

**LANDLORD:**

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

**TENANT:**

Sobe Toscana, LLC  
816 Commerce Street  
Miami Beach, Florida 33139

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**SOBE TOCANA, LLC LEASE AGREEMENT**

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## LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, with an effective date of June 1, 2027 ("Effective Date") by and between the CITY OF MIAMI BEACH, FLORIDA, a municipal corporation organized and existing under the laws of the State of Florida (hereinafter referred to as "City"), and SOBE TOSCANA LLC, a Florida limited liability company (hereinafter referred to as "Tenant").

### 1. Demised Premises.

The City, 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 the Tenant, and Tenant hereby leases and hires from the City, those certain premises hereinafter referred to as the "Demised Premises", located at 22 Washington Avenue, Miami Beach, Florida 33139, and more fully described as follows:

Approximately two thousand two hundred sixteen (2,216) square feet of land with any existing improvements. Such Demised Premises are specified in **Exhibit A**, which is hereby made a part of this Lease.

Tenant is leasing the Demised Premises concurrently with the restaurant space, adjacent to the Demised Premises, having a physical address of 816 Commerce Street, Miami Beach, Florida 33139 ("Restaurant at 816 Commerce Street").

### 2. Term.

2.1 Tenant shall be entitled to have and to hold the Demised Premises for an initial term of nine(9) years, commencing on June 1, 2027 (Commencement Date), and ending on May 30, 2037 (the "Term").

2.2 Termination for Convenience.

This Lease may be terminated, in whole or in part, by the City, for convenience and without cause, upon the furnishing of sixty (60) days prior written notice to Tenant; provided, however, that the City shall not exercise its right to terminate under this provision at any time during the first three (3) years of the Lease Term. Notwithstanding the foregoing, the City shall not exercise this Termination for Convenience without prior formal consent from the City Commission.

In the event of termination by the City pursuant to this subsection, Tenant herein acknowledges and agrees that it shall not have any claim, demand, or cause of action of whatsoever kind or nature, against the City, its agents, servants and employees (including, but not limited to, claims for any start-up costs, interference in business or damages for interruption of services, or interference in its concession operations). In no event shall the City be liable to Tenant for any indirect, incidental, special, lost profits or consequential damages.

### 3. Rent.

3.1 Base Rent.

Base Rent for the Demised Premises during the initial term shall begin to accrue as of the Commencement Date; based upon the total leasable space of 2,216 square feet as follows:

The Base Rent for the Demised Premises shall be as follows:

<b>Square Feet:</b>		<b>2,216</b>			
<b>Base Rent:</b>		<b>\$ 30.72</b>			
<b>Annual Increase:</b>		<b>3%</b>			
<u>Year</u>	<u>Period</u>	<u>PSF Base Rent</u>	<u>Monthly Base Rent</u>	<u>Annual Base Rent</u>	
1	06/01/27 - 05/31/28	\$ 30.72	\$ 5,672.96	\$ 68,075.52	
2	06/01/28 - 05/31/29	\$ 31.64	\$ 5,843.15	\$ 70,117.79	
3	06/01/29 - 05/31/30	\$ 32.59	\$ 6,018.44	\$ 72,221.32	
4	06/01/30 - 05/31/31	\$ 33.57	\$ 6,199.00	\$ 74,387.96	
5	06/01/31 - 05/31/32	\$ 34.58	\$ 6,384.97	\$ 76,619.60	
6	06/01/32 - 05/31/33	\$ 35.61	\$ 6,576.52	\$ 78,918.19	
7	06/01/33 - 05/31/34	\$ 36.68	\$ 6,773.81	\$ 81,285.73	
8	06/01/34 - 05/31/35	\$ 37.78	\$ 6,977.03	\$ 83,724.30	
9	06/01/35 - 05/31/36	\$ 38.92	\$ 7,186.34	\$ 86,236.03	
				<u>\$ 691,586.43</u>	

TOTAL BASE RENT \$691,586.43

3.1.1 Base Rent shall be due and payable on the first day of each month throughout the Term of this Lease, along with applicable sales tax. The Rent shall escalate annually on June 1<sup>st</sup> of each year by three percent (3%).

3.2 Late Payment.

If any payment due from Tenant shall be overdue more than five (5) business days, a late charge of five (5%) percent of the delinquent sum may be charged by Landlord. If any payment due from Tenant shall remain overdue for more than fifteen (15) calendar days, an additional late charge in an amount equal to the lesser of the highest rate permitted by law or one and one-half (1½%) percent per month (eighteen (18%) percent per annum) of the delinquent amount may be charged by Landlord, such charge to be computed for the entire period for which the amount is overdue and which shall be in addition to and not in lieu of the five (5%) percent late charge or any other remedy available to Landlord.

**3.3 Sales and Use Tax.**

It is also understood that Tenant shall also include and forward to the City any and all additional sums for all applicable sales and use tax, now or hereafter prescribed by State, Federal or local law, and now described by Florida Statute 212.031. It is the City's intent that it is to receive all payments due from Tenant as net of such Florida State Sales and Use Tax.

**3.4 Location for Payments.**

All rents or other payments due hereunder shall be paid to the City of Miami Beach at the following address:

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

**4. Maintenance and Examination of Records.**

Tenant shall maintain current, accurate, and complete financial records on an accrual basis of accounting related to its operations pursuant to this Lease, including such records and accounting related to the Restaurant at 816 Commerce Street. Systems and procedures used to maintain these records shall include a system of internal controls and all accounting records shall be maintained in accordance with generally accepted accounting principles and shall be open to inspection and audit by the City Manager or his designee upon reasonable prior request and during normal business hours. Such records and accounts shall include a breakdown of gross receipts, expenses, and profit and loss statements, and such records shall be maintained as would be required by an independent CPA in order to audit a statement of annual gross receipts and profit and loss statement pursuant to generally accepted accounting principles.

**5. Inspection and Audit.**

Tenant shall maintain its financial records pertaining to its operation pursuant to this Lease and including the Restaurant at 816 Commerce Street for a period of three (3) years after the conclusion of the initial term, or (if approved) the last renewal term, and such records shall be open and available to the City Manager or his designee, as deemed necessary by the City Manager or his designee. Tenant shall maintain all such records at its principal office, currently located at 816 Commerce Street, Miami Beach, Florida, 33139 or, if moved to another location, all such records shall be relocated, at Tenant's expense, to a location within the City of Miami Beach, within ten (10) days' written notice from the City Manager or his designee that the City desires to review said records.

