

**ARTICLE 10**

**INSURANCE**

**10.1 Indemnification and Waiver**

10.1.1 Tenant hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises from any cause whatsoever (including, but not limited to, any personal injuries resulting from a slip and fall in, upon or about the Premises) and agrees that Landlord, Hotel Owner, their affiliates, and their respective officers, agents, servants, employees, agents and independent contractors (collectively, "**Landlord Parties**") shall not be liable for, and are hereby released from any responsibility for, any damage either to person or property or resulting from the loss of use thereof, which damage is sustained by Tenant or by other persons claiming through Tenant, except for acts of negligence or willful misconduct by Landlord or Landlord's contractors, agents, servants, employees, invitees, guests or licensees. Tenant shall indemnify, defend, protect, and hold harmless the Landlord Parties from any and all loss, cost, damage, expense and liability (including without limitation court costs and reasonable attorneys' fees) incurred in connection with or arising from any cause in, on or about the Premises (including, but not limited to, a slip and fall), any acts, omissions or negligence of Tenant or of any person claiming by, through or under Tenant, or of the contractors, agents, servants, employees, invitees, guests or licensees of Tenant or any such person, in, on or about the Premises or any breach of the terms of this Lease, either prior to, during, or after the expiration of the Lease Term, provided that the terms of the foregoing indemnity shall not apply to the negligence or willful misconduct of Landlord or Landlord's contractors, agents, servants, employees, invitees, guests or licensees.

10.1.2 Landlord shall indemnify, defend, protect, and hold harmless Tenant, its affiliates, and their respective officers, agents, servants, employees, agents and independent contractors (collectively "**Tenant Parties**") from any and all loss, cost, damage, expense and liability incurred in connection with or arising from any cause in, on or about the Hotel, but not including the Premises (including, but not limited to, a slip and fall in the Premises), or any breach of the terms of this Lease or the exhibits attached hereto, either prior to, during, or after the expiration of either the Lease Term, provided that the terms of the foregoing indemnity shall not apply to the negligence or willful misconduct of Tenant or Landlord's contractors, agents, servants, employees, invitees, guests or licensees.

10.1.3 In case any action or proceeding is brought against a Party by reason of any of the indemnified matters, the indemnifying Party, upon written notice from the indemnified Party or Parties, shall, at its expense, resist or defend the action or proceeding. If the indemnifying Party is required to defend any action or proceeding pursuant to this Article 10 to which action or proceeding the indemnified Party or Parties (as the case may be) is made a party, the indemnified Party or Parties shall also be entitled to appear, defend, or otherwise take part in the matter involved, at its election, and at the sole expense of the indemnified Party or Parties by counsel of its choosing, provided that: (i) such action by the non-indemnified Party or Parties shall not limit or make void any liability of any insurer of the indemnifying Party with respect to the claim or matter in question; and (ii) the indemnified Party or Parties shall not, without the indemnifying Party's prior written consent, settle any such action or proceeding or interfere with the indemnifying Party's defense or prosecution of such action or proceeding.

10.1.4 The provisions of this Section 10.1 shall survive the expiration or sooner termination of this Lease with respect to any claims or liability arising in connection with any event occurring prior to such expiration or termination.

10.2 **Tenant's Compliance With Landlord's Fire and Casualty Insurance.** Tenant shall, at Tenant's expense, comply with all reasonable insurance company requirements pertaining to the use of the

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Premises. If Tenant's specific conduct or use of the Premises (as opposed to the Permitted Use) causes any increase in the premium for such insurance policies then Tenant shall reimburse Landlord for any such increase. Tenant, at Tenant's expense, shall comply with all rules, orders, regulations or requirements of the American Insurance Association (formerly the National Board of Fire Underwriters) and with any similar body.

10.3 **Tenant's Insurance.** Tenant, and its subcontractors of every tier, shall maintain the following coverages in the following amounts. In connection with Tenant's subcontractor's the below insurance policies must cover the period the subcontractor is performing any work hereunder.

10.3.1 Commercial General Liability Insurance on an occurrence form covering the insured against claims of bodily injury, personal injury and property damage (including loss of use thereof) arising out of Tenant's operations, and contractual liabilities (covering the performance by Tenant of its indemnity agreements), covering the insuring provisions of this Lease and the performance by Tenant of the indemnity agreements set forth in Section 10.1 of this Lease, for limits of liability on a per location basis of not less than:

Bodily Injury and Personal Injury Liability	\$1,000,000.00 each occurrence
Property Damage Liability	\$2,000,000.00 each occurrence

10.3.2 Physical Damage Insurance covering all furniture, business and trade fixtures, office equipment, free-standing cabinet work, movable partitions, merchandise and all other items of Tenant's property on the Premises installed by, for, or at the expense of Tenant. Such insurance shall be written on an "all risks" of physical loss or damage basis, for the full replacement cost value (subject to reasonable deductible amounts) new without deduction for depreciation of the covered items and in amounts that meet any co-insurance clauses of the policies of insurance and shall include coverage for damage or other loss caused by fire or other peril including, but not limited to, vandalism and malicious mischief, theft, water damage of any type, including sprinkler leakage, bursting or stoppage of pipes, and explosion, and providing business interruption coverage for a period of one year.

10.3.3 Worker's Compensation and Employer's Liability or other similar insurance pursuant to all applicable state and local statutes and regulations. Leased employees (PEO firms) will not be accepted unless it is accompanied by an "if any" minimum premium insurance policy.

10.3.4 In the event Tenant is specifically authorized to sell alcohol pursuant to Article 5, above, as a condition thereto, Tenant shall obtain an alcohol liability insurance policy with a limit of not less than Two Million and No/100 Dollars (\$2,000,000.00).

10.3.5 Umbrella liability insurance with limits of liability per occurrence of not less than Five Million and No/100 Dollars (\$5,000,000.00).

10.4 **Form of Policies.** The minimum limits of policies of insurance required of Tenant under this Lease shall in no event limit the liability of Tenant under this Lease. Such insurance shall (i) name Landlord and any other party the Landlord so specifies, as an additional insured, including Landlord's managing agent, if any; (ii) specifically cover the liability assumed by Tenant under this Lease, including, but not limited to, Tenant's obligations under Section 10.1 of this Lease; (iii) be issued by an insurance company having a rating of not less than A;X in Best's Insurance Guide or which is otherwise acceptable to Landlord and licensed to do business in the Commonwealth of Massachusetts; (iv) be primary and non-contributory insurance as to all claims thereunder and provide that any insurance carried by Landlord is



excess and is non-contributing with any insurance requirement of Tenant; (v) be in form and content reasonably acceptable to Landlord; and (vi) provide that said insurance shall not be canceled or coverage changed unless thirty (30) days' prior written notice shall have been given to Landlord and any mortgagee of Landlord. Tenant shall deliver said policy or policies or certificates thereof to Landlord on or before the earlier to occur of the date Landlord delivers the Premises to Tenant or the date Tenant commences Tenant's Work and at least thirty (30) days before the expiration dates thereof. In the event Tenant shall fail to procure such insurance, or to deliver such policies or certificate, Landlord may, at its option, procure such policies for the account of Tenant, and the cost thereof shall be paid to Landlord within five (5) days after delivery to Tenant of bills therefor.

10.5 **Subrogation.** Notwithstanding anything herein to the contrary, Landlord and Tenant intend that their respective property loss risks shall be borne by reasonable insurance carriers to the extent above provided, and Landlord and Tenant hereby agree to look solely to, and seek recovery only from, their respective insurance carriers in the event of a property loss to the extent that such coverage is agreed to be provided hereunder. Notwithstanding anything herein to the contrary, the parties each hereby waive all rights and claims against each other for such losses, and waive all rights of subrogation of their respective insurers, provided such waiver of subrogation shall not affect the right to the insured to recover thereunder. The parties agree that their respective insurance policies are now, or shall be, endorsed such that the waiver of subrogation shall not affect the right of the insured to recover thereunder, so long as no material additional premium is charged therefor.

10.6 **Additional Insurance Obligations.** Tenant shall carry and maintain during the entire Lease Term, at Tenant's sole cost and expense, the amounts of the insurance required to be carried by Tenant pursuant to this Article 10. Landlord shall carry and maintain during the Lease Term, at Landlord's sole cost and expense, any additional amounts of insurance above the amounts required by this Article 10 and any other reasonable types of insurance coverage typically required for similar uses to the Permitted Use in the Boston metropolitan area and in such reasonable amounts covering the Premises and Tenant's operations therein, as Landlord may desire.

