

**LEASE**

**140 NORTHERN AVENUE, L.L.C.,  
a Delaware limited liability company**

**Landlord**

**and**

**NAUTILUS BOSTON LLC,  
a Massachusetts limited liability company**

**Tenant**

**for**

**Premises on**

**Ground Floor**

**Pier 4, 300 Pier Four Boulevard  
Boston, Massachusetts**

**August 9, 2019**

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#### Schedule of Exhibits

Exhibit A	Floor Plan of the Premises
Exhibit A-1	Plan of Outdoor Area
Exhibit B	Definitions
Exhibit C	Plan of Landscaping Removal Area
Exhibit D	Rules and Regulations
Exhibit E	Form of Commencement Date Agreement
Exhibit F	Base Building Matrix
Exhibit G	Form of Promissory Note
Exhibit H	Form of Pledge Agreement

## LEASE

THIS LEASE is made as of the 9th day of August, 2019 ("Effective Date"), between **140 NORTHERN AVENUE, L.L.C.** ("Landlord"), a Delaware limited liability company, and **NAUTILUS BOSTON LLC** ("Tenant"), a Massachusetts limited liability company.

Landlord and Tenant hereby covenant and agree as follows:

### ARTICLE 1

#### BASIC LEASE PROVISIONS

<b>PREMISES</b>	A portion of the ground floor of the Building, as more particularly shown on <b>Exhibit A</b> .
<b>BUILDING</b>	The building commonly known as 300 Pier Four Boulevard, Boston, Massachusetts, including all fixtures, equipment and other improvements and appurtenances now or hereafter erected, located or placed therein or on the land upon which the Building is located. The Building is comprised of a condominium (the " <b>Condominium</b> ") known as the Pier 4 Primary Condominium, created pursuant to a master deed (the " <b>Master Deed</b> ") dated as of May 3, 2019, recorded with the Suffolk County Registry of Deeds (the " <b>Registry</b> ") on May 6, 2019 in Book 61072, Page 1 and a limited liability company agreement and by-laws dated as of May 3, 2019 and recorded with the Registry on May 6, 2019 in Book 61072, Page 62 (collectively, the " <b>Condominium Documents</b> "). The Condominium will be managed by the unit owners through the Pier 4 Primary Condominium Association LLC (" <b>Condominium Association</b> ") in accordance with, and as more particularly set forth in, the Condominium Documents. The Condominium includes condominium units designated as the " <b>Residential Unit</b> " and the " <b>Retail Unit</b> ", respectively. The Premises is comprised of a portion of the Retail Unit of the Condominium.
<b>REAL PROPERTY</b>	The Retail Unit, together with all common elements, rights, and interests appurtenant thereto.
<b>COMMENCEMENT DATE</b>	The date on which Landlord tenders possession of the Premises to Tenant in accordance with the provisions of this Lease.
<b>SCHEDULED COMMENCEMENT DATE</b>	The date which is five (5) days after the Effective Date.
<b>RENT COMMENCEMENT DATE</b>	January 1, 2021

<b>EXPIRATION DATE</b>	December 31, 2030 or, if the Term of this Lease is extended in accordance with the provisions of <b>Article 28</b> , the last day of the respective Extension Term.		
<b>TERM</b>	The period of time commencing on the Commencement Date and ending on the Expiration Date, or such earlier date upon which this Lease is terminated in accordance with the terms and conditions hereof.		
<b>PERMITTED USES</b>	The operation of a first-class full-service restaurant and bar serving globally-inspired, seafood-centric small plates, comparable to and similar in quality to the existing Nautilus restaurant of Tenant in Nantucket, Massachusetts, including a full-service bar serving all types of alcoholic drinks, offering a full menu for dining-in or takeout, fast casual lunch, and, if Tenant elects, brunch service, delivery and catering, and for no other purpose or purposes. Without limitation, in no event shall the Premises be used for any Prohibited Use.		
<b>TENANT'S PROPORTIONATE SHARE</b>	29.92%, representing a fraction (expressed as a percentage), the numerator of which is the total square footage of the floor area of the Premises and the denominator of which is 16,134, i.e., the total square footage of the Retail Unit.		
<b>AGREED AREA OF PREMISES</b>	4,827 rentable square feet, as mutually agreed by Landlord and Tenant.		
<b>FIXED RENT</b>	<u>Lease Year</u>	<u>Per Annum</u>	<u>Per Month</u>
	Lease Year 1	\$241,350.00	\$20,112.50
	Lease Year 2	\$241,350.00	\$20,112.50
	Lease Year 3	\$246,177.00	\$20,514.75
	Lease Year 4	\$251,100.54	\$20,925.04
	Lease Year 5	\$256,122.55	\$21,343.54
	Lease Year 6	\$261,245.00	\$21,770.41
	Lease Year 7	\$266,469.90	\$22,205.82
	Lease Year 8	\$271,799.29	\$22,649.94
	Lease Year 9	\$277,235.27	\$23,102.93
	Lease Year 10	\$282,779.97	\$23,564.99
<b>FIRST PERCENTAGE</b>	Ten percent (10%) for Gross Sales in any Lease Year between the First Base Gross Sales Figure and the Second Base Gross Sales Figure; with respect to each Extension Term, as set forth in <b>Article 28</b> .		
<b>SECOND PERCENTAGE</b>	Six percent (6%) for Gross Sales in any Lease Year in excess of the Second Base Gross Sales Figure; with respect to each Extension Term, as set forth in <b>Article 28</b> .		

<b>FIRST BASE GROSS SALES FIGURE</b>	\$6,000,000.00; with respect to each Extension Term, as set forth in <b>Article 28</b> .
<b>SECOND BASE GROSS SALES FIGURE</b>	\$8,000,000.00; with respect to each Extension Term, as set forth in <b>Article 28</b> .
<b>ADDITIONAL RENT</b>	All sums other than Fixed Rent payable by Tenant to Landlord under this Lease, including Percentage Rent, Tenant's Tax Payment, Tenant's Operating Payment, Tenant's Insurance Payment, Electricity Additional Rent, Trash Room Rent, late charges, overtime or excess service charges, damages, and interest and other costs related to Tenant's failure to perform any of its obligations under this Lease.
<b>RENT</b>	Fixed Rent and Additional Rent, collectively.
<b>INTEREST RATE</b>	The lesser of (i) 2% per annum above the then-current Base Rate, and (ii) the maximum rate permitted by applicable Requirements.
<b>LETTER OF CREDIT AMOUNT</b>	\$120,000.00, subject to the provisions of <b>Article 27</b> .
<b>TENANT'S ADDRESS FOR NOTICES</b>	<p>Until Tenant commences business operations from the Premises:</p> <p style="margin-left: 40px;">Nautilus Boston LLC c/o Steve Bowler 2 Catherine Lane Nantucket, Massachusetts 02554</p> <p>Thereafter, at the Premises, to the attention of Steve Bowler.</p> <p>with a copy to:</p> <p style="margin-left: 40px;">Matthew V.P. McTygue, Esq. Locke Lord LLP 111 Huntington Avenue, 8th Floor Boston, MA 02199</p>
<b>LANDLORD'S ADDRESS FOR NOTICES</b>	<p>140 Northern Avenue, L.L.C. c/o Tishman Speyer Properties, L.P. 125 High Street Boston, Massachusetts 02110 Attn: Pier 4 - Office of the Building</p> <p>with copies to:</p>

140 Northern Avenue, L.L.C.  
c/o Tishman Speyer Properties, L.P.  
45 Rockefeller Plaza  
New York, New York 10111  
Attn: Chief Financial Officer

and:

140 Northern Avenue, L.L.C.  
c/o Tishman Speyer Properties, L.P.  
45 Rockefeller Plaza  
New York, New York 10111  
Attn: Chief Legal Officer

and:

Goulston & Storrs PC  
400 Atlantic Avenue  
Boston, Massachusetts 02110  
Attn: Frank E. Litwin, Esq.

<b>LANDLORD'S BROKER</b>	City Retail LLC d/b/a Graffito SP
<b>TENANT'S BROKER</b>	Steve Bowler
<b>LANDLORD'S AGENT</b>	Tishman Speyer Properties, L.P. or any other person or entity designated at any time and from time to time by Landlord as Landlord's Agent.
<b>LANDLORD'S CONTRIBUTION</b>	\$2,896,200.00.
<b>MINIMUM HOURS OF OPERATION</b>	On Mondays through Saturdays, from 12:00 p.m. to 3:00 p.m. and 5:00 p.m. to 10:00 p.m., and on Sundays from 12:00 p.m. to 5:00 p.m. (See Section 29.2(e)).

All capitalized terms used in this Lease which are not otherwise defined in this Article 1 or in the following Articles of this Lease are defined in Exhibit B.

## ARTICLE 2

### PREMISES; TERM; RENT

**Section 2.1. Lease of Premises.** Subject to the terms of this Lease, Landlord leases to Tenant and Tenant leases from Landlord the Premises for the Term. In addition, Landlord grants to Tenant the right to use the Common Areas, on a non-exclusive basis and in common with other tenants.

**Section 2.2. Commencement Date.** Upon the Effective Date, the terms and provisions of this Lease shall be fully binding on Landlord and Tenant. The Term of this Lease shall

commence on the Commencement Date (as defined in **Article 1**). Unless sooner terminated or extended as hereinafter provided, the Term shall expire on the Expiration Date. Once the Commencement Date is determined, Landlord and Tenant shall endeavor to execute an agreement, substantially in the form attached hereto as **Exhibit F**, confirming the Commencement Date, the Rent Commencement Date and the Expiration Date; provided, however, the failure to execute said agreement will not limit or detract from the occurrence of such dates.

**Section 2.3. Payment of Rent.** Tenant shall pay to Landlord, without notice or demand, and without any set-off, counterclaim, abatement or deduction whatsoever, except as may be expressly set forth in this Lease, in lawful money of the United States by wire transfer of funds, ACH payments, or check, (i) Fixed Rent in equal monthly installments, in advance, on the first day of each month during the Term, commencing on the Rent Commencement Date, and (ii) Additional Rent, at the times and in the manner set forth in this Lease. Rent for any partial month shall be prorated on a per diem basis.

**Section 2.4. First Month's Rent.** By not later than the date which is five (5) days after the execution and delivery of this Lease by both Landlord and Tenant, Tenant shall pay one month's Fixed Rent ("Advance Rent") to Landlord. If the Rent Commencement Date is on the first day of a month, the Advance Rent shall be credited towards the first month's Fixed Rent payment. If the Rent Commencement Date is not the first day of a month, then on the Rent Commencement Date Tenant shall pay Fixed Rent for the period from the Rent Commencement Date through the last day of such month, and the Advance Rent shall be credited towards Fixed Rent for the next succeeding calendar month.

#### **Section 2.5. Percentage Rent.**

(a) **Amount.** Tenant shall pay to Landlord, for each Lease Year during the Term, percentage rent calculated as follows (collectively, the "Percentage Rent"): (x) if and to the extent that the Gross Sales (as hereinafter defined) for such Lease Year exceed the First Base Gross Sales Figure, a sum equal to (a) the First Percentage multiplied by (b) the amount of the Gross Sales for such Lease Year in excess of the First Base Gross Sales Figure up to and including the Second Base Gross Sales Figure, plus (y) if and to the extent that the Gross Sales for such Lease Year exceed the Second Base Gross Sales Figure, a sum equal to (c) the Second Percentage multiplied by (d) the amount of the Gross Sales for such Lease Year in excess of the Second Base Gross Sales Figure. Notwithstanding the foregoing, there shall be no Percentage Rent payable prior to the Rent Commencement Date or for the first Lease Year during the Term.

For any Lease Year with respect to which the Fixed Rent paid by Tenant under this Lease is a sum which is less than the total amount of Fixed Rent specified in **Article 1** as payable for such Lease Year, the First Base Gross Sales Figure and the Second Base Gross Sales Figure shall be reduced proportionately to the same extent as the amount of Fixed Rent actually paid by Tenant hereunder for and with respect to such Lease Year bears to the Fixed Rent stated as payable for such Lease Year in said **Article 1**; provided, however, if the Fixed Rent is abated pursuant to **Section 4.2** or **Section 10.12**, then the First Base Gross Sales Figure and the Second Base Gross Sales Figure shall not be reduced to the extent that, as a result of such abatement, the amount of Fixed Rent actually paid by Tenant hereunder for and with respect to such Lease Year is less than the Fixed Rent stated as payable for such Lease Year in said **Article 1**. In addition, to the extent that any Lease Year constitutes less than a full twelve (12) calendar month period, the First Base Gross Sales Figure and the Second Base

Gross Sales Figure shall be reduced proportionately to the same extent as the number of days in such Lease Year bears to 365. In addition, in the event Tenant is not open for business during the Minimum Hours of Operation, except as permitted pursuant to the provisions of **Section 29.2(e)**, then, in addition to all other remedies available hereunder, the First Base Gross Sales Figure and the Second Base Gross Sales Figure shall be proportionately reduced.

No Percentage Rent shall be payable for any Lease Year until Gross Sales during that Lease Year exceed the First Base Gross Sales Figure. Commencing with the month in which Gross Sales for such Lease Year exceed the First Base Gross Sales Figure, Tenant shall without notice or demand from Landlord, within thirty (30) days after the end of each succeeding month in such Lease Year (accompanied by the monthly statement showing Gross Sales for such preceding month), pay to Landlord on account of Percentage Rent a sum equal to the applicable Percentage multiplied by the amount by which Gross Sales during the portion of the Lease Year that expired as of the end of such immediately preceding month exceed the applicable Base Gross Sales Figure, less amounts theretofore paid hereunder for and with respect to that Lease Year on account of Percentage Rent.

(b) **Gross Sales.** "Gross Sales" shall mean the dollar aggregate of:

- (y) the sales prices of all food, food products, alcohol, goods, wares and merchandise sold and the charges for all services performed by Tenant at, in, on or from the Premises, whether made for cash, on credit, or otherwise, including such sales and services (i) made where the orders therefor originate at and are accepted by Tenant in the Premises but delivery or performance thereof is made from or at any place other than the Premises, (ii) made pursuant to computer, mail, telephone, video or other technology system now or hereafter existing, or however the same may be received or filled at or from the Premises, (iii) made by means of mechanical and other vending devices in the Premises (except for those used in the non-sales area of the Premises exclusively by Tenant's employees), (iv) made as a result of transactions originating upon the Premises, (v) sold pursuant to mail, telegraph, telephone, video, electronic computer or other technology-based systems in connection with orders made, received, filled or performed at or from the Premises, and (vi) that Tenant in the normal and customary course of its operations would credit or attribute to its business upon the Premises, or any part or parts thereof; and
- (z) all moneys or other things of value received by Tenant from its operations at, in, on or from the Premises that are not expressly excluded from Gross Sales by the other provisions of this definition.

"Gross Sales" shall not include (i) the exchange of products or merchandise between or among stores and/or warehouses of Tenant where such exchanges are made solely for the convenient operation of Tenant's business and not for the purpose of consummating a sale that has theretofore been made at, in, on or from the Premises or for the purpose of depriving Landlord of the benefit of a sale that otherwise would have been made at, in, on or from the Premises, or (ii) returns to shippers or manufacturers, or (iii) sales of fixtures or equipment after use thereof in the conduct of Tenant's business in the Premises, or (iv) the sales prices of merchandise sold from the Premises to Tenant's employees of the Premises at discounts substantially below the non-discounted prices charged therefor to the shopping public, provided that in no event shall such corresponding non-discounted prices therefor exceed in the aggregate 1% of Gross Sales during any Lease Year, or (v) charges imposed by Tenant on

customers of the Premises for delivery of merchandise sold from the Premises that are separately stated on Tenant's sales slips, or (vi) the proceeds of property insurance received by Tenant for loss or damage to Tenant's merchandise or equipment while located in the Premises, or (vii) the proceeds received by Tenant of bona fide, close-out bulk sales to jobbers at or below Tenant's costs, where the items so sold are removed from and not thereafter sold to the public from the Premises (but this exclusion shall not be construed to permit any such sales in violation of any other provisions of this Lease), or (viii) lay-a-way sales until Tenant delivers merchandise sold thereby to the customer or (ix) the amount of any gratuities paid by customers of the Premises to employees of the Premises, or (x) any capital contributions, investments, or other funding paid to Tenant by Tenant's current or future members, managers, shareholders, partners, or other equity holders, or (xi) any loans or financing received by Tenant from any bank, lender, or other financial institution, or from Tenant's current or future members, managers, shareholders, partners, or other equity holders, or (xii) any rent, payments, compensation, proceeds, profits, or other consideration received by Tenant in connection with (1) any subletting of all or any portion of the Premises, (2) any assignment, sale, transfer, or conveyance of Tenant's rights, title, and interest in this Lease or the Liquor License (as defined in **Section 31.1**), (3) any merger or consolidation of Tenant into, or with, another business entity, or (4) any transfer, conveyance, or sale of all or substantially all of Tenant's assets, or any Ownership Interests (as defined in **Section 13.6(a)**) in Tenant, or (xiii) any insurance proceeds or condemnation awards received by Tenant, or (xiv) Landlord's Contribution or any credits, abatements, or payments owed to Tenant from Landlord in accordance with the terms and conditions of this Lease, or (xv) any awards or prize money received by Tenant. Further, there shall be deducted from Gross Sales (x) cash or credit refunds made upon transactions included within Gross Sales, not exceeding the selling price of merchandise returned by the purchaser and accepted by Tenant, and (y) the amount of any city, county, state or federal sales, luxury, or excise or value added tax on such sales that is both (A) added to the selling price or absorbed therein, and (B) paid to the taxing authority by Tenant.

**"Gross Sales"** shall include such Gross Sales made by any sublessee, concessionaire, licensee or otherwise at, in, on or from the Premises. Such Gross Sales made by sublessees, concessionaires, licensees, or otherwise, shall be included in the reports provided for in this Lease (but the foregoing shall not be construed to give Tenant the right to sublease, concession or license, which right shall be governed by the provisions of **Section 13**).

(c) **Percentage Rent Reports.** Tenant shall, without notice or demand from Landlord, deliver to Landlord, within thirty (30) days after the end of each month during the Term, a complete, certified statement signed by an executive officer of Tenant or the store manager of the Premises, showing Gross Sales for the preceding month. Tenant shall utilize an electronic point-of-sale system that records continuous and cumulative totals of all Gross Sales. Tenant shall maintain accounting controls and books of account, in form adequate for auditing purposes, in accordance with generally accepted accounting principles to assure the proper recording of all Gross Sales and the exclusions and deductions therefrom provided in **Section 2.5(b)** hereof.

Tenant shall, without notice or demand from Landlord, within sixty (60) days after the end of each Lease Year, cause a statement of the Gross Sales made at, in, on and from the Premises for such Lease Year to be certified by an executive officer of Tenant and delivered to Landlord, accompanied by a check from Tenant for the balance of Percentage Rent, if any, payable with respect to such Lease Year. Said statement shall be subject to further verification as provided in **Section 2.5(d)**. In the event that Tenant's monthly payments of Percentage Rent for and with respect to a Lease Year shall in the aggregate exceed the Percentage Rent

payable by Tenant for such Lease Year, Landlord shall credit any such excess against the Rent next due under this Lease. If (i) at the time of such determination of Percentage Rent the Term of this Lease shall have expired or been terminated, (ii) Tenant shall have vacated and surrendered the Premises, and (iii) the monthly payments of Percentage Rent paid by Tenant under this **Section 3.5** exceeded the actual amount of Percentage Rent payable for such Lease Year, then the excess amount (if any) shall be applied against the then unpaid Rent or other charges (if any), and the remaining excess after such application, if any, will be paid by the Landlord to Tenant promptly thereafter. All statements deliverable by Tenant to Landlord under this Lease shall be delivered to Landlord at the Landlord's office at the Project, or such place or places as Landlord may from time to time direct by notice to Tenant.

(d) **Landlord's Audit Rights.** Landlord shall have the right, at the cost and expense of Landlord, upon ten (10) days' prior notice and at any time within twenty-four (24) months after receipt of the annual statement of Gross Sales required to be furnished pursuant to **Section 2.5(c)**, to audit all of the books of account, documents, records, returns, papers, tax returns, original sales records (including cash register tapes, sales slips, bank statements and deposit slips, credit-card records, mail orders, telephone orders, computer records and such other sales records, if any, that would normally be examined by an independent accountant pursuant to generally accepted auditing standards in performing an audit of Tenant's Gross Sales) and files of Tenant relating to Gross Sales for any Lease Year (collectively, the "**Sales Records**"); and Tenant, on request of Landlord, shall make all such Sales Records available for such examination at the Project, or, at Tenant's option, at Tenant's home office, provided the same is located in the eastern United States. Tenant shall retain the Sales Records with respect to each Lease Year for not less than twelve (12) months after the delivery of the annual statement of Gross Sales for the respective Lease Year or for such longer period as may be necessary to resolve all then outstanding audit issues and disputes. If the parties are unable to resolve any dispute as to the correctness of such Sales Records within thirty (30) days following the review or audit performed by Landlord, then either party may refer the issues raised by such review or audit to an independent nationally recognized public accounting firm selected by Landlord and reasonably acceptable to Tenant, and the decision of such accountants shall be conclusively binding upon Landlord and Tenant. If Landlord shall have such an audit made for any Lease Year, and (i) (1) the actual Gross Sales for such Lease Year shall be found to be in excess of the First Base Gross Sales Figure, and (2) Gross Sales shown by Tenant's statement for such Lease Year shall be found to be understated by more than 3% or (ii) Tenant fails to maintain reasonably sufficient records of its Gross Sales to enable Landlord to perform such audit in accordance with generally accepted auditing standards, then Tenant shall pay to Landlord, within thirty (30) days after written demand, the reasonable out-of-pocket costs and expenses incurred by Landlord for such audit. In any event, Tenant shall promptly pay to Landlord, within thirty (30) days after written demand, any deficiency in Percentage Rent. If such audit finds that the Gross Sales shown by Tenant's statement for such Lease Year were overstated and the payments made to Landlord exceed the Percentage Rent owed to Landlord for such Lease Year, then Landlord shall credit the amount of such excess against the next payable installment(s) of Rent due hereunder. If (i) at the time that such audit is completed the Term of this Lease shall have expired or terminated, (ii) Tenant shall have vacated and surrendered the Premises, and (iii) the audit shows that the sums paid by Tenant under **Section 2.5(c)** exceeded the actual amount of the Percentage Rent owed for such Lease Year, then the excess amount (if any) shall be applied against the then unpaid Rent or other charges (if any), and the remaining excess after such application, if any, will be paid by the Landlord to Tenant promptly after the Term of this Lease has expired or terminated and Tenant has vacated and surrendered the Premises. If Gross Sales shown by Tenant's statement for any four (4) Lease Years shall be found to have been understated by more than 3% in each instance where the

actual Gross Sales for such Lease Year shall be found to be in excess of the First Base Gross Sales Figure, then Landlord, in addition to all other remedies available at law or in equity or pursuant to the other provisions of this Lease, shall have the right to terminate this Lease upon notice to Tenant; provided, however, Tenant shall have the opportunity to prove that each such understatement was due to a non-deliberate, clerical error, which proof shall be delivered to Landlord within thirty (30) days of Landlord's notice to Tenant of such termination. If Tenant timely delivers reasonably satisfactory proof of said non-deliberate, clerical error to Landlord, then such termination notice shall be null and void. The entity or person retained by Landlord to perform such audit and examination shall not be compensated on a contingency fee basis. Upon request of Tenant, Landlord and all auditors, representatives, contractors, agents, and other third parties involved on behalf of Landlord in any review, audit or dispute concerning the Gross Sales shall execute and deliver to Tenant a customary commercially reasonable confidentiality agreement, in form and substance reasonably satisfactory to both Landlord and Tenant, whereby such parties agree not to disclose to any third party any of the information obtained in connection with such review of Gross Sales, subject to usual and customary exceptions and exclusions. Such examination and audit may be made by Landlord's agent or employees or by any accountant designated by Landlord from time to time. Unless there shall be bona fide cause, there shall be no more than one such audit by Landlord of Gross Sales during any Lease Year.

Landlord agrees to use reasonable efforts to hold in confidence any Gross Sales information obtained by Landlord as a result of (i) any audit or inspection of Gross Sales, (ii) receipt of any statement of Gross Sales, or (iii) any other method, except that Landlord may disclose such information to Landlord's employees, agents, attorneys and accountants, and to any prospective or then existing lender, purchaser or other transferee with respect to the Project or any part thereof, or as required by law, or in connection with any tax abatement proceedings, legal process or request of any court or Governmental Authority.

(e) **Independent Calculations.** Except as otherwise provided in this Lease, computation of the Percentage Rent specified herein shall be made separately with regard to each Lease Year. The Gross Sales of any Lease Year and the Percentage Rent due thereon shall have no bearing on, or connection with, the Gross Sales of any other Lease Year. Landlord shall in no event be construed or held to be a partner or associate of Tenant in the conduct of Tenant's business, nor shall Landlord be liable for any debts incurred by Tenant in the conduct of Tenant's business and the relationship between them is and at all times shall remain that of landlord and tenant.

### ARTICLE 3

#### CONDOMINIUM; USE AND OCCUPANCY; TRADE NAME; SIGNS

**Section 3.1. Condominium.** This Lease is subject and subordinate to the Condominium Documents, as the same may be amended from time to time. Tenant acknowledges that the Building is a mixed use project consisting of retail areas, residential areas and other commercial uses and may be altered, expanded, reduced or otherwise changed from time to time, and Landlord and the Condominium Association from time to time reserve the right to modify the Building and related improvements and facilities, to change the uses thereof, and to designate areas as common areas or as areas for the exclusive use of one or more unit owners, occupants or others. To the extent that under the Condominium Documents, it is the obligation of the Condominium Association and not of the unit owner to

perform any duty or obligation, or to provide any services, including to maintain any portion of the Building and related improvements and facilities, to restore in the event of a fire, casualty or taking, or to obtain or maintain any insurance for, or to provide any services to, the Building, then notwithstanding any provision in this Lease to the contrary, the sole and exclusive duty and obligation of Landlord with respect thereto shall be to enforce its rights under the Condominium Documents to cause the Condominium Association to perform such duty or obligation, or to provide such services, to obtain and maintain such insurance, or to perform such maintenance or restoration.

Landlord hereby represents to Tenant as follows: (a) Landlord has the authority, under the Condominium Documents to enter into this Lease with Tenant upon the terms and conditions set forth in this Lease; (b) the Permitted Uses are not prohibited under the Condominium Documents; and (c) Landlord has delivered to Tenant true, correct, and complete copies of the Condominium Documents as in effect as of the Effective Date. Landlord hereby covenants and agrees with Tenant as follows: (x) Landlord shall, as the owner of the Retail Unit, exercise good faith commercially reasonable efforts to prevent the Condominium Documents from being amended or enforced in any manner that would (i) reduce the size of the Premises, including, without limitation, the Outdoor Area, (ii) materially and adversely impact Tenant's rights under this Lease, or materially increase Tenant's obligations under this Lease, or (iii) materially detract from or limit any of Landlord's representations and warranties expressly set forth in this Lease, or materially decrease Landlord's obligations under this Lease, in each case without the prior written approval of Tenant, which may be withheld in Tenant's sole discretion; and (y) Landlord shall not take any action which will result in a breach or default by Landlord as owner of the Retail Unit under the Condominium Documents.

**Section 3.2. Permitted Use.** Tenant shall use and occupy the Premises for the Permitted Uses and for no other purpose or purposes. Tenant shall not use or occupy or permit the use or occupancy of any part of the Premises in a manner constituting a Prohibited Use. If Tenant uses the Premises for a purpose constituting a Prohibited Use, violating any Requirement, or causing the Building to be in violation of any Requirement, then Tenant shall promptly discontinue such use upon notice of such violation. Tenant, at its expense, shall procure and at all times maintain and comply with the terms and conditions of all licenses and permits required for the lawful conduct of the business operations of Tenant in the Premises.

**Section 3.3. Trade Name.** Tenant shall conduct its operations in the Premises under the trade name "The Nautilus".

**Section 3.4. Signs.** Tenant shall not place either (i) on the exterior of the Premises (including windows, doors, and entrance lobbies), or (ii) in the interior of the Premises in areas which are visible from the exterior of the Premises, any signs other than such signs (including the size, design, number and location of such signs and any replacements thereof) which are consistent with the Building's then-current signage guidelines and shall have been approved in advance by Landlord. Notwithstanding the foregoing, no subsequent amendment to or modification of the initial signage guidelines provided to Tenant after approval of such signage by Landlord shall require the removal, alteration or replacement of Tenant's signage. Without limiting the foregoing, Tenant may elect to install and maintain exterior signage on the exterior of the Building, subject in all respects to the approval of Landlord, the Condominium Association, the City of Boston, and all other applicable governmental authorities, and to compliance of all such signage with applicable Requirements. Without limitation, (A) all such signs shall be compatible with the architectural and engineering integrity and first-class condition, quality and operation of the Building, (B) such signs shall not unreasonably interfere

with the use and enjoyment of the Residential Unit, and (C) in no event shall any such sign be erected, affixed, placed or installed onto the Canopy Structure (as defined in the Condominium Documents). Tenant shall reimburse Landlord, as additional rent, for all commercially reasonable out-of-pocket costs and expenses incurred by Landlord in connection with the permitting, approval, design, installation, maintenance and removal of all such signs of Tenant. Any damage to the Building caused by Tenant's signage shall be repaired by Landlord, at Tenant's sole cost and expense. All interior signs must be professionally prepared and shall be reasonable in number. Without limitation, in no event shall Tenant place any neon signs that are visible from the exterior of the Premises.

**Section 3.5. Outdoor Area.** As an appurtenance to the Premises, subject to and in accordance with the terms and conditions of this Lease, and subject to the satisfaction of all of the following conditions, during the Term of this Lease Tenant may use the outdoor area (the "Outdoor Area") depicted as the "outdoor area" on the plan attached to this Lease as **Exhibit A-1**, for the sole purpose of maintaining seasonal outdoor seating appurtenant to the operation of the restaurant in the Premises, subject to the following conditions and obligations: (i) Tenant, at its sole cost and expense, shall obtain any and all permits, consents, licenses and/or approvals necessary or required by applicable Requirements, the Condominium Documents, and/or third parties for the installation and operation of the Outdoor Area, in accordance with and subject to the provisions of this Lease; (ii) Tenant shall reimburse Landlord for all costs and expenses incurred by Landlord in assisting the efforts of Tenant to obtain such permits, consents, licenses and/or approvals, whether or not Tenant is successful in such efforts (it being understood that (A) Tenant shall be responsible for preparing any and all plans and paying for any filing fees, and (B) Landlord shall have no obligation to assume any obligations or liabilities in connection with any such permits, consents, licenses and/or approvals), all municipal charges, fees or assessments imposed as a result of the use of the Outdoor Area; (iii) the Outdoor Area shall be considered to be part of the Premises for all purposes under the Lease (excepting only for determining the Agreed Area of the Premises or Tenant's Proportionate Share); (iv) all furniture, equipment (including heaters), facilities, and improvements in the Outdoor Area shall be satisfactory to Landlord in its good faith discretion; (v) in no event shall the Outdoor Area include any signage or advertisements of any kind whatsoever, without the prior written approval of Landlord in each instance; (vi) without limiting the foregoing, the layout and location of the equipment, facilities and improvements in the Outdoor Area shall in no way interfere with access and egress to and from the Building and the doors and entrances thereof; (vii) Tenant shall be solely and exclusively responsible for all costs, expenses and charges, of every kind, arising out of or resulting from the installation, operation, maintenance, repair, replacement and removal of the Outdoor Area, and the Landlord shall have no liability or obligation in connection therewith; (viii) without limitation, the Landlord shall have no obligation to provide any electricity or other services to the Outdoor Area, and Tenant shall be responsible for the installation of any and all wires and other equipment necessary to furnish electricity or other services to the Outdoor Area; (ix) Tenant shall, at its sole cost and expense, clean and maintain the Outdoor Area in first-class order, condition and repair; (x) to the maximum extent permitted by law, all tables, furniture, equipment, facilities and other improvements in the Outdoor Area shall be at the sole risk of Tenant and Landlord shall have no liability or obligations, of any kind, to Tenant in connection therewith; (xi) in connection with the installation, operation, maintenance, repair, replacement and/or removal of the Outdoor Area, Tenant shall comply with all applicable laws, codes, ordinances and regulations and with the rules, regulations and guidelines of all insurance carriers of Landlord; (xii) the use of the Outdoor Area shall be subject to and in accordance with all of the terms and conditions of this Lease, the Condominium Documents, and subject to and in accordance with all reasonable rules and regulations as may from time-to-time be established by Landlord and/or the

Condominium with respect thereto; and (xiii) Landlord shall have the right to enter the Outdoor Area in accordance and subject to the terms and conditions of this Lease. Without limiting the foregoing, and subject to the terms and conditions of this Lease and applicable Requirements, (w) to the extent necessary or required, Landlord will execute applications for permits and otherwise exercise usual and customary commercially reasonable efforts to cooperate with Tenant's efforts to obtain, at its sole cost and expense, electricity, water, or other utility services for the Outdoor Area; provided, however, in no event shall Landlord be obligated to incur any costs, expenses, liabilities or obligations in connection with any of the foregoing, (x) Tenant may elect to improve the Outdoor Area, at its sole cost and expense, to provide three-season outdoor seating appurtenant to the operation of its restaurant in the Premises, and (y) Tenant may use the Outdoor Area for the purpose of maintaining outdoor seating appurtenant to the operation of its restaurant in the Premises until 11:00 p.m. on a daily basis, and (z) promptly after the Effective Date, Landlord will seek approval by the applicable Governmental Authorities of the modifications to the previously approved landscaping plan to remove the planters and landscaping from the area immediately adjacent to the Outdoor Area labeled on the Landscaping Removal Plan attached hereto as **Exhibit C** as "Remove", and promptly after approval of such modifications by the applicable Governmental Authorities, Landlord will perform the subject removal work and install pavers in the area where the planter is contemplated on the previously approved landscaping plan.

**Section 3.6. Garage, Valet Parking.** Landlord will continue to facilitate discussions between Tenant and the operator of the Garage with respect to the efforts of Tenant to obtain a parking validation and/or parking valet system for Tenant's customers for use of parking spaces in the Garage; provided, however, Landlord and Tenant acknowledge and agree that providing such a parking validation and/or parking valet system for Tenant's customers shall not be deemed to be an obligation of Landlord under this Lease, and in no event shall Landlord be obligated to incur any costs, expenses, liabilities or obligations in connection therewith.

## ARTICLE 4

### BASE BUILDING WORK; CONDITION OF THE PREMISES; LANDLORD'S CONTRIBUTION

**Section 4.1. Condition; Delivery.** Landlord has completed the work (the "**Base Building Work**") identified as "Base Building Work" on the matrix attached to this Lease as **Exhibit F** and incorporated into this Lease by this reference. Landlord has no obligation to perform any additional work, supply any materials, incur any expense or make any alterations, additions or improvements in order to prepare the Premises for Tenant's use and occupancy, except for the funding of Landlord's Contribution. Tenant agrees to accept possession of the Premises in vacant, broom-clean condition, and in all other respects in its "as is," "where is" condition. The foregoing provisions shall not limit the repair and maintenance obligations of Landlord pursuant to **Section 6.1**. Any work to be performed by Tenant in connection with Tenant's initial occupancy of the Premises shall be hereinafter referred to as the "**Initial Installations**." All Initial Installations shall be considered to be "**Alterations**" and shall be performed in accordance with **Article 5**. Landlord shall be deemed to have tendered possession of the Premises to Tenant upon the delivery of notice by Landlord to Tenant stating that the Premises are vacant and in broom-clean condition. No failure to tender possession of the Premises to Tenant on or before any particular date shall affect any other obligations of Tenant hereunder. Promptly after the delivery of the Premises, Tenant shall, at its sole cost and expense (subject only to the funding of Landlord's Contribution in accordance with and subject

to the provisions of **Section 4.2**), perform the Initial Installations and shall install all trade fixtures and personal property required for initial occupancy of the Premises by Tenant. Tenant's commencement of the Initial Installations shall be conclusive evidence, as against Tenant, that Tenant has accepted possession of the Premises in its then current condition and at the time such possession was taken, the Premises and the Building were in a good and satisfactory condition as required by this Lease.

