

AMENDED AND RESTATED LEASE AGREEMENT

THIS AMENDED AND RESTATED LEASE AGREEMENT (the "Lease"), made this ____ day of _____, 2024, with an effective date of May 17, 2021 (the "Effective Date") by and among the **CITY OF MIAMI BEACH, FLORIDA**, a Florida municipal corporation (the "City") and the **MIAMI BEACH REDEVELOPMENT AGENCY**, a public body corporate and politic (the "RDA") (hereinafter collectively referred to as "Landlord"), and the **MOONLIGHTER FABLAB, INC.**, a Florida not-for-profit corporation (hereinafter referred to as "Tenant").

WHEREAS, on August 12, 2019, pursuant to City Commission Resolution No. 2019-3076 and RDA Resolution No. 640-219, the Landlord and Tenant executed a lease for use of approximately 6,720 square feet of the Retail Space (as defined in Section 1.1) for an initial term of three (3) years, with two (2) additional renewal terms, of one (1) year each, at Landlord's option ("Original Lease"); and

WHEREAS, on April 21, 2021, the City Commission and the RDA accepted the FERC's recommendation, at its February 19, 2021 meeting, and adopted City Commission Resolution No. 2021-31687 and RDA Resolution No. 656-2021, approving Amendment No. 1 to the Original Lease, to include the remaining northeasterly 935 square feet area of the Retail Space, previously occupied by Miami Beach Chamber of Commerce Visitor's Center; and

WHEREAS on August 16, 2023, Landlord and Tenant exercised the First Renewal Option commencing on May 17, 2024, and ending on May 16, 2025, leaving one remaining renewal option for a period of one (1) year, commencing on May 17, 2025 and expiring on May 16, 2026; and

WHEREAS, on _____, the City Commission and the RDA accepted the FERC's recommendation, at its April 19, 2024, and adopted City Commission Resolution No. _____ and RDA Resolution No. _____, approving two additional renewal terms: a three-year term, commencing on May 17, 2026 and expiring on May 16, 2029, and a final term for one (1) year and 364 days, commencing on May 17, 2029 and expiring on May 15, 2031, in order for Tenant to secure the funds needed to expand programming at the Premises; and

WHEREAS, in furtherance of the foregoing, the parties desire to amend and restate in its entirety the Original Lease, to accomplish the purpose outlines herein; and

WHEREAS, as of the Effective Date, the Original Lease is hereby amended and restated in its entirety and of no further force and effect and shall be suspended and replaced in its entirety by this Lease, and subject to all the terms and conditions herein contained and fairly implied by the terms hereinafter set forth.

NOW, THEREFORE, the Landlord and Tenant agree as follows:

1. Demised Premises.

- 1.1. Landlord owns that certain land (the "Land") and the facility (the "Facility") located thereon, located at 1661 Pennsylvania Avenue, Miami Beach, Florida 33139, which includes a municipal garage (the "Penn Garage"), having approximately 560 parking spaces, and ground floor retail space (the "Retail Space"), having approximately 7,655 square feet (the Land and the Facility shall be collectively referred to herein as the "Property"). Landlord, in consideration of the rentals hereinafter reserved to be paid and of the covenants, conditions, and agreements

to be kept and performed by the Tenant, hereby leases, lets, and demises to Tenant, and Tenant hereby leases and hires from Landlord, those certain premises, which are part of the Retail Space (the "Demised Premises"), having approximately 7,655 square feet, as depicted in Exhibit A, and more fully described as follows:

Unit 1, of Pennsylvania Garage Condominium, a Condominium, according to the Declaration thereof, as recorded in Official Records Book 28080, at Page 4536, of the Public Records of Miami-Dade County, Florida.

a/k/a 530 17th Street, Miami Beach, Florida 33139.

- 1.2. As referenced herein, the City Manager shall be the chief administrative officer of the City and the City Manager's Designee. The City staff member who is designated by the City Manager to administer this Lease on behalf of the Landlord shall be the Real Estate Division Director, Facilities and Fleet Management Department.

2. Term.

2.1. Initial Term.

Tenant shall be entitled to have and to hold the Demised Premises for a term of four (4) years, commencing on May 17, 2021 and expiring on May 16, 2025 (the "Expiration Date").

For purposes of this Lease, and including, without limitation, Subsection 2.2 herein, a "Contract Year" shall be defined as that certain period commencing on May 17th of a given year and ending on the last day of the 12th month thereafter.

2.2. Renewal Term(s).

At the expiration of the Initial Term herein, provided the Tenant is in good standing and free from default hereunder, the City Manager may, at the City Manager's sole option and discretion, renew and extend this Lease for the following consecutive renewal terms ("Renewal Terms"): (i) one (1) year term, commencing on May 17, 2025 and expiring on May 16, 2026; (ii) a three-year term, commencing on May 17, 2026 and expiring on May 16, 2029; and (iii) a final term for one (1) year and 364 days, commencing on May 17, 2029 and expiring on May 15, 2031, by providing Tenant with written notice not less than 180 days prior to the Expiration Date, or not less than ninety (90) days prior to the expiration date of a Renewal Term, as the case may be.

Notwithstanding anything in this subsection, in the event Tenant decides not to renew the Lease, it shall provide the City Manager with written notice of its intent not to renew at least three hundred and sixty-five (365) days prior to the Expiration Date, or ninety (90) days prior to the expiration date of the then current Renewal Term, as the case may be.

The Initial Term and any Renewal Term which may be approved by the City Manager, in the City Manager's sole option and discretion, may be collectively referred to herein as the "Term."

2.3. Termination for Convenience.

Notwithstanding anything in this subsection, or any other term or condition in this Lease, Landlord reserves the right, through the City Manager, to terminate this Lease, without cause and without liability to Landlord, upon providing Tenant with one hundred eight (180) days prior written notice.

3. Rent.

3.1. Base Rent.

Tenant's payment of Rent, as defined in this Section 3, shall commence on the Commencement Date.

The Base Rent for the Demised Premises shall be for One Dollar (\$1.00) per Contract Year and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto.

3.2. Additional Rent.

In addition to the Base Rent, as set forth in Section 3.1, Tenant shall also pay the following Additional Rent as provided below:

3.2.1. Intentionally Omitted.

3.2.2. Property Taxes.

The Property Tax Payment shall be payable by Tenant, in accordance with Section 11 herein.

3.2.3. Insurance.

The Additional Rent shall NOT include Tenant's pro-rata share toward estimated insurance costs incurred to insure the Retail Space. Notwithstanding the foregoing, if the City's costs to insure the Retail Space increase because of Tenant's use of the Demised Premises, Tenant unconditionally agrees to reimburse the City for any increase in insurance costs associated with Tenant's occupancy. This insurance coverage is in addition to the insurance required pursuant to Section 10, which shall be obtained at Tenant's sole expense and responsibility. A copy of the insurance bill(s) or other evidence of such insurance costs, together with the City's computation of Tenant's pro-rata share, will be made available to Tenant once received from the insurer, if requested by Tenant.

3.2.4. Janitorial Services in Demised Premises.

Notwithstanding anything in Section 3 or any other provision set forth herein, Tenant shall be solely responsible for all day-to-day janitorial maintenance of the Demised Premises.

3.2.5 Tenant's Taxes and Sales Taxes.

Concurrent with the payment of the Additional Rent as provided herein, Tenant shall also pay any and all sums for all applicable tax(es), including without limitation, sales and use taxes and real estate taxes, imposed, levied, or assessed against the Demised Premises or Tenant's use of the Demised Premises, or any other charge or payment required by any governmental authority having jurisdiction thereover, even though the taxing statute or

ordinance may purport to impose such tax against Landlord.