## ARTICLE 11

### DAMAGE AND DESTRUCTION

11.1 **Repair of Damage to Premises by Landlord.** Tenant shall promptly notify Landlord of any damage to the Premises resulting from fire or any other casualty. If the Premises or any Common Areas serving or providing access to the Premises shall be damaged by fire or other casualty, Landlord shall promptly and diligently, subject to reasonable delays for insurance adjustment or other matters beyond Landlord's reasonable control, and subject to all other terms of this Article 11, restore the Premises and such Common Areas. Such restoration shall be to substantially the same condition of the Premises and the Common Areas prior to the casualty, except for modifications required by zoning and Hotel codes and other laws, or modification to the Common Areas required by the holder of a mortgage on the Hotel, or any other modifications to the Common Areas deemed desirable by Landlord, which are consistent with the character of the Hotel, provided that access to the Premises and any common restrooms serving the Premises shall not be materially impaired. Upon the occurrence of any damage to the Premises, upon notice (the "Landlord Repair Notice") to Tenant from Landlord, Tenant shall assign to Landlord (or to any party designated by Landlord) all insurance proceeds payable to Tenant under Tenant's insurance required under Section 10.3 of this Lease, and Landlord shall repair any injury or damage to the Tenant's Work and the initial equipment installed in the Premises and shall return such Tenant's Work to substantially their original condition; provided that if the cost of such repair by Landlord exceeds the amount of insurance proceeds received by Landlord from Tenant's insurance carrier, as assigned by Tenant, the cost of such repairs shall be paid by Tenant to Landlord prior to Landlord's commencement of repair of the damage, but provided





that Landlord shall obtain at least 3 competitive bids for each scope of such work in consultation with Tenant and shall select the lowest reasonable bid. In the event that Landlord does not deliver the Landlord Repair Notice within seven (7) days following the date the casualty becomes known to Landlord, Tenant shall, at its sole cost and expense, repair any injury or damage to the Tenant's Work installed in the Premises and shall return such Tenant's Work to their original condition. Whether or not Landlord delivers a Landlord Repair Notice, prior to the commencement of construction, Tenant shall submit to Landlord, for Landlord's review and approval, all plans, specifications and working drawings relating thereto, and Landlord shall select the contractors to perform such improvement work. Landlord shall not be liable for any inconvenience or annoyance to Tenant or its visitors, or injury to Tenant's business resulting in any way from such damage or the repair thereof; provided however, that if such fire or other casualty shall have damaged the Premises or Common Areas necessary to Tenant's occupancy, and the Premises are not occupied by Tenant as a result thereof, then during the time and to the extent the Premises are unfit for occupancy, the Rent shall be abated and the Lease extended for the period that the Premises are unfit for occupancy. In the event that Landlord shall not deliver the Landlord Repair Notice, Tenant's right to abatement pursuant to the preceding sentence shall terminate as of the date which is reasonably determined by Landlord to be the date Tenant should have completed repairs to the Premises assuming Tenant used reasonable due diligence in connection therewith but in no event shall such Rent abatement continue beyond ninety (90) days following Landlord's completion of restoration of those portions of the Base Hotel and Common Areas necessary for Tenant's use and occupancy of the Premises. In addition to the foregoing, in the event any utilities servicing the Premises are interrupted due to the gross negligence or willful misconduct of Landlord or Landlord's contractors, agents, servants, employees, invitees, guests or licensees and such interruption renders the Premises unfit for occupancy, the Rent shall be abated for the period that the Premises is unfit for occupancy.

11.2 **Landlord's Option to Repair.** Notwithstanding the terms of Section 11.1 of this Lease, Landlord may elect not to rebuild and/or restore the Premises and/or the Hotel, and instead terminate this Lease, by notifying Tenant in writing of such termination within ninety (90) days after the date of discovery of the damage, such notice to include a termination date giving Tenant sixty (60) days to vacate the Premises, but Landlord may so elect only if the Hotel shall be damaged by fire or other casualty or cause, whether or not the Premises are affected, and one or more of the following conditions is present: (i) in Landlord's reasonable judgment, repairs cannot reasonably be completed within one hundred eighty (180) days after the date of discovery of the damage (when such repairs are made without the payment of overtime or other premiums); (ii) the holder of any mortgage on the Hotel shall require that the insurance proceeds or any portion thereof be used to retire the mortgage debt; (iii) the damage is not substantially covered by Landlord's (and any assigned Tenant's) insurance policies; (iv) intentionally omitted; or (v) the damage occurs during the last twelve (12) months of the Lease Term; provided, however, that if Landlord does not elect to terminate this Lease pursuant to Landlord's termination right as provided above, and the repairs cannot, in the reasonable opinion of Landlord, be completed within one hundred eighty (180) days after being commenced, Tenant may elect, no earlier than sixty (60) days after the date of the damage and not later than ninety (90) days after the date of such damage, to terminate this Lease by written notice to Landlord effective as of the date specified in the notice, which date shall not be less than thirty (30) days nor more than sixty (60) days after the date such notice is given by Tenant. Notwithstanding the provisions of this Section 11.2, Tenant shall have the right to terminate this Lease under this Section 11.2 only if each of the following conditions is satisfied: (a) the damage to the Hotel by fire or other casualty was not caused by the gross negligence or intentional act of Tenant or its partners or subpartners and their respective officers, agents, servants, employees, invitees, guests and contractors; (b) Tenant is not then in default under this Lease (beyond any applicable notice and cure period); (c) as a result of the damage, Tenant cannot reasonably conduct business from the Premises; and, (d) as a result of the damage to the Hotel, Tenant does not occupy or use substantially all of the Premises.





11.3 **Waiver of Statutory Provisions.** The provisions of this Lease, including this Article 11, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises or the Hotel, and any statute or regulation of the Commonwealth of Massachusetts, with respect to any rights or obligations concerning damage or destruction in the absence of an express agreement between the parties, and any other statute or regulation, now or hereafter in effect, shall have no application to this Lease or any damage or destruction to all or any part of the Premises or the Hotel.

## **ARTICLE 12**

### **NONWAIVER**

No provision of this Lease shall be deemed waived by either party hereto unless expressly waived in a writing signed thereby. The waiver by either party hereto of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant or condition herein contained. The subsequent acceptance of the Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular Rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No acceptance of a lesser amount than the Rent herein stipulated shall be deemed a waiver of Landlord's right to receive the full amount due, nor shall any endorsement or statement on any check or payment or any letter accompanying such check or payment be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the full amount due. No receipt of monies by Landlord from Tenant after the termination of this Lease shall in any way alter the length of the Lease Term or of Tenant's right of possession hereunder, or after the giving of any notice shall reinstate, continue or extend the Lease Term or affect any notice given Tenant prior to the receipt of such monies, it being agreed that after the service of notice or the commencement of a suit, or after final judgment for possession of the Premises, Landlord may receive and collect any Rent due, and the payment of said Rent shall not waive or affect said notice, suit or judgment.

## **ARTICLE 13**

### **CONDEMNATION**

If the whole or any part of the Premises or Hotel shall be taken by power of eminent domain or condemned by any competent authority for any public or quasi-public use or purpose, or if any adjacent property or street shall be so taken or condemned, or reconfigured or vacated by such authority in such manner as to require the use, reconstruction or remodeling of any part of the Premises or Hotel, or if Landlord shall grant a deed or other instrument in lieu of such taking by eminent domain or condemnation, Landlord shall have the option to terminate this Lease effective as of the date possession is required to be surrendered to the authority. If more than twenty-five percent (25%) of the usable square feet of the Premises is taken or such lesser portion as would be reasonably needed to operate the restaurant in the Premises without significant renovation, or if access to the Premises is substantially impaired, in each case for a period in excess of ninety (90) days, Tenant shall have the option to terminate this Lease effective as of the date possession is required to be surrendered to the authority. Tenant shall not because of such taking assert any claim against Landlord for any compensation because of such taking but shall be entitled to assert a claim against the governmental authority for such taking of its interest in the Premises (if any) and Tenant's personal property and fixtures and improvements pertaining to the realty belonging to Tenant and removable by Tenant upon expiration of the Lease Term pursuant to the terms of this Lease, loss of business goodwill for moving expenses, so long as claim is payable separately to Tenant. All Rent shall be apportioned as of the date of such termination. If any part of the Premises shall be taken, and this Lease



shall not be so terminated, the Rent shall be proportionately abated. Notwithstanding anything to the contrary contained in this Article 13, in the event of a temporary taking of all or any portion of the Premises for a period of one hundred and eighty (180) days or less, then this Lease shall not terminate but the Rent shall be abated for the period of such taking in proportion to the ratio that the amount of square feet of the Premises taken bears to the total square feet of the Premises, but if Tenant is not reasonably able to operate the Premises, then the whole of the Premises shall be considered taken. Landlord shall be entitled to receive the entire award made in connection with any such temporary taking however Tenant shall have the ability to make its own application for its award, but only to the extent the same does not limit or diminish Landlord's award.

#### **ARTICLE 14**

##### **ASSIGNMENT AND SUBLICENSE**

14.1 **Transfers.** Tenant shall not, without the prior written consent of Landlord, assign, mortgage, pledge, hypothecate, encumber, or permit any lien to attach to, or otherwise transfer, this Lease or any interest hereunder, permit any assignment, or other transfer of this Lease or any interest hereunder by operation of law, or enter into any sublicense or concession agreements or otherwise permit the occupancy or use of the Premises or any part thereof by any persons other than Tenant and its employees (all of the foregoing are hereinafter sometimes referred to collectively as "**Transfers**" and any person to whom any Transfer is made or sought to be made is hereinafter sometimes referred to as a "**Transferee**"). If Tenant desires Landlord's consent to any Transfer, Tenant shall notify Landlord in writing, which notice (the "**Transfer Notice**") shall include (i) the proposed effective date of the Transfer, which shall not be less than thirty (30) days nor more than one hundred eighty (180) days after the date of delivery of the Transfer Notice, (ii) a description of the portion of the Premises to be transferred (the "**Subject Space**"), (iii) all of the terms of the proposed Transfer and the consideration therefor, in connection with such Transfer, the name and address of the proposed Transferee, and a copy of all existing executed and/or proposed documentation pertaining to the proposed Transfer, including all existing operative documents to be executed to evidence such Transfer or the agreements incidental or related to such Transfer, (iv) current financial statements of the proposed Transferee certified by an officer (which need not be audited but only if certified as true and correct by Tenant's CEO or CFO), partner or owner thereof, business credit and personal references and history of the proposed Transferee and any other information reasonably required by Landlord which will enable Landlord to determine the financial responsibility, character, and reputation of the proposed Transferee, nature of such Transferee's business and proposed use of the Subject Space, and (v) an executed estoppel certificate from Tenant in the form set forth on Exhibit G. Any Transfer made without Landlord's prior written consent shall, at Landlord's option, be null, void and of no effect, and shall, at Landlord's option, constitute a default by Tenant under this Lease. Whether or not Landlord consents to any proposed Transfer, Tenant shall pay Landlord's reasonable review and processing fees, as well as any reasonable professional fees (including, without limitation, attorneys', accountants', architects', engineers' and consultants' fees) incurred by Landlord, within thirty (30) days after written request by Landlord (not to exceed \$2,500.00 per occurrence). Notwithstanding the foregoing, or anything to the contrary contained herein, Tenant acknowledges and agrees that the Services to be provided hereunder are personal to Tenant and Tenant's performance of the Services are a material inducement to Landlord entering into this Lease with Tenant and, as such, Tenant shall not be permitted to subcontract the performance of any or all of the Services to any third party.

