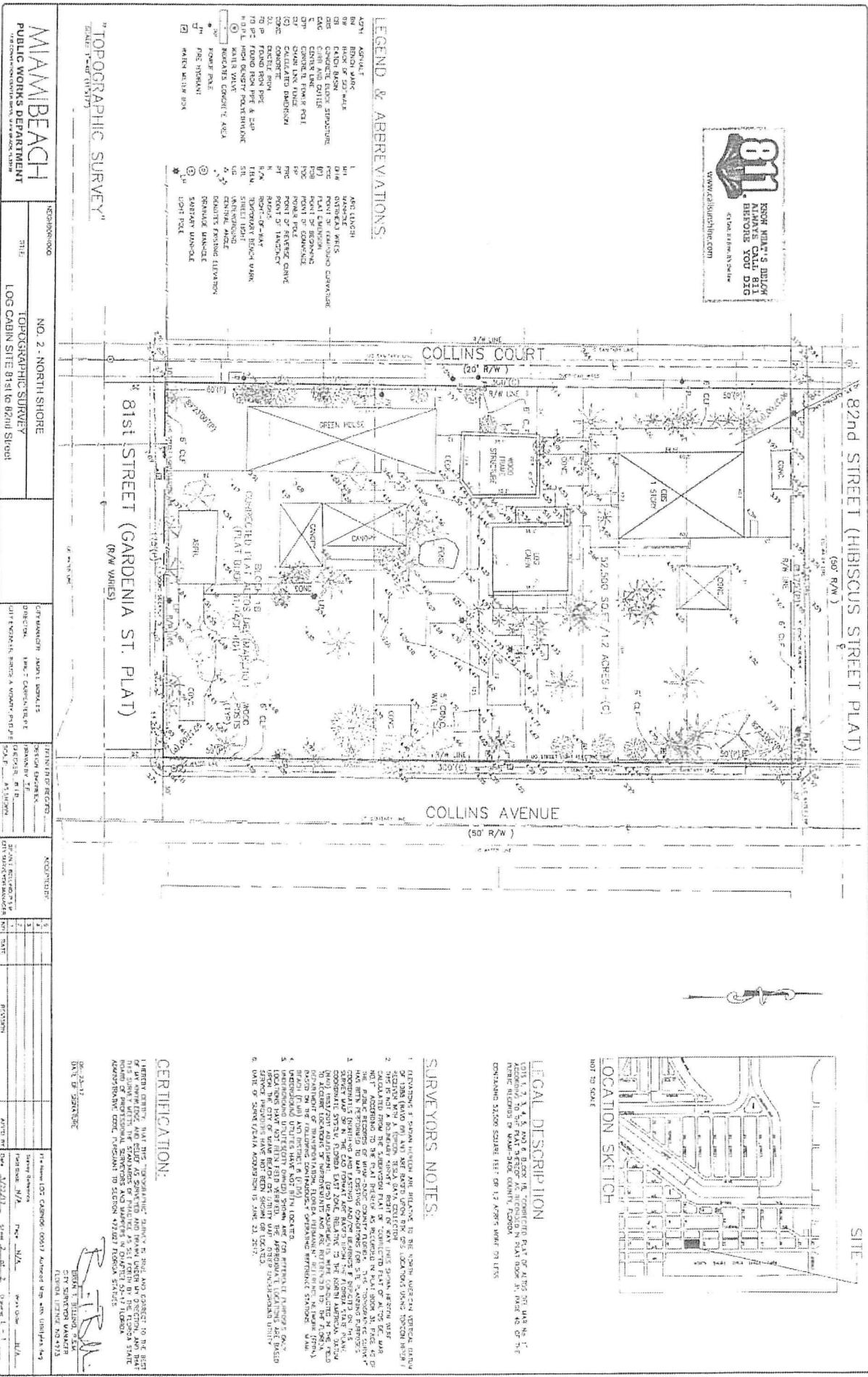


EXHIBIT "B"

Tenant's Site Plan for Premises and Preliminary Location of
Operations/Establishments within the Premises

The final Master Plan creates a memorable place that is dynamic, flexible and functional.

