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LEASE

This Lease (this “Lease”) is made as of this ____ day of _____, 20__ by and between [_____] a [_____] as “Landlord”, and [_____] a [_____] as “Tenant”. The parties hereby agree as follows:

1. **Definitions.**

Where the Lease references the following subjects, each reference shall mean the information stated in this Section for that subject. Capitalized terms used but not defined in the body of this Lease shall have the meanings provided in Exhibit L.

Landlord: [_____]

Landlord’s Address: [_____] [_____] Attn: [_____] Email: [_____]

Tenant: [_____]

Tenant’s Address: [_____] [_____] Attn: [_____] Email: [_____]

Building: [_____] [_____] Massachusetts. The Building contains approximately [_____] rentable square feet. The “Property” means the Building together with the land on which the Building is located.

Premises: Approximately [_____] rentable square feet on the [_____] floor of the Building, shown on the floor plan attached as Exhibit A-1.

Tenant’s Share: [_____]%

Commencement Date: The Term of the Lease begins on [_____] 20[_____] ¹

Expiration Date: The Term of the Lease expires on [_____] 20[_____] ²

¹ [NTD: To be revised if Commencement Date is not a fixed date, but based on build out or some other calculation.]

² [NTD: To be revised if Expiration Date will not be known at the time of execution.]

[Extension Right: The right to extend the Term by [] years (see Section 3(b) and Exhibit B)]

Rent Commencement Date: Base Rent is due and payable beginning on [], 20[]³

Minimum Base Rent: Minimum Base Rent shall be as follows:

<u>Dates</u>	<u>Annual Minimum Base Rent</u>	<u>Monthly Minimum Base Rent</u>
Rent Commencement Date – []	\$_[]	\$_[]
[] – []	\$_[]	\$_[]
[] – []	\$_[]	\$_[]
[] – []	\$_[]	\$_[]
[] – []	\$_[]	\$_[]

[Parking Charge:] [\$___ per parking space, per month (see Section 2(d) and Exhibit A-3)]

Security Deposit: \$[]

Brokers: [] (“Landlord’s Broker”) and [] (“Tenant’s Broker”)

Certain Legal Definitions of Capitalized Terms Used in this Lease: See Exhibit L

The following exhibits are attached hereto and incorporated herein:

- Exhibit A-1 Floor Plan of Premises [and Outdoor Seating Area]
- [Exhibit A-2 Outdoor Seating]
- [Exhibit A-3 Parking]
- [Exhibit B Extension Right]
- Exhibit C Gross Sales
- Exhibit D Work Letter
- Exhibit D-1 Form of Memorialization of Dates Agreement
- Exhibit E Responsibility Matrix
- [Exhibit E-1 Approved Third-Party Service Providers]
- Exhibit F Restaurant Provisions
- Exhibit G Landlord’s Services
- Exhibit H Taxes and Operating Costs
- Exhibit I Hazardous Materials
- Exhibit J Insurance

³ [NTD: To be revised if Rent Commencement Date is not a fixed date, but based on build out or some other calculation.]

Exhibit K Rules and Regulations
Exhibit L Certain Legal Definitions of Capitalized Terms Used in this Lease

2. **Lease of Premises.**

(a) **Premises.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises upon and subject to the terms and conditions of this Lease.

(b) **Common Areas.** Tenant shall have the non-exclusive right, appurtenant to the Premises, to use the “Common Areas” designated for the common use of tenants of the Property including common lobbies, loading docks, hallways, elevators, stairways, walkways, and restrooms (if any).

(c) **Outdoor Seating.** Tenant shall have the non-exclusive right, appurtenant to the Premises, to use the “Outdoor Seating Area” shown on Exhibit A-1, subject to the terms and provisions in Exhibit A-2.]

(d) **Parking.** During the Term, Tenant shall have a license to use [] parking spaces within the parking facilities serving the Property subject to the terms and provisions of Exhibit A-3.]

3. **Term.**

(a) **Initial Term.** The initial “Term” of this Lease shall be [] full months (plus the initial partial month, if the Commencement Date is not on the first day of a month). The Term begins on the Commencement Date and ends on the Expiration Date, unless sooner terminated pursuant to the provisions of this Lease.

(b) **Extension Term.** Tenant shall have the “Extension Right” to extend the Term by [] years (the “Extension Term”), subject to the terms and provisions in Exhibit B.]

4. **Rent.**

(a) **Base Rent.** The monthly “Base Rent” for the Premises shall be [the greater of (i)] Minimum Base Rent [and (ii) []% of all Gross Sales (as defined in Exhibit C) (the “Percentage Rent”)].⁴ Beginning on the Rent Commencement Date, Tenant shall pay the Base Rent to Landlord in monthly installments, in advance, prorated for any partial month.

(b) **Additional Rent.** Beginning on the Commencement Date, Tenant shall pay the following “Additional Rent” to Landlord: (i) utilities due to Landlord per Section 8, below; (ii) Tenant’s Share of Taxes and Operating Costs per Section 9, below;⁵ and (iii) all other amounts to be paid by Tenant by the terms of this Lease.⁶

(c) **Payment.** Base Rent and Additional Rent are together referred to as “Rent”. Rent shall be paid to Landlord when due, without demand, setoff or deduction, at its address set forth in Section 1 above (or another address as Landlord may notify Tenant from time to time). If any installment of Rent is not paid within 5 days after its due date, then (i) Tenant shall pay to Landlord a late charge of []% of the amount overdue; and (ii) the overdue amount shall bear interest at the Default Rate from the date such payment became due until paid by Tenant.

⁴ [NTD: Delete bracketed language and Exhibit C if there is no Percentage Rent.]

⁵ [NTD: For informational purposes, Landlord should provide Tenant with the last calendar year’s Taxes and Operating Costs together with the initial draft of the Lease.]

⁶ [NTD: Modify as needed if Utilities/Taxes/OpEx will begin on Rent Commencement Date.]

5. **Use of Premises.**

(a) **Permitted Use.**

(i) **Definition.** Tenant may use the Premises only for the following “Permitted Use” and for no other purpose without Landlord’s prior written consent: [restaurant] use in compliance with the terms and provisions of this Lease and Applicable Laws.

(ii) **Compliance.** This Lease is subject to encumbrances of record, if any. Tenant must obtain any licenses, permits, or approvals necessary for the Permitted Use at Tenant’s sole expense, and shall provide Landlord with copies thereof before Tenant may operate its business in the Premises.

(b) **Prohibited Uses.**

(i) **Generally.** Notwithstanding any other provision of this Lease, Tenant shall not use, or allow anyone else to use, the Premises or the Property in a manner that violates the terms or provisions of this Lease or the exclusive use of any other tenant or occupant of the Property, or that, in Landlord’s reasonable judgment, impairs or interferes with any Building service or use of the Common Areas, causes any injury or damage to any tenants or occupants of the Property, or impairs the appearance or reputation of the Property.

(ii) **Insurance.** Tenant shall not do or permit to be done anything that will invalidate or increase the cost of any insurance policy covering the Building or Property, and Tenant shall reimburse Landlord within 30 days of Landlord’s request for any additional premium charged due to Tenant’s failure to comply with this sentence.

6. **Condition.** On the Commencement Date, Landlord shall deliver the Premises to Tenant [with Landlord’s Work Substantially Complete (as defined in Exhibit D)], free of all tenants and occupants, and otherwise in its “as is” condition as of the date of this Lease.

7. **Maintenance.**

(a) **Responsibility Matrix.** Landlord’s and Tenant’s maintenance and repair obligations are set forth in this Section 7, and are shown in the Responsibility Matrix attached as Exhibit E. If there is any conflict between Exhibit E and this Section 7, the terms of this Section 7 shall govern.

(b) **Landlord’s Obligations.**

(i) **Maintenance and Repairs.** Landlord agrees to maintain the Common Areas and the structural elements of the Property in the same condition as they are as of the Commencement Date, reasonable wear and tear, casualty, and condemnation excepted. Landlord agrees to make any necessary repairs to the Building Systems. [Landlord shall not be liable for any failure to make any repairs or to perform any maintenance that is Landlord’s obligation unless such failure shall persist for an unreasonable time after Tenant notifies Landlord in writing of the need of such repairs or maintenance.]⁷

(ii) **Costs.** Costs incurred by Landlord under this Section 7(b) shall be included in Operating Costs (unless required in whole or in part because of any act or omission of any Tenant Party or Tenant’s

⁷ [NTD: Optional Tenant-friendly language.]

invitees, in which case Tenant shall reimburse Landlord for such cost within 30 days of Landlord's request).

(c) Tenant's Obligations.

(i) Maintenance. Tenant agrees to maintain the Premises in good order, condition, and repair in a clean and sanitary condition, and in compliance with Exhibit F, excepting only repairs for which Landlord is responsible. Tenant's obligations expressly include [_____].⁸

(ii) No Waste. Tenant shall not permit the Premises to be overloaded, damaged, stripped or defaced, nor suffer any waste.

(iii) Service Contracts. Tenant shall hire a qualified, third-party service provider, approved by Landlord, to perform regular maintenance on the equipment and systems that Tenant is responsible for maintaining under this Lease (see Exhibit E) and shall provide Landlord with copies of such contracts upon request. A list of certain third-party service providers approved by Landlord is attached as Exhibit E-1.⁹

(iv) Equipment Manuals. Tenant shall provide Landlord with any original equipment manufacturer (OEM) manuals for any equipment installed by Tenant.

(v) Condition Assessments. Landlord shall have the right to perform a facilities condition assessment or similar audit, and to the extent such audit recommends corrective action, Tenant shall reimburse Landlord for the cost of such audit and promptly perform such corrective action as part of its repair and maintenance obligations.

8. Utilities and Services.

(a) Electricity. [Electricity to the Premises is not directly metered. Commencing on the Commencement Date, Tenant shall pay all charges for electricity furnished to the Premises and/or any equipment exclusively serving the Premises as Additional Rent, based on reasonable estimates by Landlord.][OR][Electricity to the Premises is directly metered. Commencing on the Commencement Date, Tenant shall timely pay to the utility provider all charges for electricity furnished to the Premises and/or any equipment exclusively serving the Premises.]¹⁰

(b) Water. Landlord shall provide hot and cold water to the kitchen and restrooms in the Premises. Commencing on the Commencement Date, Tenant shall pay [all water and sewer charges attributable to the Premises as Additional Rent, based on reasonable estimates by Landlord][OR][Tenant's Share of all water and sewer charges for the Building as Additional Rent].¹¹

(c) HVAC. Landlord shall provide heating and cooling to the Premises during the "Business Hours" of [_____], and any additional times that Tenant may request at least [_____] days in advance. HVAC service to the Premises outside of Business Hours shall be at an additional cost to Tenant, to be paid as Additional Rent.

⁸ [NTD: Describe obligations not covered by Landlord's services (e.g., trash removal, cleaning, etc.).]

⁹ [NTD: Landlord to insert list as Exhibit E-1, or replace this sentence with: "Landlord shall provide Tenant with a list of preapproved third-party service providers upon request."]

¹⁰ [NTD: Use one set of bracketed language depending on how electricity is metered.]

¹¹ [NTD: Use one set of bracketed language depending on how water is metered.]

(d) Other Utilities. If Tenant desires to have any additional utilities or services furnished to the Premises (e.g., phone/internet), then Tenant shall arrange for and obtain them (subject to Landlord's consent per Section 12), at Tenant's cost including any taxes, penalties, surcharges, and maintenance charges pertaining thereto.

(e) Utility Reporting. Within 15 days after Landlord's request, Tenant shall provide reasonably detailed information regarding Tenant's utility usage in the Premises.

(f) Landlord's Services. Landlord shall provide the services described in Exhibit G (and shown in the Responsibility Matrix attached as Exhibit E), the cost of which shall be included in Operating Costs.

