

**LEASE AGREEMENT**

Between

**HOLLAND INVESTMENTS AK, LLC**  
A Delaware limited liability company

**“Landlord”**

and

**SECONDA VIA, LLC**  
A Michigan limited liability company

**“Tenant”**

Dated May 21, 2019

**TABLE OF CONTENTS {TO BE REVISED}**

ARTICLE 1 BASIC LEASE PROVISIONS AND ENUMERATION OF EXHIBITS ..... 1  
ARTICLE 2 DEMISE OF PREMISES AND QUIET ENJOYMENT..... 6  
ARTICLE 3 RENT ..... 8  
ARTICLE 4 MANAGEMENT FEE, CAPITAL IMPROVEMENTS, TAXES..... 9  
ARTICLE 5 UTILITIES ..... 11  
ARTICLE 6 TENANT INSTALLATION, LANDLORD RETAINED OBLIGATIONS, MAINTENANCE BY  
TENANT, SIGNAGE AND LIENS ..... 12  
ARTICLE 7 USE AND OPERATION OF PREMISES ..... 14  
ARTICLE 8 INSURANCE AND ENVIRONMENTAL PROVISIONS ..... 15  
ARTICLE 9 DEFAULT AND REMEDIES ..... 21  
ARTICLE 10 TRANSFERS, ASSIGNMENT AND SUBLETTING ..... 24  
ARTICLE 11 RIGHT OF ENTRY ..... 26  
ARTICLE 12 TENANT’S PROPERTY ..... 26  
ARTICLE 13 SUCCESSION TO LANDLORD’S INTEREST..... 27  
ARTICLE 14 SURRENDER OF PREMISES ..... 28  
ARTICLE 15 ADDITIONAL PROVISIONS ..... 29

**EXHIBITS**

EXHIBIT A LEGAL DESCRIPTION OF BUILDING  
EXHIBIT B CONFIRMATION OF LEASE TERM  
EXHIBIT C TENANT’S WORK  
EXHIBIT D RULES AND REGULATIONS  
EXHIBIT E PROHIBITED USES  
EXHIBIT F WILL LEATHER GOODS DETROIT - “REVISED PERMIT AND BID SET” DATED  
AUGUST 12, 2015 (TO BE PROVIDED)  
EXHIBIT G TENANT INSURANCE CERTIFICATE  
EXHIBIT G-1 LANDLORD’S INSURANCE CERTIFICATE

**ARTICLE 1**  
**BASIC LEASE PROVISIONS AND ENUMERATION OF EXHIBITS**

**Section 1.1 Basic Lease Provisions.**

- (A) **Landlord:** Holland Investments AK, LLC, a Delaware limited liability company
- (B) **Address for Notices to Landlord:** 1242 Berkeley Street, Suite 3, Santa Monica, CA 90404
- (C) **Address for Rent Payments to Landlord:** Wire Transfer or ACH, at Tenant's election. (Bank information to be provided by Landlord), as set forth in Section 3.1 below.
- (D) **Tenant:** Seconda Via, LLC, a Michigan limited liability company.
- (E) **Address for Notices to Tenant:** Seconda Via, LLC c/o Heirloom Hospitality Group, LLC, 217 Pierce Street, Birmingham, Suite 207, Michigan 48009 Attention: Jeremy Sasson. Tel (248) 294-0700. Email: Jeremy@heirloomhospitality.com, with a copy to Alan Stillman, Esq, Seyburn Kahn, 2000 Town Center Suite 1500, Southfield, Michigan 48075 Tel 248 353-7620, Email: astillman@seyburn.com.
- (F) **Tenant's Use:** Tenant shall use the Premises for hospitality and retail uses, the concepts of which may change and be rebranded from time to time, and/or shall include, but not be limited to, restaurant, bar, club, lounge, and other hospitality and retail uses and services, including the sale and consumption alcoholic beverages and cigars, subject to applicable "Legal Requirements", as defined below, and Prohibited Uses under **Exhibit E** ("**Tenant's Use**"). Tenant shall be solely responsible for all permits and costs associated with Tenant's Use.

Landlord will act in good faith and commercially reasonable efforts to secure any available incentives including without limitation state, federal and local incentive/abatement programs/entitlements/creative corridor incentives, etc., which may be available during the Term of the Lease. All costs incurred by Landlord shall be paid by Tenant subject to prior notice to and approval by Tenant.

- (G) **Tenant's Trade Name:** Tenant's Trade Name will be provided to Landlord prior to the "Rent Commencement Date", as defined below, and may change from time to time, in accordance with the terms of this Lease.
- (H) **Building:** The term "**Building**" means the building, located on the real property known as 4120-4128 Second Avenue, Detroit, MI 48201, the legal description of which is attached hereto as **Exhibit A**, along with all other buildings and improvements located thereon. For further reference, the Building is depicted on the Landlord provided document titled "Will Leather Goods Detroit – Revised Permit and Bid Set", dated August 12, 2015 which is attached hereto as **Exhibit F**. Additionally, Tenant shall have exclusive use of the entire Building and real property, defined as "Parcel ID W02/002364" which shall include the mezzanine, parking lot, roof of the Building, all

appurtenances, tenements and hereditaments thereto, driveways, sidewalks, and similar improvements, easements and air and subsurface rights associated with the Building. Tenant is and will be, during the Term, as defined below, the sole and exclusive tenant and occupant of the Building. The term Building and Premises are used interchangeably throughout the Lease.

- (I) **Premises:** The term "Premises" means Net Rentable Area ("NRA") consisting of approximately Nine Thousand Two Hundred and Fifty (9,250) square feet on the ground floor and mezzanine of the Building, as shown on the attached Exhibit F. The parking lot ("Parking Area") consists of approximately Six Thousand and Twenty (6,020) square feet and is not considered NRA. Square footage is provided for description purposes only. For purposes of this Lease, the term Building or Premises shall include reference to the Parking Area. Tenant acknowledges that Landlord shall have no further obligation to determine the NRA of the Premises.
- (J) **Lease Commencement Date, Lease Year; Possession Date:** The Lease Commencement Date shall be the date that the Lease is executed by both parties (the "Lease Commencement Date"). The first "Lease Year" of the term hereof shall commence upon the "Rent Commencement Date", as defined below. If the Rent Commencement Date shall not fall on the first day of a calendar month, then the first Lease Year shall be the period of time from the Rent Commencement Date to the end of the month in which said Rent Commencement Date shall occur *plus* the following twelve (12) calendar months. Each Lease Year thereafter shall be a successive period of twelve (12) calendar months. Rent for a partial Lease year is determined in accordance with Section 3.1 below.

Tenant shall be provided with access to the Premises on the Lease Commencement Date for purposes of streamlining processes and for the purposes of Tenant's architects, designers, contractor's and consultant's review, preparation and commencement of construction of the Premises, irrespective of whether the "Existing Tenant", as defined below is still in possession of the Premises.

(K) **Lease Term, Delivery Date, Commencement Date:**

- a) **Lease Term:** The term of this Lease ("Lease Term") shall run for a period of ten (10) Lease Years from the Rent Commencement Date, unless extended in accordance with the terms of this Lease.
- b) **Delivery Date:** Spirit Leatherworks, LLC dba "Will Leatherworks" (the "Existing Tenant") is currently in possession of the Premises. The Existing Tenant's Lease will be terminated prior to the Lease Commencement Date. The "Delivery Date" shall be the date which is one (1) day after the Existing Tenant fully vacates the Premises and the conditions set forth below are satisfied. Landlord estimates that the Existing Tenant will vacate the Premises on May 31, 2019, i.e. Delivery Date will be June 1, 2019 and that the following conditions have been be satisfied on the Delivery Date:

(a) the Lease Commencement Date has occurred; (b) the Existing Tenant's lease has terminated and Landlord has provided Tenant with written evidence of the termination of the Existing Tenant's lease ("**Existing Tenant Termination Agreement**"), (c) the Existing Tenant has vacated the Premises, the Premises is in broom clean condition with all of furniture and fixtures removed from the Premises (collectively "**Broom Clean Condition**") operable HVAC and connected lighting, and power, and with all of the mechanical systems or other infrastructure improvements to the Premises intact and not removed by the Existing Tenant (d) the keys to the Premises have been delivered to Tenant, (e) Tenant has delivered to Landlord the certificate(s), which evidence that Tenant has in place the insurance coverages required to be maintained by Tenant pursuant to this Lease. The date upon which all of the following conditions have been satisfied, is hereinafter referred to as the Delivery Date.

In the event that the Delivery Date does not take place within one hundred and thirty (130) days of the termination date in the Existing Tenant Termination Agreement ("**Outside Delivery Date**"), then Tenant will have the exclusive right to terminate this Lease by providing written notice to Landlord, at Tenant's option, or by written notice to Landlord, provide additional time for the Delivery Date to take place. In the event that the Outside Delivery Date is not achieved, (or Tenant provides an extension(s), and such extended date(s) is not achieved) and Tenant elects to terminate the Lease, Landlord agrees that it will be responsible for up to twenty five thousand five hundred (\$25,000) of Tenant's reasonable and actual out of pocket costs incurred in connection with Lease, including, but not limited to the fees and costs of Tenant's architects, contractors, designers, legal counsel and other consultants.