A main axis, running diagonally across the site, connects an entry plaza located at the corner of Collins and 81st Street with the existing re-purposed Classroom Building. A large existing Sea Grape tree becomes the focal point of the plaza.

The diagonal acts as the Yard's "Main Street" which is lined with shipping containers that house retail and restaurants. The positioning of the retail street will insure that potential customers will continuously filter through the shops.

Food trucks line the west and south sides of the block where they can be serviced from the alley. The trucks define the open space of the bar area and lawn with a stage at the north end.

The north end of the axis terminates at the Event Pavilion which accommodates new restroom facilities for the entire complex and provides additional event space in the form of a roof deck that is accessed by a new stair and elevator. A temporary fabric roof structure, which can be softly illuminated, envelops the building and creates a defining landmark.

On the east side of the axis, a garden area is clustered around an existing mango tree. Della's Bowls and Charcoal are situated in the north east corner of the site with ample areas for outdoor seating.

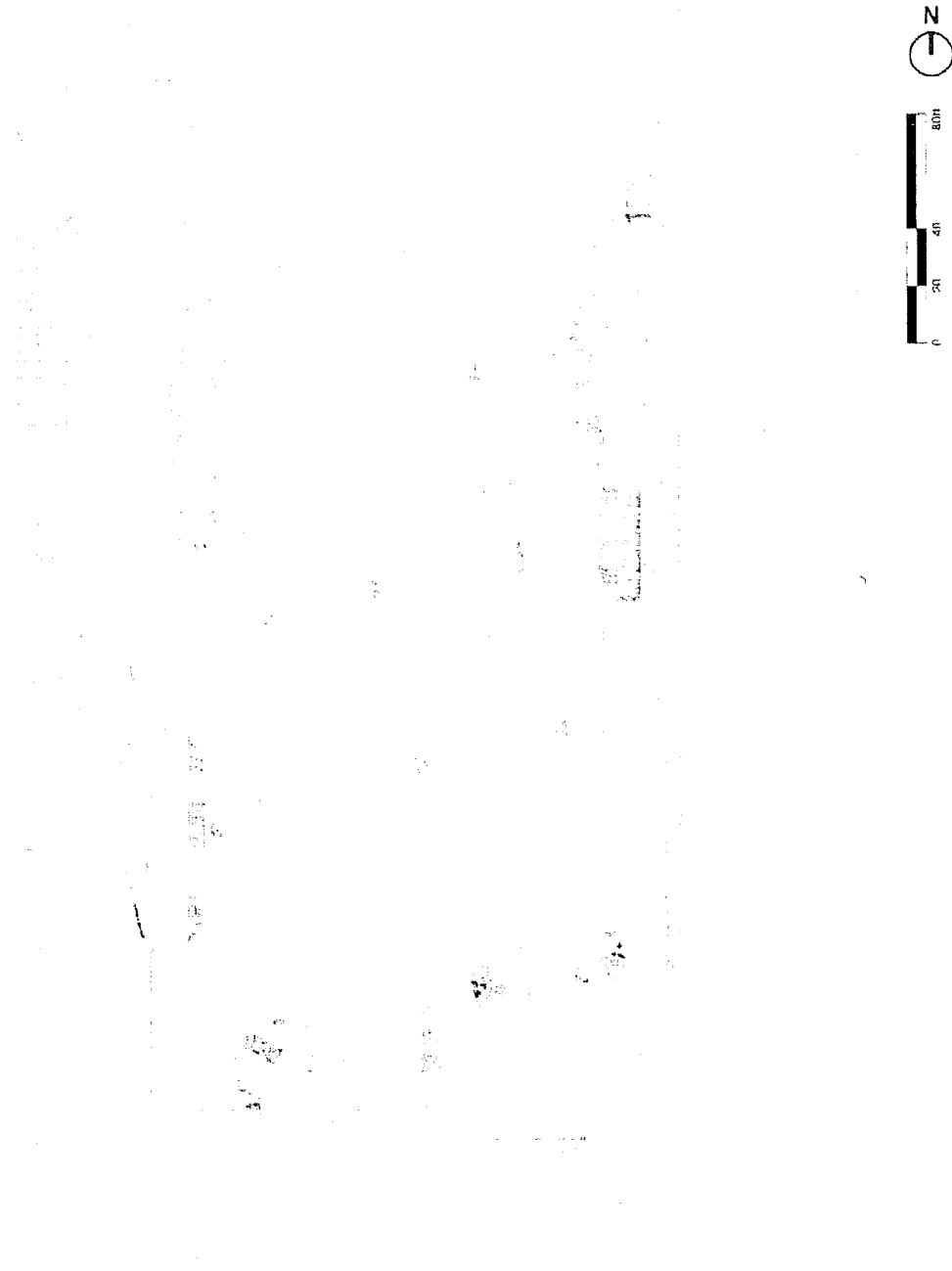


EXHIBIT "C"