14.2 **Landlord's Consent.** Landlord shall not unreasonably withhold, conditioned or delay its consent to any proposed Transfer of the Subject Space to the Transferee on the terms specified in the Transfer Notice. Without limitation as to other reasonable grounds for withholding consent, the parties hereby agree that it shall be reasonable under this Lease and under any applicable law for Landlord to withhold consent to any proposed Transfer where one or more of the following apply:



14.2.1 The Transferee is of a character or reputation or engaged in a business which is not consistent with the quality of the Hotel;

14.2.2 The Transferee intends to use the Subject Space for purposes which are not permitted under this Lease;

14.2.3 The Transferee is either a governmental agency or instrumentality thereof;

14.2.4 The Transferee is not a party of reasonable financial worth and/or financial stability in light of the responsibilities to be undertaken in connection with the Transfer on the date consent is requested;

14.2.5 The proposed Transfer would cause a violation of the Branding Standards or another lease for space in the Hotel, or would give an occupant of the Hotel a right to cancel its lease;

14.2.6 the proposed Transferee is not likely to conduct a business of a quality and standards substantially equal to that conducted by Tenant;

14.2.7 the price point of items to be featured on the proposed Transferee's menu is, in Landlord's reasonable judgment, materially less than the price point of items featured on Tenant's menu during the two (2) years immediately prior to the proposed Transfer;

14.2.8 a Transfer is of less than the entire Premises (except in the case of a sublicense or concession); or

14.2.9 the proposed Transferee does not, in Landlord's reasonable business judgment, have sufficient business experience or capability to successfully operate the Permitted Use.

If Landlord consents to any Transfer pursuant to the terms of this Section 14.2 (and does not exercise any rights Landlord may have under Section 14.4 of this Lease), Tenant may, not later than the expiration of said six-month period, enter into such Transfer of the Premises or portion thereof, upon substantially the same terms and conditions as are set forth in the Transfer Notice furnished by Tenant to Landlord pursuant to Section 14.1 of this Lease, provided that if there are any changes in the terms and conditions from those specified in the Transfer Notice (i) such that Landlord would initially have been entitled to refuse its consent to such Transfer under this Section 14.2, or (ii) which would cause the proposed Transfer to be materially more favorable to the Transferee than the terms set forth in Tenant's original Transfer Notice, Tenant shall again submit the Transfer to Landlord for its approval and other action under this Article 14 (including Landlord's right under Section 14.4 of this Lease). Notwithstanding anything to the contrary in this Lease, if Tenant or any proposed Transferee claims that Landlord has unreasonably withheld or delayed its consent under Section 14.2 or otherwise has breached or acted unreasonably under this Article 14, their sole remedies shall be a suit for contract damages (other than damages for injury to, or interference with, Tenant's business including, without limitation, loss of profits, however occurring) or declaratory judgment and an injunction for the relief sought, and Tenant hereby waives all other remedies, including, without limitation, any right at law or equity to terminate this Lease, on its own behalf and, to the extent permitted under all applicable laws, on behalf of the proposed Transferee.

#### 14.3 Intentionally Omitted

14.4 Landlord's Option as to Subject Space. Notwithstanding anything to the contrary contained in this Article 14, in the event Tenant contemplates a Transfer of all or a portion of the Premises (excluding a concession or sublicense of less than all of the Premises for less than the entire remaining term



of the Lease), Tenant shall give Landlord notice (the "Intention to Transfer Notice") of such contemplated Transfer that sets forth the contemplated Transferee and the terms of such contemplated Transfer. The Intention to Transfer Notice shall specify the portion of and amount of square feet of the Premises which Tenant intends to Transfer (the "Contemplated Transfer Space"), the contemplated date of commencement of the contemplated Transfer (the "Contemplated Effective Date"), the contemplated length of the term of such contemplated Transfer and the amount of money or any other material terms and conditions offered by such Transferee, if any (the "Key Money"), and shall specify that such Intention to Transfer Notice is delivered to Landlord pursuant to this Section 14.4 in order to allow Landlord to elect whether to exercise Landlord's right of first refusal as to the Contemplated Transfer Space. Thereafter, Landlord shall have the option, by giving written notice (a "Response Notice" ) to Tenant within thirty (30) days after receipt of any Intention to Transfer Notice, Landlord's election to either (1) exercise its right of first refusal to Transfer the Contemplated Transfer Space on the terms and conditions set forth in the Intention to Transfer Notice, including without limitation, with respect to the Key Money, if applicable, and otherwise without qualification or other condition or (2) decline to exercise its right of first refusal as to the Contemplated Transfer Space. The exercise of such right by Landlord shall cancel and terminate this Lease with respect to such Contemplated Transfer Space as of the Contemplated Effective Date. In the event Landlord elects to exercise its right of first refusal as described herein and this Lease shall be canceled with respect to less than the entire Premises, the Rent reserved herein shall be prorated on the basis of the number of square feet retained by Tenant in proportion to the number of square feet contained in the Premises, and this Lease as so amended shall continue thereafter in full force and effect, and upon request of either party, the parties shall execute written confirmation of the same. If Landlord declines, or fails to elect in a timely manner, to exercise its right of first refusal as to the Contemplated Transfer Space under this Section 14.4, then, subject to the other terms of this Article 14, for a period of nine (9) months (the "Nine Month Period") commencing on the last day of such thirty (30) day period, Landlord shall not have any right to of first refusal as to the Contemplated Transfer Space with respect to any Transfer made during the Nine Month Period, provided that any such Transfer is substantially on the terms set forth in the Intention to Transfer Notice, and provided further that any such Transfer shall be subject to the remaining terms of this Article 14. If such a Transfer is not so consummated within the Nine Month Period (or if a Transfer is so consummated, then upon the expiration of the term of any Transfer of such Contemplated Transfer Space consummated within such Nine Month Period), Tenant shall again be required to submit a new Intention to Transfer Notice to Landlord with respect any contemplated Transfer, as provided above in this Section 14.4.

14.5 **Effect of Transfer.** If Landlord consents to a Transfer, (i) the terms and conditions of this Lease shall in no way be deemed to have been waived or modified, (ii) such consent shall not be deemed consent to any further Transfer by either Tenant or a Transferee, (iii) Tenant shall deliver to Landlord, promptly after execution, an original executed copy of all documentation pertaining to the Transfer in form reasonably acceptable to Landlord, and (iv) no Transfer relating to this Lease or agreement entered into with respect thereto, whether with or without Landlord's consent, shall relieve Tenant or any guarantor of the Lease from any liability under this Lease, including, without limitation, in connection with the Subject Space, unless a substitute, credit worthy guarantor, reasonably acceptable to Landlord, agrees to guaranty this Lease. However, notwithstanding anything to the contrary contained herein, if the Lease be assigned in accordance with this Article, then upon production of a replacement guarantor which shall be approved or disapproved by Landlord in Landlord's reasonable discretion, then Guarantor shall be relieved of any and all liability under the Guaranty.

14.6 **Additional Transfers.** For purposes of this Lease, the term "Transfer" shall also include (i) if Tenant is a partnership or limited liability company, the withdrawal or change, voluntary, involuntary or by operation of law, of fifty percent (50%) or more of the partners or members (as applicable), or transfer of fifty percent (50%) or more of partnership or membership interests (as applicable), within a twelve (12)-month period, or the dissolution of the partnership or limited liability company (as applicable) without immediate reconstitution thereof, and (ii) if Tenant is a closely held corporation (i.e., whose stock is not



publicly held and not traded through an exchange or over the counter), (A) the dissolution, merger, consolidation or other reorganization of Tenant or (B) the sale or other transfer of an aggregate of fifty percent (50%) or more of the voting shares of Tenant (other than to immediate family members by reason of gift or death), within a twelve (12)-month period, or (C) except for a pledge of its assets to its lender, which shall be permitted, the sale, mortgage, hypothecation or pledge of an aggregate of fifty percent (50%) or more of the value of the unencumbered assets of Tenant within a twelve (12)-month period.