**6. Taxes, Assessments, and Utilities.**

**6.1** Tenant agrees to and shall pay before delinquency all taxes (including but not limited to Resort Taxes) and assessments of any kind assessed or levied upon Tenant by reason of this Lease or by reason of the business or other activities and operations of Tenant upon or in connection with the Demised Premises and/or the adjoining Restaurant at 816 Commerce Street.

Tenant shall also pay for any fees imposed by law for licenses or permits for any business, activities, or operations of Tenant upon the Demised Premises and/or the adjoining ground



level restaurant at 816 Commerce Street and shall maintain same current and in good standing throughout the Term of this Lease.

**6.2 Utilities.**

The City shall not be responsible for providing electrical or water service, or any and all other utilities to and/or for, and/or in connection with, the Demised Premises.

Requests for installation of electrical, water and /or any and all other utilities shall be submitted in writing to the City Manager or his designee. Installation and connection of any and all utilities, as and if approved by the City, will be performed at Tenant's sole cost and expense.

**6.3 Procedure If Ad Valorem Taxes Assessed.**

During the term of this Lease, Tenant shall be solely responsible for all taxes of whatever nature lawfully levied upon or assessed against the Demised Premises and improvements, sales, or operations thereon, including but not limited to, Ad Valorem taxes.

**7. Security Deposit.**

7.1 On or prior to the Commencement Date, Tenant shall pay the City a Security Deposit, in the sum of Twelve Thousand Four Hundred Seventy and 55/100 Dollars (\$12,470.55). Said Security Deposit is to ensure the full and faithful performance by the Tenant of each and every term, covenant and condition of this Lease. In the event that Tenant defaults with respect to any of the terms, provisions, covenants and conditions of this Lease, including but not limited to, the payment of any rent, the City may use, apply or retain the whole or any part of the Security Deposit for the payment of such rents in default or any other sum which the City may expend or be required to expend by reason of the Tenant's default, including any damages or deficiency in the re-letting of the Demised Premises, whether such damages or deficiency may accrue or after summary proceedings or other re-entry by City.

7.2 In the event that the Tenant shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this Lease, the Security Deposit or any balance thereof shall be returned to the Tenant, without interest, upon the expiration of the Lease and peaceful surrender of the Demised Premises.

7.3 City shall not be required to keep the Security Deposit in a segregated account and the Security Deposit may be commingled with other funds of City and in no event shall the Tenant be entitled to any interest on the Security Deposit.

7.4 In the event of a bona fide sale of the Demised Premises, as delineated in this Lease, the City shall have the right to transfer the Security Deposit to the purchaser for the benefit of the Tenant and the City shall be considered by the Tenant free from all liability for the return of such Security Deposit, and the Tenant agrees to look to the new owner/landlord solely for the return of the Security Deposit, if such Security Deposit is actually transferred, and it is agreed that this shall apply to every transfer or assignment made of the Security Deposit to any new owner/landlord.

It is expressly understood that the issuance of a warrant and the lawful re-entry to the Demised Premises by the City for any default on the part of the Tenant, prior to the expiration of the term of this Lease, shall not be deemed such termination of this Lease as to entitle the Tenant to recovery of the Security Deposit and the Security Deposit shall be retained and remain the possession of the City.

- 7.5 Tenant shall provide an Unconditional Guaranty by the principal of SOBE TOSCANA LLC, Catherine Arrighi Guitera, for the entire Term of this Lease to the limit of an amount that equals the last six (6) months' of Base Rent in the agreed amount of Forty-Three Thousand One Hundred Eighteen and 04/100 Dollars (\$43,118.04), a copy of which is attached as **Exhibit C** hereto.

**8. Use and Possession of Demised Premises.**

- 8.1 The Demised Premises shall be used by the Tenant solely as an outdoor cafe to serve the patrons and guests of Tenant's adjoining Restaurant at 816 Commerce Street. The outdoor cafe shall have days and hours of operation from Sunday through Thursday commencing on 11:30 a.m., and ending no later than 11:00 p.m., and Friday through Saturday, commencing on 11:30 a.m., and ending no later than midnight. Notwithstanding the preceding hours of operation, the outdoor cafe on the Demised Premises shall only be open when the restaurant at 816 Commerce Street is open for business (and, conversely, it should be closed when the restaurant is closed).

- 8.2 Tenant and owner/tenant of the Restaurant at 816 Commerce Street shall at all times throughout the Term of the Lease be one and the same and cannot exist independently of each other. Tenant acknowledges and agrees that its use of the Demised Premises shall be, and remain at all times throughout the Term, an ancillary use to Tenant's restaurant at 816 Commerce Street. Additionally, Tenant's operation will not interfere with pedestrian traffic.

The number of seatings on the Demised Premises shall not exceed 93 and shall be included in the overall seating count of Tenant's Restaurant at 816 Commerce Street. There shall be no bar counter of any kind as part of the Demised Premises and all food served shall be prepared within the interior kitchen of the Tenant's restaurant and only when the interior kitchen is operational. Any and all alcoholic beverages served at the outdoor cafe shall be serviced by Tenant's restaurant. All tables and chairs will be removed and stored each night at close of business. Any exception to this requirement shall be at the sole and absolute discretion of the City Manager or his designee. Tenant shall further maintain the Demised Premises and abide by the conditions set forth in **Exhibit B** of the Lease.

- 8.3 Tenant hereby warrants and represents that SOBE TOSCANA LLC is the owner of the Restaurant at 816 Commerce Street and shall, throughout the Term of the Lease, remain as the owner of said restaurant, unless any change in ownership is approved by the City Manager, in writing, prior to such change taking place. Change of ownership for purposes hereof shall include, without limitation, a sale, exchange, assignment, transfer or other disposition by Tenant of all or a portion of Tenant's interest in the restaurant, whether by operation of law or otherwise.

- 8.4 Tenant agrees not to place any television, speakers, or any other device used to amplify sound, on or around the Demised Premises. Tenant further agrees to not attach any televisions, speakers, or any other device used to amplify sound, to the exterior of the Restaurant building at 816 Commerce Street. Furthermore, Tenant shall in no manner use the Demised Premises, or Tenant's restaurant at 816 Commerce Street, as an outdoor entertainment or open-air entertainment establishment, and hereby acknowledges that such uses are prohibited (whether as main or accessory uses).