(g) Interruption. Landlord shall not be liable for, and Tenant shall not be entitled to, any damages, abatement, or reduction of Rent, or other liability by reason of any failure to furnish any services or utilities described in this Section 8 for any reason including due to Force Majeure, or the making of repairs, replacements, alterations, or improvements. No such failure shall be construed as an eviction of Tenant, nor relieve Tenant from any obligation under this Lease. [Notwithstanding the foregoing, Base Rent shall be proportionally abated if: (i) the Premises lack any utilities or services required to be provided by Landlord under this Section 8, and such lack renders all or a portion of the Premises untenantable for 5 consecutive business days after Landlord's receipt of written notice from Tenant (and Tenant actually vacates all or such portion of the Premises); (ii) the interruption was not caused by any Tenant Party or any of Tenant's invitees; and (iii) the interruption was the result of causes, events, or circumstances within Landlord's reasonable control or was otherwise caused by Landlord's gross negligence or willful misconduct. Such Base Rent abatement shall continue until the interrupted utility or service is fully restored.]¹²

9. Taxes and Operating Costs.

(a) Tenant's Share. Tenant shall pay Tenant's Share of Taxes and Operating Costs (as defined in Exhibit H), based on Landlord's good faith estimate for each tax year or calendar year (or part thereof) during the Term, on a monthly basis as Additional Rent, simultaneously with Tenant's payment of Base Rent.

(b) Tenant's Property. Tenant shall pay, prior to delinquency, any and all Taxes levied or assessed against any personal property or trade fixtures placed by Tenant in the Premises, whether levied or assessed against Landlord or Tenant. If any Taxes on Tenant's personal property or trade fixtures are levied against Landlord or Landlord's property, or if the assessed valuation of the Property is increased by a value attributable to improvements in or alterations to the Premises made by Tenant, whether owned by Landlord or Tenant and whether or not affixed to the real property so as to become a part thereof, higher than the base valuation on which Landlord from time-to-time allocates Taxes to all tenants in the Property, Landlord shall have the right, but not the obligation, to pay such Taxes, and Tenant shall pay such amounts as Additional Rent within 30 days of Landlord's request.

(c) Annual Statements. Landlord shall provide Tenant with statements of the actual Taxes and Operating Costs for each tax year or calendar year once those amounts are known. If the monthly payments Tenant made based on Landlord's estimates differs from what Tenant should have paid based on the actual Taxes and Operating Costs, then either:

(i) Tenant shall pay the deficiency to Landlord as Additional Rent within 30 days of Landlord's statement; or

¹² [NTD: Optional Tenant-friendly language.]

(ii) Landlord shall credit the excess against the next installment of Rent due from Tenant.

(d) Gross Up. During any calendar year (or part thereof) if the Building is less than 95% occupied, then Operating Costs for such calendar year shall be extrapolated to be Operating Costs that would have been incurred if the Building had been 95% occupied.

10. Compliance with Laws. Tenant shall be responsible, at its sole cost and expense, for compliance with all Applicable Laws, including the requirements of the American with Disabilities Act in connection with the Permitted Use and any Alterations. Tenant shall promptly notify Landlord if it receives notice of a violation of Applicable Laws.

11. Hazardous Materials. Tenant shall not cause or permit any Hazardous Materials to be generated, stored, used, or disposed of in, on, or from the Premises unless in compliance with Exhibit I.

12. Alterations.

(a) Approval Required. Tenant shall not make any alterations, additions, installations, or improvements to the Premises (collectively, [including Tenant's Work,]"Alterations") [that are structural, but may make non-structural Alterations,]¹³ without Landlord's consent, including Landlord's approval of Tenant's general contractor and architect (which may be withheld in Landlord's discretion, including if Landlord reasonably believes it could cause labor disharmony). Tenant acknowledges and agrees that any review or approval by Landlord of any plans or specifications with respect to Alterations is solely for Landlord's benefit, and without any representation or warranty whatsoever with respect to the adequacy, correctness, or efficiency thereof or otherwise.

(b) Construction. Alterations shall be at Tenant's sole cost and expense, of a quality equal to or better than the present construction of the Premises, made in a good and workman like manner, and in compliance with Applicable Laws. Before commencing any Alterations, Tenant shall provide Landlord with a certificate of insurance in compliance with Section 18(a). Tenant shall not permit any mechanics' liens to remain upon the Premises or the Property for labor or materials furnished (or claimed to have been furnished) to Tenant in connection with any Alterations or otherwise. Tenant shall cause any such lien to be released of record or bonded over within 7 days of notice, without any cost to Landlord.

(c) Property. All Alterations shall become the property of Landlord upon the Expiration Date or termination of this Lease, unless at the time Landlord consents to the Alteration Landlord states that it is required to be removed from the Premises.

13. Signage.

(a) Approved Signs. Tenant may, at its sole cost and expense, install exterior signage at the Premises, which shall be subject to Landlord's prior written approval, including the location, size, lighting (if any), and design of the signage. Tenant shall obtain all required permits and approvals for any such signage, which shall comply with all Applicable Laws.

(b) Removal. Upon the Expiration Date or earlier termination of this Lease, Tenant shall remove any of its signage and restore the Premises to its condition prior to installation.

14. Assignment and Subletting.

¹³ [NTD: Optional Tenant-friendly language. Modify if cosmetic alterations will be limited.]

(a) Consent Required. Without Landlord's prior written consent,[which shall not be unreasonably withheld,] Tenant shall not assign, mortgage, or encumber this Lease or sublease or license all or any portion of the Premises, which shall include any change in the ownership or control of Tenant or any direct or indirect owner of Tenant, or by sale or transfer of stock, partnership or beneficial interests, or by operation of law or otherwise (each, a "Transfer"). Upon a Transfer, Tenant shall remain fully liable under this Lease. Any Transfer made without Landlord's consent shall be void. Without limitation, it shall be reasonable for Landlord to withhold its consent to a Transfer if the proposed transferee, assignee, or sublessee (the "Transferee"):

(i) intends to use the Premises for a use other than the Permitted Use;

(ii) does not have a net worth sufficient to meet the Transferee's obligations hereunder, as determined by Landlord;

(iii) is not compatible with the tenant mix Landlord desires for the Building; and/or

(iv) intends to use the space subject to the Transfer for a use that violates any exclusive or restrictive use provisions then in effect with respect to any portion of the Property.

(b) Requests. Any "Request" for Landlord's consent to a Transfer shall contain all pertinent information relating to the proposed Transfer and Transferee, including:

(i) the proposed effective date of the Transfer (which shall be at least [] days after the date of the Request);

(ii) the affected portion of the Premises [(the "Recapture Premises)];

(iii) the term sheet or letter of intent signed by Tenant and the Transferee stating the key terms and provisions of the proposed Transfer and consideration to be paid in connection therewith;

(iv) financial statements of the proposed Transferee certified by an officer, partner, or owner thereof; and

(v) any other information reasonably required by Landlord.

(c) Landlord's Response. Landlord's failure to respond to a Request within 30 days of its receipt will be deemed to be a denial of the Request. Landlord's initial approval of Tenant's Request shall be conditioned upon (i) Landlord's receipt and approval of the fully executed assignment, sublease, or other use or occupancy agreement, which shall be provided at least 15 days prior to the proposed effective date of the Transfer, and (ii) Tenant's and any proposed Transferee's execution and delivery to Landlord of a Consent to such Transfer on Landlord's form of Consent.

(d) [Recapture. Within 30 days after Landlord receives a Request, Landlord shall have the right to terminate this Lease with respect to the Recapture Premises by written notice to Tenant, effective upon Tenant's proposed date for such Transfer. However, if Landlord exercises such termination right, then Tenant may withdraw the Request by written notice within 5 days after receipt of Landlord's termination notice, in which case this Lease shall continue in full force and effect.]¹⁴

¹⁴ [NTD: Optional Landlord-friendly language.]

(e) Review Costs. Tenant shall pay, as Additional Rent, all third-party costs and expenses incurred by Landlord in reviewing any proposed Transfer, including reasonable attorneys' fees.

(f) Excess Rent. Tenant shall pay to Landlord, within 30 days of Tenant's receipt, 50% of any rent, sum or other consideration paid or given to Tenant in connection with any Transfer (other than an assignment of this Lease, for which no such sums shall be due[, and excluding any amounts paid in consideration of the sale of Tenant's business operations at the Premises or of Tenant's movable furniture, fixtures, and equipment used at the Premises]¹⁵), either initially or over time, after amortization, over the term of the sublease or other use or occupancy agreement, of all reasonable out-of-pocket attorney fees, brokerage commissions and the cost of any improvements required by such Transfer, in excess of Rent hereunder as if such amount were originally called for by the terms of this Lease as Additional Rent.

(g) Permitted Transfers. Notwithstanding anything in this Section 14 to the contrary, if no Event of Default exists, Tenant shall have the right to make a Transfer without Landlord's consent, but with at least [] days' prior written notice to Landlord, to an affiliate, successor by merger or consolidation, or acquirer of Tenant's operations at the Premises, or company to which Tenant is selling all or substantially all of its assets or stock, provided such transferee has a net worth at least equal to that of Tenant both as of the date of this Lease and as of the time of such Transfer (a "Permitted Transfer").]

15. **Subordination; Estoppel Certificate.**

(a) Subordination. This Lease shall be subordinate to any mortgages, or other security, now or hereafter encumbering the Premises, and to all advances made or hereafter to be made upon the security thereof. This Section shall be self-operative and no further instrument of subordination shall be required provided, however, that Tenant shall from time to time upon request execute and deliver any document or instrument that may be required by a lender to effectuate any subordination within 10 days of a written request therefor.

(b) Estoppel. Tenant agrees to execute, acknowledge, and deliver to Landlord, within 10 days of a written request therefor, a statement in writing certifying that this Lease is unmodified and in full force and effect, that to Tenant's knowledge no uncured defaults exist hereunder, the dates to which the Rent and other charges due hereunder have been paid in advance if any, and any other facts reasonably requested by Landlord or its lender.

16. **Landlord's Reserved Rights.**

(a) Access. Tenant shall permit the Landlord Parties to enter the Premises at all reasonable times to access any area that serves any portion of the Property outside the Premises, permit contractors engaged by other occupants of the Property to pass through the Premises in order to access such areas but only if accompanied by a representative of Landlord, inspect the Premises, perform environmental audits, environmental site investigations and environmental assessments, and remove placards and signs not approved and affixed as herein provided and to maintain and repair the Premises and make alterations thereto and to the Property. Additionally, Landlord may show the Premises to potential tenants and others at any time within 6 months before the Expiration Date and may affix and maintain to any part of the Premises a notice for letting or selling the Premises or the Property.

(b) Additions to the Property. Landlord may, at any time and from time to time (which reserved rights may not materially increase Tenant's obligations under this Lease):

(i) construct additional improvements and related site improvements in all or any part of the Property;

¹⁵ [NTD: Optional Tenant-friendly language.]

- (ii) change the location or arrangement of all or any part of the Common Areas; and
- (iii) add or deduct any land to or from the Property.

(c) Pipes, Ducts, and Conduits. Tenant shall permit Landlord to erect, use, maintain, and relocate pipes, ducts and conduits in and through the Premises, provided the same do not materially reduce the floor area or materially adversely affect the appearance thereof.

(d) Cooperation. Tenant agrees to cooperate with Landlord as reasonably necessary in connection with the exercise of Landlord's rights under this Section 16. Subject to Landlord's obligations under this Section 16, Tenant further agrees that dust, noise, vibration, closures of Common Areas, or other inconvenience or annoyance resulting from the exercise of Landlord's rights under this Section 16 shall not be deemed to be a breach of Landlord's obligations under the Lease.

17. **Casualty and Taking.**

(a) Termination; Restoration. Landlord may terminate this Lease if any portion of the Premises or Property is damaged by fire or other casualty or is taken by eminent domain. If Landlord has not terminated this Lease, and if such casualty or taking renders the Premises substantially unsuitable for the Permitted Use, an equitable abatement of Rent, as determined by Landlord, shall be made, and Tenant may elect to terminate the Lease if: (a) Landlord fails to give written notice to Tenant within [] days after such casualty or taking of its intention to restore the Premises, or (b) Landlord fails to restore the Premises to a condition substantially suitable for the Permitted Use within [] days of such casualty or taking. If the Premises are taken for temporary use (a taking of 90 days or less), this Lease and Tenant's obligations, including the payment of Rent, shall continue.