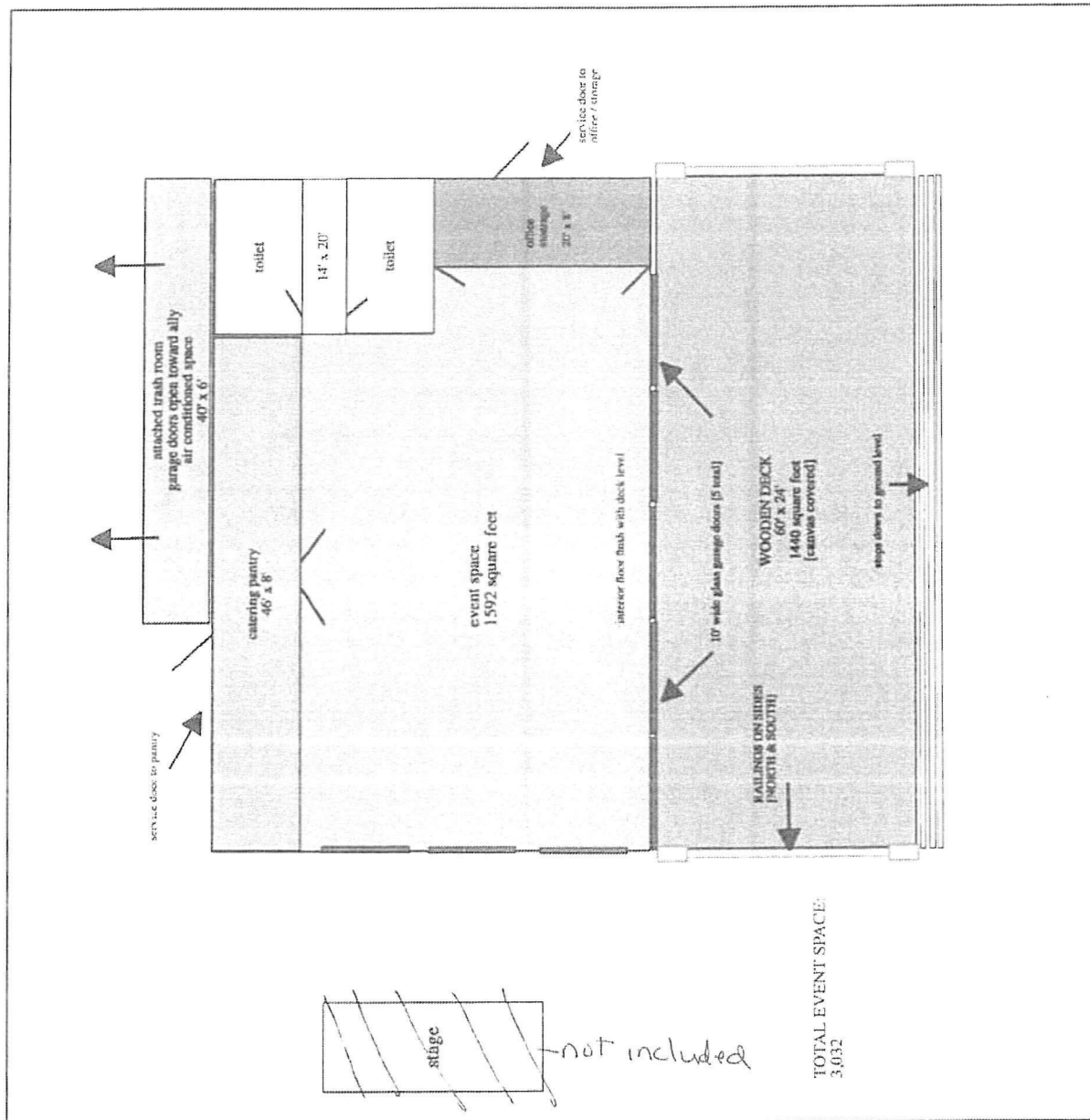
Landlord Improvements

Landlord shall remodel and renovate the existing classroom building. Key elements shall include:

- a) Approximately 1,592 square feet of event space
- b) Approximately 160 square feet of office and storage space
- c) Approximately 280 square feet of restroom space
- d) Approximately 368 square feet of catering pantry
- e) Maintain existing windows on north and west facing walls
- f) Update flooring, ceiling and wall finishes
- g) Event space may have exposed ceiling to maximize ceiling height
- h) New floor finish shall be polished concrete at event space with quarry tile or similar in pantry, toilets and office
- i) Pantry to be finished with washable walls and ceiling, electrical connections for warming ovens and hot and cold water to two sinks
- j) Restrooms to have typical fixtures, toilet partitions, toilet accessories and hand driers
- k) Modify approximately fifty feet of the structure of the east facing wall, to the extent possible, in order to accommodate new glass garage doors
- l) Purchase and install glass garage doors at east facing wall
- m) Perform selective demolition of south wall to accommodate three new fixed glass windows
- n) Purchase and install three new fixed glass windows, in south wall
- o) Existing plumbing, electrical and mechanical systems will be modified to accommodate the layout
- p) Exterior door at pantry
- q) Exterior door at office space
- r) Steps and handrails at exterior office door
- s) Ramp and handrails at exterior pantry door
- t) Paint building exterior
- u) Approximately 240 square foot addition of air conditioned trash room with two metal exterior overhead doors
- v) Approximately 1,440 square feet of wood deck with railings, steps and ADA ramp
- w) Approximately 1,440 square feet pipe framed canvas canopy supported by east wall and pipe columns

Note:

Limits of construction will be within the existing building, but shall include the proposed trash room and wood deck additions. No structural upgrades, other than those required for the overhead doors and windows. The improvements do not include any site work, landscaping or grading, and assumes existing utility services are adequate, requiring no service upgrades.



TOTAL EVENT SPACE:
3,032

EXHIBIT "D"