**Section 4.2. Landlord's Contribution.** (a) Landlord shall pay to Tenant an amount not to exceed Landlord's Contribution toward the cost of the Initial Installations, provided that as of the date on which Landlord is required to make payment thereof pursuant to **Section 4.2(b)**: (i) this Lease is in full force and effect, (ii) no Event of Default then exists, and (iii) the Liquor License Approval (as hereinafter defined) shall have occurred; provided, however, prior to the occurrence of the Liquor License Approval, up to but not more than ten percent (10%) of the Landlord's Contribution (i.e., up to \$289,620.00) may be disbursed (solely for payment of hard construction costs and labor directly related to the Initial Installations and materials delivered to the Premises in connection with the Initial Installations) as long as foregoing clauses (i) and (ii) are satisfied; provided, further, if despite the good faith commercially reasonable efforts of both Landlord and Tenant the Liquor License Approval does not occur by December 1, 2019, then up to but not more than an additional ten percent (10%) of the Landlord's Contribution (i.e., up to an additional \$289,620.00) may be disbursed (solely for payment of hard construction costs and labor directly related to the Initial Installations and materials delivered to the Premises in connection with the Initial Installations) as long as foregoing clauses (i) and (ii) are satisfied. Tenant shall pay all costs of the Initial Installations in excess of Landlord's Contribution. Landlord's Contribution shall be payable solely on account of hard construction costs and labor directly related to the Initial Installations and materials delivered to the Premises in connection with the Initial Installations; provided, however, (x) up to but not more than ten percent (10%) of the Landlord's Contribution (i.e., up to \$289,620.00) may be applied against architectural, engineering design and project management fees incurred by Tenant in connection with the Initial Installations; and (y) up to but not more than ten percent (10%) of the Landlord's Contribution (i.e., up to \$289,620.00) may be applied against the purchase of furniture, fixtures and equipment in connection with the Initial Installations. Upon the occurrence of the date which is one hundred twenty (120) days after Tenant opens for business to the public in the Premises, any amount of Landlord's Contribution for which Tenant has not previously submitted a requisition in accordance with **Section 4.2(b)** shall be retained by Landlord and Tenant shall have no further right or claim thereto.

(b) Landlord shall make progress payments on account of Landlord's Contribution on a monthly basis to reimburse Tenant for costs and expenses paid or incurred by Tenant for the work performed during the preceding month. Landlord shall pay Landlord's Contribution to Tenant or, at Tenant's option, directly to Tenant's general contractor (upon receipt of a written notice from Tenant authorizing and directing payment directly to Tenant's general contractor). Each of Landlord's progress payments shall be limited to an amount equal to the costs and expenses paid or incurred by Tenant during the immediately preceding month (as certified by the chief financial officer of Tenant and by Tenant's independent architect) to Tenant's contractors, subcontractors, vendors, and material suppliers (excluding any amounts which have been subject to previous disbursements from Landlord's Contribution) multiplied by a fraction, the numerator of which is the amount of Landlord's Contribution, and the denominator of which is the total contract price (or, if there is no specified or fixed contract price for the Initial Installations, then Landlord's reasonable estimate thereof) for the performance of all of the Initial Installations shown on all plans and specifications approved by Landlord, provided that in no event shall such fraction be greater than one. Such progress payments shall be made within

thirty (30) days next following the delivery to Landlord of the completed requisition. Each requisition shall be executed by the chief financial officer of Tenant, and shall be accompanied by (i) with the exception of the first requisition, copies of partial waivers of lien from all contractors, subcontractors, vendors, material suppliers, and design professionals covering all work, materials and services which were the subject of previous progress payments by Landlord and Tenant, (ii) a certification from Tenant's architect that the work for which the requisition is being made has been performed substantially in accordance with the plans and specifications approved by Landlord, and (iii) such other documents and information as Landlord or its Mortgagee may reasonably request. Landlord shall not be obligated to disburse the final five percent (5%) of the Landlord's Contribution (i.e., \$144,810.00) unless and until Tenant submits to Landlord the requisition therefor accompanied by all documentation required under the foregoing provisions of this **Section 4.2(b)**, together with (A) proof of the satisfactory completion of all required inspections and issuance of any required approvals, permits and sign-offs for the Initial Installations by Governmental Authorities having jurisdiction thereover (including issuance of a permanent certificate of occupancy for the Premises), (B) final "as-built" plans and specifications for the Initial Installations as required pursuant to **Section 5.1(c)**, and (C) issuance of final lien waivers by all contractors, subcontractors, material suppliers, and design professionals covering all of the Initial Installations. The right to receive Landlord's Contribution is for the exclusive benefit of Tenant, and in no event shall such right be assigned to or be enforceable by or for the benefit of any third party, including any contractor, subcontractor, materialman, laborer, architect, engineer, attorney or other person or entity.

(c) Notwithstanding the foregoing, if Tenant submits a valid and proper requisition for payment of the Landlord's Contribution, and all of the conditions thereto as set forth above have been timely, fully and completely satisfied in full, and Landlord shall fail timely to pay the amount requested and such failure shall continue for thirty (30) days after Tenant provides a written notice to Landlord which expressly and specifically identifies such failure to pay the amount requested and specifically references this **Section 4.2**, then as liquidated damages and the sole and exclusive remedy of Tenant on account hereof, Tenant shall have the right to set-off such unpaid amount against the next monthly installments of Fixed Rent payable under this Lease.

## ARTICLE 5

### ALTERATIONS

**Section 5.1. Tenant's Alterations.** (a) Tenant shall not make any alterations, additions, or other physical changes in or about the Premises (collectively, "**Alterations**"), other than decorative Alterations such as painting, wall coverings and floor coverings (collectively, "**Decorative Alterations**"), without Landlord's prior consent in each instance, which consent shall not be unreasonably withheld if such Alterations (i) are non-structural and do not affect any Building Systems, (ii) affect only either (x) the Premises and are not visible from outside of the Premises or the Building, or (y) the Outdoor Area, (iii) do not require a conditional use permit, variance, waiver or other relief from any applicable Requirement, and (iv) in all respects, comply with all applicable Requirements.

(b) Prior to making any Alterations (including the Initial Installations), Tenant, at its expense, shall (i) excepting only for Decorative Alterations, submit to Landlord for its approval, detailed plans and specifications (each, the "**Plans**") for such proposed Alteration, (ii) obtain all permits, approvals and certificates required by any Governmental Authorities for

the proposed Alteration, and furnish copies thereof to Landlord, and (iii) furnish to Landlord duplicate original policies or certificates of worker's compensation insurance (covering all persons to be employed by Tenant, and Tenant's contractors and subcontractors in connection with such Alteration) and commercial general liability (including property damage coverage) insurance and Builder's Risk coverage (as described in Article 11) all in such form, with such companies, for such periods and in such amounts as Landlord may reasonably require, naming Landlord, Landlord's Agent, any Lessor and any Mortgagee as additional insureds. The review or approval of the Plans by Landlord shall not constitute a representation or warranty by Landlord that such Plans either are complete or suitable for their intended purpose or comply with applicable Requirements. Landlord assumes no responsibility or liability whatsoever to Tenant or to any other person or entity for such completeness or suitability. Tenant shall give Landlord not less than five (5) Business Days' notice prior to performing any Decorative Alteration, which notice shall contain a description of such Decorative Alteration. In addition, with respect to any Alteration affecting any Building System, Tenant shall submit to Landlord satisfactory evidence that the proposed Alteration has been designed by, or reviewed and approved by, Landlord's designated engineer for the affected Building System.

(c) Tenant shall obtain all building permits and other approvals of Governmental Authorities required for all Alterations. In addition, Tenant shall, as and when required, promptly obtain certificates of partial and final approval of such Alterations required by any Governmental Authority. Not later than thirty (30) days after issuance of such permits or approvals, Tenant shall deliver copies thereof to Landlord. In addition, not later than thirty (30) days after completion of the respective Alteration, Tenant shall deliver "as-built" Plans for such Alterations prepared on an AutoCAD Computer Assisted Drafting and Design System, using naming conventions issued by the American Institute of Architects in June, 1990.

**Section 5.2. Manner and Quality of Alterations.** All Alterations shall be performed (a) in a good and workmanlike manner and free from defects, (b) excepting only with regard to Decorative Alterations, substantially in accordance with the Plans approved by Landlord, (c) by contractors selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed, and (d) in compliance with all Requirements, the terms of this Lease and all construction procedures and regulations adopted from time-to-time by Landlord. All materials and equipment shall be of first quality and at least equal to the then-applicable standards for the Building adopted from time-to-time by Landlord, and no such materials or equipment (other than Tenant's Property) shall be subject to any lien or other encumbrance. Upon request, Landlord will provide Tenant with a list of pre-approved contractors.

**Section 5.3. Removal of Tenant's Property.** Tenant's Property shall remain the property of Tenant and Tenant may remove the same at any time on or before the Expiration Date. By not later than the Expiration Date, Tenant shall, at Tenant's expense, remove all of Tenant's Property from the Premises. In addition, by not later than the Expiration Date, unless otherwise directed by Landlord, Tenant shall, at Tenant's expense, remove any Specialty Alterations and close up any slab penetrations in the Premises. Without limiting the foregoing, Tenant shall not be obligated to remove any Alterations (including the Initial Installations) which are not Specialty Alterations or Tenant's Property. Tenant shall repair and restore, in a good and workmanlike manner, any damage to the Premises or the Building arising out of or resulting from the removal by Tenant of any Alterations or Tenant's Property or by the closing of any slab penetrations. If Tenant fails to perform any of its obligations under this **Section 5.3**, then Landlord may elect to perform any such obligations, in which event Tenant shall reimburse Landlord for all commercially reasonable out-of-pocket costs and expenses incurred by

Landlord. Any Alterations or Tenant's Property not removed on or before the Expiration Date (or earlier termination of this Lease) shall be deemed abandoned. Landlord may retain or remove and dispose of all such Alterations or Tenant's Property not removed by the Expiration Date (or earlier termination of this Lease), without liability or accountability to Tenant. With respect to any Specialty Alterations or Tenant's Property not removed by Tenant by the Expiration Date (or earlier termination of this Lease), Landlord may elect to remove such Specialty Alterations or Tenant's Property, and to repair and restore any damage caused thereby, at Tenant's cost and expense. All Tenant's Property and all Alterations remaining in the Premises after the Expiration Date (or earlier termination of this Lease) shall become Landlord's property upon the expiration or earlier termination of this Lease.

Without limiting the foregoing, concurrent with the review of the applicable Plans, Landlord will notify Tenant in writing as to which of the proposed Alterations constitute Specialty Alterations which Tenant will be required to remove at the expiration of the Term provided that Tenant shall include the following legend in capitalized and bold type displayed prominently on the top of the first page of Tenant's notice delivered concurrently with such plans and specifications: "**LANDLORD SHALL NOTIFY TENANT IN WRITING AT THE TIME LANDLORD APPROVES THESE PLANS AND SPECIFICATIONS AS TO WHICH ALTERATIONS SHOWN THEREON ARE SPECIALTY ALTERATIONS WHICH MAY BE REQUIRED TO BE REMOVED AT THE END OF THE TERM OF THE LEASE.**" All Alterations which (x) are shown on the Plans submitted to Landlord with a notice from Tenant including the foregoing legend, and (y) are not designated by Landlord as Specialty Alterations concurrent with the review of the Plans will not be considered to be "Specialty Alterations."

**Section 5.4. Mechanic's Liens.** Tenant, at its expense, shall discharge and release any lien, encumbrance, or charge recorded or filed against the Real Property in connection with any work performed or claimed to have been performed by or on behalf of Tenant, or materials or services furnished or claimed to have been furnished to, Tenant, within ten (10) days after Tenant's receipt of notice thereof. Such discharge shall be affected by payment or filing of a bond in accordance with applicable Requirements.

**Section 5.5. Labor Relations.** Tenant shall not employ, or permit the employment of, any contractor, mechanic or laborer, or permit any materials to be delivered to or used in the Building, if, in Landlord's sole judgment, such employment, delivery or use will interfere or cause any conflict with other contractors, mechanics or laborers engaged in the construction, maintenance or operation of the Building by Landlord, Tenant or others. If such interference or conflict occurs, upon Landlord's request, Tenant shall cause all contractors, mechanics or laborers causing such interference or conflict to leave the Building immediately.

**Section 5.6. Tenant's Costs.** Tenant shall reimburse Landlord, within thirty (30) days after delivery of an invoice therefor, for all out-of-pocket costs, expenses and fees actually incurred by Landlord in connection with Alterations proposed or performed by or on behalf of Tenant from time-to-time during the Term of this Lease, including costs incurred in connection with (a) Landlord's review of the Plans (including review of requests for approval thereof) and/or supervision of performance of the Alteration, and (b) the provision of Building personnel during the performance of any Alteration, to operate elevators or otherwise to facilitate Tenant's Alterations. In addition, if any Alterations proposed by or on behalf of Tenant costs more than \$50,000.00 in the aggregate, then Tenant shall pay to Landlord, within thirty (30) days after delivery of written demand by Landlord, a construction administration fee in an amount equal to three percent (3%) of the total cost of such Alterations; provided, however, Tenant shall not be obligated to pay a construction administration fee to Landlord in connection with the

performance of any Decorative Alterations, the Initial Installations, or other Alterations proposed by or on behalf of Tenant prior to the date which is six (6) months after the date on which Tenant initially opens for business to the public in the Premises. At Landlord's request, Tenant shall deliver to Landlord reasonable supporting documentation evidencing the hard and soft costs incurred by Tenant in designing and constructing any Alterations.

**Section 5.7. Tenant's Equipment.** Tenant shall provide notice to Landlord prior to moving any heavy machinery, heavy equipment, freight, bulky matter or fixtures (collectively, "Equipment") into or out of the Building and shall pay to Landlord any out-of-pocket costs actually incurred by Landlord in connection therewith; provided, however, Tenant shall not be obligated to pay any such costs to Landlord in connection with the performance of the Initial Installations. If such Equipment requires special handling, Tenant agrees (a) to employ only persons holding all necessary licenses to perform such work, (b) all work performed in connection therewith shall comply with all applicable Requirements, and (c) such work shall be done only during hours designated by Landlord.

**Section 5.8. Legal Compliance.** The approval of Plans, or consent by Landlord to the making of any Alterations, shall not constitute Landlord's representation that such Plans or Alterations comply with any Requirements. Landlord shall not be liable to Tenant or any other party in connection with Landlord's approval of any Plans, or Landlord's consent to Tenant's performing any Alterations. If and to the extent arising out of or resulting solely from any Alterations made by or on behalf of Tenant, Landlord is required by an order or directive of a Governmental Authority to make any alterations or improvements to any part of the Building in order to comply with an applicable Requirement, Tenant shall pay, as Additional Rent, all costs and expenses incurred by Landlord in connection with such alterations or improvements.

**Section 5.9. Floor Load.** Tenant shall not place a load upon any floor of the Premises that exceeds one hundred (100) pounds per square foot "live load". Landlord reserves the right to reasonably designate the position of all equipment which Tenant wishes to place within the Premises, and to place limitations on the weight thereof.

## ARTICLE 6

### REPAIRS

**Section 6.1. Landlord's Repair and Maintenance.** Landlord shall (or shall cause the Condominium Association to) operate, maintain and, except as provided in **Section 6.2** hereof, make all necessary repairs (both structural and nonstructural) to (i) the Building Systems (including the plumbing, sanitary, sprinkler and related pipes and systems up to the point of connection of localized distribution to the Premises), (ii) the Common Areas and the Common Facilities, and (iii) the roof, exterior walls, floor slabs, and other structural portions of the Building, so as to keep them in good order, condition and repair, in conformance with standards applicable to Comparable Buildings. Any such repairs, maintenance, replacements, and services that Landlord is required to provide under this Lease shall be performed in a good and workmanlike manner, shall be of at least equal quality and class as the original work, and shall be performed in a commercially reasonable manner.

**Section 6.2. Tenant's Repair and Maintenance.** Tenant shall promptly, at its expense and in compliance with **Article 5**, (a) keep and maintain, in good order, condition and repair, consistent with the standards of Comparable Buildings, the Premises and every part thereof,

including the exterior and interior portions of all doors, interior windows, fixtures, interior walls, interior portions and elements of the floors and ceilings, signs, and all wiring, electrical systems, and equipment, and similar equipment located within and exclusively serving the Premises, and (b) make all nonstructural repairs to the Premises and the fixtures, equipment and appurtenances located therein (including all electrical, plumbing, heating, ventilation and air conditioning, sprinklers and life safety systems in and serving the Premises from the point of connection to the Building Systems) (collectively, "**Tenant Fixtures**") as and when needed to preserve the Premises in good working order and condition, except for the following: (i) reasonable wear and tear, (ii) damage caused by fire or other casualty, or as a consequence of a Taking, (iii) damage caused by the negligence or willful misconduct of Landlord or Landlord's employees, officers, agents, contractors, consultants, or invitees, (iv) those repairs for which Landlord is responsible under the terms of this Lease, or (v) those repairs for which the Condominium Association is responsible under the terms of the Condominium Documents. Notwithstanding the foregoing, Tenant shall not be obligated to perform structural alterations to the Building or repairs, maintenance or alterations to the Building Systems, unless the requirement for such repair, maintenance or alteration arises out of or results solely from (i) the specific manner and nature of Tenant's use or occupancy of the Premises, as distinct from general retail use, (ii) Alterations made by Tenant, or (iii) a breach by Tenant of any provisions of this Lease. All damage to the Building or to any portion thereof, or to any Tenant Fixtures requiring structural or nonstructural repair caused by or resulting from any negligence or misconduct of a Tenant Party or the moving of Tenant's Property or equipment into, within or out of the Premises by a Tenant Party, shall be repaired at Tenant's expense by (i) Tenant, if the required repairs are nonstructural in nature and do not affect the exterior doors, exterior windows or any Building System, or (ii) Landlord, if the required repairs are structural in nature, affect the exterior doors, exterior windows or any Building System. All Tenant repairs shall be of good quality utilizing new construction materials. The foregoing shall not limit or detract from the waiver of subrogation provisions set forth in **Section 11.2**.

**Section 6.3. Restorative Work.** Landlord, on behalf of itself and the Condominium Association, reserves the right to make all changes, alterations, additions, improvements, repairs or replacements to the Building, the Common Facilities, and/or the Building Systems, including changing the arrangement or location of entrances or passageways, doors and doorways, corridors, elevators, stairs, toilets or other Common Areas (collectively, "**Restorative Work**"), as Landlord or the Condominium Association deems necessary or desirable, and to take all materials into the Premises required for the performance of such Restorative Work provided that (a) the level of any Building service (including any Essential Service) shall not decrease in any material respect from the level required of Landlord in this Lease as a result thereof (other than temporary changes in the level of such services during the performance of any such Restorative Work), (b) Tenant's access to and use of the Premises is not materially impaired, (c) any such Restorative Work shall be of a quality comparable to the standards applicable to Comparable Buildings, (d) no materials brought into the Premises by or on behalf of Landlord or the Condominium Association shall be stored or left in the Premises when the Restorative Work is not actively being performed, (e) Landlord will exercise reasonable efforts to provide reasonable notice to Tenant prior to performing any such Restorative Work that impacts the Premises, and (f) any damage to the Premises or Tenant's Property caused by any such Restorative Work shall be repaired, restored, and/or replaced (as applicable) at Landlord's sole cost and expense. Landlord or the Condominium Association, as applicable, shall use reasonable efforts to minimize interference with Tenant's use and occupancy of the Premises during the performance of such Restorative Work. There shall be no Rent abatement or allowance to Tenant for a diminution of rental value, no actual or constructive eviction of Tenant, in whole or in part, no relief from any of Tenant's other obligations under this Lease, and no

liability on the part of Landlord by reason of inconvenience, annoyance or injury to business arising from Landlord, the Condominium Association or others performing, or failing to perform, any Restorative Work.

## ARTICLE 7

### INCREASES IN TAXES, OPERATING EXPENSES AND INSURANCE EXPENSES

**Section 7.1. Definitions.** For the purposes of this Article 7, the following terms shall have the meanings set forth below:

(a)     **"Insurance Expenses"** shall mean the aggregate of all costs and expenses payable or incurred by Landlord in connection with insuring the Real Property, including all premiums for fire, casualty, liability, worker's compensation payable to the Condominium, and such other insurance as Landlord may maintain from time to time.

(b)     **"Operating Expenses"** shall mean the aggregate of all costs and expenses payable or incurred by or on behalf of Landlord in connection with the ownership, operation, management, repair and maintenance of the Real Property, which costs and expenses may include, without limitation, the following: (x) all Common Charges (as defined in the Condominium Documents) and other charges and fees payable with respect to the Real Property pursuant to the Condominium Documents, (y) the rental value of Landlord's management office for the Real Property, whether located in the Building or in another location, and (z) the costs and expenses of any capital improvements if such capital improvement either (i) is intended in the good faith reasonable judgment of Landlord to reduce Operating Expenses (as for example, a labor saving or energy saving improvement) provided, the amount included in Operating Expenses shall not exceed an amount equal to the savings reasonably anticipated to result from the installation and operation of such improvement, and/or (ii) is made to comply with a Requirement which is first adopted or becomes effective or applicable to the Real Property after the Effective Date. The "annual charge-off" of each such capital expenditure shall be included in Operating Expenses for each calendar year in which such capital expenditure is made, and for each subsequent calendar year. The "annual charge-off" shall be determined by (i) dividing the original cost of the capital expenditure by the number of years of useful life thereof (which useful life shall be determined by Landlord in its reasonable discretion in accordance with customary practice in the real estate industry); and (ii) adding to such quotient an interest factor computed on the unamortized balance of such capital expenditure based upon an interest rate then being charged for long-term mortgages by institutional lenders on Comparable Buildings. If the Landlord's management office for the Real Property is used to provide management services to multiple properties, then the rental value shall be equitably allocated between the Real Property and such other properties. Notwithstanding the foregoing, or any other provision contained in this Lease, Operating Expenses shall not include any Excluded Expenses.

(c)     **"Statement"** shall mean an itemized statement setting forth (i) the Taxes for the Tax Year (or portion thereof), (ii) the Operating Expenses for the calendar year (or portion thereof), and/or (iii) the Insurance Expenses for the calendar year (or portion thereof).

(d)     **"Tax Year"** shall mean the twelve (12) month period from July 1 through June 30 (or such other period as hereinafter may be duly adopted by the City of Boston as the fiscal year for real estate tax purposes).

(e) "**Taxes**" shall mean (i) all real estate taxes, assessments, sewer and water rents, rates and charges and other governmental levies, impositions or charges, whether general, special, ordinary, extraordinary, foreseen or unforeseen, which may from time to time be assessed, levied or imposed upon all or any part of the Real Property, including all amounts payable to the City of Boston and all amounts payable with respect to the Real Property to the Condominium, (ii) all business improvement district impositions, charges and fees assessed, imposed or payable with respect to all or any part of the Real Property, and (iii) all expenses (including reasonable attorneys' fees and disbursements and experts' and other witnesses' fees) incurred in seeking abatement of or contesting any of the foregoing or the assessed valuation of the Real Property established by the City of Boston. Taxes shall not include (x) interest or penalties incurred by Landlord as a result of Landlord's late payment of Taxes, or (y) franchise, transfer, gift, inheritance, estate or net income taxes imposed upon Landlord. If Landlord elects to pay any assessment in annual installments, then (i) such assessment shall be deemed to have been so divided and to be payable in the maximum number of installments permitted by law, and (ii) there shall be deemed included in Taxes for each Tax Year the installments of such assessment becoming payable during such Tax Year, together with interest payable during such Tax Year on such installments and on all installments thereafter becoming due as provided by law, all as if such assessment had been so divided. If at any time the methods of taxation prevailing on the Effective Date shall be altered so that in lieu of or as an addition to the whole or any part of Taxes, there shall be assessed, levied or imposed (1) a tax, assessment, levy, imposition or charge based on the income or rents received from the Real Property whether or not wholly or partially as a capital levy or otherwise, (2) a tax, assessment, levy, imposition or charge measured by or based in whole or in part upon all or any part of the Real Property and imposed upon Landlord, (3) a license fee measured by the rents, or (4) any other tax, assessment, levy, imposition, charge or fee however described or imposed on all or any part of the Real Property, including business improvement district impositions, fees, and charges, then all such taxes, assessments, levies, impositions, charges or fees or the part thereof so measured or based shall be deemed to be included within Taxes.

**Section 7.2. Tenant's Tax Payment.** (a) Commencing on the Rent Commencement Date, and thereafter throughout the Term of this Lease, Tenant shall pay to Landlord Tenant's Proportionate Share of the Taxes for each Tax Year or portion thereof during the Term ("**Tenant's Tax Payment**"). For each Tax Year, Landlord shall furnish to Tenant Landlord's reasonable estimate of Tenant's Tax Payment for such Tax Year (the "**Tax Estimate**"). Tenant shall pay to Landlord on the first (1st) day of each month during such Tax Year an amount equal to 1/12 of the Tax Estimate for such Tax Year. If Landlord furnishes a Tax Estimate for a Tax Year subsequent to the commencement thereof, then (i) until the first (1st) day of the month which is not less than thirty (30) days after the date that the Tax Estimate is furnished to Tenant, Tenant shall pay to Landlord on the first (1st) day of each month an amount equal to the monthly sum payable by Tenant to Landlord under this **Section 7.2** during the last month of the preceding Tax Year; (ii) promptly after the Tax Estimate is furnished to Tenant or together therewith, Landlord shall give notice to Tenant stating whether the installments of Tenant's Tax Estimate previously made for such Tax Year were greater or less than the installments of Tenant's Tax Estimate to be made for such Tax Year in accordance with the Tax Estimate and the amount of any difference, and (x) if there shall be a deficiency, then Tenant shall pay the amount thereof within thirty (30) days after demand therefor, or (y) if there shall have been an overpayment, Landlord shall credit the amount thereof against the next payable installment(s) of Rent due hereunder; and (iii) on the first (1st) day of the month which is not less than thirty (30) days after the date that the Tax Estimate is furnished to Tenant, and on the first (1st) day of each month thereafter throughout the remainder of such Tax Year, Tenant shall pay to Landlord an amount equal to 1/12 of the Tax Estimate.

(b) As soon as reasonably practicable after Landlord has determined the Taxes for a Tax Year, Landlord shall furnish to Tenant a Statement of Tenant's Tax Payment for such Tax Year. If the Statement shall show that the sums paid by Tenant under **Section 7.2(a)** exceeded the actual amount of Tenant's Tax Payment for such Tax Year, then Landlord shall credit the amount of such excess against the next payable installment(s) of Rent due hereunder. If the Statement for such Tax Year shall show that the sums so paid by Tenant were less than Tenant's Tax Payment for such Tax Year, then Tenant shall pay the amount of such deficiency within thirty (30) days after delivery of the Statement to Tenant. If (i) at the time of delivery of a Statement the Term of this Lease shall have expired or terminated, (ii) Tenant shall have vacated and surrendered the Premises, and (iii) the Statement shows that the sums paid by Tenant under **Section 7.2(a)** exceeded the actual amount of Tenant's Tax Payment for such Tax Year, then the excess amount (if any) shall be applied against the then unpaid Rent or other charges (if any), and the remaining excess after such application, if any, will be paid promptly by the Landlord to Tenant.

(c) Only Landlord may institute proceedings to reduce or abate the assessed valuation of the Real Property and Tenant shall not commence any such proceeding without Landlord's prior written consent. If Landlord receives an abatement or refund of Taxes for any Tax Year, then Landlord shall credit against the next payable installment(s) of Rent due hereunder, an amount equal to Tenant's Proportionate Share of the abatement or refund net of Tenant's Proportionate Share of any expenses incurred by Landlord in achieving such abatement or refund (to the extent that such expenses have not previously been included in the Taxes), which amount shall not exceed Tenant's Tax Payment paid for such Tax Year. Landlord shall not be obligated to file any application or institute any proceeding seeking an abatement or reduction in Taxes or the assessed valuation. If (i) at the time of receipt of said abatement or refund the Term of this Lease shall have expired or terminated, (ii) Tenant shall have vacated and surrendered the Premises, and (iii) the amounts paid by Tenant under **Section 7.2(a)** exceeded the actual amount of Tenant's Tax Payment for such Tax Year (as abated or reduced), then the excess amount (if any) shall be applied against the then unpaid Rent or other charges (if any), and the remaining excess after such application, if any, will be paid promptly by the Landlord to Tenant.

(d) Tenant shall be responsible for any personal property tax assessed against the Premises or the contents thereof, or any occupancy or rent tax now in effect or hereafter enacted and, if such tax is payable by Landlord, Tenant shall pay such amounts to Landlord, within thirty (30) days after Landlord's written demand therefor.

(e) Tenant shall be obligated to make Tenant's Tax Payment regardless of whether Tenant may be exempt from the payment of any Taxes as the result of any reduction, abatement or exemption from Taxes granted to Tenant or agreed to by any Governmental Authority, or by reason of Tenant's diplomatic or other tax exempt status.

**Section 7.3. Tenant's Operating Payment.** (a) Commencing on the Rent Commencement Date, and thereafter throughout the Term of this Lease, Tenant shall pay to Landlord Tenant's Proportionate Share of the Operating Expenses for each calendar year or portion thereof during the Term ("Tenant's Operating Payment"). For each calendar year, Landlord shall furnish to Tenant Landlord's reasonable estimate of Tenant's Operating Payment for such calendar year (the "Expense Estimate"). Tenant shall pay to Landlord on the first (1st) day of each month during such calendar year an amount equal to 1/12 of the Expense Estimate. If Landlord furnishes an Expense Estimate for a calendar year subsequent to the commencement thereof, then (i) until the first (1st) day of the month which is not less than thirty

(30) days after the date that the Expense Estimate is furnished to Tenant, Tenant shall pay to Landlord on the first (1st) day of each month an amount equal to the monthly sum payable by Tenant to Landlord under this **Section 7.3** during the last month of the preceding calendar year, (ii) promptly after the Expense Estimate is furnished to Tenant or together therewith, Landlord shall give notice to Tenant stating whether the installments of Tenant's Operating Payment previously made for such calendar year were greater or less than the installments of Tenant's Operating Payment to be made for such calendar year in accordance with the Expense Estimate and the amount of any difference, and (x) if there shall be a deficiency, Tenant shall pay the amount thereof within thirty (30) days after demand therefor, or (y) if there shall have been an overpayment, Landlord shall credit the amount thereof against the next payable installment(s) of Rent due hereunder, and (iii) on the first (1st) day of the month which is not less than thirty (30) days after the date that the Expense Estimate is furnished to Tenant, and on the first (1st) day of each month thereafter throughout the remainder of such calendar year, Tenant shall pay to Landlord an amount equal to 1/12 of the Expense Estimate.

(b) Promptly after the expiration of each calendar year, Landlord shall furnish to Tenant a Statement of Tenant's Operating Payment for the immediately preceding calendar year. If the Statement shows that the sums paid by Tenant under **Section 7.3(a)** exceeded the actual amount of Tenant's Operating Payment for such calendar year, then Landlord shall credit the amount of such excess against the next payable installment(s) of Rent due hereunder. If the Statement shows that the sums so paid by Tenant were less than Tenant's Operating Payment for such calendar year, then Tenant shall pay the amount of such deficiency within thirty (30) days after delivery of the Statement to Tenant. If (i) at the time of delivery of a Statement the Term of this Lease shall have expired or terminated, (ii) Tenant shall have vacated and surrendered the Premises, and (iii) the Statement shows that the sums paid by Tenant under **Section 7.3(a)** exceeded the actual amount of Tenant's Operating Payment for such calendar year, then the excess amount (if any) shall be applied against the then unpaid Rent or other charges (if any), and the remaining excess after such application, if any, will be paid promptly by the Landlord to Tenant.

**Section 7.4. Tenant's Insurance Payment.** (a) Commencing on the Rent Commencement Date, and thereafter throughout the Term of this Lease, Tenant shall pay to Landlord Tenant's Proportionate Share of the Insurance Expenses for each calendar year or portion thereof during the Term ("**Tenant's Insurance Payment**"). For each calendar year, Landlord shall furnish to Tenant Landlord's reasonable estimate of Tenant's Insurance Payment for such calendar year (the "**Insurance Expense Estimate**"). Tenant shall pay to Landlord on the first (1st) day of each month during such calendar year an amount equal to 1/12 of the Insurance Expense Estimate. If Landlord furnishes an Insurance Expense Estimate for a calendar year subsequent to the commencement thereof, then (i) until the first (1st) day of the month which is not less than thirty (30) days after the date that the Insurance Expense Estimate is furnished to Tenant, Tenant shall pay to Landlord on the first (1st) day of each month an amount equal to the monthly sum payable by Tenant to Landlord under this **Section 7.4** during the last month of the preceding calendar year, (ii) promptly after the Insurance Expense Estimate is furnished to Tenant or together therewith, Landlord shall give notice to Tenant stating whether the installments of Tenant's Insurance Payment previously made for such calendar year were greater or less than the installments of Tenant's Insurance Payment to be made for such calendar year in accordance with the Insurance Expense Estimate, and (x) if there shall be a deficiency, Tenant shall pay the amount thereof within thirty (30) days after demand therefor, or (y) if there shall have been an overpayment, Landlord shall credit the amount thereof against the next payable installment(s) of Rent due hereunder, and (iii) on the first (1st) day of the month which is not less than thirty (30) days after the date that the

Insurance Expense Estimate is furnished to Tenant, and on the first (1st) day of each month thereafter throughout the remainder of such calendar year, Tenant shall pay to Landlord an amount equal to 1/12 of the Insurance Expense Estimate.

(b) Promptly after the expiration of each calendar year, Landlord shall furnish to Tenant a Statement of Tenant's Insurance Payment for the immediately preceding calendar year. If the Statement shows that the sums paid by Tenant under **Section 7.4(a)** exceeded the actual amount of Tenant's Insurance Payment for such calendar year, then Landlord shall credit the amount of such excess against the next payable installment(s) of Rent due hereunder. If the Statement shows that the sums so paid by Tenant were less than Tenant's Insurance Payment for such calendar year, then Tenant shall pay the amount of such deficiency within thirty (30) days after delivery of the Statement to Tenant. If (i) at the time of delivery of a Statement the Term of this Lease shall have expired or terminated, (ii) Tenant shall have vacated and surrendered the Premises, and (iii) the Statement shows that the sums paid by Tenant under **Section 7.4(a)** exceeded the actual amount of Tenant's Insurance Payment for such calendar year, then the excess amount (if any) shall be applied against the then unpaid Rent or other charges (if any), and the remaining excess after such application, if any, will be paid promptly by the Landlord to Tenant.

**Section 7.5. Non-Waiver; Disputes.** (a) Landlord's failure to render any Statement on a timely basis with respect to any calendar year shall not prejudice Landlord's right to thereafter render a Statement with respect to such calendar year or any subsequent calendar year, nor shall the rendering of a Statement prejudice Landlord's right to thereafter render a corrected Statement for that calendar year.

