

**SUBLEASE AGREEMENT**

**between**

**LFS Development, LLC  
(Landlord)**

**and**

**Hotel Circle Convenience LLC  
(Tenant)**

**Dated August 30th, 2018**

## SUBLEASE

**THIS SUBLEASE** (“Lease”) is made and entered into as of August 30th 2018 by and between **LFS Development, LLC**, a Delaware limited liability company (the “**Landlord**”), and **Hotel Circle Convenience LLC**, a California limited liability company (the “**Tenant**”), whose address is 1201 Hotel Circle S Ste B, San Diego, CA 92108 with reference to the following facts:

A. Landlord, entered into that certain lease dated May 4, 2016 (the “**Master Lease**”) with the San Diego Unified Port District, a public corporation (the “**District**”), covering property known as Lane Field South, located at 901 Bayfront Court, San Diego, California (the “**Property**”), and more particularly described in the Master Lease. Tenant acknowledges receipt of a copy of the Master Lease, which is on file in the office of the District Clerk. The provisions of the Master Lease are incorporated herein by this reference.

B. Landlord is constructing a hotel and commercial complex on the Property (the “**Project**”).

C. Under Paragraph 9 of the Master Lease, Landlord has the right to sublease all or part of the Property for uses permitted under the Master Lease, subject to the prior consent of the District.

### 1. PREMISES.

1.1 Description of Premises. In consideration of the amounts to be paid and the terms, covenants and conditions to be kept, performed and satisfied by Tenant under this Lease, Landlord leases to Tenant and Tenant leases from Landlord the certain premises (“**Premises**”) consisting of approximately 1,492 rentable square feet of space of the Project on the ground level of the northeast corner. The exact number of square feet in and the configuration of the Premises will be determined and mutually agreed upon by Landlord and Tenant as part of the Approved Construction Plan as provided in **Exhibit B**. Tenant acknowledges that no agreement or promise to decorate, alter, repair or improve the Premises has been made by or on behalf of Landlord and it is leasing the Premises in an “**as is**” condition with all defects, faults and inadequacies, without any warranty or representation being made by Landlord. Said Premises shall not include, and Landlord hereby reserves a non-exclusive easement for the installation, relocation, restoration and maintenance of, such conduits, facilities, and structures as may be located in the Premises (including the air space above the finished ceiling in the Premises) for the common use and benefit of Landlord and other tenants. Tenant acknowledges that the Landlord has the right at any time to expand, reduce, remove, demolish, renovate or construct any existing or new improvements at the Project (other than the Premises), including without limitation the right to change the shape, size, location, number, design or extent of such improvements, and the right to change the occupants of the Project.

1.2 Improvement Construction. Tenant, at Tenant’s own cost and expense, shall construct certain interior improvements to the Premises in accordance with the provisions set forth in **Exhibit B** (“**Tenant’s Work**”). No construction shall be commenced upon the Premises

by Tenant until Landlord and District have approved the plans for such work and Tenant has secured and submitted to District and Landlord performance bonds in the amount of the total estimated construction cost of improvements to be constructed by Tenant. In lieu of said performance bonds, the Landlord and District may, in their sole discretion, accept the performance and labor and material bonds supplied by Tenant's contractor or subcontractors, or performance guaranties, or other satisfactory evidence that said construction will be timely completed. Said bonds must be issued by a company qualified to do business in the State of California and be in a form acceptable to District.

## 2. DISTRICT APPROVAL AND LENDER APPROVAL.

2.1 District's Approval. Tenant acknowledges the rights and obligations of the parties under this Lease are subject to District's prior approval of this executed Lease and of Tenant as a sublessee. Following execution of this Lease, Landlord shall request and use its reasonable best efforts to obtain District's approval of this Lease. Landlord shall pay all costs and fees charged by District to Landlord and/or Tenant for processing this Lease. If for any reason District consent is not obtained, Landlord and Tenant agree to make such modifications to this Lease as District may reasonably request in order to obtain District's consent; provided, however, should the requested modifications be unreasonable in the opinion of either Landlord or Tenant, or if District is otherwise unwilling to grant its consent, this Lease shall be of no further force or effect, and no obligation shall have been incurred by either Landlord or Tenant other than the obligation of Tenant to pay for the costs and fees for processing this Lease. Tenant expressly agrees that all rights under this Lease shall be subject and subordinate to the terms, covenants, and conditions of the Master Lease and any amendments thereto and all prior exceptions, reservations, restrictions, easements, rights-of-way, licenses and other matters of record now existing which affect the Premises or the Project in any manner.

### 2.2 Intentionally Deleted

2.2 Lender Approval. Tenant understands that Landlord has obtained financing for the development of the Project from PNC Bank, N.A. and others ("**Lender**"). The Tenant acknowledges the rights and obligations of the parties under this Lease are subject to Lender's prior approval of this executed Lease and of Tenant as a sublessee. Following execution of this Lease, Landlord shall request and use its reasonable best efforts to obtain Lender's approval of this Lease. Tenant agrees to furnish Lender with its financial information. If for any reason Lender's consent is not obtained, Landlord and Tenant agree to make such modifications to this Lease as Lender may reasonably request in order to obtain Lender's consent; provided, however, should the requested modifications be unreasonable in the opinion of either Landlord or Tenant, or if Lender is otherwise unwilling to grant its consent, this Lease shall be of no further force or effect, and no obligation shall have been incurred by either Landlord or Tenant other than the obligation of Landlord to pay for the costs and fees for processing this Lease.

## 3. TERM.

3.1 Term. The term of this Lease ("**Term**") shall commence (the "**Commencement Date**") on the Delivery Date (defined below) and end One Hundred Twenty (120) months following the first day of the calendar month immediately following the month containing the

Commencement Date (unless the Commencement Date is the first day of a calendar month, in which event the Term shall end One Hundred Twenty (120) months following the Commencement Date), unless sooner terminated as provided herein. The first Lease Year shall be the period from the Commencement Date through the last day of the month in which the first anniversary of the Commencement Date occurs, and subsequent Lease Years shall commence on the first day of the following month and continue until the day prior to the anniversary thereof.

3.2 Acceptance of the Premises. Landlord shall deliver the Premises (the “**Delivery Date**”) three (3) business days after the approval of this Lease by the District, the Manager and the Lender, as applicable. Tenant acknowledges that, (a) neither Landlord nor any agent or other representative of Landlord has made any representation, warranty or covenant of any kind whatsoever, either express or implied, with respect to the Premises or any matter related thereto including the condition thereof, and (b) Tenant is not relying on any warranty, representation or covenant, express or implied, with respect to the condition of the Premises, and that Tenant is leasing the Premises in it strictly “as-is” condition with all faults and without obligation of Landlord to construct any improvements in or about the Premises. Tenant agrees to accept possession of the Premises on the Delivery Date and to proceed with due diligence to perform Tenant's Work subject to and in accordance with the conditions and limitations set forth in **Exhibit B** attached hereto and made a part hereof, and to install its fixtures, furniture and equipment subject to all of the terms, covenants and conditions of this Lease.

3.3 Right to Renew. Subject to Tenant achieving annualized sales greater than \$1,200,000.00 in the immediately preceding 12 months prior to the Option Notice period. Landlord hereby grants to Tenant one (1) option (the “**Option**”) to extend the Lease Term for a period of five (5) years (the “**Option Term**”). The Option must be exercised, if at all, by written notice (“**Option Notice**”) along with certified statement by a fully authorized financial officer of Tenant showing that the amount of Sales for the preceding Lease Year exceed \$1,200,000.00 delivered by Tenant to Landlord not more than twelve (12) and not less than six (6) months prior to the end of the initial Lease Term (the “**Option Notice Period**”). Further, the Option shall, at Landlord's option, be deemed void and of no further force and effect if Tenant has been in default under the Lease at any time during the Lease Term without thereafter curing said default within any applicable cure period or if Tenant's sales do not exceed \$1,200,000.00. Provided Tenant has properly and timely exercised the Option, the Lease Term shall be extended for five (5) years, and all terms, covenants and conditions of the Lease shall remain unmodified and in full force and effect except that Base Rent shall be adjusted as set forth in Paragraph 4. Any reletting to Tenant shall, in all events, be subject to the prior consent of District. The option shall, at Landlord's option, be deemed void and of no further force and effect if Tenant has been in default on more than one (1) occasion beyond any applicable cure periods under the Lease at any time during the Lease Term. Failure by Tenant to exercise any Renewal Term in the manner and within the time period provided in this Article shall constitute a waiver by Tenant of such Renewal Term and any subsequent Renewal Term. The rights granted under this Article are personal to Tenant and shall not be assigned to nor inure to the benefit of any other party. Time is of the essence with respect to the rights granted by this Paragraph 3.3.

3.4 Possession After Expiration of Term. Should Tenant, with the consent of Landlord, remain in possession of the Premises after the expiration of the Term, then Tenant's occupancy shall be subject to the terms of Paragraph 28.2.

3.5 Tenant's Early Termination Right. Tenant agrees to use commercially reasonable and good faith efforts to promptly commence and thereafter diligently and continuously pursue obtaining the Type 21 liquor license for the Premises (the "Liquor License") on terms and conditions reasonably acceptable to Tenant. Upon written request from Landlord, Tenant hereby agrees to deliver to Landlord a copy of any applications, plans, documents or other correspondence submitted to and/or received from the applicable governmental authorities and shall otherwise keep Landlord reasonably informed as to the status of the approval process. Prior to submitting any application to the applicable governmental authority, Tenant shall deliver to Landlord a copy of such application. Tenant agrees to submit and process such applications with the applicable governmental authorities promptly and diligently and, upon request by Landlord from time to time, shall update Landlord as to progress and status of the Liquor License. In the event that Tenant, despite Tenant's material compliance with the terms of this Section, is not able to obtain the Liquor License by January 1, 2019 and provided further that Tenant has not commenced any construction or other work within the Premises, then Tenant shall have the right to terminate ("Early Termination Right") this Lease upon written notice ("Early Termination Notice") delivered to Landlord on or before January 6, 2019. Commencing construction or other work within the Premises shall nullify and void this early termination right. Additionally, failure by Tenant to notify Landlord prior to January 6, 2019, time being of the essence, of Tenant's failure to obtain the Liquor License and Tenant's election to terminate this Lease shall be deemed a waiver thereof and the termination rights in this Section 3.5 shall be null and void and of no further force or effect. Tenant will (x) pay all Rent payable under this Lease and (y) perform all other covenants and obligations required to be performed by Tenant under this Lease through the earlier termination of this Lease pursuant to this section 3.5. Should Tenant exercise the Early Termination Right, Tenant will pay to Landlord along with the Early Termination Notice an amount equal to the unamortized portion of the Construction Allowance and broker's commissions, finder's fees, and other compensation or charges paid by Landlord to realtors, brokers, or agents in connection with this Lease, for the period from the Early Termination Date through the end of the initial Term, all amortized on a straight-line basis over the initial Term.

#### 4. RENT.

4.1 Rent. Tenant agrees to pay to Landlord, beginning on the date that is one hundred thirty-five days after the Commencement Date and thereafter during the Term of this Lease, monthly in advance on the first (1st) day of each calendar month of the Term, except for the first month's Base Rent which shall be paid upon Tenant's execution of this Lease, as rent for the use and occupancy of the Premises, in lawful money of the United States and without deduction, setoff, prior notice or demand, at the address Landlord may from time to time designate in writing, the following:

4.1.1 Base Rent. Tenant shall pay to Landlord as and for minimum annual rent (the "**Base Rent**") the sum of Eighty Thousand, Five Hundred Sixty-Eight and 00/100 Dollars (\$80,568.00) or Fifty-Four Dollars (\$54.00) per square foot of the Premises (which amount is based on the assumption of 1,492 square feet, and which will be adjusted when the square footage of the Premises is determined by Landlord).

4.1.2 Adjustment of Base Rent. Effective at the beginning of the second Lease Year and thereafter at the beginning of each subsequent Lease Year during the Term (and during the Option Term if exercised), Base Rent shall be decreased by an amount equal to one percent (1%) of the Base Rent in effect immediately prior to such subsequent Lease Year.

4.1.3 Adjustment for District Rent. Tenant shall pay Landlord, in addition to Base Rent and Additional Rent (defined below) the amount of percentage rent payable by Landlord pursuant to the Master Lease with respect to Tenant's gross income in an amount equal to the percentages for each rental period, and for the categories of gross income, provided in the Master Lease, including without limitation an initial three (3%) percent of the gross income from the operations of the Premises related to the sales of food, five (5%) percent of the gross income from the operations of the Premises related to the sales of beverages for on-premises consumption, three (3%) percent of the gross income from the operations of the Premises related to the sales of beverages for off-premises consumption and two (2%) percent of the gross income from the operations of the Premises related to the sales of merchandise (the "**District Rent Reimbursement**"). Notwithstanding the foregoing and as provided in the Master Lease for percentage rents, the District will abate a portion of the District Rent Reimbursement as follows: In the first operational year under the Master Lease, Tenant will be obligated to pay 8% of the District Rent Reimbursement. Tenant's share of the District Rent Reimbursement will increase by four percentage points each operational year thereafter until it is 100% of the District Rent Reimbursement, at which time Tenant will continue to pay 100% of the District Rent Reimbursement.

4.1.4 Monthly Percentage Rent Statements and Payments. Within ten (10) days after the end of each calendar month of the Term, Tenant shall furnish to Landlord, in a form prescribed or approved by Landlord and containing such detail as to categories of Sales as required by paragraph 3(c) of the Master Lease, a written statement certified by Tenant to be correct, showing at a minimum (i) Tenant's Sales for the immediately preceding calendar month; and (ii) Sales calendar year-to-date.

4.1.5 Additional Rent. In addition to Base Rent and District Rent Reimbursement, Tenant shall pay, as Additional Rent, all sums of money required to be paid pursuant to the terms of Paragraphs 4.8 (Payment of Common Area Costs), 6 (Utility Payment), 12 (Taxes and Assessments) and any Rider to this Lease, and all other sums of money or charges required to be paid by Tenant under this Lease (collectively referred to in this Lease as "**Additional Rent**") without setoff, deduction, prior notice or demand, in the manner set forth in this Lease. All amounts of Base Rent, District Rent Reimbursement and Additional Rent payable in a given period (also collectively referred to in this Lease as "**rental**" and/or "**Rent**") shall be deemed to comprise a single rental obligation of Tenant to Landlord. Landlord and Tenant acknowledge it is their intent and agreement that, except as otherwise expressly provided herein, this Lease be a "TRIPLE NET LEASE" and that as such, the provisions contained in this Lease are intended to pass on to Tenant or reimburse Landlord for all costs and expenses associated with this Lease and the Premises, and Tenant's operation therefrom (subject, however, to any express pass through exclusions set forth in this Lease). To the extent such costs and

expenses cannot be charged directly to and paid by Tenant, such costs and expenses shall initially be paid by Landlord and thereafter be reimbursed by Tenant.

4.1.6 Percentage Rent. In addition to Base Rent and Additional Rent, Percentage Rent is payable for each calendar year and partial calendar year during the Lease Term that Tenant's Sales (defined below) for such calendar year exceed One Million, Two Hundred Thousand Dollars (\$1,200,000.00) ("Percentage Rent Breakpoint") and shall equal the amount of such Sales in excess of the Percentage Rent Breakpoint multiplied by six percent (6%) ("Percentage Rate"). Tenant will pay to Landlord Percentage Rent during the Term on a monthly basis, at the times and in the manner specified below.

4.1.7 Rent on Renewal. In the event Tenant exercises its first Right to Renew as provided in Paragraph 3.3, the Base Rent shall be equal to the then "**Prevailing Market Rate**" for comparable space as provided in **Exhibit I** hereto; provided, however, the Base Rent rate for the Option Term shall in no event be less than 105% of the Base Rent payable by Tenant immediately prior to commencement of the Option Term and provided further that the Base Rent will remain flat for the duration of the Option Term.

4.2 Tenant's Certificate Upon Early Termination. In the event of earlier termination of this Lease, Tenant covenants and agrees to deliver to Landlord within thirty (30) days immediately following such earlier termination of this Lease a final certified statement by a fully authorized financial officer of Tenant certifying the amount of Sales for the preceding Lease Year and the amount of Sales made since the last certified statement pursuant to Paragraph 4.1.4.

#### 4.3 Tenant's Books.

4.3.1 Tenant shall keep full and accurate records, double entry books of account or other methods of account to be reasonably approved in writing by Landlord and other pertinent data documenting Tenant's Sales and such books and records shall be kept for a period of four (4) years after the close of each Lease Year, or longer as may be required by the United States or State of California tax codes or regulations. Said records must be supported by source documents of original entry such as sales invoices, cash register tapes, bank depository documentation, purchase invoices or other pertinent supporting documents. All sales shall be recorded by means of cash registers which display to the customer the amount of the transaction and automatically issue a receipt. All cash registers shall be equipped with sales totalizer counters for all sales categories, as herein provided, and sequential transaction counters which are locked in, constantly accumulating, and which cannot be reset. Said registers shall further contain tapes upon which sales details and sequential transaction numbers are imprinted. Beginning and ending sales totalizer readings shall be made a matter of daily record. Other types of cash registers may be used by Tenant with the written approval of Landlord. In the event of admission charges or rentals, Tenant shall issue serially numbered tickets for each such admission or rental and shall keep an accurate record of said tickets both issued and unissued. All of Tenant's books of account, records and documentation related to this Lease or business operations conducted within or from the Premises shall be kept either at the Premises or at such other locations as are acceptable to Landlord, and Landlord and

District shall have the right at any and all reasonable times upon 48 hours written notice to Tenant to examine and audit said books and records without restriction for the purpose of determining their accuracy and the accuracy of monthly statements of Sales submitted and of rental paid to Landlord. Tenant's failure to keep such books of account, records and documentation and make them available for inspection by Landlord and District is a breach of this Lease and cause for termination. Landlord shall have the discretion to require the installation of any additional accounting methods or controls Landlord or District may deem necessary. In the event Tenant does not make available the original records and books of account at the Premises or within the limits of San Diego County, Tenant agrees to pay all necessary expenses incurred by Landlord and District in conducting an audit at the location where said records and books of account are maintained. The receipt by Landlord of any statement or any payment District Rent Reimbursement for any period shall not bind Landlord as to the correctness of the statement or the payment.

4.3.2 Landlord's audits shall be at Landlord's expense except as provided in this Paragraph 4.3.2. In the event it is determined by Landlord's audit of Tenant's records and accounts that Tenant has understated its Sales, whether intentionally or unintentionally, Tenant will pay to Landlord any District Rent Reimbursement due plus interest on such payments from the date the same should have been paid at the interest rate provided in this Lease. In the event Landlord's audit discloses that the Sales were understated by three percent (3%) or more, the cost of such audits, including all reasonable expenses incurred as a result of such audits shall also be paid by Tenant immediately. Notwithstanding the foregoing, should Landlord and Tenant disagree as to any alleged discrepancy in District Rent Reimbursement, then Tenant's records and accounts shall be audited by an independent nationally certified public accounting firm mutually agreed upon by both Landlord and Tenant and such firm's audit shall be deemed to be conclusive as between the Landlord and Tenant. "Independent" as used in this Paragraph 4.3.2 shall mean a firm that is not at the time nor has not, within three (3) years prior to such time been employed by Landlord or Tenant. If the independent audit discloses that Sales were understated by three percent (3%) or more, the cost of such audit, including all reasonable expenses incurred as a result of the audit, shall be paid by Tenant to Landlord. If the audit discloses that Sales were understated by less than three percent (3%), the cost of such audit shall be shared equally by Landlord and Tenant.

4.4 Sales. The term Sales as used in this Lease shall mean the selling price of all merchandise, goods and services sold in, upon or from the Premises by Tenant and/or Tenant's agents, licensees, concessionaires or sublessees and whether such sales are for cash or credit. If any one or more departments or other divisions of Tenant's business in the Premises shall be sublet by Tenant or conducted by any person, firm or corporation other than Tenant, then there shall be included in Sales for the purpose of determining District Rent Reimbursement all the Sales of such departments or divisions, in the same manner and with the same effect as if the business or sales of such departments and divisions of Tenant's business had been conducted by Tenant itself. Each charge or sale upon installment or credit shall be treated as a sale in the month during which such charge or sale shall be made, irrespective of the time when Tenant shall receive payment (whether full or partial) therefor. In the event of a discrepancy in the calculation of Sales between this Lease and the Master Lease, the Master Lease shall control for



the purposes of calculating the District Rent Reimbursement. Without limiting the foregoing, Sales shall also include:

4.4.1 Sales via the internet; sales via telephone; agency sales; and any other type of sales (whether such sales occur from the Premises or elsewhere) resulting in Tenant's customers receiving services, products, or benefits on or from the Premises and whether cash or credit; and

4.4.2 Any manufacturer's or importer's excise tax included in the prices of goods sold, even though Tenant may be the manufacturer or importer of such goods, regardless of whether the amount of excise tax is stated as a separate charge.

4.5 Exclusions from Sales. Sales shall not include:

4.5.1 Sales of United States postage;

4.5.2 The amount of any discounts or allowances, credits, refunds or exchanges;

4.5.3 Sales of trade fixtures, bulk sales of stock-in-trade, or operating equipment after use thereof in the conduct of Tenant's business in the Premises;

4.5.4 Sales or excise or similar taxes payable by Tenant to any governmental agency as a direct result of operations under this Lease. The amount of such taxes shall be shown on the books and records elsewhere herein required to be maintained;

4.5.5 Gratuities, provided the customer voluntarily determines the amount of said gratuity to be paid, or the customer is aware that Tenant has added a pre-established gratuity to the charge for the services rendered and said additional amount is segregated and identified as a gratuity on the billing to the customer; and

4.5.6 Interest earned by Tenant on funds arising from the Premises or use thereof, deposited or maintained by Tenant in a bank or similar institution.

4.6 Refunds and Bad Debt Losses. Refunds shall be deducted from the Sales when incurred. Bad debt losses and credit card transaction fees shall not be deducted from Sales.

4.7 Vending Sales. Tenant shall not, without the prior written consent of Landlord and District, sell food, beverages or any other items from vending machines or allow any coin-operated game machines on the Premises.

4.8 Common Area Costs. Beginning on the Commencement Date and for the balance of the Term, Tenant shall pay, as Additional Rent, Tenant's pro rata share of all Common Area Costs as defined in Paragraph 17.5, as set forth in Paragraph 17.6.

4.9 Delinquency Compensation Charges. Tenant recognizes that the failure to pay rent when due will cause Landlord to incur certain costs, including, without limitation, processing and accounting charges, delinquent rent charges imposed upon Landlord under the Master Lease, late charges under any mortgage or deed of trust encumbering the Property and the loss to Landlord of the use of the funds. If any installment of Base Rent, Additional Rent, District Rent Reimbursement or other monetary charge is not paid on or before its due date, Tenant agrees to pay to Landlord a delinquency compensation charge for the late payment of such installment in an amount equal to ten percent (10%) of each such installment, but in no event less than One Hundred Fifty Dollars (\$150.00) per such installment. Upon five (5) days' written notice that said installment is past due, Tenant shall pay to Landlord the delinquency compensation charge without further notice or demand. Tenant agrees the delinquency compensation charges are reasonable under the circumstances existing at the time this Lease is executed. Tenant understands that the payment of the delinquency compensation charge for delinquent rent represents compensation to Landlord for damages incurred by reason of the failure to receive the rent when due. Tenant's obligation to pay the delinquency compensation charge does not alter or preclude Landlord's right and option to exercise any right or remedy Landlord may have under this Lease or otherwise for Tenant's failure to pay any rent or other amount when due. Landlord's election not to include a demand for the payment of any such delinquency compensation charge in any notice to pay any delinquency shall not constitute a waiver by Landlord of its right to collect any such delinquency compensation charge.