- c) **Rent Commencement Date:** Except, as may otherwise be provided in this Lease, the "Rent Commencement Date" shall be one hundred and eighty days (180) from the Delivery Date (the "**180 day Period**"). For avoidance of doubt, no Rent, and "Taxes", both as defined below, shall begin accruing or become due prior to the Rent Commencement Date.

(L) **Fixed Minimum Rent:**

<u>Lease Years</u>	<u>Monthly Fixed Minimum Rent</u>
Lease Year 1	<del>Fifteen Thousand Dollars (\$15,000.00)</del> [For avoidance of doubt, one hundred and eighty thousand dollars (\$180,000) per year]
Lease Year 2	<del>Eighteen Thousand Dollars (\$15,000.00)</del> [no increase over Lease Year 1]
Lease Year 3	<del>Fifteen Thousand Four Hundred and Fifty Dollars (\$15,450)</del> [3% increase]
Lease Year 4	<del>Nineteen Thousand Nine Hundred and Fourteen Dollars (\$15,914)</del> [3% increase]

Lease Year 5

Lease Year 6

Lease Year 7

Lease Year 8

Lease Year 9

Lease Year 10

**First Extended C**

Lease Year 11

Lease Year 12

Lease Year 13

Lease Year 14

Lease Year 15

**Second Extended**

Lease Year 16

Lease Year 17

Lease Year 18

Lease Year 19

Lease Year 20

**Third Extended Opt**

Lease Year 21

Lease Year 22

Lease Year 23

Lease Year 24

Lease Year 25

**Fourth Extended O**

Lease Year 26

Lease Year 27

Lease Year 28

Lease Year 29

Lease Year 30

(M) **Intentionally Deleted.**

(N) **Management Fee.** The Management Fee chargeable by Landlord shall be Two Thousand Dollars (\$2,000) per Lease Year in Lease Years 1-10, Two Thousand Five Hundred Dollars (\$2,500) per Lease Year in Lease Years 11-20, and Three Thousand Dollars (\$3,000) per Lease Year in Lease Years 21-30, and shall be payable in monthly installments during together with Rent in each Lease Year.

(O) **Security Deposit:** Forty Five Thousand Dollars (\$45,000) to be paid by Tenant to Landlord within five (5) business days following the Lease Commencement Date by either ACH payment or wire transfer. Landlord will return Thirty Thousand Dollars

(\$30,000) within five (5) business days following Tenant opening the Premises for business and return to Tenant the remaining Fifteen Thousand Dollars (\$15,000) at the end of the initial 10 year Lease Term, as further provided under Section 3.3 to this Lease. Notwithstanding the foregoing, Landlord and Tenant agree that in the event that the Delivery Date does not occur by the Outside Delivery Date, as may be extended by Tenant, and Tenant terminates the Lease in accordance with its rights under Section 1.1K (b), Tenant shall be entitled to receive a refund of the entire Security Deposit within 3 business days of its request therefore.

**Section 1.2 Significance of a Basic Lease Provision.** Each reference in this Lease to any of the Basic Lease Provisions contained in Section 1.1 of this Article shall be deemed and construed to incorporate all of the terms thereof.

## ARTICLE 2 CONDITION OF PREMISES, EXTENSION TERMS, SALE OF PROPERTY

**Section 2.1 Title.** Landlord owns fee simple title to the land described on Exhibit A together with the Buildings and any other improvements thereon. In consideration of the rents, covenants and agreements reserved and contained in this Lease, Landlord hereby leases the Premises to Tenant, subject only to the terms and conditions contained in this Lease.

**Section 2.2 Condition of Premises.** Except for Landlord's covenants, agreements, warranties and obligations set forth in this Lease, Tenant agrees that it will accept possession of the Premises in an "AS-IS" condition and that no warranties, representations or inducements respecting the condition of the Premises or suitability of the Premises for Tenant's intended use have been made to Tenant by Landlord or its authorized representatives. Similarly, except as otherwise provided in this Lease, Tenant hereby acknowledges that no promises to decorate, alter, repair or improve the Premises, either before or after the execution hereof, have been made by Landlord or its authorized representatives. Tenant, at its sole expense shall perform all repairs and maintenance, as set forth in Section 6.2 of this Lease and comply with the Americans With Disabilities Act, orders, ordinances, regulations, codes, permits, licenses, now or hereafter in effect and applicable to the Building and Tenant's Use (collectively, "Legal Requirements") which relate specifically to (i) Tenant's Use, and/or (ii) any alterations, improvements or other work performed by Tenant or Tenant's employees, agents or contractors. Tenant acknowledges that all due diligence for suitability of the Premises and the Building for Tenant's Use and Tenant's Plans shall be borne by Tenant only and Tenant has apprised itself of the suitability of the Premises for Tenant's Use, subject only to Landlord's representations and warranties set forth in this Lease. Tenant acknowledges that Landlord is not making any representation to Tenant that the Premises can be used for Tenant's Use.

Based on the Phase 1 and Phase 2 reports provided to Tenant, Landlord represents and warrants to Tenant that the Building and Parking Area is free from "Hazardous Substances", as defined below. Nothing in the preceding sentence, shall alter Landlord's obligations as set forth in Section 8.5 (A) of this Lease. Landlord has not provided to Tenant, copies of all maintenance and repair logs or copies of all current permits in connection therewith, nor they have provided copies of all warranties in effect for all aspects of the Building, including, but not limited to, the



roof of the Building, nor will Landlord provide any such documents unless such documents become available to Landlord.

To the best of Landlord's knowledge, as of the Lease Commencement Date there are no easements, zoning, use agreements, and title issues, orders, judgments, ordinances, regulations, codes, directives, permits, licenses, covenants and restrictions, that will adversely affect Tenant's use and enjoyment of the Premises, as contemplated by Tenant's Use.

Tenant shall perform all of Tenant's Work in the Premises in accordance with Tenant's Plans in accordance with Exhibit C and applicable City of Detroit ordinances, and in addition, shall install fixtures and equipment and perform such other work as shall be necessary or appropriate in order to prepare the Premises for the opening and operation of its business thereon. The scope of Tenant's Work may include, at Tenant's discretion, and without limitation, façade and elevation work, doors, windows, awning, lighting, mechanical, roof, electrical, plumbing, audio/visual related items, outdoor dining (including the sale of alcohol), outdoor bar area, and indoor and outdoor entertainment areas, including recorded, live music and a disc jockey) and also including obtaining a dance license endorsement to Tenant's liquor license, subdividing and or expanding spaces in the Building, and other enhancements to the Premises consistent with Tenant's Use.

**Section 2.3 Quiet Enjoyment.** Landlord covenants that Tenant, upon paying Rent performing and observing all of Tenant's obligations under this Lease, shall peacefully and quietly have, hold and enjoy the Premises throughout the Lease Term, and Extension Options, without interference by Landlord, its successors or assigns, or by or through anyone holding an interest in the Premises granted by or through Landlord.

**Section 2.4 Confirmation of Lease Term.** Following the Rent Commencement Date, Landlord and Tenant shall execute and deliver a written statement in the form attached as **Exhibit B** hereto and by this reference made a part hereof ("**Confirmation of Lease**") specifying the Lease Commencement Date, Rent Commencement Date and expiration date of the Lease Term, as well as the Extension Terms, as defined below, within ten (10) business days of Landlord's written request to Tenant in connection therewith (and subsequent to the Rent Commencement Date.)

**Section 2.5 Extension Terms.** Tenant shall have the option to extend the term of this Lease for four (4) consecutive terms of five (5) years each, (the "**Extension Term(s)**") on the terms and conditions contained herein, except for Fixed Minimum Rent, which shall be as set forth in Section 1.1(L). Other than as set forth herein, Tenant shall have no further option to extend this Lease. Exercise of each Extension Term shall be deemed to be automatic without any notice or action necessitated by Tenant. Within two hundred and forty (240) days of the expiration of the Initial Term and each Extension Term, Landlord shall provide Tenant with written notice confirmation of Tenant's exercise of the then applicable Extension Term ("**Extension Confirmation Notice**"). Tenant shall, within sixty (60) days of receipt of the Extension Confirmation Notice, have the right to confirm by written notice, the exercise of the Option ("**Tenant's Confirmation**") or elect to not proceed with the Option by not providing the Tenant Confirmation, in which event the Lease shall expire at the end of the then applicable current term. If Tenant has not confirmed the exercise of the Option or elected not to proceed with the

Option within such sixty (60) days, than Tenant shall deem to have confirmed exercise of the Option. Tenant shall have no right to exercise an Option during the period of any uncured monetary default and continuing until said default is cured, in which case Tenant shall be entitled to exercise the Option.