14.7 **Occurrence of Default.** Any Transfer hereunder shall be subordinate and subject to the provisions of this Lease, and if this Lease shall be terminated during the term of any Transfer, Landlord shall have the right to: (i) treat such Transfer as cancelled and repossess the Subject Space by any lawful means, or (ii) require that such Transferee attorn to and recognize Landlord as its Landlord under any such Transfer. If Tenant shall be in default under this Lease, Landlord is hereby irrevocably authorized, as Tenant's agent and attorney-in-fact, to direct any Transferee to make all payments under or in connection with the Transfer directly to Landlord (which Landlord shall apply towards Tenant's obligations under this Lease) until such default is cured. Such Transferee shall rely on any representation by Landlord that Tenant is in default hereunder, without any need for confirmation thereof by Tenant. Upon any assignment, the assignee shall assume in writing all obligations and covenants of Tenant thereafter to be performed or observed under this Lease. No collection or acceptance of Rent by Landlord from any Transferee shall be deemed a waiver of any provision of this Article 14 or the approval of any Transferee or a release of Tenant from any obligation under this Lease, whether theretofore or thereafter accruing. In no event shall Landlord's enforcement of any provision of this Lease against any Transferee be deemed a waiver of Landlord's right to enforce any term of this Lease against Tenant or any other person, provided that Tenant shall not be liable for the actions of a Transferee taking an assignment of the Lease permitted under this Lease and consented to in writing by Landlord, to the extent such actions occur after the effective date of such assignment. If Tenant's obligations hereunder have been guaranteed, Landlord's consent to any Transfer shall not be effective unless the guarantor also consents to such Transfer.

## **ARTICLE 15**

### **SURRENDER OF PREMISES; OWNERSHIP AND REMOVAL OF TENANT PROPERTY**

15.1 **Surrender of Premises.** No act or thing done by Landlord or any agent or employee of Landlord during the Lease Term shall be deemed to constitute an acceptance by Landlord of a surrender of the Premises unless such intent is specifically acknowledged in writing by Landlord. The delivery of keys to the Premises to Landlord or any agent or employee of Landlord shall not constitute a surrender of the Premises or effect a termination of this Lease, whether or not the keys are thereafter retained by Landlord, and notwithstanding such delivery Tenant shall be entitled to the return of such keys at any reasonable time upon request until this Lease shall have been properly terminated. The voluntary or other surrender of this Lease by Tenant, whether accepted by Landlord or not, or a mutual termination hereof, shall not work a merger, and at the option of Landlord shall operate as an assignment to Landlord of all sublicenses affecting the Premises or terminate any or all such sublicenses.

15.2 **Removal of Tenant Property by Tenant.** Upon the expiration of the Lease Term, or upon any earlier termination of this Lease, Tenant shall, subject to the provisions of this Article 15, quit and surrender possession of the Premises to Landlord in as good order and condition as when Tenant took possession and as thereafter improved by Landlord and/or Tenant, reasonable wear and tear and repairs which are specifically made the responsibility of Landlord hereunder excepted. Upon such expiration or termination, Tenant shall, without expense to Landlord, remove or cause to be removed from the Premises all debris and rubbish, and such items of furniture, equipment, business and trade fixtures, free-standing cabinet work, movable partitions and other articles of personal property (other than Landlord's Property) owned by Tenant or installed or placed by Tenant at its expense in the Premises, including cables, conduits



and floor monuments (unless otherwise agreed by Landlord), and such similar articles of any other persons claiming under Tenant, as Landlord may, in its sole discretion, require to be removed, and Tenant shall repair at its own expense all damage to the Premises and Hotel resulting from such removal.

#### ARTICLE 16

##### HOLDING OVER

If Tenant holds over after the expiration of the Lease Term or earlier termination thereof, with or without the express or implied consent of Landlord, such tenancy shall be from month to month only, and shall not constitute a renewal hereof or an extension for any further term, and in such case Rent shall be payable at a monthly rate equal to 150% percent of the Rent applicable during the last license period of the Lease Term under this Lease. Such month to month tenancy shall be subject to every other applicable term, covenant and agreement contained herein. Nothing contained in this Article 16 shall be construed as consent by Landlord to any holding over by Tenant, and Landlord expressly reserves the right to require Tenant to surrender possession of the Premises to Landlord as provided in this Lease upon the expiration or other termination of this Lease. The provisions of this Article 16 shall not be deemed to limit or constitute a waiver of any other rights or remedies of Landlord provided herein or at law. If Tenant fails to surrender the Premises upon the termination or expiration of this Lease, in addition to any other liabilities to Landlord accruing therefrom, Tenant shall protect, defend, indemnify and hold Landlord harmless from all loss, costs (including reasonable attorneys' fees) and liability resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding occupant founded upon such failure to surrender and any lost profits to Landlord resulting therefrom.

#### ARTICLE 17

##### ESTOPPEL CERTIFICATES

Within fifteen (15) business days following a request in writing by Landlord, Tenant shall execute, acknowledge and deliver to Landlord an estoppel certificate, which, as submitted by Landlord, shall be substantially in the form of Exhibit G, attached hereto (or such other form as may be required by any prospective mortgagee or purchaser of the Hotel, or any portion thereof, and reasonably satisfactory to Tenant), indicating therein any exceptions thereto that may exist at that time, and shall also contain any other information reasonably requested by Landlord or Landlord's mortgagee or prospective mortgagee. Any such certificate may be relied upon by any prospective mortgagee or purchaser of all or any portion of the Hotel. Tenant shall execute and deliver whatever other instruments, reasonably satisfactory to Tenant, that may be reasonably required for such purposes. Failure of Tenant to timely execute, acknowledge and deliver such estoppel certificate in the form of Exhibit G shall constitute an acceptance of the Premises and an acknowledgment by Tenant that statements included in the estoppel certificate are true and correct, without exception. This clause shall be reciprocal so that Tenant, upon at least fifteen (15) business days prior written notice to Landlord, may request an estoppel certificate from Landlord setting forth the same information set forth above.

#### ARTICLE 18

##### SUBORDINATION

This Lease shall be subject and subordinate to all present and future ground or underlying leases of the Hotel and to the lien of any mortgage, trust deed or other encumbrances now (subject to receipt of a commercially reasonable non-disturbance agreement) or hereafter in force against the Hotel or any part thereof, if any, and to all renewals, extensions, modifications, consolidations and replacements thereof, and to all advances made or hereafter to be made upon the security of such mortgages or trust deeds, unless the



holders of such mortgages, trust deeds or other encumbrances, or the Landlords under such ground lease or underlying leases, require in writing that this Lease be superior thereto. Tenant covenants and agrees in the event any proceedings are brought for the foreclosure of any such mortgage or deed in lieu thereof (or if any ground lease is terminated), to attorn, without any deductions or set-offs whatsoever, to the lienholder or purchaser or any successors thereto upon any such foreclosure sale or deed in lieu thereof (or to the ground Landlord), if so requested to do so by such purchaser or lienholder or Landlord, and to recognize such purchaser or lienholder or Landlord as the Landlord under this Lease, provided such lienholder or purchaser or Landlord shall agree to accept this Lease and not disturb Tenant's occupancy, so long as Tenant timely pays the Rent and observes and performs the terms, covenants and conditions of this Lease to be observed and performed by Tenant. Landlord's interest herein may be assigned as security at any time to any lienholder. Tenant shall, within twenty (20) days of request by Landlord, execute such further instruments or assurances as Landlord may reasonably deem necessary to evidence or confirm the subordination or superiority of this Lease to any such mortgages, trust deeds, ground leases or underlying leases. Tenant waives the provisions of any current or future statute, rule or law which may give or purport to give Tenant any right or election to terminate or otherwise adversely affect this Lease and the obligations of the Tenant hereunder in the event of any foreclosure proceeding or sale.

## ARTICLE 19

### DEFAULTS: REMEDIES

19.1 **Events of Default.** The occurrence of any of the following shall constitute an event of default of this Lease by Tenant ("**Event of Default**"):

19.1.1 Any failure by Tenant to pay any Rent or any other charge required to be paid under this Lease, or any part thereof, when due unless such failure is cured within ten (10) days after written notice from Landlord to Tenant; or

19.1.2 Except where a specific time period is otherwise set forth for Tenant's performance in this Lease, in which event the failure to perform by Tenant within such time period shall be a default by Tenant under this Section 19.1.2, any failure by Tenant to observe or perform any other provision, covenant or condition of this Lease to be observed or performed by Tenant where such failure continues for thirty (30) days after written notice thereof from Landlord to Tenant; provided that if the nature of such default is such that the same cannot reasonably be cured within a thirty (30) day period, Tenant shall not be deemed to be in default if it diligently commences such cure within such period and thereafter diligently proceeds to rectify and cure such default; or

19.1.3 Abandonment or vacation of all or a substantial portion of the Premises by Tenant except as provided for herein, which is not cured within ten (10) days of written notice from Landlord; or

19.1.4 The failure by Tenant to observe or perform according to the provisions of Articles 5, 14, 17 or 18 of this Lease where such failure continues for more than ten (10) days after notice from Landlord; or

19.1.5 Tenant's failure to occupy the Premises within twenty one (21) days after the Effective Date, or such later date as may be agreed upon by the parties, who agree to meet after the Effective Date to determine the scope of food and beverage services that can be provided during the period of Tenant's Work and amend this Lease accordingly as may be agreed during such meeting; or

19.1.6 Tenant shall use its best efforts to maintain applicable Department of Health Code standards at all times during the Term. Tenant's failure to use its best efforts to comply with such





standards, which failure continues for more than sixty (60) days shall be considered a default hereunder; provided, however, that if the nature of such default is such that the same cannot reasonably be cured within such (60) day period, Tenant shall not be deemed to be in default if it diligently commences such cure within such (60) day period and thereafter diligently proceeds to rectify and cure such default.

The notice periods provided herein are in lieu of, and not in addition to, any notice periods provided by law.

19.2 **Remedies Upon Default.** Upon the occurrence of any Event of Default by Tenant, Landlord shall, have, in addition to any other remedies available to Landlord at law or in equity (all of which remedies shall be distinct, separate and cumulative), the option to pursue any one or more of the following remedies, each and all of which shall be cumulative and nonexclusive, without any notice or demand whatsoever.