- 8.5 Tenant agrees that any (i) valet parking and/or a taxicab stand; (ii) Take-out service; and (iii) any Sidewalk Cafe permit, if approved by the City in conjunction with the Tenant's

restaurant operation at 816 Commerce Street, shall not utilize Washington Avenue and will be limited to Commerce Street. Furthermore, any and all deliveries to the restaurant shall be limited to the alley located on the south side of 816 Commerce Street.

- 8.6 Tenant shall be permitted to apply to the City of Miami Beach for one (1) special event permit for the sole and express purpose of hosting an opening event for the restaurant. At no time thereafter, throughout the remaining term of the Lease, shall the Tenant be permitted to submit an application for a special event to be held on the Demised Premises.
- 8.7 It is understood and agreed that the Demised Premises shall be used by the Tenant during the term of this Lease only for the uses contemplated herein, and for no other purpose or use whatsoever. Tenant will not make or permit any use of the Demised Premises that, directly or indirectly, is forbidden by public law, ordinance or government regulation, or that may be dangerous to life, limb or property. Tenant may not commit waste on the Demised Premises, use the Demised Premises for any illegal purpose, or commit a nuisance on the Demised Premises. In the event that the Tenant uses the Demised Premises for any purpose not expressly permitted herein, then the City may declare this Lease in default pursuant to Section 18, or without notice to Tenant, restrain such improper use by injunction or other legal action.
- 8.8 Notwithstanding anything to the contrary contained herein, in the event of a breach by Tenant of any conditions in this Section 8, the City Manager, in his sole determination and judgment, shall have the right to automatically terminate this Lease, without any liability to the City; said termination effective upon three (3) days written notice to Tenant. By executing the Lease, Tenant hereby agrees to this condition, and further voluntarily and knowingly waives and releases any and all rights now or hereinafter conferred upon Tenant pursuant to Florida Statutes including, without limitation, the procedures set forth in Chapter 83, Florida Statutes' for removal in nonresidential tenancies; the Miami-Dade; and the Miami Beach Code (respectively); to the extent this and applicable law(s) would have the effect of limiting or modifying the City's rights to terminate this Lease pursuant to this Subsection.
- 8.9 Subterranean Grease Trap Easement Use.

Tenant acknowledges that a subterranean grease trap system (the "Facilities") has been installed beneath a portion of the Demised Premises (the "Easement Area"), measuring approximately 204 square feet, pursuant to an Easement Agreement executed between the City, the Tenant, and the Restaurant Owner, incorporated herein by reference and attached hereto as **Exhibit F**. The Easement Agreement grants a non-exclusive, subterranean easement for the operation and maintenance of a 500-gallon grease trap to support Tenant's restaurant at 816 Commerce Street. Tenant agrees to comply with the terms and conditions of said Easement Agreement and specifically all obligations of the "Tenant" and "Grantee" under said Easement Agreement including, without limitation, the obligation to pay the annual use fee, as described in Section 6 of the Easement Agreement.

## **9. Improvements.**

- 9.1 Any improvements on the Demised Premises shall be subject to the prior written approval of the City Manager, which approval, if given at all, shall be at their sole discretion. As part of such approval, the City Manager may require a Performance Bond for any proposed Improvements. All permanent (fixed) improvements to the Demised Premises shall become the property of the City upon termination of the Lease. Notwithstanding the

preceding sentence, the City may require that Tenant, upon termination of the Lease, remove all permanent (fixed) improvements to the Demised Premises (at his/her sole discretion), without damage to the Demised Premises or cost to the City. Furthermore, upon the lawful termination of the Lease, all personal property and trade fixtures may be removed by the Tenant from the Demised Premises 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 construction of any improvements. Moreover, such construction shall be properly permitted and done in compliance with all applicable Municipal, County, State and Federal regulatory requirements, and shall be accomplished through the use of licensed, reputable contractors who are acceptable to the City. Any and all costs, permits and or licenses required for the installation and maintenance of improvements shall be the sole responsibility of Tenant.

9.2 Performance Bond. (INTENTIONALLY OMITTED)

9.3 City's Right of Entry.

The City, or its authorized agent or agents, 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 the City may consider necessary and for the purpose of preventing fire, theft or vandalism. However, the City agrees that whenever possible, the City shall provide reasonable notice, in writing, to Tenant, unless the need to enter the Demised Premises is an emergency, as deemed by the City at its 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 the City to do any work that under any provisions of this Lease the Tenant may be required to perform, and the performance thereof by the City shall not constitute a waiver of the Tenant's default.

9.4 If the Tenant shall not be personally present to permit entry onto the Demised Premises at any time, for any reason, and any entry thereon shall be necessary or permissible, the City, or its agents, may enter the Demised Premises, including, without limitation, forcibly entering the Demised Premises, without rendering the City or such agents liable therefore.

**10. Tenant's Insurance Requirements.**

10.1 The Tenant shall maintain the below required insurance in effect prior to the Effective Date of the Lease and for the duration of the Lease Term. The maintenance of proper insurance coverage is a material element of the Lease and failure to maintain or renew coverage may be treated as a material breach of the Lease, which could result in withholding of payments or termination of the Lease.

- (A) 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 the Tenant be exempt from this Statute, the Tenant and each employee shall hold the City harmless from any injury incurred during performance of the Lease. The exempt Tenant shall also submit (1) 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.

- (B) Commercial General Liability Insurance on an occurrence basis, to include: Premises Operations; Independent Contractors; Contractual Liability; Personal & Advertising Injury; Products-Completed Operations; Broad Form Property Damage including Completed Operations; and Underground, Explosion and Collapse Property Damage, with limits no less than \$1,000,000 per occurrence and \$2,000,000 aggregate, for bodily injury and property damage. City of Miami Beach must be included as an additional insured by endorsement with respect to this coverage.
  - (C) 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 Lease).
  - (D) 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.
  - (E) Business interruption insurance, sufficient to insure Tenant for no less than one (1) full year of loss of business, with the Landlord named thereon as loss payee to the extent permitted by applicable law.
- 10.2 Additional Insured. The City of Miami Beach 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 contractor 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 contractor's insurance
- 10.3 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.
- 10.4 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.
- 10.5 Acceptability of Insurers. Insurance must be placed with insurers with a current AM. 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.

- 10.6 Verification of Coverage. Tenant 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.