(b) Each Statement sent to Tenant shall constitute an account stated between Landlord and Tenant and shall be conclusively binding upon Tenant unless Tenant (i) pays to Landlord when due the amount set forth in such Statement, without prejudice to Tenant's right to audit such Statement, and (ii) within sixty (60) days after such Statement is delivered, sends a written notice to Landlord objecting to such Statement, specifying the reasons for such objection and stating that Tenant will audit the records concerning the items objected to by Tenant. Tenant and all auditors, representatives, contractors, agents, and other third parties involved on behalf of Tenant in any review, audit or dispute concerning Operating Expenses, Insurance Expenses or Taxes shall execute and deliver to Landlord a confidentiality agreement, in form and substance reasonably satisfactory to Landlord, whereby such parties agree not to disclose to any third party any of the information obtained in connection with such review. Tenant agrees that Tenant will not employ, in connection with any review, audit or dispute under this Lease, any person or entity who is to be compensated in whole or in part, on a contingency fee basis. If Tenant satisfies the foregoing conditions precedent, then Tenant may review or audit the Operating Expenses, Insurance Expenses, or Taxes (as applicable) for the subject calendar year or Tax Year (as applicable). If Tenant's objection includes charges imposed by the Condominium Association that Landlord has included in the Operating Expenses, then Landlord shall exercise the rights afforded to Landlord under the Condominium Documents to make available for Tenant to review and audit the applicable records of the Condominium Association concerning the charges objected to by Tenant. If the parties are unable to resolve any dispute as to the correctness of such Statement within thirty (30) days following the review or audit performed by Tenant, then either party may refer the issues raised by such review or audit to an independent nationally recognized public accounting firm selected by Landlord and reasonably acceptable to Tenant, and the decision of such accountants shall be conclusively binding upon Landlord and Tenant. If said accountants shall determine that Tenant shall have made any payment in excess of the amount properly due hereunder, such

excess amount shall be refunded to Tenant by Landlord promptly after said accountants shall have rendered their decision and if such accountants shall determine that Tenant shall have underpaid the amount properly due hereunder such under-payment shall be paid by Tenant to Landlord promptly after said accountants shall have rendered their decision. Tenant shall pay the fees and expenses relating to such procedure, unless such accountants determine that Landlord overstated Operating Expenses, Insurance Expenses, or Taxes, as applicable, by more than five percent (5%) for such calendar year or Tax Year (as applicable), in which case Landlord shall pay the reasonable out-of-pocket fees and expenses incurred by Tenant. Except as provided in this **Section 7.5**, Tenant shall have no right whatsoever to dispute by judicial proceeding or otherwise the accuracy of any Statement.

**Section 7.6. Proration.** If the Rent Commencement Date is not January 1 or July 1 (as applicable), then any Additional Rent under this **Article 7** for the calendar year or Tax Year (as applicable) in which the Rent Commencement Date occurs shall be apportioned based on the number of days in the applicable calendar year or Tax Year (as applicable). If the Expiration Date occurs on a date other than December 31 or June 30 (as applicable), any Additional Rent under this **Article 7** for the calendar year or Tax Year (as applicable) in which such Expiration Date occurs shall be apportioned on the basis of the number of days in the respective calendar year or Tax Year (as applicable). Upon the expiration or earlier termination of this Lease, any Additional Rent under this **Article 7** shall be adjusted or paid within thirty (30) days after submission of the Statement for the last calendar year or Tax Year (as applicable).

**Section 7.7. Survival.** The provisions of this **Article 7** shall survive the expiration or earlier termination of this Lease.

## ARTICLE 8

### REQUIREMENTS OF LAW

#### **Section 8.1. Compliance with Requirements.**

(a) **Tenant's Compliance.** Tenant, at its expense, shall comply and shall cause the Premises to comply with all Requirements applicable to the Premises and/or the use or occupancy of the Premises by Tenant; provided, however, Tenant shall not be obligated to perform structural alterations to the Building or alterations to the Building Systems, unless the application of such Requirements arises out of or results solely from (i) the specific manner and nature of Tenant's use or occupancy of the Premises, as distinct from general retail use, (ii) Alterations made by Tenant, or (iii) a breach by Tenant of any provisions of this Lease. Any such repairs or alterations shall be made at Tenant's expense (1) by Tenant in compliance with **Article 5** if such repairs or alterations are nonstructural and do not affect any Building System or any areas outside of the Premises, or (2) by Landlord if such repairs or alterations are structural or affect any Building System or any areas outside of the Premises. If Tenant obtains knowledge of any failure to comply with any Requirements applicable to the Premises, Tenant shall give Landlord prompt notice thereof. Without limitation, within the Premises, (which shall include any and all means of access and egress to, from and between floors comprising parts of the Premises if the Premises contain more than one such floor), Tenant shall be responsible for compliance with the applicable provisions of the ADA.

(b) **Hazardous Materials.** Tenant shall not cause or, with respect to any Tenant Party, permit (i) any Hazardous Materials to be brought into the Building, (ii) the storage

or use of Hazardous Materials in or about the Premises and/or the Building, or (iii) the escape, disposal or release of any Hazardous Materials within or in the vicinity of the Real Property; provided, however, Tenant may use cleaning supplies and materials containing ordinary and customary Hazardous Materials, as long as (i) such supplies and materials are customarily used in the ordinary course of usual and customary first-class restaurant operations, and (ii) the storage, transportation, usage, and disposal of all such Hazardous Materials is in compliance with all applicable Requirements. Tenant shall be responsible, at its expense, for all Losses directly or indirectly based on, or arising or resulting from the presence of Hazardous Materials in, on or under the Real Property which arises out of or results from any transportation, generation, storage, use, or disposal of Hazardous Materials in, on or about the Real Property by Tenant or any Tenant Party. Tenant shall provide to Landlord copies of all communications received by Tenant with respect to any Requirements relating to Hazardous Materials relating to or concerning the Real Property or any part thereof, and/or any claims made in connection therewith. Landlord or its agents may perform environmental inspections of the Premises at any time and from time-to-time, at the cost and expense of Landlord. In no event shall Tenant have any liability or responsibility for any Hazardous Materials existing at the Building or the Premises as of the Effective Date.

Landlord represents to Tenant that, as of the date of this Lease, to its actual knowledge, there are no Hazardous Materials on the Real Property (including the Premises), excepting only such materials and substances as (i) are stored or used in accordance with all applicable Requirements, and (ii) are ordinarily and customarily used or located in Comparable Buildings. Landlord agrees that if (i) Hazardous Materials subsequently are discovered to have been in the Premises or on the Real Property as of the date of this Lease, and (ii) as of the Effective Date such substances or materials were deemed pursuant to applicable Requirements to constitute Hazardous Materials, then the Landlord shall be responsible for the removal thereof in accordance with then-current industry customs and practices and all applicable Requirements. The foregoing shall not be interpreted as Tenant being responsible for the removal of any such Hazardous Materials that subsequently are discovered to have been in the Premises or on the Real Property as of the date of this Lease.

(c) **Landlord's Compliance.** Landlord shall cause (or cause the Condominium Association to cause) the Common Areas and the Common Facilities to comply with all Requirements applicable to the Building which are not the obligation of Tenant, to the extent that non-compliance would materially impair Tenant's use and occupancy of the Premises for the Permitted Uses.

(d) **Landlord's Insurance.** Tenant shall not permit any condition within the Premises that would (i) invalidate or conflict with the insurance policies of the Landlord and/or the Condominium, (ii) violate applicable rules, regulations and guidelines of the City of Boston fire department, fire insurance rating organization or any other Governmental Authority, (iii) cause an increase in the premiums of fire insurance for the Building over that payable with respect to Comparable Buildings, or (iv) result in the insurance companies' refusing to insure the Building or any property therein in amounts and against risks as reasonably determined by Landlord and/or the Condominium. If fire insurance premiums increase as a result of Tenant's failure to comply with the provisions of this **Section 8.1**, then Tenant shall promptly cure such failure and shall reimburse Landlord for the increased fire insurance premiums paid by Landlord as a result of such failure by Tenant. Notwithstanding the foregoing, in no event shall Tenant be deemed to have breached this **Section 8.1(d)**, or responsible for any increased insurance premiums, solely as a result of operating at restaurant for the Permitted Use in the Premises.

**Section 8.2. Fire and Life Safety; Sprinkler.** Tenant shall maintain in good order, condition and repair all sprinkler, fire-alarm and life-safety systems located in and exclusively serving the Premises, from the point of connection to the Building Systems, in accordance with this Lease, the Rules and Regulations and all Requirements. If any modifications and/or alterations are required to be made to such systems, or any additional equipment is required to be supplied in connection with such systems arising out of or resulting from Tenant's particular manner of business operations, or Alterations performed by Tenant, or the location of Tenant's Property (including partitions) within the Premises, then Landlord (to the extent outside of the Premises) or Tenant (to the extent within the Premises) shall make such modifications and/or Alterations, and supply such additional equipment, in either case at Tenant's expense. Tenant shall, at its cost and expense, maintain all fire extinguishers and other moveable life safety equipment in the Premises.

## ARTICLE 9

### SUBORDINATION

**Section 9.1. Subordination and Attornment.** (a) This Lease is and shall be subject and subordinate to all Mortgages and Superior Leases, and, at the request of any Mortgagee or Lessor, Tenant shall attorn to such Mortgagee or Lessor, its successors in interest or any purchaser in a foreclosure sale. As a condition to Tenant's agreement to subordinate Tenant's interest in this Lease to any Mortgage and/or any Superior Lease, Tenant shall receive from each Mortgagee or Lessor, a subordination, non-disturbance and attornment, in recordable form and in the standard form customarily employed by such Mortgagee or Lessor (which conforms to the provisions of this Article 9 and is otherwise reasonably satisfactory to Tenant), pursuant to which such Mortgagee or Lessor shall agree that, if and so long as no Event of Default hereunder shall have occurred and be continuing, the leasehold estate granted to Tenant and the rights of Tenant pursuant to this Lease shall not be terminated, modified, affected or disturbed by any action which such Mortgagee may take to foreclose any such Mortgage or which such Lessor shall take to terminate such Superior Lease, as applicable, and that any successor landlord shall recognize this Lease as being in full force and effect as if it were a direct lease between such successor landlord and Tenant upon all of the executory terms, covenants, conditions and options granted to Tenant under this Lease, except as otherwise provided in, and subject to the provisions of, **Section 9.1(b)** hereof. Landlord hereby confirms that as of the Effective Date there are no Mortgages encumbering the Real Property (or any part thereof), or any Superior Leases of the Real Property (or any part thereof).

(b) If a Lessor, Mortgagee, any of their respective successors in interest, or any purchaser at a foreclosure sale or its respective successor in interest, shall succeed to the rights of Landlord under this Lease, whether through possession or foreclosure action or the delivery of a new lease or deed, then at the request of the successor landlord and upon such successor landlord's written agreement to accept Tenant's attornment and to recognize Tenant's rights and interests under this Lease (subject to the provisions of **Section 9.1(a)**), Tenant shall attorn to and recognize such successor landlord as Landlord under this Lease. The provisions of this **Section 9.1** are self-operative and require no further instruments to give effect hereto; provided, however, Tenant shall promptly execute and deliver any instrument that such successor landlord may reasonably request (i) evidencing such attornment, (ii) affirming the liabilities and obligations of Tenant under this Lease, and (iii) containing such other terms and conditions as may be required by such Mortgagee or Lessor, provided such instrument does not increase the Rent, materially increase Tenant's other obligations, materially and

adversely affect Tenant's rights under this Lease, or materially decrease the obligations of such successor landlord under this Lease. Upon such attornment this Lease shall continue in full force and effect as a direct lease between such successor landlord and Tenant upon all of the terms, conditions and covenants set forth in this Lease except that such successor landlord shall not be:

(i) liable for any act or omission of Landlord (except to the extent such act or omission continues beyond the date when such successor landlord succeeds to Landlord's interest and Tenant gives notice of such act or omission);

(ii) subject to any defense, claim, counterclaim, set-off or offset which Tenant may have against Landlord; provided, however, the foregoing shall not exonerate such successor landlord against defaults of a continuing nature which arise or accrue after such successor landlord succeeds to the rights of Landlord under this Lease;

(iii) bound by any prepayment of more than one month's Rent to any prior landlord, except to the extent that such successor landlord actually receives such payment from the prior landlord;

(iv) bound by any obligation to make any payment to Tenant which was required to be made prior to the time such successor landlord succeeded to Landlord's interest;

(v) bound by any obligation to perform any work or to make improvements to the Premises except for (x) repairs and maintenance required to be made by Landlord under this Lease, and (y) repairs to the Premises as a result of damage by fire or other casualty or a partial condemnation pursuant to the provisions of this Lease, but only to the extent that such repairs can reasonably be made from the net proceeds of any insurance or condemnation awards, respectively, actually made available to such successor landlord;

(vi) bound by any modification or amendment of this Lease made after the execution of such Mortgage or Superior Lease which is made without successor landlord's consent;

(vii) liable for the repayment of any security deposit or surrender of any letter of credit, unless and until such security deposit actually is paid or such letter of credit is actually delivered to such successor landlord; or

(viii) liable for the payment of any unfunded tenant improvement allowance, refurbishment allowance or similar obligation.

(c) Tenant shall from time to time and within ten (10) days of request from Landlord, execute and deliver any documents or instruments that may be reasonably required by any Mortgagee or Lessor to confirm any subordination.

**Section 9.2. Mortgage or Superior Lease Defaults.** Any Mortgagee may elect that this Lease shall have priority over the Mortgage and to subordinate its Mortgage to this Lease. Upon notification to Tenant by such Mortgagee, this Lease shall be deemed to have priority over such Mortgage, regardless of the date of this Lease. In connection with any financing of the Real Property, Tenant shall consent to any reasonable modifications of this Lease requested by any lending institution, provided such modifications do not increase the Rent, materially

increase the other obligations of Tenant under this Lease, materially and adversely affect the rights of Tenant under this Lease, or materially decrease the obligations of Landlord under this Lease.

**Section 9.3. Tenant's Termination Right.** As long as any Superior Lease or Mortgage exists, Tenant shall not seek to terminate this Lease by reason of any act or omission of Landlord until (a) Tenant shall have given notice of such act or omission to all Lessors and/or Mortgagees that Landlord has identified to Tenant in writing and provided Tenant with a mailing address for any such Lessors and/or Mortgagees, and (b) a reasonable period of time shall have elapsed following the giving of notice of such default and the expiration of any applicable notice or grace periods, during which period such Lessors and/or Mortgagees shall have the right, but not the obligation, to remedy such act or omission and thereafter diligently proceed to so remedy such act or omission. If any Lessor or Mortgagee elects to remedy such act or omission of Landlord, Tenant shall not seek to terminate this Lease so long as such Lessor or Mortgagee is proceeding with reasonable diligence to effect such remedy; provided, however, in no event shall the additional period of time afforded to such Lessors and/or Mortgagees exceed one hundred twenty (120) days following the giving of such notice by Tenant. Notwithstanding the foregoing, nothing in this **Article 9** shall be deemed to modify, condition, diminish, restrict, delay, terminate, or otherwise apply to Tenant's termination and/or abatement rights under this Lease (a) pursuant to **Article 11**, in connection with a fire or other casualty, or pursuant to **Article 12**, in connection with a Taking, or (b) pursuant to **Article 31**, in connection with the issuance of the Liquor License, and in no event shall Tenant be obligated to provide any Mortgagee or Lessor with notice, or obtain the consent of any Mortgagee or Lessor, in order to exercise any such termination and/or abatement rights available to Tenant under **Articles 11, 12 or 31** of this Lease.

**Section 9.4. Provisions.** The provisions of this **Article 9** shall (a) inure to the benefit of Landlord, Tenant, any future owner of the Building or the Real Property, Lessor or Mortgagee and any sublessor thereof, and (b) apply notwithstanding that, as a matter of law, this Lease may terminate upon the foreclosure of any such Superior Lease or Mortgage.

## ARTICLE 10

### SERVICES

**Section 10.1. Electricity.** The Premises is provided with access to an aggregate of sixty (60) watts per square foot (480 volt) electrical service for HVAC, lighting, plugs and equipment. In connection with the performance of the Initial Installations, Tenant shall arrange for the distribution of electrical service from the common electrical closets to the Premises and shall contract for electricity service directly with the electricity provider which furnishes service to the Building. Tenant shall pay all charges and fees payable to the electricity provider, on a timely basis, and in all events prior to the due date thereof. Tenant shall maintain the meters for such electricity in good working order, condition and repair. If Tenant fails to maintain such meters or to pay such fees and charges on a timely basis, then Landlord may repair or replace such meters and/or pay such fees and charges directly to the electricity provider, in which event Tenant shall reimburse Landlord, as Additional Rent (the "**Electricity Additional Rent**"), for all commercially reasonable out-of-pocket costs and expenses incurred by Landlord in connection therewith within thirty (30) days after receipt of a bill therefor.

**Section 10.2. Excess Electricity.** Tenant shall at all times comply with the rules and regulations of the utility company supplying electricity to the Building. Tenant shall not install any electrical equipment which, in Landlord's reasonable judgment, would exceed the capacity of the electrical equipment currently serving the Premises. If Landlord determines that Tenant's electrical requirements exceed such capacity and as a result necessitate installation of any additional risers, feeders or other electrical distribution equipment (collectively, "**Additional Electrical Equipment**"), or if Tenant provides Landlord with evidence reasonably satisfactory to Landlord of Tenant's need for excess electricity and requests that Additional Electrical Equipment be installed, Landlord shall, at Tenant's expense, install such Additional Electrical Equipment, provided that Landlord, in its sole judgment, determines that (a) such installation is practicable and necessary, (b) such Additional Electrical Equipment is permissible under applicable Requirements, and (c) the installation of such Additional Electrical Equipment will not cause damage to the Building or the Premises, cause or create a hazardous condition, entail excessive or unreasonable alterations, interfere with or limit electrical usage by other tenants or occupants of the Building or exceed the limits of the switchgear or other facilities serving the Building, or require power in excess of that available from the utility company serving the Building. All costs incurred by Landlord in connection with any Additional Electrical Equipment shall be paid by Tenant within thirty (30) days after the delivery of a bill therefor. Tenant shall not make or perform, or permit the making or performance of, any Alterations to wiring installations or other electrical facilities in or serving the Premises without the prior consent of Landlord in each instance. Tenant, at Tenant's expense, shall purchase and install all lamps (including, but limited to, incandescent and fluorescent lamps), starters and ballasts used in the Premises.

**Section 10.3. Loading and Deliveries.** All deliveries to the Premises shall be delivered using the Building loading dock, at such times as are approved by Landlord and in accordance with the rules and regulations of general applicability to tenants of the Retail Unit adopted by Landlord with respect thereto.

**Section 10.4. Heating, Ventilation and Air Conditioning.** Without limitation, all HVAC work performed by Tenant in connection with the Initial Installations shall be considered to be an Alteration for all purposes under this Lease and Tenant shall comply with all terms and conditions of this Lease in connection therewith, including **Article 5**. Landlord will, upon request of Tenant and subject to availability, provide condenser water for such HVAC equipment. Tenant shall pay to Landlord the then-applicable condenser water charge or chilled water charge (as applicable) and the then-applicable tap-in fee, as such fees and charges may be adjusted from time to time.

**Section 10.5. Grease Traps.** In connection with the performance of the Initial Installations, Tenant will install a grease trap/interceptor system and condenser system (collectively, a "**Grease Trap/Interceptor System**"). Said Grease Trap/Interceptor System shall be considered to be an Alteration, and the installation thereof shall be performed in accordance with the provisions of **Article 5**. After the installation thereof by Tenant, Tenant will maintain, repair and clean the Grease Trap/Interceptor System, and Tenant shall comply with all rules and regulations established from time-to-time by Landlord for the use and operation of the Grease Trap/Interceptor System. Without limiting the foregoing, if Tenant fails to perform the foregoing obligations with respect to maintaining, repairing and cleaning the Grease Trap/Interceptor System, then Landlord may elect, to cause a contractor or contractors employed by Landlord to perform the same at Tenant's sole cost and expense, such payment to be Additional Rent payable by Tenant within thirty (30) days after delivery of a bill therefor by Landlord.

**Section 10.6. Cleaning; Refuse and Rubbish Removal.** Tenant, at Tenant's sole cost and expense, shall (i) cause the Premises to be cleaned, in a manner satisfactory to Landlord, (ii) cause the Premises to be exterminated with such frequency and in such manner as to prevent the existence of vermin or other infestation, (iii) cause all portions of the Premises to be cleaned daily in a manner satisfactory to Landlord, and (iv) cause Tenant's garbage and other refuse to be removed from the Premises, at such times and from such place as Landlord shall designate, and until removed, shall be kept in a neat and orderly condition, properly bagged or in the case of packing boxes and cartons, securely tied, in such place designated by Landlord. Tenant shall pay to Landlord, as Additional Rent, (i) rent ("Trash Room Rent") for use of the trash room, in equal monthly installments on the first day of each month during the Term, and (ii) forty-one percent (41%) of all costs and expenses of cleaning the trash room and of removing and disposing of all such trash, compost, garbage, and recycling, within thirty (30) days after delivery of Landlord's invoices therefor. The Trash Room Rent payable by Tenant for the first Lease Year will be payable at the rate of \$3,720.00 per annum, and the Trash Room Rent payable for each subsequent Lease Year will not exceed one hundred two percent (102%) of the Trash Room Rent payable for the immediately preceding Lease Year. In no event will Tenant's trash, garbage, compost, or recycling materials generate vapors or odors or create a nuisance or otherwise disturb other occupants or tenants of the Building. Tenant shall transport its garbage within the Building at such time and in such manner as Landlord may prescribe. Tenant shall cause its employees, agents, contractors and business visitors to observe such additional rules and regulations regarding rubbish removal and/or recycling as Landlord may, from time to time, impose. Tenant will clean the windows of the Premises on a monthly basis and will provide Landlord with reasonably satisfactory evidence thereof, including copies of invoices for such window cleaning services. Without limiting the foregoing, if Tenant fails to perform the foregoing obligations, then Landlord may elect, to cause a contractor or contractors employed by Landlord to perform the same at Tenant's sole cost and expense, such payment to be Additional Rent payable by Tenant within thirty (30) days after delivery of a bill therefor by Landlord. In addition, Tenant shall have access to and use of the trash compacter located in the Common Areas of the Building.

**Section 10.7. Water.** In connection with the performance of the Initial Installations Tenant will perform all plumbing work required to be performed in and to the Premises. In connection with the performance of the Base Building Work, Landlord will install a separate meter in the Premises to measure Tenant's consumption of water. Tenant shall reimburse Landlord, as Additional Rent, for all water consumed in the Premises based on the amounts shown on said meter within thirty (30) days after receipt of bills therefor. Tenant shall pay the cost of heating water and of redistributing water within the Premises and/or additional water capacity, and for all maintenance, repairs and replacements of all installations, improvements, and equipment relating thereto.

**Section 10.8. Natural Gas.** Landlord has installed a separate meter in the Premises to measure Tenant's consumption of natural gas. Tenant shall contract directly with the public utility company furnishing natural gas to the Building. Tenant shall pay all amounts payable to the utility company, on a timely basis, and in all events prior to the due date thereof. Tenant shall maintain the meter in good working order and repair. If Tenant fails to maintain such meter or to pay such charges on a timely basis, then Landlord may repair or replace such meter and/or pay such charges directly to the utility company and Tenant shall reimburse Landlord as Additional Rent for all amounts expended by Landlord in connection therewith within thirty (30) days after receipt of a bill therefor.

**Section 10.9. Security Services.** Tenant may elect to install an access controlled security system in the Premises; provided, however, any such security system shall be compatible with the Building access control system and shall be subject to the prior approval of Landlord in all respects. Tenant may also elect to install theft protection security systems in the Premises, subject to the prior approval of Landlord in all respects. The work to install any such security system shall be considered to be an Alteration for all purposes under this Lease, and shall be performed in accordance with all of the terms and conditions of this Lease, including Article 5. Notwithstanding the foregoing, in no event shall Landlord have any liability or obligation to Tenant arising from any claims for loss, injury or damage to persons or property in connection therewith, excepting only to the extent caused by the negligence or willful misconduct of Landlord. The provisions of this **Section 10.9** shall be subject to the waiver of subrogation provisions of **Section 11.2**.

**Section 10.10. Failure of Tenant to Perform Obligations.** If Tenant fails to perform any of its obligations (including the obligation to pay charges and amounts to a service provider when due and the obligations of maintenance and repair) pursuant to this **Article 10**, and such failure remains uncured for more than thirty (30) days after notice thereof by Landlord to Tenant, then Landlord may elect to perform such obligations (including the payment of any amounts due to a provider of services, or to perform maintenance or repairs), and in such event, Tenant shall reimburse Landlord, as Additional Rent, for all costs and expenses incurred by Landlord in connection therewith, together with an administrative fee of fifteen percent (15%) of such costs and expenses.

**Section 10.11. Service Interruptions.** Landlord reserves the right to suspend or interrupt any service when necessary, by reason of Unavoidable Delays, accidents or emergencies, or for Restorative Work which, in Landlord's reasonable judgment, is necessary or appropriate until such Unavoidable Delay, accident or emergency shall cease or such Restorative Work is completed, and Landlord shall not be liable for any such suspension or interruption of services, subject to the provisions of **Section 10.12**. Landlord shall use reasonable efforts to minimize interference with Tenant's use and occupancy of the Premises as a result of any such suspension or interruption of service. Except as expressly and specifically set forth in this Lease, the exercise of any such right or the occurrence of any such failure by Landlord shall not constitute an actual or constructive eviction, in whole or in part, entitle Tenant to any compensation, abatement or diminution of Rent, relieve Tenant from any of its obligations under this Lease, or impose any liability upon Landlord or Landlord's Agent by reason of inconvenience to Tenant, or interruption of Tenant's business, or otherwise. Landlord shall not be liable in any way to Tenant for any failure, defect or interruption of, or change in the supply, character and/or quantity of electric service furnished to the Premises for any reason except only to the extent caused by the gross negligence or willful misconduct of Landlord.

**Section 10.12. Rent Abatement.** Notwithstanding anything to the contrary contained in this Lease, if Tenant is unable despite its good faith commercially diligent efforts to use the Premises for the ordinary conduct of Tenant's business due solely to an interruption of an Essential Service which Landlord is required to provide hereunder, other than as a result of casualty or condemnation and/or Unavoidable Delay, and such condition continues for a period of longer than three (3) consecutive days after Tenant furnishes a notice to Landlord (the "**Abatement Notice**") identifying the condition and Essential Service which has been interrupted and stating that Tenant's inability to use the Premises is solely due to such condition, provided that (i) Tenant does not actually use or occupy the Premises during such three (3) consecutive day period, and (ii) such condition has not resulted from the negligence or misconduct of Tenant or any Tenant Party, then (A) Rent shall be abated on a per diem basis for the period

commencing on the Abatement Commencement Date (as hereinafter defined) and ending on the earlier of (x) the date Tenant reoccupies the Premises, or (y) the date on which such condition is substantially remedied; and (B) if such condition has not been substantially remedied and Tenant has not reoccupied the Premises by the date which is fifteen (15) days after the date Tenant delivers the Abatement Notice, then the Rent shall be abated on a per diem basis at the rate which is 200% of the daily per diem Rent then-payable under this Lease for the period of time commencing on the sixteenth (16<sup>th</sup>) day after the Abatement Commencement Date and ending on the earlier of (x) the date Tenant reoccupies the Premises, or (y) the date on which such condition is substantially remedied. The "**Abatement Commencement Date**" shall mean the later to occur of (x) the date on which the interruption of the Essential Service commences and Tenant ceases using or occupying the Premises, or (y) the date which is three (3) days prior to the date prior to the date on which Tenant delivers the Abatement Notice to Landlord. "**Essential Service**" shall mean the following services, but only to the extent that Tenant is entitled to receive such services pursuant to the terms of this Lease and if not provided the absence of such service shall materially and adversely affect the use of the Premises for the ordinary conduct of Tenant's business: electrical, natural gas, water and sewer service, condenser water and base building life-safety service. The foregoing rent abatement shall be the sole and exclusive remedy of Tenant on account of such interruption or lack of service and Landlord shall have no further liabilities or obligations to Tenant on account thereof.

**Section 10.13. No Other Services.** Except as otherwise expressly provided in this Article 10, Landlord shall not be required to furnish any other services to the Premises. The obligations of Landlord which are set forth in this Article 10 shall be subject to Unavoidable Delays and to the terms and conditions of this Lease, including Articles 11 and 12.

## ARTICLE 11

### INSURANCE; PROPERTY LOSS OR DAMAGE

**Section 11.1. Tenant's Insurance.** (a) Tenant, at its sole cost and expense, shall obtain and keep in full force and effect during the Term:

(i) a policy of commercial general liability insurance on an occurrence basis against claims for personal injury, bodily injury, death and/or property damage occurring in or about the Real Property, including blanket broad-form contractual liability coverage for the indemnity obligations set forth in Article 25, under which Tenant is named as the insured and Landlord and the Insured Parties are named as additional insureds. Such insurance shall provide primary coverage without contribution from any other insurance carried by or for the benefit of the Insured Parties. The minimum limits of liability applying exclusively to the Premises shall be a combined single limit with respect to each occurrence in an amount of not less than \$5,000,000.00; provided, however, Landlord may elect to require Tenant to increase such coverage from time to time to that amount of insurance which in Landlord's reasonable judgment is then being customarily required by landlords for similar office space in Comparable Buildings. The self-insured retention for such policy shall not exceed \$10,000.00;

(ii) insurance against loss or damage by fire, and such other risks and hazards as are insurable under then available standard forms of all risk property insurance policies with extended coverage, insuring (x) Tenant's Property, and (y) all Alterations and improvements installed or constructed in or to the Premises by or on behalf of Tenant from time-

to-time (including the Initial Installations), for the full insurable value thereof or replacement cost thereof, having a deductible amount, if any, not in excess of \$25,000.00;

(iii) during the performance of any Alteration, until completion thereof, builder's risk insurance on an "all risk" basis and on a completed value form including a permission to complete and occupy endorsement, for full replacement value covering the interests of Landlord and Tenant (and their respective contractors and subcontractors) in all work incorporated in the Building and all materials and equipment in or about the Premises;

(iv) workers' compensation insurance, as required by law;

(v) business interruption insurance covering not less than one (1) year of anticipated gross income; and

(vi) Such other insurance in such amounts and with such coverages as Landlord may reasonably require from time to time.

(b) All insurance required to be carried by Tenant (i) shall contain a provision that (x) no act or omission of Tenant shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained, and (y) shall be noncancelable and/or no material change in coverage shall be made thereto unless the Insured Parties receive thirty (30) days' prior notice of the same, by certified mail, return receipt requested, and (ii) shall be effected under valid and enforceable policies issued by reputable insurers permitted to do business in the Commonwealth of Massachusetts and rated in Best's Insurance Guide, or any successor thereto as having a Best's Rating of "A-" or better and a Financial Size Category of at least "X" or better or, if such ratings are not then in effect, the equivalent thereof or such other financial rating as Landlord may at any time consider appropriate.

(c) By not later than the Commencement Date, Tenant shall deliver to Landlord appropriate policies of insurance (the "Policies"), including evidence of the waivers of subrogation required to be carried pursuant to this Article 11 and that the Insured Parties are named as additional insureds. Tenant shall deliver evidence of each renewal or replacement of each of the Policies to Landlord at least ten (10) days prior to the expiration of the respective Policy. In lieu of the Policies, Tenant may deliver to Landlord a certificate from Tenant's insurance company (on the form currently designated Acord 27 (Evidence of Property Insurance) and Acord 25-S (Certificate of Liability Insurance), or the equivalent, provided that attached thereto is an endorsement to Tenant's commercial general liability policy naming the Insured Parties as additional insureds), which endorsement is at least as broad as ISO policy form "CG2011 Additional Insured – Managers or Lessors of Premises (pre-1999 edition)", which certification shall be binding on Tenant's insurance company, and which shall expressly provide that such certification (i) conveys to the Insured Parties all the rights and privileges afforded under the Policies as primary insurance, and (ii) contains an unconditional obligation of the insurance company to advise all Insured Parties in writing by certified mail, return receipt requested, at least thirty (30) days in advance of any termination of or change to the Policies that would affect the interest of any of the Insured Parties.

**Section 11.2. Waiver of Subrogation.** Landlord and Tenant shall each procure an appropriate clause in or endorsement to any property insurance covering the Real Property or any part thereof (including the Premises), and personal property, fixtures and equipment located therein, wherein the insurer waives subrogation and consents to a waiver of right of recovery. Notwithstanding any provision to the contrary contained herein, Landlord and Tenant agree not

to make any claim against, seek to recover from, or otherwise hold responsible, the other party for any loss or damage to its property or the property of others, to the extent covered by the property insurance carried by, or required to be carried by, that party under the terms of this Lease. Tenant acknowledges that Landlord shall not carry insurance on, and shall not be responsible for insuring against, (i) damage to any Alterations or improvements installed or constructed in or to the Premises from time-to-time (including the Initial Installations), (ii) Tenant's Property, and (iii) any loss suffered by Tenant due to interruption of Tenant's business.

**Section 11.3. Restoration.** If the Premises are damaged by fire or other casualty, or if the Building is damaged such that Tenant is deprived of reasonable access to the Premises, the damage shall be repaired by Landlord to substantially the condition thereof immediately prior to the damage, subject to the provisions of any Mortgage or Superior Lease; provided, however, (i) Landlord shall have no obligation to expend more than the amount of the insurance proceeds actually received by it; (ii) Landlord shall have no obligation to repair or restore (x) Tenant's Property, or (y) except as provided in **Section 11.3(b)**, any Alterations or improvements installed or constructed in or to the Premises from time-to-time (including the Initial Installations). So long as Tenant is not in default beyond applicable grace or notice provisions in the payment or performance of its obligations under this **Section 11.3**, then until the restoration of the Premises and the applicable portion of the Building, if any, required in order to afford Tenant with access to the Premises is Substantially Completed or would have been Substantially Completed but for Tenant Delay, Fixed Rent, Tenant's Tax Payment, Tenant's Operating Payment, Tenant's Insurance Payment and Trash Room Rent shall be abated in the proportion by which the area of the part of the Premises which is not usable (or accessible) and is not used by Tenant as a result of such fire or other casualty bears to the total area of the Premises. Effective as of the date which is sixty (60) days after the date on which Landlord notifies Tenant of the Substantial Completion of the restoration of the Premises such abatement shall cease and promptly thereafter, Tenant shall, at its expense, repair and restore Tenant's Property and all Alterations to the Premises, and as soon as practicable reopen for business in the Premises.

**Section 11.4. Landlord's Termination Right.** Notwithstanding anything to the contrary contained in **Section 11.3**, (a) if the Premises are materially damaged and are rendered Untenantable, or (b) if the Building shall be so damaged that, in Landlord's reasonable opinion, substantial alteration, demolition, or reconstruction of the Building shall be required (whether or not the Premises are so damaged or rendered Untenantable), or (c) the insurance proceeds received by Landlord are not sufficient to pay for the restoration of such damage, then in any such event Landlord may, not later than sixty (60) days following the date of the damage, terminate this Lease by notice to Tenant; provided, however, if the Premises are not damaged, then Landlord may not terminate this Lease pursuant to this **Section 11.4** unless Landlord similarly terminates the leases of other tenants in the Building aggregating at least fifty percent (50%) of the rentable area of the Building leased to other tenants for retail purposes immediately prior to such damage. If this Lease is so terminated, then (a) the Term shall expire upon the date such notice is given, as if such date was the expiration date of the Term of this Lease, (b) Tenant shall vacate the Premises and surrender the same to Landlord, (c) Tenant's liability for Rent shall cease as of the date of the damage, and (d) any prepaid Rent for any period after the date of the damage shall be refunded by Landlord to Tenant.