4.10 Interest on Rent. Any amount of Base Rent, Additional Rent, District Rent Reimbursement or other monetary charge not paid when due shall bear interest at the rate provided in this Lease.

## 5. USE OF PREMISES.

5.1 Authorized Use. Tenant shall have use of the Premises for the purpose of selling souvenirs, snacks, spirits and related merchandise and in accordance with the concept described in **Exhibit D**. No other products, merchandise or services shall be sold or provided by Tenant from the Premises or trade name used by Tenant without the prior written consent of Landlord. Tenant shall not and is expressly prohibited from using the Premises for any other purpose or use whatsoever, whether it is purported to be in addition to or in lieu of the particular use expressed in this Paragraph 5.1, without the prior written consent of Landlord, which shall not be unreasonably withheld. Tenant shall actively and continuously use and operate the Premises for the use expressly provided for in this Paragraph 5.1. Notwithstanding the foregoing, in no event shall Tenant use the Premises in violation of the Applicable Exclusives and Use Prohibitions set forth in **Exhibit G**.

5.2 IHG Trademarks. No IHG Trademarks will be used in connection with the Premises or the promotion, advertising or marketing thereof without the prior written consent of IHG Management (Maryland), LLC ("**Manager**"), which may be withheld in Manager's sole discretion. "IHG Trademarks" means (i) the name and mark "InterContinental"; (ii) the name and mark "InterContinental Hotel"; and (iii) any word, name, device symbol, logo, slogan, design, brand, service mark, Trade Name, other distinctive feature or any combination of the foregoing, whether registered or unregistered, and whether or not such term contains the

“InterContinental” mark, that is used in connection with the Hotel or by reason of extent of usage is associated with hotels in the InterContinental system of hotels. “Trade Name” means any name, whether informal (such as fictitious name or d/b/a) or formal (such as the full legal name of a corporation or partnership) that is used to identify an entity.

5.3 Exclusive. From and after the Effective Date, for so long as Tenant is not in default beyond any applicable notice and cure period, Landlord shall not execute and deliver any lease for space in the Building pursuant to which Landlord authorizes the use of the premises demised by said lease for the primary purpose of a business selling souvenirs (unless as incidental to another business and 5% or less of its gross revenue), off sale wine and beer. This exclusive shall not apply to any restaurants, beer or wine tasting rooms, or gelato shop.

5.4 Compliance with Law. Tenant shall at all times and at Tenant’s sole cost and expense comply with and conform to all municipal, district, city, county, state and federal laws, regulations, requirements or orders, present or future, which in any way relate to the condition, licensing, use or occupancy of the Premises.

5.5 Waste. Tenant agrees not to waste or suffer any waste upon the Premises, nor to use or permit the Premises to be used for any noxious, unlawful or offensive trade or business, nor to cause, maintain or permit any nuisance upon the Premises, nor cause or permit any act which obstructs or interferes with the use and enjoyment of the Project by other tenants or their patrons including, without limitation unusually loud live, recorded or reproduced entertainment.

5.6 Non-Discrimination. Tenant agrees at all times to fully comply with all laws prohibiting discrimination against any person or class of persons by reason of sex, color, race, religion, handicap or national origin. In complying with all such laws, including, without limitation, the Americans With Disabilities Act of 1990, Tenant shall be solely responsible for such compliance and required programs and there shall be no allocation of any such responsibility between Landlord and Tenant.

5.7 Easements. This Lease and all rights given hereunder are subject to all easements and rights-of-way previously granted or reserved by the District and/or Landlord in, to, or over the Premises for any purpose whatsoever, and also shall be subject to future easements and rights-of-way for access, gas, electricity, water, sewer, drainage, telephone, television transmission, and other Tenant or public facilities as may be determined from time to time by Landlord and/or District to be in the best interests of the development of the Project; provided however, any future easements shall not have a substantially negative impact on Tenant’s business. Tenant shall not be entitled to any monetary payment or other remuneration for any such future easements.

5.8 Banners. Tenant further agrees that no banners, pennants, flags, eye-catching spinners or other advertising devices, nor any temporary signs shall be permitted to be flown, installed, placed, or erected on the Premises without written consent of the Landlord and the District.

## 6. UTILITIES.

6.1 Utility Payment. From and after the Commencement Date Tenant agrees that (i) electricity, gas, telephone and CATV will be billed directly to Tenant and Tenant shall pay all charges for same before they become delinquent, (ii) water and sewer will be submetered and Tenant shall pay all charges for same to Landlord before they become delinquent, and (iii) refuse disposal, grease trap and other utilities used or consumed in the Premises will be allocated to Tenant on a reasonable basis by Landlord. If such charges are not paid when due, Landlord may, without any obligation to do so, pay the same and any amount so paid shall thereupon become due to Landlord from Tenant as Additional Rent. All costs and expenses for the installation, connection, disconnection and maintenance of such utility services shall be the sole responsibility of Tenant. In no event shall Landlord be liable for damages or otherwise for any interruption, reduction, disruption, curtailment or failure in the supply, quality or character of water, gas, electricity, sewer and sanitation or any other service or utility, nor shall any such interruption, reduction, disruption, curtailment or failure constitute or be deemed to constitute constructive eviction of Tenant or relieve Tenant from its obligations under this Lease.

6.2 Special Requirements. Landlord shall bring water, sewer, gas, and electric services stubbed to the building wherein the Premises are located. Except as otherwise provided in Paragraph 6.1, Tenant will be responsible for connection, hook-tap, installation of separate meters and distribution within the Premises of all utilities services as required by Tenant's Work described in **Exhibit B** and will also be responsible for all maintenance, repair and replacements of the heating, ventilation and air conditioning equipment, if any, at the Premises.

## 7. INSURANCE/WAIVER OF SUBROGATION/INDEMNITY.

### 7.1 Fire and Extended Coverage.

7.1.1 During the period of Tenant's construction of Tenant's Work in the Premises and until the Commencement Date, Tenant, at its sole cost and expense, shall maintain Builder's Risk Insurance in an amount sufficient to assure replacement of Tenant's Work in progress. Said insurance shall name Landlord, its mortgagees, and District as additional insureds, as their interests may appear.

7.1.2 From and after the Commencement Date and throughout the Term, Tenant shall keep Tenant's Work, improvements and contents in and on the Premises insured against fire and loss or damage by fire, or the elements and all other perils commonly covered under an extended coverage and vandalism endorsement and/or an "all risk" policy for at least one hundred percent (100%) of the replacement value thereof. Tenant shall pay for all such insurance to be carried and all such insurance shall name Landlord, its mortgagees and District as additional insureds as their interests say appear.

7.1.3 Whenever and as often as any damage occurs, the entire amount payable under any or all of said insurance policies will be first applied to the cost of any repairs to or restoration of Tenant's Work, improvements and contents in and on the Premises before using any portion thereof for any other purpose. Any excess portion of funds remaining after the cost of repairs or restoration are paid shall belong to the Tenant,

Landlord, its mortgagees and District as their interests may appear; provided that Landlord shall have no interest in any portion of such funds attributable to Tenant's furniture, fixtures, stock-in-trade and equipment (as defined in Paragraph 11), other personal property, contents and inventories.

7.1.4 Landlord shall, as part of Common Area Costs (as defined in Paragraph 17.5), provide for sufficient amounts of fire and casualty insurance for all buildings, structures and other improvements within the Project. All such Landlord's insurance shall provide that any loss shall be payable to Landlord, its mortgagees and District as their interests may appear.

7.1.5 Damage or destruction to the Premises or any portion thereof, by reason of any casualty, including without limitation fire, earthquake, flood, act of God, or the elements, shall not annul or void this Lease. Tenant hereby expressly waives the provisions of Section 1932(2) and 1933(4) of the California Civil Code or any statute or law now or hereafter in effect which provides for the automatic termination of a leasehold interest, or provides a tenant with the right to terminate its tenancy upon the partial or total damage to or destruction of the leasehold estate. If the Premises are damaged by fire, the elements, acts of God or other casualty, the damage shall be repaired in accordance with the provisions of Paragraph 16.

7.1.6 In the event of any damage to the Premises covered by insurance, Landlord and Tenant shall within thirty (30) days of notice thereof file proof(s) of loss with the insurance carrier and proceed with the collection of the claim under said policies of insurance without delay. The Tenant shall further proceed as promptly as possible, utilizing its own funds and the applicable proceeds of said insurance, with the repairing, remodeling or rebuilding of the interior of the Premises in accordance with the provisions of Paragraph 16.

7.2 Public Liability and Property Damage Insurance. Tenant shall, at its own cost during the period of construction of Tenant's Work and at all times during the Term, maintain commercial liability insurance including bodily injury, personal injury, products liability, fire legal liability and property damage with an insurance company or companies satisfactory to Landlord and licensed to do business in California insuring the legal liability assumed by Tenant under the indemnity provision in Paragraph 7.12 in the amount of not less than Two Million Dollars (\$2,000,000.00) combined single limit. If alcoholic beverages are served or sold at the Premises, Tenant shall also obtain Liquor Liability coverage in the amount of not less than Five Million Dollars (\$5,000,000.00). Said insurance shall name Landlord, its mortgagees, and District as additional insureds, as their interests may appear.

7.3 Policy Changes or Cancellation. Before changing or canceling any policy, the insurance company issuing the same shall give Landlord, its mortgagees and District at least thirty (30) days' prior written notice thereof. Duplicate certificates of all such insurance policies shall be delivered to Landlord. The first such policies shall be issued at least ten (10) days prior to the date Tenant commences construction of Tenant's Work and all renewals thereof shall be issued at least ten (10) days prior to the expiration of the then existing policies. If Tenant has not secured said insurance or evidenced the securing of such insurance by the delivery of original

certificates thereof by such date, Landlord may, without any obligation to do so, do so and Tenant shall be liable for the cost thereof as Additional Rent.

7.4 District Insurance Requirements. Tenant acknowledges that District has the right at any time to review the coverage, form and amount of insurance required of Landlord under the Master Lease. If, in the opinion of District, the insurance provisions in the Master Lease do not provide adequate protection for District and/or for members of the public using the Project, District may require that insurance sufficient in coverage, form and amount to provide adequate protection be obtained. In such event, Tenant agrees, at its own cost, to obtain insurance sufficient in coverage, form and amount to satisfy District's requirements. Landlord shall notify Tenant in writing of changes in insurance coverage required by District and, if Tenant does not deposit certificates evidencing acceptable insurance policies with Landlord incorporating such changes within thirty (30) days of receipt of such notice, Landlord shall have the right, without the obligation, to secure such additional insurance and Tenant shall be liable for the cost thereof as Additional Rent.

7.5 Lack of Insurance Coverage. If Tenant fails or refuses to maintain insurance as required in this Lease, or fails to provide proof of insurance after five (5) days written notice to Tenant, Landlord has the right, without the obligation, to declare this Lease in default without further notice to Tenant and Landlord shall be entitled to exercise all legal remedies.

7.6 No Limit to Liability. The procuring of such required policies of insurance shall not be construed to limit Tenant's liability thereunder, nor to fulfill the indemnification provisions and requirements of this Lease. Notwithstanding the procuring of said policies of insurance, Tenant shall be obligated for the full and total amount of any damage, injury or loss caused by negligence or neglect connected with this Lease or with the use or occupancy of the Premises.

7.7 Use and Insurance Cancellation. Tenant agrees not to use the Premises in any manner, even if the use is for purposes stated herein, that will result in cancellation of any insurance or increase in the cost of any insurance of any insurance coverage for the Premises or the Project. Tenant further agrees not to keep on the Premises or permit to be kept, used or sold thereon, anything prohibited by any fire or other insurance policy covering the Premises. Tenant agrees to pay Landlord, upon demand, the amount equal to any increase in premiums paid by Landlord for insurance carried and maintained by Landlord as a result of any activity or use of the Premises by Tenant whether or not such activity or use has been consented to by Landlord. Tenant shall, at its sole cost and expense, comply with any and all requirements, regarding the Premises, of any insurance organization which are necessary for maintaining fire and other insurance coverage at reasonable costs. Certificates in a form acceptable to Landlord evidencing the existence of the necessary insurance policies shall be kept on file with Landlord during the Term. All insurance policies (except that required by Paragraph 7.9) will name Landlord, its mortgagees and District as additional insureds, protect Landlord against any legal costs in defending claims and will not terminate without written notice to Landlord. All insurance companies must be satisfactory to Landlord and licensed to do business in California.

7.8 Hazardous Activities. If Tenant commits, permits or causes the conduct of any activity or the bringing or operation of any equipment on or about the Premises creating unusual

hazards, Tenant shall procure and maintain daily on such activity or operation insurance sufficient to cover the risks represented by the unusual hazards. This requirement for unusual hazard insurance shall not constitute a waiver of Landlord's right to demand the removal, cessation or abatement of any such activity or operation.

7.9 Workers and Employees. Tenant shall carry and maintain insurance against liability arising on account of injuries or deaths to workers or employees of Tenant on the Premises or any installation or other improvements of Tenant in an amount not less than the minimum required under applicable California and federal law. Such insurance shall contain a waiver of subrogation with respect to any claim against Landlord.

7.10 Subrogation. Landlord and Tenant hereby waive any rights each may have against the other on account of any loss or damage suffered by Landlord or Tenant, as the case may be, their respective property, the Premises, or its contents, to the building wherein the Premises are located or the Project arising from any risk covered by the fire and extended coverage insurance required to be maintained pursuant to this Lease. Each party, on behalf of their respective insurance companies insuring the property of either the Landlord or the Tenant against any such loss, hereby waives any right of subrogation that it may have against the other. The foregoing waivers of subrogation shall be operative only so long as available in the State of California and do not invalidate any such policy.

7.11 Destruction Due to Risk Not Covered by Insurance. If, during the Term, Tenant's Work is totally or partially destroyed from a risk not covered by the insurance described in Paragraphs 7.1 and 7.2 of this Lease, this Lease shall not terminate except as expressly provided in Paragraph 16.2, and Tenant shall restore Tenant's Work in accordance with the provisions of Paragraph 16.

7.12 Tenant's Indemnification. Tenant shall protect, defend, indemnify and hold harmless Landlord, its members, officers, agents, employees, and managers, the District and all of Landlord's lenders (collectively, the "**Landlord Indemnified Parties**") from and against any and all liability, action, claim, damage and expense including attorneys' fees and costs arising after the date of this Lease and throughout the Term, which may be imposed upon or incurred by or asserted against any Landlord Indemnified Parties by reason of any accident, injury to or death of any person or any damage to property of any kind whatsoever and to whomever belonging (except as set forth in Paragraph 7.9), including, without limitation, Tenant or its employees, occurring on or about the Premises, or caused by Tenant's, its agents' servants' or employees' negligence or willful act or failure to act or by Tenant's negligent construction, repair or maintenance of the Premises or by Tenant's breach of this Lease.

7.13 Non-Liability of District or Landlord. Neither Landlord nor District shall be liable to Tenant for any damages to Tenant or Tenant's property from any cause whatsoever and Tenant waives all claims against Landlord or District for damages to person(s) or property arising for any reason, except for those claims arising out of the sole negligence or willful misconduct of Landlord or District's sole gross negligence or willful misconduct.

## 8. ALTERATIONS BY TENANT.

8.1 Alterations. Tenant agrees that it will not make any alterations, additions, improvements or changes (collectively “**Alterations**”) in or to the Premises without the prior written consent of Landlord and with the approval of the District, if required, in accordance with Paragraph 4 of the Master Lease. In the event that Landlord and consents to Tenant’s requested Alterations, Tenant shall be responsible for the entire cost and expense of such Alterations.

Notwithstanding anything to the contrary contained herein, any and all Alterations shall be constructed in accordance with **Exhibit F** attached hereto (“**Contractor’s Rules**”), as may be amended from time to time by Landlord. Tenant’s obligations under this Paragraph 8.1 shall survive the expiration or earlier termination of this Lease

8.2 Construction Requirements. The plans and specifications for any Alterations will be submitted to Landlord and District for approval in the same manner as set forth on **Exhibit B**. All Alterations shall be under the supervision of a competent architect or licensed engineer and made in accordance with plans and specifications previously approved in writing by Landlord, and District. All work with respect to any Alterations must be done in a good and workmanlike manner, in accordance with the applicable portions of **Exhibit F**, and diligently prosecuted to completion to the end that the Premises shall at all times be a complete unit except during the period of Alteration work. Upon completion of such work, Tenant shall have recorded in the office of the County Recorder where the Project is located, a Notice of Completion, as required or permitted by law, and Tenant shall deliver to Landlord, within ten (10) days after completion of said work, a copy of the building permit and certificate of occupancy with respect thereto. All Alterations shall be performed and done strictly in accordance with the laws and ordinances relating thereto. Tenant shall have the Alterations work performed in such a manner as to not obstruct the access to the premises of any other tenant in the Project.

8.3 Insurance for Permitted Alterations. In the event that Tenant shall make any permitted Alterations to the Premises under the provisions of this Paragraph 8, Tenant agrees to carry such insurance as required by Paragraph 7 covering any such Alterations, it being expressly understood and agreed that none of such Alterations shall be insured by Landlord under the insurance it may carry for the Project, nor shall Landlord be required under the provisions of Paragraph 16 to reinstall any such Alterations.

8.4 Title and Removal. No Alterations may be removed without the prior written approval of Landlord, which shall not be unreasonably withheld, and District. Any Alterations shall at the option of Landlord be removed by Tenant upon the expiration or earlier termination of this Lease. Landlord may exercise said option as to any or all Alterations either before or within fifteen (15) days after the expiration or earlier termination of this Lease. If Landlord exercises such option and Tenant fails to remove such Alterations within thirty (30) days after the expiration or earlier termination of this Lease, Landlord shall have the right to have such Alterations removed at the expense of Tenant. As to any Alterations that Landlord does not exercise said option for removal, the same shall become the property of Landlord without any payment to Tenant and shall remain upon and be surrendered with the Premises upon the expiration or earlier termination of this Lease. During any period of time employed by Tenant under this Paragraph 8 to remove any Alterations, Tenant shall pay the Base Rent and Additional Rent to Landlord in accordance with this Lease, which Base Rent and Additional Rent shall be prorated on a daily basis. This Paragraph 8.4 shall survive the termination of this Lease.



8.5 Alterations Not Including Equipment. For the purposes of this Paragraph 8, Alterations shall not include changes, additions, or deletions of furniture, trade fixtures, and equipment covered by Paragraph 11.

## 9. MECHANIC'S LIENS.

9.1 Tenant's Covenants. Tenant agrees that it will pay, or cause to be paid, all costs for work done by it, or caused to be done by it, on the Premises, and Tenant will keep the Premises free and clear of all mechanics's liens and other such liens on account of work done for Tenant or persons claiming under Tenant. Tenant agrees to and shall at all times save Landlord and District free and harmless and indemnify them against all liability loss, damage, costs, attorneys' fees and all other expenses on account of claims for labor or materials used in connection with improvements, repairs or alterations in the Premises.

9.2 Bond. In the event any lien or levy of any nature whatsoever is filed against the Premises or the leasehold interest of Tenant, Tenant shall, upon written request of Landlord, deposit with Landlord a bond conditioned for the payment in full of all claims upon which such lien already has been filed. Such bond shall be acknowledged by Tenant as principal, and by a corporation, licensed by the Insurance Commissioner of the State of California to transact business as a fidelity and surety insurance company, as surety. Landlord shall have the right to declare this Lease in default in the event the bond required by this Paragraph 9.2 has not been deposited with Landlord within five (5) days after Tenant's receipt of Landlord's written request therefor.

9.3 Right to Cure. If Tenant shall be in default in paying any charge for which a mechanic's lien claim and suit to foreclose the lien have been filed, and shall not have given Landlord security to protect the Property, Landlord and District from liability for such claim of lien, Landlord may (but shall not be required to) pay said claim and any costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due and owing from Tenant to Landlord, and Tenant shall pay the same to Landlord with interest at the rate provided in this Lease from the date of Landlord's payments.

9.4 Notice of Lien. Should any claim of lien be filed against the Premises or any action affecting the title to the Property be commenced, the party receiving notice of such lien or action shall forthwith give the other party written notice thereof.

9.5 Notice of Non-Responsibility. Landlord or its representatives shall have the right to go upon and inspect the Premises at all reasonable times and shall have the right to post and keep posted thereon notices of non-responsibility or other such notices which Landlord may deem to be proper for the protection of Landlord's interest in the Premises. Tenant shall, at least ten (10) days before the commencement of any work which might result in any such lien, give to Landlord written notice of its intention to do so.

## 10. SIGNS.

10.1 Project Signs. Landlord, at its sole cost and expense, shall, with District's prior approval, erect and maintain, during the term, suitable signage for the Project. Landlord shall also provide and maintain, with District's prior approval, suitable and adequate direction signage for the public and other business guests and invitees of Tenant.

10.2 Tenant's Signs. Tenant shall purchase, install and maintain an exterior sign which sign (and the graphics, materials, color, design, lettering, lighting, size, specifications and exact location of such sign) complies with all laws of the United States of America, the State of California, and the ordinances, regulations or requirements of the local municipal or county governing body or other lawful authorities having jurisdiction over the Project (collectively, "**Applicable Laws**"), any declaration or other covenants, the District approved sign package, conditions or restrictions and Rules and Regulations and which has received Landlord's prior written consent. Tenant agrees to obtain all applicable District and other governmental approvals and permits for Tenant's signs. Such exterior signage shall be available to Tenant only so long as Tenant is not in default under this Lease, and shall only indicate the trade name of Tenant set forth in Paragraph 5.1. Such signage rights may only be assigned or transferred by Tenant in connection with a permitted assignment of Tenant's rights to this Sublease. The cost to design, install (including, without limitation, any hook-up fees or permits), operate and maintain Tenant's exterior signage shall be paid for by Tenant. Tenant shall also be required, at the expiration or earlier termination of the Lease, to remove Tenant's exterior signage (and repair any damage to the Premises or the building of which the Premises are a part caused by such removal) and shall be responsible for any and all costs associated with such removal. If Tenant fails to remove Tenant's exterior signage upon expiration or earlier termination of this Lease and repair any damage caused by such removal, Landlord may do so at Tenant's sole cost and expense. Tenant agrees to reimburse Landlord for all costs incurred by Landlord in connection with the installation, maintenance or removal on Tenant's account of any such signage, which amount will be deemed Additional Rent, and may include, without limitation, all sums disbursed, incurred or deposited by Landlord, including Landlord's costs and expenses and actual attorneys' fees, with interest thereon at the Interest Rate (as defined in Paragraph 28.10 below) permitted by law from the date of Landlord's demand until paid by Tenant. Tenant shall not place, affix or maintain any signs, advertising placards, names, insignia, trademarks, descriptive material or any other similar item or items outside, on or within twenty-four inches (24") of the store front, the glass panes and supports of the show windows, or any window or, door of the Premises or anywhere within, on or about the Premises that may be viewed from the other portions of the Project, except such signs as Landlord, in its reasonable discretion, shall approve in writing.