19.2.1 Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in any payment owed hereunder, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, without being liable as to prosecution of any claim for damages therefor; and Landlord may recover from Tenant the following:

(i) The worth at the time of award of the unpaid Rent which has been earned at the time of such termination; plus

(ii) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such loss that Tenant proves could have been reasonably avoided; plus

(iii) The worth at the time of award of the amount by which the unpaid Rent for the balance of the Lease Term after the time of award exceeds the amount of such loss that Tenant proves could have been reasonably avoided; plus

(iv) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, specifically including but not limited to, brokerage commissions and advertising expenses incurred, expenses of remodeling the Premises or any portion thereof for a new occupant or other inhabitant, whether for the same or a different use, and any special concessions made to obtain a new occupant or other inhabitant; and

(v) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

As used in Sections 19.2.1(i) and (ii), above, the "worth at the time of award" shall be computed by allowing interest at the rate set forth in Article 24 of this Lease, but in no case greater than the maximum amount of such interest permitted by law. As used in Section 19.2.1(iii) above, the "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

19.2.2 If Landlord does not elect to terminate this Lease on account of any default by Tenant, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and

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remedies under this Lease, including the right to recover all Rent as they become due in accordance with this Lease, or seek other legal or equitable remedies.

19.2.3 Landlord shall at all times have the rights and remedies (which shall be cumulative with each other and cumulative and in addition to those rights and remedies available under Sections 19.2.1 and 19.2.2, above, or any law or other provision of this Lease), without prior demand or notice except as required by applicable law, to seek any declaratory, injunctive or other equitable relief, and specifically enforce this Lease, or restrain or enjoin a violation or breach of any provision hereof.

19.3 **Sublease of Tenant.** Whether or not Landlord elects to terminate this Lease on account of any default by Tenant, as set forth in this Article 19, Landlord shall have the right to terminate any and all licenses, concessions or other consensual arrangements for possession entered into by Tenant and affecting the Premises or may, in Landlord's sole discretion, succeed to Tenant's interest in such licenses, concessions or arrangements. In the event of Landlord's election to succeed to Tenant's interest in any such licenses, concessions or arrangements, Tenant shall, as of the date of notice by Landlord of such election, have no further right to or interest in the amounts owed and/or or other consideration receivable thereunder.

19.4 **Efforts to Relet.** No re-entry or repossession, repairs, maintenance, changes, alterations and additions, reletting, appointment of a receiver to protect Landlord's interests hereunder, or any other action or omission by Landlord shall be construed as an election by Landlord to terminate this Lease or Tenant's right to possession, or to accept a surrender of the Premises, nor shall same operate to release Tenant in whole or in part from any of Tenant's obligations hereunder, unless express written notice of such intention is sent by Landlord to Tenant. Tenant hereby irrevocably waives any right otherwise available under any law to redeem or reinstate this Lease.

## **ARTICLE 20**

### **COVENANT OF QUIET ENJOYMENT**

Landlord covenants that Tenant, on paying the Rent, charges for services and other payments herein reserved and on keeping, observing and performing all the other terms, covenants, conditions, provisions and agreements herein contained on the part of Tenant to be kept, observed and performed, shall, during the Lease Term, peaceably and quietly have, hold and enjoy the Premises subject to the terms, covenants, conditions, provisions and agreements hereof without interference by any persons lawfully claiming by or through Landlord. The foregoing covenant is in lieu of any other covenant express or implied.

## **ARTICLE 21**

### **RENEWAL OPTIONS**

21.1 **Renewal Term.** Provided that as of the time of the giving of the Renewal Notice and the Commencement Date of the Renewal Term (as such terms are defined below), (i) Tenant is the Tenant originally named herein, and (ii) no Event of Default exists, or would exist but for the passage of time or the giving of notice, or both; then Tenant shall have the right to extend the Lease Term for an additional term of five (5) years (such additional term is hereinafter called the "**Renewal Term**") commencing on the day following the expiration of the Initial Term (hereinafter referred to as the "**Commencement Date of the Renewal Term**"). Tenant must give Landlord notice (hereinafter called the "**Renewal Notice**") of its election to extend the term of the Lease Term at least six (6) months, but not more than twelve (12) months, prior to the scheduled expiration date of the Initial Term.

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21.2 **Renewal Term Base Rent.** The Base Rent payable by Tenant to Landlord during the Renewal Term shall be the Fair Market Rent, as defined and determined pursuant to Section 21.3 and Section 21.4 below.

21.3 **Fair Market Rent.** The term "**Fair Market Rent**" shall mean the Base Rent, expressed as an annual rent per square foot of Rentable Area, which Landlord would have received from leasing the Premises for the Renewal Term to an unaffiliated person, assuming that such space were to be delivered in "as-is" condition, and taking into account the rental which such other tenant would most likely have paid for such premises, including market escalations, provided that Fair Market Rent shall not in any event be less than the Base Rent for the Premises as of the expiration of the Lease Term. Fair Market Rent shall not be reduced by reason of any costs or expenses saved by Landlord by reason of Landlord's not having to find a new tenant for the Premises (including without limitation brokerage commissions, cost of improvements necessary to prepare the space for such tenant's occupancy, rent concession, or lost rental income during any vacancy period). Fair Market Rent means only the rent component defined as Base Rent in the Lease and does not include reimbursements and payments by Tenant to Landlord payable or reimbursable by Tenant under the Lease.

21.4 **Fair Market Rent Determination.** Landlord shall notify Tenant of its determination of the Fair Market Rent (which shall be made in Landlord's sole discretion and shall in any event be not less than the Base Rent in effect as of the expiration of the Lease Term, and Tenant shall advise Landlord of any objection within ten (10) days of receipt of Landlord's notice. Failure to respond within the ten (10) day period shall constitute Tenant's acceptance of such Fair Market Rent. If Tenant objects, Landlord and Tenant shall commence negotiations to attempt to agree upon the Fair Market Rent within thirty (30) days of Landlord's receipt of Tenant's notice.

If Landlord and Tenant are not able to agree upon the Fair Market Rent of the Premises within the time period described above, then Landlord and Tenant shall attempt to agree in good faith upon a single appraiser not later than seventy-five (75) days prior to the expiration of the existing Lease Term. If Landlord and Tenant are unable to agree upon a single appraiser within such time period, then Landlord and Tenant shall each appoint one appraiser not later than sixty-five (65) days prior to the expiration of the existing Lease Term. Within (10) days thereafter, the two appointed appraisers shall appoint a third appraiser. If both parties appoint appraisers as provided herein, then the resulting three (3) appraisers chosen shall determine the Fair Market Rent of the Premises as provided in subparagraph (ii) below. If either Landlord or Tenant fails to appoint its appraiser within the prescribed time period, the party that has appointed an appraiser shall notify the party that has not appointed the appraiser within ten (10) days after the end of said prescribed time period and the party that has not appointed an appraiser will have ten (10) days from receipt of said notice to appoint its appraiser. Thereafter, if a party has failed to appoint an appraiser, the single appraiser appointed shall determine that Fair Market Rent of the Premises. If both parties fail to appoint appraisers within the prescribed time periods or their respective appointed appraisers are unable to agree on a third appraiser then either one or both of the parties may apply to a court of competent jurisdiction to appoint an appraiser to determine the Fair Market Rent of the Premises. Each party shall bear the cost of its own appraiser and the parties shall bear equally the cost of the single or third appraiser, if applicable. All appraisers shall have at least five (5) years' experience in the appraisal of commercial/industrial real property in the area in which the Premises are located and shall be members of professional organizations such as MAI or its equivalent and shall be completely independent from Landlord, Tenant and any related corporation.

21.5 **Terms of Renewal.** Except for the Base Rent as determined above, Tenant's occupancy of the Premises during the Renewal Term shall be on the same terms and conditions as are in effect immediately prior to the expiration of the initial Lease Term; provided, however, Tenant shall have no

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further right to extend the Lease Term pursuant to this addendum or to any allowances, credits or abatements or options to expand, contract, renew or extend the Lease.

21.6 **Termination of Renewal Option.** If Tenant does not send the Renewal Notice within the period set forth in Section 21.1 above, Tenant's right to extend the Lease Term for the Renewal Term shall automatically terminate. Time is of the essence as to the giving of the Renewal Notice and the notice of Tenant's objection under Section 21.4.

21.7 **No Refurbishment on Renewal.** Landlord shall have no obligation to refurbish or otherwise improve the Premises for the Renewal Term. The Premises shall be tendered on the Commencement Date of the Renewal Term in "as-is", "where-is", and "with all faults" condition.

21.8 **Amendments Evidencing Renewals.** If the Lease is extended for the Renewal Term, then Landlord shall prepare and Tenant shall execute an amendment to the Lease confirming the extension of the Lease Term and the other provisions applicable thereto.

21.9 **Modification of Lease Term.** If Tenant exercises its right to extend the term of the Lease for the Renewal Term pursuant to this Article 21, the term "Lease Term" as used in the Lease, shall be construed to include, when practicable, the Renewal Term.

