

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

TRUMP OLD POST OFFICE, LLC,)	
)	
Plaintiff,)	
)	
vs.)	Civil Action No. 2015 CA 005890 B
)	Judge Brian F. Holeman
)	Next Event: Proponent's Rule
CZ-NATIONAL, LLC AND)	26(a)(2)(B) Report (March 7, 2016)
BVS ACQUISITION CO., LLC,)	
)	
Defendants.)	
)	

**DEFENDANTS' OPPOSITION TO PLAINTIFF'S
MOTION FOR PROTECTIVE ORDER**

Defendants CZ-National, LLC ("CZ-National") and BVS Acquisition Co., LLC (together, "Defendants"), by counsel, hereby oppose the Motion of Plaintiff Trump Old Post Office, LLC ("Trump") for a Protective Order.

INTRODUCTION AND BACKGROUND CONTEXT

Trump seeks a protective order because Mr. Donald J. Trump does not wish to be deposed in this case – which Trump filed, asserting a claim for \$10 million under a Sublease that Mr. Trump signed, which was terminated because of statements Mr. Trump made. And CZ-National's Counterclaim alleges false statements made in a certification submitted to the bank to request the release of the security deposit. Again, the person who signed the certification is Mr. Trump. In short, this is not, as Trump suggests, a case where a litigant (almost always a plaintiff) seeks an "apex" deposition simply to harass the senior executive of the opposing party.

If there is one thing upon which there should be no dispute, it is that Donald J. Trump is closely identified with all of his business interests, by design. And Mr. Trump makes no secret

of his view that his name contributes to the success of his ventures. According to Mr. Trump himself, in the area of real estate, “[i]n New York City and around the world, the Trump signature is synonymous with the most prestigious of addresses.” See <http://www.trump.com/biography/>. Beyond real estate, the Donald J. Trump collection includes not only clothing but also cufflinks, billfolds, and even eyewear. There is now Trump deodorant, Trump cologne, Trump natural spring water, and much more that is branded Trump.

At every turn, the Trump brand is Donald J. Trump. And it is no different with the restoration of the Old Post Office Pavilion, which soon will open as the “Trump International Hotel, Washington D.C.”¹ From the start, Mr. Trump has been the face and leading spokesperson for the restoration and transformation of the Old Post Office.²

This lawsuit involves CZ-National’s contentions that it never bargained for – and certainly never imagined – that Mr. Trump would frustrate completely its legitimate expectations regarding the prospects of opening and operating The National restaurant in the new Trump International Hotel. It concerns as well the contention that Trump wrongfully drew down the entire letter of credit posted as security, certifying to the issuing bank that it was necessary to cover damages incurred – although at the time not a single rent payment was due. Mr. Trump himself signed that certification. And it is, of course, Mr. Trump himself who, as part of his

¹ See <https://www.trumphotelcollection.com/washington-dc/luxury-washington-dc-hotels.php>. Soon after Mr. Trump was selected by the General Services Administration to redevelop the Old Post Office, he wrote in the Washington Post that he would name the hotel “Trump International Hotel, The Old Post Office Building, Washington, D.C.” Donald J. Trump, Greatness for the Old Post Office, *Washington Post* (March 4, 2012). The name now is simply “Trump International Hotel, Washington D.C.”

² Mr. Trump led the groundbreaking for the project on July 23, 2014. See <https://www.trumphotelcollection.com/press/groundbreaking-for-trump-international-hotel-washington-dc>.

speech announcing his candidacy for President, infamously said regarding Mexican immigrants “They’re bringing drugs. They’re bringing crime. They’re rapists.”

Mr. Trump is an essential witness in this case. Understanding the potential scheduling constraints and other demands on Mr. Trump’s time at present, Defendants’ counsel notified Trump’s counsel of the need to depose Mr. Trump literally months in advance, in order to work in good faith with counsel to resolve any potential scheduling issues. Without even discussing the scheduling issues, if any, Mr. Trump may have with respect to his deposition, Trump instead took a “no deposition” approach and then filed this motion for a protective order.

Trump argues that Mr. Trump “has had no involvement in this matter” and “has no unique knowledge of the relevant facts and issues” – without any evidence whatsoever to support the first point and with only a bare statement from Mr. Trump’s son regarding the second point. Trump offers nothing whatsoever from Mr. Trump himself. On this thin record, Trump seeks to block CZ-National from questioning Mr. Trump at all.

Trump comes nowhere near meeting its burden to show good cause to support a protective order here. The record, even at this early stage, demonstrates that Mr. Trump has been personally involved in many aspects of this case. It is undisputed that Mr. Trump made the statements that led directly to this case, and only Mr. Trump is able to explain what he meant by those statements and whether he considered the impact of those statements on CZ-National and its ability to enjoy the benefits of the Sublease and open and operated a restaurant in the new hotel. Trump chose to file this lawsuit and chose the timing of the lawsuit, and CZ-National is entitled to Mr. Trump’s testimony.

FACTUAL BACKGROUND

Trump, a single-purpose entity owned and controlled by Mr. Trump,³ entered into an agreement with the General Services Administration in 2012 to redevelop the Old Post Office Pavilion and turn it into a luxury hotel. Mr. Trump sought out some of the nation's finest chefs to open restaurants in the new hotel.

The Trump brand and the personal involvement of Mr. Trump were front and center in the publicity regarding the new Trump International Hotel. Mr. Trump himself describes his brand and his personal commitment to his projects in his own words on his website:

Donald J. Trump is the very definition of the American success story. He has continually set new standards of excellence while expanding his interests nationally and internationally. *Mr. Trump is personally involved in everything that his name represents.* This commitment has made him the pre-eminent developer of quality real estate known around the world, and in all his endeavors the Trump gold standard is apparent. He is the archetypal businessman – a deal maker without peer and an ardent philanthropist.

Donald J. Trump biography, available at <https://www.trumphotelcollection.com/donald-trump.php> (last viewed January 25, 2016) (emphasis added).

³ According to his financial disclosure filing with the Federal Election Commission, Mr. Trump personally owns nearly 78% of Trump Old Post Office, LLC. The disclosure sets forth the owners as follows:

- 1%: Trump Old Post Office Member Corp., which is owned 100% by Donald J. Trump
- 76.725%: DJT Holdings LLC, which has the following owners:
 - 99%: Donald J. Trump
 - 1%: DJT Holdings Managing Member LLC, which is owned 100% by Donald J. Trump
- 22.275%: “Trump Family Members”

Donald J. Trump Executive Branch Personnel Public Financial Disclosure Report (OGE Form 278e) (July 15, 2015) (available at <https://assets.documentcloud.org/documents/2171250/donald-trump-financial-disclosure.pdf>).

On or about February 19, 2015, Trump and CZ-National entered into an agreement of sublease (the “Sublease,” Exhibit A hereto), whereby CZ-National agreed to sublease space in the Trump International Hotel for the purpose of operating a first-class restaurant in the hotel. Sublease § 4. The Sublease requires that CZ-National “hire and maintain reasonably adequate personnel for the efficient service of its customers.” Sublease § 36(d). The Sublease guarantees the CZ-National’s right to the quiet enjoyment of the Demised Premises. Sublease § 31. It also includes an implied obligation of good faith and fair dealing, which means that Mr. Trump promised that he would not do anything that would interfere with CZ-National’s right to receive the fruits of the Sublease. *Mr. Trump himself signed the Sublease.* Sublease at p. 101.

As required by the Sublease, CZ-National provided Trump with a cash security deposit of \$29,167 and a letter of credit in the amount of \$461,000. In reliance on the Sublease, CZ-National incurred substantial expenses on the build-out of The National and, as of June 2015, was on track to open the restaurant when the hotel opened in 2016.

Everything changed on June 16, 2015, when Mr. Trump announced his candidacy for President and made the following inflammatory statements with regard to Mexican immigrants: “When Mexico sends its people, they’re not sending their best. . . . They’re sending people that have lots of problems, and they’re bringing those problems with [them]. They’re bringing drugs. They’re bringing crime. They’re rapists.”

Mr. Trump never denied making these statements, nor did he ever apologize for making these statements or withdraw them. CZ-National does not seek to depose him to confirm that they were in fact made. Defendants contend that Mr. Trump made these statements to pander to a particular political segment, in furtherance of his political campaign, with absolutely no regard to the effect they would have on CZ-National’s ability to open and operate a first-class restaurant

in the new hotel, a project that bears Mr. Trump's name and that is intertwined with him and his brand.

Immediately after Mr. Trump made the statements regarding Mexican immigrants, businesses and individuals began to terminate their relationships with Mr. Trump's businesses. On July 8, 2015, José Andrés, a well-known chef who had agreed to open a separate restaurant in the hotel, stated that Mr. Trump's statements disparaging immigrants made it "impossible" for him to move forward with opening his restaurant. The next day, CZ-National stated that in light of Mr. Trump's statements, it would not be able to move forward with opening a restaurant in the hotel.

Mr. Trump responded immediately. First, he confirmed his personal involvement in the project: "Donald Trump is investing hundreds of millions of dollars to restore this national treasure and employing many hundreds of people in the process." Missy Frederick, "Geoffrey Zakarian Pulls Out of Trump Hotel Project," *Eater* (July 9, 2015) (available at <http://dc.eater.com/2015/7/9/8922761/geoffrey-zakarian-pulls-out-of-trump-hotel-project>). He also stated that CZ-National's decision to pull out "will have no effect on the completion and success of this project." *Id.*

CZ-National promptly notified Trump that it was terminating the Sublease on the ground that Mr. Trump's statements constituted a blatant breach of the Sublease and requested that Trump return its security deposit and letter of credit.

Trump did neither. Rather, Trump, which was not even due any rent from CZ-National until, at the earliest, mid-2016, submitted a statement to M&T Bank certifying to the bank that Trump was entitled to draw down the entire amount of the letter of credit. At the time Trump

submitted the certification, immediately after termination of the Sublease, it could not possibly have known to what extent it would be able to mitigate any alleged damages. *Mr. Trump personally signed the certification.* The Certification is attached as Exhibit B hereto. M&T Bank, based on Mr. Trump's personal certification, paid to Trump the entire letter of credit proceeds.

Rather than waiting to determine whether and to what extent Trump might have (or not) damages at all, Trump immediately initiated this action, and Defendants asserted counterclaims. Early in the discovery process, before either side had provided any documents or discovery responses to the other side, CZ-National's counsel reached out to Trump's counsel in November to notify her that CZ-National would be seeking Mr. Trump's deposition well in the future and that CZ-National wanted to provide plenty of time to work out a date and that CZ-National's counsel would cooperate fully regarding the scheduling of the deposition, writing:

Also, we are going to be sending you today a deposition notice for Donald J. Trump, for February 18. There will of course be others whom we want to depose, but we understand his schedule is likely more difficult than others' so we wanted to give you plenty of notice. We are of course willing to work with you on a mutually convenient date in that same general timeframe, but wanted to get the ball rolling so you have plenty of time to get something on the calendar.

Email from D. Baum to R. Woods, et al. (November 23, 2015), attached as Exhibit C hereto. (The deposition notice referred to in the email is attached as Exhibit D hereto.) Trump, in its motion for protective order, has ignored this email, criticizing CZ-National for noticing Mr. Trump's deposition before noticing other witnesses' depositions, even though CZ-National had made clear that it was reaching out early precisely in order to work out with Trump any scheduling issues for Mr. Trump's deposition. Understanding that Mr. Trump's schedule could be more difficult, CZ-National was willing to depose him either before or after other witnesses –

whenever it was convenient for him. Trump waited nearly two months and then filed a motion for protective order.

In her letter to CZ-National's counsel objecting to the deposition notice issued for Mr. Trump, Trump's counsel asserted that "Mr. Trump's knowledge of [the topics at issue in the lawsuit] is significantly less than, and solely duplicative of, the knowledge of" other witnesses. Letter from R. Woods to D. Baum (December 11, 2015), attached as Exhibit A to Trump Motion for Protective Order. Trump goes further in the motion, asserting with absolutely no factual support (and contrary to the record in this case) that "Mr. Trump has had no involvement in this matter." Motion at 2.

ARGUMENT

Because Trump is seeking to block CZ-National from obtaining discovery in this case, it bears the burden to show "good cause" to protect Mr. Trump from "annoyance, embarrassment, oppression, or undue burden or expense." D.C. Super. Ct. R. Civ. P. 26(c); *see also WebSideStory, Inc. v. NetRatings, Inc.*, No. 06CV408 WQH(AJB), 2007 WL 1120567, at *2 (S.D. Cal. Apr. 6, 2007) ("A party seeking to prevent a deposition carries a heavy burden to show why discovery should be denied."). As the U.S. Court of Appeals for the Fifth Circuit held in a case relied upon by Trump, "[i]t is very unusual for a court to prohibit the taking of a deposition [of a high ranking official] altogether and absent extraordinary circumstances, such an order would likely be in error." *Salter v. Upjohn Co.*, 593 F.2d 649, 651 (5th Cir. 1979).