**Section 11.5. Tenant's Termination Right.** If the Premises and/or the Building (as applicable) are materially damaged and are thereby rendered Untenantable, and if Landlord elects to repair and restore the Premises, Landlord shall, within sixty (60) days following the date of the damage, cause a contractor or architect selected by Landlord to deliver a notice (the

**"Restoration Notice")** to Tenant of the date by which such contractor or architect estimates the restoration by Landlord will be Substantially Completed. If such date, as set forth in the Restoration Notice, is more than twelve (12) months from the date of such damage, then Tenant shall have the right to terminate this Lease by giving notice (the **"Casualty Termination Notice"**) to Landlord not later than thirty (30) days following delivery of the Restoration Notice to Tenant (time being of the essence of the delivery of said Casualty Termination Notice). If Tenant delivers a Casualty Termination Notice within said thirty (30) day period, (a) then this Lease shall be terminated as of the date of the giving of the Casualty Termination Notice, as if such date was the expiration date of the Term of this Lease (b) Tenant shall vacate the Premises and surrender the same to Landlord, (c) Tenant's liability for Rent shall cease as of the date of delivery of the Casualty Termination Notice, and (d) any prepaid Rent for any period after such termination shall be returned to Tenant.

**Section 11.6. Final 18 Months.** Notwithstanding anything to the contrary in this Article 11, if any fire or other casualty occurring during the final eighteen (18) months of the Term renders the Premises Untenantable, either Landlord or Tenant may terminate this Lease by notice to the other party within thirty (30) days after the occurrence of such damage (time being of the essence) and this Lease shall expire on the 30th day after the date of such notice.

**Section 11.7. Landlord's Liability.** Any employee of Landlord or its agents to whom any property shall be entrusted by or on behalf of Tenant shall be deemed to be acting as Tenant's agent with respect to such property and neither Landlord nor its agents shall be liable for any damage to such property, or for the loss of or damage to any property of Tenant by theft or otherwise. None of the Insured Parties shall be liable for any injury or damage to persons or property or interruption of Tenant's business resulting from fire or other casualty, any damage caused by other tenants or persons in the Building or by construction of any private, public or quasi-public work, or any latent defect in the Premises or in the Building (except that Landlord shall be required to repair the same to the extent provided in Article 6). No penalty shall accrue for delays which may arise by reason of adjustment of insurance on the part of Landlord or Tenant, or for any Unavoidable Delays arising from any repair or restoration of any portion of the Building, provided that Landlord shall use reasonable efforts to minimize interference with Tenant's use and occupancy of the Premises during the performance of any such repair or restoration.

## ARTICLE 12

### EMINENT DOMAIN

#### Section 12.1. Taking.

(a) **Total Taking.** If all or substantially all of the Real Property, the Building, or the Premises shall be taken by condemnation or eminent domain (a **"Taking"**), this Lease shall terminate and the Term shall end as of the date of the vesting of title and Rent shall be prorated and adjusted as of such date.

(b) **Partial Taking.** If only a part of the Real Property, the Building, or the Premises is the subject of a Taking, then, except as hereinafter provided in this Article 12, this Lease shall remain in full force and effect, provided that from and after the date of the vesting of title, Fixed Rent and Tenant's Proportionate Share shall be modified to reflect the reduction of the Premises and/or the Building as a result of such Taking.

(c) **Landlord's Termination Right.** Whether or not the Premises are affected, Landlord may terminate this Lease, by notice to Tenant, within sixty (60) days following the date upon which Landlord receives notice of any such Taking, provided that, concurrent therewith, the leases of the tenants (including Tenant) occupying in the aggregate not less than fifty percent (50%) of the rentable area of the retail space in the Building are terminated.

(d) **Tenant's Termination Right.** If the part of the Real Property so Taken contains more than twenty percent (20%) of the total area of the Premises occupied by Tenant immediately prior to such Taking, or if, by reason of such Taking, Tenant no longer has reasonable means of access to the Premises, Tenant may terminate this Lease by notice to Landlord given within thirty (30) days following the date upon which Tenant is given notice of such Taking. If Tenant so notifies Landlord, this Lease shall end and expire upon the 30th day following the giving of such notice. If a part of the Premises shall be so Taken and this Lease is not terminated in accordance with this **Section 12.1**, Landlord, without being required to spend more than the net amount it receives as an award, shall, subject to the provisions of any Mortgage or Superior Lease, restore that part of the Premises not so Taken to a self-contained rental unit substantially equivalent (with respect to character, quality, appearance and services) to that which existed immediately prior to such Taking, excluding Tenant's Property and any improvements or Alterations constructed in or to the Premises by or on behalf of Tenant from time-to-time (including the Initial Installations).

(e) **Apportionment of Rent.** Upon any termination of this Lease pursuant to the provisions of this **Article 12**, Rent shall be apportioned as of, and shall be paid or refunded up to and including, the date of such termination.

**Section 12.2. Awards.** Upon any Taking, Landlord shall receive the entire award for any such Taking, and Tenant shall have no claim against Landlord or the condemning authority for the value of any unexpired portion of the Term or Tenant's Alterations; and Tenant hereby assigns to Landlord all of its right in and to such award. Nothing contained in this **Article 12** shall be deemed to prevent Tenant from making a separate claim against the condemning authority in a separate proceeding for the then value of any Tenant's Property included in such Taking and for any moving expenses, provided any such award is in addition to, and does not result in a reduction of, the award made to Landlord.

**Section 12.3. Temporary Taking.** If a temporary Taking of all or any part of the Premises occurs during the Term (i.e., for a period of time not in excess of ninety (90) days), then Tenant shall give prompt notice to Landlord and the Term shall not be reduced or affected in any way and Tenant shall continue to pay all Rent payable by Tenant without reduction or abatement and to perform all of its other obligations under this Lease, except to the extent prevented from doing so by the condemning authority, and Tenant shall be entitled to receive any award or payment from the condemning authority for such use, which shall be received, held and applied by Tenant as a trust fund for payment of the Rent falling due. Any Taking for a period of time in excess of ninety (90) days shall be subject to the provisions of **Sections 12.1 and 12.2**.

## ARTICLE 13

### ASSIGNMENT AND SUBLetting

#### **Section 13.1. Consent Requirements.**

(a) **No Transfers Without Landlord Consent.** Except as expressly set forth in **Section 13.6**, Tenant shall not assign, mortgage, pledge, encumber, or otherwise transfer this Lease, whether by operation of law or otherwise, and shall not sublet, or permit, or suffer the Premises or any part thereof to be used or occupied by others (whether for desk space, mailing privileges or otherwise), without Landlord's express prior written consent in each instance. Any assignment, sublease, mortgage, pledge, encumbrance or transfer in contravention of the provisions of this **Article 13** shall be void and shall constitute an Event of Default.

(b) **Collection of Rent.** If, without Landlord's consent, this Lease is assigned or transferred, or any part of the Premises is sublet or occupied by anyone other than Tenant, or this Lease is encumbered (by operation of law or otherwise), then Landlord may collect rent from the assignee, subtenant or occupant, and apply the net amount collected to the Rent herein reserved. No such collection shall be deemed a waiver of the provisions of this **Article 13**, an acceptance of the assignee, subtenant or occupant as tenant, or a release of Tenant from the performance of Tenant's covenants hereunder, and in all cases Tenant shall remain fully liable for its obligations under this Lease.

(c) **Further Assignment/Subletting.** Landlord's consent to any assignment or subletting shall not relieve Tenant from the obligation to obtain Landlord's consent to any further assignment or subletting. In no event shall any permitted subtenant assign or encumber its sublease or further sublet any portion of its sublet space, or otherwise suffer or permit any portion of the sublet space to be used or occupied by others, without the express prior written consent of Landlord in each instance.

#### **Section 13.2. [Intentionally Deleted].**

**Section 13.3. Consent to Assignment/Subletting.** (a) Landlord shall respond to a request for consent to a proposed sublease or assignment (a "**Tenant's Assignment/Sublease Consent Notice**") not more than thirty (30) days after delivery to Landlord of the following: (i) a copy of the proposed assignment agreement or sublease agreement (as applicable), (ii) a complete statement reasonably detailing the identity of the proposed assignee or subtenant (a "**Transferee**"), the nature of its business and its proposed use of the Premises, (iii) current financial information with respect to the Transferee, including its most recent financial statements, and (iv) such other information Landlord as may reasonably request. Provided that no Event of Default then exists, Landlord's consent to the proposed assignment or subletting shall not be unreasonably withheld if the following conditions are satisfied:

(A) in Landlord's reasonable judgment, the proposed Transferee is engaged in a business or activity, and the Premises will be used in a manner, which (1) is in keeping with the then standards of the Building, (2) is for the Permitted Uses, and (3) does not violate any restrictions set forth in this Lease, any Mortgage or Superior Lease or any negative covenant as to use of the Premises required by any other lease in the Building;

(B) the Transferee is reputable with sufficient financial means to perform all of its obligations under this Lease or the sublease, as the case may be;

(C) the Transferee is not a person or entity (or affiliate of a person or entity) with whom Landlord is then or has been within the prior six (6) months negotiating in connection with the rental of space in the Building;

(D) there shall be not more than one (1) subtenant in the Premises;

(E) the Transferee shall not be entitled, directly or indirectly, to diplomatic or sovereign immunity, regardless of whether the Transferee agrees to waive such diplomatic or sovereign immunity, and shall be subject to the service of process in, and the jurisdiction of the courts of, the Commonwealth of Massachusetts; and

(F) the Transferee is not a Prohibited Person.

(b) With respect to each sublease or assignment proposed by Tenant:

(i) the form of the proposed assignment or sublease shall be reasonably satisfactory to Landlord;

(ii) no sublease shall be for a term ending later than one day prior to the Expiration Date;

(iii) no Transferee shall take possession of any part of the Premises, until an executed counterpart of such sublease or assignment has been delivered to Landlord and (except as set forth in **Section 13.6**) approved by Landlord as provided in this **Section 13.3**;

(iv) if an Event of Default occurs and remains uncured as of the effective date of such assignment or subletting, then Landlord's consent thereto, if previously granted, shall be immediately deemed revoked without further notice to Tenant, and if such assignment or subletting would have been permitted without Landlord's consent pursuant to **Section 13.6**, such permission shall be void and without force and effect;

(v) each sublease shall be subject and subordinate to this Lease and to the matters to which this Lease is or shall be subordinate. Tenant and each Transferee shall be deemed to have agreed that upon the occurrence and during the continuation of an Event of Default hereunder, Tenant has hereby assigned to Landlord, and Landlord may, at its option, accept such assignment of, all right, title and interest of Tenant as sublandlord under such sublease. If this Lease terminates prior to the Expiration Date, then such sublease shall terminate and expire concurrent therewith; provided, however, if Landlord elects, in its sole and unfettered discretion, by express written notice to such Transferee, to recognize said sublease, then notwithstanding the termination of this Lease, the sublease shall remain in effect as a direct lease between Landlord and the Transferee, and such Transferee shall attorn to Landlord pursuant to the then executory provisions of such sublease, except that Landlord shall not be (A) liable for any previous act or omission of Tenant under such sublease, (B) subject to any counterclaim, offset, or defense which theretofore accrued to such Transferee against Tenant, (C) bound by any previous modification of such sublease not consented to by Landlord or by any prepayment of more than one month's rent, (D) bound to return such Transferee's security deposit, if any, except to the extent Landlord shall receive actual possession of such deposit

and such Transferee shall be entitled to the return of all or any portion of such deposit under the terms of its sublease, or (E) obligated to make any payment to or on behalf of such Transferee, or to perform any alterations or improvements in the sublet space or the Building, or in any way to prepare the subleased space for occupancy, beyond Landlord's obligations under this Lease. The provisions of this **Section 13.3(b)(v)** shall be self-operative, and no further instrument shall be required to give effect to this provision, provided that the Transferee shall execute and deliver to Landlord any instruments Landlord may reasonably request to evidence and confirm such subordination and attornment; and

(vi) Tenant shall, upon demand, reimburse Landlord for all reasonable out-of-pocket expenses incurred by Landlord in connection with each proposed assignment or sublease, including any investigations as to the acceptability of the proposed assignee or subtenant, reviewing any plans and specifications for Alterations proposed to be made in connection therewith, the negotiation of any consent documents for such sublease or assignment, and all legal fees and costs incurred by Landlord in connection therewith; provided, however, with respect to each proposed assignment or sublease Tenant shall not be obligated to reimburse Landlord for more than \$5,000.00 on account of such costs and expenses, unless such assignment or sublease does not occur in the ordinary course of business (e.g. is in connection with a bankruptcy or reorganization of Tenant) or involves an amendment to this Lease or other additional documentation (other than a customary Landlord's consent to assignment or sublease agreement), or if Landlord provides unusual or extraordinary services in connection therewith.

#### **Section 13.4. [Intentionally Deleted].**

**Section 13.5. Profits.** If Tenant enters into any sublease permitted hereunder or consented to by Landlord (excepting only subleases pursuant to **Section 13.6**), Tenant shall, within sixty (60) days of Landlord's consent to such sublease, deliver to Landlord a list of the reasonable and customary out-of-pocket costs and expenses incurred by Tenant in connection with said sublease, including third-party brokerage fees, legal fees, architectural fees, fees paid to Landlord in connection with reviewing the proposed sublease, and alteration costs and allowances paid or to be paid in connection with such sublease, and any actual costs incurred by Tenant in separately demising the sublet space (collectively, "**Transaction Costs**"), together with a list of all of Tenant's Property to be transferred to such Transferee. The Transaction Costs shall be amortized, on a straight-line basis, over the term of any sublease. Tenant shall deliver to Landlord evidence of the payment of such Transaction Costs promptly after the same are paid. In consideration of such subletting, Tenant shall pay to Landlord fifty percent (50%) of any consideration payable under the sublease to Tenant by the Transferee which exceeds on a per square foot basis the Fixed Rent and Additional Rent accruing during the term of the sublease in respect of the sublet space (together with any sums paid for the sale or rental of Tenant's Property, less the then fair market or rental value thereof), after first deducting the monthly amortized amount of Transaction Costs. The sums payable under this clause shall be paid by Tenant to Landlord monthly as and when paid by the subtenant to Tenant.

#### **Section 13.6. Transfers.**

(a) **Transfers of Ownership Interests.** If Tenant is a legal entity, the transfer (by one or more transfers), directly or indirectly, by operation of law or otherwise, of a majority of the membership interests, or the stock or other beneficial ownership interests in Tenant, or of all or substantially all of the assets of Tenant (collectively "**Ownership Interests**") shall be deemed a voluntary assignment of this Lease; provided, however, the provisions of this

**Article 13** shall not apply to (i) the transfer of Ownership Interests in Tenant if and so long as Tenant is publicly traded on a nationally recognized stock exchange, or (ii) the transfer of Ownership Interests among the members of Tenant existing as of the date when Tenant first opens its restaurant in the Premises for business to the public. For purposes of this **Article 13**, the term “**transfers**” shall be deemed to include (x) the issuance of new Ownership Interests which results in a majority of the Ownership Interests in Tenant being held by a person or entity which does not hold a majority of the Ownership Interests in Tenant on the Effective Date and (y) except as provided below, the sale or transfer of all or substantially all of the assets of Tenant in one or more transactions and the merger or consolidation of Tenant into or with another business entity.

Notwithstanding the foregoing, the prior consent of Landlord shall not be required with respect to, and the provisions of **Sections 13.3 and 13.5** shall not apply to, an assignment of this Lease and the Liquor License or a sublease of the Premises, in either case to a business entity which is not an Affiliate of Tenant and into or with which Tenant is merged or consolidated, or to which all or substantially all of Tenant's assets are transferred, so long as (i) such merger, consolidation, or transfer was made for a legitimate independent business purpose and not for the principal and primary purpose of transferring this Lease and relieving Tenant of liability under this Lease (and no other purpose), (ii) the successor to Tenant has either a credit rating or a Net Worth computed in accordance with generally accepted accounting principles at least equal to the credit rating or Net Worth (as applicable) of Tenant immediately prior to such merger, consolidation or transfer, and (iii) proof satisfactory to Landlord of such credit rating or Net Worth (as applicable) is delivered to Landlord at least ten (10) days prior to the effective date of any such transaction. Notwithstanding the foregoing, Tenant shall have no right to assign this Lease or sublease all or any portion of the Premises without Landlord's consent pursuant to this **Section 13.6** if Tenant is not the initial Tenant herein named or a person or entity who acquired Tenant's interest in this Lease in a transaction approved by Landlord.

(b) **Applicability.** The limitations set forth in this **Section 13.6** shall apply to Transferee(s) and guarantor(s) of this Lease, if any, and any transfer by any such entity in violation of this **Section 13.6** shall be a transfer in violation of **Section 13.1**.

(c) **Modifications, Takeover Agreements.** Any modification, amendment or extension of a sublease and/or any other agreement by which a landlord of a building other than the Building or its affiliate agrees to assume the obligations of Tenant under this Lease shall be deemed a sublease for the purposes of **Section 13.1** hereof.

**Section 13.7. Binding on Tenant; Indemnification of Landlord.** Notwithstanding any assignment or subletting or any acceptance of rent by Landlord from any Transferee, Tenant shall remain fully liable for the payment of all Rent due and for the performance of all the covenants, terms and conditions contained in this Lease on Tenant's part to be observed and performed, and any default under any term, covenant or condition of this Lease by any Transferee or anyone claiming under or through any Transferee shall be deemed to be a default under this Lease by Tenant; provided, however, (x) if after the effective date of such assignment or sublease a Transferee (or anyone claiming under or through any Transferee) and Landlord enter into an amendment to this Lease increasing the Rent payable under this Lease, then Tenant shall not be liable or responsible for such increase in the Rent, and (y) if after the effective date of such assignment or sublease a Transferee (or anyone claiming under or through any Transferee) and Landlord enter into an amendment to this Lease extending or renewing the Term of this Lease, then Tenant shall not be liable or responsible for the Rent due,

or the performance of the obligations, terms and conditions contained in this Lease, during such extension or renewal. Tenant shall indemnify, defend, protect and hold harmless Landlord from and against any and all Losses resulting from any claims that may be made against Landlord by the Transferee or anyone claiming under or through any Transferee or by any brokers or other persons or entities claiming a commission or similar compensation in connection with the proposed assignment or sublease, irrespective of whether Landlord shall give or decline to give its consent to any proposed assignment or sublease, or if Landlord shall exercise any of its options under this Article 13.

**Section 13.8. Assumption of Obligations.** No assignment or transfer shall be effective unless and until the Transferee executes, acknowledges and delivers to Landlord an agreement in form and substance reasonably satisfactory to Landlord whereby the assignee (a) assumes Tenant's obligations under this Lease and (b) agrees that, notwithstanding such assignment or transfer, the provisions of **Section 13.1** hereof shall be binding upon it in respect of all future assignments and transfers.

**Section 13.9. Tenant's Liability.** The joint and several liability of Tenant and any successors-in-interest of Tenant and the due performance of Tenant's obligations under this Lease shall not be discharged, released or impaired by any agreement or stipulation made by Landlord, or any grantee or assignee of Landlord, extending the time, or modifying any of the terms and provisions of this Lease, or by any waiver or failure of Landlord, or any grantee or assignee of Landlord, to enforce any of the terms and provisions of this Lease.

**Section 13.10. Listings in Building Directory.** The listing of any name other than that of Tenant on the doors of the Premises, the Building directory or elsewhere shall not vest any right or interest in this Lease or in the Premises, nor be deemed to constitute Landlord's consent to any assignment or transfer of this Lease or to any sublease of the Premises or to the use or occupancy thereof by others. Any such listing shall constitute a privilege revocable in Landlord's discretion by notice to Tenant.

**Section 13.11. Lease Disaffirmance or Rejection.** If at any time this Lease is assigned and thereafter this Lease is not affirmed or is rejected in any bankruptcy proceeding or any similar proceeding, or upon a termination of this Lease in connection with any such proceeding, Tenant named herein, upon request of Landlord shall (a) pay to Landlord all Rent and other charges due and owing by the assignee to Landlord under this Lease to and including the date of such disaffirmance, rejection or termination, and (b) as "tenant," enter into a new lease of the Premises with Landlord for a term commencing on the effective date of such disaffirmance, rejection or termination and ending on the Expiration Date, at the same Rent and upon the then executory terms, covenants and conditions contained in this Lease; provided, however, if after the effective date of such assignment or sublease a Transferee (or anyone claiming under or through any Transferee) agree to increase the Rent payable under this Lease, then Tenant shall not be liable or responsible for such increase in the Rent, and if after the effective date of such assignment or sublease a Transferee (or anyone claiming under or through any Transferee) and Landlord enter into an extension or renewal of the Term of this Lease, then Tenant shall not be liable or responsible for the Rent due, or the performance of the obligations, terms and conditions contained in this Lease, during such extension or renewal, except that (i) the rights of Tenant named herein under the new lease shall be subject to the possessory rights of the assignee under this Lease and the possessory rights of any persons or entities claiming through or under such assignee or by virtue of any statute or of any order of any court, (ii) such new lease shall require all defaults existing under this Lease to be cured by Tenant named herein with due diligence, and (iii) such new lease shall require Tenant named

herein to pay all Rent which, had this Lease not been so disaffirmed, rejected or terminated, would have become due under the provisions of this Lease after the date of such disaffirmance, rejection or termination with respect to any period prior thereto. If Tenant named herein defaults in its obligations to enter into such new lease for a period of thirty (30) days after Landlord's request, then, in addition to all other rights and remedies by reason of default, either at law or in equity, Landlord shall have the same rights and remedies against Tenant named herein as if it had entered into such new lease and such new lease had thereafter been terminated as of the commencement date thereof by reason of Tenant's default thereunder.

## ARTICLE 14

### ACCESS TO PREMISES

**Section 14.1. Landlord's Access.** (a) Landlord, Landlord's Agent, the Condominium Association, and utility service providers servicing the Building may erect, use and maintain concealed ducts, pipes, and conduits in and through the Premises; provided (i) such ducts, pipes and conduits shall be installed above the dropped ceilings, below the floors, and/or in the walls of the Premises, and (ii) such use does not cause the usable area of the Premises to be reduced beyond a de minimis amount. Landlord shall promptly repair any damage to the Premises caused by any work performed pursuant to this Article 14.

(b) Landlord, any Lessor or Mortgagee, the Condominium Association, and any other party designated by Landlord and their respective agents shall have the right to enter the Premises at all reasonable times, upon reasonable prior notice (which notice may be oral) except in the case of emergency, to examine the Premises, to show the Premises to prospective purchasers, Mortgagees and/or Lessors, and their respective agents and representatives or others, and to perform Restorative Work to the Premises or the Building. In connection with any such access to the Premises, Landlord will (i) except for routine access such as access for providing cleaning services, or repair or maintenance services, or other usual and customary services, and except in the case of emergency, provide reasonable advance notice of such entry into the Premises, and (ii) exercise commercially reasonable efforts to minimize disruption to the usual and customary business operations of Tenant in the Premises. In addition, during the twelve (12) month period immediately preceding the Expiration Date, Landlord may from time-to-time show the Premises to prospective tenants.

(c) All parts (except surfaces facing the interior of the Premises) of all walls, windows and exterior doors bounding the Premises, all balconies, terraces and roofs adjacent to the Premises, all space in or adjacent to the Premises used for shafts, stacks, stairways, mail chutes, conduits and other mechanical facilities, Building Systems, Common Facilities and Common Areas are not part of the Premises, and Landlord and the Condominium shall have the use thereof and, subject to the conditions set forth in Sections 6.3 and 14.1(b), access thereto through the Premises, for the purposes of operation, maintenance, alteration and repair of the Building.

**Section 14.2. Building Name.** Landlord has the right at any time and from time to time to change the name(s), number(s) or designation(s) by which the Building is (or are) commonly known.

**Section 14.3. Light and Air.** If at any time any windows of the Premises are temporarily darkened or covered over by reason of any Restorative Work, any of such windows

are permanently darkened or covered over due to any Requirement or there is otherwise a diminution of light, air or view by another structure which may hereafter be erected (whether or not by Landlord), Landlord shall not be liable for any damages and Tenant shall not be entitled to any compensation or abatement of any Rent, nor shall the same release Tenant from its obligations hereunder or constitute an actual or constructive eviction.

## ARTICLE 15

### DEFAULT

**Section 15.1. Tenant's Defaults.** Each of the following events shall be an "**Event of Default**" hereunder:

- (a) Tenant fails to pay when due any payment of Rent within five (5) days following delivery to Tenant of written notice that such payment was not received when due; provided however, that Landlord shall not be obligated to deliver such written notice more than twice in any twelve-month period and upon the third such occurrence in any twelve (12) month period Tenant shall be in default if it fails to pay when due any payment of Rent; or
- (b) Tenant fails to observe or perform any other term, covenant or condition of this Lease and such failure continues for more than thirty (30) days after written notice by Landlord to Tenant of such default, or if such default is of a nature that it cannot be completely remedied within thirty (30) days, failure by Tenant to commence to remedy such failure within said thirty (30) days, and thereafter diligently prosecute to completion all steps necessary to remedy such default, provided in all events the same is completed within ninety (90) days; or
- (c) if Landlord applies or retains any part of the security held by it hereunder, and Tenant fails to deposit with Landlord the amount so applied or retained by Landlord, or to provide Landlord with a replacement Letter of Credit (as hereinafter defined), if applicable, within ten (10) days after notice by Landlord to Tenant stating the amount applied or retained;
- (d) Tenant files a voluntary petition in bankruptcy or insolvency, or is adjudicated a bankrupt or insolvent, or files any petition or answer seeking any reorganization, liquidation, dissolution or similar relief, or makes an assignment for the benefit of creditors or seeks or consents to or acquiesces in the appointment of any trustee, receiver, liquidator or other similar official for Tenant or for all or any part of Tenant's property;
- (e) a court of competent jurisdiction shall enter an order, judgment or decree appointing a trustee, receiver or liquidator of Tenant, or of the whole or any substantial part of its property, or approving a petition filed against Tenant seeking reorganization or arrangement of Tenant under the bankruptcy laws of the United States, as now in effect or hereafter amended, or any state thereof; and such order, judgment or decree shall not be vacated or set aside or stayed within ninety (90) days from the date of entry thereof;
- (f) if the Premises or a substantial portion thereof shall become vacated, deserted or abandoned (and the fact that any of Tenant's Property remains in the Premises shall not be evidence that Tenant has not vacated, deserted or abandoned the Premises), subject to the provisions of **Section 29.2(e)** and **Article 32**; or

(g) failure of the Tenant, after the Tenant has initially opened for business to the public in the Premises, to be open for business to the public for more than three (3) days when required by this Lease to be so open in any one Lease Year, or if the Tenant shall otherwise abandon or vacate the Premises, subject to the provisions of **Section 29.2(e)** and **Article 32**. Without limitation, the failure of the Tenant to have completed its Initial Installations and equipping of the Premises and to have opened for business on the Rent Commencement Date or the closing of the Premises for business after the Tenant has initially opened for business therein, if such failure or closing continues for more than ninety (90) consecutive days on which the Tenant is required pursuant to applicable provisions of this Lease to keep the Premises open for business, shall be considered for the purposes hereof to be an abandonment of the Premises by the Tenant.

Upon the occurrence of any one or more of such Events of Default, Landlord may, to the extent permitted by law, in addition to all other remedies available at law or in equity, at its sole option, (i) immediately, or at any time after such Event of Default, without notice, re-enter the Premises or any part thereof, in the name of the whole and repossess the same as of Landlord's former estate, and dispossess Tenant and any other persons or entities from the Premises and remove any and all of their property and effects from the Premises, without being deemed guilty of any manner of trespass and without prejudice to any other rights or remedies, and/or (ii) give to Tenant three (3) days' notice of cancellation of this Lease, in which event this Lease and the Term shall terminate (whether or not the Term shall have commenced) with the same force and effect as if the date set forth in the notice was the Expiration Date stated herein, and Tenant shall then quit and surrender the Premises to Landlord, but Tenant shall remain liable for damages as provided in this **Article 15**. Any notice of cancellation of the Term may be given simultaneously with any notice of default given to Tenant.

### **Section 15.2. Landlord's Remedies.**

(a) **Possession/Reletting.** If any Event of Default occurs and Landlord reenters the Premises or terminates this Lease as aforesaid.

(i) **Surrender of Possession.** Tenant shall quit and surrender the Premises to Landlord.

(ii) **Disposition of Tenant's Property.** In the event of any such termination, entry or re-entry, Landlord shall have the rights to remove and store Tenant's property then-remaining in the Premises and that of persons claiming by, through or under Tenant, at the sole risk and expense of Tenant and, if Landlord so elects, (x) to sell such property at public auction or private sale and apply the net proceeds to the payment of all sums due to Landlord from Tenant and pay the balance, if any, to Tenant, or (y) to dispose of such property in any manner in which Landlord shall elect, Tenant hereby agreeing to the fullest extent permitted by law that it shall have no right, title or interest in any property remaining in the Premises after such termination, entry or re-entry.

(iii) **Landlord's Reletting.** Landlord, at Landlord's option, may relet all or any part of the Premises from time to time, either in the name of Landlord or otherwise, to such tenant or tenants, for any term ending before, on or after the Expiration Date, at such rental and upon such other conditions (which may include concessions and free rent periods) as Landlord, in its sole good faith discretion, may reasonably determine. Landlord shall have no obligation to and shall not be liable for refusal or failure to relet the Premises or any part thereof, or, in the event of any such reletting, for failure to collect any rent due upon any such reletting

and Tenant hereby waives, to the extent permitted by applicable Requirements, any obligation Landlord may have to mitigate Tenant's damages; and no such failure shall relieve Tenant of, or otherwise affect, any liability under this Lease. Notwithstanding the foregoing, Landlord will use reasonable efforts to relet the Premises after Tenant vacates the Premises; however, the marketing of the Premises in a manner similar to the manner in which Landlord markets other premises within Landlord's control in the Building shall be deemed to have satisfied Landlord's obligation to use "reasonable efforts." In no event shall Landlord be required to (i) solicit or entertain negotiations with any other prospective tenants for the Premises unless and until Landlord obtains full and complete possession of the Premises, including the final and unappealable legal right to relet the Premises free of any claim of Tenant, (ii) lease the Premises to a tenant whose proposed use, in Landlord's reasonable judgment, will be unacceptable, (iii) relet the Premises prior to leasing any other vacant space in the Building, suitable for the use of the prospective tenant, (iv) lease the Premises for a rental rate less than the current fair market rent then prevailing for similar space in the Building, or (v) enter into a lease with any proposed tenant that does not have, in Landlord's reasonable opinion, sufficient financial wherewithal and resources to satisfy its financial obligations under the prospective lease. Landlord shall be entitled to take into account in connection with any such reletting of the Premises all relevant factors which would be taken into account by a sophisticated landlord in securing a replacement tenant for the Premises including the first class quality of the Building, matters of tenant mix, and the financial responsibility of any such replacement tenant. Landlord, at Landlord's option, may make such alterations, decorations and other physical changes in and to the Premises as Landlord, in its sole discretion, considers advisable or necessary in connection with such reletting or proposed reletting. No action or inaction by Landlord in connection with such reletting shall relieve Tenant of any liability under this Lease or otherwise affecting any such liability.

(iv) **Remedies Not Exclusive.** The specified remedies to which Landlord may resort hereunder are not intended to be exclusive of any remedies or means of redress to which Landlord may, at any time, be entitled lawfully and Landlord may invoke any remedy (including the remedy of specific performance) allowed at law or in equity as if specific remedies were not herein provided for.

(v) **Summary Process.** Upon any Event of Default of Tenant, or the expiration or termination of this Lease, Landlord shall have the right of summary process under M.G.L.A. Chapter 239, and/or other applicable statutes, and such other rights to recover possession as permitted by applicable Requirements.

(b) **Tenant's Waiver.** To the maximum extent permitted by law, Tenant, on its own behalf and on behalf of all persons or entities claiming through or under Tenant, including all creditors, hereby waives all rights which Tenant and all such persons or entities might otherwise have under any Requirement (including M.G.L. Chapter 186, Section 11) following the occurrence of any Event of Default: (i) to the service of any notice of intention to re-enter or to institute legal proceedings, (ii) to redeem, or to re-enter or reposess the Premises, or (iii) to restore the operation of this Lease, after (A) Tenant shall have been dispossessed by judgment or by warrant of any court or judge, (B) any re-entry by Landlord, or (C) any expiration or early termination of the term of this Lease, whether such dispossess, re-entry, expiration or termination shall be by operation of law or pursuant to the provisions of this Lease. The words "re-enter," "re-entry" and "re-entered" as used in this Lease shall not be deemed to be restricted to their technical legal meanings.

(c) **Tenant's Breach.** Upon the breach by Tenant, or any persons or entities claiming through or under Tenant, of any term, covenant or condition of this Lease, Landlord shall have the right to enjoin such breach and to invoke any other remedy allowed at law or in equity as if re-entry, summary process proceedings and other special remedies were not provided in this Lease for such breach. The rights to invoke the remedies set forth above are cumulative and shall not preclude Landlord from invoking any other remedy allowed at law or in equity.

### **Section 15.3. Landlord's Damages.**

(a) **Amount of Damages.** If this Lease and the Term, or Tenant's right to possession of the Premises shall terminate, or Landlord shall re-enter the Premises, as provided in **Section 15.1**, then, in any of such events:

(i) Tenant shall pay to Landlord all items of Rent accrued and payable under this Lease by Tenant to Landlord that are outstanding as of the date of termination or repossession;

(ii) Landlord may retain all monies, if any, paid by Tenant to Landlord, whether as prepaid Rent, a security deposit or otherwise, which monies, to the extent not otherwise applied to amounts due and owing to Landlord, shall be credited by Landlord against any damages payable by Tenant to Landlord;

(iii) Tenant shall pay to Landlord, in monthly installments, on the days specified in this Lease for payment of installments of Fixed Rent, any Deficiency; it being understood that Landlord shall be entitled to recover the Deficiency from Tenant each month as the same shall arise, and no suit to collect the amount of the Deficiency for any month, shall prejudice Landlord's right to collect the Deficiency for any subsequent month by a similar proceeding; and

(iv) whether or not Landlord shall have collected any monthly Deficiency, Tenant shall pay to Landlord, on demand, at the election of Landlord, in lieu of any further Deficiency and as liquidated and agreed final damages, a sum equal to the amount by which the Rent for the period which otherwise would have constituted the unexpired portion of the Term (assuming that each of the Percentage Rent, Tenant's Tax Payment, Tenant's Operating Payment and Tenant's Insurance Payment during such period to be the same as was payable for the year immediately preceding such termination or re-entry, increased in each succeeding year by 4% (on a compounded basis)) exceeds the then fair and reasonable rental value of the Premises, for the same period (with both amounts being discounted to present value at a rate of interest equal to 2% below the then Base Rate) less the aggregate amount of Deficiencies theretofore collected by Landlord pursuant to the provisions of **Section 15.3(a)(iii)** for the same period. If, before presentation of proof of such liquidated damages to any court, commission or tribunal, the Premises, or any part thereof, shall have been relet by Landlord for the period which otherwise would have constituted the unexpired portion of the Term, or any part thereof, the amount of rent reserved upon such reletting shall be deemed *prima facie*, to be the fair and reasonable rental value for the part or the whole of the Premises so relet during the term of the reletting.