## **ARTICLE 22**

### **SIGNS**

Tenant's identifying signage shall be provided by Tenant, at Tenant's sole cost and expense (except as provided for herein and in the exhibits to this Lease), and such signage shall strictly comply with the Branding Standards, and shall be subject in all respects to Landlord's prior written approval, which approval shall not be unreasonably withheld, at locations and according to plans and specifications to be approved by Landlord. Landlord shall notify Tenant within seven (7) days after Tenant's request therefor of whether Landlord approves Tenant's signage. Landlord's failure to respond within such seven (7) day period shall be deemed to be Landlord's disapproval of Tenant's signage request. Any signs, notices, logos, pictures, names or advertisements (collectively referred to herein as "signs") which are installed and that have not been individually approved by Landlord may be removed without notice by Landlord at the sole expense of Tenant. Except as specifically set forth herein, Tenant may not install any signs on the exterior or roof of either the Hotel or the Premises. Without limiting the foregoing, Tenant shall not, without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed, (i) affix any window or door lettering, sign decoration or advertising matter or any type of sun screen, tinting, film, solar screen or similar product to any window or door glass of the Premises, or (ii) erect or install any sign, window or door lettering placard, decoration, or advertising media of any type which is visible from the exterior of the Premises, or erect or install any of the foregoing which are suspended from the ceiling of the Premises. Any permitted sign under this Article 22 shall comply with all applicable ordinances of governmental and quasi-governmental agencies and be subject to receipt by Tenant of all applicable permits and approvals, which shall be obtained at Tenant's sole cost and expense. All permitted signs shall be maintained by Tenant at its expense in a good and safe condition and appearance. Upon the expiration or earlier termination of this Lease, Tenant shall remove all signs and Tenant shall repair any damage to the Premises, inside or outside, resulting from the erection, maintenance or removal of any signs.

## **ARTICLE 23**

### **COMPLIANCE WITH LAW**



Tenant shall not do anything or suffer anything to be done in or about the Premises or the Hotel which will in any way conflict with any law, statute, ordinance or other governmental rule, regulation or requirement now in force or which may hereafter be enacted or promulgated. At its sole cost and expense, Tenant shall promptly comply with all such governmental measures other than those governmental measures which require structural change to the Hotel or the Premises (but only to the extent the requirement for such structural changes is not triggered by Tenant's use of the Premises or Tenant's Alterations or improvements to the Premises) or which require cleanup or remediation of Hazardous Materials (other than Hazardous Materials introduced to the Premises or the Hotel by Tenant or any person acting on behalf of the Tenant). Should any standard or regulation now or hereafter be imposed on Landlord or Tenant by a state, federal or local governmental body charged with the establishment, regulation and enforcement of occupational, health or safety standards for employers, employees, Landlord or occupants, then Tenant agrees, at its sole cost and expense, to comply promptly with such standards or regulations. Tenant shall be responsible, at its sole cost and expense, to make all alterations to the Premises as are required to comply with the governmental rules, regulations, requirements or standards described in this Article 23. The judgment of any court of competent jurisdiction or the admission of Tenant in any judicial action, regardless of whether Landlord is a party thereto, that Tenant has violated any of said governmental measures, shall be conclusive of that fact as between Landlord and Tenant.

#### ARTICLE 24

#### LATE CHARGES

If any payments, charges or amounts due hereunder are not received by the owed party within ten (10) business days after said amount is due, then the owing party shall pay to the other party, subject to any restrictions provided by law, a late charge equal to four percent (4%) of the overdue amount plus any reasonable attorneys' fees incurred by reason of such party's failure to pay such payments, charges or amounts when due hereunder. As it pertains to Tenant, the late charge shall be deemed Additional Rent and the right to require it shall be in addition to all of Landlord's other rights and remedies hereunder or at law and shall not be construed as liquidated damages or as limiting Landlord's remedies in any manner. In addition to the late charge described above, any payments, charges or amounts owing hereunder which are not paid by the owing party within ten (10) business days after the date they are due shall bear interest from the date when due until paid at a rate per annum equal to the lesser of (i) the annual "Bank Prime Loan" rate cited in the Federal Reserve Statistical Release Publication H.15, published on the first Tuesday of each calendar month (or such other comparable index as Landlord and Tenant shall reasonably agree upon if such rate ceases to be published) plus five (5%) percent, and (ii) ten percent (10%) (or adjusted down to comply with applicable law, if necessary).

#### ARTICLE 25

#### LANDLORD'S RIGHT TO CURE DEFAULT; PAYMENTS BY TENANT

25.1 **Landlord's Cure.** All covenants and agreements to be kept or performed by Tenant under this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any reduction of Rent, except to the extent, if any, otherwise expressly provided herein. If Tenant shall fail to perform any obligation under this Lease, and such failure shall continue in excess of the time allowed under Section 19.1.2, above, unless a specific time period is otherwise stated in this Lease, Landlord may, but shall not be obligated to, make any such payment or perform any such act on Tenant's part without waiving its rights based upon any default of Tenant and without releasing Tenant from any obligations hereunder.

25.2 **Tenant's Reimbursement.** Except as may be specifically provided to the contrary in this Lease, Tenant shall pay to Landlord, within fourteen (14) days upon delivery by Landlord to Tenant of

statements therefor: (i) sums equal to expenditures reasonably made and obligations actually incurred by Landlord in connection with the remedying by Landlord of Tenant's defaults pursuant to the provisions of Section 25.1; (ii) sums equal to all losses, costs, liabilities, damages and expenses referred to in Article 10 of this Lease; and (iii) sums equal to all expenditures made and obligations incurred by Landlord in collecting or attempting to collect the Rent or in enforcing or attempting to enforce any rights of Landlord under this Lease or pursuant to law, including, without limitation, all reasonable legal fees and other amounts so expended. Tenant's obligations under this Section 25.2 shall survive the expiration or sooner termination of the Lease Term.

## ARTICLE 26

### ENTRY BY LANDLORD

Landlord reserves the right at all reasonable times and upon at least twenty-four (24) hours' advance written notice to Tenant (except in the case of an emergency) to enter the Premises to (i) inspect them, except with respect to any daily Hotel walk-throughs by employees of the Hotel; provided, however, that Landlord shall be required to provide at least twenty-four (24) hours' advance written notice if any consultants, advisors, engineers, architects or other non-employees of the Hotel participate in such walk-throughs; (ii) show the Premises to prospective purchasers, or to current or prospective mortgagees, ground or underlying Landlords or insurers or, during the last five (5) months of the Lease Term, to prospective occupants; (iii) post notices of non-responsibility; or (iv) alter, improve or repair the Premises or the Hotel, or for structural alterations, repairs or improvements to the Hotel or the Hotel's systems and equipment; provided, however, that Landlord will use commercially reasonable efforts to minimize any interference with the Services and shall perform any alterations, repairs, or improvements not during Tenant's business hours unless in the event of an emergency or previously consented to by Tenant in writing. In so doing, Landlord shall not disturb Tenant's operations of the Premises. Notwithstanding anything to the contrary contained in this Article 26, Landlord may enter the Premises at all reasonable times and upon at least twenty-four (24) hours' advance written notice to Tenant (except in the case of an emergency) to (A) perform services required of Landlord; and (B) perform any covenants of Tenant which Tenant fails to perform after the passage of any notice and cure periods, and Landlord may enter the Premises at any time to take possession due to any breach of this Lease in the manner provided herein. Subject to the foregoing obligations of Landlord, Landlord may make any such entries without the abatement of Rent, except as otherwise provided in this Lease, and may take such commercially reasonable steps as required to accomplish the stated purposes, and Tenant hereby waives any claims for damages or for any injuries or inconvenience to or interference with Tenant's business, lost profits, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby. For each of the above purposes, Landlord shall at all times have a key with which to unlock all the doors in the Premises, excluding Tenant's vaults, safes and special security areas designated in advance by Tenant. In an emergency, Landlord shall have the right to use any means that Landlord may reasonably deem proper to open the doors in and to the Premises, and any such entry into the Premises by Landlord shall not be deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an actual or constructive eviction of Tenant from any portion of the Premises. No provision of this Lease shall be construed as obligating Landlord to perform any repairs, alterations or decorations except as otherwise expressly agreed to be performed by Landlord herein.

## ARTICLE 27

### MISCELLANEOUS PROVISIONS

27.1 **Terms; Captions.** The words "Landlord" and "Tenant" as used herein shall include the plural as well as the singular. The necessary grammatical changes required to make the provisions hereof apply either to corporations or partnerships or individuals, men or women, as the case may require, shall in



all cases be assumed as though in each case fully expressed. The captions of Articles and Sections are for convenience only and shall not be deemed to limit, construe, affect or alter the meaning of such Articles and Sections.

27.2 **Binding Effect.** Subject to all other provisions of this Lease, each of the covenants, conditions and provisions of this Lease shall extend to and shall, as the case may require, bind or inure to the benefit not only of Landlord and of Tenant, but also of their respective heirs, personal representatives, successors or assigns, provided this clause shall not permit any Transfer by Tenant contrary to the provisions of Article 14 of this Lease.

27.3 **No Air Rights.** No rights to any view or to light or air over any property, whether belonging to Landlord or any other person, are granted to Tenant by this Lease. If at any time any windows of the Premises are temporarily darkened or the light or view therefrom is obstructed by reason of any repairs, improvements, maintenance or cleaning in or about the Hotel, the same shall be without liability to Landlord and without any reduction or diminution of Tenant's obligations under this Lease.

27.4 **Short Form Lease.** At the request of Landlord or any mortgagee or ground Landlord, Tenant agrees to execute a short form of Lease reasonably satisfactory to Tenant and deliver the same to Landlord within ten (10) business days following the request therefor, as may be extended by any period required to negotiate an acceptable short form of Lease.