Tenant's Work

Tenant's Scope of Work

- All Design Review Board and Planning Board protocols performed
- Full architectural drawings, plus civil, structural and MEP engineering drawings presented to City of Miami Beach Building Department
- All underground trenches dug to contain water, waste, and gas will be installed throughout the site, along with an in-ground grease trap from all food operations. Full MEP drawings will be pre-approved by CMB building department
- Electrical lines, along with lighting and speakers will be installed on site. Electrical wires will feed each food truck and container, as needed
- Existing fence will be adjusted to have public entrances, emergency exits, and truck entrances
- Footers will be installed for all ground-level containers installed on the site, engineered drawings to be pre- approved by CMB building department
- Main pathway from south entrance to north entrance will be partially covered [canvas or potential rain collection / solar collection]. These structures will be supported from the adjoining containers [from the roof level, container-to-container]
- Food Truck pathway to have similar coverings and raised wooden boardwalk [steps and ramps for access]
- Install main bar tent [separate vendor and permit]. Install bar and back bar in the center of tent; square walk-in cooler [9'x9'] in the center, back bar and front bar installed around the cooler
- All hard and soft ground surfaces to be installed by tenant, including; AstroTurf, compacted limestone, paved walkways, concrete under food trucks, and wooden boardwalk-type walkways
- One or two water connections / hydrants [as determined by MBFD] to be installed in the interior of the site for fire hose hook-up
- Install hanging lights throughout the site, lighting on containers [up-lights], plus landscape lights and pathway lights
- Install performance stage, made out of shipping containers [see site-plan for location]. Stage to have theatrical lights plus projection screen for video
- In two locations [to be determined], containers with toilets will be installed to increase capacity
- Install garden features; organic soil-based in raised containers with irrigation system. Install containerized hydroponic farms with electric, water, etc.
- Install signage; attached to the North entrance and South entrance containers
- Install landscaping and irrigation system throughout project
- Install exit signs / strobes / siren at emergency exit locations, where needed [as per the MBFD]

EXHIBIT "E"

Rules and Regulations

1. Security. Landlord may from time to time adopt appropriate systems and procedures for the security or safety of the Premises, any persons occupying, using, or entering the same, or any equipment, furnishings, or contents thereof, and Tenant shall comply with Landlord's reasonable requirements relative thereto.
2. Return of Keys. At the end of the Term, Tenant shall promptly return to Landlord all keys for the Premises which are in the possession of Tenant. In the event any Tenant fails to return keys, Landlord may retain \$100.00 of Tenant's security deposit for locksmith work and administration.
3. Repair, Maintenance, Alterations, and Improvements. Tenant shall carry out Tenant's repair, maintenance, alterations, and improvements in the Premises only during times agreed to in advance by Landlord.
4. Water Fixtures. Tenant shall not use water fixtures for any purpose for which they are not intended, nor shall water be wasted by tampering with such fixtures. Any cost or damage resulting from such misuse by Tenant shall be paid for by Tenant.
5. Personal Use of Premises. The Premises shall not be used or permitted to be used for residential, lodging, or sleeping purposes or for the storage of personal effects or property not required for business purposes.
6. Bicycles, Animals. Tenant shall not bring onto the Premises any exotic animals or any animal that may present a danger to the public or which may implicate public health concerns at the Premises, and shall not permit bicycles or other vehicles inside or on the sidewalks outside the Premises except in areas designated from time to time by Landlord for such purposes.
7. Deliveries. Tenant shall ensure that deliveries of supplies, fixtures, equipment, furnishings, wares, and merchandise to the Premises are made through such entrances, corridors and at such times as may from time to time be designated by Landlord, and shall promptly pay or cause to be paid to Landlord the cost of repairing any damage in the Premises, caused by any person making improper deliveries.
8. Solicitations. Landlord reserves the right to restrict or prohibit canvassing, soliciting, or peddling in the Premises.
9. Refuse. Tenant shall place all refuse in proper receptacles provided by Tenant at its expense in the Premises or in receptacles (if any) provided by Landlord for the Premises, and shall keep sidewalks and driveways outside the Premises, and lobbies, corridors, stairwells, ducts, and shafts of the Premises, free of all refuse.
10. Obstructions. Tenant shall not obstruct or place anything in or on the sidewalks or driveways outside the Premises or in the lobbies, corridors, stairwells, or other common areas, or use such locations for any purpose except access to and exit from the Premises without Landlord's prior written consent. Landlord may remove at Tenant's expense any such obstruction or thing caused or placed by Tenant (and unauthorized by Landlord) without notice or obligation to Tenant.
11. Proper Conduct. Tenant shall not conduct itself in any manner which is inconsistent with the character of the Premises as a first quality entertainment pavilion or which will impair the comfort and convenience of other patrons in the Premises.
12. Employees, Agents, and Invitees. In these Rules and Regulations, "Tenant" includes the employees, agents, invitees, and licensees of Tenant and others permitted by Tenant to use or occupy the Premises.