Trump relies upon the "apex doctrine," which, as an initial matter, has not been adopted or even addressed by the District of Columbia Court of Appeals. Even as applied by other courts, the apex doctrine, contrary to Trump's assertion, does not shift the burden to CZ-National

here: “[C]ourts have rejected burden-shifting for high level business executive or so-called ‘apex’ depositions, holding that ‘[t]he burden under the apex principle is supplied by the general rule applicable to a party that seeks to avoid discovery in general.’” *In re Transpacific Passenger Air Transp. Antitrust Litig.*, No. C-07-05634 CRB (DMR), 2014 WL 939287, at *2 (N.D. Cal. Mar. 6, 2014).

When it has been applied, the “apex deposition rule is bottomed on the apex executive lacking *any* knowledge of relevant facts. The rule is aimed to prevent the high level official deposition that is sought simply because he is the CEO or agency head” *Minter v. Wells Fargo Bank, N.A.*, 258 F.R.D. 118, 126 (D. Md. 2009) (emphasis original). In *Minter*, the executive was not entitled to protection because he had personally “approved and signed” a key document, he had an “enormous economic interest” in the business at issue, and his media statements indicated he had some level of “hands on” involvement in the matters at issue. *Id.* at 126.

In this case, every factor weighs against Trump’s effort to block CZ-National from deposing Mr. Trump:

- Mr. Trump without question has direct involvement with critical aspects of this case. He has been personally involved with this project from the start, just as he is personally involved with all Trump Organization projects. He led the groundbreaking for the hotel. He personally signed the Sublease. He personally signed the certification to the bank drawing down on the letter of credit. And he personally stated that the withdrawal of CZ-National would have no adverse impact on the project.
- The statements made by Mr. Trump himself regarding Mexican immigrants led

directly to this case. Only Mr. Trump made those statements, only Mr. Trump can explain those statements, and only Mr. Trump knows whether he considered the impact those statements would have on CZ-National and its rights under the Sublease – whether they were made in compliance with Trump’s obligations of good faith.

- Mr. Trump has an enormous personal financial stake in this matter, as he owns nearly 78% of Trump.
- Trump brought this case at this time.

Trump’s arguments fall well short. Mr. Trump’s position as head of the Trump Organization cannot justify blocking his deposition in this case because “when a witness has personal knowledge of facts relevant to the lawsuit, even a corporate president or CEO is subject to deposition.” *WebSideStory*, 2007 WL 1120567, at *2. Likewise, Mr. Trump is not entitled to protection based on counsel’s unsupported assertion that he lacks knowledge of the matters at issue in this case. Mr. Trump “should have to establish his ignorance at his deposition rather than through affidavit.” *Amherst Leasing Corp. v. Emhart Corp.*, 65 F.R.D. 121, 123 (D. Conn. 1974). *Burns*, cited by Trump, concurs: “Even where . . . a high-ranking corporate officer *denies* personal knowledge of the issues at hand, this ‘claim [of denial] . . . is subject to testing by the examining party.’” *Burns v. Bank of Am.*, No. 03 Civ. 1685(RMB)(JCF), 2007 WL 1589437, at *3 (S.D.N.Y. June 4, 2007) (emphasis added). Of course here Trump has not even submitted an affidavit from Mr. Trump – or from anyone – asserting Mr. Trump’s ignorance. And the documents indicate otherwise.

That Mr. Trump may have a busy schedule does not entitle him to protection. As the *Burns* case, which Trump cites, notes, the “fact that [an executive] has a busy schedule is . . . not a basis for foreclosing otherwise proper discovery.” *Id.* at *3 (citation omitted). CZ-National has made every effort to work with Mr. Trump’s schedule, but Trump has refused to discuss

scheduling matters.

Likewise, Trump's effort to require that CZ-National take other discovery before taking Mr. Trump's deposition is not supported by the case law. "Requiring that a party exhaust other discovery sources before taking an apex deposition creates a burden-shifting analysis not mandated by the Federal Rules of Civil Procedure or the relevant case law." *In re Transpacific Passenger Air Transp.*, 2014 WL 939287, at *5; *see also Minter*, 258 F.R.D. at 127 (court refused to change the order of depositions because "it is disinclined to interfere with litigation strategy of counsel unless it is shown to cause undue burden").

The cases Trump cites are either inapposite or affirmatively demonstrate that barring the deposition would be improper. In *Last Atlantis Capital, LLC v. AGS Specialist Partners*, the plaintiffs were unable to "elaborate on what it is they hope to gain in terms of discovery from deposing these very high level witnesses," and the court blocked the deposition because "there really is no evidence to support the plaintiffs' contention that [the executives] possess relevant information." No. 04 C 0397, 2013 WL 4759581, at *3-4 (N.D. Ill. Sept. 4, 2013). By contrast, a deposition of Mr. Trump would explore directly relevant information about his personal statements and involvement with key events in this litigation. In *Burns*, unlike here, the executive had joined the company after the events in dispute and thus had no knowledge of them. 2007 WL 1589437, at *4.

In *Salter v. Upjohn Co.*, the executive convinced the court he lacked "direct knowledge of the facts," the party seeking the deposition already had the executive's prior testimony on the topics to be covered in the deposition and, in any event, the judge merely ordered other discovery

to proceed before the executive's deposition instead of blocking it outright. 593 F.2d at 651.⁴ And the court in *Bush v. Dictaphone Corp.* actually denied a request to block an executive's deposition because the officer's own statements were at issue and he was involved in the decisions that initiated litigation. 161 F.3d 363, 367 (6th Cir. 1998).

Finally, in each of Trump's cases where the court actually issued a protective order preventing the deposition outright, the party seeking the deposition was a plaintiff. Here, in contrast, Mr. Trump's comments triggered this dispute, and Trump – not CZ-National – initiated this litigation. Under similar circumstances, courts do not hesitate to permit the deposition of a top executive. *See, e.g., Eaton Corp. v. Weeks*, No. 13-12392, 2014 WL 700466, at *7 (E.D. Mich. Feb. 24, 2014) (Allowing deposition of Eaton Corp's executives and concluding "Eaton is the Plaintiff. They initiated this lawsuit for recoupment. This issue involves their high-level executives. They are not being dragged into something unforeseen."). Moreover, Trump could surely have waited – even years – to bring this case but brought it now, knowing full well that Mr. Trump has already embarked on a Presidential campaign.

Trump suggests that CZ-National must exhaust "less intrusive means of obtaining discovery" before assessing whether Mr. Trump's deposition is necessary. Motion at 7. While that approach may be appropriate in other cases, it does not work here. CZ-National is willing to take Mr. Trump's deposition when Mr. Trump is available, even if that is later in the discovery period. CZ-National should not, however, be required to conduct other discovery before deposing Mr. Trump because that discovery could not eliminate the need for Mr. Trump's deposition. Only Mr. Trump made the statements that led to this lawsuit; only Mr. Trump knows

⁴ Citing *Salter*, the court in *Bank of the Ozarks v. Capital Mortgage Corp.* similarly refused to prohibit the deposition and simply ordered other discovery to proceed first. No. 4:12-mc-00021 KGB, 2012 WL 2930479, at *2 (E.D. Ark. July 18, 2012).

why he made those statements and what he meant by them; and only Mr. Trump knows whether he considered their impact on CZ-National's rights under the Sublease. Likewise, only Mr. Trump can address why he signed a certification that Trump was entitled to draw down nearly half a million dollars to cover "damages" before any rent obligation had even accrued.

CONCLUSION

As the District of Columbia Court of Appeals has made clear, CZ-National has the right to explore the extent of Mr. Trump's knowledge as long as there is "any possibility that the information sought may be relevant." *Futrell v. Dep't of Labor Fed. Credit Union*, 816 A.2d 793, 809 (D.C. 2003). That possibility more than exists in this case, and Trump has not come close to demonstrating that a protective order is justified. Its motion should be denied.

REQUEST FOR A HEARING

CZ-National requests that the Court conduct a hearing on Trump's Motion for Protective Order as soon as practicable.

Dated: February 2, 2016

Respectfully submitted,

/s/ Deborah B. Baum

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CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2016, a copy of the foregoing Opposition to Plaintiff's Motion for Protective Order was sent electronically via CaseFileXpress to:

Rebecca Woods
Seyfarth Shaw LLP
975 F Street, N.W.
Washington, D.C. 20004

Counsel for Plaintiff Trump Old Post Office, LLC.

/s/ Adya S. Baker
Adya S. Baker

EXHIBIT A

AGREEMENT OF SUBLEASE

Dated February 19, 2015

between

.....
TRUMP OLD POST OFFICE LLC,
a Delaware limited liability company,
as Landlord

and

CZ-NATIONAL, LLC
a Delaware limited liability company,
as Tenant

Demised Premises:

Approximately 9,344 square feet of restaurant space in
the Trump International Hotel, The Old Post Office, Washington D.C.
located at 1100 Pennsylvania Avenue NW, Washington D.C. 20004

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EXHIBITS

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EXHIBIT B	-	Depiction of Demised Premises
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EXHIBIT C2	-	Plans Prepared by WDG dated 11/12/14
EXHIBIT D1	-	Landlord's Drawing Deliveries
EXHIBIT D2	-	Certain Definitions Pertaining to Tenant's Plans and Tenant's Work
EXHIBIT D3	-	Tenant's Work Submittal List and Milestone Dates
EXHIBIT D4	-	Initial Conceptual Design Documents
EXHIBIT E	-	Notice Addresses
EXHIBIT F	-	Restaurant Style Concept
EXHIBIT G	-	Tenant Allowance Payment Procedures
EXHIBIT H	-	Governmental Provisions
EXHIBIT I	-	Exterior Signage
EXHIBIT J	-	Form of Guaranty
EXHIBIT K	-	Form SNDA
EXHIBIT L	-	Davis Bacon Letter
EXHIBIT M	-	Form of GSA Non-Disturbance Agreement
EXHIBIT N	-	Letter of Credit

AGREEMENT OF SUBLEASE

THIS AGREEMENT OF SUBLEASE (this "Sublease"), is made as of this 19th day of February, 2015, between TRUMP OLD POST OFFICE LLC, a Delaware limited liability company ("Landlord"), having an address at 725 Fifth Avenue, New York, New York 10022 and CZ-NATIONAL, LLC, a Delaware limited liability company ("Tenant"), having an address at c/o BVS Acquisition Co. LLC, 1720 Post Road, Fairfield, CT 06824.

BACKGROUND

- A. Landlord leases the building located at 1100 Pennsylvania Avenue NW, Washington D.C. 20004 (the "Building") pursuant to that certain ground lease by and between the United States of America, as landlord (the "Master Landlord"), and Landlord, as tenant, dated August 8, 2014 (as the same may be amended, the "Master Lease").
- B. Landlord intends to open a hotel in the Building (the "Hotel") to be known as Trump International Hotel, The Old Post Office, Washington D.C.
- C. Landlord desires to sublease to Tenant and Tenant desires to hire from Landlord approximately 9,344 square feet of restaurant space, consisting of approximately 2,806 square feet on the first floor, and approximately 2,700 square feet on the mezzanine level of the Building (approximately 1,500 on one mezzanine level and approximately 1,200 square feet of slightly raised mezzanine level) as well as 1,838 square feet on the ground floor and approximately 2,000 square feet for outdoor dining.

NOW, THEREFORE, for the mutual covenants set forth herein and other good and valuable consideration, the receipt of which is hereby acknowledged, Landlord and Tenant, for themselves, their heirs, executors, administrators, legal representatives, successors and assigns, hereby covenant as follows:

1. **Definitions.** Each initial capitalized term used in this Sublease has the meaning given to it in Exhibit A to this Sublease unless otherwise indicated.
2. **Demise.** (a) Landlord hereby leases to Tenant, and Tenant hereby hires from Landlord, the premises, including all rights appurtenant thereto, depicted on Exhibits B1 and B2. (the "Demised Premises").

(b) Notwithstanding anything to the contrary, if the Master Landlord does not consent to the subleasing evidenced by this Sublease within thirty (30) days after the date of this Sublease, then this Sublease will be deemed automatically terminated and of no further force or effect. In the event of such termination, and at the request of either Landlord or Tenant, Landlord and Tenant shall enter into a brief termination agreement to memorialize such termination.