The ad valorem tax assessment of the Retail Space for year 2020 was estimated at zero dollars (\$0.00). Notwithstanding the foregoing sentence, the City makes no warranty or representation, whether expressed or implied, that the Retail Space and/or the Demised Premises will not be subject to ad valorem (or other) taxes (real estate taxes) in subsequent years. If the Retail Space is assessed real estate taxes, the City will pay the real estate tax bill and invoice Tenant for the portion of the real estate tax bill, attributed to the Demised Premises or Tenant's use of the Demised Premises, as determined by Landlord in its sole discretion and judgment.

3.3. Enforcement.

Tenant agrees to pay the Base Rent and Additional Rent (Base Rent and Additional Rent may be collectively referred to as "Rent"), and any other amounts as may be due and payable by Tenant under this Lease, at the time and in the manner provided herein, and should said rents and/or other additional amounts due herein provided, at any time remain due and unpaid for a period of fifteen (15) days after the same shall become due, Landlord may exercise any or all options available to it hereunder, which options may be exercised concurrently or separately, or Landlord may pursue any other remedies enforced by law.

4. Location for Payments.

All Rents or other payments due hereunder shall be paid to the City at the following address:

City of Miami Beach Finance
Department
1700 Convention Center Drive, 3rd Floor
Miami Beach, Florida 33139

or at such other address as the City Manager or his/her designee may, from time to time, designate in writing.

5. Parking.

This Lease does not grant any additional parking privileges not already available to the general public. Tenant may request, from the City's Parking Department, the use of no more than eight (8) parking spaces, if available, at Municipal Parking Garage G-9. Rental rates for parking spaces, including applicable sales and use tax, are determined by the Parking Department and are subject to change.

6. Intentionally Omitted

7. Use and Possession of Demised Premises.

7.1. The Demised Premises shall be used by Tenant for the purpose(s) of providing an innovative public space combining a Science, Technology, Engineering, Arts & Math (STEAM) education center, co-working space, and digital fabrication lab.

7.1.1 Background Screening.

In accordance with the requirements of Section 1012.465, 1012.32 and 1012.467, Florida Statutes, and School Board Policies 8475, 1121.01, 3121.01

and 4121.01, as amended from time to time, Tenant shall ensure that all instructional personnel or contractor will be required to submit to a criminal history check and background screening requirements, including level 2 screening requirements, as outlined in the above-referenced statutes and School Board Policies.

Any non-instructional personnel or contractor who is exempt from the screening requirements set forth in §1012.465, §1012.468 or §1012.467, Florida Statutes, is subject to a search of his or her name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by the Department of Law Enforcement under §943.043 and the national sex offender public registry maintained by the United States Department of Justice.

Further, upon obtaining clearance by the School Board, Tenant will obtain a Florida Public Schools Contractor badge, which shall be worn by Tenant's personnel or contractor at all times at the Demised Premises when students are present.

The costs relating to the above described criminal history checks and background screenings shall be borne by Tenant.

7.1.2 Confidentiality of Student Records.

Tenant understands and agrees that it is subject to all federal and state laws and School Board policies relating to the confidentiality of student information. Tenant further agrees to comply with the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. Section 1232g, as may be amended. Tenant shall regard all student information as confidential and will not disclose the student information to any third party.

7.1.3 CDC Guidelines.

Tenant agrees to comply with all applicable CDC guidelines in connection with its operations. Additionally, when the Demised Premises are being utilized by Miami-Dade County Public School students, Tenant shall abide by the recommendations of the Division of Academics of the Miami-Dade County Public Schools, entitled "Safety and Health Guidelines for Teaching and Learning", as may be amended, a copy of which is incorporated herein by reference and attached hereto as Exhibit "B".

- 7.2. The Demised Premises may be open for operation seven (7) days a week, with regular hours of operation being as follows:

Hours of Operation: Monday - Saturday: 10:00 AM to 8:00 PM

Nothing herein contained shall be construed to authorize hours contrary to the laws governing such operations. Any change in the days and/or hours of operation shall require the prior written consent of the City Manager; provided, however, that in no event shall the hours of operation extend earlier than 7:00 AM or later than 12:00 AM.

- 7.3. It is understood and agreed that the Demised Premises shall be used by Tenant during the Term of this Lease only for the purpose(s)/use(s) set forth in Section 7 hereof, and for no other purpose(s) and/or use(s) whatsoever. Tenant will not make or permit any use

of the Demised Premises that, directly or indirectly, is forbidden by law, ordinance, or government regulation, or that may be dangerous to life, limb or property. Tenant may not commit (nor permit) waste on the Demised Premises; nor permit the use of the Demised Premises for any illegal purposes; nor commit a nuisance on the Demised Premises.

7.3.1. In the event that Tenant uses the Demised Premises (or otherwise allows the Demised Premises to be used) for any purpose(s) not expressly permitted herein, or permits and/or allows any prohibited use(s) as provided herein, then Landlord may declare this Lease in default pursuant to Section 17 or, without notice to Tenant, restrain such improper use by injunction or other legal action.

7.3.2 Tenant's uses and/or services provided in conjunction with the Demised Premises may require Tenant to interact, from time to time, with City of Miami Beach officials and employees, acting in their regulatory capacity. Notwithstanding the preceding, Tenant hereby represents and warrants to Landlord that it shall in no way, whether express or implied, give the impression that Tenant is in any way acting as an agent and/or representative of the City of Miami Beach or the Miami Beach Redevelopment Agency, nor that, by virtue of this Lease, Tenant derives any special benefit and/or consideration from the City (acting in its regulatory capacity) with regard to Tenant's services to third parties. Any violation of this Subsection by Tenant shall be deemed as an automatic default under this Lease and, notwithstanding any other provision set forth herein, shall entitle Landlord to automatically terminate this Lease, without further notice to Tenant, and without liability to Landlord.

7.4 Public Benefits.

STEAM Education

Supporting Science, Technology, Engineering, Arts, and Mathematics education to students throughout Miami Beach.

- 1 Free field trip for up to 300 students in total each school year with no more than 22 students each prior to March of each school year. After March number of students participating may be adjusted from the following schools in Miami Beach:
- North Beach Elementary
- Miami Beach South Pointe Elementary
- Biscayne Beach Elementary
- Treasure Island Elementary
- Miami Beach Fienberg/Fisher K-8
- Miami Beach Nautilus Middle
- Miami Beach Senior High
- Lehrman Community Day School
- Yeshiva Elementary School
- Temple Beth Sholom Innovative School
- Mechina of South Florida High School
- Hebrew Academy Miami & Rabbi Alexander Gross High School
- Mater Beach Academy
- Montessori Academy at St. John's; and

- 20% off any additional field trips for the above listed public school in Miami Beach.
- 10% off all Moonlighter FabLab youth steam programming to all Miami Beach residents/students.
- Free professional development workshops for up to 50 teachers at any Miami Beach school listed above and rec staff per year.
- Annual Internships for Miami Beach resident High School Students attending any high school listed. Up to 5 Students in Spring and up to 5 Students in Fall semester each year. Internship provides Advanced Manufacturing STEAM Basics Certification.
- Up to 1 free tour of Makerspace for all IT Academy Students in Miami Beach High, Mechina of South Florida and Rabbi Alexander Gross High School; each respective school must connect with Moonlighter to organize the annual tour.