13. Pest Control. In order to maintain satisfactory and uniform pest control throughout the Facility, Tenant shall engage for the Premises and at its sole cost, a qualified pest extermination contractor either designated or approved by Landlord, who shall perform pest control and extermination services in the Premises at such intervals as reasonably required or as may be directed by Landlord.

14. 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. Only the outdoor furniture specifically shown on the approved site plan shall be allowed on the 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 Premises;
- f. No storage of dishes, silverware or other similar restaurant equipment shall be allowed on any public right-of-way, or outside the structural confines of the Premises;
- g. Intentionally Deleted;
- h. 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;
- i. Upon written or verbal notification by the City Manager or his designee 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 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 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.

EXHIBIT "F"

NORTH BEACH YARD

	OCCUPANCY RATE OR FREQUENCY	MONTHLY	Year 1		Year 2		Year 3		Year 4		Year 5	
			COMMISSIONABLE		COMMISSIONABLE		COMMISSIONABLE		COMMISSIONABLE		COMMISSIONABLE	
			REVENUES		REVENUES		REVENUES		REVENUES		REVENUES	
FOOD TRUCK VENDORS 10	90.00%	\$ 36,000	\$ 432,000	105.00%	\$ 453,600	105.00%	\$ 476,280	105.00%	\$ 500,094	102.00%	\$ 510,096	
THE BAR @ NBY 1	100.00%	\$ 8,000	\$ 96,000	110.00%	\$ 105,600	110.00%	\$ 116,160	110.00%	\$ 127,776	105.00%	\$ 134,165	
MORNING GLORY 1	100.00%	\$ 4,000	\$ 48,000	105.00%	\$ 50,400	105.00%	\$ 52,920	105.00%	\$ 55,566	105.00%	\$ 58,344	
DELLA BOWLS 1	100.00%	\$ 4,000	\$ 48,000	105.00%	\$ 50,400	105.00%	\$ 52,920	105.00%	\$ 55,566	105.00%	\$ 58,344	
CHARCOAL 1	100.00%	\$ 5,000	\$ 60,000	105.00%	\$ 63,000	105.00%	\$ 66,150	105.00%	\$ 69,458	105.00%	\$ 72,930	
MARKET VENDORS [8'X10'] 8	85.00%	\$ 12,240	\$ 146,880	105.00%	\$ 154,224	105.00%	\$ 161,935	105.00%	\$ 170,032	105.00%	\$ 178,534	
RETAIL KIOSKS [8'X12'] 3	90.00%	\$ 9,450	\$ 113,400	104.00%	\$ 117,936	104.00%	\$ 122,653	104.00%	\$ 127,560	104.00%	\$ 132,652	
RETAIL VENDORS 3	90.00%	\$ 9,450	\$ 113,400	104.00%	\$ 117,936	104.00%	\$ 122,653	104.00%	\$ 127,560	104.00%	\$ 132,652	
MARKET VENDORS [12'X16'] 2	90.00%	\$ 7,200	\$ 86,400	104.00%	\$ 89,856	104.00%	\$ 93,450	104.00%	\$ 97,188	104.00%	\$ 101,076	
FITNESS CONTAINER 1	100.00%	\$ 2,000	\$ 24,000	101.00%	\$ 24,240	101.00%	\$ 24,482	101.00%	\$ 24,727	101.00%	\$ 24,974	
CABANA RENTALS 3	12	\$ 9,000	\$ 108,000	104.00%	\$ 112,320	104.00%	\$ 116,813	104.00%	\$ 121,485	104.00%	\$ 126,345	
SMALL EVENT RENTALS 1	15	\$ 7,500	\$ 90,000	104.00%	\$ 93,600	104.00%	\$ 97,344	104.00%	\$ 101,238	104.00%	\$ 105,287	
SUB TOTAL / RENT REVENUE BASE		\$ 113,840	\$ 1,366,080		\$ 1,433,112		\$ 1,503,762		\$ 1,578,249		\$ 1,635,419	
SUB TOTAL / BASE RENT	5.00% OF RENTAL INCOME	\$ 1.00	\$ 1.00		\$ 71,656		\$ 75,188		\$ 78,912		\$ 81,771	
FESTIVAL INCOME 1		\$ 50,000	\$ 50,000		\$ 100,000		\$ 150,000		\$ 150,000		\$ 150,000	
	7.00% OF RENTAL INCOME	\$ 3,500	\$ 3,500		\$ 7,000		\$ 10,500		\$ 10,500		\$ 10,500	
TOTAL		\$ 3,501	\$ 78,656		\$ 85,688		\$ 89,412		\$ 92,271		\$ 92,271	\$ 349,528