3. Term.

- a. Generally. Unless cancelled or terminated as provided in this Sublease, the term of this Sublease (the "**Term**") shall commence on the Commencement Date and end on the date that occurs immediately prior to the twentieth (20th) anniversary of the Commencement Date (the "**Expiration Date**"), both dates inclusive.
- b. Commencement Date. The "**Commencement Date**" shall be the earlier of: (i) the Delivery Date and (ii) the date Tenant or anyone claiming by, through or under Tenant, occupies any portion of the Demised Premises for construction of Tenant's Work, the conduct of Tenant's business or otherwise. "**Delivery Date**" means the date that the Landlord delivers physical possession of the Demised Premises to Subtenant vacant and in broom-clean condition with the Landlord's Work substantially complete except for the Punchlist Items and any portion of Landlord's Work, if any, that is specifically listed on Exhibit C as not being required to be completed as of the Delivery Date; provided, however, if the Landlord delivers such physical possession more than five (5) days before the Anticipated Delivery Date then the Delivery Date will be five (5) days before the Anticipated Delivery Date. As used herein the term "**Punchlist Items**" shall mean any items of construction of the Landlord's Work that remain to be completed, that while incomplete will not materially interfere with or materially delay any portion of Tenant's construction of the Tenant's Work and the completion of which can and will be done so as not to materially interfere with or materially delay the Tenant's Work. It is presently contemplated that the Delivery Date shall occur on or about October 1, 2015. The Delivery Date shall not occur prior to October 1, 2015 without the Tenant's written consent. Landlord shall give Tenant at least ninety (90) days' prior notice ("**Delivery Date Notice**") of the Delivery Date. The date as established by Landlord's notice in accordance with the preceding sentence is referred to as the "**Anticipated Delivery Date**". If the actual Delivery Date does not occur on or before the then effective Anticipated Delivery Date, then a new notice of Anticipated Delivery Date shall be delivered, which notice shall be delivered at least 45 days prior to the new Anticipated Delivery Date. In the event the actual Delivery Date does not occur on or before June 1, 2016, then Tenant shall be entitled to a credit against the first Base Rent payable after the Rent Commencement Date of two (2) days of Base Rent for each one (1) day that occurs after June 1, 2016 up to and including the actual Delivery Date. In the event that the actual Delivery Date does not occur on or before December 31, 2016, Tenant shall have the right to terminate this Sublease, exercisable upon written notice delivered to Landlord on or before January 31, 2017, TIME BEING OF THE ESSENCE. In the event that Tenant validly terminates this Sublease pursuant to the immediately preceding sentence, Landlord shall (i) return any rent or other deposit paid by Tenant to Landlord, if any, and (ii) reimburse Tenant for its reasonable actual third-party out-of-pocket expenses paid by Tenant in connection with the negotiation of this Sublease and the design, permitting and other soft costs in connection with the Tenant's Work, subject to delivery to Landlord of such reasonable evidence and back up of such expenses; provided,

however, Landlord's reimbursement obligation under Section 3(b)(ii) shall not exceed fifty thousand dollars (\$50,000). The Commencement Date shall be confirmed, along with other matters, by written notice sent by Landlord (the "**Commencement Notice**"). Such Commencement Notice shall be conclusive and binding on Tenant as to all matters set forth therein (provided that it shall prominently state on the first page thereof that it shall be binding unless contested within 10 business days), unless within ten (10) business days following delivery of the Commencement Notice, Tenant contests any of the matters contained therein by notifying Landlord in writing of Tenant's objections. Landlord's failure to deliver the Commencement Notice to Tenant shall not affect the determination of the Commencement Date.

c. Intentionally Deleted.

d. End of Term.

i. Quit, Surrender, Removal of Tenant's Property. Upon the cancellation, termination or expiration of this Sublease, Tenant shall not be obligated to remove any of its trade fixtures or equipment or any Installations, including Landlord's Work and Tenant's Work, however, Tenant shall remove all other Tenant's Property, and quit and surrender to Landlord the Demised Premises, broom clean, in good order and condition, ordinary wear excepted. Tenant may, except as otherwise provided in this paragraph, remove any of its trade fixtures or equipment that were installed by Tenant at Tenant's expense. If Landlord cancels or terminates this Sublease on account of an Event of Default, unless Landlord then directs Tenant to the contrary with respect to any Tenant's FF&E or Tenant's Property that cannot be removed without causing material damage to the Demised Premises (and provided that the cost of such removal and repair of damages from removal shall not be covered by the Guaranty), Tenant shall surrender to Landlord all Tenant's FF&E, and other items of Tenant's Property used in the conduct of Tenant's business in the Demised Premises and, upon Landlord's request, execute and deliver a bill of sale conveying all such property to Landlord in consideration of these premises and at no additional cost to Landlord.

ii. Holdover. Notwithstanding the foregoing, if Tenant shall fail timely to quit and surrender the Demised Premises in accordance with Subsection 3(d)(i), then Tenant shall be deemed a month-to-month tenant in the Demised Premises, and the rent payable thereunder per month shall be an amount equal to, (a) for the first two (2) months of such holdover, 150% of the Holdover Multiplier (subject to clause (b) of this sentence), (b) notwithstanding clause (a) of this sentence to the contrary, if Landlord commences a summary holdover proceeding or other suit or proceeding of any kind or nature on account of such holdover, 200% of the Holdover Multiplier for the portion of the first and second months of such holdover

from and after the commencement of suit proceeding or other suit, and (c) whether or not Landlord has commenced such a suit or proceeding, for the third and each subsequent month of such holdover, 200% of the Holdover Multiplier. The "**Holdover Multiplier**" means the sum of all Base Rent and Additional Rent (including Annual Percentage Rent) payable with respect to the last full calendar month of the Term occurring prior to the cancellation, termination or expiration, as applicable. The foregoing provision shall not, and shall not be deemed to, operate as a consent by Landlord for any such holdover tenancy.

4. Use and Exclusivity.

a. Use. Tenant shall use and occupy the Demised Premises for a first-class in all respects, restaurant, adhering to the concept described in Exhibit F to this Sublease (the "**Style Concept**") and serving beer, wine and liquor, named "The National" or "The National Dining Rooms and Bar by Geoffrey Zakarian" or a variation on same, or such other name as Landlord approves, such approval not to be unreasonably withheld (the "**Restaurant Name**"), all in strict accordance with the Operating Standards and other provisions of this Sublease, and for no other purpose. Notwithstanding anything to the contrary, Tenant shall not at any time use or occupy the Demised Premises in violation of this Sublease, Legal Requirements or the certificate of occupancy or equivalent issued for the Demised Premises. Without limiting the foregoing, Tenant agrees that the value of the Demised Premises and the reputation of the Landlord will be seriously injured if the Demised Premises are used for any Obscene Use or any Ground Lease Prohibited Uses and Tenant shall not use the Demised Premises for any Obscene Use or any Ground Lease Prohibited Uses or permit or suffer the Demised Premises to be used for any Obscene Use or any Ground Lease Prohibited Uses. Tenant agrees that if at any time Tenant breaches the foregoing provisions, such violation shall be deemed a breach of a substantial obligation of this Sublease.

b. Exclusivity

i. Exclusivity Restriction on Landlord. From and after the Commencement Date and throughout the Term, unless (a) Tenant fails to initially open the Restaurant required by this Sublease for business to the public at the Demised Premises on the Grand Opening Date or (b) after opening as aforesaid, Tenant thereafter fails to keep open to the public and continuously operate the Restaurant (other than Approved Closures), Landlord shall not sublease space in the Building that is leased to Landlord under the Master Lease for use as, and each sublease entered into by Landlord after the date hereof in the Building for a restaurant shall prohibit use as, a restaurant that (1) is semi-casual (but excluding fast casual or any ready-to-eat menu), with an intimate ambiance, and offering an accessible, unpretentious menu, if same includes any apparent French aspect, such as a French word in the

name or French named dishes, in its marketing, or (2) includes "bistro" (or some variation of "bistro") in its name or marketing descriptions. Notwithstanding anything to the contrary, the foregoing restrictive covenant shall not be applicable to (t) any "gastro pub"; (u) any restaurant that is a steakhouse; (v) any restaurant that is principally a coffee or bakery house; (w) any restaurant whose menu features or specializes in a single type of ethnic or regional food (for example purposes only, and not limitation, Japanese, Mexican, Italian, Spanish, Cajun, French (provided it is fine dining, wherever located, or a café, bakery or quick service restaurant, if not located on the Lobby Level with access to the Building's main public lobby), or Southern food; (x) any restaurant that emphasizes self-service; or (y) the sale of foods intended for off-premises consumption. In the event Landlord receives from Tenant written notice of the existence of a use in the Building that is in violation of the foregoing restrictive covenant (a "**Tenant's Notice of Violation of Restrictive Covenant**"), Landlord shall use reasonable efforts to enforce the provisions of subleases and other agreements with "rogue" tenants in order to protect such restrictive covenant. Landlord shall not be deemed to be in breach of its obligation under this Subsection 4(b)(i) if (A) it commences enforcement of the provisions of such "rogue" tenant's sublease (i.e., issues a written notice under such sublease) that is the subject of a Tenant's Notice of Violation of Restrictive Covenant within fifteen (15) days after Landlord's receipt thereof and thereafter continues to diligently pursue reasonable efforts to enforce the provisions of such sublease, to the extent that Landlord may lawfully do so, or (B) a court of competent jurisdiction determines that, for any reason, the use that is the subject of a Tenant's Notice of Violation of Restrictive Covenant may be permitted to continue in existence. In the event Landlord receives a written assertion from counsel to a third party, whether a Governmental Authority or a private party, claiming that the terms and conditions of this Subsection 4(b)(i) constitute a violation of Legal Requirements and Landlord's counsel advises in a written opinion a copy of which is provided to Tenant that such claim has sufficient legal merit to sustain a suit, arbitration hearing or other legal proceeding that has a reasonable prospect of prevailing, then unless Tenant agrees to waive the enforcement of the foregoing restrictive use covenant, if Tenant still requests Landlord to continue to enforce a covenant implementing this Subsection 4(b)(i) Tenant shall defend, hold harmless and indemnify Landlord and each other Landlord Indemnified Party from and against any and all Claims arising from, connected with or related to all or any part of this Subsection 4(b)(i) including the enforcement thereof. Any provision herein notwithstanding, any restaurant may serve "French" style items that are small part of its menu.

- ii. Exclusivity Restriction on Tenant. Tenant, Avignon Enterprises LLC ("**Avignon**"), and each Principal jointly and severally covenant not to open or operate, or to permit or suffer the opening or operation of any other "The National" branded restaurant within a 15 mile radius of the Demised Premises during the Term.
- iii. Exclusivity in Event of Early Termination. Tenant, Avignon, and each Principal,

jointly and severally, covenant and agree that if upon or after the occurrence of an Event of Default the Term will be cancelled or terminated, neither it, he nor she shall engage in, own or conduct directly or indirectly any "The National" branded restaurant within a 15 mile radius of the Demised Premises for a period of eighteen (18) months after said cancellation or termination.

- iv. Trademark. Each of Avignon and Geoffrey Zakarian hereby represents and warrants to Landlord that Avignon and Geoffrey Zakarian together own all right, title and interest in the trademarks "The National" and "Zakarian" for use in connection with restaurant services in the United States and has licensed such trademarks to Tenant for use in naming, advertising, promoting and marketing the Restaurant, for a period of at least seven (7) years from the date hereof.

5. Rent.

a. Base Rent.

- i. Generally. Commencing on the Rent Commencement Date, Tenant shall pay to Landlord an annual minimum rent (the "**Base Rent**"). The "**Rent Commencement Date**" shall be the earlier of (a) the ninetieth (90th) day after the Grand Opening Date, and (b) the ninetieth (90th) day after the first date on which Tenant or anyone claiming by, through or under Tenant, engages in the sale of food and beverage in the Demised Premises, provided, however, for purposes of this clause (b) only, the conduct of tastings and trial operations prior to opening to the public shall not constitute conducting business if no fee or other charge is imposed for attendance at such tastings, for the food or beverages offered at such tastings, or otherwise in connection with such tastings. Base Rent shall be due and payable in equal monthly installments in advance on the Rent Commencement Date and on the first day of each calendar month thereafter. If the Rent Commencement Date falls on a date other than the first day of a calendar month, the Rent due for such fractional month shall be prorated on a per diem basis for the portion of such fractional month occurring on or after the Rent Commencement Date. Notwithstanding the foregoing, Tenant shall pay to Landlord on the Effective Date the sum of Twenty-Nine Thousand, One Hundred and Sixty Seven Dollars (\$29,167), which amount will be applied to the first installment of Base Rent due and payable under this Sublease after the Rent Commencement Date.

The "**Possession Date**" means the date that is the later of (i) Delivery Date and (ii) provided that (1) Tenant has, in good faith, applied to obtain, at the first reasonable time to do so, such authorization from the General Services Administration of the United States of America (the "**GSA**") as is necessary to commence construction of the portion of the Tenant's Work

scheduled in the Tenant's Work Schedule (as such term is defined in Exhibit D3 to this Sublease) as reviewed and approved by Landlord to commence on the Delivery Date (including all other related Permits, the "Initial Work Authorization") and thereafter diligently prosecuted such application, including, without limitation, promptly supplying all additional information and documentation as may be requested by the GSA, and (2) any failure of such Initial Work Authorization to issue by the Delivery Date was not due to the Tenant's fault or delay, the date the Initial Work Authorization is issued.

ii. Initial Term Base Rent. Base Rent shall be at the following rates:

<u>Period</u>	<u>Base Rent</u>	<u>Monthly Installments</u>
From Rent Commencement Date For 36 months to end of three years	\$350,000.04	\$29,166.67
From the beginning of the Fourth (4 th) year to the end of the Sixth (6 th) year	\$371,000.04	\$30,916.67
From the beginning of the Seventh (7 th) year to the end of the Ninth (9 th) year	\$393,260.04	\$32,771.67
From the beginning of the Tenth (10 th) year to the end of the Twelfth (12 th) year	\$416,855.64	\$34,737.97
From the beginning of the Thirteenth (13 th) year to the end of the Fifteenth (15 th) year	\$441,866.88	\$36,822.24
From the beginning of the Sixteenth (16 th) year to the end of the Eighteenth (18 th) year	\$468,378.96	\$39,031.58
From the beginning of the Nineteenth (19 th) year to the Expiration Date	\$496,481.64	\$41,373.47

If the Rent Commencement Date falls on a date other than the first day of a calendar month, the Base Rent due for the calendar month in which the Rent Commencement Date occurs and the calendar month in which the Term expires will be prorated on a per diem basis for the portion of each such

fractional month falling within the Term.

b. Percentage Rent.