Miami Beach Resident Discounts

- Community Workshops: Our workshops teach the basic and safety use of various advanced manufacturing equipment, hand tools, and design software available in the lab. All Miami Beach residents will have an exclusive discount (with Photo ID confirming MB residence) to all community workshops. 10% off maker workshops for Miami Beach residents.
- Nonprofits based in Miami-Beach receive up to 2 free technical office hours in support of their mission-based projects.
- City of Miami Beach Senior Residents (ages 65+) receive a 15% discount on memberships to Moonlighter FabLab.
- City of Miami Beach Schools listed below STEAM related clubs can schedule use of the space for STEAM-related projects and activities up to 2 hours per month. Venue Waiver.
- North Beach Elementary
- Miami Beach South Pointe Elementary
- Biscayne Beach Elementary
- Treasure Island Elementary
- Miami Beach Fienberg/Fisher K-8 Center
- Miami Beach Nautilus Middle
- Miami Beach Senior High
- Lehrman Community Day School
- Yeshiva Elementary School
- Temple Beth Sholom Innovation School
- Mechina of South Florida High School
- Hebrew Academy Miami & Rabbi Alexander Gross High School
- Mater Beach Academy
- Montessori Academy at St. John's; and

Venue Waiver

- Partner with Miami Beach Chamber of Commerce to provide free use of space for business development workshops, networking events, or economic development events up to four events annually.
- Up to 4 venue waivers per year: Exhibition space can be granted to civic, arts and cultural, and educational organizations for exhibitions, fundraisers, workshops, and events that support the advancement of the mission.

The following benefits are offered contingent upon success of additional fundraising efforts:

STEAM Education

- Scholarships for up to 50 needs-based Miami Beach resident students to attend Summer STEAM Camps at Moonlighter
- Scholarships for after-school sessions for low income/need-based Miami Beach resident student attending Miami Beach Fienberg/Fisher K-8 and Biscayne Beach Elementary students with transportation included from the school. Low income/need-based Miami Beach resident students attending any of the private/charter schools listed above would be eligible for scholarships for after-school sessions.
- Paid Summer internship programs for Miami Beach resident High School Students for students attending Miami Beach Sr. High, Mechina of South Florida, and Rabbi Alexander Gross High School.
- On-Site STEAM programs at all Miami Beach Schools listed above subject to availability of necessary on-site equipment.

Urban Placemaking / Arts Activations

10% off design and fabrication services for non-profit, civic, or arts organizations. Partnering with local Miami Beach institutions to activate public spaces and/or support arts initiatives with the digital fabrication lab. Work with local artists to nurture emerging talent: Artisans and Innovators in Residence. A residency program that supports creatives with the resources they need to build their innovative concepts.

Free Community Events

Up to 10 free community events per year. Talks/lectures, panels, exhibitions, meetups, and presentations exploring the fields of Art, Design, Engineering, Internet of Things, Machine Learning, Artificial Intelligence, Robotics, Automation, Autonomous, Alternative Energies, Advanced Manufacturing and Construction, Climate Resilience, Maker Education, and other relevant topics to advance education and workforce development in the region, preparing the city for innovation industries.

7.4.1 Annual Report.

Within 60 days following the end of each Contract Year, Tenant shall submit an annual report documenting achievement of the annual benchmarks identified as Public Benefits in this Section 7.4, detailing the activities and events, and the number of students, residents, and visitors impacted on an annual basis by no later than July 31 of each year.

8. Improvements.

- 7.2. Landlord has not made any representations or warranties as to the suitability or fitness of the Demised Premises for the conduct of Tenant's business or for any other purpose, nor has Landlord agreed to undertake any alterations or construct any Tenant improvements to the Demised Premises except as expressly provided in this Lease.
- 7.3. Tenant accepts the Demised Premises in its present "**AS IS**" condition and may construct or cause to be constructed, such interior and exterior improvements and maintenance to the Demised Premises, as reasonably necessary for it to carry on its permitted use(s), as set forth in Section 7; provided, however, that any plans for such improvements shall be first submitted to the City Manager for his prior written consent, which consent, if granted at all, shall be at the City Manager's sole and absolute discretion.

- 8.3 Tenant agrees that the existing kitchen exhaust hoods and duct work shall not be removed or altered and shall remain in place when Tenant surrenders the Demised Premises upon expiration of the Lease Term or earlier Termination of the Lease. Additionally, any and all approved improvements shall be made at Tenant's sole expense and responsibility. All permanent (fixed) improvements to the Demised Premises shall remain the property of Landlord upon termination and/or expiration of this Lease. Upon expiration of the Lease Term or termination of the Lease, all personal property and non-permanent trade fixtures may be removed by Tenant from the Demised Premises, provided that they can be (and are) removed without damage to the Demised Premises. Tenant will permit no liens to attach to the Demised Premises arising from, connected with, or related to the design and construction of any improvements. Moreover, such construction shall be accomplished through the use of licensed, reputable contractors who are acceptable to Landlord. Any and all permits and or licenses required for the installation of improvements shall be the sole cost and responsibility of Tenant. Absent use of the kitchen exhaust hoods and related infrastructure by Tenant, any and all maintenance and inspection costs related to the kitchen exhaust hoods and related infrastructure shall be the sole cost and responsibility of Landlord.
- 8.4 Notwithstanding Subsection 8.1, upon termination and/or expiration of this Lease, and at City Manager's sole option and discretion, any or all alterations or additions made by Tenant to or in the Demised Premises shall, upon written demand by the City Manager, be promptly removed by Tenant, at its expense and responsibility, and Tenant further hereby agrees, in such event, to restore the Demised Premises to their original condition prior to the Commencement Date of this Lease. Tenant agrees to preserve and safeguard the condition and integrity of the Demised Premises, as it is currently constructed and improved.
- 8.5 The above requirements for submission of plans and the use of specific contractors shall not apply to improvements (which term, for purposes of this Subsection 8.5 only, shall also include improvements as necessary for Tenant's maintenance and repair of the Demised Premises) which do not exceed Five Hundred (\$500.00) Dollars, provided that the work is not structural, and provided that it is permitted by applicable law.

8. Landlord's Right of Entry.

- 8.1. The City Manager, and/or his authorized representatives, shall have the right to enter upon the Demised Premises at all reasonable times for the purpose of inspecting same; preventing waste; making such repairs as Landlord may consider necessary; and for the purpose of preventing fire, theft, or vandalism. Landlord agrees that, whenever reasonably possible, it shall use reasonable efforts to provide notice (whether written or verbal), unless the need to enter the Demised Premises is an emergency, as deemed by the City Manager, in his sole discretion, which if not immediately addressed could cause property damage, loss of life or limb, or other injury to persons. Nothing herein shall imply any duty on the part of Landlord to do any work that, under any provisions of this Lease, Tenant may be required to perform, and the performance thereof by Landlord shall not constitute a waiver of Tenant's default.
- 8.2. If Tenant shall not be personally present to open and permit entry into the Demised Premises at any time, for any reason, and any entry thereon shall be necessary or permissible, the City Manager, and/or his authorized representatives, may enter the Demised Premises by master key, or, may forcibly enter the Demised Premises without rendering Landlord or such agents liable therefore.

- 8.3. Tenant shall furnish Landlord with duplicate keys to all locks including exterior and interior doors prior to (but no later than) the Commencement Date of this Lease. Tenant shall not change the locks to the Demised Premises without the prior written consent of the City Manager's designee, and in the event such consent is given, Tenant shall furnish Landlord with duplicate keys to said locks in advance of their installation.