27.5 **Transfer of Landlord's Interest.** Tenant acknowledges that Landlord has the right to transfer all or any portion of its interest in the Hotel and in this Lease, and Tenant agrees that in the event of any such transfer, Landlord shall automatically be released from all liability under this Lease and Tenant agrees to look solely to such transferee for the performance of Landlord's obligations hereunder after the date of transfer and such transferee shall be deemed to have fully assumed and be liable for all future obligations of this Lease to be performed by Landlord, and Tenant shall attorn to such transferee. Landlord shall remain liable to Tenant for all liabilities accrued prior to the date of transfer.

27.6 **Prohibition Against Recording.** Except as provided in Section 27.4 of this Lease, neither this Lease, nor any memorandum, affidavit or other writing with respect thereto, shall be recorded by Tenant or by anyone acting through, under or on behalf of Tenant.

27.7 **Landlord's Title.** Landlord's interest in the Hotel is and always shall be paramount to the interest of Tenant in the Premises. Nothing herein contained shall empower Tenant to do any act which can, shall or may encumber the interest of Landlord in the Hotel.

27.8 **Relationship of Parties.** Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venturer or any association between Landlord and Tenant.

27.9 **Application of Payments.** Landlord shall have the right to apply payments received from Tenant pursuant to this Lease, regardless of Tenant's designation of such payments, to satisfy any obligations of Tenant hereunder, in such order and amounts as Landlord, in its sole discretion, may elect.

27.10 **Time of Essence.** Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

27.11 **Partial Invalidity.** If any term, provision or condition contained in this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or



unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Lease shall be valid and enforceable to the fullest extent possible permitted by law.

27.12 **No Warranty.** In executing and delivering this Lease, neither Party has relied on any representations, or any warranty or any statement of the other Party which is not set forth herein or in one or more of the exhibits attached hereto.

27.13 **Landlord Exculpation.** The liability of Landlord or the Landlord Parties to Tenant for any default by Landlord under this Lease or arising in connection herewith or with Landlord's operation, management, leasing, repair, renovation, alteration or any other matter relating to the Hotel or the Premises shall be limited solely and exclusively to an amount which is equal to the interest of Landlord in the Hotel, including any sales or insurance proceeds received by Landlord or the Landlord Parties in connection with the Hotel or Premises. Neither Landlord, nor any of the Landlord Parties shall have any personal liability therefor beyond the foregoing amount, and Tenant hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under Tenant. The limitations of liability contained in this Section 27.13 shall inure to the benefit of Landlord's and the Landlord Parties' present and future partners, beneficiaries, officers, directors, trustees, shareholders, agents and employees, and their respective partners, heirs, successors and assigns. Under no circumstances shall any present or future partner of Landlord (if Landlord is a partnership), or trustee or beneficiary (if Landlord or any partner of Landlord is a trust), have any liability for the performance of Landlord's obligations under this Lease. Notwithstanding any contrary provision herein, neither Landlord nor the Landlord Parties shall be liable under any circumstances for injury or damage to, or interference with, Tenant's business, including but not limited to, loss of profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring, unless caused by the acts, omissions, negligence or willful misconduct of Landlord or Landlord's contractors, agents, servants, employees, invitees, guests or licensees.

27.14 **Entire Agreement.** It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Lease and this Lease constitutes the parties' entire agreement with respect to the leasing of the Premises and supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by Landlord to Tenant with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Lease. None of the terms, covenants, conditions or provisions of this Lease can be modified, deleted or added to except in writing signed by the parties hereto. Any deletion of language from this Lease prior to its execution by Landlord and Tenant shall not be construed to raise any presumption, canon of construction or implication, including, without limitation, any implication that the parties intended thereby to state the converse of the deleted language. The parties hereto acknowledge and agree that each has participated in the negotiation and drafting of this Lease; therefore, in the event of an ambiguity in, or dispute regarding the interpretation of, this Lease, the interpretation of this Lease shall not be resolved by any rule of interpretation providing for interpretation against the party who caused the uncertainty to exist or against the draftsman.

27.15 **Right to Lease.** Subject at all times to Tenant's rights of exclusivity set forth in Section 5.1.5, Landlord reserves the absolute right to effect such sublicenses in the Hotel as Landlord in the exercise of its sole business judgment shall determine to best promote the interests of the Hotel. Tenant does not rely on the fact, nor does Landlord represent, that any specific occupant or type or number of occupants shall, during the Lease Term, occupy any space in the Hotel.

27.16 **Force Majeure.** Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, acts of war, terrorist acts, inability to obtain services, labor, or materials or reasonable substitutes therefor, governmental actions, civil commotions, fire or other casualty, and other causes beyond



the reasonable control of the party obligated to perform, except with respect to the obligations imposed with regard to Rent and other charges to be paid by Tenant pursuant to this Lease (collectively, a "**Force Majeure**"), notwithstanding anything to the contrary contained in this Lease, shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Lease specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure.

27.17 **Waiver of Redemption by Tenant.** Tenant hereby waives, for Tenant and for all those claiming under Tenant, any and all rights now or hereafter existing to redcm by order or judgment of any court or by any legal process or writ, Tenant's right of occupancy of the Premises after any termination of this Lease, provided, however, that nothing herein shall be interpreted to limit any other remedy of Tenant.

27.18 **Notices.** All notices, demands, statements, designations, approvals or other communications (collectively, "**Notices**") given or required to be given by either party to the other hereunder or by law shall be in writing, shall be (A) sent by United States certified or registered mail, postage prepaid, return receipt requested ("**Mail**"), (B) delivered by a nationally recognized overnight courier with confirmation of delivery, or (C) delivered personally. Any Notice shall be sent, transmitted, or delivered, as the case may be, to Tenant at the address set forth in the Summary, or to such other place as Tenant may from time to time designate in a Notice to Landlord, or to Landlord at the addresses set forth in the Summary, or to such other places as Landlord may from time to time designate in a Notice to Tenant. Any Notice will be deemed given (i) three (3) days after the date it is posted if sent by Mail, (ii) the date the overnight courier delivery is made, or (iii) the date personal delivery is made.

27.19 **Joint and Several.** If there is more than one person or entity constituting Tenant: (i) the obligations imposed upon such persons or entities under this Lease shall be joint and several; and (ii) the act or signature of, or notice from or to, any one or more of them with respect to this Lease shall be binding upon each and all of such persons and entities with the same force and effect as if each and all of them had so acted or signed, or given or received such notice.

27.20 **Authority.** If Tenant is a corporation, trust, partnership or limited liability company, each individual executing this Lease on behalf of Tenant hereby represents and warrants that Tenant is a duly formed and existing entity qualified to do business in Massachusetts and that Tenant has full right and authority to execute and deliver this Lease and that each person signing on behalf of Tenant is authorized to do so. In such event, Tenant shall, within ten (10) days after execution of this Lease, deliver to Landlord satisfactory evidence of such authority and, if a corporation, upon demand by Landlord, also deliver to Landlord satisfactory evidence of (i) good standing in Tenant's state of incorporation and (ii) qualification to do business in Commonwealth of Massachusetts. If Landlord is a corporation, trust, partnership or limited liability company, each individual executing this Lease on behalf of Landlord hereby represents and warrants that Landlord is a duly formed and existing entity qualified to do business in Commonwealth of Massachusetts and that Landlord has full right and authority to execute and deliver this Lease and that each person signing on behalf of Landlord is authorized to do so.

27.21 **Attorneys' Fees.** In the event that either Landlord or Tenant should bring suit or take any other action for the possession of the Premises, for the recovery of any sum due under this Lease, or because of the breach of any provision of this Lease or for any other relief against the other, then all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party therein shall be paid by the other party, which obligation on the part of the other party shall be deemed to have accrued on the date of the commencement of such action and shall be enforceable whether or not the action is prosecuted to judgment.



27.22 **Governing Law; WAIVER OF TRIAL BY JURY.** This Lease shall be construed and enforced in accordance with the laws of the Commonwealth of Massachusetts. IN ANY ACTION OR PROCEEDING ARISING HEREFROM, LANDLORD AND TENANT HEREBY CONSENT TO (I) THE EXCLUSIVE JURISDICTION OF ANY COMPETENT COURT WITHIN SUFFOLK COUNTY, COMMONWEALTH OF MASSACHUSETTS, (II) SERVICE OF PROCESS BY ANY MEANS AUTHORIZED BY APPLICABLE LAW, AND (III) IN THE INTEREST OF SAVING TIME AND EXPENSE, TRIAL WITHOUT A JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER OR THEIR SUCCESSORS IN RESPECT OF ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS LICENSE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES, AND/OR ANY CLAIM FOR INJURY OR DAMAGE, OR ANY EMERGENCY OR STATUTORY REMEDY.

27.23 **Submission of Lease.** Submission of this instrument for examination or signature by Tenant does not constitute a reservation of, option for or option to occupy the Premises, and it is not effective as a license or otherwise until execution and delivery by both Landlord and Tenant.

27.24 **Brokers.** Landlord and Tenant hereby warrant to each other that they have had no dealings with any real estate broker or agent in connection with the negotiation of this Lease, and that they know of no other real estate broker or agent who is entitled to a commission in connection with this Lease. Each party agrees to indemnify and defend the other party against and hold the other party harmless from any and all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses (including without limitation reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing on account of any dealings with any real estate broker or agent, occurring by, through, or under the indemnifying party.

27.25 **Independent Covenants.** This Lease shall be construed as though the covenants herein between Landlord and Tenant are independent and not dependent and Tenant hereby expressly waives the benefit of any statute to the contrary and agrees that if Landlord fails to perform its obligations set forth herein, Tenant shall not be entitled to make any repairs or perform any acts hereunder at Landlord's expense or to any setoff of the Rent or other amounts owing hereunder against Landlord.