**Section 2.6 Sale of Property.** If Landlord elects to offer the Building for sale during the Lease Term, Landlord shall provide Tenant with written notice of same prior to advertising the Building for sale to the public. Within 10 days of Tenant's receipt of such notice, Tenant and Landlord shall discuss the sale and purchase transaction either telephonically or in person (Tenant may elect whether to discuss telephonically or in person). If in person, Landlord and Tenant shall meet at Landlord's office (unless Landlord and Tenant mutually agreed upon another place). For avoidance of doubt, this section is not intended as right of first refusal option to purchase by Tenant, and is intended merely as a courtesy by Landlord to Tenant to apprise Landlord's intention to list the Building for sale and Landlord's obligations herein shall be limited to the written notice and telephonic or in meeting.

### ARTICLE 3 RENT

**Section 3.1 Fixed Minimum Rent.** During the Lease Term, Tenant covenants and agrees to pay to Landlord, in lawful money of the United States, without any prior demand and without any deduction or setoff whatsoever (except as may otherwise be provided in this Lease), the Fixed Minimum Rent, as provided in Section 1.1(L). If the Rent Commencement Date is a day other than the first day of a calendar month, Fixed Minimum Rent for the partial calendar month shall be prorated on a per diem basis. Not less than seven (7) days prior to the due date for Fixed Minimum Rent (and Additional Rent) Landlord shall provide Tenant with a written rent payment notice via email only ("**Rent Payment Notice**"). All "**Rent**", as defined below, shall be made, at Tenant's option, by either ACH payment or wire transfer. Landlord shall provide Tenant with the required information from Landlord's bank in order to facilitate the payment of Rent, as defined below, by ACH and/or wire transfer not less than 30 days prior to the Rent Commencement Date. Landlord agrees that its bank's failure to pull funds pursuant to an ACH payment arrangement with Tenant shall not constitute a nonpayment by Tenant under this Lease, and in such instance, Landlord will be required to notify Tenant of such occurrence in writing in which case Tenant shall make such payment within 3 business days of Tenant's receipt of such notice.

**Section 3.2 Additional Rent.** In addition to Fixed Minimum Rent, "**Taxes**" and insurance premiums for Landlord's insurance, as provided for in this Lease shall be "**Additional Rent**" hereunder, and shall be due and payable at the times and in the amounts set forth in this Lease; it being agreed and understood that Landlord shall have the same rights and remedies for failure to pay Additional Rent as are granted to Landlord in connection with a non-payment by Tenant of Fixed Minimum Rent. Fixed Minimum Rent and Additional Rent are herein sometimes collectively referred to as "**Rent**". If Tenant shall fail to make any payment of Rent when due as required under the applicable provisions of this Lease, Tenant shall be responsible for the interest and late fees in accordance with 3.4 and 3.5 hereof.

**Section 3.3 Security Deposit.** Tenant shall deposit with Landlord the sum set forth in and accordance with Section 1.1(O) (hereinafter sometimes referred as the "**Security Deposit**") as

security for the performance of every provision of this Lease by Tenant. Following the lapse of the notice and cure periods provided to Tenant under this Lease and provided that such nonperformance has not been cured within such proscribed time period Landlord may apply all or part of the Security Deposit to cure any default by Tenant hereunder and Tenant shall within 15 days advance written notice, restore to the Security Deposit all reasonable amounts applied against the Security Deposit. Any portion of the Security Deposit which has not been applied by Landlord in accordance with the provisions hereof shall at Tenant's option, either be returned to Tenant, without interest, not later than 15 days after the expiration of the first Lease Term and irrespective of whether Tenant has exercised an Extension Option or applied by Tenant against the last month's Rent for the initial Lease Term.

Landlord may deliver the Security Deposit to the purchaser or transferee of Landlord's interest in the Premises, in the event that such interest is sold or transferred, and, in the event the purchaser or transferee assumes the obligations of Landlord, thereupon Landlord shall be discharged from any further liability with respect to such deposit and this Lease provided that such successor in interest to Landlord acknowledges same in writing to Tenant. Landlord shall not be required to keep the Security Deposit in a segregated account, and the Security Deposit may be commingled with other funds of Landlord.

**Section 3.4 Past Due Rent.** If Tenant shall fail to pay, when the same is due and payable, any Rent, such unpaid amounts shall bear interest from the due date thereof at the rate which is the lesser of ten percent (10%) per annum or the maximum interest rate permitted by law.

**Section 3.5 Late Fee.** Tenant recognizes that late payment of any Rent from Tenant to Landlord will result in administrative expense to Landlord, the extent of which additional expense is extremely difficult and economically impractical to ascertain. Tenant therefore agrees that if Rent from Tenant to Landlord remains unpaid five (5) days after said amount is due (which due date is the 1<sup>st</sup> day of the month provided that Tenant has received the Rent Payment Notice (via email only)), the amount of such unpaid Rent or other payments shall be increased by a late charge in an amount equal to ten percent (10%) of the amount of the delinquent Rent or other payment. Tenant agrees that such amount is a reasonable estimate of the loss and expense to be suffered by Landlord as a result of such late payment by Tenant and may be charged by Landlord to defray such loss and expense. The provisions of this Section in no way relieve Tenant of the obligation to pay Rent or other payments on or before the date on which they are due, nor do the terms of this Section in any way affect Landlord's remedies and Tenant's right pursuant to Article 10 of this Lease in the event Rent is past due. In the event that a late fee is payable hereunder, whether or not collected, for three (3) consecutive months, then notwithstanding any provision of this Lease to the contrary, Rent shall, at Lessor's option, become due and payable quarterly in advance for the following consecutive twelve (12) months thereafter and then revert back to monthly payments, unless a nonpayment occurs beyond the applicable notice and cure period.

#### **ARTICLE 4 MANAGEMENT FEE, CAPITAL IMPROVEMENTS, TAXES**

**Section 4.1 Management Fee.** Tenant shall pay to Landlord a Management Fee as provided in Section 1.1(N).

**Section 4.2 Capital Improvements.** "Amortized Capital Costs" shall mean the costs associated with capital improvements which are installed or constructed by Landlord during the Lease Term, which are required consistent with commercially reasonable standards for replacement of such items, and which improvements will be at least similar in quality to improvements that are consistent with high class buildings of similar size and use and consistent with the definition of a capital improvement, as defined by generally accepted accounting principles ("Capital Improvement"), and shall be determined as the cost of such Capital Improvement, amortized over the estimated useful life of the Capital Improvement, as determined by the useful life of such item per manufacturer specification, provided, however, that the useful life of the roof and HVAC shall be at least fifteen (15) years (unless the manufacturer represents that the useful life of the HVAC is less than 15 years in which case it shall be less than 15 years but in no event less than 10 years). The annual amortized amount of such Capital Improvement, as determined herein, is hereinafter referred to as the "Annual CI Expense". Any unamortized portion of such Capital Improvement at the expiration of the Lease, shall be borne by Landlord. Capital Improvements shall include, without limitation: replacement of roof structure and roof membranes; Parking Area replacement and replacement of Building systems and facilities that were part of the Building as of the Lease Commencement Date (including HVAC and other systems). At the beginning of each Lease Year, Landlord shall provide Tenant with the amount of the Annual CI Expense as determined in the manner set forth herein. The amount of Annual CI Expense for a given Lease Year shall be paid by Tenant in 12 equal monthly installments and paid together with payment of Fixed Minimum Rent, which at Tenant's option, can be by separate payment pursuant to Section 3.1 above. Landlord agrees that the cost of any Capital Improvement shall not be more than the fair market value of such Capital Improvement and that Landlord shall solicit not less than three (3) competitive bids for each Capital Improvement and shall provide copies of such bids along with the applicable warranty that will be provided as part of such work ("Bids") to Tenant prior to proceeding with such Capital Improvement. Tenant upon receipt of the Bids shall have a period of 10 business days to review the Bids and may, at its option, obtain its own Bids, which it will submit to Landlord for review and which Landlord shall take into consideration prior to selection of the final bid.

For avoidance of doubt, Tenant (and not Landlord) shall be solely responsible for costs and work related to repairs and regular maintenance (but not replacements) of the Building's roof and Parking Area. Landlord acknowledges that Tenant will have the exclusive right to the use of the Building's roof and the ability to make improvements to same with prior written notice to Landlord, subject to applicable law and insurance requirements necessitated by any such improvements by Tenant.

**Section 4.3 Taxes.** For purposes of this Lease, the term "Taxes" shall mean all real property taxes and assessments assessed or imposed upon the Building. The term "Taxes" shall not include any personal property taxes relating to any aspect of Building, estate and income taxes, franchise taxes, sales and use taxes related to any aspect of the Building owned by Landlord, any transfer tax of Landlord, or any increase in taxes attributable to the sale of the Building, any penalties or interest for late tax or assessment payments made by Landlord (unless same is caused by Tenant's failure to timely satisfy its obligation to pay Landlord the Taxes, in the manner set forth herein.) In the event of the sale of the Building ("Building Sale") which results in an increase in the state equalized value of the property which causes an increase in Taxes

("Sale Increase"), Tenant shall be responsible for such Sale Increase by paying 14.286% of the Sale Increase in each Lease Year over the following seven (7) Lease years.