(b) Insurance. Tenant agrees to cooperate with Landlord in collecting insurance proceeds due in connection with any casualty or taking. In no event shall Landlord be required to expend more than the Net insurance proceeds Landlord receives for damage to the Premises or the Property or the Net taking award attributable to the Premises or the Property.

(c) Awards. Except for any separate award for relocation expenses, all taking awards to Landlord or Tenant shall be Landlord's property without Tenant's participation, and Tenant hereby assigns to Landlord Tenant's interest, if any, in such award. Tenant may pursue its own claim against the taking authority.

18. **Insurance and Indemnity.**

(a) Insurance. Tenant shall at all times maintain the policies of insurance identified in Exhibit J. Before the Commencement Date, and within 30 days before the expiration of any insurance policy, Tenant shall provide to Landlord certificates of insurance (or if requested by Landlord, copies of such policies) evidencing compliance with this Section.

(b) Indemnification. Tenant shall defend, indemnify and save the Landlord Parties harmless from and against any and all claims, damages, judgments, losses, penalties, costs, expenses and fees (including reasonable legal fees) (collectively, "Claims") asserted by or on behalf of any person, firm, corporation or public authority arising from:

- (i) Tenant's breach of any covenant or obligation under this Lease;
- (ii) any injury to or death of any person, or loss of or damage to property sustained or occurring in, upon, at or about the Premises;

(iii) any injury to or death of any person, or loss of or damage to property (A) arising out of the use or occupancy of the Premises by or (B) caused by or arising from the negligence or willful misconduct of any of the Tenant Parties; and

(iv) any work or thing whatsoever done (other than by Landlord or any of the Landlord Parties) at the Premises during the Term and during the period of time, if any, prior to the Commencement Date that any of the Tenant Parties may have been given access to the Premises.

This subsection (b) (as well as any other provisions of this Lease dealing with indemnification of Landlord by Tenant) shall be deemed to be modified in each case by the insertion in the appropriate place of the following: “except as otherwise provided in Section 15 of Chapter 186 of the Massachusetts General Laws, as the same may be amended”.

(c) Waiver of Subrogation. Landlord and Tenant mutually agree that (i) the party suffering a loss or damage covered under a property or casualty insurance policy that it carries or is required to carry hereby releases the other from any and all claims with respect to such loss, notwithstanding that such loss or damage may result from the other’s negligence or fault, and (ii) their respective insurance companies shall have no right of subrogation against the other on account thereof.

(d) Occupancy at Tenant’s Risk. To the maximum extent permitted by Applicable Laws, Tenant agrees that its use and occupancy of the Premises and the Common Areas shall be at the sole risk of Tenant or those claiming through or under Tenant, and that in no case whatsoever shall Landlord be liable to Tenant, or any other person, for any injury, death, loss or damage to any person or property on the Premises unless caused by the gross negligence or willful misconduct of the Landlord Parties. Tenant agrees that the Landlord Parties shall not be liable for any injury or damage to persons or Premises resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or snow, or leaks from any part of the Building, or from the pipes, appliances or plumbing works or from the roof, street or subsurface, or from any other place or resulting from dampness or resulting from any other cause of whatsoever nature.

19. Events of Default. Each of the following events shall constitute an “Event of Default”:

(a) Monetary Defaults. Tenant’s failure to pay Rent within 5 days after the same is due; or

(b) Other Non-Performance. Tenant’s failure to perform or observe any other term or provision of this Lease within 30 days after written notice from Landlord (unless Tenant has commenced to cure such failure within such 30-day period and diligently prosecutes the same to completion, but in no event longer than 90 days), unless a shorter grace period is set forth in this Lease; or

(c) Bankruptcy; Receivership. Tenant makes any assignment for the benefit of creditors or filing of a petition for relief under any bankruptcy or insolvency law or code; or if such a petition filed against Tenant is not dismissed within 60 days; or if a custodian, receiver or similar agent is authorized or appointed to take charge of all or substantially all of the assets of Tenant; or if Tenant’s interest in this Lease is taken on execution or other process of law in any action against Tenant; or

(d) Abandonment. Tenant abandons or vacates the Premises, or fails to operate during the Minimum Business Hours required under Section 1 of Exhibit F.

20. Remedies. Upon an Event of Default, Landlord may do any one or more of the following, without notice to Tenant (unless expressly provided for below):

(a) Landlord may exercise its right of self-help provided in Section 23 hereof.

(b) Landlord may elect to terminate this Lease and the tenancy created hereby by written notice to Tenant, and may re-enter the Premises by summary proceedings or otherwise, and may remove Tenant and all other persons and property from the Premises, and may store such property in a public warehouse or elsewhere at Tenant's cost without resort to legal process and without Landlord being deemed guilty of trespass or becoming liable for any loss or damage occasioned thereby.

(c) Landlord may re-enter and retake possession of the Premises without accepting a surrender thereof or terminating this Lease, in which event Landlord may proceed to repair and remodel the Premises to make them suitable for reletting; Landlord may, as Tenant's agent and for the account of Tenant, relet the Premises or any part thereof, alone or together with other premises, without releasing Tenant from its obligations hereunder with respect to any Rent past due at the time of re-entry and for damages accruing thereafter for the remainder of the Term. Such reletting shall be upon such terms and conditions (which may include free rent, alterations to the Premises or other concessions) and for such rental as Landlord may deem advisable. Upon such reletting, all rents received by Landlord from such reletting shall be applied: first, to the payment of any costs and expenses of such reletting, including brokerage fees and attorney's fees as well as remodeling and repair expenses related to the Premises; second, to the payment of any Rent due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied to the payment of future Rent as the same may become due and payable hereunder. In the event the rentals received from such reletting during any month shall be less than the sum to be paid during that month by Tenant pursuant to the provisions of this Lease, including this paragraph, Tenant shall pay any such deficiency to Landlord promptly upon request. Such deficiency shall be calculated and paid monthly. No re-entry or retaking possession of the Premises by Landlord shall be construed as an election on its part to terminate this Lease unless a notice of such intention is given to Tenant. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such prior breach. In no event shall Landlord be liable for, nor shall Tenant's obligations hereunder be diminished by reason of, any failure by Landlord to relet the Premises or any failure by Landlord to collect any rent due upon reletting.

(d) Landlord may exercise any other legal or equitable right or remedy which it may have.

21. **Damages.** If this Lease is terminated by Landlord or if Landlord re-enters the Premises pursuant to Section 20, Tenant shall be liable for (i) all Rent due under this Lease prior to the date of termination, (ii) all actual, out-of-pocket costs, including reasonable attorneys' fees, incurred by Landlord in connection with such termination, and (iii) at Landlord's option, either:

(a) The entire amount of Rent for the remainder of the Term, less the then fair market rental value of the Premises for the remainder of the Term, with such difference discounted to its present value by using a discount factor of []%. Such amount shall be paid by Tenant to Landlord immediately upon demand by Landlord and shall constitute liquidated damages and not a penalty or forfeiture; or

(b) The following amount, which shall be computed and payable in monthly installments, in advance, on the first day of each calendar month following the Event of Default and continuing until the date on which the Term would have expired but for the Event of Default. Separate suits may be brought from time to time to collect any such damages for any month(s) (and any such separate suit shall not in any manner prejudice the right of Landlord to collect any damages for any subsequent month(s)), or Landlord may defer initiating any such suit until after the Expiration Date (in which event Tenant hereby agrees that such deferral shall not be construed as a waiver of Landlord's rights as set forth herein):

(i) the Rent that would have been payable by Tenant during the remainder of the Term had this Lease not been terminated,

(ii) less the amount of rental, if any, which Landlord may receive during such period from others to whom the Premises may be rented (other than any additional rent received by Landlord as a result of any failure of such other person to perform any of its obligations to Landlord),

(iii) after first deducting the expenses incurred by Landlord in connection with such re-letting, including altering and preparing the Premises for new tenants, brokers' commissions, and all other similar and dissimilar expenses properly chargeable against the Premises and the rental therefrom.

The remedies stated in this Section 21 are in addition to, and not in lieu of, any of Landlord's other rights and remedies at law or in equity. To the extent required by Applicable Laws, Landlord shall use commercially reasonable efforts to mitigate its damages resulting from any Event of Default. No delay in enforcing the provisions of the Lease shall constitute Landlord's waiver of such default, and Landlord's pursuit of one or more remedies shall not constitute an election against other remedies. If Landlord elects to terminate this Lease, Tenant's liability for damages shall survive such termination.

22. **Security Deposit.** Upon the execution of this Lease, Tenant shall pay to Landlord the Security Deposit, which may be comingled with Landlord's funds, and shall be held as security for Tenant's performance hereunder and refunded to Tenant, without interest, within 60 days after the Expiration Date, subject to Tenant's satisfactory compliance with the conditions of this Lease. Landlord shall have the right, from time to time without prejudice to any other remedy Landlord may have, to apply the Security Deposit, or any part thereof, to Landlord's damages arising from any Event of Default of Tenant.

23. **Self-Help; Fees and Expenses.** If Tenant fails or neglects to perform any of its obligations or duties under this Lease, Landlord may pay such sums or do any act that may be necessary or appropriate, in which case Tenant shall pay all such sums to Landlord, together with interest at the Default Rate, upon demand as Additional Rent. In addition, Tenant shall pay all of Landlord's costs and expenses, including reasonable attorneys' fees, incurred in enforcing any obligation of Tenant under this Lease, or as a result of any of the Landlord Parties being made party to any litigation pending by or against any Tenant Parties.

24. **Surrender.** On the Expiration Date or earlier termination of this Lease, Tenant shall remove from the Premises all of Tenant's personal property, equipment, and Alterations that Landlord has required Tenant to remove pursuant to Section 12 (and shall restore the damage caused by such removal), and surrender and yield up the Premises to Landlord in the same condition as of the Commencement Date, reasonable wear and tear, casualty, and condemnation excepted. If Tenant fails to remove any of its personal property or equipment from the Premises, Landlord may remove and store it at Tenant's expense, retain it under Landlord's control, or sell it at a public or private sale without notice to Tenant and to apply the net proceeds of such sale to the payment of any sum due hereunder, or to destroy it.

25. **Holdover.** If Tenant remains in the Premises beyond the Expiration Date or earlier termination of this Lease, then Tenant shall become a tenant-at-sufferance subject to the terms and provisions of this Lease, except that Minimum Base Rent shall be equal to [200]% of the Base Rent in effect during the last 30 days of the Term[, and Percentage Rent shall be equal to []% of all Gross Sales]. Additionally, Tenant shall be liable for all damages, including lost business and consequential damages, incurred by Landlord as a result of such holding over.

26. **Notice of Lease.** Tenant shall not record this Lease. [Either party shall, upon request, execute and deliver a notice of this Lease reasonably satisfactory to Landlord's attorney, in such recordable form as may be permitted by applicable statute.]

27. **Covenant of Quiet Enjoyment.** Landlord agrees that upon Tenant's timely paying the Rent and performing and observing all of the terms, covenants, conditions, and provisions on its part to be performed and observed, Tenant shall and may peaceably and quietly have, hold, and enjoy the Premises during the Term without disturbance from Landlord or anyone claiming under Landlord, subject to the terms of this Lease.

28. **Notices and Approvals.** All notices, requests, demands, consents, approvals, and other communications hereunder shall be in writing and sent by registered or certified mail, postage prepaid, return receipt requested, delivered by an overnight delivery service, or by email (with proof of delivery, with notice by one of the other methods provided for herein to follow), using the addresses set forth in Section 1, including copies as follows: if to Landlord, then to Landlord's attorney at [_____] , and if to Tenant, then to Tenant's attorney at [_____]. Notices shall be deemed given 3 days after being deposited with the U.S. Postal Service if mailed in the manner aforesaid, or upon receipt or refusal to receive by the addressee if delivered by hand or overnight delivery service.