(b) **Reletting.** If the Premises, or any part thereof, shall be relet together with other space in the Building, the rents collected or reserved under any such reletting and the expenses of any such reletting shall be equitably apportioned for the purposes of this

**Section 15.3.** Tenant shall not be entitled to any rents collected or payable under any reletting, whether or not such rents exceed the Fixed Rent reserved in this Lease. Nothing contained in Article 15 shall be deemed to limit or preclude the recovery by Landlord from Tenant of the maximum amount allowed to be obtained as damages by any Requirement, or of any sums or damages to which Landlord may be entitled in addition to the damages set forth in this Section 15.3.

**Section 15.4. Interest and Late Charges.** If any payment of Rent is not paid when due, interest shall accrue on such payment, from the date such payment became due until paid at the Interest Rate. Tenant acknowledges that late payment by Tenant of Rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs include, without limitation, processing and accounting charges, and late charges that may be imposed on Landlord by the terms of any note secured by a Mortgage covering the Real Property (or any part thereof). Therefore, in addition to interest, if any payment of Rent is not paid within five (5) days after delivery of notice by Landlord to Tenant that such amount is due, a late charge equal to five percent (5%) of such amount shall be assessed. Such interest and late charges shall constitute Additional Rent payable by Tenant, and are separate and cumulative and are in addition to and shall not diminish or represent a substitute for any of Landlord's rights or remedies under any other provision of this Lease or otherwise available at law or in equity.

**Section 15.5. Other Rights of Landlord.** If Tenant fails to pay any Additional Rent when due, Landlord, in addition to any other right or remedy, shall have the same rights and remedies as in the case of a default by Tenant in the payment of Fixed Rent. If Tenant is in arrears in the payment of Rent, Tenant waives Tenant's right, if any, to designate the items against which any payments made by Tenant are to be credited, and Landlord may apply any payments made by Tenant to any items Landlord sees fit, regardless of any request by Tenant. To the extent permitted by applicable Requirements, Landlord reserves the right, without liability to Tenant and without constituting any claim of constructive eviction, to suspend furnishing or rendering to Tenant any property, material, labor, utility or other service, whenever Landlord is obligated to furnish or render the same at the expense of Tenant, in the event that (but only for so long as) Tenant is in arrears in paying Landlord for such items for more than five (5) days after notice from Landlord to Tenant demanding the payment of such arrears.

## ARTICLE 16

### LANDLORD'S RIGHT TO CURE; FEES AND EXPENSES

If an Event of Default by Tenant occurs under this Lease, then Landlord, without waiving such default, may perform such obligations at Tenant's expense: (a) immediately, and without notice, in the case of emergency or if the Event of Default (i) materially interferes with the use by any other tenant of the Building, (ii) materially interferes with the efficient operation of the Building, (iii) results in a violation of any Requirement, or (iv) results or may result in a cancellation of any insurance policy maintained by Landlord, and (b) in any other case if such Event of Default continues after ten (10) days from the date Landlord gives notice of Landlord's intention to perform the defaulted obligation. All commercially reasonable out-of-pocket costs and expenses incurred by Landlord in connection with any such performance by it and all commercially reasonable out-of-pocket costs and expenses, including reasonable counsel fees and disbursements, incurred by Landlord as a result of any Event of Default by Tenant under this Lease or in any action or proceeding (including any summary process proceeding) brought

by Landlord to enforce any obligation of Tenant under this Lease and/or right of Landlord in or to the Premises, or any other such action or proceeding in which Landlord is a party, shall be paid by Tenant to Landlord within thirty (30) days after delivery by Landlord of written demand, with interest thereon at the Interest Rate from the date incurred by Landlord. Except as expressly provided to the contrary in this Lease, all costs and expenses which, pursuant to this Lease are incurred by Landlord and payable to Landlord by Tenant, and all charges, amounts and sums payable to Landlord by Tenant for any property, material, labor, utility or other services which, pursuant to this Lease, attributable directly to Tenant's use and occupancy of the Premises or presence at the Building, or at the request and for the account of Tenant, are provided, furnished or rendered by Landlord, shall become due and payable by Tenant to Landlord within thirty (30) days after receipt of Landlord's written invoice for such amount.

## ARTICLE 17

### **NO REPRESENTATIONS BY LANDLORD; LANDLORD'S APPROVAL**

**Section 17.1. No Representations.** Except as expressly set forth herein, Landlord and Landlord's agents have made no warranties, representations, statements or promises with respect to the Building, the Real Property, or the Premises and no rights, easements or licenses are or have been acquired by Tenant by implication or otherwise. Tenant is entering into this Lease after full investigation and is not relying upon any statement or representation made by Landlord not expressly and specifically set forth in this Lease.

**Section 17.2. No Money Damages.** Wherever in this Lease Landlord's consent or approval is required, if Landlord refuses to grant such consent or approval, whether or not Landlord expressly agreed that such consent or approval would not be unreasonably withheld, Tenant shall not make, and Tenant hereby waives, any claim for money damages (including any claim by way of set-off, counterclaim or defense) based upon Tenant's claim or assertion that Landlord unreasonably withheld or delayed its consent or approval. Tenant's sole remedy shall be an action or proceeding to enforce such provision, by specific performance, injunction or declaratory judgment. In no event shall Landlord be liable for, and Tenant, on behalf of itself and all other Tenant Parties, hereby waives any claim for, any indirect, consequential or punitive damages, including loss of profits or business opportunity, arising under or in connection with this Lease.

**Section 17.3. Reasonable Efforts.** For purposes of this Lease, "reasonable efforts" by Landlord shall not include an obligation to employ contractors or labor at overtime or other premium pay rates or to incur any other overtime costs or additional expenses whatsoever.

**Section 17.4. Landlord Representations.** Landlord hereby represents and warrants to Tenant that, as of the Effective Date, (a) sixty-one (61) of the Secondary Residential Units have been sold by the Residential Unit Owner (as such terms are defined in the Condominium Documents) and an additional ten (10) of the Secondary Residential Units are under contract to be sold by the Residential Unit Owner; and (b) a temporary certificate of occupancy has been issued for the Building by the applicable Governmental Authorities that allows the respective units in the Building to be occupied and used for their intended purposes.

## ARTICLE 18

### END OF TERM

**Section 18.1. Expiration.** Upon the expiration or other termination of the Term of this Lease, Tenant shall quit and surrender the Premises to Landlord vacant, broom clean and in good order and condition, excepting reasonable and customary wear and tear, damage from fire or casualty, or as a result of a Taking, and damage for which Tenant is not responsible under the terms of this Lease, and Tenant shall remove all of Tenant's Property and, in accordance with and subject to the provisions of **Section 5.3**, any Specialty Alterations.

**Section 18.2. Holdover Rent.** Any holding over by the Tenant after the expiration or earlier termination of the Term shall be treated as a tenancy at sufferance, at the Rent set forth below, and otherwise on the terms and conditions of this Lease. Landlord and Tenant recognize that Landlord's damages resulting from Tenant's failure to timely surrender possession of the Premises may be substantial, may exceed the amount of the Rent payable hereunder, and will be impossible to accurately measure. Accordingly, if possession of the Premises is not surrendered to Landlord by the Expiration Date or sooner termination of this Lease, in addition to any other rights or remedies Landlord may have hereunder or at law, Tenant shall pay to Landlord for each month (or any portion thereof) during which Tenant holds over in the Premises after the Expiration Date or sooner termination of this Lease, a holdover charge calculated as follows: (i) for each day during which Tenant holds over in the Premises after the Expiration Date or sooner termination of this Lease, through and including the day which is thirty (30) days thereafter, a per diem holdover charge calculated at a rate equal to 150% of the daily Rent payable under this Lease for the last full calendar month of the Term; and (ii) if Tenant holds over in the Premises for more than thirty (30) days after the Expiration Date or sooner termination of this Lease, a per diem holdover charge calculated at a rate equal to 200% of the daily Rent payable under this Lease for the last full calendar month of the Term. In addition, if possession of the Premises (or any part thereof) is not surrendered to Landlord by not later than the date which is thirty (30) days after the Expiration Date or sooner termination of this Lease, to the maximum extent permitted by law, Tenant shall (x) be liable to Landlord for (1) any payment or rent concession which Landlord may be required to make to any tenant which has entered into a binding lease agreement with Landlord for all or any part of the Premises (a "New Tenant") in order to induce such New Tenant not to terminate its lease by reason of the holding-over by Tenant, and (2) the loss of the benefit of the bargain if any New Tenant shall terminate its lease by reason of the holding-over by Tenant, and (y) indemnify Landlord against (i) all claims for damages by any New Tenant arising out of or resulting from any such holding over by Tenant, and (ii) all consequential, indirect, and special damages incurred by Landlord arising out of or resulting of any such holding-over by Tenant. No holding-over by Tenant, nor the payment to Landlord of the amounts specified above, shall operate to extend the Term hereof. Nothing herein contained shall be deemed to permit Tenant to retain possession of the Premises after the Expiration Date or sooner termination of this Lease, and no acceptance by Landlord of payments from Tenant after the Expiration Date or sooner termination of this Lease shall be deemed to be other than on account of the amount to be paid by Tenant in accordance with the provisions of this **Section 18.2**.

## **ARTICLE 19**

### **QUIET ENJOYMENT**

Provided this Lease is in full force and effect and no Event of Default then exists, Tenant may peaceably and quietly enjoy the Premises without hindrance by Landlord or any person lawfully claiming through or under Landlord, subject to the terms and conditions of this Lease and to all Superior Leases and Mortgages. The foregoing provisions are in lieu of any other covenant of quiet enjoyment, express or implied.

## **ARTICLE 20**

### **NO SURRENDER; NO WAIVER**

**Section 20.1. No Surrender or Release.** No act or thing done by Landlord or Landlord's agents or employees during the Term shall be deemed an acceptance of a surrender of the Premises, and no provision of this Lease shall be deemed to have been waived by Landlord, unless such waiver is in writing and is signed by Landlord. Without limitation, the receipt or acceptance by Landlord or Landlord's Agent of the keys to the Premises shall not be deemed an acceptance of a surrender of the Premises or a termination of this Lease.

**Section 20.2. No Waiver.** The failure of either party to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Lease, or any of the Rules and Regulations, shall not be construed as a waiver or relinquishment for the future performance of such obligations of this Lease or the Rules and Regulations, or of the right to exercise such election but the same shall continue and remain in full force and effect with respect to any subsequent breach, act or omission. The receipt by Landlord of any Rent payable pursuant to this Lease or any other sums with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly Rent herein stipulated shall be deemed to be other than a payment on account of the earliest stipulated Rent, or as Landlord may elect to apply such payment, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided in this Lease.

## **ARTICLE 21**

### **WAIVER OF TRIAL BY JURY; COUNTERCLAIM**

**Section 21.1. Jury Trial Waiver.** LANDLORD AND TENANT HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER ON ANY MATTERS IN ANY WAY ARISING OUT OF OR CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES, OR THE ENFORCEMENT OF ANY REMEDY UNDER ANY STATUTE, EMERGENCY OR OTHERWISE.

**Section 21.2. Waiver of Counterclaim.** If Landlord commences any summary proceeding against Tenant, Tenant will not interpose any counterclaim of any nature or

description in any such proceeding (unless failure to interpose such counterclaim would preclude Tenant from asserting in a separate action the claim which is the subject of such counterclaim), and will not seek to consolidate such proceeding with any other action which may have been or is thereafter brought in any other court by Tenant.

## ARTICLE 22

### NOTICES

Except as otherwise expressly provided in this Lease, all consents, notices, demands, requests, approvals or other communications given under this Lease shall be in writing and shall be deemed sufficiently given or rendered if delivered by hand (provided a signed receipt is obtained) or if sent by registered or certified mail (return receipt requested) or by a nationally recognized overnight delivery service making receipted deliveries, addressed to Landlord and Tenant as set forth in **Article 1**, and to any Mortgagee or Lessor who shall require copies of notices and whose address is provided to Tenant, or to such other address(es) as Landlord, Tenant or any Mortgagee or Lessor may designate as its new address(es) for such purpose by notice given to the other in accordance with the provisions of this **Article 22**. Any such approval, consent, notice, demand, request or other communication shall be deemed to have been given on the date of receipted delivery, refusal to accept delivery or when delivery is first attempted but cannot be made due to a change of address for which no notice is given or three (3) Business Days after it shall have been mailed as provided in this **Article 22**, whichever is earlier.

## ARTICLE 23

### RULES AND REGULATIONS

Tenant and all Tenant Parties shall observe and comply with the Rules and Regulations, as supplemented or amended from time to time. The current Rules and Regulations are attached to this Lease as **Exhibit D**. Landlord reserves the right, from time to time, to adopt additional commercially reasonable Rules and Regulations and to amend the Rules and Regulations then in effect; provided, however, (i) such Rules and Regulations shall not detract from the rights granted to Tenant under this Lease, (ii) in the event of any conflict or inconsistency between this Lease and such Rules and Regulations, the terms of this Lease shall govern and control, and (iii) Landlord will provide Tenant with a written copy of such additional Rules and Regulations. Nothing contained in this Lease shall impose upon Landlord any obligation to enforce the Rules and Regulations or terms, covenants or conditions in any other lease against any other tenant of the Building, and Landlord shall not be liable to Tenant for violation of the same by any other tenant, its employees, agents, visitors or licensees, provided that Landlord shall enforce the Rules and Regulations against Tenant in a non-discriminatory fashion.

## **ARTICLE 24**

### **BROKER**

Landlord has retained Landlord's Broker as leasing agent in connection with this Lease and Landlord will be solely responsible for any fee that may be payable to Landlord's Broker. Landlord agrees to pay a commission to Tenant's Broker pursuant to a separate agreement between Landlord and Landlord's Broker. Each of Landlord and Tenant represents and warrants to the other that neither it nor its agents have dealt with any broker in connection with this Lease other than Landlord's Broker and Tenant's Broker. Each of Landlord and Tenant shall indemnify, defend, protect and hold the other party harmless from and against any and all Losses which the indemnified party may incur by reason of any claim or liability to any broker, finder or like agent (other than Landlord's Broker and Tenant's Broker) arising out of any dealings claimed to have occurred between the indemnifying party and the claimant in connection with this Lease, and/or the above representation being false.

## **ARTICLE 25**

### **INDEMNITY**

**Section 25.1. Tenant's Indemnity.** Excepting only to the extent otherwise provided in M.G.L. Chapter 186, Section 15, Tenant shall indemnify, defend, protect and hold harmless each of the Indemnitees from and against any and all Losses, resulting from any claims (i) against the Indemnitees arising from any negligence or willful misconduct of any of the Tenant Parties, (ii) against the Indemnitees arising from any accident, injury or damage to any person or to the property of any person and occurring in or about the Premises, and (iii) against the Indemnitees resulting from any breach, violation or nonperformance of any covenant, condition or agreement of this Lease on the part of Tenant to be fulfilled, kept, observed or performed.

**Section 25.2. Landlord's Indemnity.** Landlord shall indemnify, defend and hold harmless Tenant from and against all Losses incurred by Tenant (i) arising from any accident, injury or damage to any person or the property of any person in or about the Common Areas (specifically excluding the Premises) to the extent caused by the negligence or willful misconduct of Landlord or its employees or agents or (ii) any breach, violation or nonperformance of any covenant, condition or agreement of this Lease on the part of Landlord to be fulfilled, kept, observed or performed.

**Section 25.3. Defense and Settlement.** If any claim, action or proceeding is made or brought against any party entitled to indemnification hereunder, then such party shall provide prompt notice thereof to the indemnifying party and thereafter, upon demand, the indemnifying party, at its sole cost and expense, shall resist or defend such claim, action or proceeding in the indemnitee's name (if necessary), by attorneys approved by the party entitled to indemnification hereunder, which approval shall not be unreasonably withheld (attorneys for the insurer of the indemnifying party shall be deemed approved for purposes of this Section 25.3). Notwithstanding the foregoing, an indemnitee may retain its own attorneys to participate or assist in defending any claim, action or proceeding involving potential liability in excess of the amount available under its liability insurance for such claim and the indemnifying party shall pay the reasonable fees and disbursements of such attorneys. If the indemnifying party fails to diligently defend or if there is a legal conflict or other conflict of interest, then the indemnitee may retain separate counsel at the indemnifying party's expense. Notwithstanding anything

herein contained to the contrary, the indemnifying party may direct the indemnitee to settle any claim, suit or other proceeding provided that (a) such settlement shall involve no obligation on the part of the indemnitee other than the payment of money, (b) any payments to be made pursuant to such settlement shall be paid in full exclusively by the indemnifying party at the time such settlement is reached, (c) such settlement shall not require the indemnitee to admit any liability, and (d) the indemnitee shall have received an unconditional release from the other parties to such claim, suit or other proceeding. In addition, the indemnitee shall not settle any such claim, suit or other proceeding without the consent of the indemnifying party to the terms of such settlement, unless the indemnitee waives or releases any further liability of the indemnifying party with respect thereto.

## **ARTICLE 26**

### **MISCELLANEOUS**

**Section 26.1. Delivery.** The submission of drafts of this document for examination and negotiation does not constitute an offer to lease, or the acceptance of an offer to lease, or a reservation of or option for, the Premises. This Lease shall not be binding upon Landlord or Tenant unless and until Landlord shall have executed and delivered a fully executed copy of this Lease to Tenant.

**Section 26.2. Transfer of Real Property.** Landlord's obligations under this Lease shall not be binding upon any Landlord (including the Landlord originally named in this Lease) after the sale, conveyance, assignment or transfer (collectively, a "Transfer") by such Landlord of its interest in the Real Property and in the event of any such Transfer, such Landlord shall be entirely freed and released of and from all covenants, liabilities and obligations of Landlord hereunder arising from and after the date of Transfer, and the transferee of Landlord's interest (or that of such subsequent Landlord) in the Real Property shall be deemed to have assumed all obligations under this Lease arising from and after the date of Transfer.

**Section 26.3. Limitation on Liability.** Notwithstanding any provision contained in this Lease to the contrary, the liability of Landlord for its obligations under this Lease shall be limited to the interests of Landlord in the Real Property. In no event shall any partner, member, manager, shareholder, director, officer, principal, employee, agent, or owner of Landlord, direct or indirect, disclosed or undisclosed, be personally liable for any debts, liabilities or obligations of Landlord, or for any claims against Landlord, arising out of or resulting from this Lease. Any such debts, obligations, liabilities or claims shall be satisfied solely out of the interests of Landlord in the Real Property. In no event shall any personal judgment be sought or obtained against any partner, member, manager, shareholder, director, officer, principal, employee, agent, or owner of Landlord, direct or indirect, disclosed or undisclosed (collectively, the "Parties").

**Section 26.4. Rent.** All amounts payable by Tenant to or on behalf of Landlord under this Lease, whether or not expressly denominated Fixed Rent, Tenant's Tax Payment, Tenant's Operating Payment, Tenant's Insurance Payment, Additional Rent or Rent, shall constitute rent for the purposes of Section 502(b)(6) of the United States Bankruptcy Code.

**Section 26.5. Entire Document.** This Lease (including any Schedules and Exhibits referred to herein and all supplementary agreements provided for herein) contains the entire agreement between the parties and all prior negotiations and agreements are merged into this

Lease. All of the Schedules and Exhibits attached hereto are incorporated in and made a part of this Lease, provided that in the event of any inconsistency between the terms and provisions of this Lease and the terms and provisions of the Schedules and Exhibits hereto, the terms and provisions of this Lease shall control.

**Section 26.6. Governing Law.** This Lease shall be governed in all respects by the laws of the Commonwealth of Massachusetts.

**Section 26.7. Unenforceability.** If any provision of this Lease, or its application to any person or entity or circumstance, shall ever be held to be invalid or unenforceable, then in each such event the remainder of this Lease or the application of such provision to any other person or entity or any other circumstance (other than those as to which it shall be invalid or unenforceable) shall not be thereby affected, and each provision hereof shall remain valid and enforceable to the fullest extent permitted by law.

**Section 26.8. Lease Disputes.** (a) Landlord and Tenant agree that all disputes arising, directly or indirectly, out of or relating to this Lease, and all actions to enforce this Lease, shall be dealt with and adjudicated in the state courts of the Commonwealth of Massachusetts or the federal courts located in the Commonwealth of Massachusetts and for that purpose hereby expressly and irrevocably submits itself to the jurisdiction of such courts. Landlord and Tenant agree that so far as is permitted under applicable law, this consent to personal jurisdiction shall be self-operative and no further instrument or action, other than service of process in one of the manners specified in this Lease, or as otherwise permitted by law, shall be necessary in order to confer jurisdiction upon it in any such court.

(b) To the extent that Tenant has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, Tenant irrevocably waives such immunity in respect of its obligations under this Lease.

**Section 26.9. Landlord's Agent.** Unless Landlord delivers notice to Tenant to the contrary, Landlord's Agent is authorized to act as Landlord's agent in connection with the performance of this Lease, and Tenant shall be entitled to rely upon correspondence received from Landlord's Agent, as if said correspondence came directly from Landlord. The actions of Landlord's Agent shall be binding on Landlord in connection with this Lease (and Tenant shall have no obligation to inquire or determine whether any such action by Landlord's Agent has been authorized by Landlord, or is within the scope of authority granted to Landlord's Agent by Landlord). Tenant acknowledges that Landlord's Agent is acting solely as agent for Landlord in connection with the foregoing; and neither Landlord's Agent nor any of its direct or indirect partners, members, managers, officers, shareholders, directors, employees, principals, agents or representatives shall have any liability to Tenant in connection with the performance of the obligations of Landlord under this Lease, and Tenant waives any and all claims against any and all of such parties arising out of, or in any way connected with the obligations of Landlord under this Lease, the Building or the Real Property.

**Section 26.10. Estoppel.** Within seven (7) days following request from Landlord, any Mortgagee or any Lessor, Tenant shall deliver to Landlord a statement executed and acknowledged by Tenant, in form reasonably satisfactory to Landlord, (a) stating the Commencement Date, the Rent Commencement Date and the Expiration Date, and that this Lease is then in full force and effect and has not been modified (or if modified, setting forth all

modifications), (b) setting forth the date to which the Fixed Rent and any Additional Rent have been paid, together with the amount of monthly Fixed Rent and Additional Rent then payable, (c) stating whether or not, to the best of Tenant's knowledge, either Tenant and/or Landlord is in default under this Lease, and setting forth the specific nature of all such defaults, if any, (d) stating the amount of the security deposit, if any, under this Lease, (e) stating whether there are any subleases or assignments affecting the Premises, (f) stating the address of Tenant to which all notices and communications under the Lease shall be sent, and (g) responding to any other matters reasonably requested by Landlord, such Mortgagee or such Lessor. Tenant acknowledges that any statement delivered pursuant to this **Section 26.10** may be relied upon by any purchaser or owner of the Real Property or the Building, or all or any portion of Landlord's interest in the Real Property or the Building or any Superior Lease, or by any Mortgagee, or assignee thereof or by any Lessor, or assignee thereof.

**Section 26.11. Certain Interpretational Rules.** For purposes of this Lease, whenever the words "include", "includes", or "including" are used, they shall be deemed to be followed by the words "without limitation" and, whenever the circumstances or the context requires, the singular shall be construed as the plural, the masculine shall be construed as the feminine and/or the neuter and vice versa. This Lease shall be interpreted and enforced without the aid of any canon, custom or rule of law requiring or suggesting construction against the party drafting or causing the drafting of the provision in question. The captions in this Lease are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Lease or the intent of any provision hereof.

**Section 26.12. Parties Bound.** The terms, covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and, except as otherwise provided in this Lease, to their respective legal representatives, successors, and assigns. Each term and each provision of this Lease to be performed by the Tenant shall be construed to be both a covenant and a condition.

**Section 26.13. Memorandum of Lease.** This Lease shall not be recorded; provided, however, at request of either party, Landlord and Tenant shall execute, acknowledge and deliver a notice of lease in recordable form and complying with applicable Massachusetts laws, and reasonably satisfactory to both Landlord and Tenant. In no event shall such document set forth the rental or other charges payable by Tenant under this Lease; and any such document shall expressly state that it is executed pursuant to the provisions contained in this Lease, and is not intended to vary the terms and conditions of this Lease. Within ten (10) days after the expiration or earlier termination of the Term, Tenant shall enter into such documentation as is reasonably required by Landlord to remove the notice of lease of record.

**Section 26.14. Counterparts; Electronic Signature.** This Lease may be executed in two (2) or more counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute but one instrument. This Lease may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, in addition to electronically produced signatures, "electronic signature" shall include "electronically scanned and transmitted versions (e.g., via PDF) of an original signature. This Lease may be executed in multiple counterparts (which counterparts may be executed and delivered by PDF or another file sent by email) which shall together constitute a single document. Any executed counterpart of this Lease delivered by PDF or another file sent by email shall be equally effective as an original counterpart for all purposes.

**Section 26.15. Survival.** All obligations and liabilities of Landlord or Tenant to the other which accrued before the expiration or other termination of this Lease, and all such obligations and liabilities which by their nature or under the circumstances can only be, or by the provisions of this Lease may be, performed after such expiration or other termination, shall survive the expiration or other termination of this Lease. Without limiting the generality of the foregoing, the rights and obligations of the parties with respect to any indemnity under this Lease, and with respect to any Rent and any other amounts payable under this Lease, shall survive the expiration or other termination of this Lease.

**Section 26.16. Inability to Perform.** The obligation of Tenant to pay Rent hereunder shall not be affected, impaired or excused by any Unavoidable Delays. Landlord shall use reasonable efforts to promptly notify Tenant of any Unavoidable Delay which prevents Landlord from fulfilling any of its obligations under this Lease. Tenant shall use reasonable efforts to promptly notify Landlord of any Unavoidable Delay which prevents Tenant from fulfilling any of its obligations under this Lease.

**Section 26.17. Landlord Defaults.** Landlord shall in no event be in breach or default in the performance of any of Landlord's obligations under this Lease or any warranties or promises hereunder unless Landlord shall have failed to perform such obligations within thirty (30) days, or such additional time as is reasonably required to correct any such default, after notice by Tenant to Landlord properly specifying wherein Landlord has failed to perform any such obligation. Without limitation, in no event shall Tenant have the right to terminate or cancel this Lease or to withhold rent or to set-off any claim or damages against rent as a result of any default by Landlord or breach by Landlord of its obligations or any warranties or promises hereunder, except (i) in the case of a wrongful eviction of Tenant from the Premises (constructive or actual) by Landlord continuing after notice to Landlord thereof and a reasonable opportunity for Landlord to cure the same as set forth above, or (ii) as otherwise expressly and specifically set forth in **Section 4.2 or Section 10.12**. In addition, the Tenant shall not assert any right to deduct the cost of repairs or any monetary claim against the Landlord from Rent thereafter due and payable under this Lease, but shall look solely to the interests of the Landlord in the Real Property for satisfaction of any such claim.

**Section 26.18. Work Orders.** All requests made by or on behalf of Tenant either (i) for work to be performed by Landlord, or (ii) for services to be provided by Landlord, shall be submitted in accordance with the applicable procedures established from time to time by the Landlord. As of the date of this Lease, the Landlord has established an Angus system for such requests, and all such requests shall be submitted in accordance with the Angus procedures and using the Angus forms.

**Section 26.19. Financial Statements.** Upon request of Landlord, in connection with potential financing(s) or sale(s) of the Building, Tenant shall provide Landlord with its most recent current financial statements; however, Landlord shall not request such financial statements more than once in any twelve (12) month period. Upon request of Tenant, Landlord and Tenant will enter into a mutually-acceptable commercially reasonable confidentiality agreement with respect to the disclosure of such financial statements.

## ARTICLE 27

### LETTER OF CREDIT

**Section 27.1. Letter of Credit.** Concurrent with the execution of this Lease, Tenant has delivered to Landlord a Letter of Credit (as hereinafter defined) in the amount of the Letter of Credit Amount specified in the Basic Lease Information, as security for the faithful performance and observance by Tenant of the terms, covenants and conditions of this Lease. Tenant covenants and agrees to maintain the Letter of Credit in the Letter of Credit Amount throughout the Term of this Lease. The Letter of Credit shall be in the form of a clean, irrevocable, non-documentary and unconditional letter of credit (the "Letter of Credit") issued by and drawable upon a commercial bank (the "Issuing Bank"), which is satisfactory to Landlord and which satisfies both the Minimum Rating Agency Threshold (as hereinafter defined) and the Minimum Capital Threshold (as hereinafter defined). The "**Minimum Rating Agency Threshold**" shall mean that the Issuing Bank has outstanding unsecured, uninsured and unguaranteed senior long-term indebtedness that is then rated (without regard to qualification of such rating by symbols such as "+" or "-" or numerical notation) "Baa" or better by Moody's Investors Service, Inc. and/or "BBB" or better by Standard & Poor's Rating Services, or a comparable rating by a comparable national rating agency designated by Landlord in its discretion. The "**Minimum Capital Threshold**" shall mean that the Issuing Bank has combined capital, surplus and undivided profits of not less than \$2,000,000,000. The Letter of Credit shall (a) name Landlord as beneficiary, (b) have a term of not less than one year, (c) permit multiple drawings, (d) be fully transferable by Landlord without the payment of any fees or charges by Landlord, and (e) otherwise be in form and content satisfactory to Landlord. If upon any transfer of the Letter of Credit, any fees or charges shall be so imposed, then such fees or charges shall be payable solely by Tenant and the Letter of Credit shall so specify. The Letter of Credit shall provide that it shall be deemed automatically renewed, without amendment, for consecutive periods of one (1) year each thereafter during the Term. The Letter of Credit (as extended) shall not expire prior to the date which is sixty (60) days after the Expiration Date (as extended). If the Issuing Bank does not renew the Letter of Credit upon the expiration thereof, then the Issuing Bank shall send a notice (the "**Non-Renewal Notice**") to Landlord by certified mail, return receipt requested (addressed "Attention, Chief Legal Officer") not less than sixty (60) days next preceding the then expiration date of the Letter of Credit stating that the Issuing Bank has elected not to renew the Letter of Credit. The Issuing Bank shall agree with all drawers, endorsers and bona fide holders that drafts drawn under and in compliance with the terms of the Letter of Credit will be duly honored upon presentation to the Issuing Bank at an office location in Boston, Massachusetts. The Letter of Credit shall be issued pursuant to, and shall be subject in all respects to, the Uniform Customs and Practice for Documentary Credits ISP 98, International Chamber of Commerce Practices Publication No. 590 (1998 Revision).

**Section 27.2. Application of Security.** If (a) an Event of Default by Tenant occurs under this Lease, or (b) Tenant fails to make any installment of Rent as and when due, or (c) Landlord receives a Non-Renewal Notice, or (d) Tenant files a voluntary petition under any Federal or state bankruptcy or insolvency code, law or proceeding, then Landlord shall have the right by sight draft to draw, at its election, all or a portion of the proceeds of the Letter of Credit and thereafter hold, use, apply, or retain the whole or any part of such proceeds, as the case may be, (x) to the extent required for the payment of any Rent or any other sum as to which Tenant is in default including (i) any sum which Landlord may expend or may be required to expend by reason of such Event of Default, and/or (ii) any damages to which Landlord is entitled pursuant to this Lease, whether such damages accrue before or after summary proceedings or other reentry by Landlord, and/or (y) as a cash security deposit, unless and until, in the case of

clause (c) above, Tenant delivers to Landlord a substitute Letter of Credit which meets the requirements of this **Article 27**. If Landlord applies or retains any part of the proceeds of the Letter of Credit, or cash security, then Tenant, upon demand, shall amend the Letter of Credit or deliver an additional Letter of Credit which satisfies the requirements of this **Article 27** in the amount so applied or retained such that Landlord shall have a Letter of Credit (or Letters of Credit) in the Letter of Credit Amount on hand at all times during the Term. If Tenant shall comply with all of the terms, covenants and conditions of this Lease, then the Letter of Credit or then-remaining balance of the cash security, as the case may be, shall be returned to Tenant promptly after (x) the Expiration Date, (y) the surrender and yield-up of possession of the Premises to Landlord in the manner required by this Lease, and (z) the curing of any outstanding Events of Default under this Lease.

**Section 27.3. Transfer.** The Letter of Credit shall also provide that Landlord, its successors and assigns, may, at any time and without notice to Tenant and without first obtaining Tenant's consent thereto, transfer (one or more times) all or any portion of its interest in and to the Letter of Credit to the holder of any mortgage upon the Building or the successor landlord in connection with a transfer of the Building, from or as a part of the assignment by Landlord of its rights and interests in and to this Lease. In the event of a transfer of Landlord's interest in the Building, Landlord shall transfer the Letter of Credit, in whole or in part, to the transferee and thereupon Landlord shall without any further agreement between the parties, be released by Tenant from all liability therefor. The provisions of this **Section 27.3** shall apply to every transfer or assignment of the whole or any portion of said Letter of Credit to a new landlord. In connection with any such transfer of the Letter of Credit by Landlord, Tenant shall, at Tenant's sole cost and expense, execute and submit to the Issuing Bank such applications, documents and instruments as may be necessary to effectuate such transfer, and Tenant shall be responsible for paying the Bank's transfer and processing fees in connection therewith.

**Section 27.4. Maintenance of Letter of Credit by Tenant.** If, as a result of any drawing by Landlord on the Letter of Credit, the amount of the Letter of Credit shall be less than the Letter of Credit Amount, Tenant shall, within ten (10) days thereafter, provide Landlord with additional letter(s) of credit in an amount equal to the deficiency, and any such additional letter(s) of credit shall comply with all of the provisions of this **Article 27**. Tenant further covenants and warrants that it will neither assign nor encumber the Letter of Credit or any part thereof and that neither Landlord nor its successors or assigns will be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

**Section 27.5. Landlord's Right to Draw Upon Letter of Credit.** The use, application or retention of the Letter of Credit, or any portion thereof, by Landlord shall not prevent Landlord from exercising any other right or remedy provided by this Lease or by any applicable law, it being intended that Landlord shall not first be required to proceed against the Letter of Credit, and shall not operate as a limitation on any recovery to which Landlord may otherwise be entitled. Tenant agrees not to interfere in any way with payment to Landlord of the proceeds of the Letter of Credit, either prior to or following a "draw" by Landlord of any portion of the Letter of Credit, regardless of whether any dispute exists between Tenant and Landlord as to Landlord's right to draw upon the Letter of Credit. No condition or term of this Lease shall be deemed to render the Letter of Credit conditional to justify the issuer of the Letter of Credit in failing to honor a drawing upon such Letter of Credit in a timely manner. Tenant agrees and acknowledges that (a) the Letter of Credit constitutes a separate and independent contract between Landlord and the Issuing Bank, (b) Tenant is not a third party beneficiary of such contract, (c) Tenant has no property interest whatsoever in the Letter of Credit or the proceeds thereof, and (d) in the event Tenant becomes a debtor under any chapter of the Bankruptcy

Code, neither Tenant, any trustee, nor Tenant's bankruptcy estate shall have any right to restrict or limit Landlord's claim and/or rights to the Letter of Credit and/or the proceeds thereof by application of Section 502(b)(6) of the U. S. Bankruptcy Code or otherwise.

**Section 27.6. Issuing Bank.** If, at any time or from time to time, Landlord determines that an Issuing Bank (i) no longer satisfies the Minimum Rating Agency Threshold, (ii) no longer satisfies the Minimum Capital Threshold, (iii) has been seized or closed by the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, or another governmental or regulatory agency or authority, (iv) has become insolvent, or (v) is unwilling or unable to honor the Letter of Credit or to perform its obligations to honor a draw upon the Letter of Credit, then within ten (10) days after demand, Tenant shall deliver to Landlord a replacement Letter of Credit, issued by a replacement Issuing Bank which satisfies the Minimum Rating Agency Threshold and the Minimum Capital Threshold and otherwise satisfies the requirement of this Article 27.