Furthermore, if certain Taxes may be paid in installments, only the amount of each installment that would be due and paid during the applicable Lease Year shall be included as Taxes for that year. In the event that an assessment is not payable in installments, Tenant's payment of the assessment will be allocated over a period of years equal to the useful life of the subject of the assessment and Tenant shall only be responsible for such installments that are due during the Lease Term. Taxes for the first and last year of the Term shall be prorated based on the due date of such Tax, such that Tenant is only responsible for that portion of the Tax which is attributable to the Lease Term. Within a reasonable time of receipt of the tax bills for each tax year, Landlord will deliver to Tenant copies of the tax bills for the Taxes. Tenant shall pay any deficiency within ten (10) days' after demand therefor by Landlord and if there has been an overpayment by Tenant, Landlord shall credit any excess payments against the next payments required to be made by Tenant under this Lease.

Landlord agrees that Tenant may from time to time engage real estate tax counsel on a contingency basis to evaluate whether an appeal of the Property Taxes for the applicable year is justified. Tenant will advise Landlord and its counsel whether any appeal is justified and if so Tenant at its sole cost shall be entitled to proceed therewith. Landlord will apprise Tenant if an appeal has been undertaken and all material developments in connection with such appeal (or the reason why an appeal is not being undertaken for the applicable year). If Property Taxes for any calendar year are retroactively reduced and refunded, Tenant shall receive a credit for such refund.

Landlord will utilize commercially reasonable efforts to secure any tax incentives/abatements which may be available during the term of this Lease and shall also utilize commercially reasonable efforts to maintain all tax incentives that are presently in place with regard to the Building and Property.

Landlord shall submit to Tenant once per Lease Year and not less than 90 days prior to the date which the Taxes can be paid without penalty, copies of the tax bills for the current Lease Year, and subject to the proration's, adjustments and limitations, as set forth above, Tenant shall remit payment to Landlord or at Tenant's option, Tenant may remit payment directly to the taxing authority (in which case Tenant will provide Landlord with a receipt for such payment) of the amount on such tax bills within 30 days of its receipt of copies of such bills from Landlord.

## **ARTICLE 5 UTILITIES**

**Section 5.1 Utility Services.** Landlord represents and warrants to Tenant that, as of the Rent Commencement Date, all utilities that service the Premises shall be separately metered. Landlord to provide all meter numbers to Tenant and unrestricted access to all meter locations. As of the Rent Commencement Date, Tenant shall transfer into Tenant's name, obtain, pay for, and be solely responsible for, all utilities required, used or consumed in the Premises, including, but not limited to gas, water (including water for domestic uses and for fire protection), telephone, electricity, sewer service, garbage collection services, as set forth herein, (herein sometimes

collectively referred to as the "Utility Services"). Landlord acknowledges that Tenant may, at its option, increase the Utility Services currently at the Building, as part of Tenant's Work, or thereafter, at Tenant's Expense. In the event that any charge for any utility supplied to the Premises is not paid by Tenant to the utility supplier when due, then following the expiration of the notice and cure period provided to Tenant, Landlord may but shall not be required to, pay such charge for and on behalf of Tenant, with any such amount paid by Landlord being repaid by Tenant to Landlord, as Additional Rent, promptly upon demand. Tenant shall be entitled, but not required to use a generator(s) at the Property, to assist in managing a disruption of electricity to the Property. Landlord and Tenant hereby agree that Landlord shall not be liable for any interruptions or curtailment in Utility Services to the Premises or Building unless as a result of Landlord's failure to comply with the terms and conditions of this Lease and under all circumstances, instances of Landlord's negligence. Landlord agrees to work with Tenant in good faith to assist Tenant in the restoration of such utilities and for the procurement of all permits, utility line and access easements and anything else necessary to operate the above referenced generators at the Property (provided that Tenant shall reimburse Landlord for any reasonable and necessary costs by any third party, if any, as a result of such assistance – e.g. consultants, contractors, attorneys, travel cost, permit fees—provided that such costs have been previously approved by Tenant.)

**ARTICLE 6**  
**TENANT INSTALLATION, LANDLORD'S RETAINED OBLIGATIONS,**  
**MAINTENANCE BY TENANT, SIGNAGE AND LIENS**

**Section 6.1 Tenant Installation.** Tenant shall, at Tenant's sole expense, install all trade fixtures and equipment required to operate its business (which shall be of commercial grade). Upon completion of Tenant's work under **Exhibit C**, Tenant shall not make any alterations, additions, improvements, or changes or perform any other work whatsoever in and to the Premises, (other than interior/exterior cosmetic, branding and decorative changes) which exceed seventy five thousand dollars (\$75,000.00) for any one occurrence (excluding any work covered by insurance), without the prior written approval of Landlord (which approval shall not be unreasonably withheld, conditioned or delayed).

**Section 6.2 Intentionally Omitted.**

**Section 6.3 Maintenance by Tenant.** Except as provided in Section 6.2 and otherwise in this Lease, Tenant shall, at Tenant's sole expense, and as commercially reasonable and necessary keep the interior and exterior portions of the Premises, including without limitation, maintaining, repairing and keeping the Parking Area in good condition and repair (but excluding parking lot resurfacing and replacement which is a Capital Improvement) and all mechanical, electrical, and plumbing, heating, ventilating and air conditioning systems servicing the Premises, fixtures, storefront entry and rear service doors and all broken glass (with glass of the same size and quality) in good order, condition, and repair, clean, sanitary, and safe, provided further, that Tenant shall be responsible to remove all snow and ice from the sidewalks immediately outside of the Premises. Tenant shall properly dispose of its garbage in a commercially reasonable manner and be responsible for all costs thereof. In the event Tenant fails to perform any of its obligations as required hereunder after written notice from Landlord and subject to the cure period set forth in Section 10 below, Landlord may, but shall not be required to, perform and

satisfy such obligations of Tenant, at amounts not to exceed a commercially reasonable charge therefore, with Tenant hereby agreeing to reimburse Landlord, together with an administrative fee of five percent (5%), as Additional Rent, for the cost thereof promptly upon demand. With the exception of the fire sprinkler system for the Building, which Tenant is being provided an allowance for in accordance with Exhibit C, Tenant shall maintain the Premises and make any and all additions, improvements, alterations, and repairs to or on the Premises which may at any time during the Lease Term be reasonably required by any lawful authorities. All such work shall be performed in a good and workmanlike manner.

**Section 6.4 Signage.** Tenant shall be permitted to install, at Tenant's cost, the maximum exterior signage, including awnings and canopy, allowable by City Ordinance on the Building's storefront and other exterior parts of the Building permitted, in accordance with the City Ordinance, including without limitation, Tenant's use of the existing blade signage. Design drawings and plans ("**Signage Drawings**") for any exterior sign for the Building will be submitted by Tenant to Landlord, for Landlord's approval, which approval shall not be unreasonably withheld, delayed or conditioned. Landlord shall have five (5) days to approve the Signage Drawings from its receipt of same. In the event that the Signage Drawings are not responded to by Landlord within such time frame, the Signage Drawings shall be deemed approved. Tenant shall be entitled to place "coming soon", "under construction" and similar signage as well as signage displaying Tenant's branding on the Building and or in windows of the Building and in the Parking Area, from and after the Lease Commencement Date.

All signs shall be constructed, maintained and installed pursuant to City of Detroit Ordinance at Tenant's sole cost and expense and in a quality and workmanlike manner. Electrical connections, if applicable, shall comply with all applicable codes and regulations. All signs shall be installed by a licensed contractor in a professional workmanlike manner. Within 15 days following the expiration of the Lease Term, Tenant shall be responsible to remove all signs fastened to the structure of the Building and repair any unreasonable damage arising from such removal within 30 days following the expiration of Term.

**Section 6.5 Liens.** Tenant will not create or permit to be created or to remain, and will discharge, any lien caused by Tenant (including, but not limited to, the liens of mechanics, laborers or materialmen for work or materials alleged to be done or furnished in connection with the Premises), encumbrance or other charge upon the Premises or any part thereof, upon Tenant's leasehold interest therein within thirty (30) days' of receipt of notice thereof, provided, that Tenant shall not be required to discharge any such liens, encumbrances or charges as may be placed upon the Premises by the act of Landlord or anyone other than Tenant and not under Tenant's control. If Tenant shall fail to timely vacate or release such lien on accordance with the terms of this Lease, Tenant shall be in default and in addition to any other right or remedy, Landlord may vacate or release the same by paying the amount claimed due or by procuring the release of such lien, as may be prescribed by law. Tenant shall repay to Landlord on demand, all sums disbursed or deposited by Landlord, including costs and expenses and reasonable attorney's fees, incurred in connection therewith. However, nothing contained herein shall imply a consent or agreement on the part of Landlord to subject their respective estates or interests to liability under any lien law, whether or not such work, services or materials to, through or under Tenant shall have been consented to by Landlord or any such parties.