9. Tenant's Insurance Requirements.

- 9.1. Before beginning any work and throughout the Term of the Lease (including renewal periods), Tenant shall, at its sole cost and expense, comply with all insurance requirements of Landlord. It is agreed that Tenant shall not occupy the Demised Premises until proof of the following insurance coverage has been reviewed and approved by the City's Risk Manager. All insurance policies required below shall be issued by companies authorized to do business under the laws of the State of Florida. The insurance provider shall indicate that insurance coverage has been obtained which meets the requirements as outlined below by submitting original certificates of insurance to the City's Risk Manager and City Manager's designee, respectively:
- 9.2. Worker's Compensation Insurance for all employees of the vendor as required by Florida Statute 440, and Employer Liability Insurance for bodily injury or disease. Should Tenant be exempt from this Statute, Tenant and each employee shall hold the City harmless from any injury incurred during performance of the Lease. The exempt Tenant shall also submit (i) a written statement detailing the number of employees and that they are not required to carry Workers' Compensation insurance and do not anticipate hiring any additional employees during the term of this Lease or (ii) a copy of a Certificate of Exemption.
- 9.3. Commercial General Liability Insurance on an occurrence basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence, and \$2,000,000 general aggregate.
- 9.4. All-Risk property and casualty insurance, written at a minimum of eighty (80%) percent of replacement cost value and with replacement cost endorsement, covering all leasehold improvements installed in the Demised Premises by or on behalf of Tenant and including without limitation all of Tenant's personal property in the Demised Premises (including, without limitation, inventory, trade fixtures, floor coverings, furniture, and other property removable by Tenant under the provisions of this Agreement).
- 9.5. Liquor Liability Insurance on an occurrence basis, including property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. (Required, if necessary.)
- 9.6. Additional Insured - City of Miami Beach and the Miami Beach Redevelopment Agency must be included by endorsement as an additional insured with respect to all liability policies (except Professional Liability and Workers' Compensation) arising out of work or operations performed on behalf of the Tenant including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired or borrowed in the form of an endorsement to the Tenant's insurance.

- 9.7. Notice of Cancellation - Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice to the City of Miami Beach c/o EXIGIS Insurance Compliance Services.
- 9.8. Waiver of Subrogation – Vendor agrees to obtain any endorsement that may be necessary to affect the waiver of subrogation on the coverages required. However, this provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer.
- 9.9. Acceptability of Insurers – Insurance must be placed with insurers with a current A.M. Best rating of A:VII or higher. If not rated, exceptions may be made for members of the Florida Insurance Funds (i.e. FWCIGA, FAJUA). Carriers may also be considered if they are licensed and authorized to do insurance business in the State of Florida.
- 9.10. Verification of Coverage – Contractor shall furnish the City with original certificates and amendatory endorsements, or copies of the applicable insurance language, effecting coverage required by this contract. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.
- 9.11. CERTIFICATE HOLDER MUST READ:
City of Miami Beach
c/o Exigis Insurance Compliance Services
P.O. Box 947 Murrieta, CA 92564
- Kindly submit all certificates of insurance, endorsements, exemption letters to our servicing agent, EXIGIS, at:
- Certificates-miamibeach@riskworks.com
- 9.12. Compliance with the foregoing requirements shall not relieve Tenant of its liability and obligation under this section or under any other section of this Lease.
- 9.13. Landlord reserves the right to impose additional reasonable insurance requirements as Landlord may deem necessary or in accordance with common practice.
- 9.14. The policies of insurance referred to above shall not be subject to cancellation or changing coverage except upon at least thirty (30) days written notice to Landlord and then subject to the prior written approval of the City's Risk Manager. Should Tenant fail to obtain, maintain, or renew the policies of insurance referred to above, in the required amounts, Landlord may, at its sole discretion, obtain such insurance, and any sums expended by Landlord in obtaining said insurance, shall be repaid by Tenant to Landlord, plus ten percent (10%) of the amount of premiums paid to compensate Landlord for administrative costs. If Tenant does not repay City's expenditures within fifteen (15) days of demand, the total sum owed shall accrue interest at the rate of twelve percent (12%) until paid, and such failure shall be deemed an event of default hereunder.

9.15. Waiver of Subrogation.

Tenant hereby waives, on behalf of itself and its insurer(s) (none of which shall ever be assigned any such claim or be entitled thereto due to subrogation or otherwise), any and all rights of recovery, claim, action, or cause of action, against Landlord, its agents, officers, or employees, for any loss or damage that may occur to the Demised Premises, or any improvements thereto, or any personal property of such party therein, by reason of fire, the elements, or any other causes which are, or could or should be insured against under the terms of the standard fire and extended coverage insurance policies referred to in this Lease, regardless of whether such insurance is actually maintained and regardless of the cause or origin of the damage involved, including negligence of Landlord, its agents officers, or employees.

The Tenant shall obtain from its respective insurer(s), under all policies of fire, theft, public liability, worker's compensation, and other insurance maintained at any time during the term hereof insuring or covering the Retail Space or any portion thereof or operations therein, a waiver of all rights of subrogation which Tenant's insurer might have against Landlord, and Tenant shall indemnify, defend, and hold harmless Landlord against any loss or expense, including reasonable attorneys' fees (appellate or otherwise) resulting from the failure to obtain such waiver.

10. Property Taxes and Assessments.

For the purposes of this Section and other provisions of this Lease:

10.1. The term "Property Taxes" shall mean (i) real estate taxes, assessments, and special assessments of any kind which may be imposed upon the Demised Premises, and (ii) any expenses incurred by the City in obtaining a reduction of any such taxes or assessments.

10.2. The term "Property Tax Year" shall mean the period of twelve (12) calendar months, beginning on January 1st of each year.

10.3. Tenant shall pay, as Additional Rent pursuant to Section 3.2, for such Property Tax Year an amount ("Property Tax Payment") equal to Tenant's pro-rata share of the Property Taxes (if any) for the Retail Space for such Property Tax Year; said pro-rata share to be determined by the City based upon the ratio of the Demised Premises to the Retail Space or based upon Tenant's use of the Demised Premises. If a Property Tax Year ends after the expiration of the Lease Term or termination of the Lease, the Property Tax Payment therefore shall be prorated to correspond to that portion of such Property Tax Year occurring within the term of this Agreement. The Property Tax Payment shall be payable by Tenant immediately upon receipt of notice from the City. A copy of the tax bill(s) or other evidence of such taxes issued by the taxing authorities, together with the City's computation of the Property Tax Payment, will be made available to Tenant once received from the taxing authorities, if requested by Tenant. Tenant shall pay any difference in the amount between the estimated property taxes and the actual property taxes to the City immediately, upon receipt of request for said payment from the City.

11. Assignment and Subletting.

Tenant shall not have the right to assign the Lease or sublet the Demised Premises without the prior written consent of the City Manager, which consent, if given at all, shall be at the City Manager's sole option and discretion. At the City Manager's sole discretion, the

approval of any assignment of the Lease or sublease may be submitted for approval to the City Commission.