## ARTICLE 28

### EXTENSION TERMS

**Section 28.1. Extension Terms.** Subject to the terms and conditions of this Article 28, Tenant shall have the right to renew the Term for all of the Premises for three (3) successive extension terms (each, an "Extension Term;" the "First Extension Term"; the "Second Extension Term"; and the "Third Extension Term", respectively) of five (5) years each. The First Extension Term shall commence on the day immediately following the expiration of the Initial Term (the "First Extension Term Commencement Date") and shall expire on the day immediately preceding the fifth (5th) anniversary of the First Extension Term Commencement Date or such earlier date as this Lease may terminate pursuant to any of the terms and conditions of this Lease. The Second Extension Term shall commence on the fifth (5th) anniversary of the First Extension Term Commencement Date (the "Second Extension Term Commencement Date"), and shall expire on the day immediately preceding the fifth (5th) anniversary of the Second Extension Term Commencement Date or such earlier date as this Lease may terminate pursuant to any of the terms and conditions of this Lease. The Third Extension Term shall commence on the fifth (5th) anniversary of the Second Extension Term Commencement Date (the "Third Extension Term Commencement Date"), and shall expire on the day immediately preceding the fifth (5th) anniversary of the Third Extension Term Commencement Date or such earlier date as this Lease may terminate pursuant to any of the terms and conditions of this Lease. Each of the First Extension Term Commencement Date, the Second Extension Term Commencement Date, and the Third Extension Term Commencement Date are sometimes referred to herein as an "Extension Term Commencement Date." The right of Tenant to extend the Term for each Extension Term shall be subject to, and the respective Extension Term shall commence only if, all of the following conditions precedent are satisfied: (a) Tenant delivers written notice (each, a "Extension Notice") to Landlord of Tenant's exercise of such extension right not earlier than twenty-four (24) months and not later than twelve (12) months prior to the respective Extension Term Commencement Date; (b) at the time of the exercise of such right and immediately prior to the respective Extension Term Commencement Date, no Event of Default shall have occurred hereunder and remain uncured, and (c) Tenant occupies all of the rentable area of the Premises at the time the respective Extension Notice is given. Time is of the essence with respect to the giving of each Extension Notice. Upon the giving of each such Extension Notice, the Term of this Lease shall be extended for the respective Extension Term with the same force and effect as if such Extension

Term had originally been included in the Term. Each Extension Term shall be upon all of the agreements, terms, covenants and conditions of this Lease, except that the Fixed Rent shall be determined as provided in **Section 28.2**. Upon the commencement of each respective Extension Term, (A) the respective Extension Term shall be added to and become part of the Term, (B) any reference in this Lease to the "Term", the "term of this Lease" or any similar expression shall be deemed to include the respective Extension Term, and (C) the expiration of the respective Extension Term shall become the Expiration Date. Any termination, cancellation or surrender of the entire interest of Tenant under this Lease at any time during the Term shall terminate the foregoing rights of extension of Tenant hereunder. If Tenant duly exercises Tenant's option to extend this Lease for such Extension Term in accordance with this **Article 28**, then promptly after the determination of the Fixed Rent and Percentage Rent pursuant to the provisions of this **Article 28**, the parties shall promptly enter into an amendment to this Lease evidencing the extension of the Term for the Extension Term and confirming the Fixed Rent and Percentage Rent for the Extension Term, but the failure of the parties to do so shall not affect the effectiveness of such extension of the Term for the Extension Term or the determination of the Fixed Rent and Percentage Rent.

**Section 28.2. Extension Term Rent.** The annual Fixed Rent payable during the First Extension Term shall be equal to the lesser of (i) the annual Fair Market Value (as hereinafter defined) of the Premises as of commencement of the First Extension Term, or (ii) 108% of the Fixed Rent payable for the last Lease Year of the Initial Term, calculated as of as of the commencement of the First Extension Term (the "**First Extension Term Calculation Date**"). The annual Fixed Rent payable during the Second Extension Term shall be equal to the lesser of (i) the annual Fair Market Value of the Premises as of commencement of the Second Extension Term, or (ii) 108% of the Fixed Rent payable for the last Lease Year of the First Extension Term, calculated as of as of the commencement of the Second Extension Term (the "**Second Extension Term Calculation Date**"). The annual Fixed Rent payable during the Third Extension Term shall be equal to the lesser of (i) the annual Fair Market Value (as hereinafter defined) of the Premises as of commencement of the Third Extension Term, or (ii) 120% of the Fixed Rent payable for the last Lease Year of the Second Extension Term, calculated as of commencement of the Third Extension Term (the "**Third Extension Term Calculation Date**"). Each of the First Extension Term Calculation Date, the Second Extension Term Calculation Date, and the Third Extension Term Calculation Date is referred to herein as a "**Calculation Date**." For the purposes of calculating the annual Percentage Rent payable during each Extension Term, (i) the First Percentage shall be 5.5%, (ii) the First Base Gross Sales Figure for each Lease Year during the respective Extension Term shall equal the annual Fixed Rent payable for such Lease Year divided by 5.5%, and (iii) the Second Percentage and Second Base Gross Sales Figure shall not be applicable to the respective Extension Term. Without limitation, by not later than ten (10) Business Days after receipt of Tenant's request therefor (which may be delivered not more than twenty (20) months prior to the applicable Extension Term Commencement Date), Landlord will provide Tenant with its good faith non-binding determination of the then-applicable Fair Market Value. "**Fair Market Value**" shall mean the fair market annual rental value of the Premises as of the Calculation Date for a term equal to the Extension Term, based on comparable space in Comparable Buildings, taking into account all relevant factors, and taking into account all of Landlord's services provided for in this Lease, and with the Premises considered in "as is" condition existing on the Extension Term Commencement Date. Landlord shall advise Tenant (the "**Rent Notice**") of Landlord's determination of Fair Market Value not later than thirty (30) days after delivery of the Extension Notice. Within thirty (30) days after receipt of Landlord's Rent Notice, Tenant may elect either (i) to rescind the exercise of the extension option by delivering a notice (a "**Rescission Notice**") of such rescission to Landlord, or (ii) to dispute Landlord's determination of Fair Market Value by

delivering a notice (a “**Dispute Notice**”) of such dispute to Landlord. If Tenant timely delivers a Rescission Notice in accordance with the provisions of this **Section 28.2**, then the Term of this Lease shall expire (unless sooner terminated in accordance with the terms and conditions hereof) on the then-scheduled Expiration Date and Tenant shall have no further right or option to extend or renew the Term of this Lease. Time is of the essence of delivery of both a Rescission Notice and a Dispute Notice. If neither a Rescission Notice nor a Dispute Notice is given by Tenant within such 30-day period (time being of the essence), then Tenant shall have no further right to rescind the exercise of the extension option and Landlord’s determination of Fair Market Value shall be binding upon Tenant. If Tenant delivers a Dispute Notice within said thirty (30) day period, and the parties do not resolve such dispute within thirty (30) days after the delivery of the Dispute Notice, then either party may, by delivery of a notice (an **Arbitration Notice**) to the other party, submit said dispute concerning the Fair Market Value to arbitration in accordance with **Section 28.3**. Time is of the essence of the giving of said Dispute Notice. Failure on the part of Tenant to timely submit a Dispute Notice shall constitute a waiver of the right of Tenant to dispute the Fair Rental Value determined by Landlord, and in such event the Fixed Rent for the Extension Term shall be as set forth in the Rent Notice. If the Fixed Rent payable during the Extension Term is not determined prior to the Extension Term Commencement Date, then beginning on the Extension Term Commencement Date, Tenant shall pay Fixed Rent in an amount equal to the Fair Market Value for the Premises as determined by Landlord in the Rent Notice (the “**Interim Rent**”). Upon final determination of the Fixed Rent for the Extension Term, Tenant shall commence paying such Fixed Rent as so determined, and within thirty (30) days after such determination Tenant shall pay any deficiency in prior payments of Fixed Rent or, if the Fixed Rent as so determined shall be less than the Interim Rent, Tenant shall be entitled to a credit against the next succeeding installments of Fixed Rent in an amount equal to the difference between each installment of Interim Rent and the Fixed Rent as so determined which should have been paid for such installment until the total amount of the over payment has been recouped.

**Section 28.3. Arbitration.** If either party (the “**Initiating Party**”) delivers an Arbitration Notice to the other party (the “**Receiving Party**”), then the Fair Market Value shall be determined by arbitration in accordance with the then prevailing expedited procedures of the American Arbitration Association or its successor for arbitration of commercial disputes, except that the expedited procedures shall be modified as follows:

(1) In its Arbitration Notice, the Initiating Party shall specify the name and address of the person to act as the arbitrator on Initiating Party’s behalf. The arbitrator shall be a commercial real estate appraiser with the M.A.I. designation from the American Institute of Real Estate Advisors, with at least 10 years full-time commercial real estate appraisal experience who is familiar with the Fair Market Value of first-class retail space in Boston, Massachusetts. Within ten (10) Business Days after receipt of the Arbitration Notice, the Receiving Party shall give notice to the Initiating Party specifying the name and address of the person designated by the Receiving Party to act as arbitrator on its behalf, which arbitrator shall be similarly qualified. If the Receiving Party fails to notify the Initiating Party of the appointment of its arbitrator within such ten (10) Business Day period, and such failure continues for five (5) Business Days after the Initiating Party delivers a second notice to the Receiving Party, then the arbitrator appointed by the Initiating Party shall be the arbitrator to determine the Fair Market Value for the Premises.

(2) If two arbitrators are chosen pursuant to **Subsection 28.3(1)**, the arbitrators so chosen shall meet within ten (10) Business Days after the second

arbitrator is appointed and shall seek to reach agreement on Fair Market Value. If within twenty (20) Business Days after the second arbitrator is appointed the two arbitrators are unable to reach agreement on Fair Market Value then the two arbitrators shall appoint a third arbitrator, who shall be a competent and impartial person with qualifications similar to those required of the first two arbitrators pursuant to **Subsection 28.3(1)**. If they are unable to agree upon such appointment within five (5) Business Days after expiration of such twenty (20) Business Day period, the third arbitrator shall be selected by the parties themselves. If the parties do not agree on the third arbitrator within five (5) Business Days after expiration of the foregoing five (5) Business Day period, then either party, on behalf of both, may request appointment of such a qualified person by the Boston Office of the American Arbitration Association. The third arbitrator shall decide the dispute, if it has not been previously resolved, by following the procedures set forth in **Subsection 28.3(3)**. Each party shall pay the fees and expenses of its respective arbitrator and both shall share the fees and expenses of the third arbitrator. Attorneys' fees and expenses of counsel and of witnesses for the respective parties shall be paid by the respective party engaging such counsel or calling such witnesses.

(3) Fair Market Value shall be fixed by the third arbitrator in accordance with the following procedures. Concurrently with the appointment of the third arbitrator, each of the arbitrators selected by the parties shall state, in writing, his or her determination of the Fair Market Value supported by the reasons therefor. The third arbitrator shall have the right to consult experts and competent authorities for factual information or evidence pertaining to a determination of Fair Market Value, but any such determination shall be made in the presence of both parties with full right on their part to cross-examine. The third arbitrator shall conduct such hearings and investigations as he or she deem appropriate and shall, within thirty (30) days after being appointed, select which of the two proposed determinations most closely approximates his or her determination of Fair Market Value. The third arbitrator shall have no right to propose a middle ground or any modification of either of the two proposed determinations. The determination he or she chooses as that most closely approximating his or her determination of the Fair Market Value shall constitute the decision of the third arbitrator and shall be final and binding upon the parties. The third arbitrator shall render the decision in writing with counterpart copies to each party. The third arbitrator shall have no power to add to or modify the provisions of this Lease. Promptly following receipt of the third arbitrator's decision, the parties shall enter into an amendment to this Lease evidencing the extension of the Term for the Extension Term and confirming the Fixed Rent for the Extension Term, but the failure of the parties to do so shall not affect the effectiveness of the third arbitrator's determination of the Fixed Rent.

(4) In the event of a failure, refusal or inability of any arbitrator to act, his or her successor shall be appointed by him or her, but in the case of the third arbitrator, his or her successor shall be appointed in the same manner as that set forth herein with respect to the appointment of the original third arbitrator.

## ARTICLE 29

### OPERATING COVENANTS

**Section 29.1. General Standards.** Tenant covenants and agrees that at all times: (a) the business to be conducted at, through and from the Premises and the kind and quality of the

services offered in the conduct thereof will be reputable in every respect, and (b) the restaurant operations employed in Tenant's business, will be dignified and in conformity with the highest standards of practice of similar superior restaurants in Boston, Massachusetts.

**Section 29.2. Specific Operating Covenants.** Tenant further covenants and agrees that, except as expressly and specifically set forth in this Lease, it will, at its sole cost and expense:

(a) Clean the windows and doors (including, in each case, the frames thereof) in the Premises and in the perimeter walls thereof whenever necessary, consistent with the standards set forth in **Section 29.1**. Tenant will not require, permit, suffer or allow any such window or door to be cleaned in violation of any applicable Requirements.

(b) Keep the Premises clean; keep all restrooms and locker rooms clean and sanitary; not permit garbage or waste materials to accumulate or become a nuisance; seal all refuse in plastic bags of adequate strength and size; maintain all garbage dumpsters in a clean and sanitary condition; remove all rubbish and other debris from the Premises to such location as may be specified by Landlord from time to time and under conditions approved by Landlord.

(c) Keep all glass in the Premises and in the perimeter walls thereof, the frames for such glass, and any lettering and ornamentation on such glass insured against damage (including temporary repairs) for the benefit of Landlord for the full replacement value thereof. Such insurance shall be effected by Tenant furnishing Landlord with a separate policy or policies for such glass insurance, in such form and placed with such insurance companies as may be approved by Landlord in its reasonable discretion. Such insurance shall be effected, at the option of Landlord, either by Tenant paying to Landlord a proportionate share of the premium incurred by Landlord for a blanket comprehensive glass policy for the Building, or by Tenant furnishing Landlord with a separate policy or policies for such glass insurance, in such form and placed with such underwriters as may be approved by Landlord. In the event Landlord elects to obtain such insurance, then upon Tenant's payment of its proportionate share of Landlord's blanket premium, Landlord will furnish Tenant with a certificate of such insurance.

(d) Exercise good faith commercially reasonable efforts to cause the Premises to be open for business to the public by not later than April 30, 2020; provided, however, if despite the good faith commercially reasonable efforts of both Landlord and Tenant the Liquor License Approval does not occur by January 1, 2020, then Tenant shall exercise good faith commercially reasonable efforts to cause the Premises to be open for business to the public by not later than October 31, 2020.

(e) Tenant shall keep the entire Premises (excepting only the Outdoor Area) continuously open for business during the Minimum Hours of Operation, except (x) to the extent that Tenant is prevented from keeping the Premises open for business as a result of Unavoidable Delays, despite its good faith diligent efforts, or (y) as otherwise expressly and specifically set forth in this **Section 29.2(e)** or **Article 32**; provided, however, (i) financial inability shall never be deemed to be an Unavoidable Delay or event beyond the control of the Tenant, and (ii) Tenant shall promptly advise Landlord of any such event and the resulting delay, and shall open for business as soon as the cause for such delay has subsided or can be eliminated through the exercise by Tenant of good faith diligent efforts. Notwithstanding the foregoing, Tenant shall not be obligated to open to the public for business in the Premises (i) on Observed Holidays, (ii) when engaged by Landlord, the Condominium Association, or residents of the Residential Unit to conduct private parties within the Premises, provided that Tenant

provides Landlord with not less than five (5) days' prior written notice of such closing for private parties, (ii) for no more than seventeen (17) non-consecutive days per calendar year to conduct any other private parties within the Premises, provided that Tenant provides Landlord with not less than five (5) days' prior written notice of such closing for private parties, or (iv) after the third (3<sup>rd</sup>) anniversary of the date when Tenant first opens for business to the public in the Premises, for no more than fourteen (14) days during any three (3) year period in order to repaint, refurbish and/or renovate the Premises, provided that Tenant provides Landlord with not less than five (5) days' prior written notice of such closing to repaint, refurbish and/or renovate the Premises.

(f) Not install or place any lettering, sign, advertisement or notice on the windows or doors or on the exterior of the Premises which is not (i) approved in writing by Landlord prior to installation, which approval will not be unreasonably withheld, and (ii) in conformity with Landlord's standard sign and store front program for the Building, as such program may be modified by Landlord from time to time by notice to Tenant. Notwithstanding the foregoing, Tenant shall be permitted, with Landlord's prior consent (not to be unreasonably withheld), to use a portion of the windows of the Premises to display real estate listings, changes in schedule, notices of events, and other similar displays. Tenant shall remove from the Premises any such items installed without Landlord's approval, and if Tenant fails to do so promptly after notice from Landlord, Landlord may perform such work on Tenant's behalf, and Tenant shall pay, as Additional Rent, all costs and expenses incurred by Landlord in so doing. On or before the expiration or earlier termination of this Lease, Tenant shall remove all lettering, signs, advertisements and notices from the Premises.

(g) Not install, place or permit any awning or canopy on the perimeter walls of the Premises unless provided or approved by Landlord in writing, prior to installation, and if so provided or approved, keep each such awning clean and in good order, repair and appearance consistent with the standards set forth in **Section 29.1** including, whenever necessary, the replacement of any damaged or worn awning coverings with materials approved by Landlord. Where any such awning has been provided by Landlord upon request by Tenant, Landlord will make all repairs and replacements to the framework or mechanical parts thereof, at Tenant's expense.

(h) Provide and maintain in good working order during the Term a security system adequate to provide reasonable protection to the Premises, including a 24-hour direct response smoke, fire and burglary alarm system. If Tenant employs security guards at the Premises, under no circumstances shall such security guards carry firearms of any kind. Tenant understands that Landlord will not provide Tenant with any security guards or alarm or security systems of any kind or nature, and will have no liability or obligation to Tenant arising from any claims for loss, injury or damage to persons or property in connection therewith.

(i) As soon as practicable and in any event within forty-eight (48) hours after any exterior or interior glass (including mirrors) is broken or cracked, including any so-called "bulls eye" break in the glass, replace such glass with glass of the same kind and quality, and repair or replace the frames for such glass if necessary or desirable in Landlord's reasonable judgment, and if Tenant fails to do so promptly after notice from Landlord, Landlord may perform such work on Tenant's behalf, and Tenant shall pay all commercially reasonable out-of-pocket costs and expenses incurred by Landlord in so doing.

(j) Not conduct any "pop-up", clearance, "going-out-of-business", auction, distress, fire or bankruptcy or similar operations or sales in the Premises. The foregoing shall

not prevent Tenant from conducting "pop-up" events which are customary with restaurant industry practice involving guest chefs or food presentations open to the public and/or residents of the Building.

(k) Not (i) place or maintain any merchandise or other articles in the lobby or in any other area outside of the Premises, or on the sidewalks, corridors or other common areas of the Building unless approved in advance in each instance by Landlord; nor (ii) receive or ship articles of any kind outside the designated loading areas for the Premises; nor (iii) permit the parking of vehicles by Tenant, or by employees, contractors, consultants or customers of Tenant, so as to interfere with the use of any driveway, corridor, footwalk, parking area or other common area of the Building.

(l) Operate the Premises in a manner consistent with its location in a first class mixed-use residential building including the exercise of methods of crowd control, security and the prevention of Tenant's prospective customers congregating in areas adjacent to the Premises. Tenant shall take all reasonable actions to prevent Tenant's prospective customers from entering, using, congregating in or causing a disturbance in the lobby area of the Building or in and around the sidewalk area outside of the Building, and Tenant shall cause all patrons of Tenant to enter and leave the Premises through the separate exterior door exclusively serving the Premises.

(m) Cause all of its staff and employees to enter and exit the Premises at all times through the separate exterior door exclusively serving the Premises, or through the trash room doors, and keep such staff and employees from loitering in the lobbies and other areas of the Building.

(n) Not use, play or operate or permit to be used, played or operated any loudspeaker, sound making or sound reproducing device in the Premises and/or the Outdoor Area, in a loud, offensive, or disruptive manner, and observe, comply with and adopt such means and precautions as Landlord may from time to time request in connection therewith. Landlord recognizes that the playing of music is a part of Tenant's conducting business in the Premises and/or the Outdoor Area and Tenant recognizes that the emission of loud, offensive or disruptive noise outside of the Premises and/or the Outdoor Area is a matter of substantial importance to Landlord. Accordingly, in the event that Landlord receives a reasonable request from another occupant of the Building concerning loud music or noise originating from the Premises and/or the Outdoor Area, Tenant, upon notice from Landlord, shall immediately modify or eliminate the source of such offensive or loud noise or music. Without limitation, Tenant shall not play music in the Outdoor Area prior to 9:00 a.m. or later than 11:00 p.m.; provided, however, any music in the Outdoor Area after 8:00 p.m. shall be limited to ambient background music.

(o) Not install or use any lighting equipment in or about the Premises which is visible from or casts light toward the exterior of the Premises without the prior written consent of Landlord; provided, however, Landlord will not unreasonably withhold its consent with respect to lighting in the Outdoor Area.

**Section 29.3. Maintenance Covenants.** Tenant further covenants and agrees that, except as expressly and specifically set forth in this Lease, it will, at its sole cost and expense:

(a) Take all commercially reasonable precautions to prevent any offensive odors from emanating from the Premises, including the installation, as part of the initial

Installations, of mutually acceptable control devices, and the establishment of effective control procedures, to eliminate such odors.

(b) Install and maintain automatic, non-toxic, dry chemical fire extinguishing devices approved by the Fire Insurance Rating Organization having jurisdiction over the Premises, and if gas is used in the Premises for cooking or other purposes, suitable gas cut-off devices (manual and automatic).

(c) Not use the utility waste lines and plumbing for any purpose other than for which they were constructed. Tenant shall clear any blockage in the sewer line or lines servicing the Premises resulting from Tenant's operations, whether or not in violation of any provision hereof.

(d) Periodically clean all stacks, flues and exhausts to the extent servicing the Premises, whether or not located in the Premises in accordance with schedules and standards approved from time to time by Landlord in its reasonable discretion. Landlord shall provide Tenant with reasonable access to such portions of the Building as may be necessary for Tenant to comply with this obligation, and shall cooperate with Tenant to obtain the consent of the Condominium Association or the Residential Unit Owner, as applicable, to access such portions of the Building as may be necessary for Tenant to comply with this obligation. Landlord and Tenant acknowledge and agree that Landlord and/or the Condominium Association shall be responsible for cleaning and maintaining such stacks, flues and exhausts, or the portions thereof, that do not exclusively serve the Premises.

(e) Not permit Tenant's employees to enter any floor above the Premises, unless expressly invited to such floor by an occupant of the Building, nor shall Tenant use any cart, wagon or similar conveyance for the sale and/or delivery of coffee or any other items inside the Building except as may be approved in advance in writing by Landlord.

(f) Contract with an exterminator (which exterminator must first be approved by Landlord) to exterminate rodents, insects and other vermin on a regular basis as part of a program to keep the Premises free of rodents, insects and other vermin.

**Section 29.4. Breach by Tenant.** Tenant acknowledges that damages resulting from any breach of the provisions of this **Article 29** are difficult, if not impossible to ascertain and concedes that, among other remedies for such breach permitted by law or the provisions of this Lease, Landlord shall be entitled to enjoin Tenant from any violation hereof.

## ARTICLE 30

### PATRIOT ACT

**Section 30.1. Patriot Act.** As an inducement to Landlord to enter into this Lease, Tenant hereby represents and warrants that: (i) Tenant is not, nor is it owned or Controlled directly or indirectly by, any person, group, entity or nation named on any list issued by the Office of Foreign Assets Control of the United States Department of the Treasury ("OFAC") pursuant to Executive Order 13224, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law No. 107-56, 115 Stat. 272), as the same may be amended, modified or supplemented from time-to-time, or any similar list or any Requirement any Executive Order of the President of the United

States as a terrorist, "Specially Designated National and Blocked Person" or other banned or blocked person (any such person, group, entity or nation being hereinafter referred to as a "**Prohibited Person**"); (ii) Tenant is not (nor is it owned, Controlled, directly or indirectly, by any person, group, entity or nation which is) acting directly or indirectly for or on behalf of any Prohibited Person; and (iii) neither Tenant (nor any person, group, entity or nation which owns or Controls Tenant, directly or indirectly) has conducted or will conduct business or has engaged or will engage in any transaction or dealing with any Prohibited Person, including any assignment of this Lease or any subletting of all or any portion of the Premises or the making or receiving of any contribution or funds, goods or services to or for the benefit of a Prohibited Person. In connection with the foregoing, it is expressly understood and agreed that (x) any breach by Tenant of the foregoing representations and warranties shall be an Event of Default, and (y) the representations and warranties contained in this **Article 30** shall be continuing in nature and shall survive the expiration or earlier termination of this Lease.

## ARTICLE 31

### LIQUOR LICENSE

**Section 31.1. Liquor License.** Landlord will, at its sole cost and expense, provide Tenant with a so-called common victualer 7-day all alcohol license (the "**Liquor License**"), duly approved by the City of Boston Licensing Board (the "**Licensing Board**") and the Commonwealth of Massachusetts Alcoholic Beverages Control Commission (the "**ABCC**"), permitting Tenant to sell alcohol, beer and wine for consumption within the Premises until at least 1:00 a.m., seven (7) days per week, subject to and in accordance with all applicable Requirements and this Lease. Landlord has provided Tenant with copies of its agreement with the current holder of the Liquor License to transfer the Liquor License to Landlord, as well as a copy of the existing Liquor License. Concurrent with the execution of this Lease, Landlord and Tenant have executed and delivered the Pledge Agreement in the form attached hereto as **Exhibit H** and Tenant has executed and delivered the Promissory Note in the form attached hereto as **Exhibit G**. Landlord will provide Tenant with periodic status reports concerning the approval of the Licensing Board and the ABCC of the transfer of the Liquor License to Tenant. Tenant agrees to cooperate with Landlord in its efforts to obtain the approval of the Licensing Board and the ABCC of the issuance of the Liquor License to Tenant and the approval of the pledge of the License to Landlord pursuant to the Pledge Agreement. Without limitation, upon request of Landlord, Tenant shall submit all required applications and other required information to the Licensing Board and the ABCC for the transfer and pledge of the Liquor License. The "**Liquor License Approval**" shall mean when the Liquor License has been purchased by Landlord and the Licensing Board has approved the transfer thereof to Tenant (subject only, if applicable, to final issuance). Tenant further agrees throughout the Term of this Lease to use all reasonable efforts and diligence to maintain the Liquor License in full force and effect and good standing.

Landlord shall exercise commercially reasonable good faith efforts to obtain the Liquor License Approval as soon as possible. Without limiting the foregoing, if despite the commercially reasonable good faith efforts of both Landlord and Tenant the Liquor License Approval has not occurred by March 1, 2020 (the "**Outside Liquor License Approval Date**"), then as liquidated damages and the sole and exclusive remedy of Tenant on account hereof, for and with respect to each day between the Outside Liquor License Approval Date and the date on which the Liquor License Approval actually occurs, Tenant shall receive a credit against the Rent payable under this Lease in an amount equal to the per diem Fixed Rent payable for the

first Lease Year. Notwithstanding anything to the contrary contained herein, the Outside Liquor License Approval Date shall be extended, and there shall be no credit against Fixed Rent for any delay in the Liquor License Approval Date arising out of or resulting from the failure by Tenant to timely cooperate with the efforts of Landlord to obtain the Liquor License Approval. The "Liquor License Termination Date" shall mean June 1, 2020. If despite the commercially reasonable good faith efforts of both Landlord and Tenant, the Liquor License Approval does not occur by the Liquor License Termination Date, then not earlier than the Liquor License Termination Date and not later than forty-five (45) days following the Liquor License Termination Date, either Landlord or Tenant may terminate this Lease by giving the other party a written termination notice (a "Liquor License Condition Termination Notice"). Such termination shall be effective immediately upon the timely giving of such Liquor License Condition Termination Notice. If either Landlord or Tenant validly terminates this Lease in accordance with the foregoing provisions, then Tenant immediately shall yield-up and surrender the Premises in accordance with and subject to the terms and conditions of this Lease, this Lease shall be null and void and of no further force and effect, and except as expressly and specifically set forth herein, the parties shall have no further liabilities, responsibilities or obligations hereunder. Notwithstanding any provision contained herein, if either (i) the Liquor License Approval occurs prior to delivery of the Liquor License Condition Termination Notice, or (ii) neither party delivers a Liquor License Condition Termination Notice within such forty-five (45) day period, then neither party shall have no further right to terminate this Lease pursuant to this **Section 31.1**. Time is of the essence of this **Section 31.1**. The provisions of this **Section 31.1** shall not limit or detract from the provisions of **Section 4.2(a)** and **Section 29.2(d)**.

**Section 31.2. Sale of Liquor.** Provided that Tenant (i) maintains the Liquor License in full force and effect (after Landlord provides the Liquor License to Tenant), (ii) complies with all state, municipal and other governmental Requirements, regulations and rules with respect to the sale of liquor and all alcoholic beverages as aforesaid, and (iii) complies with all applicable provisions of this Lease, Landlord agrees that Tenant shall have the right to sell alcohol, beer and wine at retail for consumption within the Premises, subject to and in accordance with all applicable provisions of the Liquor License and this Lease.

**Section 31.3. Indemnity and Liability Insurance.** Tenant agrees to indemnify and hold harmless Landlord from and against any and all claims and any and all loss, cost, damage or expense relating to the sale of liquor and all alcoholic beverages in and from the Premises, including, without limitation, any such claim arising out of or resulting from the sale or consumption of liquor and/or alcoholic beverages in and from the Premises by Tenant, or Tenant's contractors, licensees, agents, employees, customers, guests, or invitees, or from any accident, injury, or damage whatsoever caused to any person or to the property of any person arising out of or resulting from the sale or consumption of liquor and/or alcoholic beverages in and from the Premises occurring from and after the Commencement Date until the end of the Term of this Lease, whether such claim arises or accident, injury or damages occurs within the Premises, within the Building but outside the Premises, or outside the Building, excepting only to the extent caused by the negligence or willful misconduct of Landlord. This indemnity and hold harmless agreement shall include indemnity against all costs, expenses and liabilities (including, without limitation, legal fees, court costs and other reasonable disbursements) incurred or made in connection with any such claim or proceeding brought thereon, and the defense thereof, and shall survive the expiration or termination of this Lease. It is understood that without this indemnification of Landlord by Tenant, Landlord would not enter into this Lease and would not permit the sale of alcoholic beverages in or from the Premises, and Tenant covenants that Tenant's liability insurance referred to in this Lease shall cover, indemnify and hold harmless Landlord from all such matters and items mentioned in this indemnity.

Without limiting the generality of other provisions of this Lease regarding insurance coverage to be maintained by Tenant, for such period of time as Tenant shall sell liquor or other alcoholic beverages, Tenant agrees to maintain with a responsible and qualified insurance company approved by Landlord, and with minimum combined limits of at least the minimum limits of insurance specified in Article 11 above plus minimum limits of coverage of at least \$5,000,000 under an umbrella policy covering excess "liquor law" liability, or such higher limits as Landlord may from time to time request provided such higher limits are then customarily being carried by first-class stores and restaurants in Boston selling beer, wine and other alcoholic beverages, the broadest available so-called liquor law liability insurance (sometimes also known as "dram shop" insurance) policy or policies, which shall insure Tenant and Landlord (disclosed or undisclosed), and all those claiming by, through or under Landlord, adequately in Landlord's good-faith judgment, against any and all claims, demands or actions for personal and bodily injury to, or death of, one person or multiple persons in one or more accidents, and for damage to property, as well as for damages due to loss of means of support, loss of consortium, and the like, including, without limitation, any claims mentioned in the immediately preceding indemnity paragraph; so that at all times Landlord will be fully protected against any claims that may arise by reason of or in connection with the sale of liquor and alcoholic beverages in and from the Premises. Certificates of such insurance shall at all times be deposited with Landlord showing current insurance in force and all such policies shall name Landlord as an additional insured and shall provide that such policies shall not be cancelled or the coverage reduced without at least thirty (30) days' prior written notice to Landlord, and such certificate shall evidence the same.

**Section 31.4. Suspension, Denial or Revocation.** If at any time during the Term after Landlord provides Tenant with the Liquor License, the Liquor License is suspended for seven (7) consecutive days (or longer), or revoked or not renewed for any reason (excepting only if caused solely by an act or omission of Landlord), including non-compliance with any governmental conditions, requirements, rules, regulations, ordinances or laws, the same shall constitute a material default in Tenant's obligations hereunder, and Tenant shall promptly (i) deliver to Landlord written notice of such suspension, non-renewal or revocation, and (ii) commence the applicable appeal proceedings and proceed with all due diligence to reinstate the Liquor License. As long as Tenant has so commenced the applicable appeal proceedings, if any, and is proceeding therewith as aforesaid, such suspension, denial or revocation shall not ripen into an Event of Default, unless and until the suspension, denial or revocation has continued without the Liquor License being reinstated for ninety (90) days or more but, in the event of such suspension, denial or revocation, if Tenant fails to deliver promptly to Landlord notice thereof, or if Tenant fails promptly to commence the applicable appeal proceedings and to continue thereafter to proceed as aforesaid, then the same shall so ripen into an Event of Default at Landlord's election and upon notice thereof given to Tenant at any time while such suspension, denial or revocation continues. At the time that Tenant makes any filing with or receives a notice or any other communication regarding a hearing or in connection with any purported such non-compliance from any governmental licensing board, agency, commission, or like authority with respect to the Liquor License, Tenant promptly shall deliver a copy of such filing, notice or other communication to Landlord.

**Section 31.5. Security Measures.** Tenant covenants and agrees to maintain order and decorum in and around all portions of the Premises, and if auxiliary personnel shall reasonably be required to maintain such order and decorum the same shall be provided by and at the expense of Tenant. Tenant shall use all reasonable efforts to cause its customers to avoid any conduct of any kind considered by Landlord to be improper or offensive, whether occurring in or in the vicinity of the Premises or the Building, Tenant acknowledging that the

same would be extremely deleterious to the continued well-being and functioning of the Building; and Tenant agrees promptly to take any commercially reasonable steps that Landlord shall require in order to insure compliance with the foregoing provisions and to insure that liquor and alcoholic beverages served in or from the Premises are not consumed outside such areas within the Premises as are permitted by the Liquor License and under applicable provisions of law and this Lease. In no event will the Premises be used, in whole or in part, as a discotheque, tavern, so-called "singles bar", or the like.

**Section 31.6. Reporting Liquor Sales.** Reference is made to **Section 2.5** of this Lease. For purposes of calculating Percentage Rent, Gross Sales shall, without limitation, include sales of liquor and all alcoholic beverages made in or from the Premises. Landlord shall have the right to inspect and audit the Tenant's tax returns and other materials relating to the sale of liquor and all alcoholic beverages in or from the Premises pursuant to **Section 2.5(d).**

**Section 31.7. Pledge of Liquor License.** Pursuant to the Pledge Agreement, Tenant has pledged the Liquor License to Landlord. Tenant agrees that it shall not, without the prior written consent of Landlord in each instance, sell, transfer, pledge, hypothecate or otherwise transfer or encumber the Liquor License to or in favor of any party, including, without limitation, any other tenant or occupant of the Building, any assignee or sublessee of Tenant, or any transferee of Tenant's stock or survivor of any merger, reorganization or consolidation involving Tenant herein named, excepting only as expressly and specifically set forth in **Section 31.8.** In the event of any expiration or termination of this Lease, Tenant shall, subject to all necessary approvals of state and local governing bodies, transfer the Liquor License to Landlord or to such party designated by Landlord, for no additional consideration payable by Landlord.