Tenant shall have the right to contest, in good faith and by appropriate legal proceedings, the validity or amount of any mechanics', laborers' or material person's lien or claimed lien. In the event of such contest, Tenant shall post reasonable security with a third party agreed upon by Landlord and Tenant, in the amount of the lien or whatever amount is required by law as the amount of the posted bond, to insure payment thereof and to prevent any sale, foreclosure or forfeiture of the Premises or any part thereof by reason of such non-payment including, upon request, a statutory payment bond. Upon final determination of such lien or such claim for lien, Tenant will immediately pay any judgment rendered, with all proper costs and charges, and shall have such lien released or judgment satisfied at Tenant's expense and upon such payment and release of satisfaction, Tenant will promptly receive any funds which remain in escrow following discharge of the lien. Landlord reserves the right to post on the exterior of the Premises, notices of non-responsibility for any such lien. Tenant shall protect, defend, indemnify and save harmless Landlord, its employees, agents, contractors, successors and assigns, from and against any and all liabilities, losses, claims, damages, costs and expenses, including reasonable attorney fees, incurred by Landlord by reason of the filing of any lien or the requisite removal of such lien in connection with, or arising out of Tenant's work, use, occupancy or business at the Premises. Notwithstanding anything to the contrary contained in this Lease, in the event that Tenant does not receive the Landlord Allowance, in accordance with the terms and conditions of this Lease, any liens that are filed on the Premises, in connection with such work shall not be deemed a default under this Lease, *and* the provisions of this Section shall not apply until thirty (30) days following Tenant's receipt of the Landlord Allowance in accordance with Exhibit C.

## ARTICLE 7 USE AND OPERATION OF PREMISES

**Section 7.1 Use and Operation.** Tenant may change the Trade Name set forth in Section 1 (G) to any other name from time to time used by Tenant, its parents, affiliates, or subsidiaries, provided further such trade name is not offensive or illegal provided that there is no change to Tenant's Use. In no event shall Tenant operate or allow to be operated a business for any of the Prohibited Uses set forth in Exhibit E. From and after the Lease Commencement Date, Tenant shall have access to the Premises 24/7/365. Landlord agrees that garbage and other restaurant related waste removal for the Premises and areas servicing such removal requirements for the Premises shall be based on the needs of Tenant's business operations, and with such frequency as determined by Tenant. Tenant shall have the right to use such portions of the Premises and exterior areas of the Premises and Parking Area for Tenant's trash and restaurant refuse disposal. In addition, Tenant shall be entitled to use adjacent alleyways, and thoroughfares, subject to any required city approval, and Landlord agrees to reasonable cooperate in connection with same.

**Section 7.2 Rules and Regulations.** Tenant agrees to comply with and observe all of the operational rules and regulations attached hereto as Exhibit D and by this reference made a part hereof. Tenant's failure to keep and observe said rules and regulations shall constitute a material breach of the terms and provisions of this Lease to the same extent as if such rules and regulations are contained herein as covenants, and Tenant shall be entitled to the notice and opportunity to cure period set forth in Section 10.1 (b).



**Section 7.3 Americans with Disabilities Act Compliance.** The parties acknowledge that the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) and regulations and guidelines promulgated thereunder, as all of the same may be amended and supplemented from time to time (collectively referred to herein as the "ADA") establish requirements for business operations, accessibility and barrier removal, and that such requirements may or may not apply to the Premises and the Building. Tenant agrees to comply with same to the extent applicable to the Premises from and after the Lease Commencement Date. The parties hereby agree that Tenant shall be responsible for ADA Title III compliance in the Premises, including any leasehold improvements or other work to be performed in the Premises under or in connection with this Lease. Landlord represents and warrants that to Landlord's best knowledge there are no ADA violations of the Building as of the Lease Commencement Date. The Premises have not undergone an inspection by a Certified Access Specialist (CASp). Landlord makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. Landlord and Tenant hereby agree that any CASp inspection requested by Tenant shall be conducted at Tenant's sole cost and expense.

**Section 7.4 Parking.** All parking that is available (or that becomes available during the Lease Term) at the Building shall be exclusive for Tenant use and enjoyment in accordance with Tenant's Use. Landlord agrees that it will support Tenant to secure a City of Detroit issued valet license and to establish appropriate parking for Tenant's Use at the Property. If Tenant requests such support than Tenant agrees that it will reimburse Landlord for any reasonable costs incurred by Landlord in connection with such Tenant requests, provided that such costs are unrelated third party charges and approved by Tenant in advance.

**Section 7.5 Odor Control.** Tenant shall be responsible for mitigation and control of excessive and offensive odors emanating from the Premises or otherwise attributable to Tenant's operations and use of the Premises or the Building to the extent such odors materially exceed those odors typically generated by Tenant's Use and also to ensure compliance with any applicable code or ordinance.

## ARTICLE 8 INSURANCE AND ENVIRONMENTAL PROVISIONS

**Section 8.1 Tenant's Coverage.** From and after the Delivery Date and for the duration of the Term thereafter, Tenant shall keep in force, at Tenant's sole cost and expense, as long as this Lease remains in effect and during such other times as Tenant occupies the Premises or any part thereof, commercial general liability insurance in amounts of \$1,000,000 per occurrence and \$4,000,000 umbrella or excess aggregate insurance insuring against liability for injury to or death of a person or persons or damage to property.

From and after the Delivery Date and for the duration of the Term thereafter, Tenant shall also keep in force, at Tenant's sole cost and expense, fire and extended coverage insurance covering the Building and all leasehold improvements in the Premises (whether installed by Tenant or otherwise) and all of Tenant's merchandise, equipment, trade fixtures, appliances, furniture, furnishings and personal property, located from time to time in, on, or upon the Premises, in an amount not less than the replacement cost thereof, providing protection against perils included within the classification of fire, extended coverage, vandalism, malicious

mischievous, special extended peril ("special form"), boiler, flood, glass breakage, water and sprinkler leakage or flow. Landlord agrees that any existing or future mortgage on the Building, shall allow for the utilization of the insurance proceeds from the coverage required to be maintained under this Section 8.1 to be used for the reconstruction of the Building.

Tenant shall in addition keep in force Worker's Compensation or similar insurance to the extent required by law. All insurance which Tenant shall, or is obligated to, maintain under the terms and provisions of this Lease shall name Landlord, and such other persons or firms as shall be specified by Landlord from time to time, as additional insured under ISO form CG 20 26 11 85 (or equivalent) and shall be issued by insurance companies licensed in the state of Michigan and having an A.M. Best rating of "A-VII" or better or the equivalent thereof ("Qualified Insurer"). Tenant shall provide certificates evidencing such insurance to Landlord no later than the Delivery Date. Should Tenant fail to effect the insurance called for herein or to pay the premiums therefor or to deliver said policies, certificates, or duplicates thereof, to Landlord, and subject to notice and Tenant's right to cure as set forth in Section 10.1(b). Landlord may procure such insurance. In connection therewith, Tenant shall pay all sums reasonably expended by Landlord to Landlord as Additional Rent, which amount will be paid by Tenant within 15 days of Tenant's receipt of an invoice therefor. Each insurer under the policies required hereunder shall agree by endorsement on the policy issued by it or by independent instrument furnished to Landlord that it will give Landlord thirty (30) days prior written notice before the policy or policies in question shall be altered or canceled. A certificate evidencing Tenant's required insurance is attached hereto as Exhibit G which Exhibit has been reviewed and approved by Landlord as compliant with Tenant's insurance requirements hereunder.

**Section 8.2 Landlord's Insurance.** At all times during the Term of this Lease, Landlord will maintain commercial general liability insurance in an amount of not more than \$2,000,000, on an occurrence basis, for the benefit of Landlord, covering personal injury including bodily injury and death or property damage liability and such other insurance on or related to the Premises, as Tenant reasonably requires Landlord to maintain ("Landlord's Insurance"). Landlord's insurance certificate, as required hereunder is attached hereto as Exhibit G-1. Tenant shall not be responsible for any deductible under any of Landlord's insurance policies. Landlord's Insurance must be issued by a Qualified Insurer. Each insurer under the policies under Landlord's Insurance shall provide that policy cannot be canceled or amended without providing Tenant with thirty (30) days prior written notice before the policy or policies in question shall be altered or canceled. Landlord and Tenant agree that Tenant, may, from time to time, provide quotes for Landlord's Insurance from Tenant's insurance carrier for Landlord's review and consideration, which Landlord agrees to review and consider in good faith, but Landlord shall be entitled to make the final determination of which carrier Landlord uses.