27.26 **Hotel Name and Signage.** Landlord shall have the right at any time to change the name of the Hotel and to install, affix and maintain any and all signs on the exterior and on the interior of the Hotel as Landlord may, in Landlord's sole discretion, desire. Tenant shall not use pictures or illustrations of the Hotel, or any of Hotel's other intellectual property, in advertising or other publicity (including, without limitation, any online or social media campaigns and/or accounts) or for any purpose without the prior written consent of Landlord, not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Tenant may use the name "Springhill Suites at the Waterfront Square" and the address and location of the Hotel solely for purposes of identifying the business to be conducted by Tenant in the Premises.

27.27 **Counterparts.** This Lease may be executed in counterparts with the same effect as if both parties hereto had executed the same document. Both counterparts shall be construed together and shall constitute a single Lease.

27.28 **Confidentiality.** Both parties acknowledge that the content of this Lease and any related documents are confidential information, and shall keep such confidential information strictly confidential and shall not disclose such confidential information to any person or entity other than the respective Party's parent companies, affiliates, partners, employees, financial, legal, insurance, professional and space planning consultants, and any other person necessary for a Party to fulfill its obligations hereunder. If either

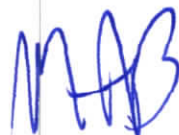


party provides to the other party (whether orally or in writing) any information that is proprietary to its business (including the provisions of this Agreement) or is otherwise confidential or sensitive in nature ("**Confidential Information**"), the recipient shall not disclose it, directly or indirectly, to any third party except: (1) to the extent necessary to comply with law, rule or regulation, the valid order of a court of competent jurisdiction, or the requirements of a governmental agency, in which event the party making the disclosure shall notify the other party in advance of disclosure and, upon the request of the other party, reasonably cooperate to obtain a protective order or other confidential treatment and, barring such treatment, limit the scope of the disclosure; (2) as part of its normal reporting or review procedures to its parent companies, partners, lenders, financial consultants, auditors, employees, and attorneys, provided, however, that such parties shall be directed to comply with the confidentiality provisions of this Agreement; and (3) to enforce its rights pursuant to this Agreement or in a legal proceeding.

27.29 **Hotel Renovations.** Tenant hereby acknowledges that Landlord may during the Lease Term renovate, improve, alter, or modify (collectively, the "**Renovations**") the Hotel and/or the Premises. Tenant hereby agrees that such Renovations shall in no way constitute a constructive eviction of Tenant. Landlord shall use commercially reasonable efforts to minimize any disruption to Tenant's business during any renovations and under no circumstances will access to the Premises be obstructed for other than on a temporary basis. Additionally, if Tenant's business is required to close as a result of any Renovations, the Rent shall be abated until the earlier of such work being completed or when Tenant's business can reasonably re-open.

27.30 **No Violation.** Tenant hereby warrants and represents that neither its execution of nor performance under this Lease shall cause Tenant to be in violation of any agreement, instrument, contract, law, rule or regulation by which Tenant is bound, and Tenant shall protect, defend, indemnify and hold Landlord harmless against any claims, demands, losses, damages, liabilities, costs and expenses, including, without limitation, reasonable attorneys' fees and costs, arising from Tenant's breach of this warranty and representation. Landlord hereby warrants and represents that neither its execution of nor performance under this Lease shall cause Landlord to be in violation of any agreement, instrument, contract, law, rule or regulation by which Landlord is bound, and Landlord shall protect, defend, indemnify and hold Tenant harmless against any claims, demands, losses, damages, liabilities, costs and expenses, including, without limitation, reasonable attorneys' fees and costs, arising from Landlord's breach of this warranty and representation.

27.31 **Communications and Computer Lines.** Tenant may install, maintain, replace, remove or use any communications or computer wires and cables serving the Premises (collectively, the "**Lines**"), provided that (i) Tenant shall obtain Landlord's prior written consent, use an experienced and qualified contractor reasonably approved in writing by Landlord, and comply with all of the other provisions of Articles 7 and of this Lease, (ii) the Lines therefor (including riser cables) shall be appropriately insulated to prevent excessive electromagnetic fields or radiation, shall be surrounded by a protective conduit reasonably acceptable to Landlord, and shall be identified in accordance with the "Identification Requirements," as that term is set forth hereinbelow, (iii) any new or existing Lines servicing the Premises shall comply with all applicable governmental laws and regulations, (iv) as a condition to permitting the installation of new Lines, Landlord may require that Tenant remove existing Lines located in or serving the Premises and repair any damage in connection with such removal, and (v) Tenant shall pay all costs in connection therewith. All Lines shall be clearly marked with adhesive plastic labels (or plastic tags attached to such Lines with wire) to show Tenant's name, suite number, telephone number and the name of the person to contact in the case of an emergency (A) every four feet (4 ') outside the Premises (specifically including, but not limited to, the electrical room risers and other Common Areas), and (B) at the Lines' termination point(s) (collectively, the "**Identification Requirements**"). Landlord reserves the right, upon written notice to Tenant at any time prior to the expiration or earlier termination of this Lease, to require



that Tenant remove any Lines located in or serving the Premises prior to the expiration or earlier termination of this Lease.

27.32 **Transportation Management.** Tenant shall fully comply with all present or future programs mandated by any governmental authority intended to manage parking, transportation or traffic in and around the Hotel, and in connection therewith, Tenant shall take responsible action for the transportation planning and management of all employees located at the Premises by working directly with Landlord, any governmental transportation management organization or any other transportation-related committees or entities. Such programs may include, without limitation: (i) restrictions on the number of peak-hour vehicle trips generated by Tenant; (ii) increased vehicle occupancy; (iii) implementation of an in-house ridesharing program and an employee transportation coordinator; (iv) working with employees and any Hotel or area-wide ridesharing program manager; (v) instituting employer-sponsored incentives (financial or in-kind) to encourage employees to rideshare; and (vi) utilizing flexible work shifts for employees.

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IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be executed the day and date first above written.

LANDLORD:

LIXI HOSPITALITY REVERE, INC.  
a Delaware corporation

By: [Signature]  
Name: Liu Lina  
Title: VP

TENANT:

REVERE RESTAURANT OPERATOR, LLC,  
a Massachusetts limited liability company

By: [Signature]  
Name: Martin A. Bloom  
Title: Managing Member

[Signature]

[Signature]

**EXHIBIT A**

**Legal Description of Hotel**

That certain tract or parcel of land situated on the northwesterly side of Ocean Avenue, Revere, Suffolk County, Massachusetts and being shown as "LOT 6" delineated on a plan entitled "Plan of Land in Revere, MA" prepared by Hancock Associates, dated June 8, 2017 and recorded with the Suffolk County Registry of Deeds as Plan 333 of 2017, to which Plan reference is hereby made for a more particular description of said Lot 6.

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EXHIBIT G

ESTOPPEL CERTIFICATE

The undersigned as Tenant under that certain Lease (the "Lease") made and entered into as of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_ as Landlord, and the undersigned as Tenant, for Premises located at \_\_\_\_\_, certifies as follows:

1. Attached hereto as **Exhibit A** is a true and correct copy of the Lease and all amendments and modifications thereto. The documents contained in **Exhibit A** represent the entire agreement between the parties as to the Premises.
2. The undersigned currently occupies the Premises described in the Lease, the Lease Term commenced on \_\_\_\_\_, and except as expressly provided in the Lease, the Lease Term expires on \_\_\_\_\_, and the undersigned has no option to terminate or cancel the Lease or to purchase all or any part of the Premises and/or the Hotel.
3. Rent became payable on \_\_\_\_\_.
4. The Lease is in full force and effect and has not been modified, supplemented or amended in any way except as provided in **Exhibit A**.
5. Tenant has not transferred, assigned, or sublicensed any portion of the Premises nor entered into any license or concession agreements with respect thereto except as follows:
6. Tenant shall not modify the documents contained in **Exhibit A** without the prior written consent of Landlord's mortgagee.
7. All monthly installments of the Base Rent have been paid when due through \_\_\_\_\_. The current monthly installment of the Base Rent is \$ \_\_\_\_\_.
8. All conditions of the Lease to be performed by Landlord necessary to the enforceability of the Lease have been satisfied and Landlord is not in default thereunder, except as follows: \_\_\_\_\_. In addition, Tenant has not delivered any notice to Landlord regarding a default by Landlord thereunder, except as follows: \_\_\_\_\_.
9. No amounts owed under the Lease have been paid more than thirty (30) days in advance and no security has been deposited with Landlord except as provided in the Lease.
10. As of the date hereof, there are, to Tenant's knowledge, no existing defenses or offsets or claims or any basis for a claim, that the Tenant has against Landlord.
11. There are no actions pending against the undersigned under the bankruptcy or similar laws of the United States or any state.
12. Other than in compliance with all applicable laws and incidental to the ordinary course of the use of the Premises, the undersigned has not used or stored any hazardous substances in the Premises.
13. To the undersigned's knowledge, all improvement work to be performed by Landlord under the Lease has been completed in accordance with the Lease.

The undersigned acknowledges that this Estoppel Certificate may be delivered to Landlord or to a prospective mortgagee or prospective purchaser, and acknowledges that said prospective mortgagee or prospective purchaser will be relying upon the statements contained herein in making the loan or acquiring the property of which the Premises are a part and that receipt by it of this certificate is a condition of making such loan or acquiring such property.

Executed at \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.



**"Tenant":**

REVERE RESTAURANT OPERATOR, LLC ,  
a Massachusetts limited liability company

By:

Its:

*MAB*  
*Managing Member*

*MAB*      *lll*