29. **Rules and Regulations.** Tenant shall comply with the "Rules and Regulations" applicable to the Property attached as Exhibit K as the same may be amended, modified or supplemented by Landlord from time to time. If there is any conflict between this Lease and any Rules and Regulations, the terms of this Lease shall control. Nothing contained in this Lease shall impose upon Landlord any obligation to enforce the Rules and Regulations or the terms, covenants or conditions in any other lease as against any other tenant, and Landlord shall not be liable to Tenant for violation of the same by any other tenant, its servants, employees, agents, contractors, visitors, invitees, or licensees.

30. **Limitations on Liability.** "Landlord" shall mean only the owner of the Premises at the time in question, and in the event of any transfer of title to the Premises, Landlord herein named shall be automatically relieved of all liability under this Lease, it being intended that the obligations contained in this Lease on the part of Landlord shall be binding on Landlord, its successors and assigns, only during and in respect of their respective successive periods of ownership of the Premises. Notwithstanding anything to the contrary in this Lease, Landlord's liability to Tenant shall be limited to Landlord's equity interest in the Property. Tenant shall look solely to Landlord's interest in the Property for the recovery of any judgment or award against Landlord. Neither Landlord nor any Landlord related party shall be personally liable for any judgment or deficiency. In no event shall any Landlord Party ever be liable to Tenant for indirect or consequential damages.

31. **Brokerage.** Tenant warrants and represents to Landlord that Tenant has dealt with no broker or agent entitled to claim a commission in connection with this Lease[, other than the Brokers identified in Section 1], and shall defend, indemnify, and save harmless Landlord from and against any such claim including reasonable attorneys' fees incurred by Landlord.

32. **Waiver of Trial By Jury.** TENANT AND LANDLORD WAIVE ANY RIGHT TO TRIAL BY JURY OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE ARISING OUT OF THIS LEASE.

33. **Relocation.** [Landlord reserves the right to relocate the Premises to comparable space within the Building upon 30 days' notice. Landlord shall pay the reasonable cost of moving Tenant to such new space. Effective on the date of such relocation, the new space shall be deemed to be the "Premises".]¹⁶

34. **Miscellaneous.**

(a) **Waiver.** No waiver of any term, covenant, or condition of this Lease shall be binding upon Landlord unless executed in writing by Landlord. The waiver by Landlord of any breach or default of any term,

¹⁶ [NTD: Optional Landlord-friendly language.]

covenant or condition contained in this Lease shall not be deemed to be a waiver of any preceding or subsequent breach or default of such term, covenant or condition or any other term, covenant or condition of this Lease. The acceptance by Landlord of Rent or other payment hereunder, or silence by Landlord as to any breach, shall not be construed as a waiver of any of the Landlord's rights hereunder unless such waiver is in writing.

(b) Binding Effect. Unless otherwise specified herein, the covenants and agreements of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(c) Independent Obligations. Notwithstanding any contrary term or provision of this Lease, Tenant's covenants and obligations to pay Rent and to perform its other obligations hereunder are absolute, unconditional, and irrevocable obligations which are separate and independent from any of Landlord's covenants, obligations, warranties or representations in this Lease. Tenant shall have no right to hold back, offset or fail to pay any such Rent or other amounts due hereunder nor to terminate this Lease for any alleged default by Landlord or for any other reason whatsoever except as expressly provided herein. Landlord and Tenant each acknowledges and agrees that the independent nature of the obligations of Tenant hereunder represents fair, reasonable, and accepted commercial practice with respect to the type of property subject to this Lease, and that this agreement is the product of free and informed negotiation. Such acknowledgements, agreements, and waivers by Tenant are a material inducement to Landlord entering into this Lease.

(d) Entire Agreement. This Lease, including the Exhibits attached hereto, sets forth the entire agreement between the parties and any and all statements and representations, written and oral, are merged herein. This Lease cannot be modified or amended except in writing duly executed by both parties hereto.

(e) Severability. The invalidity of one or more of the provisions of this Lease shall not affect the remaining portions of this Lease; and, if any one or more of the provisions of this Lease should be declared invalid by final order, decree or judgment of a court of competent jurisdiction, this Lease shall be construed as if such invalid provisions had not been included in this Lease.

(f) Counterparts; Electronic Signatures. This Lease may be executed in one or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same agreement. A facsimile, electronic or PDF signature on this Lease shall be equivalent to, and have the same force and effect as, an original signature.

(g) Interpretation. The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease or any exhibits or amendments hereto. Unless expressly stated otherwise, (i) the use of the word "including" or "include" shall be deemed to mean "including without limitation" or "include without limitation" in each instance, (ii) the use of the word "withheld" shall be deemed to mean "withheld, conditioned, or delayed" in each instance, and (iii) where Landlord's consent or approval is required, such consent or approval shall be deemed to be in Landlord's sole and absolute discretion in each instance, unless otherwise expressly provided.

(h) Governing Law. This Lease is made pursuant to, and shall be governed by, and construed in accordance with, the laws of the Commonwealth of Massachusetts and any Applicable Laws. Any litigation relating to this Lease shall be brought in the state or federal courts in the Commonwealth of Massachusetts, and each party consents to personal jurisdiction in such courts.

(i) Time. Time is of the essence as to the performance of Tenant's obligations under this Lease. The term "business day" means Monday through Friday, other than any national or local holiday on which federal government agencies in the County of [] are closed for business. Any time period which ends on a non-business day shall be extended to the first subsequent business day.

(j) Force Majeure. In the event of a strike, lockout, labor dispute, civil commotion, act of God, actual or threatened health emergency, or any other event beyond Landlord's ability to control ("Force Majeure"), which results in Landlord being unable to timely perform its obligations hereunder,¹⁷ Landlord shall not be in breach hereunder and this Lease shall not terminate, so long as Landlord diligently proceeds to perform such obligations within a reasonable time after the end of such Force Majeure event.

[Remainder of page intentionally left blank]

LCR | LAWYERS FOR CIVIL RIGHTS BOSTON

¹⁷ [NTD: Add exception for "Tenant's obligation to pay Rent when due" if this Section is revised to be claimed by either Landlord or Tenant.]

WITNESS the execution hereof as a sealed instrument as of the date first above written.

LANDLORD:

[_____]

By: _____
Name:
Title:

TENANT:

[_____]

By: _____
Name:
Title:

LCR
LAWYERS FOR
CIVIL RIGHTS
BOSTON

EXHIBIT A-1

Floor Plan of Premises [and Outdoor Seating Area]

[See Attached]



EXHIBIT A-2

[Outdoor Seating]¹⁸

1. [Outdoor Seating Area]. Tenant shall have the non-exclusive right to use the Outdoor Seating Area for seasonal outdoor seating for Tenant's customers in accordance with the Permitted Use, from [March 1 through October 31] (the "Outdoor Patio Season"), no later than [11:00 p.m. Sunday through Thursday and 11:59 p.m. on Friday and Saturday], or such earlier time as required by Applicable Laws.
2. Outdoor Seating Plan. Tenant's use of the Outdoor Seating Area shall be subject to Landlord's review and approval of Tenant's outdoor seating plan including outdoor furniture.
3. Permits. Tenant shall be solely responsible for obtaining, at Tenant's sole cost and expense, all licenses, permit, and approvals that are required in connection with Tenant's use of the Outdoor Seating Area.
4. Compliance. Tenant's use of the Outdoor Seating Area shall be undertaken in accordance with the Lease, Rules and Regulations, and all Applicable Laws, and shall not adversely impact access to or egress from the Building.
5. Storage. Tenant shall be responsible for securing any patio or other outdoor furniture when the Outdoor Seating Area is not in use during the Outdoor Patio Season, and storing any such furniture in an off-site location at all times outside of the Outdoor Patio Season.
6. Maintenance. Tenant shall be responsible for the maintenance and cleaning of the Outdoor Seating Area and Tenant's property thereon during each Outdoor Patio Season.]

¹⁸ [NTD: Omit Exhibit A-2 if Lease does not include outdoor seating area.]

EXHIBIT A-3

[Parking]¹⁹

1. Parking Spaces. During the Term, Tenant shall have a license to use [] parking spaces within the parking facilities serving the Property on an unreserved basis in common with other tenants of the Property, subject to the Rules and Regulations.
2. Parking Charge. Tenant shall pay the Parking Charge on a monthly basis as Additional Rent, simultaneously with Tenant's payment of Base Rent. The Parking Charge may be increased by Landlord from time to time.
3. Default. If Tenant fails to timely pay the Parking Charge within 10 days after written notice that payment is overdue, then Landlord may revoke Tenant's parking license by written notice.
4. Liability. Landlord assumes no responsibility for loss or damage due to casualty or theft or otherwise to any automobile (or personal property therein) accessing or using the parking facilities.]

¹⁹ [NTD: Omit Exhibit A-3 if Lease does not include parking.]

EXHIBIT B

Extension Right

1. **Exercise of Extension Right.** Tenant's Extension Right is subject to the following conditions:
 - (i) the Tenant initially named in this Lease [or a Transferee pursuant to a Permitted Transfer] is occupying 100% of the Premises;
 - (ii) there is no Event of Default both as of the date of the Extension Notice and at the beginning of the Extension Term; and
 - (iii) Tenant timely exercises the Extension Right by giving Landlord written notice (the "Extension Notice") not more than [] months, but at least [] months, before the Expiration Date, time being of the essence.

If these conditions are met, then the Term shall be extended for the Extension Term, applying all of the same terms and provisions of this Lease, except that:

- (a) Minimum Base Rent during the Extension Term shall be calculated pursuant to Section 2, below;
- (b) Tenant shall have no right to extend the Term again; and
- (c) Landlord shall not be required to provide any materials, perform any work, or reimburse Tenant for alterations made to prepare the Premises for Tenant's occupancy, nor to grant Tenant any rent concessions.

Even though Tenant's proper and timely exercise of such Extension Right shall be self-executing, the parties shall promptly execute a lease amendment reflecting the Extension Term after Tenant validly exercises its Extension Right. However, the execution of such amendment shall not waive any of the conditions in clauses (i) – (ii).

2. **Minimum Base Rent.** The Minimum Base Rent during the Extension Term shall be the greater of (i) [103%] of Minimum Base Rent for the last 12 months of the initial Term, and (ii) the fair market rental value of the Premises. Minimum Base Rent shall increase by []% annually, beginning on the first anniversary of the Extension Term.

3. **Fair Market Rental Value.**

- (a) **Definition.** As used in this Exhibit B, "fair market rental value" means the then-current fair market annual rental value for space in the [] area of equivalent quality, size, intended use, and location, taking into account the length of the Extension Term, the credit standing of Tenant, and all other relevant factors.

- (b) **Landlord's Determination.** Within 30 days after receipt of the Extension Notice, Landlord shall give Tenant written notice of its determination of the fair market rental value.

- (c) **Tenant's Response.** Tenant shall, within 15 days after receipt of such notice, notify Landlord in writing whether Tenant accepts or rejects such determination ("Tenant's Response Notice"). If Tenant accepts such determination or fails to timely deliver Tenant's Response Notice, then Landlord's determination shall be

binding on Tenant. If Tenant disagrees with Landlord's fair market value determination, then Tenant may object in the manner described in Section 4, below.

4. Determination Process. If Tenant's Response Notice is timely delivered to Landlord and indicates that Tenant (i) rejects Landlord's determination, and (ii) desires to submit the matter to the "Determination Process" described in this Section 4, then the fair market rental value shall be determined as follows:

(a) Appraisers. Within 10 days after Landlord's receipt of Tenant's Response Notice, Tenant and Landlord shall each choose their own appraiser (respectively, "Tenant's Appraiser" and "Landlord's Appraiser") and notify the other in writing of their choices. Within 10 days of their appointment, Landlord's Appraiser and Tenant's Appraiser shall jointly select a "Third Appraiser". Each of the three "Appraisers" shall meet the qualifications provided in subsection (c), below:

(b) Qualifications. All of the Appraisers selected shall be brokers with at least 10 consecutive years' commercial appraisal experience in the area in which the Premises are located, shall be members of the Appraisal Institute (M.A.I.), and, in the case of the Third Appraiser, shall not have acted in any capacity for either Landlord or Tenant within 5 years of its selection.