- i. Generally. In addition to Base Rent, Tenant shall pay to Landlord as an item of Additional Rent a sum ("**Annual Percentage Rent**") for each calendar year or part thereof occurring during the Term on or after the Rent Commencement Date equal to six percent (6%) (the "**Rate of Percentage Rent**") of the amount by which Gross Sales during such calendar year or part thereof exceeds the quotient (the "**Natural Break Point**") derived by dividing (i) the Base Rent payable for such calendar year or part thereof by (ii) the Rate of Percentage Rent for such calendar year or part thereof (the "**Natural Break Point**"). Percentage Rent shall be due and payable in installments on a "rolling basis" on the twentieth (20th) of each calendar month beginning with the calendar month first occurring after the calendar month in which the Gross Sales for the applicable calendar year or part thereof first exceeds the applicable Natural Break Point for such calendar year or part thereof. An installment of Annual Percentage Rent due and payable in accordance with this Sublease on account of a calendar month is sometimes hereinafter referred to as "**Monthly Percentage Rent**".
- ii. Regular Reporting Requirement. Tenant, on or before the twentieth (20th) of each calendar month during the Term, shall deliver to Landlord at Landlord's Address for Payment, or at such other place or in such other reasonable manner as Landlord shall designate in writing from time to time, a statement certified by an executive officer of Tenant setting forth the total amount of Gross Sales made during the preceding calendar month and year-to-date (each a "**Monthly Gross Sales Statement**"). Tenant, on or before sixty (60) days after each calendar year ending during the Term and sixty (60) days after the last day of the Term shall furnish to Landlord at Landlord's Address for Payment, or at such other place or in such other reasonable manner as Landlord shall designate in writing from time to time, a statement certified under oath to be true, correct and complete by an executive officer of Tenant setting forth the total amount of Gross Sales made during the calendar year or the balance of the Term, as applicable (each, an "**Annual Gross Sales Statement**").
- iii. Supplemental Reporting Requirement. If Tenant's Gross Sales are required to be reported on any federal, state or local sales tax return or other tax return (each, a "**Sales Tax Return**") and Gross Sales as so reported on any of said returns or any amendment of any of said returns exceed the Gross Sales in any Monthly Gross Sales Statement, Annual Gross Sales Statement or Landlord's Audit Statement (or any relevant combination of the foregoing, for example without limitation, the

aggregate of three months of Monthly Gross Sales Statement with respect to a quarterly sales tax return), then the Gross Sales for purposes of determining Monthly Percentage Rent and/or the Annual True-Up Percentage Rent shall be deemed to be the highest figure as so reported; or if any Governmental Authority shall increase the Gross Sales reported by Tenant on any Sales Tax Return to an amount that exceeds the Gross Sales in any Monthly Gross Sales Statement, Annual True-Up Percentage Rent Statement or Landlord's Audit Statement (or any relevant combination of the foregoing, for example without limitation, the aggregate of three months of Monthly Percentage Statement with respect to a quarterly sales tax return) or reported on any Sales Tax Return then the Gross Sales for purposes of determining Monthly Percentage Rent and Annual True-Up Percentage Rent shall be deemed to be such higher figure. Within ten (10) days of the filing of any Sales Tax Return, including any amended tax return, or the receipt by Tenant of any such governmental audit results, Tenant shall deliver to Landlord at Landlord's Address for Payment, or at such other place or in such other manner as Landlord shall designate in writing from time to time, a statement (a "**Supplemental Percentage Rent Statement**") certified under oath to be true, correct and complete by an executive officer of Tenant setting forth the total amount of increased Gross Sales if any for each applicable period in which any Monthly Gross Sales Statement, Annual Gross Sales Statement or Landlord's Audit Statement was given or made and a copy of each Sales Tax Return (which Sales Tax Returns Landlord will disclose to Master Landlord pursuant to Section 5.3(f) of the Master Lease) and, simultaneously with the delivery of the Supplemental Percentage Rent Statement, Tenant shall pay to Landlord as an item of Additional Rent, any additional amount shown by such Supplemental Percentage Rent Statement to have accrued for any period subject to a Monthly Gross Sales Statement, Annual Gross Sales Statement, Statement or Landlord's Audit Statement but previously been unpaid ("**Supplemental Percentage Rent**").

- iv. Verification of Reporting. (A) Tenant's Books and Records, including without limitation, any federal, state or local return shall be made available to Landlord, its agents and accountants and other consultants, who shall have full and free access thereto for examination and audit upon notice not less than two business days in advance to Tenant, during Business Hours. Landlord shall have the right to require Tenant and (to the extent reasonably applicable) Tenant's Personnel to provide such other information or explanation as may be reasonably necessary for a proper and complete examination and audit, and to make Tenant's Books and Records available at the Demised Premises. Such examination or audit may be conducted no more frequently than once during any 12-month period, (B) If any audit or examination of Tenant's Books and Records shall disclose that any Monthly Gross Sales Statement, Annual Gross Sales Statement or Supplemental Percentage Rent Statement understates Gross

Sales for the applicable reporting period, Tenant shall pay as an item of Additional Rent to Landlord, within fourteen (14) days of demand therefor, the resultant deficiency in Percentage Rent, plus Default Interest from the date Tenant was initially obligated to pay such Percentage Rent. Additionally, in the event that such audit or examination discloses that Tenant understated Gross Sales by three percent (3%) or more during a period of 12 months or more, or, whether or not such examination or audit discloses that Tenant understated Gross Sales, if Tenant is found to be deficient in maintaining any of Tenant's Books and Records in any manner that is expressly required to be maintained hereunder or if such examination or audit was conducted pursuant to Subsection 5(b)(v), Tenant shall also pay as an item of Additional Rent to Landlord all reasonable out-of-pocket costs and expenses paid by Landlord to third parties to conduct such examination or audit including all reasonably necessary travel expenses incurred by Landlord in conducting such audit, which Tenant's payment shall be due and payable within fourteen (14) days of demand therefor from time to time. Any provision herein notwithstanding. The provisions of this Subsection 5(b)(iv)(B) shall not apply to an audit or examination to the extent relating to a period that shall have ended more than 3 years prior to the audit or examination.

- v. Failure to Report. Without limitation of any obligation to pay Default Interest or any other remedies, if Tenant does not timely deliver any Monthly Gross Sales Statement, Annual Percentage Rent Statement or Supplemental Percentage Rent Statement, Landlord shall provide notice to Tenant (provided that such notice shall not be required if such failure is repeated more than twice in any 12-month period, and if Tenant has not cured such failure within five business days and provided, further, that for purposes of giving notice of a failure to deliver a Supplemental Percentage Rent Statement, failure may be presumed if the Supplemental Percentage Rent Statement is not delivered when the tax return or amended tax return is due), then Tenant shall pay to Landlord as an item of Additional Rent a late reporting fee in the amount of One Hundred Dollars (\$100.00) for each day beyond the date such Monthly Gross Sales Statement or Annual Gross Sales Statement was due that Tenant does not submit the required report, until such report is submitted and Landlord shall have the right to make, at Tenant's sole cost and expense, an examination or audit of Tenant's Books and Records and to prepare the statement or statements that Tenant has failed to prepare and deliver (provided Landlord shall not be obligated to certify such statements) (a "**Landlord's Audit Statement**"). The Landlord's Audit Statement shall be deemed to be correct apart from manifest mathematical errors. Tenant shall pay to Landlord as an item of Additional Rent all reasonable costs and expenses paid or incurred by Landlord arising from, connected with or related to such audit which payment shall be due and payable within ten (10) business days of demand therefor from time to time.

vi. Record Keeping. The business of Tenant upon the Demised Premises shall be operated so that a duplicate dated sales slip, dated invoice, readout totals, register receipt or similar evidence of payment, serially numbered, shall be issued with each sale, transaction or other event resulting in Gross Sales. In the event Tenant chooses to record each sale by using a cash register, the continuous, cash register tape will be sealed or locked in such a manner that it is not accessible to the person operating the cash register. Tenant shall keep and preserve at all times at the Demised Premises, or at the corporate office of Tenant located in the continental U.S., accurate books and records of all business conducted at the Demised Premises (including the business of any subtenant, licensee, assignee or concessionaire) in accordance with generally accepted accounting principles and all Sales Tax Returns, in each case for a period of at least six (6) years following the end of the Sublease Year for which said records apply ("**Tenant's Books and Records**"). Tenant's Books and Records shall include, without limitation: (a) a general ledger or a summary record of all cash receipts and disbursements from operations on or from the Demised Premises; (b) daily sales computer records that reflect in any manner sales, income or revenue generated in or from the Demised Premises; (c) bank accounts into which all receipts of business or other revenue from operations on or from the Demised Premises are deposited; (d) all bank statements detailing transactions in or through any business bank account; (e) copies of all sales or use tax returns filed with any Governmental Authority which reflect in any manner sales, income or revenue generated in or from the Demised Premises; (f) accounts receivable; (g) inventory records, purchase orders and receiving records; (h) sales and cash receipts; (i) sales documents and disbursement journals; (j) sales returns and allowance details; (k) register tape and/or individual sales slips, sales records and other supporting documentation; and (l) such other records or accounts as Landlord may reasonably require in order to ascertain, document, or substantiate Gross Sales. If Tenant's Books and Records are insufficient to permit Landlord to conduct a proper examination or audit thereof, Tenant shall pay to Landlord, upon demand, the reasonable cost of the examination or audit, including, without limitation, all local travel expenses incurred by Landlord in conducting such examination and/or audit plus Default Interest. If any audit is required or a controversy arises regarding Percentage Rent, Tenant shall retain Tenant's Books and Records until such audit is terminated or controversy resolved notwithstanding the expiration of the above six (6) year period or the expiration, cancellation or termination of the Term. The receipt by Landlord of a statement of Gross Sales or Percentage Rent shall not constitute an admission of its correctness.

vii. Definitions. As used in this Section 5

1. **"Gross Sales"** shall mean gross revenue derived in any manner from Tenant's operations in, at, on or from the Demised Premises (including without limitation any outdoor sales area (if any), off-premises catering, catering in the Building provided by Tenant (if any), room service (if any) and take-out delivery and originating from whatever source (so long as created through Tenant's operations in the Demised Premises), whether or not Tenant, in the ordinary course of business, would credit or attribute such gross revenue to its business upon the Demised Premises, including without limitation, as of the date of the transaction, the dollar aggregate without discount of: (a) the entire sales price for all food, beverages, gift and merchandise certificates, goods, wares, merchandise, tickets, deposits, trade-ins, leased, licensed, shipped or delivered, and the receipts for all services or other operations or businesses sold or rendered at, in, on or from the Demised Premises by Tenant (including any assignees, licensees, concessionaires or subtenants of Tenant) whether for cash or on a charge or credit card including, but not limited to, such sales, leases or licenses of goods, wares, merchandise, tickets, trade-ins, beverages, food, services or other items whether or not (i) such orders originate or are accepted by Tenant at the Demised Premises but delivery or performance is made from or at any place other than the Demised Premises, or vice versa; (ii) pursuant to mail, catalog, telephone, internet, email or other similar orders received at, shipped from, or billed from the Demised Premises; (iii) by means of mechanical, electronic and other vending machines in the Demised Premises; and (iv) made as a result of solicitation off the Demised Premises conducted by personnel operating from, or reporting to, or under the supervision of, any Tenant's Personnel when they are actually located at the Demised Premises to the extent that any of the food or beverages delivered is produced or transmitted through the Demised Premises; and (v) for which Tenant accepts a trade-in of merchandise as partial or full payment, in which case the value of the trade-in shall be reported as (y) the amount credited upon the sale or (z) the documented resale value if the trade-in is sold to an unrelated third party within thirty (30) days, and the remainder of the payment, if any, for the sale shall be reported in full; and (b) all monies or other things of value received by Tenant from Tenant's operations at, upon or from the Demised Premises or attributable directly or indirectly to the use, occupation, maintenance, enjoyment or operation of the Demised Premises, that are neither included in nor excluded from Gross Sales by the other provisions of this definition, but without any duplication, including the proceeds of any business interruption insurance, service, finance or interest charges, cost of gift or merchandise certificates and gift cards and all deposits earned by services or forfeited by customers,

all display fees, slotting allowances, promotional considerations, rebates, and other payments received in any manner whatsoever related to stock, promotion or advertisement of any product or services. Each charge or sale upon installment or credit shall be treated as a sale for the full price in the month during which such charge or sale is made, irrespective of the time when Tenant shall receive payment (whether full or partial) therefor. Tenant shall not accept "barter" for its goods and services unless expressly authorized, in writing, by Landlord. If so approved by Landlord, there shall be included in Gross Sales the "real value" of goods and services received and used by Tenant in barter or otherwise for Tenant's food and beverages in connection with Tenant's acceptance of "barter cards" and/or goods and services sold or provided by Tenant through catering. The "real value" of such goods and services shall be determined by Landlord and Tenant using competitive prices for comparable goods and services received and used and sold and performed by Tenant. As used in this Subsection 5(b)(vii) the term "**Tenant**" shall include Tenant and all assignees, subtenants, licensees, concessionaires and any and all other parties conducting business on, in, at, or from the Demised Premises, jointly and severally. Notwithstanding the foregoing, Tenant shall not permit any business to be operated in or from the Demised Premises by any subtenant concessionaire, licensee, or others, except as expressly provided in this Sublease. No deduction shall be made from Gross Sales for any franchise, income, gross receipts, or other taxes (other than sales and services taxes). Any provision herein notwithstanding, Gross Sales shall not include (A) fees charged by third parties that are not affiliated with the Tenant or Principals to their invitees attending private affairs at the Demised Premises and which fees are not paid or payable to Tenant, provided that Tenant's charge to such third party for use of the Demised Premises is a fair market rate, without rebates, and the amount thereof is included in Gross Sales in addition to receipts by Tenant for goods and services supplied by Tenant or (B) receipt for goods and services not ordered from, prepared at, served at or delivered from the Demised Premises, even if such goods and or services are provided by personnel at facilities other than the Demised Premises who are supervised by Geoffrey Zakarian or (C) amounts uncollected, if previously included in Gross Sales, through refunds or credits.