CERTIFICATE HOLDER MUST READ:  
MIAMI BEACH REDEVELOPMENT AGENCY and  
CITY OF MIAMI BEACH  
c/o EXIGIS Insurance Compliance Services  
P.O. Box 4668- ECM #35050  
New York, NY 10163-4668

Kindly submit all certificates of insurance, endorsements, exemption letters to our seining agent, EXIGIS, at: Certificate-miamibeach@riskworks.com

- 10.7 Special Risks or Circumstances. The City of Miami Beach reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- 10.8 Compliance with the foregoing requirements shall not relieve the Tenant of his liability and obligation under this section or under any other section of this Lease.

## **11. Assignment and Subletting.**

- 11.1 Tenant shall not have the right to assign or sublet the Demised Premises, in whole or in part, without the prior written consent of City which shall not be unreasonably withheld. Such written consent is not a matter of right and City is not obligated to give such consent. If granted as provided herein, the making of any assignment or sublease will not release Tenant from any of its obligations under this Lease. A sale or transfer of a majority interest of the stock of Tenant's corporate entity shall be deemed an assignment, and for purposes of this Lease, the City shall have the right to approve the new majority owner. Said approval shall be provided in writing. Tenant is prohibited from assigning or subletting this Lease to any person or entity which is not of the same or higher financial responsibility as Tenant, as shall be determined by City, in its sole judgment and discretion. Further, Tenant shall be prohibited from any changes in ownership, whether in the Demised Premises or the restaurant located at 816 Commerce Street, as set forth in Subsections 8.2 and 8.3.
- 11.2 Any consent by the City to any act of assignment shall apply only to the specific transaction thereby authorized. Such consent shall not be construed as a waiver of the duty of the Tenant or the legal representatives or assigns of the Tenant, to obtain from the City consent to any other or subsequent assignment, or as modifying or limiting the rights of the City under the foregoing covenants of the Tenant not to assign without such consent.

- 11.3 Any violation of the provisions of this Lease, whether by act or omissions, by assignee, sub-tenant, or under-tenant or occupant, shall be deemed a violation of such provision by the Tenant, it being the intention and meaning of the parties hereto, that the Tenant shall assume and be liable to the City for any and all acts and omissions of any and all assignees, sub-tenants, or under-tenants or occupants. If the Lease be assigned, the City may and is hereby empowered to collect rent from the assignee; if the Demised Premises or any part thereof be underlet or occupied by any person, other than the Tenant, the City, in the event of the Tenant's default, may, and is hereby empowered to, collect rent from the under-tenant or occupants; in either of such events, the City may apply the net amount received by it for rent herein reserved, and no such collection shall be deemed a waiver of the covenant herein against assignment or the acceptance of the assignee, under-tenant or occupant as tenant, or a release of the Tenant from the further performance of the covenants herein contained on the part of the Tenant.

## **12. Maintenance and Repair.**

- 12.1 Tenant shall maintain the Demised Premises and any fixtures and appurtenances thereon, and, at its sole cost and expense, shall make all repairs thereto as and when needed to preserve them in good working order and condition. This shall include, but not be limited to, Tenant being responsible for maintenance and repair of any and all improvements, such as fences, walkways, pavers, ground-coverings, landscaping, and gates.
- 12.2 All damage or injury of any kind to the Demised Premises shall be the obligation of Tenant, and shall be repaired, restored or replaced promptly by Tenant at its sole cost and expense to the satisfaction of the City.
- 12.3 All of the aforesaid repairs, restorations and replacements shall be in quality and class equal to the original work or installations and shall be done in good and workmanlike manner.
- 12.4 If Tenant fails to make such repairs or restorations or replacements, the same may be made by the City, at the expense of the Tenant, and all sums spent and expenses incurred by the City shall be collectable and shall be paid by the Tenant within ten (10) days after rendition of a bill or statement thereof.
- 12.5 It shall be Tenant's obligation to insure 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.
- 12.6 THE DEMISED PREMISES ARE BEING LEASED IN THEIR PRESENT "AS IS" CONDITION. Tenant may construct or cause to be constructed, such exterior improvements to the Demised Premises, as reasonably necessary for it to carry on its permitted use(s); provided, however, that any plans for such improvements shall be first submitted to the City Manager for his prior received written approval, which approval, if granted at all, shall be at the City Manager's sole and absolute discretion. Additionally, any and all approved improvements shall be made at Tenant's sole cost and expense. All permanent (fixed) improvements to the Demised Premises shall remain the property of the City upon termination and/or expiration of this Lease. Upon termination and/or expiration of this Lease, all personal property and non-permanent trade fixtures may be removed by the 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 the City Manager. Any and all permits and or licenses required for the construction and/or installation of improvements shall be the sole cost and responsibility of Tenant.

**13. Governmental Regulations.**

The 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, Miami-Dade County, and City governments, and any and all of their departments and bureaus applicable to the Demised Premises and shall also comply with and fulfill all rules, orders, and regulations for the prevention of fire, all at Tenant's own cost and expense. Tenant shall pay all costs, expenses, claims, fines, penalties, and damages that may be imposed because of Tenant's failure to comply with this Section, and shall indemnify and hold harmless the City from all liability arising from each non-compliance.

**14. Intentionally Omitted.**

**15. Condemnation.**

15.1 If at any time during the term of this Lease all or any part or portion of the Demised Premises are taken, appropriated, or condemned by reason of Eminent Domain proceedings (except if the Eminent Domain proceedings are initiated by the City of Miami Beach), 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 the Tenant shall pay any and all rents, additional rents, utility charges, or other costs including excess taxes 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 the City in any such Eminent Domain proceeding, excepting, however, the Tenant shall have the right to claim and recover from the condemning authority, but not from the City, 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. Default.**

**16.1 Default by Tenant.**

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

16.1.1 Rent, or any installment thereof is not paid promptly when and where due within fifteen (15) days of due date and if Tenant shall not cure such failure within five (5) days after receipt of written notice from the City specifying such default;

16.1.2 Any other payment provided for under this Lease is not paid promptly when and where due;

16.1.3 Demised Premises shall be deserted, abandoned, or vacated;



- 16.1.4 Tenant shall fail to comply with any material 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 City specifying any such default; or such longer period of time acceptable to the City, at its sole discretion;
- 16.1.5 Receipt of notice of violation from any governmental authority having jurisdiction dealing with a code, regulation, ordinance or the like, which remains uncured within the time specified in such notice of violation or such period of time acceptable to the City Manager, at his sole discretion;
- 16.1.6 Any petition is filed by or against Tenant under a 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;
- 16.1.7 Tenant shall become insolvent;
- 16.1.8 Tenant shall make an assignment for benefit of creditors;
- 16.1.9 A receiver is appointed for Tenant by any court and shall not be dissolved within thirty (30) days thereafter; or
- 16.1.10 The leasehold interest is levied on under execution.
- 16.1.11 Tenant's violation of the provision of Subsection 8.8 herein, which shall result in an automatic termination of the Lease, as further provided in said subsection.