(c) Baseball Arbitration. The Appraisers shall determine the fair market rental value in accordance with the requirements and criteria set forth in Section 3 above, employing so-called "baseball arbitration" whereby Landlord's Appraiser and Tenant's Appraiser each sets forth its determination of the fair market rental value, and the Third Appraiser must select one or the other. The Third Appraiser shall be prohibited from selecting a compromise figure. Landlord's Appraiser and Tenant's Appraiser shall deliver their determinations of the fair market rental value to the Third Appraiser within 5 days of the appointment of the Third Appraiser, and the Third Appraiser shall make its selection within 10 days after receipt of both determinations. The Third Appraiser's selection shall be binding on both Landlord and Tenant. Each party shall pay for its own Appraiser, and the cost of the Third Appraiser shall be paid by the party whose determination is not selected.

EXHIBIT C

Gross Sales

1. Gross Sales.

(a) Definition. “Gross Sales” means the actual sales prices of goods sold, leased, or licensed, and the actual charges for services performed (such as catering, events, delivery, and take-out), at, from, or in connection with the use of the Premises, whether for wholesale, retail, cash, credit, or otherwise. Gross Sales shall be determined without reserve or deduction for inability or failure to collect. No franchise, occupancy, capital stock tax, or tax based on income or profits shall be deducted from Gross Sales. Any deposit not refunded shall be included in Gross Sales. Each installment or credit sale shall be treated as a sale for the full price in the month during which such sale is made, regardless of the time when Tenant receives payment therefor.

(b) Inclusions. Gross Sales includes: (i) sales and services ordered at the Premises (even if delivered or performed from some other place), ordered by mail, phone, internet, or other technology platform (including third-party apps such as Uber Eats and Grubhub), or purchased via mechanical or other vending devices in the Premises; (ii) all fees and surcharges including admission or cover charges, room charges, service charges, and the like; and (iii) any promotional or advertising income received by or credited to Tenant for displays, promotions, advertising, or other activities at the Premises.

(c) Exclusions. Gross Sales excludes: (i) returns to shippers or manufacturers; (ii) cash or credit refunds to customers (up to the actual selling price of the item returned) on transactions otherwise included in Gross Sales; (iii) sales of trade fixtures, machinery, and equipment after being used in the conduct of Tenant’s business; (iv) taxes collected and paid by Tenant for sales or services included in Gross Sales (e.g., sales or meals taxes collected from customers); (v) employee discounts, promotional/complimentary goods or services, and gratuities, service or administration charges, and similar amounts paid by customers to Tenant’s employees and not retained by Tenant; (vi) service charges and fees made by or for credit card companies or other charge programs; (vii) revenue share fees charged by or for third-party delivery services; (viii) sales from “gift cards” unless redeemed at the Premises; (ix) exchanges between Tenant’s stores if made solely for the convenient operation of Tenant’s business; (x) any insurance proceeds received by Tenant as a result of business interruption (other than to the extent in consideration of loss of sales), damage to inventory or damage to any other property of Tenant;

2. Quarterly Statements.

(a) Tenant’s Statements. Tenant shall prepare a “Statement of Gross Sales” showing the Gross Sales and Percentage Rent for each “Quarter”, meaning any three-month period beginning on January 1, April 1, July 1, and October 1 that occurs (or partially occurs) during the Term. If the Percentage Rent exceeds the Minimum Base Rent paid for such Quarter, then Tenant shall pay the difference to Landlord simultaneously with its delivery of the Statement of Gross Sales.

(b) Preparation. The Statement of Gross Sales shall be prepared in accordance with generally accepted accounting principles and delivered to Landlord within 30 days after the last day of each Quarter. If Tenant does not deliver a Statement of Gross Sales to Landlord within 30 days after written notice that it is overdue, then Landlord may employ an independent CPA to examine Tenant’s books and records and certify the amount of Tenant’s Gross Sales for such Quarter (and Tenant shall reimburse Landlord upon request for the CPA’s reasonable fees and costs).

3. **Recordkeeping.**

(a) **Sales Records.** Tenant shall utilize, and cause to be utilized, a commercially reasonable accounting system in accordance with good retail practice which will accurately record all Gross Sales. Upon at least 7 days' prior written notice, Landlord may inspect the operation of Tenant's accounting system during Tenant's hours of operation, without unreasonably interfering with Tenant's business.

(b) **Audit.** For at least 3 years after Tenant delivers each Statement of Gross Sales, Tenant shall keep its books and records that disclose the information required to determine and verify the relevant Gross Sales, in accordance with generally accepted accounting principles ("Tenant's Records"), including the gross income, franchise, sales, and occupation tax returns and sales records. Within such 3-year period, Landlord and its accountants or representatives may examine Tenant's Records during Tenant's hours of operation, without unreasonably interfering with Tenant's business. Tenant will make Tenant's Records available to Landlord upon 7 days' written request. If Landlord's examination reveals Tenant under-paid Percentage Rent for any Quarter, then Tenant shall promptly pay the deficit with interest thereon at the Base Rate from the time such payment should have been made. If Tenant under-paid Percentage Rent by more than []%, then Tenant shall also pay the reasonable cost of Landlord's audit. If Tenant under-paid Percentage Rent by more than []%, or any 2 consecutive examinations by Landlord reveal Tenant under-paid Percentage Rent by more than []%, then such underpayments shall be deemed an Event of Default. If Landlord's examination reveals that Tenant's records, in Landlord's opinion, are inadequate to accurately reflect Tenant's Gross Sales, Landlord may retain a consultant to establish a proper recording system for the determination of Tenant's Gross Sales, and Tenant shall use the system, books, and records prescribed by such consultant, and shall reimburse Landlord for the fees and expenses of such consultant.

EXHIBIT D

Work Letter

1. **Landlord's Work**.²⁰

(a) "Landlord's Work" consists of [_____].

(b) Allowance.

(i) Amount. Landlord shall perform Landlord's Work at a cost of up to \$[_____] (the "Allowance").

(ii) Budget. If the estimated cost of Landlord's Work exceeds the Allowance, then Tenant shall have an opportunity to consult with Landlord's architect and contractor to value engineer the cost of Landlord's Work, and Landlord shall reasonably cooperate in such value engineering process. The final estimated cost of Landlord's Work is referred to as the "Budget". During the performance of Landlord's Work, Landlord shall promptly notify Tenant if Landlord reasonably believes the actual cost of Landlord's Work will exceed the Budget.

(iii) Excess Costs. After such value engineering process, if the estimated cost of Landlord's Work still exceeds the Allowance (the "Excess Costs"), then Tenant shall advance the Excess Costs to Landlord upon request. Landlord shall not be obligated to begin or continue Landlord's Work until the Excess Costs are delivered. If the actual Excess Costs are greater than the amount advanced by Tenant, then Tenant shall pay the difference upon request. If the actual Excess Costs are less than the amount advanced by Tenant, then Landlord shall credit Tenant with the overage against Tenant's next installment of Rent.

(c) Plans.

(i) Initial Plans.

(A) Initial Review. Landlord's architect shall prepare and submit to Tenant a "Space Plan" for the Premises. Tenant shall review and provide any comments to the Space Plan within [5] days after receipt, and if Tenant fails to timely provide such comments, then the Space Plan shall be deemed approved by Tenant.

(B) Comments. If Tenant timely provides any comments to the Space Plan, then Landlord's architect shall deliver a revised Space Plan to Tenant for its review and approval, after which Tenant shall review and provide any comments to the revised Space Plan within [5] days after receipt. If Tenant fails to timely provide such comments, then the revised Space Plan shall be deemed approved by Tenant.

(C) Approval. Said process of submittal and response shall continue until Tenant approves the Space Plan.

(ii) Final Plans.

²⁰ [NTD: Delete either Section 1 or Section 2 (or both) depending on who is performing the build out (if any).]

(A) Initial Review. Landlord's architect will prepare construction set architectural and engineering plans and specifications for the Landlord's Work (the "Proposed Plans") and will submit the Proposed Plans to Tenant for its review and approval, not be unreasonably withheld, unless the Proposed Plans are materially inconsistent with the approved Space Plan. Tenant shall review and provide any comments to the Proposed Plans within [5] days after receipt, and if Tenant fails to timely provide such comments, then the Proposed Plans shall be deemed approved by Tenant.

(B) Comments. If Tenant timely provides any comments to the Proposed Plans, then Landlord's architect shall deliver revised Proposed Plans to Tenant for its review and approval, after which Tenant shall review and provide any comments to the revised Proposed Plans within [5] days after receipt. If Tenant fails to timely provide such comments, then the revised Proposed Plans shall be deemed approved by Tenant. In no event may Tenant require any changes to the Proposed Plans that are inconsistent with the approved Space Plan.

(C) Approval. Such process of submittal and response shall continue until Tenant approves the Proposed Plans, which are referred to as the "Construction Drawings".

(D) Changes. Any requested changes to the Construction Drawings shall be subject to Landlord's approval.

(d) Substantial Completion. Landlord shall deliver the Premises to Tenant with Landlord's Work "Substantially Complete", meaning that Landlord's Work is substantially completed in accordance with this Work Letter, except for items identified on a "punch list" prepared by Landlord following a walk-through of Landlord's Work by Landlord's and Tenant's representatives, which punch list items do not materially interfere with Tenant's business operations. If Landlord's Work is delayed by any of Tenant's acts or omissions, then Landlord's Work will be deemed Substantially Complete on the day it would have been Substantially Complete without Tenant's delay. Landlord's failure to Substantially Complete Landlord's Work on or before the Commencement Date shall not give rise to any liability of Landlord, shall not constitute a default by Landlord, and shall not affect the validity of the Lease. Without limitation, the completion and performance of Landlord's Work is subject to Force Majeure.

2. Tenant's Work.

(a) Tenant shall have the right to perform [_____] ("Tenant's Work"), subject to the terms and provisions of this Work Letter.

(b) Authorized Representatives.

(i) Landlord designates [_____] as "Landlord's Authorized Representative" who is authorized by Landlord to approve on behalf of Landlord to initial and sign all plans, drawings, and other matters for which the approval of Landlord is contemplated pursuant to this Work Letter. Tenant shall not be obligated to respond to or act upon any item until initialed or signed or submitted in writing (as applicable) by Landlord's Authorized Representative.

(ii) Tenant designates [_____] as "Tenant's Authorized Representative" who is authorized by Tenant to initial and sign all plans, drawings, change orders, and approvals pursuant to this Work Letter. Landlord shall not be obligated to respond to or act upon any item until initialed or signed or submitted in writing (as applicable) by Tenant's Authorized Representative. Tenant's Authorized

Representative shall be reasonably available to meet and consult with Landlord's Authorized Representative in the vicinity of the Property or by phone (at the election of Tenant's Authorized Representative) as and when needed, upon reasonable prior notice by Landlord.

(iii) Either party may change its Authorized Representative upon 1 day's prior written notice.

(c) Schedule. The schedule for design and development of Tenant's Work, including the preparation and review of construction documents, approvals, and performance, shall be in accordance with a reasonable "Schedule" to be prepared by Tenant, and clearly identify all activities requiring Landlord participation, including specific dates and time periods when Tenant's contractor will require access to areas of the Property outside of the Premises. As soon as the Schedule is completed, Tenant shall deliver the same to Landlord for approval, not to be unreasonably withheld. If Landlord disapproves the Schedule, then Landlord shall notify Tenant in writing of its objections to such Schedule, and the parties shall confer and negotiate in good faith to reach agreement on the Schedule. The Schedule shall be subject to adjustment as mutually agreed upon in writing by the parties, or as provided in this Work Letter.