**Section 8.3 General Indemnities.** Landlord shall defend, indemnify, and hold harmless Tenant and its agents from and against all claims, demands, liabilities, causes of action, suits, judgments, and expenses (including reasonable attorneys' fees) for any loss arising from (i) any occurrence in the Building to the extent caused by the negligence or willful misconduct of Landlord or its employees, invitees, or agents, (ii) for the breach by Landlord of any of Landlord's contractual obligations, representations and covenants provided for in this Lease, and (iii) any encroachments or other matters which are shown on the Survey dated June 3, 2016, prepared by Storey Engineering Group LLC. Job Number, 2016-010, Drawing Number C-1.0,

and listed on the Survey, as Schedule B-2, item 13 (referencing First American Title Insurance Commitment number 741756, effective date May 23, 2016) unless due to Tenant's actions or negligence. The indemnities set forth in this Section 8.3 shall survive termination or expiration of this Lease. Tenant shall defend, indemnify, and hold harmless Landlord and its agents from and against all claims, demands, liabilities, causes of action, suits, judgments, and expenses (including reasonable attorneys' fees) (y) from any loss arising from any occurrence in the Premises to the extent caused by the negligence or willful misconduct of Tenant, or its employees, invitees, or agents, and (z) for the breach by Tenant of any of Tenant's contractual obligations, representations and covenants provided for in this Lease. The indemnities set forth in this Section 8.3 shall survive termination or expiration of this Lease.

**Section 8.4 Waiver of Subrogation.** Landlord and Tenant each waive any right to recover against the other claims or damages to property to the extent such damages and claims are insured against, or required to be insured against, by Landlord or Tenant under this Lease. The foregoing provision is intended to waive, fully and for the benefit of each party, any rights and/or claims that might give rise to a right of subrogation by any insurance carrier, and the foregoing waiver shall govern and control any contrary or inconsistent terms or provisions of this Lease.

**Section 8.5 Hazardous and Toxic Substances.**

(A) **Landlord's Representation and Obligations.** Landlord agrees that it will provide Tenant with copies of all existing environmental reports on the Building which Landlord has in its possession and has access to and which identifies all environmental studies and remediation which has been identified and performed at the Building, as of the Lease Commencement Date. Landlord shall be responsible, at its cost for the remediation and/or containment of any asbestos or other "Hazardous Substance", as defined below ("**Landlord Environmental Issue(s)**") in the Building and Parking Area, which exists as of the Lease Commencement Date and/or which Tenant discovers prior to and/or during the construction of Tenant's Work, or at any time during the term of the Lease that were not brought upon the Building by Tenant or Tenant's agents, employees or contractors or which were brought upon the Building by Landlord or Landlord's agents, employees or contractors, or that have migrated onto the Building from other properties. Prior to the commencement of Tenant's Work and during the pendency thereof, (and during the Term), Tenant will notify Landlord of any Asbestos or other contamination discovered in Building or Parking Area ("**Environmental Notice**"). Landlord shall have a period of 10 business days from the date of each Environmental Notice to dispatch a reputable licensed environmental contractor to the Premises to remediate or otherwise address the Landlord Environmental Issue in accordance with applicable law and to the satisfaction of Tenant. In the event that Landlord fails to do so within the above referenced time frame, Tenant, at its cost, may engage its own environmental consultant to perform such work, the cost of which shall be borne by Landlord. Landlord acknowledges that the existence of a Landlord Environmental Issue occurring prior to the Rent Commencement Date which results in stoppage or material delay of Tenant's Work (based on commercially reasonable standards), that the Rent Commencement Date shall be delayed by such number of days following the date when Landlord is notified of the Environmental Issue until the Environmental Issue is remediated and/or contained. In addition, Landlord shall be responsible for any damage or disruption to the Premises which is caused by any remediation or containment work required to be done by Landlord during the Term in relation to a Landlord Environmental Issue.

Hazardous Substances: shall mean any substance, material or waste which is or becomes designated, classified or regulated as being "toxic" or "hazardous" or a "pollutant", which is or becomes similarly designated, classified or regulated, under any Environmental Law, including asbestos, petroleum and petroleum products, or which becomes hazardous to the health and welfare of any occupants in the Building, as designated under any "Environmental Law". Environmental Law shall mean any federal, state or local law, statute, ordinance, requirement, regulation, order or pronouncement pertaining to health, industrial hygiene or the environment including, without limitation, CERCLA (Comprehensive Environmental Response, Compensation and Liability Act of 1980), RCRA (Resources Conservation and Recovery Act of 1976) and SARA (Superfund Amendments and Reauthorization Act of 1986).

Landlord hereby agrees to indemnify and hold Tenant harmless from and against any loss or expense arising from Hazardous Substances which are located in the Premises as of the Lease Commencement Date and which are not remediated and/or contained in accordance with this Section. This provision of this Section shall survive termination of this Lease.

**(B) Tenant's Representation.**

- (i) If the Building becomes contaminated in any manner for which Tenant is responsible for the release or discharge of a Hazardous Substance, Tenant shall immediately notify Landlord of the release or discharge of the Hazardous Substance, shall bear all costs related to remediation or otherwise address the Hazardous Substance, and Tenant shall indemnify, defend and hold harmless Landlord from and against any loss or expense arising during or after the Term of this Lease and arising as a result of such contamination, release or discharge. This indemnification includes, without limitation, all costs incurred because of any investigation of the site or any cleanup, removal or restoration mandated by federal, state or local agency or political subdivision. This provision of this Section shall survive termination of this Lease. Notwithstanding the foregoing, Tenant shall be entitled to use and store those substances are regular used in a restaurant operation in in a manner and quantity necessary for the ordinary performance of Tenant's business, the storage and use of which shall not require Landlord's consent, but shall be at Tenant's sole risk.
- (ii) Tenant, at its sole cost and expense, shall operate its business in the Premises in reasonable compliance with all Environmental Requirements, as defined below. Tenant shall complete and certify to any required disclosure statements reasonably requested by Landlord from time to time, but in any event, not more than once per lease year relating to Tenant's storage, use, or release of Hazardous Materials on the Premises, and Tenant shall promptly deliver to Landlord a copy of any notice of violation relating to the Premises or Project of any Environmental Requirement. Tenant shall also give Landlord prompt written notice of any material water leakage, water damage or mold identified by Tenant in or about the Premises. Tenant shall not conduct any invasive environmental testing or investigation (including, without limitation, any

testing of any soils) on or about the Premises without obtaining Landlord's prior written consent, and any investigations or remediation on or about the Premises shall be conducted only by a consultant approved in writing by Landlord and pursuant to a work letter approved in writing by Landlord. The term "**Environmental Requirements**" means all applicable present and future statutes, regulations, ordinances, rules, codes, judgments, permits, authorizations, orders, policies or other similar requirements of any governmental authority, agency or court regulating or relating to health, safety, or environmental conditions on, under, or about the Premises or the environment, including without limitation, the following: the Comprehensive Environmental Response, Compensation and Liability Act; the Resource Conservation and Recovery Act; the Clean Air Act; the Clean Water Act; the Toxic Substances Control Act and all state and local counterparts thereto, and any common or civil law obligations including, without limitation, nuisance or trespass.

- (iii) Tenant, at its sole cost and expense, if required by law, shall remove all Hazardous Materials stored, disposed of or otherwise released at the Premises by Tenant, its assignees, subtenants, agents, employees, contractors or invitees onto or from the Premises, in a manner and to a level which complies with all Environmental Requirements and does not limit any uses of the Premises which are permitted under applicable Legal Requirements as of the Delivery Date or require the recording of any deed restriction regarding the Premises. Tenant shall perform such work within a reasonable period of time given the scope of work following a written request by Landlord or, in the absence of a specific request by Landlord, before Tenant's right to possession of the Premises terminates or expires. If Tenant fails to timely commence and thereafter diligently pursue such work to completion, and such failure continues for more than thirty (30) days after delivery of a written request from Landlord, Landlord may at its discretion, and without waiving any other remedy available under this Lease or at law or equity (including without limitation an action to compel Tenant to perform such work), perform such work at Tenant's cost. Tenant shall pay all actual, out-of-pocket costs incurred by Landlord in performing such work within thirty (30) days after Landlord's request therefor. Regardless of Landlord's performance of any such work on behalf of Tenant, Tenant shall remain the owner, generator, operator, transporter, and/or arranger of the Hazardous Materials for purposes of Environmental Requirements. Unless otherwise required pursuant to a court order or applicable Legal Requirements, Tenant agrees not to enter into any agreement with any person, including without limitation any governmental authority, regarding the removal of Hazardous Materials that have been disposed of or otherwise released onto or from the Premises without the written approval of the Landlord.