NOTES

1. THE TEST KITCHEN / KITCHEN CLASSROOM IS NOT FIGURED IN THESE CALCULATIONS BECAUSE THE PURPOSE OF THAT UNIT IS TO TEACH COOKING CLASSES - IT IS NOT PROGRAMMED AS A TYPICAL COMMERCIAL ARM OF THE COMPLEX
2. THE ROOF-TOP PAVILLION IS NOT FIGURED INTO THESE CALCULATIONS SINCE (A), IT IS UNKNOWN IF THE PAVILLION IS FEASIBLE AND (B), IF IT DOES GET BUILT, A DIFFERENT RATE WILL NEED TO BE CONSIDERED.
3. THE FITNESS CENTER RENT ESTIMATE HAS BEEN LOWERED, AS THE ORIGINAL NUMBER (\$4K) WAS PROBABLY EXCESSIVE. IF, AFTER THE FIRST YEAR, IT CAN BE ESTABLISHED THAT THE FITNESS CENTER CAN PAY MORE, WE WILL INCREASE THE RENT.

EXHIBIT "G"

Cleanliness Standards

Cleanliness Index for Streets, Sidewalks, Alleys, Parks, Parking Lots and Beaches

Index	Litter / Trash	Garbage Cans / Dumpsters
1 Extremely Clean	<ul style="list-style-type: none"> No litter and/or debris on entire block face. 	<ul style="list-style-type: none"> Can is in good working order, no more than 3/4 full. Can is free of items (i.e. stickers, graffiti.)
	Organic Materials <ul style="list-style-type: none"> Isolated instances of small fresh organic material (i.e. leaves, branches) cover the paved area. 	Fecal Matter <ul style="list-style-type: none"> Fecal matter is not visible.
2 Clean	Litter / Trash <ul style="list-style-type: none"> Isolated pieces of litter on the entire assessed area, which is not void of litter, but may contain an isolated incidence of litter. 	Garbage Cans / Dumpsters <ul style="list-style-type: none"> Can is in good working order, no more than 3/4 full. Isolated piece of trash outside of the can. Can is free of items (i.e. stickers, graffiti.)
	Organic Materials <ul style="list-style-type: none"> Less than 10% of a 10 step distance paved area is covered by small organic materials, but no more than 10% of the entire assessed area. 	Fecal Matter <ul style="list-style-type: none"> Past residue of fecal matter. It seems that an attempt was made to clean the fecal matter, but residue was left behind.
3 Somewhat Clean	Litter / Trash <ul style="list-style-type: none"> Small to moderate amounts of litter. Litter accumulation should account to less than 10 small pieces or 2-4 pieces of large litter, but no more than 10% of the entire assessed area. 	Garbage Cans / Dumpsters <ul style="list-style-type: none"> Can is functioning, but is full with trash, which can be seen from the eye level. No litter above the rain guard. One small isolated instance of a sticker or graffiti, which the eye is not drawn to it.
	Organic Materials <ul style="list-style-type: none"> Between 10% - 30% of a 10 step paved area is covered by organic materials, but no more than 10% of the entire assessed area 1 to 3 pieces of large organic materials 	Fecal Matter <ul style="list-style-type: none"> One instance of fecal matter is present on the public area.
4 Somewhat Dirty	Litter / Trash <ul style="list-style-type: none"> Consistently scattered trash. The trash accumulation should account to more than 10 pieces of small litter or over 4 pieces of large litter, but no more than 10% of the entire assessed area. 	Garbage Cans / Dumpsters <ul style="list-style-type: none"> Can is full and there is trash above the rain guard. Can is in a usable and working condition, but contains items (i.e. stickers, graffiti) on them and/or some damage (ex. dents).