10.3 Restrictions. Tenant shall not display, paint or place or cause to be displayed, painted or placed, any handbills, bumper stickers or other advertising devices on any vehicle parked in the Project, whether belonging to Tenant or to Tenant's agents, or to any other person; nor shall Tenant distribute, or cause to be distributed in the Project, any handbills or other advertising devices. Tenant agrees that no banners, pennants, flags, eye-catching spinners or other advertising devices nor any temporary signs shall be permitted to be flown, installed, placed or erected on the Premises without the prior written consent of Landlord.

## 11. FURNITURE, FIXTURES AND EQUIPMENT.

11.1 Fixtures. Tenant's Improvements, Tenant's Work and any personalty installed in the Premises (excluding any trade fixtures) that becomes realty under applicable law are collectively referred to in this Lease as "**Fixtures**" and shall become the property of Landlord upon the expiration or earlier termination of this Lease.

11.2 Installation. Tenant may install its trade fixtures and equipment, and may from time to time during the Term replace and alter its trade fixtures and equipment in accordance with plans and specifications previously submitted to and approved in writing by Landlord.

11.3 Removal. Trade fixtures and equipment of any kind placed on the Premises by Tenant shall be removed by Tenant prior to the expiration or earlier termination of this Lease; provided, however, Tenant agrees to repair any and all damage occasioned by the removal thereof. If any such trade fixtures or equipment are not removed within two (2) days after the expiration or termination of this Lease, the same may be considered abandoned and shall thereupon become the property of Landlord without cost to Landlord and without any payment to Tenant; except that Landlord shall have the right to have the same removed at the expense of Tenant. During any period of time employed by Tenant under this Paragraph to remove trade fixtures and equipment, Tenant shall pay the Base Rent and Additional Rent to Landlord in accordance with this Lease, which Base Rent and Additional Rent shall be prorated on a daily basis. This Paragraph 11.3 shall survive the termination of this Lease.

11.4 Landlord's Lien Waiver. Landlord, within thirty (30) days after request from Tenant, shall execute and deliver any document reasonably required by any supplier, lessor, or lender in connection with the granting, creating, or perfecting by Tenant of a security interest in and to Tenant's movable Personal Property (including, but, not limited to, Tenant's food, inventory, supplies, merchandise, fixtures, machinery and equipment) and any proceeds therefrom, pursuant to which Landlord shall subordinate any rights it may have or acquire with respect to said Personal Property of Tenant, and any proceeds therefrom, if the supplier, lessor, or lender agrees in writing that: (i) it will remove that property from the Premises before the expiration of the Lease Term and (ii) it will, at its sole cost and expense, make whatever restoration to the Premises that is necessary by such removal on or before the expiration of the Lease Term.

11.5 Personal Property Taxes. Tenant shall pay before delinquent all taxes, including sales and use taxes, assessments, license fees and public charges levied, assessed or imposed upon its business operations as well as upon its merchandise, fixtures, equipment and personal property and tenant improvements. If any such items of property are assessed with property of Landlord, then, and in such event, such assessment shall be divided between Landlord and Tenant to the end that Tenant shall pay only its equitable portion of such assessment. Landlord shall determine the basis of prorating any such assessment and such determination shall be binding upon both Landlord and Tenant. No taxes, assessments, fees or charges referred to in this Paragraph 11.3 shall be considered as taxes or assessments under the provisions of Paragraph 12.

## 12. TAXES AND ASSESSMENTS.

12.1 Taxes. Beginning on the Commencement Date, Tenant shall pay as part of Additional Rent, its pro rata share of all taxes and assessments levied, assessed or charged upon the Property and the Project. Such pro rata share shall be established by Landlord in its reasonable judgment based upon the manner in which taxes and assessments are levied and measured with respect to the Project.

12.2 Taxes Defined. Under this Lease, the term “taxes and assessments” shall include any form of tax or assessment, license fee, license tax, commercial rental tax, possessory interest tax, levy, charge, penalty or similar imposition by any authority having power to tax, including any municipal, district, city, county, state or federal government, or any school, lighting, drainage or other improvement or special assessment district, on any legal or equitable interest of Landlord, District or Tenant in the Property and the Project, including without limitation:

12.2.1 Any assessment, tax, fee, levy or charge in substitution, partially or totally, of any assessment, tax, fee, levy or charge on land, buildings, or property, it being acknowledged by Tenant and Landlord that assessments, taxes, fees, levies and charges may be imposed by governmental agencies for such services as fire protection, street, sidewalk and road maintenance, refuse removal and for other governmental services formally provided without charge to property owners or occupants, and it being the intention of Tenant and Landlord that any and all such new and increased assessments, taxes, fees, levies and charges be included within the definition of “taxes and assessments” for the purposes of this Lease.

12.2.2 Any assessment, tax, fee, levy or charge allocable to or measured by the area of the Project or the Property, any income tax or excise tax levied by the state, city or federal government, or any political subdivision thereof, with respect to the receipt of rent, or upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy of the Project. In the event and to the extent any tax is imposed in substitution or in lieu of a tax or assessment, such tax shall, for the purposes of this Lease, be considered taxes and assessments regardless of the source from which it is collected.

## 13. ASSIGNMENT OR SUBLEASE.

13.1 Lease is Personal. The purpose of this Lease is to transfer possession of the Premises to Tenant for Tenant’s personal use in return for rent and other consideration to be given by Tenant to Landlord. Tenant acknowledges and agrees that (i) Tenant’s personal business skills and philosophy were an important inducement to Landlord for entering into this Lease, (ii) Tenant has entered into this Lease in order to acquire the Premises for its own personal use and not for the purpose of obtaining the right to transfer any of its rights under this Lease to others.

13.2 No Transfer Without Consent. Tenant shall not assign, sublet, enter into a license or concession agreement for, hypothecate or otherwise divest itself of this Lease or any of its

rights hereunder or permit any third party or parties other than Tenant, its authorized agents, employees, invitees and visitors to occupy, manage or operate the Premises or any portion thereof (collectively a “**Transfer**”) without Landlord’s and District’s prior written consent, and subject to the terms and conditions contained in this Paragraph 13. Any attempted Transfer without Landlord’s advance written consent shall constitute a default hereunder and shall be void ab initio so as not to confer any rights upon any third person. The provisions of Paragraph 13.3 constitute the sole means by which such consent may be requested.

13.3 Procedure for Requesting Consent. If Tenant desires at any time to effect a Transfer it must first notify Landlord in writing of its desire to do so and shall submit in writing to Landlord; (i) the name of the third party concerned; (ii) the nature of the third party’s business proposed to be carried on in the Premises; (iii) the terms and provisions of the proposed Transfer; and (iv) such financial information as Landlord may reasonably request concerning the third party. Submission to Landlord by Tenant of an executed sublease or other document purporting to make a Transfer subject to Landlord’s and District’s approval shall constitute a request for Landlord’s consent under this Paragraph 13.3.

13.4 Conditions of Authorization. As conditions precedent to Landlord’s consent to Tenant’s Transfer, Landlord may require any or all of the following:

- (a) Tenant shall remain fully liable under this Lease during the unexpired term hereof;
- (b) Tenant shall provide Landlord with evidence reasonably satisfactory to Landlord that the value of Landlord’s interest under this Lease will not thereby be diminished or reduced. Such evidence shall include, but need not be limited to, evidence respecting the relevant business experience and financial responsibility and status of the third party concerned;
- (c) Tenant shall reimburse Landlord for Landlord’s reasonable costs including attorneys’ fees incurred in connection with the review, processing and documentation of such request, including any necessary approval or consent from District;
- (d) Written agreement from any third party concerned that in the event Landlord gives such third party notice that Tenant is in default under this Lease, such third party shall thereafter make all payments otherwise due Tenant directly to Landlord, which payments will be received by Landlord without any liability of Landlord except to credit such payment against those due under this Lease, and any such third party shall agree to attorn to Landlord or its successors and assigns should this Lease be terminated for any reason; provided however, that in no event shall Landlord or its successors or assigns be obligated to accept such attornment;
- (e) Any such Transfer and consent shall be affected on forms approved by Landlord as to form and substance;
- (f) Tenant shall not then be in default hereunder, beyond any applicable cure period, in any respect, unless such default shall be cured in connection with the Transfer;

(g) Such third party shall agree in writing to assume, be bound by and perform all of the terms, covenants and conditions of this Lease which could reasonably be construed as applicable to such third party;

(h) Such third party's proposed use of the Premises shall be the same as Tenant's permitted use;

(i) Landlord shall not be bound by any provision of any agreement pertaining to Tenant's Transfer;

(j) Tenant shall deliver to Landlord such number of executed copies of any and all written instruments evidencing or relating to Tenant's Transfer as Landlord shall request; and

(k) Such third party, at its sole cost and expense, shall keep and maintain in effect throughout the entire Term a policy of business interruption insurance with a twelve (12) month rental loss endorsement covering the Base Rent, and District Rent Reimbursement payable pursuant to Paragraph 4.

Tenant hereby agrees and acknowledges that the above conditions imposed upon the granting of Landlord's consent are reasonable and Landlord's imposition of such conditions shall under no circumstances impair or limit Landlord's rights and remedies under California Civil Code Section 1951.4 or any related, successor or similar provision of law. Tenant also acknowledges that the consent of District to any Transfer must also be obtained for such Transfer to be effective.

### 13.5 Intentionally Deleted.

13.6 No Waiver. Landlord's consent to Tenant's Transfer on any one occasion shall apply only to the specific transaction thereby authorized and such consent shall not be construed as a waiver of the duty of Tenant or any transferee to obtain Landlord's consent to any other or subsequent Transfer or as modifying or limiting Landlord's rights hereunder in any way. Landlord's acceptance of rent or any other payment directly from any third party shall not be construed as a waiver of any of Landlord's rights or as Landlord's agreement to accept the attornment of any third party in the event of a termination of this Lease. In no event shall Landlord's enforcement of any provision of this Lease against any third party be deemed a waiver of Landlord's right to enforce any term of this Lease against Tenant or any other person.

13.7 Change of Control. If a Transfer by sale, assignment, death or incompetency, mortgage, trust, operation of law, or otherwise of any shares, voting rights or ownership interest results in a change in the identity of the persons or entities exercising, or who may exercise, effective day to day control of Tenant, unless such change results from the trading of shares listed on a recognized public stock exchange ("**Change of Control**"), then such Change of Control shall be deemed a Transfer within the meaning and provisions of this Paragraph 13 and shall be subject to the term hereof.

13.8 Consent to Approved Third Parties. In the event that Landlord gives its consent to a Transfer, such consented to third party must in turn apply to Landlord for its consent to

subsequent Transfers, in which case the provisions of this Paragraph 13 shall apply as fully as possible to such third party (including this Paragraph 13.8 in the case of more remote Transfers); provided, however, that as an additional condition of the granting of Landlord's consent the Premises will not, in Landlord's opinion, thereby become unduly fractionalized.

**13.9 Shared Transfer Premium.** If Tenant makes a Transfer under this Lease, then Tenant will pay to Landlord fifty percent (50%) of any "**Transfer Premium**" as and when received by Tenant from the Transfer. "Transfer Premium" means (a) the total rent and other consideration of any kind or nature allocable to the leasehold value only and payable by the assignee, sublessee, or other transferee; provided that any other tangible assets may not be transferred for an amount greater than book value (as determined in accordance with GAAP), no value shall be attributed to intangible assets, and no value will be attributed to any assets purchased with any allowance provided by Landlord; (b) less the total amount of Rent payable by Tenant under this Lease from and after the effective date of the assignment or sublet; (c) after subtracting Tenant's actual out-of-pocket costs reasonably and customarily incurred in connection with the applicable Transfer (to be allocated on a straight line basis over the portion of the Lease Term to which such Transfer applies), including (i) reasonable attorney fees; (ii) reasonable and customary brokerage commissions, advertising, and marketing expenses; and (iii) costs of alterations or improvements made for the benefit of the assignee, sublessee, or other transferee or allowances or other reasonable and customary monetary concessions granted to any such assignee, sublessee, or other transferee. For clarity, the Transfer Premium shall not apply to all other consideration obtained by Tenant (as qualified above) from a Transfer for any other asset of Tenant's business and shall be limited only to the consideration paid for the leasehold value as described in this Paragraph.

#### 14. TENANT'S CONDUCT OF BUSINESS.

**14.1 Operating Covenants.** Tenant covenants and agrees that it will continuously from and after its initial opening for business operate and conduct within the Premises the business which it is permitted to operate and conduct under the provisions of Paragraph 5, except while the Premises are untenable by reason of fire or other casualty, keep and maintain within and upon the Premises an adequate stock of merchandise and trade fixtures to service and supply the usual and ordinary demands and requirements of its customers, and keep the Premises in a neat, clean and orderly condition.

**14.2 Operating Days and Hours.** Recognizing that it is in the interests of both Tenant and Landlord to have regulated hours of business for all of the Project, Tenant agrees that, commencing with the opening for business by Tenant in the Premises and for the remainder of the Term, Tenant shall, unless otherwise approved by Landlord, be open for business and maintain the minimum hours of 7am to 10pm, seven days a week, and shall continuously so remain open for business during such hours. It is agreed, however, that the foregoing provisions shall be subject to the hours of operation prescribed by any governmental regulations or labor union contracts which may govern the operations or business of Landlord or tenant.

**14.3 Policy of District.** It is the policy of District that prevailing wage rates shall be paid to all persons who are directly or indirectly employed by Tenant to perform construction work on the property of District.

14.4 Equal Employment Opportunity and Non-Discrimination. Tenant agrees to comply with Title VII of the Civil Rights Act of 1964, as amended, the California Constitution, the California Fair Employment and Housing Act and any other applicable federal, state or local laws and regulations now existing or hereinafter enacted, requiring equal employment opportunities or prohibiting discrimination, including without limitation, laws and regulations prohibiting discrimination because of race, color, ancestry or national origin, religion, age, sex or disability. Upon reasonable notice, Tenant shall make available to Landlord and District for inspection and copying all of its records relevant to compliance with this provision.

## 15. MAINTENANCE AND REPAIRS.

15.1 Maintenance. Except as otherwise provided in Paragraph 17 with respect to the Common Area, Tenant shall, at its sole cost and expense at all times during the Term, keep and maintain the Premises, including without limitation Tenant's signs, entrances and exits, plate glass, glazing and skylights, plumbing and other fixtures, equipment and appliances, including heating, ventilating and air conditioning equipment, plumbing lines exclusively serving the Premises, interior walls, ceilings and floors, and all other appurtenances comprising a part of the Premises, in good, safe, healthy and sanitary order, condition and repair to the satisfaction of Landlord and in compliance with all applicable laws. The maintenance of all glass, both exterior and interior, is at the sole risk of Tenant and any glass broken or damaged shall be promptly replaced at Tenant's sole cost and expense with glass of the same size, same kind and the same, or better quality. The water and wash closets and other plumbing fixtures within the Project and Premises shall not be used for any purposes other than those for which they were constructed, and no sweepings, rubbish, rags or other substances shall be deposited therein. Any damages resulting from any misuse of the plumbing fixtures by Tenant, Tenant's servants, employees, agents, visitors or licensees shall be borne by the Tenant.

15.2 Landlord's Right to Inspect. For the purpose of keeping the Premises in a good, safe, healthy and sanitary condition, Landlord and its designated agent shall always have the right, without the duty, to enter, view, inspect and determine the condition of and protect its interests in, the Premises, including the right to determine if Tenant is complying with this Lease; except in the case of emergency, Landlord shall provide Tenant with at least twenty-four (24) hours' notice. If inspection discloses that the Premises are not in the condition required by this Lease, Tenant must perform the necessary maintenance work within ten (10) days after written notice from Landlord. If at any time Landlord determines that the Premises are not in the condition required by this Lease, Landlord may require Tenant to file and pay for a faithful performance bond, to assure prompt correction without additional notice. The amount of this bond shall be adequate, in Landlord's opinion, to correct the unsatisfactory condition. Notwithstanding the foregoing, Landlord shall not be required at any time to maintain or to make any improvements or repairs whatsoever on or for the benefit of the Premises that are the obligation of Tenant under this Lease, or to maintain or repair any utilities located within the Premises but serving other portions of the Project. Landlord shall not be liable to Tenant for any damage or interruption in Tenant's business caused by such entry, maintenance or repairs. The rights reserved in this Paragraph 15 shall not create any obligations or increase any obligation for Landlord elsewhere in this Lease.



15.3 Landlord's Right to Enter and Repair. Tenant agrees Landlord may enter the Premises and make any necessary repairs to the Premises and perform any work thereon (i) which may be necessary to comply with any laws, ordinances, rules or regulations of any public authority or of any similar body, or the requirements of the insurers of Tenant, Landlord or District; (ii) to maintain or repair any utilities located within the Premises but serving other portions of the Project; (iii) that Tenant is obligated to make under the terms of this Lease, or (iv) that Landlord deems necessary to prevent any waste or deterioration of the Premises, if the Tenant does not repair or cause such repairs to be performed pursuant to the requirements of Paragraph 15.2 within ten (10) days after receipt of the written demand for such repairs from Landlord. Landlord's rights under this Paragraph 15.3 shall not impose any duty on Landlord to make any such repairs, nor constitute a waiver of Tenant's failure to do the same. If Landlord makes or causes to be made any repairs which Tenant is obligated to make under Paragraph 15.2 or elsewhere in this Lease, Tenant shall pay to Landlord as Additional Rent upon demand the cost of such repairs, plus a supervision fee equal to ten percent (10%) of such costs, the total of which shall bear interest at the rate provided in this Lease.

15.4 Tenant's Waiver. Tenant waives the provisions of any law permitting repairs by a Tenant at the expense of Landlord, including all rights by a Tenant under Sections 1941 and 1942 of the California Civil Code.

## 16. RECONSTRUCTION.

16.1 Insured Casualty. In the event of damage to or destruction of the Premises by fire, the elements, acts of God, or any other cause, (provided Landlord is insured for such damage or destruction), Landlord shall commence repair, reconstruction and restoration of Landlord's Work and shall prosecute the same diligently to completion, and this Lease shall continue in full force and effect. In the event of such reconstruction of Landlord's Work, upon completion of said reconstruction, Tenant, at its sole cost and expense, shall commence repair, reconstruction and restoration of Tenant's Work, including all leasehold improvements, and replacement of its stock in trade, fixtures, furniture, furnishings and equipment. Tenant shall diligently prosecute such installation to completion. Repair, replacement or reconstruction of the Premises and other improvements shall be done in accordance with plans approved by Landlord and District.

16.2 Uninsured Casualty. In the event of uninsured damage or destruction to the Premises that constitutes thirty-three percent (33%) or more of the replacement costs of the improvements located on the Premises immediately before the damage or destruction, Landlord shall have the option, subject to the prior written consent of District, of repairing, reconstructing and restoring the Premises. In the event that Landlord determines to repair and reconstruct the Premises, Landlord shall provide Tenant with written notice thereof within ninety (90) days of the event of damage or destruction. Upon completion of repair and reconstruction by Landlord, Tenant, at its sole cost and expense, shall commence repair, reconstruction and restoration of Tenant's leasehold improvements, and replacement of its stock in trade, fixtures, furniture, furnishings and equipment. Tenant shall diligently prosecute such installation to completion. In the event that Landlord determines not to repair and reconstruct the Premises, Landlord shall give written notice to Tenant of such determination within ninety (90) days of the event of damage or destruction, and this Lease shall be terminated as of the date of such damage or

destruction. Base Rent and Additional Rent shall be prorated to the date of such termination and the unpaid District Rent Reimbursement, and any other charges or assessments shall be computed and paid to the date of such termination. If this Lease is terminated by the exercise of such option, neither Tenant nor Landlord shall be under any duty or obligation to repair damage to or restore the Premises and Landlord shall have any rights to which it would be entitled under the provisions of Paragraph 11.3.

16.3 Abatement of Rent. In the event that Landlord undertakes such repair and reconstruction, as set forth in this Paragraph 16, Tenant shall continue the operation of its business on the Premises during any such period to the extent reasonable and practicable from the standpoint of prudent business management, and the obligation of Tenant hereunder to pay District Rent Reimbursement and other charges and rents shall remain in full force and effect, except that Base Rent shall be abated proportionately with the degree to which Tenant's use of the Premises is impaired during the period of repair and reconstruction by Landlord. Tenant shall not be entitled to any compensation or damages from Landlord for loss of use of the whole or any part of the Premises, Tenant's personal property or any inconvenience or annoyance occasioned by such damage, repair, reconstruction or restoration.

16.4 Waiver. With respect to any partial or total destruction which Landlord is obligated to restore or may restore under the provisions of this Lease, the provisions of California Civil Code Section 1932(2) and Section 1933(4) are hereby waived by Tenant.

## 17. COMMON AREA.

17.1 Common Area Defined. The "**Common Area**" is approximately located as shown on Exhibit C. The Common Area for the purpose of this Lease is that part of the Project outside the Premises' boundary and not constructed nor improved for the specific or dedicated use of Tenant or any other tenant within the Project and is that property which Landlord has designated to be for the common use of all tenants, their guests, employees or invitees including without limitation: parking areas, sidewalks, landscaping, curbs, loading areas, private streets and alleys, exterior surfaces and roofs of all structures now or hereafter located within the Project, and other areas and improvements that Landlord may designate, from time to time. Landlord may cause any or all of said services to be provided by an independent contractor or contractors. Notwithstanding anything to the contrary contained herein, Landlord shall have the right, from time to time, to equitably allocate some or all of the Common Area Costs for the Project among different portions or user groups of the Project (the "**Cost Pool**") in Landlord's good faith and reasonable business judgment. The Common Area Costs within each such Cost Pool shall be allocated and charged to the occupants within such Cost Pool in an equitable manner as determined in Landlord's good faith and reasonable business judgment. Landlord's allocation of certain Common Area Costs for the Project shall be based on Landlord's good faith determination that such approach will be more cost effective.

17.2 Management and Control. All of the Common Area shall be subject to Landlord's sole management and control. Landlord reserves the right to make changes from time to time in the Common Area, including, without limitation, changes in or establishing the location of driveways, entrances, exits, and prohibited areas and to change the building perimeters of the Project and other building and improvement locations within the Project.

Landlord shall have the right to remove any person, authorized or unauthorized from the Common Area or to restrain the use thereof by such persons.

17.3 Non-Exclusive Use and Landlord's Rules. Landlord grants to Tenant and Tenant's employees, customers, subtenants, licensees and concessionaires the non-exclusive right in common with Landlord, other tenants of the Project and other persons permitted by Landlord, to use the Common Area as constituted from time to time, subject to such reasonable rules and regulations governing Common Area use and the Project generally as Landlord may from time to time prescribe (the "**Landlord's Rules**"). The current Landlord's Rules are attached as **Exhibit H**.

17.3.1 Tenant and Tenant's employees, agents and invitees shall comply with all Landlord's Rules. Any violation by Tenant or Tenant's employees, agents or invitees of any Landlord's Rules shall constitute a default under this Lease. Landlord shall give notice to Tenant of the Landlord's Rules as they may exist from time to time, and Tenant will not be bound thereby until given a copy of same. Tenant shall indemnify and hold Landlord harmless from all claims and liabilities for Tenant's breach of the Landlord's Rules. If there is a conflict between any of Landlord's Rules and any of the provisions of this Lease, this Lease shall prevail.