- (iv) Tenant shall indemnify, defend, and hold Landlord harmless from and against any and all claims and reasonable expenses related to a violation by Tenant of the Tenant Representation, provided that Tenant has received notice and an opportunity to cure as set forth in Section 9 of this Lease. The obligations of Tenant under this Section 30 shall survive any termination of this Lease.
- (v) Landlord shall have access to, and a right to perform inspections and tests of, the Premises, at Landlord's sole cost and expense and not more frequently than once per Lease year with 10 days advance written notice to Tenant during Tenant's non business hours. Landlord shall be responsible for any disruption and related costs it causes as a result of such inspection.

**Section 8.6 Fire, Explosion or Other Casualty, Condemnation.**

(A) **Repair Estimate.** If the Building is damaged by fire or other casualty (a "Casualty"), Landlord shall, within thirty (30) days after such Casualty, deliver to Tenant a good faith estimate (the "Damage Notice") of the time needed to repair the damage caused by such Casualty.

(B) **Tenant's Rights and Repair Obligations.** Notwithstanding anything to the contrary contained herein, if a material portion of the Building is damaged by Casualty such that Tenant is prevented from conducting its business in the Building in the manner equivalent to that conducted immediately before such Casualty and Landlord provides Tenant with notice ("Repair Notice") that the damage caused thereby cannot be repaired within one hundred twenty (120) days from the occurrence of the damages (the "Repair Period"), then Tenant may terminate this Lease by delivering written notice to Landlord of its election to terminate the Lease or, at Tenant's option provide additional time by written notice to Landlord. Notwithstanding the foregoing, if the Premises are wholly or partially damaged or destroyed as a result of the gross negligence or willful misconduct or omission of Tenant, Tenant shall forthwith diligently undertake to repair or restore all such damage or destruction at Tenant's sole cost and expense, or Landlord may at its option undertake such repair or restoration at Tenant's sole cost and expense by delivery of written notice to Tenant delivered within ten (10) business days after such casualty; provided, however, that Tenant shall be relieved of its repair and payment obligations pursuant to this Section to the extent that insurance proceeds are collected by Landlord to repair such damage, although Tenant shall in such events pay to Landlord the full amount of the deductible under Landlord's insurance policy and any amounts not insured. In such event, this Lease shall continue in full force and effect without any abatement or reduction in Fixed Minimum Rent or other payments owed by Tenant.

(C) **Landlord's Rights and Repair Obligations.** If Tenant does not elect to terminate this Lease following a Casualty, as set forth in Section 9.1 (B) above, then Landlord shall, no later than sixty (60) days following such Casualty, begin to repair and restore the Building ("Repair Start Date") and shall proceed with reasonable diligence to restore the Building to substantially the same condition as existed immediately before such Casualty and shall redeliver the Premises to Tenant on or before the expiration of the Repair Period. In the event that the Premises is not redelivered to Tenant on or before the expiration of the Repair

Period, Tenant shall be entitled to terminate the Lease or provide additional time to Landlord, at Tenant's option. Notwithstanding anything to the contrary contained herein, provided that Tenant does not elect to terminate this Lease, as set forth above, in no event shall the redelivery of the Premises, exceed 240 days from the date of the Casualty.

(D) **Reopening Period.** In addition to Tenant's rights in this Section 9, Landlord and Tenant agree that Tenant shall have a period of one hundred and eighty days (180) from the date of the restoration of the Building and redelivery by Landlord to Tenant, free of Fixed Minimum Rent, Additional Rent, and utilities (the "**Reopening Period**") to prepare the Building to re-open and that Tenant shall be provided with a commensurate Tenant Allowance to enable Tenant to reconstruct those portions of the Building which the Landlord Allowance was used therefor and which were damaged or destroyed.

(E) **Abatement of Rent.** If the Building are damaged by Casualty, and the Lease is not terminated in accordance with the provisions hereof, Rent for the portion of the Building rendered untenable (which may be the entire Building even if only a portion of the Building is damaged by Casualty if the use of the balance of the Building is not suitable or practical for existing operation of Tenant's Use) by the damage shall be abated from the date of damage until the last day of the Reopening Period.

**Section 8.7 Condemnation.** If the whole of the Premises, or so much thereof as to render the balance unusable by Tenant, shall be taken under power of eminent domain, or otherwise transferred in lieu thereof, this Lease shall automatically terminate as of the date possession is taken by the condemning authority. If less than the whole or substantially less than the whole of the Building is taken, Tenant may, at its option, terminate this Lease by giving written notice thereof to Landlord; in which event this Lease shall terminate as of the date when physical possession of such portion of the Building, is taken by the condemning authority. If this Lease is not terminated by Tenant upon any such taking, Rent shall be diminished by an equitable amount determined by Landlord and Tenant in their reasonable discretion, and Landlord shall restore the Building and, if affected, the Premises to substantially their former condition, and Landlord will be required to provide Tenant with such portion of the Landlord Allowance.

All compensation awarded or paid for any taking or acquiring under the power or threat of eminent domain, shall be allocated between Landlord and Tenant with Tenant being entitled to be entitled to Tenant's loss of business, relocation expenses, and for the taking of Tenant's Work and all other furniture and fixtures, trade fixtures, furniture, personal property and leasehold improvements to the extent of the cost to Tenant of said improvements ("**Tenant's Award**"). Landlord agrees that it will cooperate with Tenant in good faith to ensure that Tenant receives Tenant's Award.

## **ARTICLE 9 DEFAULT AND REMEDIES**

**Section 9.1 Default.** In the event that Tenant (a) fails to pay any sum due from Tenant within fifteen (15) days of Tenant's receipt of written notice from Landlord of such nonpayment; (b) Tenant fails to perform or observe any other agreement, covenant, condition or provision of this Lease to be performed or observed by Tenant as and when performance or observance is

required and such failure continues for more than thirty (30) days after Tenant's receipt of written notice thereof to Tenant, provided that if the nonperformance cannot be reasonably cured within said 30 day period, Tenant shall have such time as is reasonably required by Tenant to cure such nonperformance; or (c) becomes bankrupt, insolvent or files any debtor proceeding, takes or has taken against Tenant any petition of bankruptcy; takes action or has action taken against Tenant for the appointment of a receiver for all or a portion of Tenant's assets, files a petition for a corporate reorganization; makes an assignment for the benefit of creditors, or if in any other manner Tenant's interest hereunder shall pass to another by operation of law unless such designations or filings are not removed within 90 days of the original designation or filing, and Tenant has failed to pay Rent, then Tenant shall be in default hereunder and Landlord may, at its option and with notice to Tenant, and subject to all of the court filings required by Landlord and issuance of a writ of restitution, terminate Tenant's right to possession of the Premises and without terminating this Lease re-enter and resume possession of the Premises and change the door and other locks at the Premises (with no obligation whatsoever to tender a key for new locks installed in the Premises) and Tenant shall have no further right to possession of the Premises, and/or declare this Lease terminated, and may thereupon, in either event, remove all persons and property from the Premises, pursuant to applicable court proceeding.

Notwithstanding such re-entry by Landlord, Tenant hereby covenants to protect, defend, indemnify and hold Landlord harmless from any and all reasonable loss or damage which Landlord may incur by reason of the termination of this Lease and/or Tenant's right to possession hereunder. In no event shall Landlord's termination of this Lease and/or Tenant's right to possession of the Premises abrogate Tenant's agreement to pay Rent hereunder for the then existing Lease Term. Following re-entry of the Premises by Landlord, Tenant shall continue to pay all such Rent as same becomes due under the terms of this Lease, together with all other reasonable and necessary expenses incurred by Landlord in regaining possession until such time, if any, as Landlord relets same and the Premises are occupied by such successor. Landlord agrees that it shall use reasonable efforts to mitigate its damages under this Lease and Landlord acknowledges that it will have the burden of proof that it has used commercially reasonable efforts to mitigate its damages.

Upon reletting, sums received from such new lessee by Landlord shall be applied first to payment of reasonable costs and expenses incident to reletting, including, without limitation, reasonable and necessary: commissions, improvements for any new tenant, legal fees and expenses; any excess shall then be applied to the payment of Fixed Minimum Rent due and unpaid. The balance, if any, shall be applied against the present value of such deficiency, using the Discount Rate, defined below, which deficiency Tenant shall pay to Landlord, within 30 days of notice of same from Landlord.

In the event of a termination by Landlord of Tenant's possessory interest in the Premises or of the Lease, Landlord shall have the right to recover from Tenant but without duplication of damages: (1) all accrued unpaid Rents, plus interest thereon of ten percent (10%) per annum ("**Default Interest**"), plus (2) all reasonable and necessary costs of recovering the Premises, and the costs of readying the Premises for a new tenant, plus (3) the present value of the rents that accrue under the Lease for the balance of the Lease Term reduced by the reasonable fair market value of the unexpired Lease Term (determined from actual rents received from reletting the Premises or from a comparable lease and comparable tenant for a comparable term and taking



into account among other things the condition of the Premises, market conditions and the period of time the Premises may reasonably remain vacant before Landlord is able to re-lease the same to a suitable replacement tenant), plus (4) all reasonable and necessary costs of reletting, plus (5) any other reasonable costs or amounts necessary to make Landlord whole and compensate Landlord for its damages, including reasonable attorney fees incurred by Landlord in connection with an event of default by Tenant. In determining the present value of the rents that accrue under the Lease for the balance of the Lease Term, the same shall be discounted at the discount rate of 10% per annum.