12. Operation, Maintenance, and Repair.

- 12.1. Tenant shall be solely responsible for the operation, maintenance, and repair of the Demised Premises. Tenant shall, at its sole expense and responsibility, maintain the Demised Premises, and all fixtures and appurtenances therein, and shall make all repairs thereto, as and when needed, to preserve them in good working order and condition. Tenant shall be responsible for all interior walls and the interior and exterior of all windows and doors, as well as immediate replacement of any and all plate glass or other glass in the Demised Premises which may become broken, using glass of the same or better quality.
- 12.2. Landlord shall be responsible for the maintenance of the Retail Space's roof, the exterior of the Retail Space, the structural electrical and plumbing (other than plumbing surrounding any sink(s) and/or toilet(s), including such sink(s) and toilet(s) fixture(s), within the Demised Premises), the common areas and any HVAC systems shared by more than one tenant. Landlord shall maintain and/or repair those items that it is responsible for, so as to keep same in proper working condition.
- 12.3. All damage or injury of any kind to the Demised Premises, and including without limitation its fixtures, glass, appurtenances, and equipment (if any), or to the building fixtures, glass, appurtenances, and equipment, if any, except damage caused by the gross negligence and/or willful misconduct of Landlord, shall be the sole obligation of Tenant, and shall be repaired, restored or replaced promptly by Tenant, at its sole expense and to the satisfaction of Landlord.
- 12.4. All of the aforesaid repairs, restorations and replacements shall be in quality and class equal to or better than the original work or installations and shall be done in good and workmanlike manner.
- 12.5. If Tenant fails to make such repairs or restorations or replacements, the same may be made by Landlord, at the expense of Tenant, and all sums spent and expenses incurred by Landlord shall be collectable by Landlord and shall be paid by Tenant within three (3) days after submittal of a bill or statement therefore.
- 12.6. It shall be Tenant's sole obligation and responsibility to ensure that any renovations, repairs and/or improvements made by Tenant to the Demised Premises comply with all applicable building codes and life safety codes of governmental authorities having jurisdiction.
- 12.7. Tenant Responsibilities for Utilities
Tenant is solely responsible for, and shall promptly pay when due, all charges for electricity, gas, cable, telephone, internet, and any other utility service provided to the Demised Premises, including, without limitation, all hook-up fees and impact fees.
- In addition to other rights and remedies hereinafter reserved to Landlord, upon the failure of Tenant to pay for such utility services (as contemplated in this Subsection 13.7) when due, Landlord may elect, at its sole discretion, to pay same,

whereby Tenant agrees to promptly reimburse Landlord upon demand.

In no event, however, shall Landlord be liable, whether to Tenant or to third parties, for an interruption or failure in the supply of any utilities or services to the Demised Premises.

12.8. **TENANT HEREBY ACKNOWLEDGES AND AGREES THAT THE DEMISED PREMISES ARE BEING LEASED IN THEIR PRESENT "AS IS" CONDITION.**

13. Governmental Regulations.

Tenant shall obtain, at Tenant's expense, all governmental and private approvals, licenses, and permits required to make any improvements and to lawfully operate its business at the Demised Premises. Tenant covenants and agrees to fulfill and comply with all statutes, ordinances, rules, orders, regulations, and requirements of any and all governmental bodies, including but not limited to Federal, State, County, and local governments, and shall also comply with and fulfill all applicable rules, orders, and regulations, all at Tenant's own expense and responsibility. Tenant shall pay all costs, expenses, claims, fines, penalties, and damages that may be imposed because of the failure of Tenant to comply with this Section and shall indemnify and hold harmless Landlord from all liability arising from any noncompliance.

14. Liens.

Tenant will not permit any mechanics, laborers, or materialman's liens to stand against the Demised Premises or improvements for any labor or materials to Tenant or claimed to have been furnished to Tenant's agents, contractors, or sub-tenants, in connection with work of any character performed or claimed to have performed on said Premises, or improvements by or at the direction or sufferance of Tenant; provided however, Tenant shall have the right to contest the validity or amount of any such lien or claimed lien. In the event of such contest, Tenant shall give Landlord reasonable security as may be demanded by Landlord to insure payment thereof and prevent sale, foreclosure, or forfeiture of the Premises or improvements by reasons of such non-payment. Such security need not exceed one and one half (1½) times the amount of such lien or such claim of lien. Such security shall be posted by Tenant within ten (10) days of written notice from Landlord, or Tenant may "bond off" the lien according to statutory procedures. Tenant will immediately pay any judgment rendered with all proper costs and charges and shall have such lien released or judgment satisfied at Tenant's own expense.

15. Condemnation.

15.1. If at any time during the Term of this Lease (including any renewal term hereunder) all or any part or portion of the Demised Premises is taken, appropriated, or condemned by reason of Eminent Domain proceedings, then this Lease shall be terminated as of the date of such taking, and shall thereafter be completely null and void, and neither of the parties hereto shall thereafter have any rights against the other by reason of this Lease or anything contained therein, except that any rent prepaid beyond the date of such taking shall be prorated to such date, and Tenant shall pay any and all Rents, utility charges, and/or other costs for which it is liable under the terms of this Lease, up to the date of such taking.

15.2. Except as hereunder provided, Tenant shall not be entitled to participate in the proceeds of any award made to Landlord in any such Eminent Domain proceeding, excepting, however, Tenant shall have the right to claim and recover from the

condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all damage to Tenant's business by reasons of the condemnation and for or on account of any cost or loss which Tenant might incur in removing Tenant's furniture and fixtures.

16. Tenant's Default.

16.1. Events of Default by Tenant:

At Landlord's option, any of the following shall constitute an Event of Default under this Lease:

- 16.1.1. The Rent or any other amounts as may be due and payable by Tenant under this Lease, or any installment thereof, is not paid promptly when and where due, and Tenant shall not have cured such failure within five (5) days after receipt of written notice from Landlord specifying such default;
- 16.1.2. The Demised Premises shall be deserted, abandoned, or vacated;
- 16.1.3. Tenant shall fail to comply with any term, provision, condition, or covenant contained herein other than the payment of Rent and shall not cure such failure within thirty (30) days after the receipt of written notice from Landlord specifying any such default; or such longer period of time acceptable to Landlord, at its sole discretion;
- 16.1.4. Receipt of notice of violation from any governmental authority having jurisdiction dealing with a law, code, regulation, ordinance, or the like, which remains uncured for a period of thirty (30) days from its issuance, or such longer period of time as may be acceptable and approved in writing by the City Manager, at his sole discretion;
- 16.1.5. Any petition is filed by or against Tenant under any section or chapter of the Bankruptcy Act, as amended, which remains pending for more than sixty (60) days, or any other proceedings now or hereafter authorized by the laws of the United States or of any state for the purpose of discharging or extending the time for payment of debts;
- 16.1.6. Tenant shall become insolvent;
- 16.1.7. Tenant shall make an assignment for benefit of creditors;
- 16.1.8. A receiver is appointed for Tenant by any court and shall not be dissolved within thirty (30) days thereafter; or
- 16.1.9. The leasehold interest is levied on under execution
- 17.1.10 Tenant fails to remain a not-for-profit corporation at all times during the Term of the Lease.

16.2. Landlord's Rights on Default.

Upon an Event of Default by Tenant as provided herein, Landlord shall have the option to do any of the following, in addition to and not in limitation of, any other remedy permitted by law or by this Lease:

- 16.2.1. Terminate this Lease, in which event Tenant shall immediately surrender the Demised Premises to Landlord, but if Tenant shall fail to do so, Landlord may, without further notice, and without prejudice to any other remedy Landlord may have for possession or arrearages in Rent or damages for breach of contract, enter upon the Demised Premises and expel or remove Tenant and its effects in accordance with law, without being liable for prosecution or any claim for damages therefore, and Tenant agrees to indemnify and hold harmless Landlord for all loss and damage which Landlord may suffer by reasons of such Lease termination, whether through inability to re-let the Demised Premises, or otherwise.
- 16.2.2. Declare the entire amount of the Rent which would become due and payable during the remainder of the Term of this Lease to be due and payable immediately, in which event Tenant agrees to pay the same at once, together with all rents therefore due, at the address of Landlord, as provided in the Notices section of this Lease; provided, however, that such payment shall not constitute a penalty, forfeiture, or liquidated damage, but shall merely constitute payment in advance of the Rents for the remainder of said Term and such payment shall be considered, construed and taken to be a debt provable in bankruptcy or receivership.
- 16.2.3. Enter the Demised Premises as the agent of Tenant, by force if necessary, without being liable to prosecution or any claim for damages therefore; remove Tenant's property there from; and re-let the Demised Premises, or portions thereof, for such terms and upon such conditions which Landlord deems, in its sole discretion, desirable, and to receive the rents therefore, and Tenant shall pay Landlord any deficiency that may arise by reason of such re-letting, on demand at any time and from time to time at the office of Landlord; and for the purpose of re-letting, Landlord may (i) make any repairs, changes, alterations or additions in or to said Demised Premises that may be necessary or convenient; (ii) pay all costs and expenses therefore from rents resulting from re-letting; and (iii) Tenant shall pay Landlord any deficiency as aforesaid.
- 16.2.4. Take possession of any personal property owned by Tenant on said Demised Premises and sell the same at public or private sale, and apply same to the payment of rent due, holding Tenant liable for the deficiency, if any.
- 16.2.5. It is expressly agreed and understood by and between the parties hereto that any installments of Rent accruing under the provisions of this Lease which shall not be paid when due shall be subject to a late charge of Fifty and 00/100 (\$50.00), plus interest at the rate of eighteen (18%) percent per annum, or the maximum amount allowable under Florida law, whichever is lesser, from the due date of payment until such time as payment is actually received by Landlord. Any failure on Landlord's behalf to enforce this Section shall not constitute a waiver of this provision with respect to future accruals of past due Rent.
- 16.2.6. If Tenant shall default in making any payment of monies to any person or for any purpose as may be required hereunder, Landlord may pay such expense, but Landlord shall not be obligated to do so. Tenant, upon Landlord's paying such expense, shall be obligated to forthwith reimburse Landlord for the amount thereof. All sums of money payable by Tenant to Landlord hereunder shall be deemed as Rent for use of the Demised Premises and collectable by Landlord from Tenant as Rent, and shall be due from Tenant to Landlord on

the first day of the month following the payment of the expense by Landlord.

- 16.2.7. The rights of Landlord under this Lease shall be cumulative but not restrictive to those given by law and failure on the part of Landlord to exercise promptly any rights given hereunder shall not operate to waive or to forfeit any of the said rights.

17. Landlord's Default.

- 17.1. The failure of Landlord to perform any of the covenants, conditions and agreements of this Lease which are to be performed by Landlord and the continuance of such failure for a period of thirty (30) days after notice thereof in writing from Tenant to Landlord (which notice shall specify the respects in which Tenant contends that Landlord failed to perform any such covenant, conditions and agreements) shall constitute a default by Landlord, unless such default is one which cannot be cured within thirty (30) days because of circumstances beyond Landlord's control, and Landlord within such thirty (30) day period shall have commenced and thereafter shall continue diligently to prosecute all actions necessary to cure such defaults.

17.2. Tenant's Rights on Default.

If an event of Landlord's default shall occur, Tenant, to the fullest extent permitted by law, shall have the right and option to terminate this Lease and all of its obligations hereunder by giving written notice of such election to Landlord, and, subject to the limitations on Landlord's liability, as set forth in Section 34, shall further have the right to pursue any actions at law or suits in equity to obtain damages resulting from Landlord's default. Notwithstanding anything in this Section or elsewhere in the Lease, in the event of a default by Landlord, Tenant hereby agrees and acknowledges that in no event shall Landlord be liable for any of Tenant's incidental, indirect, special, or consequential damages which may be alleged as a result of Landlord's default, including, without limitation, loss of revenue and lost profits.

18. Compliance.

Tenant shall comply with all applicable City, County, State, and Federal ordinances, statutes, rules, and regulations including, but not limited to, all applicable environmental City, County, State, and Federal ordinances, statutes, rules, and regulations, as may be amended from time to time.

19. No Discrimination.

In connection with its operations, Tenant shall not discriminate against any employee or applicant for employment on the basis of actual or perceived race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, or political affiliation.

Additionally, Tenant shall comply fully with the City of Miami Beach Human Rights Ordinance, codified in Chapter 62 of the City Code, as may be amended from time to time, prohibiting discrimination in employment (including independent contractors), housing, public accommodations, public services, and in connection with its membership or policies because of actual or perceived race, color, national origin,

religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, hair texture and/or hairstyle, domestic partner status, labor organization membership, familial situation, or political affiliation.

20. Florida Public Records Law.

20.1. Tenant shall comply with Florida Public Records law under Chapter 119, Florida Statutes, as may be amended from time to time.

20.2. The term "public records" shall have the meaning set forth in Section 119.011(12), which means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the City.

20.3. Pursuant to Section 119.0701 of the Florida Statutes, if Tenant meets the definition of "Contractor" as defined in Section 119.0701(1)(a), Tenant shall:

20.3.1. Keep and maintain public records required by the City to perform the service;

20.3.2. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;

20.3.3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the contract term and following completion of the Lease if Tenant does not transfer the records to the City;

20.3.4. Upon completion of the Lease, transfer, at no cost to the City, all public records in possession of Tenant or keep and maintain public records required by the City to perform the service. If Tenant transfers all public records to the City upon completion of the Lease, Tenant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Tenant keeps and maintains public records upon completion of the Lease, Tenant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

20.4. Request for Records; Noncompliance.

20.4.1. A request to inspect or copy public records relating to the City's contract for services must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify Tenant of the request, and Tenant must provide the records to the City or allow the records to be inspected or copied within a reasonable time.

20.4.2. Tenant's failure to comply with the City's request for records shall constitute a breach of this Lease, and the City, at its sole discretion, may:
(1) unilaterally terminate the Lease; (2) avail itself of the remedies set forth under the Lease; and/or (3) avail itself of any available remedies at law or in equity.

20.4.3. A Tenant who fails to provide the public records to the City within a reasonable time may be subject to penalties under s. 119.10.

20.5. Civil Action.

20.5.1. If a civil action is filed against a Tenant to compel production of public records relating to the City's contract for services, the court shall assess and award against Tenant the reasonable costs of enforcement, including reasonable attorney fees, if:

20.5.1.1. The court determines that Tenant unlawfully refused to comply with the public records request within a reasonable time; and

20.5.1.2. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that Tenant has not complied with the request, to the City and to Tenant.

20.5.2. A notice complies with subparagraph (1)(b) if it is sent to the City's custodian of public records and to Tenant at Tenant's address listed on its contract with the City or to Tenant's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

20.5.3. A Tenant who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

20.6. **IF THE TENANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE TENANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

CITY OF MIAMI BEACH

ATTENTION: RAFAEL E. GRANADO, CITY CLERK

1700 CONVENTION CENTER DRIVE

MIAMI BEACH, FLORIDA 33139

E-MAIL: RAFAELGRANADO@MIAMIBEACHFL.GOV

PHONE: 305-673-7411

21. Indemnity Against Costs and Charges.

21.1. Tenant shall be liable to Landlord for all costs and charges, expenses, reasonable attorney's fees, and damages which may be incurred or sustained by Landlord, by reason of Tenant's breach of any of the provisions of this Lease. Any sums due Landlord under the provisions of this item shall constitute a lien against the interest of Tenant and the Demised Premises and all of Tenant's property situated thereon to the same extent and on the same conditions as delinquent Rent would constitute a lien on said premises and property.

21.2. If Tenant shall at any time be in default hereunder, and if Landlord shall deem it necessary to engage an attorney to enforce the City's rights and Tenant's

obligations hereunder, Tenant will reimburse Landlord for the reasonable expenses incurred thereby, including, but not limited to, court costs and reasonable attorney's fees, whether suit be brought or not and if suit be brought, then Tenant shall be liable for expenses incurred at both the trial and appellate levels.