17.3.2 In addition to Landlord's Rules, Tenant shall complete, or cause to be completed, all deliveries, loading, unloading and services to the Premises in accordance with a schedule established by Landlord from time to time, which shall take into account the delivery requirements of the Hotel and other tenants of the Project. Tenant may not display, sell merchandise, allow carts, portable signs, devices or any other objects to be stored or to remain outside the Premises, or in the Common Area, without the prior written consent of Landlord in each instance. Tenant shall remove any of said objects maintained in violation of this Paragraph within twenty-four (24) hours of receipt of written notice to do so by Landlord or Landlord shall be entitled to remove said objects without liability to Landlord at Tenant's sole expense. No aerial, antenna, satellite dish or other receiving or transmitting device shall be erected on the roof or exterior walls of the Premises without the prior written consent of Landlord and District. Any device so installed without such written consent shall be subject to removal without notice at any time by Landlord at Tenant's sole expense. Tenant shall not store anything in service or exit corridors, or in electrical meter rooms within the Premises. Tenant agrees that all receiving and delivery of goods and merchandise, and all removal of merchandise, supplies, equipment, trash and garbage, and all storage of trash and garbage, shall be made only by way of or in the areas provided therefore by Landlord.

17.3.3 Landlord may temporarily close any part of the Project or the Common Area for such periods of time as may be necessary to prevent the public from obtaining prescriptive rights or to make necessary repairs, alterations or improvements.

17.4 Parking Restrictions. As provided in this Paragraph 17.4, Tenant and Tenant's employees and visitors shall pay for and be permitted to use, on an unreserved basis, the parking areas located in (i) the parking garage (the "**Garage**") located in the Building. Parking will be at market rates for as determined Landlord in its sole discretion. Tenant will, within 15 days of

Landlord's request, furnish Landlord a complete list of license plate numbers for the vehicles of Tenant and Tenant's employees. Tenant acknowledges and agrees that Landlord may partially or totally restrict parking within the Project by Tenant's employees and others in connection with special events from time to time. Landlord reserves the right to charge Tenant's guests and visitors for parking. Landlord shall have no obligation to monitor, regulate, and (or) police the parking area(s).

**17.5 Maintenance and Charges.** Tenant agrees to pay to Landlord as Additional Rent Tenant's pro rata share (defined below) of all costs and expenses incurred by Landlord in connection with the maintenance, repair, management and operation of the Common Area, all taxes and assessments as defined in Paragraph 12 and all insurance costs of Landlord with respect to the Project (collectively, "**Common Area Costs**"), including, without limitation, all costs, expenses, fees and other sums incurred or expended for; (i) all general maintenance and repairs, pest control, resurfacing, reroofing, painting, restriping, cleaning, removal of rubbish and debris, sweeping and janitorial services; (ii) maintenance and repair of sidewalks, curbs, parking areas and private roads, including resurfacing and restriping, planting and landscaping, lighting, drainage and other utilities; (iii) directional signs and other markers and bumpers; (iv) maintenance and repair of all structures and improvements available for use in common by all tenants and the visiting public; (v) security; (vi) personnel to implement all such services and to police the automobile parking and Common Area when deemed advisable by Landlord or required by District; (vii) all real and personal property taxes and assessments thereon, including possessory interest taxes on secured or unsecured tax rolls imposed, assessed or attributed to the Property, Project or Common Area and as defined in Paragraph 12; (viii) comprehensive public liability and property damage insurance on the Project or Common Area (including any reasonable deductibility provisions therefor) in such amounts as Landlord shall determine; (ix) fire and extended coverage insurance on all structures and improvements in the Project; (x) fees for Landlord's management and supervision of the Common Area and the Project generally; (xi) licenses and permits; (xii) parking gates, parking personnel or other improvements in order for Landlord to implement any system for paid parking or parking by validation; (xiii) seasonal and permanent decorating; (xiv) merchandising audits; (xv) confidential shoppers' program(s), (xvi) entertainment within the Common Area; and (xvii) all other costs and expenses incurred by Landlord in the ownership, operation, maintenance, repair and management of the Common Area and the Project generally. No Hotel facilities located at the Project may be used by Tenant in connection with the operation and use of the Premises except for shared trash and loading docks, subject to Landlord's prior written consent.

#### **17.6 Method of Payment.**

**17.6.1** On the Commencement Date and for the balance of the Term, Tenant shall pay Landlord, on the first day of each calendar month, an amount estimated by Landlord to be Tenant's pro rata share of monthly Common Area Costs. The foregoing estimated monthly charge may be adjusted by Landlord at the end of any calendar quarter on the basis of Landlord's experience and reasonably anticipated costs, except for the first month's Common Area Costs which shall be paid upon Tenant's execution of this Lease.

17.6.2 Within ninety (90) days following the end of each calendar quarter or, at Landlord's option, each calendar year, Landlord shall furnish Tenant a statement covering the calendar quarter or year just expired, certified as correct by an authorized representative of Landlord, showing the total Common Area Costs and Tenant's pro rata share thereof for such calendar quarter or year and the payments made by Tenant for such period as set forth in Paragraph 17.6.1. If Tenant's share of the Common Area Costs exceeds Tenant's payments made pursuant to Paragraph 17.6.1, Tenant shall pay Landlord the deficiency within ten (10) days after receipt of such statement. If said payments exceed Tenant's share of the Common Area Costs, Tenant shall be entitled to offset the excess against payments next thereafter due Landlord, as set forth in Paragraph 17.6.1.

17.6.3 Tenant's pro rata share of the Common Area Costs shall be determined by Landlord from time to time, taking into account the sharing of the Common Area and Common Area Costs with the Hotel and parking components of the Project, as applicable.

## 18. BANKRUPTCY/INSOLVENCY.

18.1 Right of Termination. The filing by Tenant of any petition for relief under the provisions of Federal Bankruptcy Law, including any petition for reorganization, or the making by Tenant of a general assignment for the benefit of Tenant's creditors, or any action at the corporate or partnership level taken by Tenant to authorize either of the foregoing actions to be taken on behalf of Tenant, or the appointment of a receiver or trustee to take possession of all or substantially all of the assets of Tenant, or any action taken or suffered by Tenant under any State insolvency law now or hereafter in effect, or the taking or seizing of the Premises or any portion thereof under levy of execution or attachment against Tenant, shall constitute a breach of this Lease by Tenant and in such event Landlord may at its option terminate this Lease upon written notice to Tenant.

18.2 Automatic Transfer. It is understood and agreed that neither this Lease nor any interest herein, nor any estate hereby created, in favor of Tenant, shall pass by operation of law under any state or federal insolvency or bankruptcy act, or any similar law now or hereafter in effect, to any trustee, receiver, assignee for the benefit of creditors, or any other person whomsoever without the prior written consent of Landlord and District. Any transfer in violation of the provisions of this Paragraph 18 shall constitute a breach of this Lease by Tenant.

## 19. DEFAULT BY TENANT.

19.1 Events of Default. The occurrence of any of the following shall constitute a default by Tenant and a breach of this Lease:

19.1.1 Failure in the submittal of any report of Sales;

19.1.2 Failing or refusing to pay any amount of Base Rent, Additional Rent, District Rent Reimbursement or other monetary charge when due in accordance with the provisions of this Lease;

19.1.3 Abandoning the Premises by failing or refusing to occupy and operate the Premises in accordance with Paragraph 5; or;

19.1.4 Failing or refusing to perform fully and promptly any covenant or condition of this Lease, other than those specified in Paragraphs 19.1.1, 19.1.2 and 19.1.3, the breach of which the Tenant is capable of curing after reasonable notice from Landlord.

19.2 Notices. Following the occurrence of any of the defaults specified in Paragraph 19.1 Landlord shall give Tenant a written notice specifying the nature of the default and demanding that Tenant either fully cure each such default within the time period specified in this Paragraph 19.2 for cure of such default or quit the Premises and surrender the same to Landlord:

19.2.1 For failure to submit any report of Sales, three (3) days;

19.2.2 For nonpayment of Base Rent, Additional Rent, District Rent Reimbursement or other monetary charge, three (3) days

19.2.3 For abandonment of the Premises or failure to use the Premises in accordance with the provisions of Paragraph 5, ten (10) days;

19.2.4 For failure or refusal to perform fully and promptly any covenant or condition of this Lease, other than those specified in Paragraph 19.2.1, 19.2.2 or 19.2.3, thirty (30) days.

19.3 Landlord's Rights and Remedies. Should Tenant fail to cure within the time period specified in Paragraph 19.2 any default specified in Paragraph 19.1 ("**Event of Default**"), Landlord, in addition to any other rights or remedies available to Landlord at law or in equity, shall have the right to:

19.3.1 Terminate this Lease and all rights of Tenant under this Lease by giving Tenant written notice that this Lease is terminated, in which case Landlord may recover from Tenant the aggregate sum of:

- (i) the worth at the time of award of any unpaid rent that was payable at the time of termination;
- (ii) the worth at the time of award of the amount by which (1) the unpaid rent that would have been payable after termination until the time of award exceeds (2) the amount of the rental loss, if any, as Tenant affirmatively proves could have been reasonably avoided;

- (iii) the worth at the time of award of the amount by which (1) the unpaid rent for the balance of the term after the time of award exceeds (2) the amount of rental loss, if any, as Tenant affirmatively proves could be reasonably avoided;
- (iv) any other amount necessary to compensate Landlord for all the detriment caused by Tenant's failure to perform Tenant's obligations or that, in the ordinary course of things, would be likely to result from Tenant's failure; and
- (v) all other amounts in addition to or in lieu of those previously set out as may be permitted from time to time by applicable California Law.

As used in clauses i and ii of Paragraph 19.3.1, the "worth of the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause iii of Paragraph 19.3.1, the "worth of the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). As used in this Paragraph, the term "rent" shall include Base Rent, District Rent Reimbursement and any other payments required by Tenant under this Lease.

19.3.2 Continue this Lease and, from time to time, without terminating this Lease, recover all rent and other amounts payable as they become due.

19.3.3 None of the following remedial actions, alone or in combination, shall be construed as an election by Landlord to terminate this Lease unless Landlord has in fact given Tenant written notice that this Lease is terminated or unless a court of competent jurisdiction decrees termination of this Lease: any act by Landlord to maintain or preserve the Premises; or any efforts by Landlord to relet the Premises. If Landlord takes any of the previous remedial actions without terminating this Lease, Landlord may nevertheless at any later time terminate this Lease by written notice to Tenant.

19.4 Landlord's Cure of Tenant's Default. Landlord shall have the right, after expiration of Tenant's cure period, to take any action necessary or appropriate, including entering the Premises, to cure any default. All costs incurred by Landlord to cure any such default, including reasonable attorneys' fees, with interest, shall become immediately due and payable by Tenant upon demand as Additional Rent. Nothing in this Paragraph 19.4 shall preclude or limit Landlord from electing to terminate this Lease pursuant to Paragraph 19.3.1 upon written notice to Tenant.

19.5 Fixtures and Personal Property. In the event at default, all of the Tenant's fixtures, furniture, equipment, improvements, additions, alterations, and other personal property shall remain on the Premises, and in that event, and continuing during the length of said default, Landlord shall have the right to take exclusive possession of the same or to use the same, free of

rent or any other charge until all defaults are cured or, at its option, at any time during the Term, to require Tenant to remove the same.

19.6 No Waiver. The waiver by Landlord of any breach of any term, covenant or condition contained in this Lease shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition contained in this Lease. The subsequent acceptance of rent 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 or of any right of Landlord to a forfeiture of this Lease by reason of such breach, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent. No term, covenant or condition of this Lease shall be deemed to have been waived by Landlord unless such waiver be in writing and signed by Landlord.

## 20. DEFAULT BY LANDLORD.

20.1 Landlord's Default; No Right of Termination. Landlord shall not be charged with default in the performance at any of its obligations hereunder unless Landlord fails to perform such obligations within thirty (30) days, or such additional time as is reasonably required to correct any such default, after written notice by Tenant to Landlord specifying Landlord's default. If Landlord's interest in and to the Premises, or any part thereof, is at any time subject to a ground lease, mortgage or deed of trust, and this Lease or the rentals due hereunder are assigned in connection with such ground lease, mortgage or deed of trust and Tenant is given written notice thereof and the post office address of such assignee, Tenant agrees that it will, concurrently with the giving of any notice of default to Landlord, mail a duplicate of such default notice to such ground lessor or assignee. Tenant further agrees that it will, prior to exercising any remedies by reason of such default give any such assignee, mortgagee or trust deed holder a reasonable opportunity to cure such default for and on behalf of Landlord. Except as provided below, Tenant's remedies shall be limited to monetary damages and injunctive relief; provided, however, that in no event shall Landlord be liable under any circumstances for any consequential damages incurred by Tenant, including, without limitation, any injury to, or interference with, Tenant's business, (including any loss of profits) arising in connection with this Lease. Nothing herein contained shall be interpreted to mean that Tenant is excused from paying rental due hereunder as a result of any default by Landlord.

## 21. EMINENT DOMAIN.

21.1 Taking Resulting in Termination. In the event the entire Premises shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, this Lease shall terminate and expire as of the date of such taking, and Landlord and Tenant shall each thereupon be released from any further liability accruing under this Lease.

21.1.1 In the event more than twenty-five percent (25%) of the rentable area of the Premises is taken under the power of eminent domain by any public or quasi-public authority, or if by reason of any appropriation or taking, regardless of the amount so taken, the remainder of the Premises is not one undivided parcel of property, either Landlord or Tenant shall have the right to terminate this Lease as of the date Tenant is required to vacate a portion of the Premises, upon giving notice in writing of such



election within thirty (30) days after receipt by Tenant from Landlord of written notice that said Premises have been so appropriated or taken. In the event of such termination, both Landlord and Tenant shall thereupon be released from any liability thereafter accruing under this Lease. Landlord agrees immediately after learning of any appropriation or taking to give to Tenant notice in writing thereof.

21.2 Award. If this Lease is terminated in either manner as provided in Paragraph 21.1, Landlord and District, as their interests appear, shall be entitled to, and Tenant hereby assigns to Landlord, the entire award or compensation in such proceedings, but the Base and other charges for the last month of Tenant's occupancy shall be prorated and Landlord agrees to refund to Tenant any Base Rent or other charges to the extent paid in advance. Tenant's right to receive compensation or damages for its fixtures, personal property, and goodwill from the condemning authority shall not be affected in any manner hereby.

21.3 Partial Taking. If this Lease is not so terminated as a result of a partial taking, Tenant shall continue to occupy that portion of the Premises which shall not have been appropriated or taken and the parties will proceed as follows: (i) at Landlord's cost and expense and soon as is reasonably possible, Landlord will restore the remaining Premises to a complete unit of like quality and character as existed prior to such appropriation or taking; (ii) the Base Rent provided for in Paragraph 4 shall be adjusted on an equitable basis, taking into account the relative values of the portion taken as compared to the portion remaining; and (iii) Landlord and District, as their interests appear, shall be entitled to the entire award or compensation in such proceedings. Tenant's right to receive compensation or damages for Tenant's fixtures, personal property and goodwill from the condemning authority shall not be affected in any manner hereby. Tenant hereby waives any statutory rights of termination which may arise by reason of any partial taking of the Premises under the power of eminent domain.

21.4 Transfer Under Threat of Taking. For the purposes of this Paragraph 21, a voluntary sale or conveyance under threat and in lieu of condemnation shall be deemed an appropriation or taking under the power of eminent domain.

## 22. ATTORNEYS' FEES.

22.1 If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Lease, the prevailing party shall be entitled to a reasonable attorneys' fees and costs which may be set by the Court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled and including, without limitation, any such fees or costs incurred on any appeal from such action or proceeding.

## 23. SUBORDINATION; ATTORNMENT.

23.1 Subordination. This Lease, and the rights of Tenant hereunder, shall be subject and subordinate to the terms, covenants, and conditions of the Master Lease and to all mortgages or deeds of trust placed upon the Premises by Landlord. In the event of any conflict or inconsistency between the Sublease and the Master Lease, the provisions of the Master Lease shall govern and prevail. Landlord shall have the right to encumber in any manner whatsoever

any right or interest in the Premises and this Lease. Upon request, Tenant shall within ten (10) days after written request execute and deliver to Landlord, or any such mortgagee, beneficiary or ground lessor, any documents or instruments required by any of them to evidence subordination of this Lease hereunder or to make this Lease prior to the lien of any mortgage, deed of trust or ground lease as herein specified. The Master Lease and all mortgages or deeds of trust pertaining in whole or in part to the Premises will not encumber the furniture, trade fixtures, equipment, inventory and all other personal property placed on the Premises by Tenant.

23.2 Attornment. If any right or interest in the Premises or this Lease is sold or transferred by judicial or non-judicial sale, deed in lieu of foreclosure or any other proceeding or action commenced to enforce an encumbrance, Tenant shall attorn to such purchaser, transferee or grantee, as the case may be, and recognize such purchaser, transferee or grantee as Landlord under and for the purposes of this Lease.

23.3 Estoppel Certificate. Within ten (10) days after written request of Landlord, Tenant shall execute, acknowledge and deliver to Landlord a statement certifying: (i) this Lease is unmodified and in full force and effect (or, if there have been modifications, the same is in full force and effect as modified, and stating the modifications); (ii) any existing offsets or defenses against the enforcement of any provisions of this Lease (and, if so, specifying the same); (iii) the dates to which rent or other charges have been paid in advance; and (iv) such other matters as Landlord may reasonably request. This certificate may be relied upon by any prospective purchaser, lessor, mortgagee or holder of a deed of trust on the Premises. Tenant's certification shall not preclude Tenant from asserting an existing default of Landlord of which Tenant did not have actual knowledge on the date of certification.

## 24. HAZARDOUS SUBSTANCES.

24.1 Reportable Uses Require Consent. The term “**Environmental Laws**” means all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any government authority regulating now in effect or later enacted, relating to or imposing liability or standards of conduct concerning any Hazardous Substance (as later defined), or pertaining to occupational health or industrial hygiene (and only to the extent that the occupational health or industrial hygiene laws, ordinances or regulations relate to Hazardous Substances on, under or about the Property), occupational or environmental conditions on, under or about the Property, as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”) [42 USCS §§ 9601 *et seq.*]; the Resource Conservation and Recovery Act of 1976 (“RCRA”) [42 USCS §§ 901 *et seq.*]; the Clean Water Act, also known as the Federal Water Pollution Control Act (“FWPCA”) [33 USCS §§ 1251 *et seq.*]; the Toxic Substances Control Act (“TSCA”) [15 USCS §§ 2601 *et seq.*]; the Hazardous Materials Transportation Act (“HMTA”) [49 USCS §§ 1801 *et seq.*]; the Insecticide, Fungicide, Rodenticide Act [7 USCS § 136 *et seq.*]; the Superfund Amendments and Reauthorization Act [42 USCS §§ 6901 *et seq.*]; the Clean Air Act [42 USCS §§ 7401 *et seq.*]; the Safe Drinking Water Act [42 USCS §§ 300f *et seq.*]; the Solid Waste Disposal Act [42 USCS §§ 6901 *et seq.*]; the Surface Mining Control and Reclamation Act [30 USCS § 1201 *et seq.*]; the Emergency Planning and Community Right to Know Act [42 USCS §§ 11001 *et seq.*]; the Occupational Safety and Health Act [29 USCS §§ 655 and 657]; the California Underground Storage of

Hazardous Substances Act [H & S C §§ 25280 *et seq.*]; the California Hazardous Substances Account Act [H & S C §§ 25300 *et seq.*]; the California Hazardous Waste Control Act [H & S C §§ 25100 *et seq.*]; the California Safe Drinking Water and Toxic Enforcement Act [H & S C §§ 24249.5 *et seq.*]; the Porter-Cologne Water Quality Act [Wat C §§ 13000 *et seq.*]. The term “Hazardous Substances” includes without limitation: (i) those substances included within the definitions of “hazardous substance,” “hazardous waste,” “hazardous material,” “toxic substance,” “solid waste,” or “pollutant or contaminant” in CERCLA, RCRA, TSCA, HMTA or under any other Environmental Law; (ii) those substances listed in the United States Department of Transportation (DOT) Table [49 CFR 172.101], or by the Environmental Protection Agency (EPA), or any successor agency, as hazardous substances [40 CFR Part 302]; (iii) other substances, materials and wastes that are or become regulated or classified as hazardous or toxic under federal, state or local laws or regulations; and (iv) any material, waste or substance that is (a) a petroleum or refined petroleum product, (b) asbestos, (c) polychlorinated biphenyl, (d) designated as a hazardous substance pursuant to 33 USCS Section 1321 or listed pursuant to 33 USCS Section 1317, (e) a flammable explosive, or (f) a radioactive material. **“Reportable Use”** shall mean (i) the installation or use of any above or below ground storage tank; (ii) the generation, possession, storage, use, transportation or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority; and (iii) the presence in, on or about the Premises of a Hazardous Substance with respect to which any applicable laws require that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Tenant may, without Landlord’s prior consent, but upon notice to Landlord and in compliance with all Applicable Requirements, use any ordinary and customary materials reasonably required to be used by Tenant in the normal course of the uses of the Tenant permitted under this Lease, so long as such use is not a Reportable Use and does not expose the Premises or neighboring properties to any meaningful risk of contamination or damage or expose Landlord to any liability therefore. In addition, Landlord may (but without any obligation to do so) condition its consent to any Reportable Use of any Hazardous Substance by Tenant upon Tenant’s giving Landlord such additional assurances as Landlord, in its reasonable discretion, deems necessary to protect itself, the public, the Premises and the environment against damage, contamination or injury and/or liability therefor, including, but not limited to, the installation (and, at Landlord’s option, removal on or before Lease expiration or earlier termination) of reasonably necessary protective modifications to the Premises (such as concrete encasement) and/or the deposit of an additional Security Deposit under Paragraph 27 hereof.

**24.2 Duty to Inform Landlord.** If Tenant knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on or under or about the Premises or any building constructed thereon, other than as previously consented to by Landlord, Tenant shall immediately give Landlord written notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action or proceeding given to, or received from, any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, such Hazardous Substance, including, but not limited to, all such documents as may be involved in any Reportable Use involving the Premises. Tenant shall not cause or permit any Hazardous Substance to be spilled or released in, on, or under or about the Premises (including, without limitation, through the plumbing or sanitary sewer system).

24.3 Indemnification. Tenant shall indemnify, protect, defend and hold Landlord and District, its officers, employees and lenders, harmless from and against any and all damages, liabilities, judgments, costs, claims, liens, expenses, penalties, loss of permits and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Tenant or by anyone under Tenant's control. Tenant's obligations under this Paragraph 24.3 shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Tenant, and the cost of investigation (including consultants' and attorneys' fees and testing), removal, remediation, restoration and/or abatement thereof, or of any contamination therein involved, and shall survive the expiration or earlier termination of this Lease. No termination, cancellation or release agreement entered into by Landlord and Tenant shall release Tenant from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Landlord in writing at the time of such agreement.

24.4 Tenant's Compliance with Requirements. Except as otherwise specifically set forth in this Lease, Tenant shall, at Tenant's sole cost and expense, fully, diligently and in a timely manner, comply with all Applicable Requirements, which term is used in this Lease to mean all laws, rules, regulations, ordinances, directives, covenants, easements and restrictions of record, permits and the requirements of any applicable fire insurance underwriter or rating bureau relating in any manner to the Premises (including but not limited to matters pertaining to (i) environmental conditions on, in, under or about the Premises, including soil and groundwater conditions, to the extent brought onto the Premises by or for Tenant or by anyone under Tenant's control, and (ii) the use, generation, manufacture, production, installation, maintenance, removal, transportation, storage, spill or release of any Hazardous Substance), now in effect or which may hereafter come into effect. Tenant shall, within five (5) days after receipt of Landlord's written request, provide Landlord with copies of all documents and information, including, but not limited to, permits, registrations, manifests, applications, reports and certificates, evidencing Tenant's compliance with any Applicable Requirements specified by Landlord, and shall promptly upon receipt, notify Landlord in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving failure by Tenant or the Premises to comply with any Applicable Requirements.