**Section 9.2 Inducement Recapture.** Any agreement for free or abated rent or other charges, or for the giving or paying by Landlord to or for Tenant of any cash or other bonus, inducement or consideration for Tenant's entering into this Lease, including without limitation Landlord's payment of any commission, brokerage or consultancy fee including without limitation under Section hereunder, all of which concessions are hereinafter referred to as "Inducement Provisions," shall be deemed conditioned upon Tenant's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon breach of this Lease by Tenant in the initial forty eight (48) months from the Lease Commencement Date of this Lease, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Landlord under such an Inducement Provision shall be immediately due and payable by Tenant to Landlord, notwithstanding any subsequent cure of said breach by Tenant, provided, however that maximum amount payable by Tenant to Landlord under this Section shall be One Hundred Eighty Thousand Dollars (\$180,000). The acceptance by Landlord of rent or the cure of the breach which initiated the operation of this paragraph shall not be deemed a waiver by Landlord of the provisions of this paragraph unless specifically so stated in writing by Landlord at the time of such acceptance. For avoidance of doubt, this Section 9.2 shall be of no further force and effect effective the first (1st) day of the forty ninth (49th) month from the Lease Commencement Date. Notwithstanding the foregoing, Tenant shall not be required to pay such amount, unless Landlord can establish that Landlord has paid a commission in connection with this Lease in the amount of \$50,000 and that Landlord has paid Tenant \$40,000 for the Building sprinkler in accordance with the terms of Exhibit C. Further, the Inducement Recapture shall be subject to any claim by Tenant that Landlord has defaulted under the terms of the Lease in connection with any cross claim filed by Tenant in connection with any action filed by Landlord.

Landlord further agrees that any judgment or settlement which awards or provides future rent to Landlord shall be subject to a post judgment or settlement reconciliation, which provides Tenant with a refund of any rent collected by Landlord of Rent for the time period equivalent to the balance of the then current term at the time of Tenant's default.

**Section 9.3 Rights and Remedies.** The various rights and remedies herein granted to Landlord shall be cumulative and in addition to any others Landlord may be entitled to by law or in equity, and the exercise of one or more rights or remedies shall not impair Landlord's right to exercise any other right or remedy. In all events, Landlord shall have the right upon notice to Tenant, in accordance with the notice and cure provisions provided for in this Lease and the satisfaction and expiration thereof, to cure any breach, and Tenant shall reimburse Landlord for

the reasonable cost incurred by Landlord in connection therewith within 15 days of Tenant's receipt of an invoice therefor.

**Section 9.4 Bankruptcy.** If Landlord shall not be permitted to terminate this Lease as hereinabove provided because of the provisions of Title 11 of the United States Code relating to Bankruptcy, as amended ("**Bankruptcy Code**"), then Tenant as a debtor in possession or any trustee for Tenant agrees promptly, within no more than fifteen (15) days' upon request by Landlord to the Bankruptcy Court, to assume or reject this Lease and Tenant on behalf of itself, and any trustee agrees not to seek or request any extension or adjournment of any application to assume or reject this Lease by Landlord with such Court. In such event, Tenant or any trustee for Tenant may only assume this Lease if (a) it cures or provides adequate assurance that the trustee will promptly cure any default hereunder, (b) compensates or provides adequate assurance that Tenant or trustee will promptly compensate Landlord for any actual pecuniary loss to Landlord resulting from Tenant's defaults, and (c) provides adequate assurance of performance during the fully stated term hereof of all of the terms, covenants, and provisions of this Lease to be performed by Tenant. Adequate assurance of performance of this Lease as set forth hereinabove shall include, without limitation, adequate assurance (1) of the source of rent reserved hereunder and (2) the assumption of this Lease will not breach any provision hereunder, and (3) in the event of a filing of a petition under the Bankruptcy Code, Landlord shall have no obligation to provide Tenant with any services or utilities as herein required, unless Tenant shall have paid and be current in all payments of same.

**Section 9.5 Landlord's Default.** In the event that Landlord fails to perform any obligation under this Lease following notice from Tenant in connection therewith and the lapse of a thirty (30) day cure period from Landlord's receipt of such notice (unless in the event of an emergency, in which case only notice which is practicable under the circumstances need be given), or otherwise is responsible for any other costs or charges incurred by Tenant arising out of this Lease, Tenant shall have the right, but not the obligation, to perform such work or otherwise remedy such nonperformance, and at Tenant's option, may charge Landlord the cost to remedy such nonperformance, in which case, Landlord shall remit payment to Tenant within thirty (30) days of its receipt of an invoice therefor, and failing payment of same, Tenant shall have its rights and remedies under Michigan law as well as the ability to offset such amounts against the next ensuing rent payment and at Tenant's option, the Management Fee. Interest shall accrue on such amounts at the rate of 10% per annum.

## ARTICLE 10 TRANSFERS, ASSIGNMENT AND SUBLETTING

**Section 10.1 Assignment and Subletting.** Except, as otherwise provided herein, Tenant shall not without Landlord's prior written consent, not to be unreasonably withheld conditioned or delayed, either voluntarily or by operation of law, sell, assign, or otherwise transfer this Lease, or sublet the Premises or any part thereof (all of the foregoing collectively referred to as a "**Transfer**"). Landlord and Tenant acknowledge and agree that the foregoing restriction on Transfers has been freely negotiated by the parties hereto and that Landlord and Tenant would not have entered into this Lease without Tenant's consent to the terms of this Section 11.1. Any attempted Transfer contrary to the terms hereof shall be void ab initio and Tenant shall remain primarily liable on this Lease and shall not be released from performing any of the terms,

covenants and conditions of this Lease. The acceptance by Landlord of payments of Rent or Additional Rent following any Transfer prohibited by this Section shall not be deemed to be consent by Landlord to any such Transfer, nor shall the same be deemed to be a waiver of any right or remedy of Landlord hereunder. Landlord's consent to any Transfer hereunder may not be unreasonably withheld, conditioned or delayed; provided that in considering whether to grant such consent Landlord may reasonably evaluate the proposed transferee's experience in operating all or a portion of Tenant's Use or if another use, evaluate the proposed transferee's experience in operating such use and in both instances, evaluate the financial wherewithal of the proposed transferee as being adequate (and in no way commensurate with Tenant's financial wherewithal, at the time of the Lease Commencement Date or requested Transfer) to support the financial obligations of Tenant under this Lease ("**Transferee Criterion**").

**Section 10.2 Request of Landlord's Consent.** Each request for consent to an assignment or subletting shall be in writing, accompanied by information regarding proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, and a narrative on the proposed transferee's business plan for the Premises, if there is any deviation from Tenant's Use, together with a fee of One Thousand Dollars (\$1,000) ("**Landlord's Fee**"), as consideration for Landlord's considering and processing said request. In addition to Landlord's Fee, Tenant shall further promptly reimburse Landlord for its reasonable costs ("**Landlord's Costs**"), including appraisal fees, consultants and attorneys' fees incurred by Landlord in connection with the processing and documentation of any requested Transfer. It is understood that Landlord's consent for the approval of a Transfer shall be strictly based on the Transferee Criterion and any directly related issues (with the exception of Permitted Transfers which are addressed in Section 10.5 below), and in that regard, any Landlord's Costs must relate strictly to the review of the Transferee Criterion and any related issue, and in any event, the Landlord's Costs shall not exceed \$5,000, unless agreed to in writing by Tenant. Tenant acknowledges that Landlord's refusal to grant its approval or consent to any such Transfer due to Tenant's failure to reimburse Landlord's Costs (for avoidance of doubt, including if Landlord's Costs are greater than \$5,000 (which as stated above, requires Tenant's consent), as provided herein is deemed reasonable. No other costs in connection with such request by Tenant shall be imposed by Landlord or any other party.

**Section 10.3 Notice.** Each request for consent to an assignment or subletting shall be in writing to Landlord.

**Section 10.4 Consent Required.** Any Transfer without Landlord's written consent shall be void, and shall constitute a default hereunder which will trigger the notice and cure rights set forth in Section 10.1(b). Consent to any Transfer shall not operate as a waiver of the necessity for consent to any subsequent Transfer. The terms of such consent shall be binding upon any person holding by, under or through Tenant.

**Section 10.5 Permitted Transfers.** Tenant shall have the right to assign, transfer and sublet all or any portion of the Lease and Premises, in connection with any of the following circumstances (each, a "**Permitted Transfer**") without the prior written consent of, but with written notice to, Landlord, to the following (a "**Permitted Transferee**"): (i) any corporation, limited partnership, limited liability partnership, limited liability company, any trust which Jeremy Sasson is the beneficiary or Trustee of or other business entity in which or with which