## **17. Rights on Default.**

### **17.1 Rights on Default.**

- 17.1.1 In the event of any default by Tenant as provided herein, the City 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;
- 17.1.2 Terminate this Lease, in which event Tenant shall immediately surrender the Demised Premises to the City, but if Tenant shall fail to do so the City may, without further notice, and without prejudice to any other remedy the City may have for possession or arrearages in rent or damages for breach of contract, enter upon Demised Premises and expel or remove Tenant and his effects in accordance with law, without being liable for prosecution or any claim for damages therefore, and Tenant agrees to indemnify and hold harmless the City for all loss and damage which the City may suffer by reasons of such termination, whether through inability to re-let the Demised Premises, or through decrease in rent, or otherwise.
- 17.1.3 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 the City, 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.

- 17.1.4 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 the City deems, in its sole discretion, desirable, and to receive the rents therefore, and Tenant shall pay the City 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 the City; and for the purpose of re-letting, City 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 the City any deficiency as aforesaid.
- 17.1.5 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 the Tenant liable for the deficiency, if any.
- 17.1.6 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 bear interest at the maximum legal rate of interest per annum then prevailing in Florida from the date when the same was payable by the terms hereof, until the same shall be paid by Tenant. Any failure on the City's behalf to enforce this Section shall not constitute a waiver of this provision with respect to future accruals of past due rent. No interest will be charged for payments made within the grace period, such grace period to be defined as within five (5) days of the due date. In addition, there will be a late charge of five percent (5%) for any payments submitted after the grace period.
- 17.1.7 If Tenant shall default in making any payment of monies to any person or for any purpose as may be required hereunder, the City may pay such expense but the City shall not be obligated to do so. Tenant, upon the City's paying such expense, shall be obligated to forthwith reimburse the City for the amount thereof. All sums of money payable by Tenant to the City hereunder shall be deemed as rent for use of the Demised Premises and collectable by the City from Tenant as rent, and shall be due from Tenant to City on the first day of the month following the payment of the expense by the City.
- 17.1.8 The rights of the City under this Lease shall be cumulative but not restrictive to those given by law and failure on the part of the City to exercise promptly any rights given hereunder shall not operate to waive or to forfeit any of the said rights.

## 17.2 Default by City.

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

However, in the event the City fails to perform within the initial thirty (30) day period provided above, and such failure to perform prevents Tenant from operating its business in a customary manner and causes an undue hardship for the Tenant, then such failure to perform (regardless of circumstances beyond its control) as indicated above, shall constitute a default by the City.

**17.3 Tenant's Rights on Default:**

If an event of the City'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 the City, and shall further have the right to pursue any actions at law or suits in equity to obtain damages resulting from the City's default. Notwithstanding anything in this Section 17.3 or the Lease, in the event of a default by the City, Tenant hereby agrees and acknowledges that in no event shall the City be liable for any incidental, indirect, special or consequential damages, including without limitation loss of revenue and lost profits, of Tenant which may be alleged as a result of the City's default.

**18. Indemnity Against Costs and Charges.**

18.1 Tenant shall be liable to the City for all costs and charges, expenses, reasonable attorney's fees, and damages which may be incurred or sustained by the City, by reason of the Tenant's breach of any of the provisions of this Lease. Any sums due the City under the provisions of this item shall constitute a lien against the interest of the 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.

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

**19. Indemnification Against Claims.**

19.1 Tenant shall indemnify and save the City 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 any parking lot or other facility or appurtenance used in connection with the Demised Premises, occasioned in whole or in part by any of the following:

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

19.1.2 Any misuse, neglect, or unlawful use of the Demised Premises or the building in which the Demised Premises is located or any of its facilities by the Tenant, or any employee, agent, invitee, or guest, assignee or sub-tenant or the Tenant, but not to include trespassers upon the Demised Premises;

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

19.1.4 Anything growing out of the use or occupancy of the Demised Premises by the Tenant or anyone holding or claiming to hold through or under the Lease.

- 19.2 Tenant agrees to pay all damages to the Demised Premises or other facilities used in connection therewith, caused by the Tenant or any employee, guest, or invitee of the Tenant.

**20. Signs and Advertising.**

Without the prior written consent of the City, at the City's sole 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

**21. Damage to the Demised Premises and/or Restaurant at 816 Commerce Street.**

- 21.1 If the Demised Premises and/or restaurant at 816 Commerce Street 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, in whole or in part (hereinafter referred to as "such occurrence"), Tenant shall as soon as possible after such occurrence, utilize its insurance proceeds to cause such damage to be repaired and the rent for the Demised Premises shall not be abated. If by reason of such occurrence, the Demised Premises and/or restaurant at 816 Commerce Street shall be rendered untenable, as determined by the City, only in part, Tenant shall as soon as possible utilize its insurance proceeds to cause the damage to be repaired, and the rent for the Demised Premises shall be abated proportionately as to the portion of the Demised Premises rendered untenable; provided however, if either the Demised Premises and/or restaurant at 816 Commerce Street are by reason of such occurrence, rendered more than 50% but less than 100% untenable, as determined by the City, Tenant shall promptly obtain a good faith estimate, from a licensed contractor acceptable to the City, of the time required to render the Demised Premises and/or restaurant at 816 Commerce Street tenantable. If such time exceeds sixty (60) days, the City and/or Tenant shall have the option of canceling this Lease, which option shall be exercised by the requesting party in writing within ten (10) days of the end of the sixty (60) day period, and the Lease shall be terminated within thirty (30) days from the date thereof.

- 21.2 If the Demised Premises and/or restaurant at 816 Commerce Street shall be rendered wholly untenable by reason of such occurrence, Tenant shall utilize its insurance proceeds to cause such damage to be repaired and the rent for the Demised Premises shall be abated in whole; provided, however, that the Tenant shall have the right, to be exercised by notice in writing delivered to the City within sixty (60) days from and after said occurrence, to elect not to reconstruct the destroyed Demised Premises and/or restaurant, 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 untenable, the City and/or Tenant shall have the right, to be exercised by notice in writing, delivered to the other party within thirty (30) days from and after said occurrence, to elect to terminate this Lease, the rent to be adjusted accordingly.