24.5 Inspection; Compliance with Law. Landlord, District, Landlord's agents, employees, contractors and designated representatives, and the holders of any mortgages or deeds of trust on the Premises shall have the right to enter the Premises at any time in the case of an emergency, and otherwise at reasonable times upon reasonable notice, for the purpose of inspecting the condition of the Premises and for verifying compliance by Tenant with this Lease and all Applicable Requirements (as defined in Paragraph 24.4), and Landlord and District shall be entitled to employ experts and/or consultants in connection therewith to advise Landlord and District with respect to Tenant's activities, including, but not limited to, Tenant's installation, operation, use, monitoring, maintenance, or removal of any Hazardous Substance on or from the Premises. The costs and expenses of any such inspections shall be paid by the party requesting same, unless an uncured default or breach of this Lease by Tenant or a violation of Applicable Requirements or a contamination, caused by Tenant, is found to exist or to be imminent, or unless the inspection is requested or ordered by a governmental authority as the result of any such existing or imminent violation or contamination; in such case, Tenant shall upon request

reimburse Landlord, District or Landlord's lender, as the case may be for the costs and expenses of such inspections.

## 25. NOTICES.

25.1 Notices. All notices, approvals, requests, demands and other communications permitted or required to be given under this Lease shall be in writing and shall be and deemed duly served or given when actually delivered, if personally delivered (including delivery by Federal Express, Express Mail or other similar overnight courier service which confirms delivery in writing), or within three (3) business days after deposit in the U.S. Mail, if sent by certified mail, postage prepaid, return receipt requested. Such notices shall be addressed to the addresses of the parties set forth below; provided, however, notices to Tenant shall be deemed duly served or given if personally delivered or mailed to Tenant at the Premises. Landlord and Tenant may, from time to time by notice to the other, designate another place for receipt of future notices.

If to Tenant: Hotel Circle Convenience, LLC

If to Landlord: LFS Development, LLC  
c/o Portman Holdings, LLC  
303 Peachtree Center Ave.  
Suite 575  
Atlanta, GA 30303  
Attn: General Counsel

## 26. WAIVER OR CONSENT LIMITATION.

26.1 No waiver, benefit or privilege voluntarily given or performed by either party shall give the other party any contractual right by custom, estoppel or otherwise. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent similar act by Tenant. The acceptance of rent or any payment after termination of this Lease shall not constitute a reinstatement, extension or renewal of the Lease or revocation of any notice or other act by Landlord.

## 27. SECURITY DEPOSIT.

27.1 Security Deposit. Tenant shall deposit with Landlord the sum of Eight Thousand One Hundred Dollars (\$8,100.00) as a security deposit. Such Security Deposit shall be held by Landlord without liability for interest as security for the faithful performance by Tenant of all of its obligations under this Lease. If any amount of rent or any other charge payable by Tenant to Landlord shall be overdue and unpaid or paid by Landlord on behalf of Tenant, or if Tenant shall fail to perform any of its obligations under this Lease, then Landlord may, at its option and without prejudice to any other remedy which Landlord may have on account thereof, appropriate and apply said entire Security Deposit or so much thereof as may be necessary to compensate Landlord for the rent, charge, loss or damage sustained by Landlord as a result thereof, and Tenant shall forthwith upon demand restore said Security Deposit to the original sum deposited. If Tenant complies with all of its obligations under this Lease and promptly pays all of the rents

when due and all other charges payable by Tenant to Landlord, said Security Deposit shall be returned in full to Tenant at the end of the Term.

## 28. MISCELLANEOUS.

28.1 Incorporation by Reference. All Exhibits and any other documents attached hereto are incorporated herein by this reference.

28.2 Holdover. This Lease shall terminate without further notice at the expiration of the Term. Any holding over by Tenant after expiration or earlier termination of this Lease shall not constitute a renewal or extension or give Tenant any rights in or to the Premises. If Tenant, with Landlord's and District's express written consent, remains in possession of the Premises after expiration or earlier termination of the Term or after the date in any notice given by Landlord to Tenant terminating this Lease, such possession by Tenant shall be deemed to be a month-to-month tenancy terminable on thirty (30) days prior written notice given at any time by either party. During any such month-to-month tenancy, Tenant shall pay one-hundred fifty percent (150%) of all Base Rent in effect just prior to such termination, together with District Rent Reimbursement, Additional Rent and all other charges as required by this Lease. All provisions of this Lease, except those pertaining to the Term, shall apply to the month-to-month tenancy. If Tenant fails to surrender the Premises upon the expiration of this Lease, despite demand to do so by Landlord, Tenant shall indemnify and hold Landlord harmless from all loss, liability, costs and expenses, including attorneys' fees, incurred by Landlord as a result of such holdover, including, without limitation, any claims made by any succeeding tenant.

### 28.3 District Approval and Rules and Regulations.

28.3.1 District Approval. The approval or consent of the District wherever required in the Master Lease shall mean the approval or consent of the Executive Director of the San Diego Unified Port District, unless otherwise specified. Landlord's refusal to consent or approve of any matter under this Lease shall be deemed reasonable if the consent or approval of District is required and District fails or refuses to give its consent or approval, and Landlord shall have no liability to Tenant with respect to such failure or refusal.

28.3.2 Rules and Regulations. Tenant agrees that in all activities on or in connection with the Premises and in all uses thereof, including the making of any alterations or changes and, the installation of any machines, trade fixtures, appliances or equipment or other improvements, it will abide by and conform to all rules and regulations prescribed by the San Diego Unified Port District Act, Manager, Landlord, any ordinance of any city wherein the Premises are located, including the Building Code thereof, and any ordinances and general rules of the District, including tariffs, and any applicable laws of the State of California and Federal Government, as any of the same now exists or may hereafter be adopted or amended.

28.4 Transfer by Landlord. If Landlord or Landlord's successor in interest transfers its interest in this Lease, Landlord, or its successor in interest, shall automatically be freed and relieved from all personal liability for the performance of any obligation after the date of such

transfer or conveyance provided that the Landlord's successor assumes all of Landlord's obligations herein arising after the date of such transfer or conveyance. Any funds in which Tenant has an interest which are in the hands of Landlord, or its successor in interest, shall be turned over to the transferee.

28.5 Time of the Essence. Time is of the essence under this Lease.

28.6 Force Majeure. The occurrence of any of the following events shall excuse such obligations of Landlord or Tenant as are thereby rendered impossible or reasonably impracticable for so long as such event continues: lockout; labor dispute; acts of God; inability to obtain labor, materials, or reasonable substitutes therefor; governmental restrictions, regulations or controls; judicial orders; enemy or hostile governmental actions; civil commotions; fire or other casualties; and other causes beyond the reasonable control of, but not caused by, the party obligated to perform. Notwithstanding the foregoing, the occurrence of such events shall not excuse Tenant's obligations to pay Base Rent, District Rent Reimbursement, Additional Rent or any other charge (unless the provisions of Paragraph 16 apply), nor excuse such obligations as this Lease may otherwise impose on the party to abate, remedy or avoid such event; moreover, should the work performed by Tenant or Tenant's contractor result in a strike, lockout and/or labor dispute, such strike, lockout or labor dispute shall not excuse Tenant's performance.

28.7 Quiet Possession. Landlord agrees that Tenant, upon paying the Base Rent, District Rent Reimbursement, Additional Rent and all other charges provided for in this Lease and performing all the covenants and conditions of this Lease, may quietly have, hold and enjoy the Premises from and after Landlord's delivery of the Premises to Tenant and until the end of the Term; subject, however, to the provisions of Paragraphs 15.3 and 28.2, the Master Lease and any mortgage, ground leases, agreements and encumbrances to which this Lease is or may become subordinate.

28.8 Headings/Number and Gender. The captions and paragraph headings at this Lease are inserted only as a matter of convenience and no way define, limit or describe the scope of the meaning or intent of the provisions of this Lease. Words of gender shall include any other gender, singular words include the plural and the word "person" includes individuals, firms, partnerships, joint ventures, corporations, trusts and other types of entities or associations.

28.9 Governing Law and Severability. This Lease shall be governed and construed under California Laws applicable to contracts made and to be performed entirely in California. If any provision of this Lease is invalid or contravenes California law, such provision shall be deemed not to be a part of this Lease and shall not affect the validity or enforceability of the remaining provisions.

28.10 Interest Rate/Calendar Days. Whenever it is provided in this Lease that interest at a rate provided in this Lease shall accrue and be payable by Tenant to Landlord on amounts paid or incurred by Landlord on behalf of Tenant or due and payable by Tenant to Landlord, unless otherwise specifically provided, such interest shall be at the annual rate of ten percent (10%) and shall accrue as of the date paid or incurred by Landlord on behalf of Tenant or the date due and payable by Tenant to Landlord and shall continue to accrue up to and including the date all such

amounts, together with interest, are paid by Tenant to Landlord. Whenever the term “days” is used in this Lease, it shall mean calendar days, unless otherwise specifically provided.

28.11 Binding Effect. Subject to restrictions on the rights of Tenant to transfer, assign or sublet this Lease, this Lease shall be binding upon and inure to the benefit of Landlord and Tenant and their respective heirs, beneficiaries, legal representatives, successors and assigns.

28.12 Amendments and Modification. This Lease may be amended or modified only by a written instrument executed by both parties. This Lease shall not be amended or modified in any respect without the prior written consent of District. Any purported amendment or modification without such prior written consent shall be null and void.

28.13 Negation of Partnership. Landlord shall not become or be deemed a partner or a joint venturer with Tenant by reason of the provisions of this Lease.

28.14 Entire Agreement. This Lease, all attached exhibits and all documents incorporated by reference supersede all oral statements and representations and contain the entire agreement of the parties with respect to Tenant’s use and occupancy of the Premises. Tenant specifically acknowledges and agrees that Landlord has not in any fashion solicited Tenant’s execution of this Lease or Tenant’s occupancy of the Premises during the Term, nor has Landlord made any representation, claim or warranty to Tenant in connection with Tenant’s execution of this Lease and occupancy of the Premises during the Term related to (i) the profitability or anticipated financial success of the Project; (ii) the tenant mix or composition within the Project; (iii) the identity of any particular tenant proposed to occupy space within the Project; (iv) the anticipated occupancy rate of leasable space within the Project at any time; (v) the opening date of any business to be operated within the Project; (vi) the commencement or continued operation of any public or private transportation service of any type to or from the Project at any time during the Term; or (vii) any means of access to or from the Project or its general locale.

28.15 Brokers. Landlord has entered into an agreement with Retail Insite (“**Landlord’s Broker**”), and Landlord shall pay any commissions or fees that are payable to Landlord’s Broker with respect to this Lease in accordance with the provisions of a separate commission contract. Except as otherwise provided herein, Landlord shall have no further or separate obligation for payment of commissions or fees to any other real estate broker, finder or intermediary. Tenant represents that it has not had any dealings with any real estate broker, finder or intermediary with respect to this Lease. Subject to the foregoing, each party hereto shall indemnify and hold harmless the other party hereto from and against any and all losses, damages, liabilities, losses, costs and expenses (including, but not limited to, reasonable attorneys’ fees and related costs) resulting from any claims that may be asserted against such other party by any real estate broker, finder or any intermediary arising from any acts of the indemnifying party in connection with this Lease.

28.16 Consent. Whenever the consent or approval of either party is required pursuant to this Lease, except as otherwise expressly provided herein, such consent or approval will not be unreasonably withheld or delayed.



28.17 Guaranty. This Lease shall be guaranteed by Steve Abbo for the first five (5) years of the Initial Term, such guaranty to be in the form and substance of **Exhibit E** attached hereto.

28.18 Certified Access. Pursuant to Section 1938 of the California Civil Code, Landlord hereby advises Tenant that the Premises, as delivered to Tenant, has not undergone an inspection by a Certified Access Specialist (CASp). Landlord makes no representations or warranties with respect to the Premises complying with any applicable federal, state and local standards, codes, rules and regulations governing physical access for persons with disabilities at places of public accommodation, including, but not limited to, the Americans with Disabilities Act of 1990, California's Unruh Civil Rights Act, California Building Standards Code, or California Health and Safety Code (collectively, the "**Accessibility Laws**"). Tenant is solely responsible for complying with all Accessibility Laws with respect to the Premise.

28.19 Financial Statements. Tenant agrees that it shall promptly furnish Landlord, from time to time, upon Landlord's written request, with current financial statements reflecting Tenant's and any Guarantor(s) (if applicable) financial condition. Such financial statements shall be prepared in accordance with generally accepted accounting principles and, if such is the normal practice of Tenant, shall be audited by an independent certified public accountant. Notwithstanding the foregoing, in the event Tenant is a publicly traded corporation, then for so long as Tenant is a publicly traded company, a copy of Tenant's most current "10Q" and annual report shall satisfy the requirements of this Paragraph 28.19.

28.20 Anti-Terrorism Law.

A. Tenant represents and warrants to Landlord as follows:

- (1) Neither Tenant, its constituents or affiliates nor any of their respective agents (collectively, the "**Tenant Parties**") is in violation of any law relating to terrorism or money laundering, including, but not limited to, Executive Order No. 13224 on Terrorist Financing, the U.S. Bank Secrecy Act, as amended by the Patriot Act, the Trading with the Enemy Act, the International Emergency Economic Powers Act and all regulations promulgated thereunder, all as amended from time to time (collectively, "**Anti-Terrorism Law**").
- (2) No action, proceeding, investigation, charge, claim, report, or notice has been filed, commenced, or threatened against any of the Tenant Parties alleging any violation of any Anti-Terrorism Law.
- (3) None of the Tenant Parties has, after due inquiry, knowledge of any fact, event, circumstance, situation or condition which could reasonably be expected to result in any action, proceeding, investigation, charge, claim, report, notice or penalty being filed, commenced, threatened or imposed against any of them relating to any violation of or failure to comply with any Anti-Terrorism Law.

(4) None of the Tenant Parties is a “**Prohibited Person**”. A Prohibited Person means any of the following:

- (a) A person or entity that is “specially designated” on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control or which is owned, controlled by or acting for or on behalf of any such person or entity;
- (b) A person or entity with whom Landlord is prohibited from dealing by any Anti-Terrorism Law;
- (c) A person or entity that commits, threatens, or conspires to commit or supports “terrorism”, as defined in any Anti-Terrorism Law.

(5) None of the Tenant Parties:

- (a) Conducts any business or transactions or makes or receives any contribution of funds, goods, or services in violation of any Anti-Terrorism Law;
- (b) Engages in or conspires to engage in any transaction that evades or avoids, has the purpose of evading or avoiding or attempts to violate any of the prohibitions of any Anti-Terrorism Law.

B. Tenant covenants that it shall not:

- (1) Conduct any business or transaction or make or receive any contribution of funds, goods, or services in violation of any Anti-Terrorism Law;
- (2) Engage in or conspire to engage in any transaction that evades or avoids, has the purpose of evading or avoiding or attempts to violate any of the prohibitions of any Anti-Terrorism Law.

C. Tenant agrees to deliver to Landlord within ten (10) days of Landlord’s written request any certification or other evidence requested from time to time by Landlord, in its reasonable discretion, confirming Tenant’s compliance with the foregoing.

28.21 Inducement Recapture. Any Rent concession provided for under this Lease is called “Abated Rent”. Tenant shall be credited with having paid all of the Abated Rent on the expiration of the Lease Term only if Tenant has fully, faithfully and punctually performed all of Tenant’s obligations hereunder, including the payment of all Rent (other than the Abated Rent) and all other monetary obligations, and Tenant surrenders the Premises in the physical condition

required by this Lease. Tenant acknowledges that its right to receive credit for the Abated Rent is absolutely conditioned upon Tenant's full, faithful, and punctual performance of its obligations under this Lease. Upon the occurrence of an Event of Default, in addition to, and not in limitation of, all other rights of Landlord pursuant to this Lease, at law or in equity, the Abated Rent shall immediately become due and payable in full, and this Lease shall be enforced as if there were no such Abated Rent, or other Rent concession. In such case, Abated Rent shall be calculated based on the full initial Rent payable under this Lease.

28.22 Remodeling. Upon Landlord's request, but not more frequently than every four years, upon the request of Landlord, Tenant shall refurbish the Premises so that the furnishings, furniture, flooring, wall fixtures and coverings, equipment and other appurtenances in the Premises shall be in keeping with current industry standards and in accordance with plans and specifications prepared by Tenant and approved by Landlord.

28.23 Communications and Computer Lines. Tenant may install, maintain, replace, remove or use any communications or computer wires and cables (collectively, the "**Lines**") at the Project in or serving the Premises, provided that (i) Tenant shall obtain Landlord's prior written consent, use an experienced and qualified contractor approved in writing by Landlord, and comply with all of the other provisions of Paragraphs 8 and 11 of this Lease, (ii) an acceptable number of spare Lines and space for additional Lines shall be maintained for existing and future occupants of the Project, as determined in Landlord's reasonable opinion, (iii) the Lines therefor (including riser cables) shall be appropriately insulated to prevent excessive electromagnetic fields or radiation, and shall be surrounded by a protective conduit reasonably acceptable to Landlord, (iv) any new or existing Lines servicing the Premises shall comply with all Applicable Laws, (v) 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 (vi) Tenant shall pay all costs in connection therewith. Landlord reserves the right to require that Tenant remove any Lines located in or serving the Premises which are installed in violation of these provisions, or which are at any time in violation of any laws or represent a dangerous or potentially dangerous condition.

28.24 Submission of Lease. Submission of this Lease to Tenant does not constitute an offer to lease; this Lease shall become effective only upon execution and delivery thereof by Landlord and Tenant. The Effective Date of this Lease shall be the date filled in on Page 1 hereof by Landlord, which shall be the date of execution by the last of the parties to execute the Lease.

28.25 Representation by Tenant. If Tenant is or will be a corporation, the persons executing this Lease on behalf of Tenant hereby covenant and warrant that Tenant is a duly qualified corporation authorized to do business in the State where the Project is located, that all franchise and corporate taxes have been paid to date and all future forms, reports, fees and other documents necessary to comply with applicable laws will be filed when due, and the person signing this Lease on behalf of the corporation is an officer of Tenant, and is duly authorized to sign and execute this Lease. Tenant hereby represents and warrants that: (a) there are no proceedings pending or so far as Tenant knows threatened before any court or administrative agency that would materially adversely affect the financial condition of Tenant, the ability of Tenant to enter into this Lease or the validity or enforceability of this Lease; (b) there is no provision of any existing mortgage, indenture, contract or agreement binding on Tenant which

would conflict with or in any way prevent the execution, delivery or performance of the terms of this Lease; (c) the financial statement of Tenant provided to Landlord in connection with this Lease is complete and correct and fairly presents the financial condition of Tenant as of the date and for the period referred to therein and has been prepared in accordance with generally accepted accounting principles consistently applied; and (d) there have been no material adverse changes in the financial condition of Tenant since the date of such financial statement and to the knowledge of Tenant, no such material adverse changes are pending or threatened. Tenant acknowledges that Landlord is executing this Lease in reliance upon the foregoing representation and warranty and that such representation and warranty is a material element of the consideration inducing Landlord to enter into and execute this Lease.

28.26 Confidentiality. Tenant agrees that (a) the terms and provisions of this Lease are confidential and constitute proprietary information of Landlord and (b) it will not disclose, and it will cause any Tenant-related Persons (defined below) or real estate agents, lenders, accountants and attorneys to not disclose any term or provision of this Lease to any other person without first obtaining the prior written consent of Landlord. "Tenant-related Persons" are the following: (i) Tenant; (ii) subtenants and other occupants of the Premises; (iii) Tenant's contractors and invitees; (iv) the shareholders, members, managers, partners, and Affiliates of those described in items (i) through (iii); and (v) the officers, managers, directors, employees, and agents of those described in items (i) through (iv).

**IN WITNESS WHEREOF**, the parties hereto have executed this Lease as of the day and year first above written.

Landlord:

Tenant:

**LFS DEVELOPMENT, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Its \_\_\_\_\_

**Exhibit A**

**PREMISES**

[Per the Port District guidelines, the entire premises to be subleased must be specific; e.g., address and suite number, or outlined in red on a drawing attached.]

## Exhibit B

### TENANT'S WORK

**1. Tenant Information and Criteria Package.** To the extent existing and applicable, Landlord shall deliver to Tenant, when available, a Tenant Information and Criteria Package (“**Tenant Package**”) showing thereon the columns and other structural work in the Premises and containing general design criteria and fixturation requirements.

**2. Plans and Specifications.** Tenant shall submit to Landlord, within 60 days following the execution of this Lease, commercially reasonable construction plans and specifications for Tenant's Work as described in this **Exhibit B**. Tenant shall employ a licensed architect approved by Landlord, to prepare plans which are commercially reasonable and professional, complete and in compliance with all governing laws, codes and ordinances. Landlord will, within fifteen (15) days following its receipt of same, either approve or disapprove the plans and specifications. If Landlord disapproves any portion of such plans, Tenant will have the plans modified to address Landlord's objections and will resubmit same to Landlord within ten (10) days after receiving Landlord's notice of disapproval. The plans and specifications as approved by Landlord shall be defined as the “**Approved Construction Plans**”. Approved Construction Plans are not a representation by Landlord that they are in compliance with the requirements of governing authorities, and it shall be Tenant's responsibility to meet and comply with all Federal, State, and local law and code requirements. Further, Landlord shall have the right to require, by notice to Tenant delivered at the time Landlord approves Tenant's construction plan and specifications, that Tenant remove upon the expiration or earlier termination of the Lease at Tenant's sole cost and expense any portion(s) of the Tenant's Work that Landlord so specifies in writing to Tenant. If Tenant does not deliver the plans and specifications to Landlord within the time limits set forth above, Landlord shall have the right, but not the obligation, to extend the date of delivery of the Premises to Tenant.

**3. Payment for Changes in Work.** No changes to the Approved Construction Plans shall be made without the written consent of Landlord. Any additional charges, expenses or costs including, without limitation, increased fees which Landlord may be required to pay for architectural, engineering, construction and other similar services arising by reason of any subsequent change in the Approved Construction Plans made at the request of Tenant shall be the sole cost and expense of Tenant and shall be paid by Tenant to Landlord prior to the performance of the work.

**4. Tenant Delays.** Subject to Force Majeure, if there shall be a delay or there are delays in the occurrence of any of the other conditions precedent to the Commencement Date as a result of:

4.1 Tenant's failure to timely approve any matter requiring Tenant's approval or process Tenant's construction plans;

4.2 a default (after expiration of any applicable notice and cure period) by Tenant of the terms of this Work Letter or the Lease;

4.3 Tenant's request for changes in the Approved Construction Plans;

4.4 Any other acts or omissions of Tenant, or its agents (including Tenant's Architect), or employees,

(individually, a "**Tenant Delay**" and collectively, "**Tenant Delays**"); then, notwithstanding anything to the contrary set forth in this Lease or this **Exhibit B** the Commencement Date shall be deemed to be the date the Commencement Date would have occurred if no Tenant Delay or Delays, as set forth above, had occurred. Tenant Delays shall not include any delays through no fault of Tenant including, but not limited to delays caused by the city or other government agencies. Notwithstanding the foregoing, in the event Tenant Delays exceed, in the aggregate, ninety (90) days, Landlord may, at Landlord's option, terminate the Lease by delivery of written notice from Landlord to Tenant, in which event this Lease shall be of no further force and effect, except for any provisions of the Lease which expressly survive expiration or early termination of the Lease.