(d) Performance of Tenant's Work. Tenant shall perform Tenant's Work, using an architect and general contractor approved by Landlord (which approval may be withheld in Landlord's discretion, including if Landlord reasonably believes it could cause labor disharmony), at Tenant's sole cost and expense (subject to Landlord's obligations with respect to the Allowance), in accordance with the Approved Plans, the Lease, and this Work Letter. If there is any conflict between this Work Letter and Section 12 of the Lease, the terms of this Work Letter shall govern. Tenant shall take, and shall cause its contractors to take, commercially reasonable steps to protect the Premises during the performance of Tenant's Work, including covering or temporarily removing any window coverings so as to guard against dust, debris or damage.

(e) Allowance.

(i) Amount. Landlord shall reimburse Tenant for the cost of Tenant's Work, up to \$[] (the "Allowance"). The Allowance may be applied to the "hard" and "soft" costs of Tenant's Work [and Landlord's review fee (which is []% of the cost of Tenant's Work)]²¹, but not the cost of any unauthorized work, the purchase of any furniture, fixtures, or equipment, or amounts recoverable from a third party (e.g., insurers, warrantors, or tortfeasors).

(ii) Excess Costs. To the extent that the total projected cost of Tenant's Work (as projected by Tenant) exceeds the Allowance (such excess, the "Excess Costs"), Tenant shall pay the costs of Tenant's Work on a pari passu basis with Landlord as such costs become due, in the proportion of Excess Costs payable by Tenant to the Allowance. If Tenant fails to timely pay any sum due under this Work Letter, then Landlord shall have all of the rights and remedies set forth in the Lease for nonpayment of Rent (including the right to interest and the right to assess a late charge), and for purposes of any litigation instituted with regard to such amounts the same shall be considered Rent.

(iii) Budget. Notwithstanding anything to the contrary set forth elsewhere in this Work Letter or the Lease, Landlord shall not have any obligation to expend any portion of the Allowance until Landlord shall have reasonably approved in writing a "Budget" for Tenant's Work to be prepared by Tenant prior to commencing Tenant's Work. Prior to Landlord's approval of the Budget, Tenant shall pay all of the costs and expenses incurred in connection with Tenant's Work as they become due.

²¹ [NTD: Delete if inapplicable]

Landlord shall not be obligated to reimburse Tenant for costs or expenses relating to Tenant's Work that exceed the amount of the Allowance.

(f) Fund Requests.

(i) Submission. Tenant may submit "Fund Requests" for the full or partial disbursement of any unused portion of the Allowance on or before the "Deadline" of [____], after which date Landlord's obligation to fund any such costs for which Tenant has not submitted a Fund Request to Landlord shall expire. Each Fund Request include:

(A) a statement setting forth the total amount of the Allowance requested;

(B) a summary of Tenant's Work performed, using AIA standard form Application for Payment (G702) executed by the general contractor and by the architect;

(C) invoices from the general contractor, architect, and any subcontractors, material suppliers and other parties requesting payment with respect to the amount of the Allowance then being requested; and

(D) except with respect to the final Fund Request, conditional lien releases from the general contractor and each subcontractor and material supplier with respect to Tenant's Work performed that correspond to the Fund Request in a form acceptable to Landlord and complying with Applicable Laws.

(ii) Disbursement. If Tenant submits to Landlord a Fund Request meeting the criteria above prior to the Deadline, then within 30 days after Landlord's receipt of the Fund Request and required accompanying materials, Landlord shall pay to (as elected by Landlord) the applicable contractors, subcontractors and material suppliers or Tenant, the amount of Tenant's Work costs set forth in such Fund Request or Landlord's pari passu share thereof if Excess Costs exist based on the approved Budget. Notwithstanding anything in this Section to the contrary, Tenant shall have no right to submit a Fund Request after the Deadline or more often than every 30 days. In no event shall any unused portion of the Allowance entitle Tenant to a credit against Rent payable under this Lease.

(g) Plans.

(i) Initial Plans.

(A) Submission. Landlord has approved the initial plans and specifications for the Tenant's Work prepared by Tenant's architect attached hereto as Exhibit [] (the "Initial Plans"). Tenant shall deliver "Design Development Drawings" prepared by its architect, that are a logical evolution of the Initial Plans, to Landlord for Landlord's approval or disapproval within [30] days. If Landlord fails to timely respond, then the Design Development Drawings shall be deemed disapproved by Landlord.

(B) Objections. If Landlord disapproves, then it shall specify its objections, and thereafter Tenant shall revise the Design Development Drawings to address Landlord's objections and deliver revised Design Development Drawings to Landlord for Landlord's approval or disapproval within [15] days.

(C) Approval. Said process and schedule of revision, delivery, and notice of objections shall continue until Landlord approves the Design Development Drawings. Landlord will not unreasonably withhold or condition its approval of the Design Development Drawings so long as the Design Development Drawings are a logical evolution of the Initial Plans.

(ii) Final Plans.

(A) Submission. Tenant shall deliver construction documents and drawings that are 100% completed and in a form that can be submitted to the [_____ Inspectional Services Department], prepared by Tenant's architect that are a logical evolution of the approved Design Development Drawings (the "Construction Drawings") to Landlord for Landlord's approval or disapproval within [30] days. If Landlord fails to timely respond, then the Construction Drawings shall be deemed disapproved by Landlord.

(B) Objections. If Landlord disapproves, then it shall specify its objections, and thereafter Tenant shall revise the Construction Drawings to meet Landlord's objections and deliver revised Construction Drawings to Landlord for Landlord's approval or disapproval within [15] days.

(C) Approval. Said process and schedule of revision, delivery, and notice of objections shall continue until Landlord approves the Construction Drawings. Landlord will not unreasonably withhold its approval of the Construction Drawings so long as the Construction Drawings are a logical evolution of the Design Development Drawings. Promptly after the Construction Drawings are approved by Landlord and Tenant, 2 copies of such Construction Drawings shall be initialed and dated by Landlord and Tenant, and Tenant shall promptly submit such Construction Drawings to all appropriate governmental authorities for approval. The approved Construction Drawings, and all change orders specifically permitted by this Work Letter, are referred to herein as the "Approved Plans."

(iii) Changes. Any "Changes" to the Approved Plans shall be subject to the written approval of the non-requesting party in accordance with this Work Letter. Either Landlord or Tenant may submit a written "Change Request" in substantially the same form as the AIA standard change order form, which shall detail the nature and extent of any requested Changes, including the party required to perform the Change and any modification of the Approved Plans and the Schedule, as applicable, necessitated by the Change. If the nature of a Change requires revisions to the Approved Plans, then the requesting party shall be solely responsible for the cost and expense of such revisions and any increases in the cost of Tenant's Work as a result of such Change. Change Requests shall be signed by the requesting party's Authorized Representative. All Change Requests shall be subject to the other party's prior written approval, not to be unreasonably withheld. The non-requesting party shall have [5] days after receipt of a Change Request to notify the requesting party in writing of the non-requesting party's decision either to approve or object to the Change Request. The non-requesting party's failure to timely respond shall be deemed approval by the non-requesting party.

(h) Completion. Tenant's Work shall be deemed completed when Tenant furnishes to Landlord:

(i) evidence satisfactory to Landlord that:

(A) all of Tenant's Work has been completed and paid for in full (evidenced by the architect's certificate of completion and the general contractor's and each subcontractor's and

material supplier's final unconditional waivers and releases of liens, each in a form acceptable to Landlord and complying with Applicable Laws, and a Certificate of Substantial Completion in the form of the American Institute of Architects document G704, executed by the project architect and the general contractor, together with a statutory notice of substantial completion from the general contractor);

(B) any and all liens related to Tenant's Work have either been discharged of record or waived by the party filing such lien; and

(C) no security interests relating to Tenant's Work are outstanding.

(ii) all unconditional certifications and approvals with respect to Tenant's Work that may be required from any governmental authority and any board of fire underwriters or similar body for the use and occupancy of the Premises (including a certificate of occupancy (or its substantial equivalent) for the Premises for the Permitted Use);

(iii) certificates of insurance required by the Lease to be purchased and maintained by Tenant;

(iv) an affidavit from Tenant's architect certifying that all work performed in, on or about the Premises is in accordance with the Approved Plans; and

(v) such other "close out" materials as Landlord reasonably requests consistent with Landlord's own requirements for its contractors, such as copies of manufacturers' warranties, operation and maintenance manuals and the like.

(i) **Insurance.** At all times during the period beginning with commencement of construction of Tenant's Work and ending with final completion of Tenant's Work, Tenant shall maintain, or cause to be maintained (in addition to the insurance required of Tenant pursuant to the Lease), the insurance required in Exhibit J. Any insurance provided pursuant to this Section shall waive subrogation against the Landlord Parties and Tenant shall hold harmless and indemnify the Landlord Parties for any loss or expense incurred as a result of a failure to obtain such waivers of subrogation from insurers.

3. **Early Access.** Tenant may access the Premises before the Commencement Date with Landlord's prior written consent, to install Tenant's furniture, fixtures, and equipment, and only if the insurance coverages required of Tenant are in effect. Tenant's early access will be subject to all of the terms of this Lease, other than the payment of Rent. [If Tenant's early access delays Landlord's ability to Substantially Complete Landlord's Work, then Landlord's Work will be deemed Substantially Complete on the day it would have been Substantially Complete without Tenant's delay.]²²

4. **Miscellaneous.** Within 10 business days of written request, Tenant shall execute the Memorialization of Dates Agreement substantially in the form attached hereto as Exhibit D-1.

²² [NTD: Delete if Landlord is not performing any Landlord's Work.]

EXHIBIT D-1

Form of Memorialization of Dates Agreement

[Date]

[Tenant Name]

[Address]

[Attn: _____]

Re: Lease dated _____ ([as amended,] the "Lease") by and between _____ ("Landlord") and _____ ("Tenant") for _____ (the "Premises")

Dear _____:

In accordance with the terms and conditions of the Lease, Tenant accepts possession of the Premises and acknowledges:

1. The Commencement Date is _____.
2. The Rent Commencement Date is _____.
3. The Expiration Date is _____.

This letter is binding upon and shall inure to the benefit of Landlord and Tenant and their respective successors and assigns. By signing this letter, Tenant acknowledges that it has accepted possession of the Premises, and that the dates written above are correct. Tenant's failure to sign this letter (or object in writing to the dates written above) within 10 business days shall be deemed Tenant's approval of the statements contained herein.

Sincerely,

[NAME OF LANDLORD]

By: _____

Name:

Title:

Acknowledged and Accepted:

[NAME OF TENANT]

By: _____

Name:

Title:

DATE: _____, 20__

EXHIBIT E

Responsibility Matrix²³

Category	Description	Landlord's Responsibility	Tenant's Responsibility
1. Maintenance And Repair:			
Structural	Structural components of the Building, including the roof and roof membrane, load bearing and exterior walls, slab flooring, foundation, guttering, and downspouts	X	
Common Areas	Common Areas of the Property	X	
Parking Facilities	Parking facilities serving the Property, if any	X	
Windows and Doors	Exterior doors, and exterior windows (other than storefront windows)	X	
	Interior windows and doors, and storefront windows		X
Plumbing	Serving the Building generally	X	
	Within the Premises, beginning at the point of connection of distribution to the Premises		X
Electrical	Serving the Building generally	X	
	Within the Premises, beginning at the point of connection of distribution to the Premises		X
Life Safety (e.g., fire sprinkler, suppression, detection, alarm systems)	Serving the Building generally	X	
	Exclusively serving the Premises (with service contract)		X
HVAC	Serving the Building generally (up to the first damper or isolation valve that serves the Premises)	X	
	Serving the Building generally (including the first damper or isolation valve and extending into and through the Premises), or exclusively serving the Premises (with service contract)		X
Security	Serving the Building generally	X	
	Exclusively serving the Premises		X

²³ [NTD: Modify or supplement matrix as necessary to reflect Property details and deal terms.]