**22. 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.

**23. Waiver.**

23.1 It is mutually covenanted and agreed by and between the parties hereto that the failure of the City 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.

23.2 A waiver of any term expressed herein shall not be implied by any neglect of the City 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.

23.3 The receipt of any sum paid by Tenant to the City 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 the City.

**24. 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:

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

With copies to: City Attorney  
City of Miami Beach  
1700 Convention Center Drive, 4<sup>th</sup> floor  
Miami Beach, Florida 33139

TENANT: SOBE TOSCANA LLC  
816 Commerce Street  
Miami Beach, Florida 33139  
Attn: Catherine Arrighi Guitera

All notices shall be hand delivered and a receipt requested, or by certified mail with return receipt requested, and shall be effective upon receipt.

**25. Entire and Binding Agreement.**

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 the City and Tenant and their respective successors and assigns, except as may be otherwise expressly provided in this Lease.

**26. 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.

**27. 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.

**28. 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.

**29. Governing Law.**

This Lease shall be governed by and construed in accordance with the law of the State of Florida.

**30. Limitation of Liability.**

The City desires to enter into this Lease only if in so doing the City can place a limit on the City's liability for any cause of action for money damages due to an alleged breach by the City of this Lease, so that its liability for any such breach never exceeds the sum of Ten Thousand (\$10,000.00) Dollars and no/100. Tenant hereby expresses its willingness to enter into this Lease with the Tenant's recovery from the City for any damage action for breach of contract to be limited to a maximum amount of Ten Thousand (\$10,000.00) Dollars. Accordingly, and notwithstanding any other term or condition of this Lease, Tenant hereby agrees that the City shall not be liable to Tenant for damage in an amount in excess of Ten Thousand (\$10,000.00) Dollars for any action or claim for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City 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 City's liability as set forth in Florida Statutes, Section 768.28.

**31. 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 the City 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 Article. 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 the City, be deemed abandoned by the Tenant, and either may be retained by the City as its property or may be removed and disposed of at the sole cost of the Tenant in such manner as the City may see fit. If the Demised Premises and personal property, if any, be not surrendered at the end of the term as provided in this Section, the Tenant shall make good the City all damages which the City shall suffer by reason thereof, and shall indemnify and hold harmless the City against all claims made by any succeeding tenant or purchaser, so far as such delay is occasioned by the failure of the Tenant to surrender the Demised Premises as and when herein required.

**32. Time is of the Essence.**

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

**33. Venue.**

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.

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

**34. PROHIBITIONS REGARDING SALE OR USE OF EXPANDED POLYSTYRENE FOOD**

SERVICE ARTICLES OR PLASTIC STRAWS. Pursuant to Section 82-7 of the City Code, as may be amended from time to time, effective August 2, 2014, the City has prohibited the use of expanded polystyrene food service articles by City Contractors, in connection with any City contract, lease, concession agreement or Special event permit. Additionally, pursuant to Section 82-385 of the City Code, as may be amended from time to time, no polystyrene food service articles will be allowed in the right-of-way, and no polystyrene food service articles can be provided to sidewalk cafe patrons.

Expanded polystyrene is a petroleum byproduct commonly known as Styrofoam. Expanded polystyrene is more particularly defined as blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead foam), injection molding, foam molding, and extrusion-blown molding (extruded foam polystyrene).

Expanded polystyrene food service articles means plates, bowls, cups, containers, lids, trays, coolers, ice chests, and all similar articles that consist of expanded polystyrene. Tenant agrees not to sell, use, provide food in, or offer the use of expanded polystyrene food service articles at the Demised Premises or in connection with this Lease. Tenant shall ensure that all vendors operating in the Demised Premises abide by the restrictions contained in this Section 35. A violation of this section shall be deemed a default under the terms of this Lease. This subsection shall not apply to expanded polystyrene food

service articles used for prepackaged food that have been filled and sealed prior to receipt by the Tenant or its vendors.

Additionally, Tenant agrees to comply (and ensure compliance by its vendors) with Section 46-92 (c) of the City Code, which states that it is unlawful for any person to carry any expanded polystyrene product onto any beach or into any park within the City or for any business to provide plastic straws with the service or delivery of any beverage to patrons on the beach.

### **35. Inspector General Audit Rights**

- 35.1 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.
- 35.2 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.
- 35.3 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.
- 35.4 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.



35.5 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:

- (a) 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
- (b) 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.

35.6 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.

35.7 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.

**36. Tenant's Compliance With Anti-Human Trafficking Laws.**

Tenant agrees to comply with Section 787.06, Florida Statutes, as may be amended from time to time, and has executed the Certification of Compliance with Anti-Human Trafficking Laws, as required by Section 787.06(13), Florida Statutes, incorporated herein by reference and attached hereto as **Exhibit D.**

**37. Prohibition on Contracting with a Business engaging in a Boycott.**

Tenant warrants and represents that it is not currently engaged in, and will not engage in, a boycott, as defined in Section 2-375 of the City Code. In accordance with Section 2-375.1(2)(a) of the City Code, Tenant hereby certifies that Tenant is not currently engaged in, and agrees for the duration of the Agreement to not engage in, a boycott of Israel.

**38. Prohibition Against Contracting with Foreign Countries of Concern When an Individual's Personal Identifying Information May Be Accessed.**

Tenant hereby agrees to comply with Section 287.138, Florida Statutes, as may be amended from time to time, which states that as of January 1, 2024, a governmental entity may not accept a bid on, a proposal for, or a reply to, or enter into, a contract with an entity which would grant the entity access to an individual's personal identifying information (PII), unless the entity provides the governmental entity with an affidavit signed by an officer or representative of the entity under penalty of perjury attesting that the entity does not meet any of the criteria in Paragraphs 2(a)-(c) of Section 287.138, Florida Statutes: (a) the entity is owned by a government of a foreign country of concern; (b) the government of a foreign country of concern has a controlling interest in the entity; or (c) the entity is organized under the laws of or has its principal place of business in a foreign country of concern (each a "Prohibited Entity"). A foreign country of concern is defined in

Section 287.138 (1)(c), Florida Statutes, as may be amended from time to time, as the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolas Maduro, or the Syrian Arab Republic, including any agency of or any other entity of significant control of such foreign country of concern. Additionally, beginning July 1, 2025, a governmental entity may not extend or renew a contract with a Prohibited Entity. Tenant warrants and represents that it does not fall within the definition of a Prohibited Entity, and as such, has caused an authorized representative of Tenant to execute the "Prohibition Against Contracting with Entities of Foreign Countries of Concern Affidavit", incorporated herein by reference and attached hereto as **Exhibit E**.