## **5. Requirements Relating to Tenant's Work.**

5.1 All of Tenant's Work in the Premises shall be strictly in accordance with the Approved Construction Plans and all governing laws, codes and ordinances. Tenant shall obtain, at its sole cost and expense, permits and approval from all necessary authorities for Tenant's Work and shall furnish Landlord with a copy of said permits prior to commencement of construction.

5.2 Tenant shall obtain Landlord's prior written approval of all contractors and subcontractors engaged to perform any portion of Tenant's Work.

5.3 Tenant agrees to cooperate and comply with all commercially reasonable rules and regulations which Landlord, its architect or contractor makes in connection with the construction of the Project and the Premises. These rules may include, but are not limited to the Contractor Rules, as may be amended from time to time by Landlord.

5.4 Prior to commencement of construction of Tenant's Work, Tenant shall furnish Landlord with a certificate of its contractor's workers' compensation and liability insurance, both of which shall name Landlord, the District, the Manager and Landlord's lender(s) as additional insureds.

5.5 Tenant agrees to pay prevailing wage rates to all persons who are employed by Tenant to perform construction activities on the property of District, and to require any contractor engaged by Tenant (and its subcontractors) to pay prevailing wages to their employees performing construction activities on the Property.

## **6. Delivery of Premises and Commencement of Tenant's Work.**

Upon Landlord's delivery of possession of the Premises to Tenant, Tenant shall thereupon proceed with due diligence to install Tenant's Work, including Tenant's equipment and merchandise, without interfering with other work being done in the Premises or Project. Landlord shall have no responsibility for any loss of, or damage to, any of Tenant's property installed or left on the Premises. Tenant's entry prior to the commencement of the Lease Term

shall be subject to all of the provisions of the Lease other than the payment of Rent and other charges of Landlord. At all times after such entry, Tenant shall maintain, or cause to be maintained, insurance complying with the provisions of the Lease, notwithstanding the fact that the Lease Term shall not then have commenced.

**7. Tenant's Work.** The work to be performed by Tenant shall be all work (other than that specifically designated as Landlord's Work) necessary to complete the Premises in accordance with the Approved Construction Plans ("**Tenant's Work**"). In addition to the Security Deposit required to be provided by Tenant to Landlord under the Lease, Tenant shall also deliver to Landlord, concurrently with Tenant's execution of this Lease, the Construction Deposit in the sum of \$5,000.00 ("**Construction Deposit**"). The Construction Deposit shall be returned to Tenant within thirty (30) days after Tenant satisfies all of Tenant's requirements with respect to Tenant's Work set forth in this Exhibit B and Tenant has opened for business. In the event Tenant does not satisfy the requirements of this Exhibit B with respect to Tenant's Work and be opened for business by one hundred fifty (150) days after the Delivery Date, in such event, Landlord shall retain the entire Construction Deposit. Tenant acknowledges that Tenant's failure to timely open and satisfy the construction requirements contained herein will cause Landlord to incur certain costs, expenses and potential liabilities which are not contemplated under this Lease, the exact amount of which are extremely difficult or impractical to fix. Landlord and Tenant agree that Landlord's retention of the Construction Deposit represents a reasonable estimate of such costs and expenses and is fair compensation to Landlord for the loss caused by Tenant's failure to perform its obligations under this Exhibit B and timely open for business as required hereunder. Landlord's retention of such Construction Deposit shall not constitute a waiver of Tenant's default with respect to Tenant's obligations under this Lease nor prevent Landlord from exercising all other rights and remedies available to Landlord under this Lease or under law.

**8. Construction Allowance.** Notwithstanding anything to the contrary contained in this Exhibit B, Landlord agrees to contribute the sum of One Hundred Thousand Dollars (\$100,000.00) ("**Construction Allowance**") of toward the cost of Tenant's Work, except that said sum shall not in any event be applied toward Tenant's Personal Property, Fixtures, inventory, signs or architect or other consultant fees. Tenant shall pay (as part of the Construction Allowance) a fee to Landlord in an amount equal to four percent (4%) of all the "hard" costs of Tenant's Work for coordination of the Tenant's Work budget and implementation of the work described in this exhibit.

Upon written request, Landlord shall pay to Tenant fifty percent (50%) of the Construction Allowance within thirty (30) days after the Tenant has delivered to Landlord the documents identified in Item (c) below and the remaining fifty percent (50%) within fifteen (15) days after the Tenant has opened for business and Tenant has delivered to Landlord the documents identified in Items (a) - (g) below; provided, however, in no event shall Landlord be obligated to pay Tenant the Construction Allowance until the expiration of sixty (60) days following the recordation of the Notice of Completion referred to in (b) below:

(a) The original (or its equivalent) "Certificate of Occupancy" issued by the applicable building department in the city in which the Project is located;

(b) A copy of Tenant's recorded, valid "Notice of Completion";



(c) Copies of paid invoices and all mechanics' lien releases or other lien releases on account of Tenant's Work, which are notarized (if required by Landlord), unconditional and in recordable form or in such form as Landlord shall have approved;

(d) Copies of all building permits, indicating inspection and approval of the Premises by the issuer of said permits;

(e) A certification from Tenant's general contractor or architect certifying that the Tenant's Work has been constructed in accordance with the Approved Construction Plans;

(f) Copies of all guaranties, warranties and operations manuals issued by the contractors and suppliers of Tenant's Work, which guaranties and warranties shall inure to the benefit of both Landlord and Tenant; and

(g) Final revised drawings ("as-built" drawings) in the following formats: (i) Auto CAD (clearly labeled as "as-built") and (ii) PDF (stamped and signed as "as-built").

The cost of any work in addition to Landlord's Work performed by Landlord for the benefit of Tenant, any amounts owed by Tenant under Paragraph 3 above and any Rent owing under this Lease shall be deducted from the Construction Allowance before said Construction Allowance is paid to Tenant.

Should Tenant fail to open for business within thirty (30) days after the time limit set forth in Paragraph 7 above or should Tenant fail to request payment of the Construction Allowance within one hundred twenty (120) days after its opening for business, then Landlord shall not be obligated to pay Tenant the Construction Allowance.

## Exhibit C

### COMMON AREA

The below calculations are subject to the final designs and as built area measurements.



**Exhibit D**

**TENANT CONCEPT**

**Exhibit E****GUARANTY**

WHEREAS, a certain Sublease (“**Lease**”), more fully described below, has been or will be executed:

- a. Landlord: LFS DEVELOPMENT, LLC
- b. Tenant: Hotel Circle Convenience, LLC.
- c. Effective Date: \_\_\_\_\_
- d. Premises Address: 901 Bayfront Court  
Suite 110  
San Diego CA 92101

WHEREAS, Landlord requires as a condition to its execution of said Lease that the undersigned (herein referred to as “**Guarantor**”) guarantee the full performance of the obligations of Tenant under the Lease.

WHEREAS, the undersigned is desirous that Landlord enter into the Lease with Tenant and the undersigned will receive a monetary benefit from Tenant entering into the Lease.

NOW, THEREFORE, in consideration of the execution of the Lease by Landlord, Guarantor agrees as follows:

1. From the date hereof until the expiration of the fifth year of the Lease so long as no event of default has occurred, Guarantor hereby unconditionally guarantees the performance of, and unconditionally promises to perform, all of the obligations of Tenant under the Lease and any and all extensions and modifications thereof, including, but not limited to, the obligation to pay rent thereunder.

2. In such manner, upon such terms and at such times as Landlord shall deem best, and without notice to or the consent of Guarantor, Landlord may alter, compromise, extend or change the time or manner for the performance of any obligation hereby guaranteed, substitute or add any one or more guarantors, accept additional or substituted security for the performance of any such obligation, or release or subordinate any security therefor, any and all of which may be accomplished without any effect on the obligations of Guarantor hereunder. No exercise or non-exercise by Landlord of any right hereby given, no dealing by Landlord with Tenant, any other guarantor or other person, and no change, impairment or suspension of any right or remedy of Landlord shall in any way affect any of the obligations of Guarantor hereunder or any security furnished by Guarantor or give Guarantor any recourse against Landlord.

3. Guarantor hereby waives and agrees not to assert or take advantage of the following:

(a) Any right to require Landlord to proceed against Tenant or any other person or to proceed or exhaust any security held by Landlord at any time or to pursue any other remedy in Landlord's power before proceeding against Guarantor, including the provisions of Sections 2845 and 2850 of the Civil Code of California;

(b) Any defense based on the statute of limitations in any action hereunder or in any action for the performance of any obligation hereby guaranteed;

(c) Any defense that may arise by reason of the incapacity, lack of authority, bankruptcy, death or disability of any other person or persons or the failure of Landlord to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other person or persons, including the provisions of Section 2810 of the Civil Code of California;

(d) Any right to receive demands, protests and notices of any kind including, but not limited to, notice of the existence, creation or incurring of any new or additional obligation or of any action or non-action on the part of Tenant, Landlord or any other person;

(e) Any defense based on an election of remedies including, but not limited to, any action by Landlord which shall destroy or otherwise impair any subrogation right of Guarantor or the right of Guarantor to proceed against Tenant for reimbursement, or both;

(f) Any duty on the part of Landlord to disclose to Guarantor any facts Landlord may now or hereafter know about Tenant, regardless of whether Landlord has reason to believe that such facts materially increase the risk beyond that which Guarantor intends to assume or has reason to believe that such facts are unknown to Guarantor or has a reasonable opportunity to communicate such facts to Guarantor, it being understood and agreed that Guarantor is fully responsible for being and keeping informed of the financial condition of Tenant and of all circumstances bearing on the risk of nonperformance of any obligation hereby guaranteed;

(g) Any right to receive notice of or to consent to any amendments that may hereafter be made to the Lease, including the provisions of Section 2819 of the Civil Code of California; and

(h) Any defense based on the fact that Guarantor's obligations hereunder are larger or more burdensome than that of Tenant's under the Lease, including the provisions of Section 2809 of the Civil Code of California.

4. Until all obligations hereby guaranteed shall have been fully performed, Guarantor shall have no right of subrogation and waives any right to enforce any remedy which Landlord now has or may hereafter have against Tenant and any benefit of, and any right to participate in, any security now or hereafter held by Landlord, including the provisions of Sections 2847, 2848 and 2849 of the Civil Code of California.

5. All existing and future obligations of Tenant to Guarantor, or any person owned in whole or in part by Guarantor, and the right of Guarantor to cause or permit itself or such person to withdraw any capital invested in Tenant are hereby subordinated to all obligations hereby guaranteed, and, without the prior written consent of Landlord, such obligations to Guarantor shall not be performed, and such capital shall not be withdrawn, in whole or in part, while Tenant is in default under the Lease.

6. All rights, powers and remedies of Landlord hereunder and under any other agreement now or at any time hereafter in force between Landlord and Guarantor shall be cumulative and not alternative, and such rights, powers and remedies shall be in addition to all rights, powers and remedies given to Landlord at law or in equity. This Guaranty of Lease is in addition to and exclusive of the guarantee of any other guarantor of any obligation of Tenant to Landlord.

7. The obligations of Guarantor hereunder are independent of the obligations of Tenant under the Lease, and, in the event of any default hereunder or under the Lease, a separate action or actions may be brought and prosecuted against Guarantor, whether or not Tenant is joined therein or a separate action or actions are brought against Tenant. Landlord may maintain successive actions for other defaults. Landlord's rights hereunder shall not be exhausted by its exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all obligations hereby guaranteed shall have been fully performed.

8. Guarantor shall pay to Landlord, without demand, reasonable attorneys' fees and all costs and other expenses which Landlord shall expend or incur in collecting or compromising any obligation hereby guaranteed or in enforcing this Guaranty against Guarantor, whether or not suit is filed including, but not limited to, attorneys' fees, costs and other expenses incurred by Landlord in connection with any insolvency, bankruptcy, reorganization, arrangement or other similar proceeding involving Guarantor which in any way affects the exercise by Landlord of its rights and remedies hereunder.

9. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions shall nevertheless be effective.

10. This Guaranty shall inure to the benefit of Landlord and its successors and assigns, and shall bind the heirs, executors, administrators, successors and assigns of Guarantor. This Guaranty may be assigned by Landlord concurrently with the transfer of title to property covered by the Lease, and, when so assigned, Guarantor shall be liable to the assignees without in any manner affecting the liability of Guarantor hereunder.

11. Upon full performance of all obligations hereby guaranteed, this Guaranty shall be of no further force or effect; provided, however, Guarantor's obligations hereunder shall continue and remain in effect if such full performance is avoided or recovered from Landlord as a preference, fraudulent transfer or otherwise.

12. No provision of this Guaranty or right of Landlord hereunder can be waived or modified, nor can Guarantor be released from Guarantor's obligations hereunder, except by a writing duly executed by Landlord.

13. When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural and the masculine shall include the feminine and neuter and vice versa. The word "person" as used herein shall include any individual, company, firm, association, partnership, corporation, trust or other legal entity of any kind whatsoever.

14. If two (2) or more persons are signing this Guaranty as Guarantor, then all such persons shall be jointly and severally liable for the obligations of Guarantor hereunder.

15. This Guaranty shall be governed by and construed in accordance with the laws of the State of California. In any action brought under or arising out of this Guaranty, Guarantor hereby consents to the jurisdiction of any competent court within the State of California and hereby consents to service of process by any means authorized by California law. This Guaranty shall constitute the entire agreement of Guarantor with respect to the subject matter hereof, and no representation, understanding, promise or condition concerning the subject matter hereof shall be binding upon Landlord unless expressed herein.

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be executed as of the Effective Date of the Lease.

GUARANTOR: \_\_\_\_\_

[Insert Entity, Signature, and Address Block]

## **Exhibit F**

### **CONTRACTOR'S RULES**

The attached Construction & Tenant Improvement Rules & Regulations document, dated \_\_\_\_\_, as well as the following are the rules for contractors working in tenant spaces at Lane Field North (the “**Project**”) and are subject to change prior to the start of Tenant’s Work. Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Lease.

1. **Barricade.** Tenant’s contractor(s) and subcontractor(s) (collectively, “**Contractor**”) shall be responsible for erecting a safe and neat barricade before construction begins. Such barricade will not extend beyond three feet from the lease line. The barricade shall be constructed of fire-resistant gypsum board or painted plywood if approved by Landlord. The barricade should extend from floor to ceiling, and prevent dust from seeping into the Common Area. At the Landlord’s request, the barricade shall be topped with a dust barrier. The barricade shall not be removed without Landlord’s approval.

2. **Parking.** All loading, unloading, and parking of vehicles of Contractor and its employees shall be done only in areas designated by Landlord. Vehicles not parked in designated areas may be towed at Contractor’s expense. At no time will the vehicles of any Contractor or its employees, agents, suppliers, subcontractors or licensees be permitted to be parked or located in pedestrian areas or block drive aisles or otherwise interfere with the flow and safety of individuals and vehicles within the Common Area of the Project.

3. **Trash.** No trash may be placed in Project compactors or dumpsters. No trash may be put in the Common Area. All trash must be stored in the tenant space being worked on or any other area designated by Landlord or Landlord’s Agent. All trash and debris must be removed from the Common Area daily. Trash must be removed through the rear entrance.

4. **Dust and Dirt.** Tracking dirt and dust into the Common Area is prohibited. Contractor must keep the “hardscape” Common Areas clear of any dirt, dust, and other debris.

5. **Damage.** Any damage to Project walls, floors, or ceilings must be repaired by Contractor before construction is complete.

6. **Storage of Equipment.** Storage of all Contractor’s tools, equipment and supplies is limited to Tenant’s space.

7. **Entry to Tenant’s Space.** Deliveries and all entries by Contractor shall be made through the rear entrance of Tenant’s space. If items are too large to fit through Tenant’s rear entrance, Contractor shall request and get Landlord’s prior permission to deliver through the main entrance.

8. **Outside Work.** All work is to be completed in Tenant’s space only. No work is to be performed in the Common Areas or other tenant spaces without Landlord’s approval.

9. **Loaning of Equipment.** No Project equipment will be loaned to Contractor.



**10. Quality of Work.** Contractor work shall be performed in a thorough, first-class, and workmanlike manner and shall be in good and usable condition at the date of completion thereof. If, in Landlord's judgment, the work fails to comply with this standard, the Tenant will not be allowed to open until any discrepancies are fixed.

**11. Smells.** Proper care must be taken when working with glues, paints and any other materials requiring special ventilation. Such smells must not waft into the Common Area or other tenant spaces.

**12. Sprinklers.** At no time shall the sprinkler system be shut down without Landlord's prior approval.

**13. Irregular Hours.** Contractor shall not perform any work before or after Project hours of operation without prior approval of Landlord.

**14. Noise.** Loud noises, particularly those created by the use of jackhammers, rivet guns and grinding equipment shall not be used during Project hours of operation without Landlord's prior permission. All radio and music is prohibited.

**15. Roof.** Contractor shall not go on the roof without the prior written approval of Landlord. Contractor and Contractor's employees shall keep the roof clean at all times.

**16. Asbestos.** All materials incorporated in the Tenant's space shall be 100% free of asbestos-containing materials and other Hazardous Substances.

**17. Electrical Room.** Contractor shall not enter the electrical room without Landlord's permission.

**18. Fire Extinguisher.** Contractor shall keep a fire extinguisher in the Tenant's space at all times.

**19. Professional Behavior.** Contractor's employees must not curse, expectorate, or otherwise act unprofessionally and must wear shirts at all times.

**20. Elevators.** Contractor's use of the elevators will be coordinated with Landlord's general contractor.

Landlord shall have the right to have Contractor post a security deposit in an amount reasonably required by Landlord. Landlord may fine Contractor whatever amount is needed to repair any property damage that Contractor does not fix on its own. If Contractor shall fail to comply with any of the rules set forth in this **Exhibit F**, within a reasonable time after such compliance is required by the terms herein, Landlord may, but shall not be obligated to, perform any such act on Contractor's behalf, without waiving Landlord's rights based upon any defaults of Contractor and without releasing Tenant from any obligations hereunder. Any costs incurred by Landlord in performing Contractor's obligations shall be immediately reimbursed by Contractor or, at Landlord's option, deducted from Contractor's security deposit (along with any fines imposed by Landlord).

Landlord also has the right to stop work in progress for violation of the above rules and regulations.

I have read and understand all of the above conditions and Project regulations and agree to abide by the same.

Tenant Space: \_\_\_\_\_

Contractor: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_



**BRIC Phase II**  
**Tenant Criteria Manual**

**December 2017**

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## Building Contact List

Following are Base Building Contacts for BRIC Phase II/Lane Field South.

**Owner /Landlord:** Carey Owens

**Portman Holdings**

303 Peachtree Center Avenue NE #575

Atlanta, GA 30303

404.614.5171 (O)

[cowens@portmanholdings.com](mailto:cowens@portmanholdings.com)

**Property Manager:**

Kerrie L Ozarski, Property Manager

**Reef Real Estate Services, Inc.**

619.780.0101 (O)

619.810.2884 (F)

858.229.6747 (M)

[KerrieL@reefrealestate.com](mailto:KerrieL@reefrealestate.com)

**Assistant Property Manager:**

Michelle Montalbano, Assistant Property Manager

**Reef Real Estate Services, Inc.**

619.780.0103 (O)

619.810.2884 (F)

[Mmontalbano@reefrealestate.com](mailto:Mmontalbano@reefrealestate.com)

**Chief Engineer (InterContinental)**

T B D

**Construction Contact – Building Inquiries:**

Ali Streetman, Construction Project Manager

**Portman Holdings**

404.808.5979 (M)

[astreetman@portmanholdings.com](mailto:astreetman@portmanholdings.com)

Following are preferred contractors for BRIC Phase II/Lane Field South:

***Base Building Structural Engineer:***

**iDE (Integrated Design Engineers)**

Dave Hornsby, Principal/Partner

206-264-1121 ext 107 (O)

206.992.5133 (M)

[dhornsby@id-engr.com](mailto:dhornsby@id-engr.com)

***Fire Protection/Sprinkler:***

**COSCO Fire**

Timm Ryker

4990 Greencraig Lane

San Diego, CA 92123

858.444.2000 (O)

858.444.2001 (D)

619.607.8194 (M)

[tryker@coscofire.com](mailto:tryker@coscofire.com)

***Fire Alarm:***

**HMT Electric**

Stefanos Southas

2340 Meyers Ave.

Escondido CA 92029

858-458-9771 (O)

858-458-9775 (F)

[stefans@hmtelectric.com](mailto:stefans@hmtelectric.com)

***Waterproofing Contractor:***

Jacob Bozarth, Project

Manager/Estimator

Waterproofing Division

**Courtney Inc.**

16781 Millikan Avenue

Irvine, CA 92606

714-661-7865 (M)

949-222-2050 x 109 (O)

[jacob@courtneyinc.com](mailto:jacob@courtneyinc.com)

***Roofing Contractor:***

**Courtney Inc.**

Rob Males, Project Manager/Estimator

Roofing Division

16781 Millikan Avenue

Irvine, CA 92606

(949) 536 6271 (M)

(949) 222 2050 Ext. 103 (O)

[rob@courtneyinc.com](mailto:rob@courtneyinc.com)

***Curtainwall:***

**Sunset Glazing**

Mark Williams, Project Manager

8834 La Mesa Blvd.

La Mesa, CA 91942

619.463.9803, ext 22 (O)

[mwilliams@sunsetglazing.com](mailto:mwilliams@sunsetglazing.com)

## BASE BUILDING GENERAL INFORMATION

### *Building/Tenant address:*

901 Bayfront Court  
Suite ###  
San Diego, CA 92101

### *Loading Dock:*

- The loading dock entry is located on Pacific Highway.
- Overhead door clearance is 13'-6".

### *Structure:*

- Level B2 – 9" mild concrete slab
- Level B1 – 9" mild concrete slab
- Level 1 – 12" mild concrete slab
- Level 2 – 12" mild concrete slab
- Level 19 – 10" mild concrete slab, 8" acoustical foam with a 4" topping slab
- Level 20 – 10" mild concrete slab
- Level 2/Roof – 10" mild concrete slab

### *Service Elevators:*

- Service Elevator 1
  - Serves levels B3 – 19
  - Dimensions:
    - Door Height: 7' – 0"
    - Door Width: 4' – 0"
    - Cab Width: 7' – 9 ½"
    - Cab Depth: 5' – 5 5/8"
    - Cab Height: 9' – 7"
- Service Elevator 2
  - Serves levels B3 – 19
  - Dimensions:
    - Door Height: 7' – 0"
    - Door Width: 4' – 0"
    - Cab Width: 7' – 9 ½"
    - Cab Depth: 5' – 5 5/8"
    - Cab Height: 9' – 7"

## **CONSTRUCTION & TENANT IMPROVEMENT RULES & REGULATIONS**

Following are Rules and Regulations for Tenants, Contractors and Vendors involved with construction or retail tenant improvements work Lane Field South/BRIC Phase II.