Category	Description	Landlord's Responsibility	Tenant's Responsibility
Elevator	Elevator(s) serving the Building, if any	X	
Restaurant Equipment	Stacks, flues, vents, exhausts, ansul systems, and grease traps serving the Premises		X
2. Services:			
Cleaning	Common Areas, including exterior surface of exterior windows	X	
	Premises generally, including interior surface of exterior windows		X
	Food and beverage storage, preparation, service, and consumption areas of the Premises (daily)		X
Trash Removal	Common Areas	X	
	Premises		X
	Substances in the Premises required to be disposed of separately from ordinary trash		X
Extermination	Common Areas	X	
	Premises (with service contract)		X
Snow and Ice Removal	From sidewalks and other Common Areas, as reasonably necessary for the normal operation of the Building.	X	
Other Miscellaneous Landlord's Services	Reasonable passenger and freight elevator service.	X	
	Staff the Building's front desk during certain hours as reasonably determined by Landlord.	X	

EXHIBIT E-1

Approved Third-Party Service Providers

1. []²⁴



²⁴ [NTD: Landlord to either insert list of current approved third-party service providers, or to delete Exhibit E-1 if not required to provide list under Section 7(c)(iii).]

EXHIBIT F

Restaurant Provisions

Landlord's and Tenant's maintenance and service obligations set forth in this Exhibit F are shown in the Responsibility Matrix attached as Exhibit E. If there is any conflict between this Exhibit F and Exhibit E, the terms of this Exhibit F shall govern.

1. Hours of Operation. During the Term, Tenant shall operate Tenant's business continuously for the Permitted Use, during the days and hours approved by Landlord in writing (consisting of at least [10 hours per day, 7 days per week]) (the "Minimum Business Hours"). The initial Minimum Business Hours shall be: [_____].

2. Maintenance. Tenant shall, at its sole cost and expense:

(a) Take all precautions to prevent any odors from emanating from the Premises, including the installation of such control devices prescribed by Landlord, and the establishment of effective control procedures, as required in order to eliminate such odors;

(b) Maintain in good order and repair all necessary flues, vents, ansul systems, and grease traps;

(c) 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);

(d) Use the utility waste lines and plumbing only for the purpose for which they were constructed. Tenant shall take all reasonable steps to prevent fat, grease, or any other greasy substance from entering the utility waste lines and plumbing of the Premises, and Tenant shall clear any blockage in the sewer line or lines servicing the Premises resulting from Tenant's operations;

(e) Periodically clean and otherwise maintain the stacks, flues, and exhausts servicing the Premises, as and when required to minimize the risk of fire and other hazards; and

(f) Contract with an exterminator approved by Landlord to exterminate rodents, insects, and other vermin on a regular basis (at least monthly), and shall cause all portions of the Premises used for the storage, preparation, service or consumption of food or beverages to be cleaned daily, as part of a program to keep the Premises free of rodents, insects, and other vermin.

3. Equipment. All equipment installed or used by Tenant in the Premises shall be properly installed, including any electrical usage and connections, and shall comply with any manufacturers' recommendations and Applicable Laws. All electrical equipment shall have been tested and approved by the Underwriter's Laboratory or similar safety testing organization. No equipment shall be used in the Premises unless and until all necessary permits and authorizations for the use and operation thereof have been obtained by Tenant from such governmental authorities at Tenant's sole cost and expense.

4. Gas Service. If Tenant desires to have gas service in the Premises for cooking (no other use of gas is permitted in the Premises), Tenant shall be responsible for the installation of necessary pipes and other facilities to connect the Premises to gas supply lines (if any) provided by Landlord. All such installations shall be in accordance with and subject to the other provisions of this Lease and Applicable Laws. Notwithstanding the

foregoing, the services and utilities to be provided by Landlord to the Premises shall be subject to such energy, greenhouse gas emissions, water and other conservation controls required by Applicable Laws or any “Green Building” or similar certification process (e.g., LEED) adopted by Landlord, or public utilities or insurance carriers. If and to the extent required to comply with such energy, greenhouse gas emissions, water or other conservation controls, Landlord shall not be deemed in violation of this Lease for the duration of such controls, and such controls shall not be considered an eviction, actual or constructive, of Tenant from the Premises and shall not entitle Tenant to terminate this Lease or to an abatement or reduction of any Rent payable hereunder.

5. Alcoholic Beverages. With regard to the serving of alcoholic beverages, Tenant agrees that:

(a) Tenant shall comply with Applicable Laws related to the serving of alcoholic beverages, including restrictions on serving alcoholic beverages to minors, the age of persons serving alcoholic beverages, and the hours and days during which alcoholic beverages may be served; and

(b) Tenant shall, at Tenant’s sole cost and expense, obtain and keep in full force and effect all necessary licenses, permits, authorizations, and approvals from all Governmental Authorities having jurisdiction with respect to the serving of alcoholic beverages.

6. Deliveries. All deliveries to the Premises shall be made in accordance with the Rules and Regulations. Because of the unique nature of Tenant’s business, if any leaking or spilling occurs or if any goods or merchandise fall out of any containers or packages, Tenant shall immediately clean and remove the same and repair any damage to the Property. Tenant shall immediately convey all goods and merchandise received by Tenant to the Premises and properly store the same in the Premises to slow any spoilage, to prevent any odors, and to prevent infestation.

7. Sound Levels. Tenant shall not use, play or operate, or permit to be used, played or operated, any sound-making or -reproducing device in the Premises in any manner that allows the sound to be heard outside of the Premises. In no event shall any sound generated within the Premises exceed those levels reasonably designated by Landlord. Tenant shall, at its sole cost and expense, observe, comply with, and adopt such means and precautions as Landlord may from time to time request in connection with the sound levels at the Premises.

8. Trash. [Tenant shall be responsible, at Tenant’s sole cost and expense, for daily removal of all trash and other waste from the Premises, which removal shall be conducted in a clean and sanitary manner.] Because of the unique nature of Tenant’s business, Tenant shall store all trash and other waste within the Premises in odor- and vermin-proof containers, or in such other common trash facilities provided Landlord. Tenant shall, at Tenant’s sole cost and expense, frequently dispose of such trash and other waste using containers reasonably approved by Landlord at the times and in the manner specified by Landlord and subject to the Rules and Regulations. Landlord’s rules and regulations for Tenant’s trash disposal and removal may differ from the rules and regulations applicable to other tenants. In no event shall Tenant leave or store any such trash or other waste outside the Premises, excepting only Landlord designated common trash facilities.

9. Health Department. Tenant shall maintain the Premises in a manner sufficient to consistently comply with the requirements of the Department of Health Services (or other applicable governmental authorities) regarding the operation of restaurants. Tenant’s failure to pass an inspection by a governmental authority shall constitute a default under this Lease. If Tenant fails to pass any such inspection more than once during the Term, then such 2nd or any subsequent failure shall constitute an Event of Default.

10. Facilities. In no event shall Tenant permit Tenant’s customers to form waiting lines outside of the Premises. Tenant shall not permit any Tenant Parties to use any Common Area, including any public restrooms

located therein, for the changing of clothes or for the storage of personal effects, nor shall Tenant permit any Tenant Parties to loiter at the entrance to the Premises or in the Common Area.

11. Landlord's Approval Right. The name of the Restaurant shall initially be "[_____]." Tenant shall not change the name or restaurant concept without obtaining Landlord's prior written approval, which approval shall not be unreasonably withheld.

LCR | LAWYERS FOR
CIVIL RIGHTS
BOSTON

EXHIBIT G

Landlord's Services²⁵

The services to be provided by Landlord are set forth in this Exhibit G, and are shown in the Responsibility Matrix attached as Exhibit E. If there is any conflict between this Exhibit G and Exhibit E, the terms of this Exhibit G shall govern.

1. Cleaning. Cleaning of the [Premises and] Common Areas in a manner substantially comparable to other comparable buildings in the [] area.
2. Trash. Removal of trash from the [Premises and] Common Areas. Such trash removal shall not include removal of excessive trash generated when an occupant moves in or out of the Building, when equipment is discarded, when files are purged, or construction related trash and debris. Tenant shall not place in any trash receptacle any material that cannot be disposed of in the ordinary and customary manner. If Landlord's trash removal company or any Applicable Law requires that any substances in the Premises be disposed of separately from ordinary trash, Tenant shall make arrangements at Tenant's expense for such disposal directly with a qualified and licensed disposal company approved by Landlord at a lawful disposal site. Tenant shall comply with all rules, requirements, and orders imposed by Applicable Laws or Landlord regarding the collection, sorting, and recycling of trash and other waste products generated by Tenant.
3. Snow and Ice. Snow and ice removal from the sidewalks and driveways appurtenant to the Building, as reasonably necessary for the normal operation of the Building.
4. Elevators. Reasonable passenger and freight elevator service.

²⁵ [NTD: Landlord to modify or supplement as needed.]

EXHIBIT H

Taxes and Operating Costs

1. Taxes.

(a) Definition. “Taxes” means the cost of the following[, to the extent such costs in any tax year (or partial tax year) during the Term exceeds those for fiscal year 20[___]]:

(i) the real estate taxes and other taxes, levies, and assessments imposed upon the Property, and upon any personal property of Landlord used in the operation thereof, or on Landlord’s interest therein or such personal property or reasonably allocated thereto (provided that to the extent the Property is not a separate tax parcel, such amounts shall be allocated among the buildings located on the tax parcel of which the Property is a part and shall be based on the assessor’s records or, if the records do not provide a separate allocation, based on square footage of the buildings in question unless Landlord reasonably determines that such allocation should be made on another basis);

(ii) charges, fees, and assessments for transit, housing, police, fire or other services or purported benefits to the Property (including any community preservation assessments);

(iii) service or user payments in lieu of taxes;

(iv) reasonable expenses (including legal and consultant fees) of tax abatement or other proceedings contesting assessments or levies; and

(v) any and all other taxes, levies, betterments, assessments, and charges arising from the ownership, leasing, operation, use, or occupancy of the Property or based upon rentals derived therefrom, which are or shall be imposed by federal, state, county, municipal, or other governmental authorities.

(b) Exclusions. Taxes shall not include any inheritance, estate, succession, gift, franchise, rental, income or profit tax, capital stock tax, capital levy or excise, or any income taxes arising out of or related to the ownership and operation of the Property, provided, however, that any of the same and any other tax, excise, fee, levy, charge, or assessment, however described, that may in the future be levied or assessed as a substitute for or in addition to, in whole or in part, any tax, levy or assessment which would otherwise constitute Taxes, whether or not now customary or in the contemplation of the parties on the date of this Lease, shall constitute Taxes, but only to the extent calculated as if the Property were the only real estate owned by Landlord.

(c) Tenant’s Taxes. If any Tax is levied or assessed directly against Tenant, then Tenant shall be responsible for and shall pay the same at such times and in such manner as the taxing authority shall require.

2. Operating Costs.

(a) Definition. “Operating Costs” means the cost of the following[, to the extent such costs in any calendar year (or partial calendar year) during the Term exceeds those for calendar year 20[___]]:

(i) all costs incurred and expenditures of whatever nature made by Landlord in the operation, management, repair, replacement, maintenance, and insurance (including environmental liability insurance and property insurance on Landlord-supplied leasehold improvements for tenants, but not property insurance on tenants’ equipment) of the Property or allocated to the Property;

(ii) all costs of labor (wages, salaries, fringe benefits, etc.) up to and including the group or portfolio manager, however denominated;

(iii) any costs for utilities supplied to exterior areas and the Common Areas;

(iv) any costs for repair and replacements, cleaning, and maintenance of exterior areas and the Common Areas, related equipment, facilities and appurtenances, and HVAC equipment;

(v) security services;

(vi) a management fee paid to Landlord's property manager;

(vii) the costs, including a commercially reasonable rental factor, of Landlord's management office for the Property (which management office may be located outside the Property and which may serve other properties in addition to the Property (in which event the costs thereof shall be equitably allocated among the properties served by such office));

(viii) the cost of operating any amenities in the Property available to all tenants of the Property and any subsidy provided by Landlord for or with respect to any such amenity; and

(ix) the costs of any consultants and/or experts engaged to evaluate cost-savings measures for the Property (including tax and energy conservation consultants).