**39. Prohibition on Contracting with an Individual or Entity which has Performed Services for Compensation to a Candidate for City Elected Office.**

Tenant warrants and represents that, within two (2) years prior to the Effective Date, Tenant has not received compensation for services performed for a candidate for City elected office, as contemplated by the prohibitions and exceptions of Section 2-379 of the City Code.

For the avoidance of doubt, the restrictions on contracting with the City pursuant to Section 2-379 of the City Code shall not apply to the following:

- (a) Any individual or entity that provides goods to a candidate for office.
- (b) Any individual or entity that provides services to a candidate for office if those same services are regularly performed by the individual or entity in the ordinary course of business for clients or customers other than candidates for office. This includes, without limitation, banks, telephone or internet service providers, printing companies, event venues, restaurants, caterers, transportation providers, and office supply vendors.
- (c) Any individual or entity which performs licensed professional services (including for example, legal or accounting services).

**40. Florida Public Records Law.**

- 40.1 Tenant shall comply with Florida Public Records law under Chapter 119, Florida Statutes, as may be amended from time to time.
- 40.2 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.
- 40.3 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:
  - 40.3.1 Keep and maintain public records required by the City to perform the service;
  - 40.3.2 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;

40.3.3 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;

40.3.4 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.

#### 40.4 Request for Records; Noncompliance.

40.4.1 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.

40.4.2 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.

40.4.3 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.

#### 40.5 Civil Action.

40.5.1 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:

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

40.5.1.2 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.

40.5.2 A notice complies with subparagraph 40.5.1.2 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.

- 40.5.3 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.

40.6

**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](mailto:RAFAELGRANADO@MIAMIBEACHFL.GOV)**

**PHONE: 305-673-7411**

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

**IN WITNESS WHEREOF**, the parties hereto have caused these presents to be signed by the respective duly authorized officers and the respective corporate seals to be affixed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

ATTEST:

CITY:  
CITY OF MIAMI BEACH, FLORIDA

By: \_\_\_\_\_  
Rafael E. Granada, City Clerk

By: \_\_\_\_\_  
Eric T. Carpenter, P.E., City Manager

ATTEST:

TENANT:  
SOBE TOSCANA, LLC

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

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

### Description of Demised Premises

[illegible]

## **EXHIBIT B**

### **Additional Requirements**

The Demised Premises shall be maintained in a clean, neat and orderly appearance at all times by the Tenant. The area of the sidewalk, curb and gutter immediately adjacent to the Demised Premises shall be cleared of all debris during hours of operation, and again at the close of each business day, or as may otherwise be determined by the City Manager. The Tenant shall be responsible for cleaning the floor surface on which the outdoor seating is located at the close of each business day. In addition, the following conditions shall apply:

- a. Tables, chairs, umbrellas and any other outdoor cafe furniture shall be maintained in a clean, attractive, and orderly appearance, and shall be maintained and kept in good repair at all times;
- b. All outdoor furniture shall be of high quality, design, materials, and workmanship so as to ensure the safety and convenience of the public;
- c. Tenant must obtain approvals from the Planning Department and the City Administration in the design and layout of the outdoor cafe pavers, tables, chairs and umbrellas. Only the outdoor cafe furniture specifically shown on the approved site plan shall be allowed in the Demised Premises;
- d. All tables, chairs, umbrellas, and any other outdoor furniture shall be readily removable, and shall not be physically attached, chained, or in any other manner affixed to any public structure, street furniture, signage, and/or other public fixture, or to a curb and/or public right-of-way;
- e. The stacking or piling up of chairs shall be prohibited on the Demised Premises;
- f. At close of business, all tables, chairs and any other outdoor furniture shall be removed from the Demised Premises and stored in a non-visible location from the public right-of-way. Any exception to this requirement shall be at the sole and absolute discretion of the City Manager and/or his/her designee.
- g. No storage of dishes, silverware, bussing stations or other similar restaurant equipment shall be allowed in the Demised Premises, or in any other portion of the public right-of-way, or outside the structural confines of the building in which the restaurant is located, during non-business hours;
- h. There shall be no live entertainment or speakers placed in the Demised Premises;
- i. Only one menu board shall be permitted to be displayed on the Demised Premises, the location of which shall be set back next to the main entrance door of the enclosed area of the restaurant;
- j. No food preparation, food storage, refrigeration apparatus or equipment, or fire apparatus or equipment, shall be allowed on the Demised Premises;
- k. No food displays shall be permitted on Demised Premises. No advertising signs or business identification signs shall be permitted, except that the restaurant name and/or its logo may be permitted on umbrellas but such logos and/or lettering may not exceed six inches in height;
- l. Plants shall be properly maintained. Distressed plants shall be promptly replaced. Plant fertilizers which contain material that can stain the sidewalks shall not be allowed;

- m. The City Manager or his/her designee may cause the immediate removal, relocation and/or storage of all or part of any furniture located on the Demised Premises in emergency situations or for public safety considerations. Upon written and/or verbal notification by the City Manager of a hurricane or other major weather event, or the issuance of a hurricane warning by Miami-Dade County, whichever occurs first, the Tenant shall, within no more than four hours of same, remove and place indoors all tables, chairs and any other outdoor furniture located on the Demised Premises. The notification by the City Manager of a hurricane or other major weather event, or the issuance of a hurricane warning, shall constitute a public emergency situation as referenced in this division. The City Manager may remove, relocate, and/or store any outdoor furniture found on the Demised Premises that has otherwise not been removed by the Tenant pursuant to this subsection. Any and all costs incurred by the City for removal, relocation and/or storage of Tenant's furniture shall be the responsibility of the Tenant.

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## EXHIBIT C

### Unconditional Guaranty

THIS UNCONDITIONAL GUARANTY (the "Guaranty") is made as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Catherine Arrighi Guitera, individually (the "Guarantor"), in favor of CITY OF MIAMIBEACH, FLORIDA, a municipal corporation organized and existing under the laws of the State of Florida (the "City"), and is executed pursuant to that certain Lease Agreement, dated \_\_\_\_\_, 20\_\_\_\_ (the "Lease"), between the City and SOBE TOSCANA LLC (the "Tenant"), involving unimproved city-owned land as defined in the Lease as the Demised Premises, having a physical address of 22 Washington Avenue, Miami Beach, Florida 33139 (the "Demised Premises"). All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Lease.