- c. Additional Rent. All costs and expenses that Tenant assumes or agrees to pay pursuant to this Sublease shall, at Landlord's election, be treated as additional rent. All such costs and expenses that Landlord elects to treat as additional rent (including Percentage Rent) are referred to in this Sublease as "**Additional Rent**". In the event of non-payment of Additional Rent, Landlord shall have all of the

same rights and remedies in this Sublease as are provided for the non-payment of Base Rent and at law and equity for non-payment of rent. Each item of Additional Rent shall be due and payable as set forth in this Sublease for each such item of Additional Rent.

- d. Intentionally deleted.
- e. Payment. Tenant shall pay Base Rent and Additional Rent in lawful money of the United States which shall be legal tender in payment of all debts and dues, public and private, at the time of payment at Landlord's Address for Payment, without any set off or deduction whatsoever. In the event that, at the Commencement Date, or thereafter, Tenant shall be in default in the payment of rent to Landlord pursuant to the terms of another lease with Landlord or with Landlord's predecessor in interest, Landlord may at Landlord's option and without notice to Tenant add the amount of such arrears to any monthly installment of rent payable hereunder and the same shall be payable to Landlord as Additional Rent.
- f. Free Rent. The ninety (90) day period described in clauses (a) and (b) of the definition of "Rent Commencement Date" as applicable, are sometimes referred to as the "Free Rent Period". Notwithstanding anything contained in this Sublease to the contrary, if there exists an Event of Default or a fact or circumstance exists that but for the passage of time or the giving of notice (or both) would be an Event of Default, or if any one or more of the conditions set forth below in this Section 5(f) is not satisfied then Tenant shall not be entitled to any portion of the Free Rent Period and Tenant will be required to pay Base Rent payable under this Sublease commencing with such default, Event of Default or failure to satisfy a specified condition until Tenant has cured such default, Tenant has cured the default giving rise to such Event of Default prior to Landlord's termination of this Lease or Tenant satisfied all such condition(s), as applicable. The following conditions must have been satisfied for Tenant to be entitled to all or any part of the Free Rent Period: (i) Final Completion of the Tenant Work has occurred; (ii) Tenant has delivered to Landlord copies of all insurance policies and/or insurance certificates required under this Sublease; (iii) Tenant has fully fixtured, stocked and staffed the Demised Premises; (iv) Tenant has opened the Demised Premises for business as required under this Sublease; and (v) Tenant has furnished Landlord with the complete Close-Out Package. For the avoidance of doubt the Free Rent Period shall not be reset or extended by this Section 5(f).
- g. Legal Restrictions on Payment of Rent. If any of the Base Rent or Additional Rent payable under the terms and provisions of this Sublease shall be or become uncollectible, reduced or required to be refunded because of any Legal Requirement, Tenant shall enter into such agreement(s) and take such other steps as Landlord may reasonably request and as may be legally permissible to permit Landlord to collect the maximum rents that from time to time during the continuance of such rent restriction may be collected. Upon the termination of such rent restriction, (a) the rents shall become and

thereafter be payable in accordance with the amounts reserved herein for the periods following such termination and (b) Tenant shall pay to Landlord, to the maximum extent legally permissible, an amount equal to (i) the rents which would have been paid pursuant to this Sublease but for such rent restriction less (ii) the rents actually paid by Tenant during the period such rent restriction was in effect.

6. Escalations.

- a. Tax Contribution. Commencing on the Commencement Date, Tenant shall pay, as Additional Rent, an amount equal to Ten Dollars (\$10) per square foot in the Demised Premises (the "**Base Tax Contribution**"), as increased pursuant to Subsection 6(b) (the Base Tax Contribution, or if increased, as so increased, the "**Tax Contribution**"). Landlord and Tenant agree for all purposes of calculating the Base Tax Contribution or Tax Contribution under this Sublease that the square footage of the Demised Premises will be deemed to be 6,144 square feet. The Tax Contribution shall be due and payable in equal monthly installments in advance on the Commencement Date and on the first day of each calendar month thereafter. On each such date, Tenant shall pay to Landlord as Additional Rent an amount equal to 1/12 of the Tax Contribution. The entire Tax Contribution shall be non-refundable.
- b. Tax Contribution Escalation. If the Taxes for any Tax Year after the Base Tax Year shall be more than the Base Tax, whether by reason of an increase either in the tax rate or the assessed valuation, or both, or by reason of the levy, assessment or any tax on real estate or rents, or otherwise, then the Tax Contribution for such Tax Year shall equal the product of the Tax Contribution for the Base Tax Year multiplied by a fraction the numerator of which is Taxes for such Tax Year and the denominator of which is the Base Tax. "**Base Tax**" shall mean the Taxes for the Tax Year (the "**Base Tax Year**") that is the first full Tax Year that begins after the occurrence of a governmental real-estate-tax re-assessment of the Building and the land on which it is situated based on at least 12 months of data relating to a period commencing on or after the Grand Opening Date. If the Base Tax Year is not the 2017 Tax Year (i.e. 10/1/16 to 9/30/17), then the Tax Contribution shall increase each Tax Year through and including the Base Tax Year by 2% over the Tax Contribution for the preceding Tax Year. If the real estate tax fiscal year of the District of Columbia shall be changed or if any items included in Taxes are increased or first assessed, levied or imposed during any Tax Year, then the Tax Contribution shall be re-determined immediately (and the portion thereof due monthly shall be adjusted accordingly). For the avoidance of doubt, in no event shall the Base Rent or Additional Rent ever be reduced by operation of this Section 6.
- c. Occupancy and Rent Tax. In addition to the Tax Contribution, Tenant shall solely be responsible for the payment of any and all occupancy tax or rent tax now in effect or hereafter enacted and shall pay same to the applicable

Governmental Authority prior to the date on which the same may be deemed delinquent, provided, however, Tenant shall pay to Landlord upon demand, as Additional Rent, any occupancy tax or rent tax now in effect or hereafter enacted, if payable by Landlord in the first instance or hereafter required to be paid-by Landlord.

- d. CAM Charge. Commencing on the Commencement Date, Tenant shall pay to Landlord, as Additional Rent, an annual payment (the "CAM Charge") to partially offset the Landlord's expenses incurred in respect of the repair, maintenance, operation and cleaning of the Building. The CAM Charge shall be due and payable in equal monthly installments in advance, the first such installment on the Commencement Date and on the first day of each calendar month thereafter. On each such date, Tenant shall pay to Landlord as Additional Rent an amount equal to 1/12 of the CAM Charge. The CAM Charge for the first three Sublease Years of the Term will be eight dollars (\$8) per square foot in the Demised Premises. Landlord and Tenant agree for purposes of calculating CAM Charges that the square footage of the Demised Premises will be deemed to be 6,144 square feet. Commencing three years after the Rent Commencement Date, the CAM Charge shall be \$8.48 per square foot included in the Demised Premises. Commencing with six years after the Rent Commencement Date, the CAM Charge shall be \$8.98 per square foot included in the Demised Premises. Commencing nine years after the Rent Commencement Date, the CAM Charge shall be \$9.53 per square foot included in the Demised Premises. Commencing 12 years after the Rent Commencement Date, the CAM Charge shall be \$10.10 per square foot included in the Demised Premises. Commencing 15 years after the Rent Commencement Date, the CAM Charge shall be \$10.71 per square foot included in the Demised Premises. Commencing 18 years after the Rent Commencement Date, the CAM Charge shall be \$11.35 per square foot included in the Demised Premises. The entire CAM Charge shall be non-refundable. For the avoidance of doubt, (a) payment of the CAM Charge is independent from any other fee, charge or item of Additional Rent that may be payable by Tenant under this Sublease, regardless of whether such other fee, charge or item of Additional Rent may also offset a portion of Landlord's expenses incurred in respect of the repair, maintenance, operation and cleaning of the Building (including, without limitation, any charge for trash removal, recycling or utilities) and (b) Landlord shall have no obligation to demonstrate any or all expenses incurred in respect of the repair, maintenance, operation and cleaning of the Building or account for the application of all or any portion of the CAM Charge towards any such expense.

7. Delivery; Preparation of Premises for Initial Occupancy.

- a. Failure to Give Possession. Delay in the Grand Opening Date or in the performance by Landlord of the work required by Exhibit C of this Sublease (the "Landlord's Work") or any inability of Landlord to give possession of the Demised Premises shall not subject Landlord to any liability for delay in giving possession, and the validity of this Sublease shall not be impaired under such

circumstances nor shall the same be construed in any way to extend the Term, except as expressly provided herein. If permission is given to Tenant to occupy the Demised Premises or to occupy premises other than the Demised Premises prior to the Commencement Date, Tenant covenants and agrees that such possession and/or occupancy shall be deemed to be under all the terms, covenants, conditions and provisions of this Sublease except, provided that Tenant is not responsible for the failure or inability to deliver possession or complete construction, the obligation to pay the Base Rent CAM Charges and Real Estate Taxes. Notwithstanding the foregoing, if Landlord is delayed achieving substantial completion of the Landlord's Work as a result of (a) Tenant's request for any Landlord's Additional Work, (b) Tenant's failure to furnish drawings and specifications in accordance with Section 7(b)(iii) below, (c) Tenant's changes in said drawings or specifications after final submission and approval thereof by Landlord; or (d) the performance or completion by a party employed by Tenant that constitutes a material obstruction or delay, or negligence or a breach of this Sublease including, without limitation, the failure to coordinate its work or cooperate with Landlord and Landlord's contractors, then the Commencement Date and Rent Commencement Date shall be accelerated by the number of days of such delay.

b. Preparation of Demised Premises.

- i. Landlord's Work. Landlord shall perform or cause to be performed the Landlord's Work in accordance with the terms and conditions set forth in Exhibit C and this Sublease. The Landlord's Work pursuant to this Sublease shall be performed in a workmanlike manner and in compliance with all applicable Legal Requirements.
- ii. Landlord's Additional Work. If, in connection with the preparation of the Demised Premises for initial occupancy, Landlord agrees in its sole discretion to perform, (A) at Tenant's request, any additional work over and above Landlord's Work, or (B) if Tenant's Plans (as defined below) have any elements in respect of floor loads, heating, ventilating and air conditioning, electricity, plumbing and other matters relating to the shell and core or other central systems (including, but not limited to, mechanical, electrical, plumbing, sprinkler, security and life-safety systems) of the Building that will require change or addition to the shell and core or such systems, and Landlord notifies Tenant of such change or addition in reasonable detail (including estimates as to the cost of work that will be required to make such change or addition prior to final approval of Tenant's drawings and plans described in Section 7(b)(iii)) and Tenant determines not to modify Tenant's drawings and plans to eliminate the need for such changes or additions, such work to make the changes or additions, then the work described in (A) and/or (B) above will be "**Landlord's Additional Work.**" For the avoidance of doubt, no portion of what Landlord is required to do to complete the Landlord's Work

constitutes Landlord's Additional Work. Landlord's Additional Work shall be performed by Landlord, at Tenant's expense, as a Tenant's extra. Prior to or after Landlord's consent to perform any Landlord's Additional Work, Landlord may cause to be prepared, at Tenant's expense, such drawings and specifications relating to the subject work or requirement as Landlord may desire (the "**Supplemental Building Plans**"). If any Landlord's Additional Work will require the consent of any Superior Lessor, Superior Mortgagee, Governmental Authority, utility or other Person, Landlord, at Tenant's expense, will promptly endeavor to obtain such consent, but Landlord will not be required to perform such Landlord's Additional Work unless and until such consent has been obtained. Before commencing any Landlord Additional Work, Landlord will submit to Tenant written estimates of the cost thereof. If Tenant will fail to approve any such estimate within one week, the same shall be deemed disapproved by Tenant and Landlord shall not be authorized or required to proceed thereon. Tenant shall pay Landlord, promptly upon being billed therefor, the cost of all Landlord Additional Work, and the cost for the preparation of the Supplemental Building Plans (whether or not Landlord is authorized or required to perform the work depicted or described thereon). Such sums shall be collectible as Additional Rent.