(b) Exclusions. Operating Costs shall not include the following "Excluded Costs":

(i) any mortgage charges (including interest, principal, points, and fees);

(ii) brokerage commissions;

(iii) salaries of executives and owners not directly employed in the management/operation of the Property;

(iv) the cost of work done by Landlord for a particular tenant;

(v) the cost of items which, by generally accepted accounting principles, would be capitalized on the books of Landlord or are otherwise not properly chargeable against income, except to the extent such capital item is (A) required by any Applicable Laws, (B) reasonably projected to reduce Operating Costs, or (C) reasonably expected to improve the management, security, and/or operation of the Building;

(vi) the costs of any contributions made by Landlord to any tenant of the Property in connection with the build-out of its premises;

(vii) franchise or income taxes imposed on Landlord;

(viii) costs paid directly by individual tenants to suppliers, including tenant electricity, telephone, and other utility costs;

(ix) increases in premiums for insurance when such increase is caused by the use of the Property by Landlord or any other tenant of the Property;

(x) maintenance and repair of capital items not a part of, or used in connection with, the Property;

(xi) depreciation of the Property;

(xii) costs relating to maintaining Landlord's existence as a corporation, partnership, or other entity;

(xiii) advertising and other fees and costs incurred in procuring tenants;

(xiv) the cost of any items for which Landlord is actually reimbursed by insurance, condemnation awards, refund, rebate, or otherwise, and any expenses for repairs or maintenance to the extent covered by warranties, guaranties, and service contracts; and

(xv) costs incurred in connection with any disputes between Landlord and its employees, between Landlord and Building management, or between Landlord and other tenants or occupants.

(c) Multiple Properties. To the extent that a cost included in Operating Costs is also allocable to property other than the Property, such cost shall be equitably allocated to each parcel of property which benefits from such cost.

(d) Equitable Allocation. Landlord shall have the right but not the obligation, from time to time, to equitably allocate some or all of the Operating Costs among different tenants of the Property (for example, and without limiting the generality of the foregoing, based in whole or in part on shared or similar use of particular systems or equipment).

EXHIBIT I

Hazardous Materials

1. Definition. “Hazardous Material” means any toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous substance, material, or waste that is or becomes regulated by Applicable Laws or any governmental authority.
2. Prohibited Use; Indemnification. Tenant shall not cause or permit any Hazardous Materials to be generated, stored, used, or disposed of in, on, or from the Premises without Landlord’s prior written consent, and then only in compliance with Applicable Laws. Tenant shall indemnify, defend, and hold harmless the Landlord from and against all liabilities, losses, costs, fines, demands, claims, judgments, damages, expenses, action, or rights of action of any type or nature arising from Tenant’s breach of the foregoing sentence or the release of Hazardous Materials by a Tenant Party resulting in contamination of any portion of the Property or any adjacent property. This indemnification by Tenant shall survive the Expiration Date or earlier termination of the Term, and includes costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work required by any governmental authority. Without limiting the foregoing, if the presence of any Hazardous Materials caused or permitted by any Tenant Party results in any contamination of the Property or any adjacent property, then Tenant shall promptly take all actions at its sole cost and expense necessary to return the areas to their respective pre-contamination condition; provided that Tenant must first obtain Landlord’s written approval of such action. Tenant’s obligations under this Section shall not be affected by any limitation on the amount or type of damages, compensation, or benefits payable by or for Tenant under workers’ compensation acts, disability benefit acts, employee benefit acts, or similar legislation.
3. Tenant’s Hazardous Materials. Tenant may operate its business according to the custom of Tenant’s industry (e.g., ordinary cleaning supplies) so long as the use or presence of Hazardous Materials is strictly and properly monitored in accordance with Applicable Laws. Tenant agrees to deliver to Landlord (a) a list identifying each type of Hazardous Material at the Premises that is subject to regulation under any environmental Applicable Laws, (b) a list of any and all approvals or permits from governmental authorities required in connection with the presence of such Hazardous Material at the Premises, and (c) correct and complete copies of notices of violations of Applicable Laws related to Hazardous Materials.
4. Inspections. Landlord may conduct tests of the Premises to demonstrate that Hazardous Materials are present, or that contamination has occurred, due to the acts or omissions of a Tenant Party. Tenant shall pay all reasonable costs of such tests if they reveal that Hazardous Materials exist at the Premises in violation of this Lease.
5. Reporting. Tenant shall promptly report to Landlord any actual or suspected presence of mold or water intrusion at the Premises.

EXHIBIT J

Insurance

1. Policies. Tenant shall procure, pay for, and keep in force throughout the Term (and for so long thereafter as Tenant remains in occupancy of the Premises), the following insurance:

(a) Commercial general liability insurance, on a primary and non-contributory basis, insuring Tenant on an occurrence basis against all claims and demands for bodily injury or damage to property which may be claimed to have occurred from and after the time any Tenant Party first enters the Premises, of not less than [\$1,000,000] per occurrence, [\$3,000,000] aggregate, or such higher amounts reasonably required by Landlord from time to time. Tenant shall also carry umbrella liability coverage on a follow form basis in an amount of not less than [\$1,000,000], including contractual liability coverage covering Tenant's liability assumed under this Lease, including Tenant's indemnification obligations. Such policies shall name Landlord, its managing agent, and those claiming by, through or under them, if any, as additional insureds.

(b) Fire, vandalism, malicious mischief, and extended coverage (so-called special cause of loss property insurance or its equivalent), on a primary and non-contributory basis, in an amount equal to 100% of the replacement cost insuring all items or components of Alterations and Tenant's furniture, fixtures, equipment, and property related or arising out of Tenant's leasehold estate, which may be in or upon the Premises or the Building, insuring the interests of both Landlord and Tenant as their interests may appear from time to time.

(c) Business interruption insurance sufficient to cover at least 12 months of Rent and Tenant's business losses during such 12-month period.

(d) Worker's compensation insurance with statutory limits covering all of Tenant's employees working at the Premises.

(e) Employer's liability insurance of not less than [\$500,000] per incident, [\$1,000,000] in the aggregate.

(f) Such additional insurance as may be necessary to comply with any Applicable Laws or as may be reasonably required by Landlord.

(g) During the performance of any Alterations, so-called special cause of loss property insurance or its equivalent and/or Builders Risk Insurance on 100% replacement cost coverage basis, including hard and soft costs coverages. Such insurance shall protect and insure Landlord, other Landlord Parties, Tenant, and Tenant's contractors, as their interests may appear, against loss or damage by fire, water damage, vandalism and malicious mischief, and such other risks as are customarily covered by so-called special cause of loss property/ builders risk coverage or its equivalent, and shall otherwise include no less than the coverage terms required for property insurance described above.

2. Requirements. The insurance required pursuant to this Exhibit J:

(a) shall be effected with insurers approved by Landlord, with a rating of not less than "A-VII" in the current Best's Insurance Reports, and authorized to do business in the Commonwealth of Massachusetts under valid and enforceable policies;

(b) shall each provide that it shall not be canceled or modified without at least 30 days' prior written notice to each insured named therein; and

(c) may include deductibles in an amount no greater than [\$25,000]. In the event of any claim, and upon Landlord's request, Tenant shall deliver to Landlord complete copies of any such policy.



EXHIBIT K

Rules and Regulations²⁶

1. Signage. Except for exterior signage Tenant is expressly permitted to install (see Section 13 of the Lease), Tenant may not place, display, or install any sign, picture, advertisement, or notice outside of (or visible from the outside of) the Premises. Landlord may remove anything in violation of this rule at Tenant's sole cost and expense and without notice.
2. Obstructions. The Tenant Parties shall not obstruct the Property's common entrances, lobbies, elevators, sidewalks and stairways, or use them for any purposes other than ingress and egress to and from the Premises.
3. Windows and Doors. Tenant may not place, hang, or install any curtains, blinds, shades, screens, hanging plants, or other similar objects on any window or door of the Premises that is visible from the exterior of the Premises, without Landlord's prior written consent.
4. Antennae. Tenant shall not install any radio, television, or other antennae; cell or other communications equipment; or other devices on the roof or exterior walls of the Premises without Landlord's prior written approval. Tenant shall not interfere with radio, television, or other digital or electronic communications at the Property or elsewhere.
5. Deliveries. Deliveries shall be made through the loading dock and service corridors designated by Landlord, and [no later than 8 a.m. and no earlier than 6 p.m.] Deliveries may not interfere with other tenants in, or the operation of, the Property.
6. Large Items. Tenant shall coordinate with Landlord before moving any furniture, kitchen equipment, or other large or bulky items into the Premises. Any such moves shall be restricted to the reasonable hours designated by Landlord, and shall be subject to reasonable restrictions that Landlord may impose.
7. Floor Load. Tenant shall not place a load upon any floor in the Premises exceeding the maximum floor load per square foot that such floor was designed to carry, or is allowed by Applicable Laws.
8. Vibrations. Tenant shall, at its sole cost and expense, place and maintain fixtures and equipment that cause noises or vibrations that may be objectionable to other tenants on vibration eliminators or other devices prescribed by Landlord sufficient to eliminate such noises and vibrations to reasonably acceptable levels.
9. Solicitations. Canvassing, peddling, soliciting, and distributing handbills or any other written material within, on, or around the Property (other than within the Premises) are prohibited. Tenant shall cooperate with Landlord to prevent such activities by any Tenant Party.
10. Advertisements. Tenant shall not, without Landlord's prior written consent, use the name of the Property (if any) in connection with or in promoting or advertising Tenant's business except as Tenant's address.
11. Safety. Tenant shall comply with all safety, fire protection, and evacuation procedures and regulations established by Landlord or any Applicable Laws.

²⁶ [NTD: Landlord to modify or supplement as needed to reflect current Rules and Regulations.]

12. Security. Tenant assumes any and all responsibility for protecting the Premises from theft, robbery, and pilferage, including keeping doors locked and other means of entry to the Premises closed. Tenant shall cooperate and participate in all reasonable security programs affecting the Premises.
13. Locks. Tenant shall not modify any locks to the Premises without Landlord's prior written consent, not to be unreasonably withheld. Tenant shall furnish Landlord with copies of keys, pass cards, or similar devices for locks to the Premises.
14. HVAC. Tenant shall not use any method of HVAC other than that serving the Premises as of the Commencement Date, unless approved by Landlord in writing.
15. Plumbing. The water, wash closets, and other plumbing fixtures shall not be used for any purposes other than those for which they were constructed, and no sweepings, rubbish, rags, or other substances shall be deposited therein.
16. Animals. Tenant shall not permit any animals in the Building, other than service animals.
17. Bicycles. Tenant shall not permit any bicycles to be taken into the Building.
18. Smoking. Smoking and the use of smokeless tobacco products, electronic smoking devices (e.g., e-cigarettes), and nicotine products is prohibited at the Property.
19. Weapons. Firearms and any other items intended for use as weapons are not permitted at the Property.
20. Parking. Parking facilities (if any) may not be used for overnight parking or storage of vehicles or other miscellaneous items without Landlord's prior written approval. Vehicles and other miscellaneous items left unattended by any Tenant Party in any parking facility for 24 hours or longer may be towed/removed at Tenant's expense without notice.

EXHIBIT L

Certain Legal Definitions of Capitalized Terms Used in this Lease

“Applicable Laws” means all federal, state, municipal, and local laws, codes, ordinances, rules and regulations of governmental authorities, committees, associations, or other regulatory committees, agencies, or governing bodies having jurisdiction over the Premises, Property, Landlord, or Tenant.

“Building Systems” means the plumbing, heating, electrical, and ventilating systems serving the Building generally (and not the Premises exclusively).

“Default Rate” means the annual rate of [18%], or at any applicable lesser maximum legally permissible rate for debts of this nature.

“Landlord Parties” means Landlord and its agents, contractors, and employees.

“Net” means the insurance proceeds or taking award actually paid to Landlord (and not paid over to a mortgagee) less all costs and expenses, including adjusters and attorneys’ fees, of obtaining the same.

“Tenant Parties” means Tenant or its agents, servants, employees, contractors, subcontractors, licensees, or subtenants.