FOR VALUE RECEIVED, the receipt whereof is hereby acknowledged, in consideration of, and as an inducement to the City's entering into the Lease with Tenant, the undersigned Guarantor, in consideration of the benefits to flow to the Tenant and to the undersigned as stockholder, officer, and/or director of said Tenant, do hereby irrevocably and unconditionally guarantee to the City for the entire Term of the Lease (the "Guaranty Term") the full and faithful performance of all of the obligations, duties and liabilities of the Tenant under that certain Lease for the Demised Premises, to the limit of an amount that equals the last six months of Base Rent (as defined in the Lease), in the agreed amount of Forty-Three Thousand One Hundred Eighteen and 04/100 Dollars (\$43,118.04).

This Guaranty is a guarantee of payment and not of collectability is not in any way conditional or contingent and constitutes a valid obligation of Guarantor, and shall not be terminated, affected or impaired by reason of the assertion by the City against Tenant of any of the rights and remedies reserved to the City pursuant to the provisions of the Lease. The validity of this Guaranty shall not be terminated, affected or impaired by reason of any action which the City may take or fail to take against Tenant or by reason of any waiver of or failure to enforce any of the rights or remedies reserved to the City in the Lease or for any other cause or circumstance whatsoever, including but not limited to any subletting of the Demised Premises, assignment of the Lease or waiver of any breach by the Tenant.

This liability of Guarantor hereunder shall be primary and independent of the obligations of Tenant, and the City may proceed against Guarantor without commencing any action against Tenant. The City shall not be required to make any demand upon or pursue and exhaust any of its rights or remedies against Tenant, before, simultaneously with, or after enforcing its rights or remedies against Guarantor under this Guaranty; and Guarantor agrees that the City may enforce any or all of its remedies hereunder at such time or times or in such manner as it shall deem appropriate.

This Guaranty shall remain and continue in full force and effect during the Guaranty Term, notwithstanding any modification, amendment, renewal or extension of the Lease or any provision thereof and notwithstanding any assignment of interest therein.

The Guarantor consents to all of the terms and provisions of the Lease, as the same may be from time to time hereafter amended, and expressly waive (i) any and all notices of proof of non-payment, non-performance or non-observance by Tenant of any covenant or provision of the Lease, (ii) any and all demands, notices, rights or remedies of any kind which may be required to be given or which may inure to the benefit of Guarantor under applicable law, and (iii) any and all notices of default or events of default hereunder or under the Lease.

The City and Guarantor agree that in any action or proceeding brought by either the City or Guarantor against the other on any matters whatsoever arising out of, under, or by virtue of this Guaranty ("Legal Proceeding"), the City and Guarantor shall and do hereby waive trial by jury. In addition, the venue, in connection with any such Legal Proceeding, shall be in Miami-Dade County, Florida. Should it become necessary to enforce the terms and conditions of this Guaranty, the prevailing party shall be entitled to collect court costs and attorney's fees in connection with said prosecution, including any appeals resulting from said Legal Proceeding.

Following the expiration of the Guaranty Term, upon written request by Tenant, the original of this Guaranty shall be marked as "cancelled" and returned to Guarantors. This Guaranty shall inure to the benefit of the City, its heirs, executors, successors and assigns and shall bind the heirs, executors, successors and assigns of Guarantors.

EXECUTED as of the day and year first above written, to be effective as of the date of the lease.

GUARANTOR:

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

STATE OF FLORIDA

MIAMI-DADE COUNTY

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, \_\_\_\_ personally known to me or \_\_\_\_\_ who has produced a valid driver's license as identification.

\_\_\_\_\_  
Notary Public, State of Florida

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

My Commission Expires:

## EXHIBIT D

### Anti-Human Trafficking Affidavit

In accordance with Section 787.06 (13), Florida Statutes, the undersigned, on behalf of Tenant hereby attests under penalty of perjury that Tenant does not use coercion for labor or services as defined in Section 787.06, Florida Statutes, entitled "Human Trafficking".

I understand that I am swearing or affirming under oath to the truthfulness of the claims made in this affidavit and that the punishment for knowingly making a false statement includes fines and/or imprisonment.

The undersigned is authorized to execute this affidavit on behalf of Tenant.

#### TENANT:

\_\_\_\_\_, a \_\_\_\_\_ corporation.

\_\_\_\_\_  
Name/Title: \_\_\_\_\_ (Address) \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_ by

\_\_\_\_\_, as \_\_\_\_\_, of \_\_\_\_\_, a \_\_\_\_\_ corporation, known to me to be the person described herein, or who produced \_\_\_\_\_ as identification, and who did/did not take an oath.

#### NOTARY PUBLIC:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

My commission expires: \_\_\_\_\_

## EXHIBIT E

### Prohibition Against Contracting with Foreign Countries of Concern Affidavit

In accordance with Section 287.138, Florida Statutes, incorporated herein by reference, the undersigned, on behalf of Tenant, hereby attests under penalty of perjury that Tenant does not meet any of the following criteria in Paragraphs 2(a)-(c) of Section 287.138, Florida Statutes: (a) Tenant is owned by a government of a foreign country of concern; (b) the government of a foreign country of concern has a controlling interest in Tenant; or (c) Tenant is organized under the laws of or has its principal place of business in a foreign country of concern.

I understand that I am swearing or affirming under oath, under penalties of perjury, to the truthfulness of the claims made in this affidavit and that the punishment for knowingly making a false statement includes fines and/or imprisonment.

The undersigned is authorized to execute this affidavit on behalf of Tenant.

#### TENANT:

\_\_\_\_\_, a \_\_\_\_\_ corporation.

\_\_\_\_\_  
Name/Title: \_\_\_\_\_ (Address)

State of \_\_\_\_\_

County of \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_ by \_\_\_\_\_, as \_\_\_\_\_, of \_\_\_\_\_, a \_\_\_\_\_ corporation, known to me to be the person described herein, or who produced \_\_\_\_\_ as identification, and who did/did not take an oath.

#### NOTARY PUBLIC:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

My commission expires: \_\_\_\_\_

**EXHIBIT F**  
**Easement Agreement**

DRAFT