### **A. PRIOR TO COMMENCEMENT OF CONSTRUCTION**

#### **1. Tenant Improvement Interior Construction Plans:**

Landlord and Port of San Diego's review and approval of Tenant plans must be completed prior to the construction of any Tenant space. Adequate time shall be provided for review and corrections per Tenant's Lease Agreement. Landlord and Port of San Diego's reviews are for obvious violations of lease restrictions and design elements that conform to the provisions of the utilities being supplied to the space by the Landlord. Landlord's review does not involve or concern governmental requirements or regulations. Tenant shall be responsible for design elements for the operation of their business and meeting all Governmental Codes and Regulations. Tenant's design team should take special precautions to review the structural restrictions that may be involved with core drilling, saw cutting, or modifying the structural elements of the building. Tenant is responsible for submitting plans to the Port of San Diego for review and approval. Instructions can be found on the [Port of San Diego](#) website.

#### **2. Food Cooking/Restaurant Facilities:**

Smoke and Grease Exhaust accessories are required additions for basic systems installed for all hood exhaust systems used in Food Cooking/Restaurant facilities.

#### **3. Tenant Signage Construction Plans:**

Tenant is to submit signage that meets the requirements of the Tenant Signage Criteria (Attachment B) to Landlord for review and approval prior to releasing signage for fabrication. Adequate time shall be provided for review and corrections. Landlord's review is for consistency with lease requirements and adherence to Tenant Signage Criteria package. Landlord's review does not involve or concern governmental requirements or regulations. Tenant shall be responsible for meeting all Governmental Codes and Regulations. Tenant's design team should take special note to review the building signage requirements and exterior wall construction.

#### **4. Core Drilling Plan:**

Tenant shall submit a detailed core drilling or saw cutting plan to the Landlord indicating all wall and floor penetrations for review by the structural engineer. Refer to base building information on page 5 to determine the thickness of slab and structural detail. Plans shall include the center lines of all cores, penetrations, floor sinks, or other structural modifications that are anticipated and must be dimensioned from the grid lines of the building. Include layout for all trades on one set of plans. Plans should include opening sizes and lengths and the method and materials for sealing the penetrations proposed. Layout will need to be plus or minus 1/4" of the proposed hole or cut location. Tenant is responsible for coordinating the proposed locations with the existing structure and with site utilities.



Approval of the plans by the Landlord's structural engineer does not relieve the Tenant from responsibilities for any damage that may occur to structure, utilities, or other.

The floor will need to be x-rayed/GPR prior to coring of any holes to locate any floor rebar or conduits that may be present in the slab. ***ANY ITEM HIT OR CUT IN THE SLAB WILL BE THE CONTRACTOR OR TENANT'S RESPONSIBILITY FOR REPAIR AND RESTORATION, EVEN IF LOCATION IS APPROVED BY STRUCTURAL ENGINEER.***

*Base Building Structural Engineer*

**iDE (Integrated Design Engineers)**

Dave Hornsby, Principal/Partner

206-264-1121 ext 107 (O)

206.992.5133 (M)

[dhornsby@id-engr.com](mailto:dhornsby@id-engr.com)

#### **5. Mandatory Preconstruction Meeting:**

A pre-construction meeting shall be held on site at least three (3) Days prior to start of Construction. The meeting will need to be scheduled at least one (1) week in advance.

#### **6. Plans On-Site:**

A full copy of plans approved by Owner/Landlord and the City of San Diego Building Department must be posted at the job site at all times, including an approved core drilling or saw cutting plan, as approved by the Owner's/Landlord's structural engineer.

#### **7. Documents Required for Construction and Billing:**

*The following documents are required prior to any construction work:*

- a. Certificates of insurance verifying coverage as specified in the lease agreement and construction contract and as specifically outlined in the section titled Vendor and Contractor Minimum Insurance Requirements located on page 14. No contractor will be permitted to do any work until the required insurance is on file in the Owner's/Landlord's office.

**The following additional insureds are to be named in the insurance endorsements:**

*LFS Development, LLC; PNC Banks, National Association, its Successors, or Assigns, their officers, employees, agents and others; and San Diego Unified Port District, as required by written contract.*

- b. Building Permit — All permits (Building, Mechanical, Electrical, Plumbing, Fire, etc.) issued by the City of San Diego must be posted at the job site at all times. Copies must be filed with the Owner/Landlord prior to the start of construction. All permit cards with final signatures of all City inspectors and a certificate of occupancy must also be submitted to the Owner/Landlord immediately after construction is completed (and prior to opening of Tenant space, if applicable).

- c. A progress schedule or bar chart showing the work schedule and anticipated completion of the space.
- d. A 24-hour emergency phone number for the general contractor.
- e. A complete list of subcontractors and suppliers, with contact name and number.
- f. Material Safety Data Sheet (MSDS) on all hazardous substances used by any contractor must be provided.
- g. Fire Sprinkler Plans approved by the City of San Diego Fire Department.
- h. The attached forms (Forms I thru V) must be signed and turned in to the Landlord's representative before any work begins on the job site.
- i. Tenant must complete a form indicating the floor coverings and treatments to be installed in their spaces. The form requires a plan indicating the floor treatment areas and the type of adhesive to apply the flooring. Form must be approved by the landlord prior to the construction on site meeting.

*The following must be submitted to Landlord/Owner with **each periodic billing**:*

- j. Pay Application signed by contractor and approved by Tenant and Tenant's architect.
- k. Interim lien waivers for all current billing from general contractor and all sub-contractors.
- l. Final Lien waivers for previous month's billing amount from general contractor and all sub-contractors. Current billing will not be funded until all unconditional waivers from the previous billing have been received.

## **B. CONSTRUCTION**

### **1. Work Hours & Site Rules:**

During base building construction, work hours in effect at all times are 7:00 AM to 7:00 PM. After the building is open and operating work hours in effect at all times are 9:00 AM to 6:00 PM, Monday through Friday. No construction work is allowed during other hours without approval from Owner's/Landlord's representative. Contractors are required to follow site rules established by the Owner/Landlord. Landlord/Owner reserve the right to temporarily stop work due to planned events or hotel activities that may be disrupted by certain types of construction work.

### **2. Project Safety:**

These rules are applicable for all tenant premises, construction areas, public areas, and the surrounding construction site:

- a. All contractors, subcontractors, suppliers, etc., must adhere to the applicable CAL-

OSHA standards.

- b. These rules require the proper safety precautions such as work boots or hard sole shoes (no tennis shoes) and exclude wearing of short pants while on the job site. Safety vests & hard hats are required at all times.

### **3. Designated Fire Alarm & Sprinkler Contractor:**

Fire Alarm & Fire Sprinkler contractors for the shell building are required for extension of installations into Tenant Spaces. Tenant is responsible for Tenant contractor to contact and secure service from Landlord's preferred vendor, **COSCO Fire Protection** and to pay all related costs. The fire system for the retail units is directly tied into the system for the contiguous hotel and zoned by floor. **All sprinkler work must be pre-approved. All work to be done on the sprinkler system requires a 48-hour notice to the Hotel Engineer and Property Manager.**

Devices need to be UL listed for the Main Fire Alarm Control Panel. **Please contact HMT Electric for all fire alarm scope.**

HMT Electric must be notified when the system is put in test or when any work will be done to the system. (It is the Tenant's contractor's responsibility to ensure that this is completed to avoid any fines)

#### **COSCO Fire (Fire Sprinkler)**

Timm Ryker  
4990 Greencraig Lane  
San Diego, CA 92123  
858.444.2000 (O)  
858.444.2001 (D)  
619.607.8194 (M)  
[tryker@coscofire.com](mailto:tryker@coscofire.com)

#### **HMT Electric (Fire Alarm)**

2340 Meyers Ave.  
Escondido CA 92029  
Contact: Stefanos Southas  
Office: 858-458-9771  
Fax: 858-458-9775  
[stefans@hmtelectric.com](mailto:stefans@hmtelectric.com)

### **4. Trash Removal:**

Contractor is responsible for the removal of construction debris. Contractor should prepare a trash removal plan for approval by the Landlord; however, there is limited space for debris bins/dumpsters. The compactor and recycling bins on site are for Tenant and Hotel use only so please refrain from dumping in them at any time. Any fees incurred due to unauthorized materials dumped inside the dumpsters or compactors will be billed back to Tenant and its Contractor.

### **5. Access Routes and Material Deliveries:**

- a. Loading zones shall be kept open for deliveries whenever possible. Parking in

driveways, fire lanes, and loading zones is strictly prohibited. Delivery vehicles must be completely unloaded and moved out. Unattended parked vehicles in Loading Zones will be tagged and or towed at the expense of the Tenant.

- b. During base building construction, all deliveries and site access must be coordinated with Hensel Phelps Superintendent.
- c. Primary off-loading location is accessible from the monitored loading dock off Pacific Highway. All vehicles will be required to check-in daily with security on site.
- d. Access and deliveries through the common area or the main public entrances will only be permitted when it is physically impossible to make deliveries through the service corridors and loading dock and only with permission of Chief Engineer and Property Manager. Use of public areas shall be permitted for those tenant spaces not serviced by a rear door.
- e. All carts and dollies are required to have pneumatic tires. Only rubber tires are permitted in service corridors. Metal wheels are not allowed.
- f. All materials, store fixtures, and merchandise received on-site for a Tenant Contractor must be immediately placed in the Tenant's space. Storage of such materials in public areas, service corridors, or unloading areas will not be permitted. Any such materials found outside the Tenant's space will be disposed of at Tenant's expense if not removed within a timely manner upon request from Owner/Landlord.
- g. Highest delivery priority is hotel area needs above tenant area needs. Advanced planning and coordination of all deliveries is imperative for coordination with ongoing work. Please schedule deliveries with the Owner's/Landlord's construction coordinator 48 hours in advance.

## **6. Clean-up:**

It is the contractor's responsibility to maintain the work area in a neat and orderly manner. The work area includes any area beyond the immediate space where work is occurring or where traffic has occurred while implementing the work. The area of responsibility also includes the parking structure where contractor's employees are parking. If Owner/Landlord has to clean any public areas due to construction mess/debris, all associated costs will be billed to Tenant.

## **7. Roof:**

Access to the roof is generally not allowed for Tenant's contractor since this is through the hotel. New roof penetrations, of any type, must have advanced written approval by Owner/Landlord. All roof repairs, if required by tenant contractor work, shall be completed by the Owner's/Landlord's roofing contractor (without exception), to maintain warranty. It is the Tenant contractor's responsibility to hire and direct roof repairs using the Owner's/Landlord's designated roofer.

### ***Roofing Contractor:***

Rob Males, Project Manager/Estimator  
 Roofing Division  
**Courtney Inc.**  
 16781 Millikan Avenue  
 Irvine, CA 92606  
 (949) 536 6271 (M)  
 (949) 222 2050 Ext. 103 (O)  
[rob@courtneyinc.com](mailto:rob@courtneyinc.com)

#### **8. Abuse Violations:**

The use of any alcoholic beverage, any drug defined substance and all items that can be termed weapons (excluding construction tools, i.e., power activated tools) are absolutely FORBIDDEN on any part of the construction site. Violators will be removed at the discretion of the Owner/Landlord.

#### **9. Construction Parking:**

During base building construction there is no on-site parking available. Once building is open, limited employee/work truck parking is possible in the parking structure and will be subject to current market parking rates. On-site parking is a privilege and not a right; availability cannot be guaranteed on site at all times. Contractor shall be solely responsible for his own parking and the parking of his subcontractors and suppliers. Contractor should prepare a construction vehicle parking plan with Owner's/Landlord's representative.

#### **10. Additional Construction Policies:**

- a. No pets are allowed.
- b. Loud noises, particularly those created by the use of jackhammers, rivet guns and grinding equipment shall not be used outside of Work Hours without Landlord's prior permission. Landlord reserves the right to temporarily cease certain types of loud work to if it is causing a disruption to hotel guests or other tenants.
- c. Work that produces odors shall not be completed outside of Work Hours without Landlord's prior permission. Work producing during approved hours must provide adequate ventilation. Landlord reserves the right to temporarily cease certain types of odor producing work to if it is causing a disruption to hotel guests or other tenants.
- d. Due to the sensitive nature of the hotel guests above, radio noise levels will be strictly enforced. If radios are used during construction, the volume must be at a level which does not allow the noise to extend beyond the construction space.
- e. Hours of operation shall be 9:00 am to 6:00 pm (see Section B.1.). Once the residential units become occupied, the Owner/Landlord reserves the right to further restrict hours if necessary.
- f. Security is the responsibility of the Tenant and all contractors.

#### **11. Supervision:**

Contractor shall provide a full time supervisor or representative on site at all times when construction is being performed. For communication and safety reasons, it is imperative this individual speak and understand English. Contact telephone information shall be provided at the commencement of work and maintained for duration of work.

#### **12. Utility Damage/Repair:**

Contractor and/or Tenant will be responsible for disruption and/or damage to existing utilities or any other service that may pass through the construction area. This includes, but is not limited to, electrical conduit that may be embedded in concrete floors.

#### **13. Floor/Wall Penetration:**

Owner's/Landlord's approval of a core drilling or saw cutting plan shall not relieve contractor from responsibility for damage to the existing building's property due to penetration, core drilling, or saw cutting of the floor slab. Contractor shall coordinate with Owner/Landlord when any core drilling or saw cutting is attempted, and provide a watchman in that specific area below the area where the core drilling will occur for the duration of such work. It is the contractor's responsibility to provide protection of affected locations. Tenant's contractor shall repair any damages incurred by core drill/saw cutting/penetrations immediately. If damage is not repaired, Owner/Landlord will complete repair and bill Tenant for all associated costs.

#### **14. Temporary Utilities:**

Contractor is responsible for providing its own temporary utilities. Temporary toilets will be at Tenant's sole cost & expense. Temporary toilets must be placed at the designated area in the loading dock/loading area. Toilets must be serviced 2-3 times per week in order to minimize odors in the loading dock/rear hotel area.

#### **15. Welding:**

Any welding performed in the premises requires a fire watch in effect during and one hour after the completion. Fire extinguishers must be on site. National Fire Code shall be adhered to at all times. Under no circumstances will welding, cutting, or soldering be permitted during a sprinkler shut down.

#### **16. Owner's/Landlord's Punch List:**

Upon completion of construction, the Contractor is to contact the Owner's/Landlord's representative to arrange an appointment for an on-site review and punch list of the construction area, common area adjacent to the construction area, the areas used for access, and the areas used for employee parking. For tenant improvements, the punch list items may or may not need to be completed prior to the store opening pending Owner's/Landlord's approval and review is conditioned by the terms of the Tenant's lease.

### **17. Security Deposit:**

Landlord shall have the right to have Contractor post a security deposit in an amount reasonably required by Landlord. Landlord may fine Contractor whatever amount is needed to repair any property damage that Contractor does not fix on its own. If Contractor shall fail to comply with any of the rules set forth in this document or the Lease, within a reasonable time after such compliance is required by the terms herein, Landlord may, but shall not be obligated to, perform any such act on Contractor's behalf, without waiving Landlord's rights based upon any defaults of Contractor and without releasing Tenant from any obligations hereunder. Any costs incurred by Landlord in performing Contractor's obligations shall be immediately reimbursed by Contractor or, at Landlord's option, deducted from Contractor's security deposit (along with any fines imposed by Landlord).

### **18. Contractor's Responsibility**

It is the responsibility of the Contractor to ensure that all construction personnel and subcontractors are familiar with and abide by the above described rules and regulations. Landlord has the right to stop work in progress for violation of the above rules and regulations.

## **C. STORE OPENING**

### **1. Stocking Merchandise:**

Tenant shall not stock merchandise in the premises until Fire Department inspects and approves tenant's sprinkler system, and starts system full operation. Other restrictions by the City Building Department may also apply.

### **2. Compliance Paperwork & Items:**

Tenant/Contractor shall deliver the following to the Owner's/Landlord's representative within ten (10) days of completion of tenant improvement work or opening for business whichever comes first. Review is conditioned by the terms of the Tenant's lease and these rules for project construction.

- a) Copies of all approved permits with final signatures (building, fire, health, etc.)
- b) Unconditional lien releases from all contractors, subcontractors, and suppliers within 120 days of the earlier of completion of tenant work or opening for business.
- c) Copy of approved sprinkler shop drawings.
- d) Copy of as-built plans in both electronic and hard copy.
- e) Copy of operations and warranty manuals.
- f) Keys required for Fire Department access.

Compliance for work other than tenant improvements will be governed by the Construction Agreement.

## **VENDORS & CONTRACTORS MINIMUM INSURANCE REQUIREMENTS**

Vendors and Contractors shall procure and maintain, at their expense, during the term of the contract or work performed, the following insurance coverages, subject to LFS Development, LLC's approval.

Note: If subcontractors are used, the contractor must require subcontractors to meet the same insurance requirements.

### **LIABILITY COVERAGES**

Commercial General Liability Insurance:

\$1,000,000 Per Occurrence  
 \$2,000,000 Products/Completed Operations Aggregate  
 \$2,000,000 General Aggregate  
 \$1,000,000 Personal Injury & Advertising Injury Liability

Coverage is to include:

- Premises/Operations Liability
- Products/Completed Operations Liability
- Contractual Liability
- Broad form property damage including completed operations liability
- No exclusions pertaining to demolition, excavating, collapse, underground work and blasting
- Completed operations coverage, if applicable, to be continued for 10 years or applicable maximum state statute of limitations for property damage after acceptance of work under contract
- Liquor liability coverage, if the contractor or vendor is in the business of selling or serving alcoholic beverages, otherwise host liquor liability coverage
- Coverage written on an Occurrence form basis

Auto Liability Insurance:

\$1,000,000 Per Accident

Coverage is to include:

- Owned, leased, hired and non-owned vehicles used by or on behalf of the vendor or contractor
- Workers' Compensation/Employer's Liability:

Workers' Compensation — Statutory Employer's Liability:

- Bodily Injury by Accident - \$1,000,000 per accident
- Bodily Injury by Disease - \$1,000,000 policy limit
- Bodily Injury By Disease - \$1,000,000 per employee

Excess General, Auto and Employer's Liability Insurance:

\$5,000,000 Per Occurrence

- ✓ Coverage is to be provided on a following form basis



### Other Liability Insurance Requirements:

The General Liability, Auto Liability and Excess Liability policies shall name as additional insureds all entities in the chain of ownership of the property, including:

- LFS Development, LLC
- San Diego Unified Port District
- Reef Real Estate Services, Inc.
- PNC banks, National Association, its Successors, or Assigns, their officers, employees, agents and others.
- All other entities in which LFS Development, LLC has an interest or is a member, which entities have an interest in the property

The above policies (except Workers' Compensation/Employer's Liability) shall be endorsed so they are primary and non-contributing with insurance available to LFN Developers LLC and the other additional insureds as referenced in A. above.

The above policies (except Workers' Compensation/Employer's Liability) shall include a cross liability or severability of interests clause.

The above policies (except Workers' Compensation/Employer's Liability) shall:

- include a waiver of subrogation by insurers in favor of the property owners, or
- provide the vendor or contractor permission to waive recovery rights against the property owners, in which case the contract with the respective vendor or contractor should include a waiver of recovery rights by such party in favor of the owner entities as referenced in A. above.

### PROPERTY COVERAGES

- All Risk Replacement Cost Property Insurance:

Contractor or vendor shall provide "All Risk" Property Insurance on materials, supplies, equipment, apparatus and any other property of the contractor or vendor located, used, or stored at the site in which LFS Development, LLC has an ownership interest.

- The Property Insurance policy shall:
  - include a waiver of subrogation by insurers in favor of the property owners, or
  - provide the respective vendor or contractor permission to waive recovery rights against the property owners, in which case the contract with the respective vendor or contractor should include a waiver of recovery rights by such party in favor of the owners of the property.

### Applicable to All of the Above Coverages:

- Required insurance is to be placed with an insurance company rated A- VII or better by A.M. Best.
- The above policies shall be endorsed to provide 30 days prior written Notice of Cancellation or Non-Renewal (10 days for non-payment of premium) to LFS Development, LLC.
- The contractor or vendor shall be required to provide an ACORD certificate of insurance as evidence of compliance with the insurance requirements, which certificate is to include copies of any required policy endorsements.

## FORM I

**LANE FIELD SOUTH/BRIC II  
CONSTRUCTION RULES AND REGULATIONS**

I have read and fully understand the Rules and Regulations outlined and agree to comply with same.

_____ Signature	_____ Print Name & Title
_____ Company	_____ Project Name/Location
_____ Day Phone	_____ After Hours Phone

## FORM II

**LANE FIELD SOUTH/BRIC II  
ACCEPTANCE OF PREMISES FORM**

This contractor accepts this space as being complete and ready for Construction. Any issues with space prior to the start of construction are listed below:

_____ Signature	_____ Print Name & Title
_____ Company	_____ Project Name/Location
_____ Day Phone	_____ After Hours Phone

Punch List Items Prior to Construction:

## FORM III

**LANE FIELD SOUTH/BRIC II  
CONTRACTOR'S WORK RELEASE**

Project Name/Location: \_\_\_\_\_

Contractor's Name: \_\_\_\_\_

Contractor's Address: \_\_\_\_\_

Office Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

24 hour Emergency  
Contact Number: \_\_\_\_\_

Job Contact Person: \_\_\_\_\_

Email: \_\_\_\_\_

Project Completion  
Date: \_\_\_\_\_

## FORM IV

**LANE FIELD SOUTH/BRIC II  
TENANT CONTRACTOR'S SUB LIST**

**Project:** \_\_\_\_\_

**Name/Location:** \_\_\_\_\_

**Contractor's Name:** \_\_\_\_\_

<b>Sub-Contractor Name:</b>	<b>Trade/Specialty:</b>	<b>Contact Name/Number:</b>

## FORM V

**LANE FIELD SOUTH/BRIC II  
PRE-CONSTRUCTION CHECKLIST**

*Project Name/Location:*

Prior to allowing any construction to begin for the above tenant, all items below must be completed and/or received:

Date Received/Completed

Approved Plans:

Landlord

Port of San Diego

City Of San Diego

Health Department, if applicable

Building Permits

Insurance Certificate with additional insureds

Form I - Acknowledgment of Rules & Regulations

Form II - Acceptance of Premises Form

Form III - Contractor's Work Release

Form IV - Sub-Contractor List

Construction Schedule

Material and Safety Data Sheets on all hazardous substances

Pre-Construction Meeting

Job Site Safety Training

*Signature/Name*

*Date*

Date: \_\_\_\_\_

## **Exhibit G**

### **Applicable Exclusives and Use Prohibitions**

Tenant shall be excluded from the following business activities:

Conducting business as a full-service high-end steakhouse themed restaurant. Sales of steaks may not exceed 15% of gross sales on an annual basis.

The sale of gourmet brand identified coffee and coffee-based beverages. Notwithstanding the foregoing sentence, Tenant may sell non-gourmet, non-brand identified brewed coffee. For purposes of this lease, "gourmet" shall be defined as: (a) beverages made using Arabica beans or (b) sourced from a gourmet coffee brand such as Starbucks, Coffee Bean & Tea Leaf, Intelligentsia, Peets, Caribou or similar gourmet coffee purveyor. For purposes of this Lease, "brand identified" shall mean beverages advertised or marketed within the applicable retail space using a brand name or served in a brand-identified cup. Sales of coffee or coffee-based beverages may not to exceed ten (10%) percent of gross sales on a quarterly basis.

## **Exhibit H**

### **RULES AND REGULATIONS**

Tenant shall faithfully observe and comply with the following Rules and Regulations. Landlord shall not be responsible to Tenant for the nonperformance of any of said Rules and Regulations by or otherwise with respect to the acts or omissions of any other tenants or occupants of the Project; provided, however, Landlord shall use its reasonable efforts to cause all other tenants and occupants of the Project to comply with the following rules and regulations and all such rules and regulations shall be enforced in a nondiscriminatory manner.