- iii. Tenant's Work. (A) Generally. Tenant shall perform all work necessary to build-out the Demised Premises as a first-class high quality restaurant consistent with top tier restaurants in Washington D.C. and the other facilities within the Building with a high-design finish and consistent with the Initial Conceptual Design Documents (as defined in Exhibit D2) attached as Exhibit D4 and consistent with other "The National" restaurants operated by Geoffrey Zakarian. The Tenant's Plans must be conceived by and implemented under the direct supervision of Geoffrey Zakarian. Tenant shall deliver all items set forth on the Tenant's Work Timeline (as defined below) as requiring submittal and cause the occurrence of each fact or circumstance listed as a Critical Milestone on Tenant's Work Timeline, in each case as set forth therefor on the Tenant's Work Timeline.

(B) Landlord's Drawing Deliveries. Tenant acknowledges that it has received from Landlord the drawings set forth on Exhibit D1 hereto, which Tenant may use at its own risk and solely in connection with the design and completion of the Tenant's Work. If Tenant has not received such drawings, then Landlord shall work diligently to provide them to Tenant as soon as practicable.

(C) Tenant's Plans. Tenant, at Tenant's expense, shall provide Landlord with the following drawings and specifications prepared by a reputable architect and/or engineer reasonably acceptable to Landlord: Conceptual Design Documents, Schematic Design Documents, Interior Design Development Documents and 95% Completed Construction Documents

(each as defined in Exhibit D2). All such drawings and specifications (including the rehabilitation tax credit cards), and any change orders or other modifications thereto, are expressly subject to Landlord's prior written approval, which approval shall not unreasonably be withheld (such drawing and specifications as so approved, the "Tenant's Plans") and must be consistent with the Initial Conceptual Design Document and Landlord shall not be entitled to any fee or charge for its review of the Tenant's Plans, any supervision fee in connection with the performance of Tenant's Work, or any fee for use of the loading dock or freight elevator at the Building for use in the performance of Tenant's Work. For the avoidance of doubt, fees and charges may apply with respect to any such review, supervision, or use related to any future Alteration or other matters. Tenant shall deliver said drawings and specifications and the Tenant's Plans to Landlord on the dates established therefor on Exhibit D3 (the "Tenant's Work Timeline"). No approval of Tenant's drawings and specifications shall in any way be deemed to be an agreement by Landlord that the work contemplated thereby complies with Legal Requirements or Insurance Requirements or that Tenant's Plans will be approved by any Governmental Authority, Superior Lessor or Superior Mortgagee. Without limiting Landlord's approval rights with respect to the Conceptual Design Documents, the elevator location shown on the Initial Conceptual Design Documents is acceptable to Landlord only if no pit will be required and work will not need to be done in the Landlord's space below the elevator.

(D) Permitting. Tenant shall prepare and file the Tenant's Plans (and, if any, the Supplemental Building Plans) and any ancillary applications, certifications or other documents (the "Ancillary Application Documents") necessary or appropriate to obtain all permits required for the Tenant's Work (including the Initial Work Authorization), at Tenant's expense, with the appropriate Governmental Authorities in such form as may be required by Governmental Authorities and shall be responsible for obtaining all Permits in connection with the Tenant's Work. Landlord shall have the option, in its discretion, to elect to deliver on Tenant's behalf the Tenant's Plans and Ancillary Application Documents to the GSA, SHPO and NPS for filing. If Tenant has not obtained the Initial Work Authorization by the Delivery Date, then Landlord shall have the right, if Tenant has not applied for all Permits promptly and diligently pursued them, or if Landlord has reasonable grounds for concluding that Tenant will be unable to obtain all Permits in a timely fashion, to terminate this Sublease, exercisable upon written notice delivered to Tenant on or before the fifteenth (15th) day after the Delivery Date, TIME BEING OF THE ESSENCE. Without limiting the foregoing, all conversations and meetings in any format (including, telephonic, electronic and in-person) with the GSA, SHPO and/or NPS must be scheduled at the reasonable convenience of, and attended by representatives of, the Landlord. Tenant must deliver to Landlord, simultaneously with delivery thereof to (or promptly after receipt thereof from) the GSA, SHPO and/or NPS as

applicable, true correct and complete copies of all correspondence, in any format (including electronic, CAD and hard copy) to, or from or with the GSA, SHPO and/or NPS.

Notwithstanding anything to the contrary, the Tenant shall not commence the Tenant Work until the Tenant has obtained the Initial Work Authorization and the NPS has issued a Historic Preservation Certification Application Amendment/Advisory Determination (an "NPS Determination") that approves the amendment requested by Landlord on account of Tenant's Work to the Historic Preservation Certification Application for the Building (the "HP App") previously approved by the NPS. Tenant shall not commence any portion of the Tenant's Work or any other Alteration until all permits required therefor, and an NPS Determination for any further amendment to the HP App for the Building requested by Landlord with consultation and approval by Tenant on account of any portion of the Tenant's Work that required a modification of the Tenant's Plan or any other Alteration, have been issued. In the event that any approval of any such amendment to the HP App is conditional then Tenant shall be obligated to comply, at Tenant's cost and expense, with the conditions set forth on the applicable NPS Determination.

(E) Performance of Tenant's Work. Tenant shall cause to be performed at Tenant's expense all of the work depicted or described in the Tenant's Plans (the "Tenant's Work"). Tenant shall cause the Tenant's Work to be performed in compliance with the terms and conditions set forth in the Sublease for Alterations, in accordance with the Tenant's Work Timeline, in a good and workmanlike manner, in compliance with all Legal Requirements, Insurance Requirements, Superior Leases and Superior Mortgages, and using only such contractors (and subcontractors at any tier of the work) as may be permitted by Section 8(b)(iii) of this Sublease.

(F) Early Entry to Demised Premises. If Landlord permits entry of such contractors and subcontractors into the Demised Premises prior to the Commencement Date, such entry shall only be at such time or times as Landlord will deem feasible in the circumstances and such license to enter shall be deemed to be conditioned upon Tenant's workers, mechanics and contractors (and their subcontractors at any tier of the work) working in harmony with, and not interfering with, the workers, mechanics and contractors (and their subcontractors at any tier of the work) of Landlord and of any other tenant or subtenant. If at any time such entry or work by Tenant causes any disharmony or interference, such license may be withdrawn by Landlord upon forty-eight hours written notice to Tenant. Workers' Compensation, public liability and property damage insurance, all in amounts, with deductibles, with companies and on forms reasonably satisfactory to Landlord, shall be provided and at all times maintained by Tenant's contractors (and their subcontractors at any tier of the work) engaged in the performance of Tenant's Work, and, before proceeding with

the work, certificates of such insurance reasonably acceptable to Landlord shall be furnished to Landlord. Such entry shall be deemed to be under all the terms, covenants, provisions and conditions of the Sublease except the covenant to pay rent and escalations. All Tenant's materials, work, installations and decorations of any nature brought upon or installed in the Demised Premises before the commencement of the term of this Sublease will be at Tenant's risk, and neither Landlord nor any party acting on Landlord's behalf will be responsible for any damage thereto or loss or destructions thereof, except to the extent same is caused by the gross negligence or willful misconduct of Landlord or contractors of Landlord.

- iv. Tenant's Allowance. On account of the costs and expenses paid by Tenant for Tenant's Work in connection with the initial preparation of the Demised Premises, Tenant shall be entitled to, subject to the procedures and other terms and conditions set forth in Exhibit G of this Sublease and compliance with the terms and conditions of this Sublease (including the provisions hereof relating to Alterations), the amount of One Million Two Hundred Forty Seven Thousand Four Hundred Dollars (\$1,247,400) (the "**Tenant's Allowance**") from Landlord. Notwithstanding anything to the contrary, Tenant shall not be entitled to the Tenant's Allowance or any portion thereof at any time during the continuance of a default or at any time after the occurrence of an Event of Default unless such Event of Default shall be cured prior to Landlord's termination of this Sublease. Without limiting the foregoing, if Tenant is in default in the payment of any sums due under this Sublease, Landlord shall have the right to offset the amounts due and owing to Landlord from any portion of the Tenant's Allowance being paid to Tenant.

- c. Condition of Demised Premises. Landlord makes no representation as to the condition of the Demised Premises and no warranties or guarantees, express or implied, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, with respect to workmanship or any defects in material, and no promise to decorate, alter, repair or improve the Demised Premises either before or after the Effective Date except as may be expressly set forth in this Sublease. Tenant agrees to accept the Demised Premises in its AS IS WHERE IS condition on the Delivery Date and subject to any violations not interfering with Tenant's usage in accordance herewith (including, without limitation, its applications for work related permits and performance of improvements), whether or not of record; provided that the Demised Premises are delivered in the condition required hereunder, and provided further that Landlord shall remain responsible for punchlist items from Landlord's Work not completed in accordance with the requirements hereof and set forth in a written list provided by Tenant at a walk through on or about the Delivery Date (after correction by Landlord for any improper inclusions by Tenant, the "**Landlord's Work Punchlist**"); provided further that this sentence shall not reduce Landlord's duties for maintenance and

repair of the Building as set forth herein. Without limiting the foregoing, Landlord shall not be liable for any change of condition in the Demised Premises caused by the compliance with any present or future Legal Requirements, including any change required by Legal Requirements for off-street parking or similar legislation, or by revocation by any such authority or authorities of any permit or license heretofore granted, or by construction or operation of any public or quasi-public work, or by the erection of any building or buildings upon any adjacent property, or by change of environment. Landlord shall not be liable for interference with or loss of light or other incorporeal hereditaments caused by anybody other than Landlord, or caused by or for any governmental or quasi-governmental agency or authority in connection with the construction of any public or quasi-public work. In addition, Landlord agrees to correct any defective work constituting a part of Landlord's Work that could not have been discovered by a reasonably thorough inspection on or before the Delivery Date ("**Latent Defect**") after receipt of written notice from Tenant given within six (6) months of the Grand Opening Date and promptly after Tenant's discovery of such Latent Defect and describing such Latent Defect with specificity. If any such correction requires the uncovering, disturbance or change of Tenant's Work or other Alterations performed by or on behalf of Tenant, then Tenant shall be responsible to perform the work to uncover, disturb or change such Tenant's Work or other Alterations and Landlord and Tenant shall each be responsible for one-half of the cost of such uncovering, disturbance or change and one-half of the cost of any subsequent restoration of Tenant's Work or other Alteration. Without limiting the preceding sentence, after discovery of a Latent Defect Tenant shall not perform any Tenant's Work or other work or installation of FF&E that may impede, handicap or obstruct Landlord's efforts to correct such Latent Defect.

8. Alterations.

- a. Generally. Tenant shall not, unless expressly authorized by this Sublease, make any alterations, installations, additions or improvements in or to the Demised Premises (each, an, "**Alteration**") without in each case receiving Landlord's prior written consent thereto, which shall not be withheld unreasonably. For the avoidance of doubt, the Tenant's Work is an Alteration and must comply with all provisions of this Sublease relating to Alterations generally and to the Tenant's Work specifically, except as to costs of approval to the extent provided in Section 7 above.
- b. Conditions Precedent to Alterations. The following are further conditions precedent to Tenant's right to make any Alteration:
 - i. Notice. Tenant shall give Landlord not less than fifteen (15) days' prior written notice of each Alteration that Tenant proposes to undertake, which notice shall include:

- A. A detailed description of the proposed Alteration; and
 - B. Any and all information reasonably requested by Landlord.
- ii. Plans and Specifications. Tenant, at Tenant's sole cost and expense, shall prepare and furnish to Landlord detailed project specifications and design drawings (and architectural and engineering working drawings where it would be prudent in Landlord's judgment to have same prepared), together with such other matters as Landlord may reasonably request, in connection with such Alteration. All such drawings and specifications, and any change orders or other modifications thereto, are expressly subject to Landlord's prior written approval, which shall not be unreasonably withheld. After Landlord completes its review process regarding the specifications and design drawings, unless Landlord has disapproved same, Landlord will submit the specifications and design drawings as approved to the Master Landlord, at Tenant's sole cost and expense, for any required review and approval. If and when Master Landlord approves the required specifications and design drawings, then Tenant shall, at Tenant's sole cost and expense, file all required architectural, mechanical and electrical drawings with all appropriate Governmental Authorities and obtain all necessary Permits and Approvals. If an engineer is required in connection with any Alterations, Tenant shall use (as Tenant's sole cost and expense) the engineer designated by Landlord with respect to the preparation of Tenant's engineering working drawings in connection with such Alterations provided such engineer works at fair market rates. Tenant shall also reimburse Landlord for all costs and expenses paid or incurred by Landlord for any Governmental Authority reviews required as a part of Landlord's and/or Master Landlord's review and upon completion, provide two (2) copies (one (1) of which will be delivered to the Master Landlord) of record drawings of the portion of the Building and/or Demised Premises affected by the Alterations. No approval of Tenant's drawings and specifications shall in any way be deemed to be an agreement by Landlord that the work contemplated thereby complies with Legal Requirements or Insurance Requirements or that Tenant's Plans will be approved by any Governmental Authority, Superior Lessor or Superior Mortgagee.
- iii. Acceptable Contractors. Tenant shall advise Landlord in writing of Tenant's general contractor or construction manager and all contractors and subcontractors who are to perform each Alteration, and such general contractors, construction managers, contractors and subcontractors shall be subject to Landlord's prior written approval, which will not be unreasonably withheld, and to all approvals required pursuant to the Master Lease;
- iv. Permits. At Tenant's sole cost and expense, Tenant shall before making

any Alterations, obtain and thereafter comply with all required Permits and upon completion obtain all Approvals and deliver promptly duplicates of all such Permits and Approvals to Landlord;