**Section 31.8. Transfer of Liquor License Incident to Sale of Tenant's Business.** Notwithstanding the provisions of **Section 31.7**, during the Term of this Lease, in connection with either an assignment of this Lease in accordance with the terms and conditions of **Article 13** or a sublease of the entire Premises in accordance with the terms and conditions of **Article 13**, Tenant may assign or transfer the Liquor License to the Transferee; provided, however, any such assignment or transfer of the Liquor License shall be subject to the following conditions: (i) the Liquor License shall be used solely for operations in the Premises and for no other location, (ii) in no event shall Tenant assign or transfer the Liquor License unless this Lease is concurrently assigned to such Transferee or the entire Premises is concurrently subleased to such Transferee, (iii) any assignment or transfer of the Liquor License shall be subject to Tenant obtaining, at its' sole cost and expense, all required approvals by the Licensing Board and the ABCC of the transfer of the Liquor License to the Transferee and the pledge of the Liquor License by the Transferee to Landlord, (iv) such Transferee shall confirm to the reasonable satisfaction of Landlord its pledge of the Liquor License to Landlord and its agreement to comply with all of the terms and conditions of this **Article 31**, including the provisions of **Section 31.9**; and (v) such Transferee shall execute a Promissory Note and Pledge Agreement substantially in the forms attached hereto as **Exhibit G** and **Exhibit H**, respectively, to replace the documents executed by Tenant.

**Section 31.9. Transfer of Liquor License to Landlord on Expiration or Termination of Lease.** Tenant agrees that the Liquor License and all of Tenant's right, title, interest, power and authority in, to, under or by virtue of the Liquor License shall, upon the expiration or earlier termination of the Term of this Lease, be transferred and assigned to Landlord or its nominee, for no additional consideration (excepting only as expressly and specifically set forth in the Pledge Agreement and/or the Promissory Note); and, that Tenant shall, subject only to receiving the required approval by the appropriate governmental authorities and officials of the City of

Boston and Commonwealth of Massachusetts, for no additional consideration (excepting only as expressly and specifically set forth in the Pledge Agreement and/or the Promissory Note), transfer the Liquor License to Landlord or its nominee upon the expiration or earlier termination of the Term of this Lease. The provisions of this **Article 31** shall survive the expiration or termination of this Lease, and shall be binding upon all successors and assigns of Tenant.

## ARTICLE 32

### RIGHT OF TENANT TO REDUCE HOURS OF OPERATION, AREA OF OPERATION AND TO DISCONTINUE OPERATIONS

**Section 32.1. Right of Tenant to Reduce Hours of Operation, Area of Operation and to Discontinue Operations.** Notwithstanding anything to the contrary contained herein, provided that (i) Tenant shall have initially opened for business in the Premises as provided in this Lease and shall have continuously operated its business therein, and (ii) no Event of Default by Tenant has occurred hereunder which remains uncured after the expiration of the applicable period of grace, if any, then at any time after the third (3<sup>rd</sup>) anniversary of the Rent Commencement Date for up to but not more than one hundred eighty (180) consecutive days, in one (1) instance during the Term of this Lease, Tenant may elect the following: (i) Tenant may temporarily reduce the hours of operation of its business in the Premises to less than the Minimum Hours of Operation (the "**Temporary Reduction in Hours of Operation Period**"), for a period of up to but not more than sixty (60) consecutive days; (ii) immediately following the expiration of the Temporary Reduction in Hours of Operation Period, Tenant may both temporarily reduce the footprint of its business operations and operate its business in less than all of the rentable area of the Premises and temporarily reduce the hours of operation of its business in the Premises to less than the Minimum Hours of Operation (the "**Temporary Reduction in Area of Operation Period**"), for a period of up to but not more than thirty (30) consecutive days; and (iii) immediately following the expiration of the Temporary Reduction in Area of Operation Period, for a period of up to but not more than ninety (90) consecutive days, Tenant may temporarily discontinue operating its business in the Premises (the "**Temporary Go Dark Period**"). Tenant shall provide to Landlord not less than thirty (30) days prior notice before commencing said temporary reduction in the hours of operation of its business in the Premises. In the event that Tenant reduces its hours of operation, reduces its area of operation, and/or discontinues operating its business in the Premises as aforesaid, then Tenant shall continue to perform all of its other obligations under this Lease, including, without limitation, the obligations to pay the Fixed Rent and Additional Rent in accordance with terms and conditions of this Lease. If Tenant so reduces its hours of operation, reduces its area of operation, and/or discontinues operating its business in the Premises, and (x) the reduction in the hours of operation of Tenant's business in the Premises to less than the Minimum Hours of Operation continues after the later of the expiration of the Temporary Reduction in Hours of Operation Period, the Temporary Reduction in Area of Operation Period, or the Temporary Go Dark Period, as applicable, (y) the reduction in the area of operation of Tenant's business in the Premises to less than the all of the rentable area of the Premises continues after the later of the expiration of the Temporary Reduction in Area of Operation Period or the Temporary Go Dark Period, as applicable, or (z) the cessation or discontinuance of Tenant's operations continues after the expiration of the Temporary Go Dark Period, then at any time thereafter while such reduction in hours of operation, reduction in area of operation, and/or cessation or discontinuance continues, Landlord shall have the right to terminate this Lease by delivering notice to that effect to Tenant, and this Lease shall terminate concurrent with the delivery of such notice. If either Landlord terminates this Lease in accordance with the foregoing

provisions, then Tenant immediately shall yield-up and surrender the Premises in accordance with and subject to the terms and conditions of this Lease, this Lease shall be null and void and of no further force and effect, and except as expressly and specifically set forth herein, the parties shall have no further liabilities, responsibilities or obligations hereunder, subject, however, to the payment by Tenant to Landlord of all Rent and other amounts then due and owing or having accrued hereunder. Notwithstanding the foregoing, in addition to all other rights and remedies on account thereof, Landlord may elect to declare an Event of Default under this Lease if (x) the reduction in the hours of operation of Tenant's business in the Premises to less than the Minimum Hours of Operation continues after the later of the expiration of the Temporary Reduction in Hours of Operation Period, the Temporary Reduction in Area of Operation Period, or the Temporary Go Dark Period, as applicable, (y) the reduction in the area of operation of Tenant's business in the Premises to less than the all of the rentable area of the Premises continues after the later of the expiration of the Temporary Reduction in Area of Operation Period or the Temporary Go Dark Period, as applicable, or (z) the cessation or discontinuance of Tenant's operations continues after the expiration of the Temporary Go Dark Period.

## ARTICLE 33

### EXCLUSIVE USE

**Section 33.1. Exclusive Use.** Subject to the conditions and limitations set forth herein, Landlord agrees that (i) during the period of time prior to the second (2<sup>nd</sup>) anniversary of the Rent Commencement Date, Landlord will not enter into a lease for premises within the Retail Unit for use of the subject premises by the respective tenant (a) as a sushi counter, raw bar, oyster bar, ceviche bar, or similar concept, or (b) principally and primarily as a full service or take-out food restaurant deriving greater than 20% of its gross sales from "Asian Cuisine" (as hereinafter defined); and (ii) from and after the second (2<sup>nd</sup>) anniversary of the Rent Commencement Date, Landlord will not enter into a lease for premises within the Retail Unit for use of the subject premises by the respective tenant principally and primarily as a full service or take-out food restaurant deriving greater than 40% of its gross sales from Asian Cuisine (the foregoing restrictions being referred to herein as the "**Exclusive Use.**"). "Asian Cuisine" shall mean sushi, crudo, ceviche, poke bowls, rice bowls, and other comparable Asian cuisine. Notwithstanding the foregoing, from and after the second (2<sup>nd</sup>) anniversary of the Rent Commencement Date, subject to the provisions of **Section 33.2**, Landlord shall not be limited, restricted or prohibited from entering into a lease for premises within the Retail Unit for use of the subject premises by the respective tenant as a sushi counter, raw bar, oyster bar, ceviche bar, or similar concepts

**Section 33.2. After Second Anniversary of Rent Commencement Date.** If at any time after the second (2<sup>nd</sup>) anniversary of the Rent Commencement Date, Landlord in its sole discretion elects to enter into a lease for other premises within the Retail Unit for use of the subject premises by the respective tenant as a sushi counter, raw bar, oyster bar, ceviche bar, or similar concept, and provided that the conditions precedent set forth below in this **Section 33.2** are then satisfied, then prior to offering to lease such space to any third parties for said use, Landlord shall deliver notice thereof to Tenant (the "**Exclusive Offer Notice**") setting forth a bona fide offer to lease the space in question, including a description of the intended use of the space in question, the location of the space in question (including the rentable area thereof), the Landlord's determination of Fixed Rent and Additional Rent for such space, the proposed use of the subject space, and the other material business terms upon which Landlord

is willing to lease the subject space to Tenant. Provided that all of the conditions precedent set forth in this **Section 33.2** are fully satisfied by Tenant, Tenant shall have the one-time option (the “**Exclusive Leasing Option**”), exercisable by Tenant delivering written notice (the “**Acceptance Notice**”) to Landlord within thirty (30) days after delivery by Landlord of the Exclusive Offer Notice, to lease all of the subject space in question upon all of the terms and conditions set forth in the Exclusive Offer Notice, including the Fixed Rent and Additional Rent for the space in question designated by Landlord in the Exclusive Offer Notice. Time shall be of the essence as to Tenant’s delivery of an Acceptance Notice. If Tenant fails to deliver an Acceptance Notice within such thirty (30) day period, then Tenant shall be deemed to have rejected the option to lease other premises in the Retail Unit. In such event (except as expressly and specifically set forth below in this **Section 33.2**), the Exclusive Leasing Option shall lapse and expire, and be of no further force or effect, Tenant shall have no further rights or claims under this **Section 33.2**, Landlord shall have no further liabilities or obligations to Tenant under this **Section 33.2**, and Landlord may elect to lease the premises within the Retail Unit to third parties for any use or purpose (including for use of the subject premises by the respective tenant as a sushi counter, raw bar, oyster bar, ceviche bar, or similar concept), excepting only for use of the subject premises by the respective tenant principally and primarily as a full service or take-out food restaurant deriving greater than 40% of its gross sales from Asian Cuisine, upon such terms and conditions as Landlord may determine in its discretion. Nothing set forth in this **Section 33.2** shall be construed to obligate Landlord to lease any other premises in the Retail Unit for any use or purpose (including as a food restaurant selling Asian Cuisine or for operating a sushi counter, raw bar, oyster bar, ceviche bar, or similar concept). Tenant will not have an Exclusive Leasing Option, and Landlord will not be obligated deliver an Exclusive Offer Notice to Tenant, in connection with the leasing of space in the Retail Unit to, or use of space in the Retail Unit by, Landlord or any Affiliate of Landlord for any use or purpose (including as a food restaurant selling Asian Cuisine or for operating a sushi counter, raw bar, oyster bar, ceviche bar, or similar concept); provided, however, Landlord or any Affiliate of Landlord shall not use the subject premises principally and primarily as a full service or take-out food restaurant deriving greater than 40% of its gross sales from Asian Cuisine. The Exclusive Leasing Option shall be applicable only to space in the Retail Unit and shall not be applicable to any other areas or properties, including areas in the Building located outside of the Retail Unit. Tenant shall have no right to exercise the Exclusive Leasing Option, and Landlord shall have no obligation to deliver an Exclusive Offer Notice, unless all of the following conditions precedent have been satisfied in full: (a) No uncured default or Event of Default shall exist under this Lease; and (b) the original Tenant named herein is occupying the entire Premises (excepting only the Outdoor Area) and operating a full-service restaurant in the Premises for the Permitted Use. The delivery of the Acceptance Notice by Tenant shall constitute the irrevocable and unconditional acceptance by Tenant of the offer to lease the space in question upon all of the terms and conditions set forth in the Exclusive Offer Notice. Without limitation, if Tenant timely delivers an Acceptance Notice and exercises the Exclusive Leasing Option, upon request made by either party, Landlord and Tenant will execute, acknowledge and deliver an amendment to this Lease confirming the terms and conditions of the leasing of the space in question, including the commencement date, Fixed Rent, Percentage Rent, and Additional Rent, and the use of the subject space; provided, however, as long as the conditions set forth in this **Section 33.2** are satisfied, the timely delivery of an Acceptance Notice after receipt of the Exclusive Offer Notice shall be the automatic and self-operative exercise of the Exclusive Leasing Option and the failure of either party to execute and deliver such an amendment shall not detract from the exercise by Tenant of the Exclusive Leasing Option. Notwithstanding the foregoing, if (i) Tenant was entitled to exercise its Exclusive Leasing Option but failed to deliver an Acceptance Notice within the thirty (30) day period, and (ii) within six (6) months after the date on which Landlord delivers the Exclusive Offer Notice to Tenant, Landlord proposes to lease the respective space

to a prospective tenant on terms that are "materially more favorable" than those set forth in the Exclusive Leasing Notice previously delivered to Tenant, then Tenant's Exclusive Leasing Option with respect to the respective space shall be revived, Tenant shall once again have an Exclusive Leasing Option with respect to the respective space, and prior to offering to lease such space on materially more favorable terms to a prospective tenant Landlord shall deliver an updated Exclusive Offer Notice to Tenant including such materially more favorable terms. For purposes hereof, the terms offered to a prospect shall be deemed to be "materially more favorable" from those set forth in the Exclusive Leasing Option Notice if there is a reduction of more than ten percent (10%) in the "bottom line" cost per rentable square foot of the respective space to the prospective tenant, when compared with the "bottom line" cost per rentable square foot for the respective space under the Exclusive Leasing Option Notice, determined by considering all of the economic terms of both proposals, respectively, including, among other relevant factors, the fixed rent, the percentage rent, the real estate taxes, operating expenses and insurance payment obligations, the additional rent, any free rent periods, and any other concessions and allowances. Notwithstanding any provision contained herein to the contrary, from and after the date which is twelve (12) months prior to the Expiration Date (as such expiration date may be extended from time to time pursuant to **Article 28** of this Lease), the Exclusive Leasing Option shall lapse and expire, and be of no further force or effect, Tenant shall have no further rights or claims under this **Section 33.2**, Landlord shall have no further liabilities or obligations to Tenant under this **Section 33.2**, and Landlord may elect to lease the premises within the Retail Unit to third parties for any use or purpose, including as a food restaurant selling Asian Cuisine or for operating a sushi counter, raw bar, oyster bar, ceviche bar, or similar concept, excepting only for use of the subject premises by the third party principally and primarily as a full service or take-out food restaurant deriving greater than 40% of its gross sales from Asian Cuisine.

**Section 33.3. Limitations and Conditions.** The Exclusive Use shall be subject to the following limitations and conditions:

(a) The Exclusive Use shall not apply to (i) any current (i.e., as of the Effective Date) tenants and occupants of the Retail Unit (or any part thereof), or their successors, sublessees or assigns, (ii) any assignees, sublessees, or other transferees of current tenants of the Retail Unit (or any part thereof), or their respective successors, sublessees or assigns, (iii) any tenant that is in any way, either directly or indirectly, an Affiliate, subsidiary or parent of Tenant, (iv) any tenant that is in any way, either directly or indirectly, an Affiliate, subsidiary or parent of Landlord, or (v) any property other than the Retail Unit.

(b) The Exclusive Use shall expire upon the earlier to occur of the following: (i) the date this Lease is terminated or expires, and/or otherwise ceases to be in full force and effect; (ii) the date that Tenant permanently ceases operating a full service or take-out restaurant in the Premises principally and primarily offering Asian Cuisine (provided, however, Tenant will not be considered to have permanently ceased operating during the Temporary Reduction in Hours of Operation, Temporary Reduction in Area of Operation, or Temporary Go Dark Period pursuant to **Section 32.1**) ; or (iii) the Expiration Date. After any such expiration, the Exclusive Use and the rights and claims of Tenant under this **Article 33** shall be null and void, and of no further force or effect.

**Section 33.4. Expiration.** The Exclusive Use shall automatically expire if a final order or decision is rendered by a court of competent jurisdiction or governmental authority which declares this or all such exclusivity or use clauses void. If any such governmental authority or court order or decision renders this or all such exclusivity or use clauses void, then the

Exclusive Use and the rights and claims of Tenant under this **Article 33** shall be deemed null and void and of no further force or effect.

**Section 33.5. Indemnification.** If any tenant or prospective tenant, or any governmental agency or authority, challenges the validity of this **Article 33** either by the institution of legal action or by commencing any other proceeding or action before a governmental agency, authority, or tribunal, then Tenant shall, upon written notice thereof from Landlord, either forfeit and waive its Exclusive Use right, or defend the challenge with counsel of its own selection, whereupon Tenant agrees to indemnify, defend, and hold Landlord harmless from and against any claims, expenses, losses, damages, fines and liability (including, without limitation, reasonable attorneys' fees) arising out of or resulting from the granting to Tenant of this Exclusive Use clause. This indemnity shall survive the expiration or earlier termination of this Lease.

**Section 33.6. Remedies.** If Landlord shall violate the Exclusive Use right set forth in this **Article 33** and such violation continues for more than thirty (30) days after notice from Tenant to Landlord thereof, then the Fixed Rent otherwise due and payable hereunder shall be abated by fifty percent (50%) on a day-for-day basis until the date on which said violation shall cease. In no event shall Tenant, by reason of any breach by Landlord of the foregoing Exclusive Use covenant, have the right to terminate this Lease or, except as set forth in this **Section 33.6**, to withhold payment of Fixed Rent or other charges payable hereunder, or to obtain monetary damages from Landlord. Tenant's sole and exclusive remedies on account of a breach of the foregoing Exclusive Use covenant shall be (x) to seek injunctive relief against Landlord compelling Landlord to comply with the foregoing Exclusive Use covenant, and (y) the foregoing abatement of Fixed Rent.

(signatures on following page)

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

**LANDLORD:**

**140 NORTHERN AVENUE, L.L.C.,**  
a Delaware limited liability company

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

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

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

Paul A. Galiano  
Senior Managing Director

**TENANT:**

**NAUTILUS BOSTON LLC**, a Massachusetts limited liability company

By: Nautilus Management LLC, a Massachusetts limited liability company, its Manager

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

Name: Stephen Bowler

Its: Chief Financial Officer

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

**LANDLORD:**

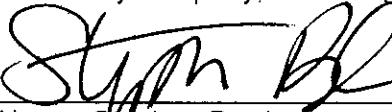
**140 NORTHERN AVENUE, L.L.C.,**  
a Delaware limited liability company

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

**TENANT:**

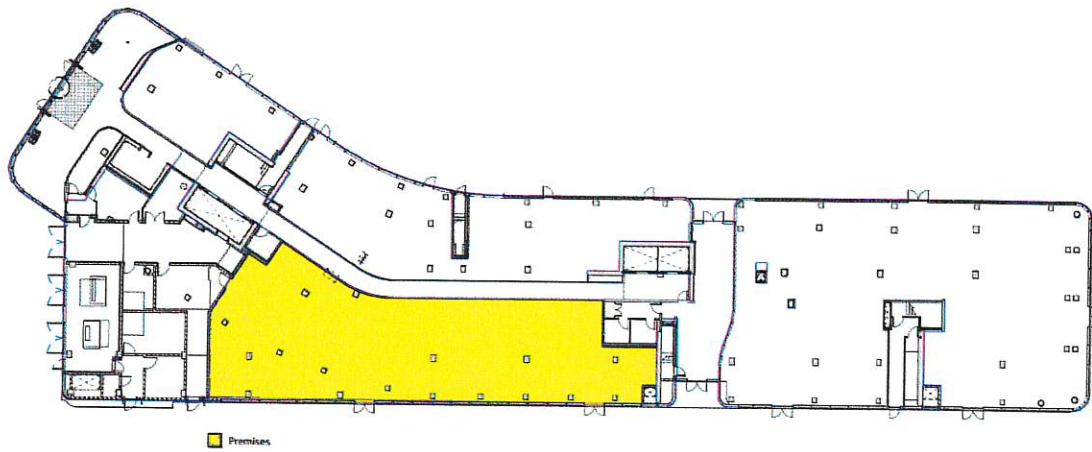
**NAUTILUS BOSTON LLC**, a Massachusetts  
limited liability company

By: Nautilus Management LLC, a Massachusetts  
limited liability company, its Manager

By:   
Name: Stephen Bowler  
Its: Chief Financial Officer

**EXHIBIT A**  
**FLOOR PLAN**

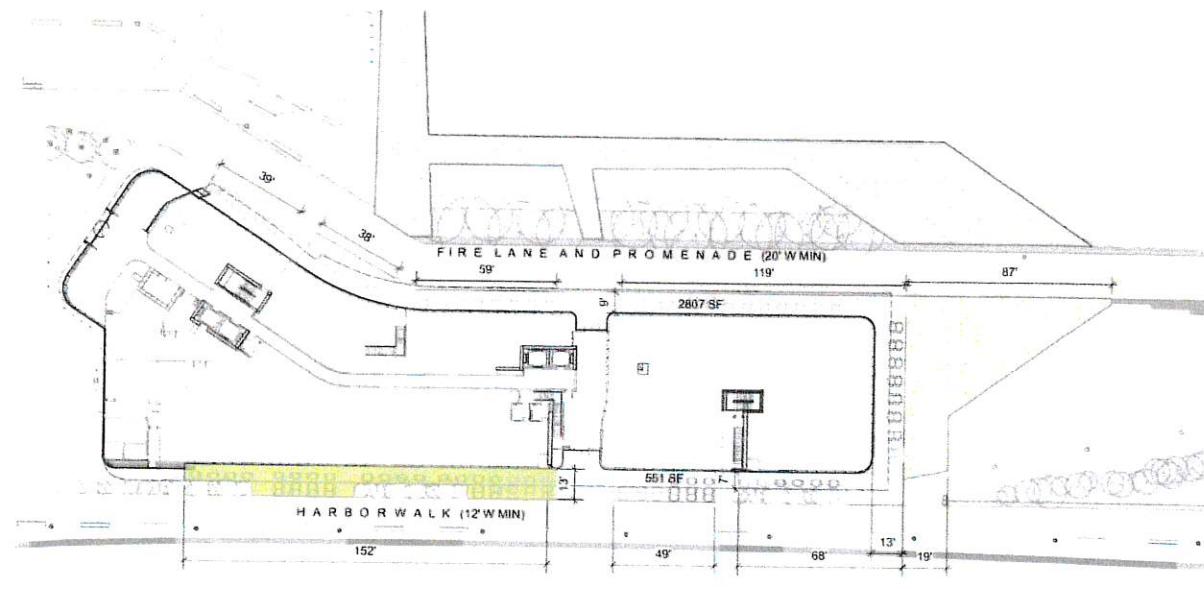
The floor plan which follows is intended solely to identify the general location of the Premises, and should not be used for any other purpose. All areas, dimensions and locations are approximate, and any physical conditions indicated may not exist as shown.



cbt

**RETAIL AREAS**  
PER 4100 PER 4 BLVD, BOSTON, MA 02118  
1/16" = 1'-0"

**EXHIBIT A-1**  
**PLAN OF OUTDOOR AREA**



## EXHIBIT B

### DEFINITIONS

**ADA:** Collectively, the Americans with Disabilities Act (42 U.S.C. § 12101 *et seq.*) and the regulations and guidelines promulgated thereunder, as the same may be amended, modified, and supplemented from time-to-time; and, the rules and regulations of the Massachusetts Architectural Access Board (M.G.L. c. 22, § 13A, *et seq.*; 521 C.M.R. 1.00 *et seq.*), as the same may be amended, modified, and supplemented from time-to-time; and, any law, code or regulation promulgated by a Governmental Authority of similar import.

**Affiliate:** With respect to any person or entity, any other person or entity that, directly or indirectly (through one or more intermediaries), Controls, is Controlled by, or is under common Control with, such first person or entity.

**Base Rate:** The annual rate of interest publicly announced from time to time by Bank of America, N.A., or its successor, in New York, New York as its “**base rate**” (or such other term as may be used by Bank of America, N.A., from time to time, for the rate presently referred to as its “**base rate**”).

**Building Systems:** The mechanical, electrical, plumbing, sanitary, sprinkler, heating, ventilation and air conditioning, security, life-safety, elevator and other service systems or facilities of the Building up to the point of connection of localized distribution to the Premises (excluding, however, HVAC systems of tenants, sprinklers and the horizontal distribution systems within and exclusively servicing the Premises).

**Business Days:** All days, excluding Saturdays, Sundays and Observed Holidays.

**Code:** The Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, as amended.

**Common Areas:** The Garage, the lobby, plaza and sidewalk areas and other similar areas of general access and the areas on individual multi-tenant floors in the Building devoted to corridors, elevator lobbies, restrooms, and other similar facilities serving the Premises.

**Common Facilities:** All common areas and facilities serving the Building, including all air-conditioning and mechanical areas, the central plant and systems (including ventilating fans and fan rooms) furnishing heating, ventilating and air conditioning to the Building, all areas containing equipment or enclosing pipes, ducts or shafts, utility distribution systems and electrical transformers, closets, equipment rooms and switchgear, emergency generators and oil tanks therefor, the common corridors, lobbies and stairways, loading docks, the parking garage (the “**Garage**”) located beneath the Building, the interior publicly accessible space included as part of the Building (such as the lobby areas), turn-around areas, mechanical and electrical areas and facilities, the area of the covered space located along the perimeter of the Building, and the other public sidewalks, stairways and plazas.

**Comparable Buildings:** First-class mixed use residential and retail buildings of comparable age and quality in the Seaport District of Boston, Massachusetts.

**Control, Controlled By, or Under Common Control With:** (i)(a) The ownership, directly or indirectly, of more than 50% of the voting stock of a corporation, or (b) in the case of any person or entity which is not a corporation, the ownership, directly or indirectly, of more than

50% of the beneficial ownership interest in such person or entity or (ii) in the case of any such person or entity, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation, person or entity.

**Deficiency:** The difference between (a) the Fixed Rent and Additional Rent for the period which otherwise would have constituted the unexpired portion of the Term (assuming the Additional Rent for each year thereof to be the same as was payable for the year immediately preceding such termination or re-entry), and (b) the net amount, if any, of rents collected under any reletting effected pursuant to the provisions of the Lease for any part of such period (after first deducting from such rents all out-of-pocket expenses incurred by Landlord in connection with the termination of this Lease, Landlord's re-entry upon the Premises and such reletting, including repossession costs, brokerage commissions, attorneys' fees and disbursements, and alteration costs).

**Excluded Expenses:** (a) Taxes; (b) franchise or income taxes imposed upon Landlord; (c) mortgage amortization, principal, points, fees, and interest; (d) leasing commissions; (e) the cost of tenant installations and decorations incurred in connection with preparing space for any Building tenant, including workletters and concessions; (f) fixed rent under Superior Leases, if any; (g) management fees to the extent in excess of the greater of (A) 3% of the gross rentals and other revenues collected for the Real Property and (B) fees charged by Landlord or related entities for the management by any of them of other first class properties in the area of the Building; (h) wages, salaries and benefits paid to any persons above the grade of Building Manager and their immediate supervisor; (i) legal and accounting fees relating to (A) disputes with tenants, prospective tenants or other occupants of the Building, (B) disputes with purchasers, prospective purchasers, mortgagees or prospective mortgagees of the Building or the Real Property, (C) disputes with employees, contractors, or consultants of Landlord, or (D) negotiations of leases, contracts of sale or mortgages; (j) costs that are reimbursed out of insurance, warranty or condemnation proceeds, or which are reimbursable by Tenant or other tenants other than pursuant to an expense escalation clause; (k) costs for services, supplies or repairs (other than management fees) paid to any related entity in excess of costs that would be payable in an "arm's length" or unrelated situation for comparable services, supplies or repairs; (l) allowances, concessions or other costs and expenses of improving or decorating any demised or demisable space in the Real Property; (m) appraisal, advertising and promotional expenses in connection with leasing of the Real Property; (n) any costs or expenses (including fines, interest, penalties and legal fees) arising out of Landlord's failure to timely pay Operating Expenses or Taxes; (o) costs incurred in connection with the removal, encapsulation, remediation, or other treatment of asbestos or any other Hazardous Materials (classified as such on the Effective Date) existing in the Building as of the date hereof; (p) the cost of capital improvements other than those expressly included in Operating Expenses pursuant to **Section 7.1**; (q) costs relating to the repair, maintenance and operation of the Garage; (r) costs associated with the operation of the business of the entity which constitutes Landlord as the same are distinguished from the costs of operation of the Real Property, including, without limitation, Landlord's general overhead and administrative expenses not related to the Real Property; (s) the cost of work or services furnished by Landlord exclusively for a particular tenant (other than Tenant); (t) costs of selling, financing, mortgaging, transferring, or conveying all or any part of Landlord's interest in the Building, the Real Property, or the Condominium Association, including, without limitation, any legal, accounting, consulting, brokerage, and other professional fees, and costs of appraisals, inspections, testing, and other due diligence associated with such sale, financing, mortgage, or conveyance; (u) any costs or expenses associated with creating the Condominium, the Condominium Association, and the Condominium Documents, as well as costs or expenses associated with creating any secondary condominium, secondary condominium association, and secondary condominium documents

contemplated by the Condominium Documents; (v) any costs or expenses of maintaining or operating the Residential Unit and any exclusive common elements, rights, and interests appurtenant thereto, including, without limitation, any costs, expenses, or assessments associated with the Residential Elevators, Residential Garage, Residential Limited Common Elements, Residential Parking Easement, and Residential Storage Areas (as such terms are defined in the Condominium Documents); and (w) any reserves or working capital owed or paid by Landlord under the Condominium Documents.

**Governmental Authority:** The United States of America, the City of Boston, the Commonwealth of Massachusetts, or any political subdivision, agency, department, commission, board, bureau or instrumentality of any of the foregoing, now existing or hereafter created, having jurisdiction over the Real Property.

**Hazardous Materials:** Any substances, materials or wastes currently or in the future deemed or defined in any Requirement as "hazardous substances," "toxic substances," "contaminants," "pollutants" or words of similar import.

**Indemnitees:** Landlord, Landlord's Agent, the association of unit owners of the Condominium, each Mortgagee and Lessor, and each of their respective direct and indirect partners, officers, shareholders, directors, members, managers, trustees, beneficiaries, employees, principals, contractors, servants, agents, and representatives.

**Initial Term:** The period of time commencing on the Commencement Date and expiring on the Expiration Date (without giving effect to any Renewal Term).

**Insured Parties:** Landlord, Landlord's Agent, the association of unit owners of the Condominium, and any Lessors and Mortgagees whose names have been furnished to Tenant.

**Lease Year:** The first Lease Year shall commence on the Rent Commencement Date and shall end on the last day of the calendar month preceding the month in which the first anniversary of the Rent Commencement Date occurs. Each succeeding Lease Year shall commence on the day following the end of the preceding Lease Year and shall extend for twelve (12) consecutive months; provided, however, that the last Lease Year shall expire on the Expiration Date.

**Lessor:** A lessor under a Superior Lease.

**Losses:** Any and all losses, liabilities, damages, claims, judgments, fines, suits, demands, costs, interest and expenses of any kind or nature (including reasonable attorneys' fees and disbursements) incurred in connection with any claim, proceeding or judgment and the defense thereof, and including all costs of repairing any damage to the Premises or the Building or the appurtenances of any of the foregoing to which a particular indemnity and hold harmless agreement applies.

**Mortgage(s):** Any mortgage, trust indenture or other financing document which may now or hereafter encumber or otherwise affect the Premises, the Real Property and/or the Building or any Superior Lease and the leasehold interest created thereby, and all renewals, extensions, supplements, amendments, modifications, consolidations and replacements thereof or thereto, substitutions therefor, and advances made thereunder.

**Mortgagee(s):** Any mortgagee, trustee or other holder of a Mortgage.

**Net Worth:** The excess of all assets over all liabilities, as shown on the balance sheet of a person or entity, determined in accordance with generally accepted accounting principles consistently applied.

**Observed Holidays:** New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day plus days observed by the Commonwealth of Massachusetts, the City of Boston, and the labor unions servicing the Building as holidays.

**Prohibited Use:** Any use or occupancy of the Premises that in Landlord's reasonable judgment would: (a) cause damage to the Building or any equipment, facilities or other systems therein; (b) impair the appearance of the Building; (c) materially interfere with the efficient and economical maintenance, operation and repair of the Premises, the Real Property, or the Building or the equipment, facilities or systems thereof; (d) adversely affect any service provided to, and/or the use and occupancy by, any Building tenant or occupants; (e) not comply with applicable Requirements; (f) materially and adversely affect the first-class image of the Building; or (g) result in protests or civil disorder or commotions at, or other disruptions of the normal business activities in, the Building. Prohibited Use also includes the use of any part of the Premises for: (i) any use which is not permitted by the Condominium Documents, (ii) the business of photocopying, multilith or offset printing (except photocopying in connection with Tenant's own business); (iii) a school or classroom; (iv) lodging or sleeping; (v) the operation of a savings and loan association or retail facilities of any financial, lending, securities brokerage or investment activity; (vi) a payroll office; (vii) a barber, beauty or manicure shop; (viii) an employment agency or similar enterprise; (ix) offices of any Governmental Authority, any foreign government, or any agency or department of the foregoing; (x) the manufacture of merchandise; (xi) the rendering of medical, dental or other therapeutic or diagnostic services; or (xii) any illegal purposes or any activity constituting a nuisance.

**Related Entity:** A business entity which Controls, is Controlled by, or is under Common Control with, the original tenant named herein.

**Requirements:** All present and future laws, rules, orders, ordinances, regulations, statutes, requirements, codes and executive orders, extraordinary and ordinary of (i) all Governmental Authorities, including the ADA and any law of like import, and all rules, regulations and government orders with respect thereto, and any of the foregoing relating to Hazardous Materials, environmental matters, public health and safety matters, and landmarks protection, (ii) any applicable fire rating bureau or other body exercising similar functions, affecting the Real Property or the maintenance, use or occupation thereof, or any street, avenue or sidewalk comprising a part of or in front thereof or any vault in or under the same, (iii) all requirements of all insurance bodies affecting the Premises, and (iv) utility service providers.

**Rules and Regulations:** The rules and regulations annexed to and made a part of this Lease as **Exhibit E**, as they may be modified from time to time by Landlord.

**Specialty Alterations:** Alterations which are not standard restaurant installations such as executive bathrooms, raised computer floors, computer room installations, supplemental HVAC equipment, safe deposit boxes, vaults, libraries or file rooms requiring reinforcement of floors, internal staircases, slab penetrations, and other Alterations of a similar character.

**Substantial Completion:** As to any construction performed by any party in the Premises, "Substantial Completion" or "Substantially Completed" means that such work has been completed, as reasonably determined by Landlord's architect, in accordance with (a) the provisions of this Lease, (b) the plans and specifications for such work, and (c) all applicable

Requirements, except for minor details of construction, decoration and mechanical adjustments, if any, the noncompletion of which does not materially interfere with Tenant's use of the Premises or which in accordance with good construction practices should be completed after the completion of other work in the Premises or the Building.

**Superior Lease(s):** Any ground or underlying lease of the Real Property or any part thereof heretofore or hereafter made by Landlord and all renewals, extensions, supplements, amendments, modifications, consolidations, and replacements thereof.