	Organic Materials <ul style="list-style-type: none"> Between 30% - 50% of a 10 step paved area is covered by organic materials. 2 to 3 instances of organic material accumulation caused by standing water/poor drainage. The organic material is beginning to turn brown. 	Fecal Matter <ul style="list-style-type: none"> Two instances of fecal matter are present on the public area.
5 Dirty	Litter / Trash <ul style="list-style-type: none"> Consistent accumulation of trash. There are multiple piles of trash consisting of more than 10 pieces of small litter or over 4 pieces of large litter. 	Garbage Cans / Dumpsters <ul style="list-style-type: none"> Can is full and there is trash above the rain guard and beginning to overflow. A large area of the can contains items (i.e. stickers or graffiti) on them.
	Organic Materials <ul style="list-style-type: none"> Over 50% of paved area is covered by organic materials. Over 10 pieces of large organic materials. 3-4 instances of organic material accumulation caused by standing water and poor drainage. 	Fecal Matter <ul style="list-style-type: none"> Three instances of fecal matter are present on the public area.
6 Extremely Dirty	Litter / Trash <ul style="list-style-type: none"> Area is blocked by an accumulation of trash and litter. Illegal dumping may be evident. Hazardous materials on the street. 	Garbage Cans / Dumpsters <ul style="list-style-type: none"> Can is full and trash has overflowed to the ground. In some cases, there is a rat/rodent/insect infestation. Can is covered of items (i.e. stickers or graffiti) and needs to be replaced.
	Organic Materials <ul style="list-style-type: none"> 90-100% of paved area is covered with organic material. The organic material has turned brown. Over 5 instances of organic material accumulation caused by standing water and poor drainage. 	Fecal Matter <ul style="list-style-type: none"> Four or more instances of fecal matter are present on the public area.

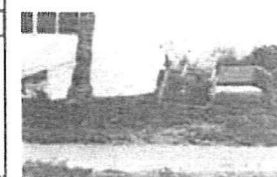
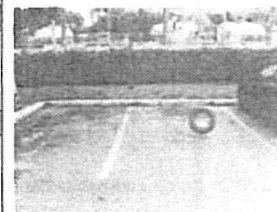


Exhibit "H"
Penalties in Lieu of Default

Failure to properly remove debris, litter or garbage, or otherwise satisfy the Level 2 Cleanliness Standards: \$250 per violation;

Failure to comply with any alcoholic beverage law, food service or handling requirement: \$500 per violation;

Failure to comply with Landlord's expanded polystyrene prohibition: \$250 per violation;

Failure to promptly correct or resolve any code violation or notice of violation issued by any agency having jurisdiction over the Premises, the Tenant, or any Vendor or operator on the Premises: \$250 per violation;

Failure to maintain any copyright license as required under the Lease: \$500 per violation;

Failure to comply with Landlord's signage requirements: \$250 per violation;

Failure to properly store or maintain hazardous materials: \$500 per violation;

Failure to adhere to Rules and Regulations set forth in Exhibit E: \$250 per violation;

Failure to report any matter to Landlord as required under Lease: \$100 per violation