- v. Intentionally deleted.
- vi. Quality. All Alterations shall be of material, manufacture, design, capacity and color at least equal to the standards for the Tenant's Work as set forth in Exhibit D4 and/or the Tenant's Plans. All work must be performed in a good and workmanlike manner; and
- vii. Landlord's Costs. Tenant shall pay Landlord as an item of Additional Rent (1) Landlord's reasonable costs and expenses for services related to Alterations (other than the Tenant's Work) including, without limitation, for plan review and supervision, and (2) all cost and expenses paid or incurred by Landlord including costs and expenses incurred by Landlord pursuant to any Superior Lease (including the Master Lease) and/or Superior Mortgage (including the Existing Superior Mortgage) arising from Alterations, including the cost and expenses arising from, connected with or related to any review, approval, consent or supervision requested from or required by any superior lessor or the holder or a superior mortgage or under any superior lease or superior mortgage. Tenant's payment of all such fees, charges, costs and expenses shall be due and payable within ten (10) business days of demand therefor from time to time.
- viii. Tenant's Prompt Payment. Tenant shall pay all of the costs and expenses of all Alterations when such costs and expenses are due. Immediately following each such payment, Tenant shall provide Landlord with copies of lien waivers from Tenant's contractors and subcontractors at every tier with respect to the work covered by such payments.
- c. Rubbish Removal. During the period in which any Alteration is being performed, Tenant shall be responsible for removal of its and its contractors' rubbish, refuse, garbage and waste from the Demised Premises and the Building. Promptly following completion of any Alterations, Tenant shall remove all temporary structures, surplus materials, debris and rubbish of whatever kind remaining in the Building which were brought in or created in the performance of the Alteration.
- d. Covering Work. Prior to the commencement of any Alteration visible from outside of the Demised Premises, Tenant shall either frost or cover the exterior windows of the Demised Premises and otherwise cover up the work in a manner reasonably satisfactory to Landlord so as to maintain the appearance of the exterior and interior of the Building.
- e. Labor Harmony. Notwithstanding any approval by Landlord or Master

Landlord, Tenant agrees that Tenant will not, either directly or indirectly, use contractors (or subcontractors at any tier) and/or labor and/or materials if the use at any time of any of such contractors and/or labor and/or materials would or will create any difficulty with other contractors (or subcontractors at any tier) and/or labor engaged by Tenant or Landlord or others in the construction, maintenance, repair, restoration and/or operation of the Building or any part thereof. Without limiting any other compliance requirement and for the avoidance of doubt, except to the extent non-compliance is permitted by that certain letter dated October 21, 2014 from the GSA to the Landlord (a copy of which is attached hereto as Exhibit L), Tenant shall comply with and cause its contractors to comply with the reporting requirements evidencing Tenant's and its contractors' compliance with the construction wage rates applicable to an Alteration under the Davis-Bacon Act, 40 U.S.C. § 276a *et seq.*

- f. Compliance with Law, Insurance Requirements; Superior Leases and Superior Mortgages. Without limiting any other provision of this Sublease, all Alterations shall be (A) performed in compliance with all Legal Requirements, all Insurance Requirements, each Superior Lease (including the Master Lease) and each Superior Mortgage (including the Existing Superior Mortgage), including all construction requirements, and (B) made in such a way that, upon completion thereof, the Demised Premises shall be in full compliance with all Legal Requirements, including, the Americans with Disabilities Act, as amended, all Insurance Requirements, and with each Superior Lease (including the Master Lease) and each Superior Mortgage (including the Existing Superior Mortgage).
- g. Minimizing Disturbances; Supervision; Coordination. Tenant agrees that each Alteration must be performed with the least possible disturbance to any occupants of the Building and with no disturbance to any structural components of the Building, and, except as necessary for hookups and connections and any similar minor work, the Building System or utilities. Any work on any structural component of the Building or Building System shall be coordinated with Landlord. All Alterations must be performed in accordance with good construction practice and Tenant shall be responsible for all site safety and security in connection with such Alteration. Tenant shall supervise and direct all Alterations, using Tenant's best skill and attention. Tenant shall keep in its employment, during the performance of the Work, a competent on-site superintendent. Tenant shall coordinate timing and performance of all phases of Alterations with Landlord and other contractors on site.
- h. Structural Alterations. In no event shall Landlord be required to consent to any Alterations that would physically affect any structural part of the Building or would in Landlord's judgment adversely affect the proper functioning of any of the Building Systems. If Landlord consents to any Alterations that are structural or affect any Building System, Tenant shall, at its sole cost and expense leave all structural elements and systems that may be affected by such Alterations in good and workmanlike operating condition acceptable to Landlord but in no event less

than the condition thereof existing prior to the performance of such Alteration.

- i. Landlord's Access. Without limitation of Section 20 below, at any and all times during the progress of each Alteration, Landlord shall be entitled to have a representative or representatives on the site to inspect such Alteration, and such representative or representatives shall have free and unrestricted access to any and every part of the Demised Premises.
- j. Security. For any Alteration which cost more than Fifty Thousand Dollars (\$50,000), Landlord shall have the right to require Tenant to provide Landlord with appropriate evidence of Tenant's ability to complete and pay for the completion of the Alterations, such as (i) Tenant providing a payment bond, letter of credit, or funds deposited in a separate construction account for the estimated cost, and/or (ii) any of Tenant's contractors' providing a performance/completion bond.
- k. Sprinklers. Notwithstanding anything contained in this Sublease to the contrary, if the applicable board of fire underwriters or the Insurance Services Office or any bureau, department or official of the federal, state or city government require or recommend the installation of a sprinkler system other than as may be already installed in the Demised Premises as of the date hereof or that will be installed prior to the Commencement Date pursuant to the Landlord's Work or Tenant's Work, or that any changes, modifications, alterations, or additional sprinkler heads or other equipment be made or supplied in an existing sprinkler system by reason of Tenant's business, or the location of partitions, trade fixtures, or other contents of the Demised Premises, or for any other reason, or if any such sprinkler system installations, changes, modifications, alterations, additional sprinkler heads or other such equipment, become necessary to prevent the imposition of a penalty or charge against the full allowance for a sprinkler system in the fire insurance rate set by any of the foregoing bodies or by any fire insurance company, Tenant shall, at Tenant's sole cost and expense and in compliance with all requirements for Alterations, promptly make such sprinkler system installations, changes, modifications, alterations, and supply additional sprinkler heads or other equipment and materials as required whether the work involved shall be structural or non-structural in nature.
- l. Mechanic's Liens. If any mechanic's lien is filed against the Demised Premises or the Building, for work claimed to have been done for, or materials claimed to have been furnished to, Tenant, directly or indirectly whether or not done pursuant to this Section 8 or the Tenant's Work, the same shall be discharged by Tenant within the earlier of (i) the earliest time required under any Superior Lease or Superior Mortgage or related document and (ii) fifteen (15) days after Tenant becomes aware of such mechanic's lien (whether by notice from Landlord in accordance with this Sublease, notice from the claimant under such lien or otherwise) at Tenant's sole cost and expense, by payment or by filing the bond required by Legal Requirements.

- m. Ownership of Installations. All fixtures and all paneling, partitions, railings and like installations, installed in the Demised Premises at any time ("**Installations**"), either by Tenant or by Landlord on Tenant's behalf, shall, upon installation, become the property of Landlord and shall remain upon and be surrendered with the Demised Premises. Nothing in this Section 8 shall be construed to give Landlord title to, or to prevent Tenant's removal of, Tenant's FF&E, but upon removal of any such items from the Demised Premises or upon removal of Installations as may be required by Landlord, Tenant shall immediately and at its sole cost and expense, repair and restore the Demised Premises to the condition existing prior to installation and repair any damage to the Demised Premises or the Building due to such removal. All property permitted or required to be removed by Tenant at the end of the Term remaining in the Demised Premises after Tenant's surrender of the Demised Premises shall be deemed abandoned and may, at the election of Landlord, either be retained as Landlord's property or may be removed from the Demised Premises by Landlord at Tenant's sole cost and expense.
- n. Stop Work Order. Without limitation of any other remedy available to Landlord under this Sublease or at law or in equity for a default by Tenant in the conduct of an Alteration, Landlord may, but shall have no obligation to, issue a written order to Tenant to stop work on any Alteration, or any portion thereof, whereupon Tenant shall immediately stop the performance of all work on such Alteration until the cause for such order is eliminated.

9. Maintenance and Repair.

- a. Generally. Tenant shall, at its sole cost and expense, take good care of the Demised Premises (including the space above the lower floor slab of each level to the lower surface of the floor slab(s) above any hung ceiling(s) including the space above any hung ceiling, the Installations and the Tenant's Property and, without limiting the foregoing, all in accordance with the Applicable Standards (as such term is defined in the Master Lease)). Tenant shall be responsible for and shall promptly make all repairs in and to the Demised Premises. Tenant shall be responsible for and shall promptly make all repairs, interior and exterior, structural and nonstructural, ordinary and extraordinary, in and to the Building outside of the Demised Premises the need for which arises out of (a) the performance or existence of any Tenant's Work, Alterations or other work by Tenant, (b) the installation, use or operation of Tenant's Property (but excluding Landlord's Work and ordinary wear and tear and Landlord's standard maintenance obligations hereunder), (c) the moving of Tenant's Property in or out of the Demised Premises or the Building, or (d) any act that is inconsistent with prudent standards for operating a first-class restaurant or which breaches a legal responsibility or violates a Legal Requirement, Culpable Omission, breach of this Sublease by Tenant or any subtenant or licensee, or their respective employees, agents, contractors or (while in the Demised Premises or, if not also guests of the Hotel,

while traveling to and from the Demised Premises) invitees. Tenant, at its sole cost and expense, shall promptly replace all scratched, damaged or broken doors and glass in and about the Demised Premises. Tenant shall be responsible for all repairs, painting, maintenance and replacement of wall and floor coverings in the Demised Premises. Tenant shall be responsible for the repair, maintenance and replacement of all mechanical, electrical, sanitary, heating, ventilating, air-conditioning, life-safety and other fixtures and equipment (i) located in the Demised Premises unless installed by Landlord for serving other areas of the Building (including between the hung ceiling(s) and the floor slab(s) above such hung ceiling(s) thereof), and/or (ii) outside the Demised Premises if installed by Tenant and servicing the Demised Premises exclusively. Tenant shall be responsible for and shall promptly make all repairs to building systems in the Demised Premises to the extent that they exclusively serve the Demised Premises. Tenant shall be responsible for and shall promptly make all repairs to building systems to the extent they do not exclusively serve the Demised Premises to the extent such repair is caused by any act that is inconsistent with prudent standards for operating a first-class restaurant or which breaches a legal responsibility or violates a Legal Requirement, Culpable Omission, willful misconduct, or breach of this Sublease by Tenant and/or its agents); for clarity, and without narrowing Tenant's responsibility under this Section 9(a), the intent of this sentence is to make Tenant responsible for all damages caused by Tenant and/or its agents or that Tenant could and should properly have prevented, other than ordinary wear-and-tear from Tenant's standard and proper operations.

- b. Landlord's Option to Perform. Any repairs and replacements for which Tenant is responsible (i) if not completed within ten (10) business days after notice from Landlord, (ii) if they are of an emergency nature or (iii) if they relate or impact any Building System or any structural or historical element of the Building, may, at Landlord's option, be performed by Landlord at Tenant's sole cost and expense provided same are done at fair market rates, provided, however, that it shall be Tenant's burden to prove that any rates are not fair market rates and only rates charged by contractors approved by the GSA for work at the Premises shall be acceptable as a basis for comparison and Landlord may, at its option, before Landlord or Tenant commences any such work or at any time thereafter, require Tenant to furnish to Landlord security reasonably satisfactory to Landlord under the same terms and conditions as would apply if such repair or replacement were an Alteration.
- c. Limited Approval of Contractors. Any repairs and replacements required to be made by Tenant to the Building or Building Systems shall be performed only by contractors selected in the manner provided for Alterations.
- d. Quality of Materials. All replacements shall be first-class materials and equipment that are at least equal in utility and value to the utility and value that the materials and equipment being replaced had when they were new.