22. Indemnification Against Claims.

22.1. Tenant shall indemnify and hold Landlord harmless from and against any and all claims or causes of action (whether groundless or otherwise) by or on behalf of any person, firm, or corporation, for personal injury or property damage occurring upon the Demised Premises or upon the Property or appurtenance used in connection with the Demised Premises, occasioned in whole or in part by any of the following:

22.1.1. An act or omission on the part of Tenant, or any employee, agent, contractor, invitee, guest, assignee, sub-tenant, or subcontractor of Tenant;

22.1.2. Any misuse, neglect, or unlawful use of the Demised Premises by Tenant, or any employee, agent, contractor, invitee, guest, assignee, sub-tenant, or subcontractor of Tenant;

22.1.3. Any breach, violation, or non-performance of any undertaking of Tenant under this Lease;

22.1.4. The use or occupancy of the Demised Premises by Tenant or anyone holding or claiming to hold through or under this Lease.

22.2. Tenant agrees to pay all damages to the Demised Premises and/or the Property used in connection therewith, caused by Tenant or any employee, agent, contractor, guest, or invitee of Tenant.

23. Signs and Advertising.

Without the prior written consent of the City Manager, which consent, if given at all, shall be at the City Manager's sole and absolute discretion, Tenant shall not permit the painting and display of any signs, plaques, lettering or advertising material of any kind on or near the Demised Premises. All additional signage shall comply with signage standards established by the City and comply with all applicable building codes, and any other municipal, County, State, and Federal laws.

24. Effect of Conveyance.

The term "City", "RDA", and/or "Landlord" as used in the Lease means only the owner for the time being of the Property containing the Demised Premises, such that in the event of any sale of said Property, or in the event of a lease of said Property, Landlord shall be and hereby is entirely freed and relieved of all covenants and obligations of Landlord hereunder, and it shall be deemed and construed without further agreement between the parties, or between the parties and the purchaser at such sale, or the lease of this building, that the purchaser or Tenant has assumed and agreed to carry out all covenants and obligations of Landlord hereunder.

25. Damage to the Demised Premises.

25.1. If the Demised Premises shall be damaged by the elements or other casualty not due to Tenant's negligence, or by fire, but are not thereby rendered untenable,

as determined by the City Manager, in his sole discretion, in whole or in part, and such damage is covered by the City's insurance, if any, (hereinafter referred to as "such occurrence"), Landlord, shall, as soon as possible after such occurrence, utilize the insurance proceeds to cause such damage to be repaired and the Rent shall not be abated. If by reason of such occurrence, the Demised Premises shall be rendered untenantable, as determined by the City Manager, in his sole discretion, only in part, Landlord shall as soon as possible utilize the insurance proceeds to cause the damage to be repaired, and the Rent meanwhile shall be abated proportionately as to the portion of the Demised Premises rendered untenantable; provided however, that Landlord shall promptly obtain a good faith estimate of the time required to render the Demised Premises tenantable and if such time exceeds sixty (60) days, either party shall have the option of canceling this Lease.

- 25.2. If the Demised Premises shall be rendered wholly untenantable by reason of such occurrence, Landlord shall have the option, but not the obligation, in its sole discretion, to utilize the insurance proceeds to cause such damage to be repaired and the Rent meanwhile shall be abated. However, Landlord shall have the right, to be exercised by notice in writing delivered to Tenant within sixty (60) days from and after said occurrence, to elect not to reconstruct the destroyed Demised Premises, and in such event, this Lease and the tenancy hereby created shall cease as of the date of said occurrence, the Rent to be adjusted as of such date. If the Demised Premises shall be rendered wholly untenantable, Tenant shall have the right, to be exercised by notice in writing, delivered to Landlord within thirty (30) days from and after said occurrence, to elect to terminate this Lease, the Rent to be adjusted accordingly.

Notwithstanding any clause contained in this Section 26, if the damage is not covered by the City's insurance, then Landlord shall have no obligation to repair the damage, but Landlord shall advise Tenant in writing within thirty (30) days of the occurrence giving rise to the damage and of its decision not to repair, and Tenant may, at any time thereafter, elect to terminate this Lease, and the Rent shall be adjusted accordingly.

26. Quiet Enjoyment.

Tenant shall enjoy quiet enjoyment of the Demised Premises and shall not be evicted or disturbed in possession of the Demised Premises so long as Tenant complies with the terms of this Lease.

27. Waiver.

- 27.1. The parties mutually covenant and agree that the failure of either party to insist upon the strict performance of any of the conditions, covenants, terms, or provisions of this Lease, or to exercise any option herein conferred, will not be considered or construed as a waiver or relinquishment for the future of any such conditions, covenants, terms, provisions or options but the same shall continue and remain in full force and effect.

- 27.2. A waiver of any term expressed herein shall not be implied by any neglect of a party to declare a forfeiture on account of the violation of such term if such violation by continued or repeated subsequently and any express waiver shall not affect any term other than the one specified in such waiver and that one only for the time and in the manner specifically stated.

28.3 The receipt of any sum paid by Tenant to Landlord after breach of any condition, covenant, term, or provision herein contained shall not be deemed a waiver of such breach, but shall be taken, considered and construed as payment for use and occupation, and not as Rent, unless such breach be expressly waived in writing by Landlord.

28. Notices.

The addresses for all notices required under this Lease shall be as follows, or at such other address as either party shall be in writing, notify the other:

LANDLORD:

City Manager
City of Miami Beach
1700 Convention Center Drive Miami
Beach, Florida 33139

With copy to:

Asset Division City of
Miami Beach
1700 Convention Center Drive Miami
Beach, Florida 33139

TENANT:

Thomas Pupo, Director Moonlighter
Fablab, Inc.
2041 NW 1st Place
Miami, Florida 33127

Any notice, consent, or other instrument required or permitted to be given under this Lease shall be in writing and shall be delivered in person, or sent by certified mail, return receipt requested, or overnight express mail courier, postage prepaid, addressed as set forth above, and if to Tenant, at the Demised Premises.

29. Entire and Binding Lease.

This Lease contains all of the agreements between the parties hereto, and it may not be modified in any manner other than by agreement in writing signed by all the parties hereto or their successors in interest. The terms, covenants and conditions contained herein shall inure to the benefit of and be binding upon Landlord and Tenant and their respective successors and assigns, except as may be otherwise expressly provided in this Lease.

30. Provisions Severable.

If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

31. Captions.

The captions contained herein are for the convenience and reference only and shall not be deemed a part of this Lease or construed as in any manner limiting or amplifying the terms and provisions of this Lease to which they relate.

32. Number and Gender.

Whenever used herein, the singular number shall include the plural and the plural shall include the singular, and the use of one gender shall include all genders.

34. Limitation of Liability.

Landlord desires to enter into this Lease only if in so doing Landlord can place a limit on the Landlord's liability for any cause of action for money damages due to an alleged breach by Landlord of this Lease, so that its liability for any such breach never exceeds the sum of one hundred (\$100.00) Dollars. Tenant hereby expresses its willingness to enter into this Lease with Tenant's recovery from Landlord for any damage action for breach of contract to be limited to a maximum amount of \$100.00. Accordingly, and notwithstanding any other term or condition of this Lease, Tenant hereby agrees that Landlord shall not be liable to Tenant for damage in an amount in excess of \$100.00 for any action or claim for breach of contract arising out of the performance or non-performance of any obligations imposed upon Landlord by this Lease. Nothing contained in this Section or elsewhere in this Lease is in any way intended to be a waiver of the limitation placed upon the City's or RDA's liability as set forth in Florida Statutes, Section 768.28.

35. Surrender of the Demised Premises.

Tenant shall, on or before the last day of the Term herein demised, or the sooner termination thereof, peaceably and quietly leave, surrender and yield upon to Landlord the Demised Premises, together with any and all equipment, fixtures, furnishings, appliances or other personal property, if any, located at or on the Demised Premises and used by Tenant in the maintenance, management or operation of the Demised Premises, excluding any trade fixtures or personal property, if any, which can be removed without material injury to the Demised Premises, free of all liens, claims and encumbrances and rights of others or broom- clean, together with all structural changes, alterations, additions, and improvements which may have been made upon the Demised Premises, in good order, condition and repair, reasonable wear and tear excepted, subject, however, to the subsequent provisions of this Section.