1. Tenant shall bear the cost of any lock changes or repairs required by Tenant.
2. Any requests of Tenant shall be directed to the management office for the Project or at such office location designated by Landlord. Employees of Landlord shall not perform any work or do anything outside their regular duties unless under special instructions from Landlord.
3. Tenant shall not disturb, solicit, or canvass any occupant of the Project and shall cooperate with Landlord and its agents to prevent such activities.
4. Tenant shall not use or keep in or on the Premises or the Project any kerosene, gasoline or other inflammable or combustible fluid or material.
5. Tenant shall not use, keep or permit to be used or kept, any foul or noxious gas or substance in or on the Premises, or permit or allow the Premises to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the Project by reason of noise, odors, or vibrations, or interfere in any way with other tenants or those having business therein.
6. The Premises shall not be used for lodging or for any illegal purposes.
7. Landlord reserves the right to exclude or expel from the Project any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of these Rules and Regulations.
8. All trash, rubbish, waste material and other garbage within the Premises shall be emptied by Tenant on a regular basis and disposed of in the Premises' trash containers in accordance with the Rules and Regulations and at Tenant's expense. Tenant shall not burn any garbage in or about the Premises or anywhere within the Project.
9. Tenant shall comply with all safety, fire protection and evacuation procedures and regulations reasonably established by Landlord or any governmental agency.
10. Tenant shall assume any and all responsibility for protecting the Premises from theft, robbery and pilferage, which includes keeping doors locked and other means of entry to the Premises closed during the hours and days Tenant is not required to be open for business to the public.



11. Neither Tenant nor Tenant's employees, agents, contractors, sublessees, assignees, licensees, concessionaires nor invitees (collectively, "**Tenant's Parties**") shall go on the roof nor make any penetrations to the roof without the prior written approval of Landlord.

12. Tenant shall cause Tenant's Parties to comply with the Code of Conduct adopted by, and posted within, the Project, by Landlord, which Code of Conduct may be changed from time to time at Landlord's sole discretion.

Landlord reserves the right at any time to reasonably change or rescind any one or more of these Rules and Regulations, or to make such other and further reasonable, nondiscriminatory rules and regulations as in Landlord's judgment may from time to time be necessary for the management, safety, care and cleanliness of the Premises, the Common Area and the Project, and for the preservation of good order therein, as well as for the convenience of other occupants and tenants therein. Tenant shall be deemed to have read these Rules and Regulations and to have agreed to abide by them as a condition of its occupancy of the Premises.

## **EXHIBIT I**

### **MARKET RENT DETERMINATION**

1. (a) If Tenant sends an Option Notice as provided in Paragraph 3.3 for the Option Term, Base Rent for the Premises (including all space which has become a part of the Premises) shall be adjusted at the commencement of the applicable Option Term to the then “**Prevailing Market Rate**” (as hereinafter defined). The “Prevailing Market Rate” shall be determined by Landlord and Tenant by mutual agreement, and, if Landlord and Tenant cannot agree within thirty (30) days after Landlord receives the Option Notice, the Prevailing Market Rate shall be established in the manner specified in the balance of this subparagraph. Landlord shall within ten (10) Business Days after expiration of such thirty (30) day period advise Tenant of its determination of what the Prevailing Market Rate, per square foot of Rentable Area, should be for the Option Term (“**Landlord’s Final Rate**”). Within ten (10) Business Days after receipt of Landlord’s Final Rate, Tenant shall advise Landlord, in writing, as to whether or not Tenant accepts or rejects Landlord’s Final Rate. Failure to accept or reject within said ten (10) Business Day period shall be deemed acceptance thereof. If Tenant rejects Landlord’s Final Rate, Tenant shall specify in such rejection notice Tenant’s determination of what the Prevailing Market Rate, per square foot of Rentable Area, should be for the Extension Period (“**Tenant’s Final Rate**”), and the Prevailing Market Rate, applying the definition in subparagraph (b) below, for the Option Term shall then be determined by arbitration in accordance with the provisions of Paragraph 2 below. If the arbitrator has not determined the Prevailing Market Rate prior to the commencement of the Option Term, Tenant shall continue to pay the Base Rent in effect pursuant to this Lease for the last month of the then expiring term and, within thirty (30) days following the arbitrator’s decision, any overpayment or underpayment based on such previous Base Rent shall be paid by Tenant or Landlord to the other, as appropriate.
  
- (b) The term “Prevailing Market Rate” shall mean the then prevailing market rate for base rental for new leases comparable to this Lease for Class A tourist focused Downtown San Diego and waterfront retail and restaurants including but not limited to leases or sub-leases on Port of San Diego property. Such rental shall be the rental that would be agreed to by a landlord and tenant, each of whom is willing, but neither of whom is compelled, to enter a new lease transaction. The Prevailing Market Rate shall be determined on the assumption that the payment by tenant of the expenses and charges incurred by the landlord

for maintenance and operation (including utilities) shall be as provided in this Lease. In determining Prevailing Market Rate, appropriate consideration shall be given to the length of lease term, then market inducements for new tenants, incentives, the size and location (including floor level) of the premises being considered, use, definition of rentable area, quality, age and location of applicable buildings, the quality and creditworthiness of the tenant, lease inducements provided to Tenant and those that would have been provided to a comparable new tenant in a comparable building (including without limitation rent credits, tenant improvement allowance, brokerage commissions, lease buy outs, moving allowance and similar then market inducements for new tenants) and other relevant economic considerations.

## **2. Arbitration.**

(a) If Landlord and Tenant have been unable to agree upon the Prevailing Market Rate pursuant to Paragraph 1, the arbitration procedure shall commence when either party submits the matter to arbitration. No later than ten (10) days after the arbitration procedure has commenced, each party shall appoint an arbitrator and notify the other party of such appointment by identifying the appointee. If either party fails to appoint an arbitrator and such failure shall continue for five (5) days following written notice of such failure from the other party hereto, the other appointed arbitrator shall alone determine the Prevailing Market Rate. Each arbitrator must be a licensed real estate broker or MAI appraiser who is an individual having no less than ten (10) years of office leasing in the San Diego market, which person shall not have been employed or retained during the last three (3) years as a consultant or otherwise by the party selecting such person. Neither party may consult directly or indirectly with any arbitrator regarding the Prevailing Market Rate prior to appointment, or after appointment, outside the presence of the other party. The arbitration shall be conducted in San Diego, California under the provisions of the commercial arbitration rules of the American Arbitration Association.

(b) No later than five (5) days after both arbitrators are appointed, each party shall submit to each arbitrator the Final Rate which it previously delivered to the other party. The two selected arbitrators, after reviewing such submissions, shall determine whether Landlord's or Tenant's Final Rate is closer to the actual "Prevailing Market Rate" for the Premises. If both arbitrators agree that one of said declared Final Rates is closer to the actual "Prevailing Market Rate", they shall declare that Final Rate to be the Prevailing Market Rate for purposes of the Option Term, and their decision shall be final and binding upon the parties. They may not declare as the Prevailing Market Rate any amount other than one of the declared Final Rates.

(c) If the two selected arbitrators are unable to agree on whether Landlord's or Tenant's Final Rate is closer to the actual "Prevailing Market Rate" within twenty (20) days after receipt of Landlord's and Tenant's submissions, then the arbitrators shall so inform the parties. Unless the parties shall both otherwise then direct, said arbitrators shall select a third arbitrator no later than ten (10) days after the expiration of said twenty (20) day period. If no arbitrator is selected within such ten (10) day period, either party may immediately petition a court with appropriate jurisdiction to appoint such third arbitrator. The third arbitrator shall have the qualifications and restrictions set forth in subparagraph (a) above. The third arbitrator's decision shall be final and binding as to whether Landlord's or Tenant's Final Market Rate is closer to the actual "Prevailing Market Rate" and that Final Rate shall be the Prevailing Market Rate for purposes of the Option Term. Such third arbitrator shall make a decision no later than twenty (20) days after appointment.

(d) Each party shall be responsible for the costs, charges and/or fees of its respective appointee, and the parties shall share equally in the costs, charges and/or fees of the third arbitrator, if applicable. The decision of the arbitrator(s) may be entered in any court having jurisdiction thereof.

## **FOOD SERVICE RIDER**

This Food Service Rider (“**Rider**”) is made and entered into by and between LFS DEVELOPMENT, LLC, a Delaware limited liability company (“**Landlord**”), and Hotel Circle Convenience, LLC, a California limited liability company (“**Tenant**”), and is dated as of the Effective Date of the Sublease by and between Landlord and Tenant to which this Rider is attached (“**Lease**”). The agreements set forth in this Rider shall have the same force and effect as if set forth in the Lease. To the extent the terms of this Rider are inconsistent with the terms of the Lease, the terms of this Rider shall control.

### **PARAGRAPH 1**

#### **EXHAUST SYSTEM/GREASE TRAP/GENERAL MAINTENANCE**

1.1 **Exhaust System.** Tenant shall use all reasonable efforts to minimize noxious or objectionable odors in the Premises and to preclude any such odors from being emitted therefrom, and all noxious or objectionable odors and fumes from the Premises shall only be emitted through such kitchen exhaust systems for the Premises approved by Landlord and all applicable governmental agencies and installed by Tenant, at Tenant’s sole cost and expense and otherwise pursuant to Landlord’s required specifications. Tenant shall, at Tenant’s sole cost and expense, enter into and furnish to Landlord, a contract with a qualified service company for the regular (meaning not less frequently than monthly) cleaning, maintenance and the repair and replacement, as necessary, of any kitchen exhaust system serving the Premises. If Tenant fails to carry out any maintenance, repairs and replacements properly as required pursuant to this Paragraph 1.1 to the reasonable satisfaction of Landlord, then in addition to Landlord’s other rights and remedies at law and in equity, Landlord may, but shall not be obligated to, upon thirty (30) days prior written notice, or such shorter notice as may be appropriate in an emergency, perform such maintenance, repairs and replacements without being liable for any loss or damage that may result to Tenant’s Fixtures or Personal Property or to Tenant’s business by reason thereof, and upon completion thereof, Tenant shall pay to Landlord, upon demand, both Landlord’s costs relating to any such maintenance, repairs and replacements plus a reasonable administrative fee. Tenant agrees that the making of any maintenance, repairs and replacements by Landlord pursuant to this Paragraph 1.1 is neither a re-entry nor a breach of any covenant of quiet enjoyment contained in the Lease.

1.2 **Grease Trap System.** Tenant shall, at Tenant’s sole cost and expense, connect to and employ the grease traps, grease storage facilities and grease interceptors and other similar equipment (collectively, the “**Grease Traps**”) provided by Landlord for the Project. Tenant shall, at Tenant’s sole cost and expense be responsible for maintaining, repairing and replacing the portion of, and connection to, the vertical portion of the Grease Trap riser from level 3 to level 19. and shall enter into and furnish to Landlord, a contract with a qualified service company for the regular (meaning not less frequently than monthly) cleaning and maintenance of such portion of the Grease Trap. Landlord will enter into a maintenance and cleaning contract for the horizontal portions of the Grease Trap from the Premises to the connection with the shared Grease Trap in the loading dock, as well as the shared portion of the Grease Trap, the costs of which shall be allocated between Tenant and other tenants using the Grease Trap as Landlord

shall reasonably determine, and Tenant shall pay such allocated cost as Additional Rent within ten (10) days after demand therefor.

1.3 General Maintenance Standards. The following supplements Paragraph 15.1 of the Lease:

In addition to the other covenants and obligations of Tenant concerning the maintenance of the Premises set forth in the Lease, Tenant shall, at Tenant's sole cost and expense, strictly comply with the following requirements:

(a) Tenant shall remove grease from all exposed surfaces of the Premises daily.

(b) All range hoods shall be protected by automatic extinguisher systems.

(c) Tenant shall not place any grease or cooking oil into any trash compactor, normal garbage containers, floor drains, sink drains or toilets.

(d) To the extent applicable, Tenant shall implement a daily treatment program to chemically degrease sewer and drainage lines located within the Premises, which treatment program shall be subject to Landlord's approval.

(e) Tenant shall provide and use suitable grease and cooking oil containers.

(f) Tenant shall retain a dependable bonded degreasing service for the Premises on a minimum monthly basis throughout the Term of the Lease to clean and degrease the entire kitchen area, ranges, cooking equipment, broilers, stoves, hoods, vents, exhaust and blower systems, filters and flue stack in the Premises and shall provide proof of service performed to the satisfaction of Landlord.

(g) Tenant shall provide Landlord with all schedules for grease removal for Landlord's approval. Tenant shall strictly comply with all such grease removal schedules.

(h) In addition to the foregoing, Tenant shall comply with any additional requirements Landlord may reasonably determine are required concerning grease maintenance or other special maintenance required in connection with the operation of Tenant's restaurant within the Project.

(i) Tenant shall maintain all Tenant's motors and blowers whether or not within the Premises in such a manner as not to transmit noises or vibrations to any part of the Project (Tenant further agrees forthwith to repair on demand by Landlord any damage caused to the Project by such motors or blowers).

(j) Tenant shall use the trash dumpster provided by Landlord for the Project, in accordance with such rules and regulations therefore established by Landlord from time to time. Any spillage of garbage shall be promptly cleaned by Tenant, and failure to do so shall allow Landlord to clean said spillage at Tenant's expense.

(k) Clean and wash daily all tables, chairs, dividers, fixtures, floor mats and furnishing used by Tenant with an approved detergent-disinfectant type of solvent to prevent build-up from food spills, dust, dirt, and other substances (floor mats shall not be washed or cleaned outside the Premises or in the Common Area).

(l) Clean any spills or waste in the Project occasioned by off-premises consumption of food and other items sold by Tenant promptly after its discovery or notice thereof.

(m) Steam-clean all sidewalk areas serving the Premises as necessary, but not less frequently than weekly, to remove all food particles grease and residue.

Tenant's failure to strictly comply with the foregoing maintenance requirements shall constitute a default under the Lease, and Landlord shall have the right to exercise any or all remedies available for such default, including the right to perform any or all maintenance on Tenant's behalf and to charge Tenant for said maintenance plus a sum equal to the Administrative Fee.

## **PARAGRAPH 2**

### **PEST CONTROL**

2.1 **Pest Control.** Tenant, at Tenant's expense, shall maintain at all times throughout the Lease Term, a written service contract with a licensed, bonded professional pest and sanitation control service to perform inspection and services for the purposes of keeping the Premises constantly pest-free and vermin-free, including control coverage for the following: cockroaches, ants, earwigs, weevils, silverfish, spiders, beetles, rats, mice and rodents of all types. Tenant agrees to co-operate fully in Landlord's pest control efforts including, but not limited to, (a) moving provisions, food stuffs and equipment during inspection and spraying by Landlord's exterminator, (b) maintaining the Premises in a clean, trash free (except as temporarily stored in trash receptacles) and sanitary condition, and (c) allowing exterminator to perform inspections and/or spraying. In the event Tenant refuses or fails to satisfy its obligations set forth in this Paragraph 2.1, and such failure continues for a period of one (1) business day after notice from Landlord, then the Landlord may, but shall not be obligated to, take such actions on Tenant's behalf and bill the cost thereof to Tenant; and Tenant shall pay such cost to Landlord immediately upon Landlord's demand as Additional Rent plus a sum equal to the Administrative Fee. Landlord's right hereunder shall be cumulative and shall in no way restrict Landlord's other rights under the Lease or at law or in equity. Tenant agrees that the making of any maintenance, repairs and replacements by Landlord pursuant to this Paragraph 2.1 is neither a re-entry nor a breach of any covenant of quiet enjoyment contained in the Lease.

## **PARAGRAPH 3**

### **HEALTH DEPARTMENT RATING**

3.1 **Required Rating.** Landlord and Tenant hereby acknowledge that (a) the Lease would not have been entered into by Landlord but for the high-quality and first-class reputation of Tenant in the operation of the Permitted Use set forth in the Lease and (b) the success of the Project will be significantly affected by the quality and reputation of the restaurant operations in the Project and, therefore, the character and quality of Tenant's operation are of paramount

concern to Landlord and have greatly influenced Landlord's selection of Tenant. Accordingly, Tenant agrees, as a material part of the Lease, that Tenant shall, throughout the Lease Term, comply in all respects with the quality standards, use restrictions and other requirements set forth in the Lease, in addition to Tenant's other duties and obligations contained elsewhere in the Lease. In addition, Tenant shall at all times during the Lease Term maintain a food service rating of "A" (or such other highest department of health or other applicable governmental authority having jurisdiction over the Premises (collectively, "**Health Department**") or similar rating as is available). If at any time during the Lease Term Tenant's food service rating as issued by the Health Department for public food service establishments or comparable rating agency shall fall below an "A" (or such other rating as may be available from the Health Department) and such failure continues for thirty (30) days after written notice by Landlord, then Tenant shall be deemed to be in material default of the Lease without the benefit of any additional cure period otherwise provided in the Lease. In addition, Tenant shall comply with all current and subsequently adopted Health Department and other governmental laws applicable to Tenant's operations in the Premises and shall promptly: (i) furnish or cause to be furnished to Landlord copies of all Health Department and other governmental reports, notices and citations issued with respect to the Premises; and (ii) cure or otherwise eliminate all deficiencies and violations noted by the Health Department and other governmental authorities and take all required actions to prevent the reoccurrence of such deficiencies and violations.

#### **PARAGRAPH 4**

#### **ALCOHOLIC BEVERAGES**

Notwithstanding anything to the contrary contained in the Lease, including without limitation, Paragraph 5 of the Lease, Tenant's right to sell and serve alcoholic beverages from the Premises shall be subject to Tenant obtaining and maintaining throughout the Lease Term, at its sole cost and expense, all liquor licenses, and any other licenses and permits, required by Law or otherwise necessary for serving and selling alcoholic beverages from the Premises (copies of which permits shall be provided to Landlord). Tenant hereby acknowledges that, notwithstanding Landlord's approval of Tenant's sale and serving of alcoholic beverages from the Premises, Landlord has made no representations or warranty to Tenant with respect to the probability of obtaining and maintaining such liquor licenses, approvals and permits. In the event Tenant does not receive or otherwise maintain the necessary licenses, permits and approvals for the sale of alcoholic beverages, Tenant's and Landlord's rights and obligations under the remaining provisions of the Lease shall not be affected. Tenant agrees that it will purchase and maintain so-called "dramshop" insurance insuring both Landlord, District, Manager, any mortgagees of the Premises, and Tenant with adequate limits in the event the State of California now has, or hereafter enacts a statute which provides that a judgment obtained against a retailer, or any other person or entity, who dispenses alcoholic beverages to unauthorized persons, as defined by said statute, shall be a lien against the real estate from which said alcoholic beverages were illegally dispensed (sometimes referred to as a dram shop act).

#### **PARAGRAPH 5**

#### **CONDUCT OF BUSINESS**

5.1 Noise Levels. Tenant shall operate its Permitted Use from the Premises in a manner such that any noise generated from the interior of the Premises shall not unreasonably



disturb other occupants, customers and neighboring properties of the Project. There shall be no sound amplifying devices on any patio area or other area not a part of the enclosed portions of the Premises. If Landlord receives a bona-fide complaint from another tenant, occupant, customer or neighbor of the Project objecting to the noise generated by Tenant from the Premises, and if Landlord in its reasonable discretion determines that such noise has an adverse and material effect on the operation, reputation or quality of the Project, then Landlord shall notify Tenant of the problem, and Tenant, coordinating with Landlord's Project management, shall, at its sole cost and expenses, take such action as may be reasonably necessary to correct the problem in a timely manner.

5.2 Recorded Music As Normal Part of Operations. Landlord hereby acknowledges that Tenant plays recorded music in the Premises as part of Tenant's customary business operations. However, such music shall not be played or amplified in such a manner which is materially annoying to persons outside of the Premises or in adjacent tenant premises or neighboring properties, or in any way violates Landlord's Rules and Regulations. Tenant's on-site management shall immediately comply with Landlord's on-time management requests concerning reduction of the volume of such music if Landlord receives any complaints relating to same. Notwithstanding anything to the contrary contained in the Lease or this Rider, as a condition precedent to any right of the Tenant to play recorded music in the Premises, Landlord expressly reserves the right to require Tenant, at Tenant's sole cost and expense as part of the initial Tenant's Improvements or otherwise as may be required by Landlord from time to time during the Lease Term, to install sound attenuation measures in the Premises reasonably acceptable to Landlord.

5.3 Live Entertainment. Subject to compliance with the Rules and Regulations, written consent of Landlord, and Tenant obtaining, at Tenant's sole cost and expense, any applicable governmental permits and/or approvals (copies of which shall be provided to Landlord), Tenant may permit live entertainment within the Premises, subject further to the following restrictions: (a) such activities shall not unreasonably interfere with other tenants' business operations within the Project or the businesses of any neighbors of the Project or otherwise create a nuisance; (b) there shall be no exterior signs or banners displayed outside of the Premises relating to such activities; (c) Tenant shall provide any necessary security on the Premises and parking area supervision on Common Area security necessary as a result of the live entertainment event; and (d) Tenant shall, at its sole cost and expense, be responsible for any damage to or extra cleaning of the Premises and/or Common Areas as a result of such live entertainment event. Notwithstanding the foregoing, in addition to any of Landlord's other remedies under this Lease, upon a violation of this Paragraph 5.3, Tenant shall pay to Landlord within thirty (30) days of the date Tenant receives a written request therefor, all costs and expenses incurred by Landlord as a result of Tenant's violation of the terms of this Paragraph 5.3, including without limitation, any additional management or administrative costs and expenses incurred by Landlord, any costs and expenses incurred by Landlord in connection with other tenants, occupants or prospective tenants of the Project, and any costs and expenses incurred by Landlord in order to provide security for the Project. Notwithstanding anything to the contrary contained in the Lease or this Rider, as condition precedent to any right of Tenant to have live entertainment within the Premises, Landlord expressly reserves the right to require Tenant, at Tenant's sole cost and expense as part of the initial Tenant's Improvements or otherwise as may be required by Landlord from time to time during the Lease Term, to install sound attenuation measures in the Premises acceptable to Landlord.

5.4 Security. Tenant expressly agrees that security within the Premises shall be Tenant's sole responsibility and Landlord shall have no obligation to provide any security to the Premises. Paragraph 7.2 of the Lease is hereby supplemented to provide that Tenant's Commercial General Liability Insurance policy shall be endorsed to include security guard coverage.

## **PARAGRAPH 6**

### **AFTER HOURS/ADDITIONAL HOURS OF OPERATION**

6.1 The following supplements Paragraph 14.2 of the Lease:

In addition to operations during the operating hours approved by Landlord pursuant to Paragraph 14.2 of the Lease, Tenant may elect to be open during additional hours, except that, in no event shall Tenant be permitted to operate during the following hours ("**Additional Hours**"): 1 a.m. to 6 a.m. daily.

In addition, the following additional Rules and Regulations shall apply to Tenant's After Hours operation (if applicable) and may be amended or modified by Landlord from time to time during the Lease Term:

(a) Tenant shall pay, as Additional Rent, one hundred percent (100%) of all additional costs and expenses (or, Tenant's pro-rata share (as reasonably determined by Landlord), of such costs, if more than one (1) tenant is engaged in After Hours operations as further described herein), resulting from such After Hour operation, any increase in the costs of janitorial expenses, security expenses and insurance expenses (collectively, the "**After Hours Expenses**").