**Tenant Delay:** Any delay which results from any act or omission of any Tenant Party, including delays due to changes in or additions to, or interference with any work to be done by Landlord, or delays by Tenant in submission of information approving working drawings or plans or estimates or giving authorizations or approvals.

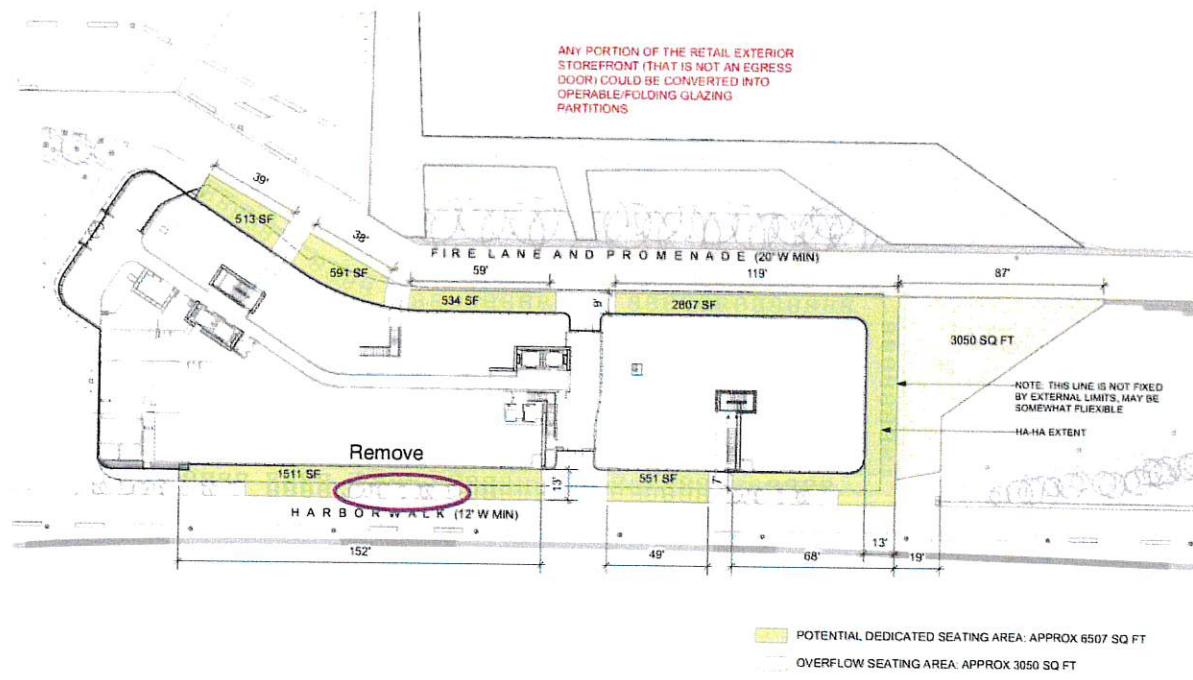
**Tenant Party:** Tenant and any subtenants or occupants of the Premises and their respective agents, contractors, subcontractors, employees, invitees or licensees.

**Tenant's Property:** Tenant's moveable fixtures and moveable partitions, telephone and other equipment, telecommunications data and other cabling, computer systems, trade fixtures, furniture, modular furniture, partitions, furnishings, and other items of personal property which are removable without material damage to the Building.

**Unavoidable Delays:** A party's inability to fulfill or delay in fulfilling any of its obligations under this Lease expressly or impliedly to be performed by such party or such party's inability to make or delay in making any repairs, additions, alterations, improvements or decorations or such party's inability to supply or delay in supplying any equipment or fixtures, if such party's inability or delay is due to or arises by reason of strikes, labor troubles or by accident, or by any other cause whatsoever beyond such party's reasonable control, including governmental preemption in connection with a national emergency, Requirements or shortages, or unavailability of labor, fuel, steam, water, electricity or materials, or delays caused by the other party, the Condominium Association, or other tenants, mechanical breakdown, acts of God, enemy action, civil commotion, fire or other casualty; provided, however (i) in no event shall financial inability be deemed to be or be a cause of an Unavoidable Delay, and (ii) in no event shall any Unavoidable Delay in any way affect, reduce or abate the obligation of Tenant timely to pay all Rent and other charges payable by Tenant pursuant to the terms of this Lease.

**Untenantable:** As a result of a fire or other casualty, (i) access to the Premises is prevented or precluded; or (ii) despite its good faith diligent efforts, Tenant is prevented from using more than fifty percent (50%) of the rentable area of the Premises for the conduct of its business, and said prevention or preclusion of access or inability to use the Premises (as applicable) is reasonably anticipated to continue for more than ninety (90) consecutive days.

**EXHIBIT C**  
**LANDSCAPING REMOVAL PLAN**



REED+HILDERBRAND

PIER 4  
BOSTON, MASSACHUSETTS

SEATING DIAGRAM  
PHASE 3

FEBRUARY 25, 2016

## EXHIBIT D

### RULES AND REGULATIONS

1. Nothing shall be attached to the outside walls of the Building. Other than Building standard blinds, no curtains, blinds, shades, screens or other obstructions shall be attached to or hung in or used in connection with any exterior window or entry door of the Premises, without the prior consent of Landlord.

2. No sign, advertisement, notice or other lettering visible from the exterior of the Premises shall be exhibited, inscribed, painted or affixed to any part of the Premises without the prior written consent of Landlord. All lettering on doors shall be inscribed, painted or affixed in a size, color and style acceptable to Landlord.

3. The grills, louvers, skylights, windows and doors that reflect or admit light and/or air into the Premises or Common Areas shall not be covered or obstructed by Tenant, nor shall any articles be placed on the window sills, radiators or convectors.

4. Landlord shall have the right to prohibit any advertising by any Tenant which, in Landlord's opinion, tends to impair the reputation of the Building, and upon written notice from Landlord, Tenant shall refrain from or discontinue such advertising.

5. The Common Areas shall not be obstructed or encumbered by any Tenant or used for any purposes other than ingress of egress to and from the Premises and for delivery of merchandise and equipment in a prompt and efficient manner, using elevators and passageways designated for such delivery by Landlord.

6. Except in those areas designated by Tenant as "**security areas**," all locks or bolts of any kind shall be operable by the Building's Master Key. No locks shall be placed upon any of the doors or windows by Tenant, nor shall any changes be made in locks or the mechanism thereof which shall make such locks inoperable by the Building's Master Key. Tenant shall, upon the termination of its Lease, deliver to Landlord all keys of stores, offices and lavatories, either furnished to or otherwise procured by Tenant and in the event of the loss of any keys furnished by Landlord, Tenant shall pay to Landlord the cost thereof.

7. All movement in or out of any freight, furniture, boxes, crates or any other large object or matter of any description must take place during such times and in such elevators as Landlord may prescribe.

8. All hand trucks shall be equipped with rubber tires, side guards and such other safeguards as Landlord may require.

9. No Tenant Party shall be permitted to have access to the roof, mechanical, electrical or telephone rooms of the Building without permission from Landlord.

10. Tenant shall store all its trash and recyclables within its Premises and/or the Trash Room. No material shall be disposed of which may result in a violation of any Requirement. All refuse disposal shall be made only through entry ways and elevators provided for such purposes and at such times as Landlord shall designate. Tenant shall use the Building's hauler.

11. Tenant shall not deface any part of the Building. No boring, cutting or stringing of wires shall be permitted, except with prior consent of Landlord, and as Landlord may direct.

12. The water and wash closets, electrical closets, mechanical rooms, fire stairs and other plumbing fixtures shall not be used for any purposes other than those for which they were constructed and no sweepings, rubbish, rags, acids or other substances shall be deposited therein. All damages resulting from any misuse of the fixtures shall be borne by Tenant where a Tenant Party caused the same.

13. Tenant, before closing and leaving the Premises at any time, shall see that all lights, water faucets, etc. are turned off. All entrance doors in the Premises shall be kept locked by Tenant when the Premises are not in use.

14. No bicycles, in-line roller skates, vehicles or animals of any kind (except for seeing eye dogs) shall be brought into or kept by any Tenant in or about the Premises or the Building.

15. Canvassing or soliciting in the Building is prohibited.

16. Employees of Landlord or Landlord's Agent shall not perform any work or do anything outside of the regular duties, unless under special instructions from the office of Landlord or in response to any emergency condition.

17. Tenant is responsible for the delivery and pick up of all mail from the mail room located in the Building.

18. Landlord reserves the right to exclude from the Building during other than Ordinary Business Hours all persons who do not present a valid Building pass. Tenant shall be responsible for all persons for whom a pass shall be issued at the request of Tenant and shall be liable to Landlord for all acts of such persons. Tenant shall be responsible for all costs and expenses of issuing new or replacement security cards and passes.

19. Landlord shall not be responsible to Tenant or to any other person or entity for the non-observance or violation of these Rules and Regulations by any other tenant or other person or entity. Tenant shall be deemed to have read these Rules and Regulations and to have agreed to abide by them as a condition to its occupancy of the Premises.

20. The review/alteration of Tenant drawings and/or specifications by Landlord's Agent and any of its representatives is not intended to verify Tenant's engineering or design requirements and/or solutions. The review/alteration is performed to determine compatibility with the Building Systems and lease conditions. Tenant renovations must adhere to the terms and conditions of this Lease and be compatible with all Building Systems.

Tenant shall comply with all security measures, procedures and guidelines adopted by Landlord from time to time, including, without limitation, those relating to the installation of turnstiles in the lobby of the Building and the building pass procedures for access to the Building.

**EXHIBIT E**  
**FORM OF COMMENCEMENT DATE AGREEMENT**

Lease Commencement Date Agreement

THIS LEASE COMMENCEMENT DATE AGREEMENT, made as of this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_\_, by and between 140 NORTHERN AVENUE, L.L.C., a Delaware limited liability company ("Landlord"), and NAUTILUS, BOSTON LLC, a Massachusetts limited liability company ("Tenant").

WITNESSETH:

THAT, WHEREAS, Landlord and Tenant have entered into that certain Lease (the "Lease") dated as of \_\_\_\_\_, 201\_\_\_\_\_, for certain premises located at Pier 4, 140 Northern Avenue, in Boston, Massachusetts; and

WHEREAS, all capitalized words and phrases used in this Agreement and not otherwise defined herein shall have the meanings described to them in the Lease; and

WHEREAS, Landlord and Tenant have agreed to confirm the Commencement Date, Rent Commencement Date and Expiration Date of the Lease, pursuant to and in accordance with **Section 2.2** thereof;

NOW, THEREFORE, for \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree that the Commencement Date of the Term of the Lease shall be \_\_\_\_\_, 201\_\_\_\_\_, the Rent Commencement Date shall be \_\_\_\_\_, 201\_\_\_\_\_, and the Expiration Date shall be \_\_\_\_\_, 201\_\_\_\_\_.  
\_\_\_\_\_

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease Commencement Date Agreement as a sealed instrument as of the day and year first above written.

LANDLORD:

140 NORTHERN AVENUE, L.L.C.,  
a Delaware limited liability company

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

Name:

Its:

TENANT:

NAUTILUS, BOSTON LLC,  
a Massachusetts limited liability company

By: Nautilus Management Company LLC, a  
Massachusetts limited liability company, its  
manager

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

Name:

Its:

**EXHIBIT F**  
**BASE BUILDING MATRIX**

**Exhibit F - Base Building Work**  
**140 Northern Avenue, LLC (Pier 4 - Phase 3) Retail Space #2**

**Allocation of Responsibility between Landlord and Tenant Work**

Landlord shall provide the Base Building Work (core-and-shell systems), to be constructed in accordance with the Base Building Construction Documents. Tenant Work shall be funded through the Tenant Improvement Allowance, supplemented by Tenant as required. This document describes the allocation of different building elements between Landlord's Base Building Work and Tenant Work.

ELEMENT	DESCRIPTION	BASE BUILDING WORK	TENANT WORK
Site Improvements	All permanent site improvements around the building, including pavers, benches, plantings in the vicinity of retail spaces, in accordance with the landscape plans within the Base Building Construction Documents. Outdoor space is already designed with finished in place, LL is open to ongoing dialog.	X	
	Ensure base building and site construction/common areas are in compliance with all applicable laws including ADA. Language covered in lease.	X	
	Any potential necessary environmental remediation. Language covered in lease.	X	
	All site furnishings, planters, tables and chairs, etc. associated with outdoor activities for tenants space, subject to Landlord's review and approval.		X
	Installation of mutually agreed upon fencing or other surround to delineate tenant's out door space. LL suggests moveable stantions or planters.		X
Building Envelope	Environmentally responsible sustainable Base Building that has achieved LEED Certification.	X	
	Building Façade of insulated glass curtain wall, metal panels and other similar materials.	X	
	Storefront and base building standard entry doors, including louvers for HVAC fresh-air, for all retail spaces. Relocation or redesign of retail entry doors will be by Tenant.	X	
	Any modifications to storefront, or entry doors requested by tenant (including installation procedures and keying) and approved by Landlord.		X
Roofing	Membrane roofing system with walkway pads to all Base Building mechanical equipment and any roofing penetrations related to the Base Building. These are already in place.	X	

	Roofing penetration and walkway pads to any Tenant mechanical equipment installed on the roof, including exhaust fans. All roof work by Tenant shall be by Landlord's roofing contractor at Tenant's expense. Tenant mechanical areas to be further detailed and located (if possible) on the roof area.		X
Structural	Cast-in-place concrete floor systems capable of supporting a live load of 100 PSF on the ground floor and 55 PSF on the upper residential floors. Deck has 3-hr fire rating due to garage levels below.	X	
	2" floor depression provided for the retail spaces to accommodate flooring materials or a topping slab at Tenant cost.		X
	Any structural upgrades, openings, modifications or other changes to the Base Building structural system requested by Tenant and approved by Landlord.		X
Sound Attenuation	Delivery of concrete ceiling slab with an acoustical rating of STC 55.	X	
	Installation of mutually agreed upon soundproofing or sound deadening materials to bring the ceiling acoustical rating to STC 65 or greater and an acoustical report confirming the rating from a mutually agreed upon consultant.		X
Base Building Common Areas	All Base Building Common Area components of the Building that serve only the Building's residents (not utilized by Retail Tenants), such as the residential lobby, elevators, residential corridor and mechanical areas.	X	
	Finished ground floor electrical rooms, tel/data room, water room and fire pump room, which provide service for both residents and Retail Tenants, as shown on Landlord's Base Building drawings.	X	
Retail Common Areas	Loading/service/trash activities will be required to follow the loading/service /trash diagram. The Building loading dock will be used for residential loading/ service/trash only.	X	
	Loading/service/trash will be conducted by Tenant. A refrigerated trash room will be provided by LL and shared with othe retail restaurant tenant. Trash will be brought to loading dock by Tenant for scheduled pick-up (not storage) and all loading will be done via street access. Tenant may require add'l storage space in their Premises for waste.	X	
	Restrooms for retail spaces are to be provided within individual Tenant premises as a part of Tenant fit-out.		X
Tenant Areas	Framing, insulation, vapor barrier at exterior walls (excluding storefront) and all walls separating Retail Tenants from Building Common Areas and Retail Common Areas.	X	
	Framing (metal studs) of demising walls between Retail Tenants.	X	
	Drywall on Retail Tenant side of demising walls between Retail Tenants, Building Common Areas and Retail Common Areas.	X	

	All partitions, ceilings, flooring, painting, finishes, doors/hardware, millwork, MEP systems, fixtures, equipment and related work within Retail Tenant premises.		X
	LEED Certification for Retail Tenant improvements is not required but optional if desired by Retail Tenant. Landlord's LEED Tenant Design and Construction Guidelines to be provided to Tenant, who shall in any case adhere to any requirements set forth in the Guidelines that pertain to protection of the LEED Certification for the Base Building.		X
Window Treatment	All window treatments at storefront to be designed and installed as part of Tenant fit-out, will be subject to Landlord's review and approval.		X
HVAC	HVAC systems suitable for a 4827sq.ft. restaurant space for cooling, heating, ventilation/make up air to be 4-pipe chilled water/hot water fan-coil units installed in the ceiling of the Retail Tenant premises, utilizing the exterior louver for outside air and chilled water/hot water piping tied into building chilled water and hot water loops.		X
	48"x18" fire-wrapped black iron kitchen exhaust riser stubbed from the Retail Tenant premises to the roof with clean-outs every other floor.	X	
	Black iron ductwork from kitchen equipment to black iron duct risers, grease scrubbers and fans. Charcoal scrubber will possibly be required and installed by Retail Tenant.		X
	Toilet exhaust will go directly through the louver band facing East. Should be located on the SE edge, which is located below the amenity space above and not a residential unit.		X
Gas	Gas service from National Grid to building with primary gas meter.	X	
	Gas shall be direct metered through utility. Gas meter for Retail Tenant premises to be installed in or near Retail Tenant premises. Landlord is prepared to assist Tenant in dealing with Gas utility company if timing becomes an issue.		X
	Gas piping from meter to Retail Tenant premises.		X
	Gas piping within Retail Tenant premises and to all Retail Tenant equipment.		X
Plumbing	2" Building water service, with back flow prevention.	X	
	Cold water service piped, stubbed and valved to each Retail Tenant premises, with provision for tenant-furnished sub-meter.	X	
	Cold water distribution system within Retail Tenant premises.		X
	Stand alone electric or gas powered domestic hot water system within Retail Tenant premises, including all electric and gas powered hot water heaters, pumps and distribution of all hot water piping within Retail Tenant premises to all Retail Tenant equipment, restrooms, kitchens and other specialty requirements.		X
	4" Sanitary waste main and common sanitary vent to roof.	X	

	All sanitary waste, grease waste and vent connections within Retail Tenant premises.		X
	Landlord approved grease trap locations and path for connection line will be provided, but grease trap and all associated infrastructure will be by Retail Tenant.		X
	All Plumbing fixtures and equipment within Retail Tenant premises, including restrooms, kitchens and other specialty requirements.		X
Electrical	Primary service feeds from Eversource, electrical service switchboards and related Base Building equipment.	X	
	Allocation to restaurant Retail Tenants of 60 W/SF - 480-volt 450 amp breaker - in a MDP for HVAC, lighting, plugs and equipment.	X	
	3" Empty conduits (2) leading from Base Building electrical room to Retail Tenant.	X	
	Switchboard connection, CT cabinet, electrical utility company metering and wiring to Tenant Premises.		X
	Provisions of and connections to transformers, panels and related equipment in Retail Tenant premises.		X
	Lighting and receptacles serving Retail Tenant premises and all electrical connections to HVAC and specialty equipment.		X
	Lighting and receptacles serving core Building areas.	X	
	Exterior Base building lighting not associated with any specific Retail Tenant.	X	
	Exterior lighting associated with a Retail Tenant Storefront, approved by Landlord		X
	Emergency egress and exit lighting fixtures in Retail Tenant premises.		X
	Lightning protection system, for Building and Base Building equipment.	X	
	Lightning protection tie-in for any Retail Tenant rooftop equipment to already existing connection points, using UL-certified contractor.		X
	Emergency egress and exit lighting in the core Base Building areas.	X	
Fire Protection	Sprinkler service including fire pump, fire department connection, alarm flow valve protection, standpipes in each stair.	X	
	Core Building area sprinkler heads and piping.	X	
	Retail Space piping and sprinkler heads only as required to obtain a Base Building Certificate of Occupancy.	X	
	All modifications to base fire protection system as required by the Retail Tenant fit-up program, including additional run-outs, drops, heads and related equipment as approved by Landlord.		X
	Special extinguishing systems for Retail Tenant kitchen requirements.		X

	Fire Extinguisher Cabinets in core Building areas and stair entries with appropriate Fire Extinguishers.	X	
	Fire Extinguisher Cabinets in Retail Tenant premises with appropriate code compliant Fire Extinguishers.		X
Fire Alarm	Base Building expandable addressable fire alarm system that meets all code requirements. Base Building system to include separate circuits ready for connection by Tenant.	X	
	Detection and annunciation devices in core Building areas and stair entries.	X	
	Detection, annunciation and all wiring in Retail Tenant premises and as required to tie into Base Building system. Final tie-in to be provided at Retail Tenant cost by Landlord's fire alarm contractor.		X
Telecommunications	Main Distribution Frame (MDF) telephone room, with empty conduit leading to Retail Tenant premises.	X	
	Telephone and data wiring, conduits and outlets for Retail Tenant premises from core closets, plus extensions from closets to MDF for carrier services.		X
	Audio-visual connections and systems for Retail Tenant Premises.		X
	Any special equipment needed to provide specific requirements for Retail Tenant's telephone, IT and data equipment. Rooftop dishes may only be installed with Landlord's specific permission and at locations approved by Landlord.		X
Security	Base Building wide security network system for monitoring and access control, including card access at any common entry and service doors.	X	
	Card access and/or alarm systems into or within Retail Tenant premises. Emergency egress doors must be tied into Base Building Fire Alarm system.		X
Signage	Building and site exterior address, directional, common identity and code-required signage to Landlord's standards.	X	
	All Retail Tenant exterior identity signage, consistent with Landlord's Signage Guidelines and as approved by Landlord.		X
	Signage within Retail Tenant premises. Any signage visible from the sidewalk shall be approved by Landlord.		X

**EXHIBIT G**  
**FORM OF PROMISSORY NOTE**

## PROMISSORY NOTE

1. **DEFINED TERMS.** As used in this Promissory Note (the "Note"), the following terms shall have the following meanings:
  - 1.1 **Lender:** 140 NORTHERN AVENUE, L.L.C., a Delaware limited liability company
  - 1.2 **Borrower:** NAUTILUS BOSTON LLC, a Massachusetts limited liability company
  - 1.3 **Loan:** That certain loan in the amount of \$400,000.00 (the "Loan Amount") being made by Lender to Borrower in accordance with the terms of the Loan Documents.
  - 1.4 **Date of Disbursement:** Lender shall disburse the Loan Amount to Borrower upon full and final approval of the C.V. Seven-Day All Alcoholic Beverages Liquor License Transfer Application to Borrower and the Pledge of the Liquor License to Lender by the City of Boston License Commission (the "Board") and the Massachusetts Alcoholic Beverages Control Commission (the "ABCC").
  - 1.5 **Interest Rate:** Five percent (5%) per annum.
  - 1.6 **Lease, License, Loan, Loan Documents and Event of Default** shall have the same meanings as in the Pledge Agreement by and between Lender and Borrower of even date herewith (the "Pledge Agreement").
  - 1.7 **Maturity Date:** The expiration or earlier termination of the Lease.
2. **DEBT:** For value received, Borrower hereby promises to pay to the order of Lender the Loan Amount, together with interest on all unpaid balances from the Date of Disbursement, at the interest rate set forth in this Note, together with all other amounts due hereunder or under the Loan Documents.
3. **INTEREST:** The Loan Amount shall accrue interest at a fixed rate of five percent (5%) per annum.
4. **PAYMENTS:** Interest payments shall be paid on the 1st day of each month with payments based on a ten (10) year amortization schedule. Payments of principal shall be deferred until the Maturity Date.

Any payments on this Note, shall be made in coin and currency of the United States of America which is legal tender for the payment of public and private debts, in immediately available funds, to Lender at the address set forth in the Pledge Agreement, or such other address as Lender may from time to time designate in writing.

5. **COSTS AND EXPENSES UPON DEFAULT:** Upon the occurrence and continuance of an Event of Default, in addition to principal, interest, and delinquency charges, Lender shall be entitled to collect all costs of collection, including but not limited to reasonable attorneys' fees.
6. **APPLICATION OF PAYMENTS:** Unless an Event of Default has occurred and is continuing, all payments hereunder shall be applied first to delinquency charges, costs of collection and enforcement and other similar amounts due, if any, under this Note and under the other Loan Documents, then to interest which is due and payable under this Note, and the remainder, if any, to principal due and payable under this Note. If an Event of Default has occurred and is continuing such payments may be applied to sums due under this Note or under the other Loan Documents in any order and combination that Lender may, in its sole and absolute discretion, determine.
7. **WAIVERS:** Borrower severally and irrevocably waives presentment for payment, demand, diligence in collection, commencement of suit against any obligor, notice of protest, and protest of this Note, with or without notice to Borrower, and agree that its liability shall not be in any manner affected by any indulgence, extension of time, renewal, waiver or modification granted or consented to by Lender. Borrower consents to any and all extensions of time, renewals, waivers or modifications that may be granted by Lender with respect to the payment or other provisions of this Note, and to any release of the collateral for this Note, or any part thereof, before or after maturity of this Note, with or without notice to Borrower, and without affecting its liability under this Note. Any delay on the part of Lender in exercising any right under this Note shall not operate as a waiver of any such right, and a waiver granted or consented to on one occasion shall not operate as a waiver in the event of any subsequent default.
8. **ACCELERATION AND OTHER REMEDIES:** If an Event of Default occurs and is continuing then, and in any such event, Lender may, at its option, declare the entire unpaid balance of this Note together with interest accrued thereon, to be immediately due and payable and Lender may proceed to exercise any rights or remedies that it may have under this Note, the other Loan Documents or such other rights and remedies which Lender may have at law, equity or otherwise.
9. **RIGHT OF FIRST REFUSAL:** For so long as the Loan remains outstanding, the Borrower shall be prohibited from selling or transferring the License to any party other than the Lender, except as expressly and specifically set forth in the Lease.
10. **SUCCESSORS AND ASSIGNS:** This Note shall be binding upon Borrower and its successors, assign and representatives, and shall inure to the benefit of Lender and its successors, endorsees, and assigns.
11. **COLLECTION:** Any check, draft, money order or other instrument given in payment of all or any portion hereof may be accepted by Lender and handled by collection in the customary manner, but the same shall not constitute payment hereunder or diminish any rights of Lender except to the extent that actual cash proceeds of such instrument are

unconditionally received by Lender and applied to this indebtedness in the manner elsewhere herein provided.

12. **AMENDMENTS:** This Note may be changed or amended only by an agreement in writing signed by the party against whom enforcement is sought.
13. **GOVERNING LAW; SUBMISSION TO JURISDICTION:** This Note is given to evidence debt for business or commercial purposes and shall be governed by and construed under the laws of the Commonwealth of Massachusetts. Borrower and each member, manager, partner, officer, director and employee of Borrower, hereby submits to personal jurisdiction in the Commonwealth of Massachusetts for the enforcement of Borrower's obligations hereunder and under the other Loan Documents, and waives any and all personal rights under the law of any other state to object to jurisdiction within the Commonwealth of Massachusetts for purposes of litigation to enforce such obligations of Borrower. In the event such litigation is commenced, Borrower agrees that service of a copy of the summons, complaint and other pleadings required to commence such litigation upon Borrower at the address set forth in the preamble to this Note.
14. **CAPTIONS:** All paragraph and subparagraph captions are for convenience of reference only and shall not affect the construction of any provision herein.
15. **EARLY TERMINATION:** Notwithstanding anything to the contrary contained herein, in the event of full and final disapproval of the C.V. Seven-Day All Alcoholic Beverages Liquor License Transfer Application to Borrower by the Board or the ABCC, Lender shall not disburse the Loan Amount to Borrower and this Note shall be immediately null and void.

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IN WITNESS WHEREOF, this Note has been executed and delivered under this seal  
this 9th day of August, 2019.

WITNESS:

BORROWER:

NAUTILUS BOSTON LLC, a Massachusetts  
limited liability company

By: Nautilus Management LLC, a  
Massachusetts limited liability company,  
its Manager

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

Name: Stephen Bowler  
Its: Chief Financial Officer  
Hereunto duly authorized

**EXHIBIT H**

**FORM OF PLEDGE AGREEMENT**

## **PLEDGE AGREEMENT**

This Pledge Agreement (the “**Pledge Agreement**”) is made and entered into on this 9th day of August, 2019, by and between NAUTILUS BOSTON LLC c/o Steve Bowler, 2 Catherine Lane, Nantucket, Massachusetts 02554 (the “**Pledgor**”) and 140 NORTHERN AVENUE, L.L.C. c/o Tishman Speyer Properties, L.P., 45 Rockefeller Plaza, New York, New York 10111, Attn: Chief Financial Officer (the “**Pledgee**”).

### **WITNESSETH:**

**WHEREAS**, Pledgor has applied to the City of Boston License Commission and the Massachusetts Alcoholic Beverages Control Commission for approval of the transfer to Pledgor of C.V. Seven-Day All Alcoholic Beverages License, License Number LB-99180 (the “**License**”), to be exercised at certain premises (the “**Premises**”) located at 300 Pier Four Boulevard, Boston, Massachusetts, to be known as “Nautilus”;

**WHEREAS**, Pledgor has leased the Premises from Pledgee pursuant to that certain Lease dated as of August 9, 2019 (the “**Lease**”);

**WHEREAS**, pursuant to various agreements by and between the parties Pledgor has executed a Promissory Note in the amount of Four Hundred Thousand and 00/100 (\$400,000.00) (the “**Note**”), to be repaid as stated in said Note;

**WHEREAS**, the agreement of the parties require that the payment and performance of the Note shall be secured by a Pledge Agreement covering the License of the Pledgor; and

**WHEREAS**, in order to induce Pledgee to consummate the transactions, Pledgor is willing to execute the Note and grant the pledge hereunder as security for the payment and performance by the Pledgor of the Note.

**NOW THEREFORE**, in consideration of the foregoing and in consideration of One (\$1.00) Dollar and other good and valuable consideration this day paid and extended by Pledgee to Pledgor, the receipt and sufficiency of which are, by the execution hereof, hereby acknowledged, Pledgor and Pledgee do hereby covenant, represent, warrant, understand and agree as follows:

1. Pledgor hereby pledges and assigns to Pledgee and grants Pledgee to the full extent permitted by law, a security interest in the License, together with any and all renewals and replacements thereto, all rights that have accrued and may hereafter accrue thereunder and Pledgor’s right, title and interest therein and all proceeds arising out of or resulting from the sale, transfer or assignment of the License. For and during all such times as any indebtedness of Pledgor to Pledgee is outstanding under the Note, the License shall be subject to this Pledge Agreement. Pledgor covenants and agrees (a) to comply with all of the covenants, agreements, terms, conditions and provisions set forth in the Note and this Pledge Agreement (collectively, the “**Loan Documents**”); (b) not to, in any manner, (i) sell, or cause to be sold the License held by the Pledgor except subject to the Loan Documents, (ii) be subject to any dissolution, voluntary or otherwise, or (iii) grant any security interest in the License to any person, without the prior written consent of Pledgee; (c) to maintain its existence and remain in good standing under the laws of the Commonwealth of Massachusetts; (d) to keep in full force and effect all such licenses, permits and

authorizations as are required in the conduct of its business, and to comply with all rules and regulations applicable thereto; (e) to pay, withhold, collect and remit all such taxes as are required by law; and (f) to pay all alcoholic beverage bills incurred in the conduct of its business.

2. Pledgor agrees to notify Pledgee in writing, without delay, in the event it is listed as delinquent on the Alcoholic Beverages Control Commission list under M.G.L. c.138, §25, ¶4, and to effect its removal from the list within ten (10) days of notification. Failure to do so shall constitute an Event of Default hereunder.

3. Pledgor agrees to notify Pledgee of all changes in officers, directors, members, managers and shareholders of Pledgor, all of which changes must be duly approved by the Boston Licensing Board and the Alcoholic Beverages Control Commission. In the event of any such change, any documents requested by Pledgee, as appropriate, shall be furnished without delay to Pledgee.

4. For and during the term of this Pledge Agreement and while any indebtedness of Pledgor to Pledgee is outstanding under the Note, the Pledgor agrees that it shall conduct its restaurant and liquor business in accordance with all applicable laws, rules and regulations and that it will, in good faith, use best efforts to protect Pledgee's interest hereunder.

5. This Pledge Agreement shall continue in full force and effect until the earlier to occur of (i) all indebtedness under the Note is satisfied and paid in full, or (ii) the Note becomes null and void in accordance with the terms of paragraph 15 of the Note. In the event that either (each, an "**Event of Default**") (a) Pledgor fails to pay any sum due on the Note or under any other Loan Document within five (5) days following delivery to Pledgor of written notice that such payment was not received when due; provided, however, Pledgee shall not be obligated to deliver such written notice more than twice in any twelve-month period and upon the third such occurrence in any twelve (12) month period Pledgor shall be in default if it fails to pay any such sum when due, or (b) or there is any other default of any of the provisions of the Loan Documents continuing for thirty (30) days or more after written notice by Pledgee to Pledgor of such default, Pledgee may, without notice of demand, declare all obligations and liabilities referred to hereunder, including (without limitation), the indebtedness of the Note, to be immediately due and payable, and Pledgee shall then have, in addition to all other rights and remedies, the rights and remedies of a secured party under the Uniform Commercial Code. Pledgor hereby irrevocably constitutes and appoints Pledgee the true and lawful attorney of Pledgor only upon and during the occurrence and continuance of an Event of Default to execute such License transfer documents as may be necessary to transfer the License to Pledgee or its designee.

6. With respect to all of the obligations and liabilities referred to hereunder, Pledgor assents to the granting or allowance by Pledgee of any extension or postponement of the time of payment or other indulgence, of any substitution, exchange or release of collateral, of the addition or release of any party or person primarily or secondarily liable, of the acceptance of partial payment thereon and the settlement, compromising or adjusting of any thereof, all in such manner and at such time or times as Pledgee may deem advisable. Pledgee shall have no duty as to the collection or protection of the collateral or any income thereon, nor as to the preservation of rights against prior parties, nor as to the preservation of any rights pertaining thereto. Pledgee may exercise its rights with respect to the collateral without resorting or regard to other collateral or

sources of reimbursement for liability. Pledgee shall not be deemed to have waived any of its rights upon or under the obligations and liabilities hereunder or to the collateral. Any waiver shall be specific in nature and in writing, signed by Pledgee. No delay or omission on the part of Pledgee in exercising any rights shall operate as a waiver of such right or any other right. A waiver on any one occasion shall not be construed as a bar to or a waiver of any right on any future occasion. All rights and remedies of Pledgee on the obligations and liabilities hereunder or to the collateral, whether evidence hereby or by any other instrument or papers, shall be cumulative and may be exercised separately or concurrently.

7. This Pledge Agreement and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by the laws of Massachusetts. This Pledge Agreement is intended to take effect as a sealed instrument.

8. This Pledge Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective (as applicable) heirs, representatives, successors and assigns.

9. Notwithstanding any provision contained in this Pledge Agreement to the contrary, the liability of Pledgee for its obligations under this Pledge Agreement shall be limited to the interests of Pledgee in the Real Property (as defined in the Lease). In no event shall any partner, member, manager, shareholder, director, officer, principal, employee, agent, or owner of Pledgee, direct or indirect, disclosed or undisclosed, be personally liable for any debts, liabilities or obligations of Pledgee, or for any claims against Pledgee, arising out of or resulting from this Pledge Agreement. Any such debts, obligations, liabilities or claims shall be satisfied solely out of the interests of Pledgee in the Real Property. In no event shall any personal judgment be sought or obtained against any partner, member, manager, shareholder, director, officer, principal, employee, agent, or owner of Pledgee, direct or indirect, disclosed or undisclosed.

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Executed as of the date and year set forth above.

**PLEDGOR:**

**NAUTILUS BOSTON LLC, a Massachusetts limited liability company**

**By: Nautilus Management LLC, a Massachusetts limited liability company,  
its Manager**

**By: \_\_\_\_\_  
Name: Stephen Bowler  
Its: Chief Financial Officer  
Hereunto duly authorized**

**PLEDGEE:**

**140 NORTHERN AVENUE, L.L.C., a Delaware limited liability company**

**By: \_\_\_\_\_  
Name:  
Title:**