Any property which pursuant to the provisions of this Section is removable by Tenant on or at the Demised Premises upon the termination of this Lease and is not so removed may, at the option of Landlord, be deemed abandoned by Tenant, and either may be retained by Landlord as its property or may be removed and disposed of at the sole cost of Tenant in such manner as Landlord may see fit. If the Demised Premises and personal property, if any, are not surrendered at the end of the Term as provided in this Section, Tenant shall be responsible to Landlord for all damages which Landlord shall suffer by reason thereof, and shall indemnify and hold harmless Landlord against all claims made by any succeeding tenant or purchaser, so far as such delay is occasioned by the failure of Tenant to surrender the Demised Premises as and when herein required.

36. Time is of the Essence.

Time is of the essence in every particular and particularly where the obligation to pay money is involved.

37. Venue.

This Lease shall be deemed to have been made and shall be construed and interpreted in accordance with the laws of the State of Florida. This Lease shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any and all the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida.

LANDLORD AND TENANT HEREBY KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING THAT LANDLORD AND TENANT MAY HEREINAFTER INSTITUTE AGAINST EACH OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS LEASE.

38. Radon Disclosure.

Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your County Public Health Unit.

39. No Dangerous Materials.

Tenant agrees not to use or permit in the Demised Premises the storage and/or use of gasoline, fuel oils, diesel, illuminating oils, oil lamps, combustible-powered electricity-producing generators, turpentine, benzene, naphtha, propane, natural gas, or other similar substances, combustible materials, or explosives of any kind, or any substance or thing prohibited in the standard policies of fire insurance companies in the State of Florida. Any such substances or materials found within the Demised Premises shall be immediately removed.

Tenant shall indemnify and hold Landlord harmless from any loss, damage, cost, or expense of Landlord, including, without limitation, reasonable attorney's fees, incurred as a result of, arising from, or connected with the placement by Tenant of any "hazardous substance" or "petroleum products" on, in or upon the Demised Premises as those terms are defined by applicable Federal and State Statute, or any environmental rules and environmental regulations promulgated thereunder. The provisions of this Section 38 shall survive the termination or earlier expiration of this Lease.

40. Prohibitions Regarding Sale or Use of Expanded Polystyrene Food Service Articles, Single-Use Plastic Beverage Straws, and Single-Use Plastic Stirrers.

40.1 Tenant hereby agrees and acknowledges that, pursuant to Section 82-7 of the City Code, as may be amended from time to time, Tenant shall not sell, use, provide food in, or offer the use of expanded polystyrene food service articles (as defined in City Code Section 82-7) in the Demised Premises. A violation of this section shall be deemed a default under the terms of this Lease. Notwithstanding the above, this

section shall not apply to expanded polystyrene food service articles used for prepackaged food that have been filled and sealed prior to receipt by Tenant.

40.2 Additionally, Tenant agrees and acknowledges that, pursuant to Section 82- 8 of the City Code, as may be amended from time to time, Tenant shall not sell, use, provide food in, or offer the use of single-use plastic beverage straws or single-use plastic stirrers (as defined in City Code Section 82-8) in the Demised Premises. A violation of this section shall be deemed a default under the terms of this Lease. Notwithstanding the above, the requirements of Section 82-8 shall not restrict Tenant from providing a beverage with, or offering the use of, a single-use plastic beverage straw or single-use plastic stirrer to an individual with a disability or medical condition that impairs the consumption of beverages without a single-use plastic beverage straw or single-use plastic stirrer.

40.3 As additional consideration for this Lease and as an additional public benefit, regardless of the legal force and effect of the foregoing Sections 82-7 and 82-8 of the City Code, Tenant agrees:

40.3.1. not sell, use, provide food in, or offer the use of expanded polystyrene food service articles in the Demised Premises. A violation of this section shall be deemed a default under the terms of this Lease. Notwithstanding the above, this section shall not apply to expanded polystyrene food service articles used for prepackaged food that have been filled and sealed prior to receipt by Tenant; and

40.3.2. not sell, use, provide food in, or offer the use of single-use plastic beverage straws or single-use plastic stirrers in the Demised Premises. A violation of this section shall be deemed a default under the terms of this Lease. Notwithstanding the above, Tenant shall be permitted to providing a beverage with, or offering the use of, a single-use plastic beverage straw or single-use plastic stirrer to an individual with a disability or medical condition that impairs the consumption of beverages without a single-use plastic beverage straw or single-use plastic stirrer.

41. Inspector General Audit Rights

(A) Pursuant to Section 2-256 of the Code of the City of Miami Beach, the City has established the Office of the Inspector General which may, on a random basis, perform reviews, audits, inspections and investigations on all City contracts, throughout the duration of said contracts. This random audit is separate and distinct from any other audit performed by or on behalf of the City.

(B) The Office of the Inspector General is authorized to investigate City affairs and empowered to review past, present and proposed City programs, accounts, records, contracts and transactions. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor City projects and programs. Monitoring of an existing City project or program may include a report concerning whether the project is on time, within budget and in conformance with the contract documents and applicable law. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the Tenant, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption. Pursuant to Section 2-378 of the City Code, the City is allocating a percentage of its overall annual contract expenditures to fund the activities and operations of the Office of Inspector General.

- (C) Upon ten (10) days written notice to the Tenant, the Tenant shall make all requested records and documents available to the Inspector General for inspection and copying. The Inspector General is empowered to retain the services of independent private sector auditors to audit, investigate, monitor, oversee, inspect and review operations activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the Tenant its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.
- (D) The Inspector General shall have the right to inspect and copy all documents and records in the Tenant's possession, custody or control which in the Inspector General's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and with successful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.
- (E) The Tenant shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid_preparation) and performance of this Agreement, for examination, audit, or reproduction, until three (3) years after final payment under this Agreement or for any longer period required by statute or by other clauses of this Agreement. In addition:
- i. If this Agreement is completely or partially terminated, the Tenant shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and
 - ii. The Tenant shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this Agreement until such appeals, litigation, or claims are finally resolved.
- (F) The provisions in this section shall apply to the Tenant, its officers, agents, employees, subcontractors and suppliers. The Tenant shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the Tenant in connection with the performance of this Agreement.
- (G) Nothing in this section shall impair any independent right to the City to conduct audits or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the City by the Tenant or third parties.

42. Consent to Sublease with Alchemy Miami Beach LLC

Landlord consents to the Window and Door Ad Display Sublease Agreement between Tenant and Alchemy Miami Beach LLC, a Delaware limited liability company, dated November 7, 2023, which includes a Consent of Landlord, dated October 20, 2023.

IN WITNESS WHEREOF, the parties hereto have caused their names to be signed and their seals to be affixed, all as of the day and year first above written, indicating their agreement.

Landlord:

CITY OF MIAMI BEACH, FLORIDA

ATTEST:

By:

Rafael E. Granado, City Clerk

Eric T. Carpenter, P.E., City Manager

Print Name

Date: _____

Landlord:

**MIAMI BEACH REDEVELOPMENT
AGENCY**

ATTEST:

By:

Rafael E. Granado, Secretary

Eric T. Carpenter, P.E., Executive Director

Print Name

Date: _____

Tenant:

MOONLIGHTER FABLAB, INC.

ATTEST:

By: _____

Thomas Pupo, Director

Print Name

Title

Date: _____

DRAFT

Demised Premises



EXHIBIT B

Safety and Health Guidelines for Teaching and Learning

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