- e. Window and Door Cleaning. Without limiting Subsection 9(a) above, Tenant shall at Tenant's sole cost and expense, clean and polish the interiors and exteriors of the windows and doors (including, without limitation, in each case, the frames thereof) in the Demised Premises and in the perimeter walls thereof, and clean and polish the inside and outside of the store fronts of the Demised Premises, in each case whenever necessary in the reasonable judgment of Landlord, provided, however, that if the Landlord elects, in its discretion, to retain a single contractor to provide any or all of the exterior cleaning services that Tenant is required to provide under this Sublease, and to assess Tenant's proportionate share of the expense of such contractor, then Tenant shall pay such proportionate share to Landlord as Additional Rent within ten (10) business days of demand therefor provided same are done at fair market rates provided that it shall be Tenant's burden to prove that any rates are not fair market rates and only rates charged by contractors approved by the GSA for work at the Premises shall be acceptable as a basis for comparison. Tenant will neither clean, nor require, permit, suffer or allow any window or door, whether interior or exterior, in the Demised Premises to be cleaned, from the outside in violation of any applicable Legal Requirements or the Department of Consumer and Regulatory Affairs.
- f. Glass. Without limiting Subsection 9(a) above, Tenant shall, at Tenant's sole cost and expense, promptly replace any and all glass (including mirrors) in the Demised Premises and in the perimeter walls thereof, the frames for such glass, and any lettering and ornamentation on such glass, that may be broken or damaged, regardless of the cause of such damage (even if occasioned by the negligence of Landlord or its servants or agents), it being the intent of this provision that Landlord be hereby indemnified to the full extent to which it would be were such glass, frames, lettering and ornamentation insured for the benefit of Landlord on the customary form of glass insurance carried by owners of comparable commercial properties in Washington D.C.
- g. Trash Removal and Recycling.
- i. Sorting and Recycling. Tenant covenants and agrees to comply, at its sole cost and expense, with all present and future Legal Requirements regarding the collection, sorting, separation and recycling of waste products, garbage, refuse and trash.
 - ii. Transport to Central Location. Without limiting the foregoing, Tenant shall, at its sole cost and expense, sort and separate its waste products, garbage, refuse and trash into such categories as provided by Legal Requirements and Landlord's reasonable Building Rules, place them in separate receptacles reasonably approved by Landlord, and transport all such waste products, garbage, refuse and trash to one or more locations designated by Landlord and using only such parts of the Building as may be designated by Landlord from time to time for such transportation.

- iii. Carting Away. Landlord will arrange for the removal of the waste products, garbage, refuse and trash transported by Tenant to the location designated by Landlord. Tenant shall pay as an item of Additional Rent to Landlord the Landlord's charge (the "Waste Removal Charge") for removal of Tenant's waste products, garbage, refuse and trash ("**Waste Removal**"). The Waste Removal Charge shall be based upon a reasonable pro rata allocation as reasonably determined by Landlord, based upon the ratio that the servicing of the weighted average of Tenant's Waste Removal bears to the total weighted average of the waste removal being performed. The collection of the Waste Removal Charge for the first one hundred twenty (120) days of the Term shall be deferred. The weighted average of Tenant's Waste Removal shall be determined over the first four (4) month period and shall be deemed the Tenant's weighted average for waste removal for the first four (4) months of the Term and thereafter on a going forward basis, subject to Landlord's right to increase such charge equitably based on any increase in Landlord's cost of waste removal from time to time and/or Landlord's reassessment of the monthly volume of waste removal associated with operations at the Demised Premises. Tenant shall pay its Waste Removal Charge to Landlord for the first four (4) months of the Term and thereafter within ten (10) business days of demand therefor from time to time. As reasonably requested by Tenant, Landlord shall provide to Tenant copies of supporting documentation on which the Waste Removal Charge may be confirmed.
- iv. Failure to Follow Procedures. Landlord reserves the right to refuse to collect or accept from Tenant any waste products, garbage, refuse or trash that is not separated and sorted as required by Legal Requirements or the Landlord's Building Rules and to require Tenant to arrange for such collection, at Tenant's sole cost and expense utilizing a contractor reasonably satisfactory to Landlord. Tenant shall pay all costs, expenses, fines, penalties or damages which may be imposed on Landlord, any affiliates of Landlord or Tenant by reason of Tenant's failure to comply with the provisions of this Section. Tenant shall indemnify, defend and hold harmless Landlord and each other Landlord Indemnified Party from and against any and all Claims arising from, connected with or relating to such non-compliance.
- h. No Disturbance. All maintenance and repairs performed or caused to be performed by Tenant shall be performed without unreasonably interfering with the normal operation of the Landlord's business at the Building, Hotel operator's business at the Hotel or the business of any other subtenant at the Building, and without damaging the Building or any portion thereof.
- i. No Landlord Liability; Express Limitation of Remedies. Except as otherwise

expressly provided in this Sublease, Landlord shall have no liability to Tenant, nor shall Tenant's obligations under this Sublease be reduced or abated in any manner, by reason of any inconvenience, annoyance, interruption or injury to Tenant's business arising from Landlord's making any repairs or changes that Landlord is required or permitted to make hereunder, under any other agreement to which Landlord is a party or pursuant to Legal Requirements or Insurance Requirements unless caused by Landlord's gross negligence or willful misconduct. Except as specifically provided in this Sublease, there shall be no diminution of rental value by reason of inconvenience, annoyance or injury to business arising from Landlord's, Tenant's or third parties' failure to make any repairs, alterations, additions or improvements in or to any portion of the Building, including the erection or operation of any crane, derrick or sidewalk shed, or in or to the Demised Premises or the fixtures, appurtenances or equipment thereof. It is specifically agreed that Tenant shall be not entitled to any setoff or reduction of rent by reason of any failure of Landlord to comply with any repair or maintenance obligation of Landlord. Tenant agrees that Tenant's sole remedy at law in such instance will be by way of an action for damages for breach of contract. Landlord shall in all cases (i) except in an emergency, where the repair or improvement is being performed by Landlord because Tenant has failed to perform it (notwithstanding an obligation on Tenant therefor) or the repair or improvement is routine, simple or otherwise not likely to materially interfere (or will be performed at a time not likely to interfere) with Tenant's operations (the "Entry Notice Exceptions"), give notice to Tenant a reasonable period before commencing any repairs or improvements in the Demised Premises or that would cut off utility service to the Demised Premises; (ii) exert and cause its personnel and contractors to exert reasonable commercial efforts not to unreasonably disturb Tenant's business and to protect Tenant's Property and other property, if any, in the Demised Premises, in making any such repairs or improvements, including, without limitation not storing when not actually in use any equipment or materials in the Demised Premises.

J. Landlord's Services. Landlord is responsible for maintaining, repairing all structural and common elements, including, without limitation, roof, sidewalls, foundation, plumbing within demising walls and floors unless installed by Tenant, sprinklers (other than sprinklers in the Demised Premises), electrical wiring within demising walls and floors unless installed by Tenant, ceiling shared with the second floor and all mechanical and HVAC systems in the Building outside the Demised Premises not exclusively serving the Tenant. Landlord shall maintain the sidewalks, driveways and parking lot areas surrounding the Building. Landlord shall maintain all areas of the Building outside the Demised Premises in a clean condition. All cleaning, maintenance and repairs to be made by Landlord shall be made promptly and in a manner not to unreasonably interfere with Tenant's business. Landlord shall take full responsibility for repairing and replacing any windows in the Demised Premises, at Tenant's sole cost and expense at rates that are reasonable in the local market, all relevant facts considered. If any violation on the Building which shall affect the Demised Premises shall have been filed prior

to the date of this Sublease and which must be discharged, in order for Tenant to obtain work permits, sign-offs/close-outs of work permits, or an amended certificate of occupancy for the Demised Premises, in connection with renovations performed or to be performed by Tenant, then Landlord shall cooperate by promptly effecting any such repairs and discharging any such violation that is so required and which would be Landlord's responsibility hereunder. Landlord shall cooperate, without any obligation to spend money, with Tenant in any application by Tenant for work permits for alterations permitted under this Sublease.

10. Liens.

- a. Obligation to Pay Contractors. Tenant covenants and agrees that prior to conducting its ordinary business at the Demised Premises the entire cost of work performed by Tenant (including the Tenant's Work) will be paid for in full, apart from bona fide disputes for which Tenant has posted additional cash security reasonably acceptable to Landlord in an amount equal to 125% of the contract price or bonded off all liens. Without limiting the generality of the foregoing, Tenant agrees and covenants that Tenant shall not, prior to, during, or subsequent to the Term, do or fail to do any act, or execute or cause to be executed any security agreement, conditional bill of sale, title retention agreement, or chattel mortgage which shall or may render the Building, or any part thereof, the Demised Premises, any Installation or any Tenant's Property installed or placed within the Demised Premises (including any materials used in any Alteration), other than the Tenant's point of sale equipment, liable or subject to any mechanic's lien or other lien or charge or any security agreement, chattel mortgage or conditional bill of sale or title retention agreement. Tenant's breach of the foregoing covenant shall be deemed to be a material breach of this Sublease.
- b. Obligation to Remove Liens. Without limiting the generality of Subsection 8(k) of this Sublease, Tenant shall not suffer or permit any mechanic's or other lien for work, labor, services or materials rendered or furnished to or for the account of Tenant upon or in connection with the Demised Premises or the Building to attach to the Demised Premises, Building or to any portion of either, and wherever and whenever any such lien or liens shall be filed, Tenant shall pay or bond the same or procure the discharge thereof in such manner as may be provided by Legal Requirements within 15 days of Tenant's awareness thereof or such shorter period as may be provided under the Master Lease or any mortgage or any other finance agreement to which the Building or the Landlord's interest in the Master Lease or any part thereof containing the Demised Premises is subject.
- c. Failure to Remove Liens. If Tenant shall fail to cause a lien created or continuing to exist in violation of Section 10(b) above to be discharged within the earlier of 30 days of filing and 15 days of Tenant's awareness thereof or such shorter period as may be required by Section 10(b) above, then, in addition to any other right or remedy Landlord shall have, Landlord may, but shall not be obligated to, discharge the lien by paying the amount claimed to be due, or by procuring the

discharge of such lien by deposit or bonding proceedings, and in any such event Landlord shall also be entitled, if Landlord so elects, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of judgment in favor of the lienor with interest, costs and allowances. Any amount so paid by Landlord with all costs and expenses incurred by Landlord in connection therewith, together with Default Interest thereon from the respective dates of Landlord's making of the payment or incurring of the costs and expenses, shall constitute Additional Rent payable by Tenant under this Sublease and shall be required to be paid by Tenant to Landlord within ten (10) business days from demand therefor.

- d. No Liability to Landlord. With respect to any work performed to the Demised Premises by or for Tenant, other than Landlord's Work **NOTICE IS HEREBY GIVEN** that neither Landlord nor Master Landlord shall, under any circumstances, be liable to pay for any work, labor or services rendered or materials furnished to or for the account of Tenant upon or in connection with the Demised Premises, and that no mechanic's or other lien for work, labor or services rendered or material furnished to or for the account of Tenant shall, under any circumstances, attach to or affect the reversionary or other estate or interest of Landlord, in the Demised Premises, the Building or any Alteration, repair or improvement erected or made thereon. Tenant shall cause the foregoing provision to be included in all construction agreements pertaining to the Demised Premises or impacting the Building or the land on which the Building is situated, or any part thereof.

11. Legal Compliance; Safety and Security.

- a. Compliance with Legal Requirements. Prior to the commencement of the Term and at all times during the Term, Tenant, at Tenant's sole cost and expense, shall promptly comply with all present and future Legal Requirements and all orders, rules and regulations of the local board of fire underwriters or the Insurance Services Office, or any similar body that may impose any violation, order or duty upon Landlord or Tenant. Tenant shall not do, permit or suffer any act or thing to be done in or to the Demised Premises or Building, or use to be made of the Demised Premises, that is contrary to or in violation of Legal Requirements.
- b. Compliance with Insurance Requirements. Tenant shall not do, permit or suffer any act or thing to be done in or to the Demised Premises or Building, or use to be made of the Demised Premises, that is contrary to or in violation of Insurance Requirements or that may invalidate or be in conflict with public liability, fire or other policies of insurance customarily carried by owners of buildings comparable to the Building or at any time carried by or for the benefit of Landlord. Without limitation of Subsection 11(g) below, if the fire insurance rate on the Building or imposed on Landlord will be, at the beginning of the Term or at any time during the Term, higher than it otherwise would be for operation of a restaurant in the

Demised Premises, then Tenant shall reimburse Landlord, as Additional Rent hereunder, for that portion of all fire insurance premiums thereafter paid by Landlord that may have been charged because of the failure by Tenant to comply with the terms of this Section 11. In any action or proceeding wherein Landlord and Tenant are parties, a schedule or "make-up" of rate for the Building or Demised Premises issued by a body making fire insurance rates applicable to the Demised Premises shall be conclusive evidence of the facts therein stated and of the several items and charges in the fire insurance rate then applicable to the Demised Premises. Tenant shall not do or permit any act or thing to be done in the Demised Premises or Building apart from the permitted use that may in any way adversely affect any insurance covering the Building, Demised Premises, or any shops or facilities in the Building, or that may result in any increase in the premiums for such insurance.

- c. Hazardous Activities and Substances. Tenant specifically covenants and agrees that all of Tenant's operations and activities at the Demised Premises shall be conducted in full compliance with each and every Environmental Law. Without limiting the foregoing, neither Tenant, Tenant's Personnel nor Tenant's Guests shall cause, permit or suffer any Hazardous Substances to be placed, held, located, stored, disposed of, or released in, on or about the Demised Premises or any other part of the Building in violation of any Environmental Law. Landlord shall have the right to enter the Demised Premises and conduct such testing or sampling as Landlord may reasonably deem necessary in order to confirm the suspected presence of any Hazardous Substance in, under or about the Demised Premises, whether or not Landlord has reason to believe that such Hazardous Substance originated at or about the Demised Premises. In the event that any Hazardous Substance shall be detected in the Demised Premises, or in the vicinity of the Demised Premises, such that the efficient remediation thereof shall reasonably require access to and/or installation of remediation equipment in the Demised Premises, Landlord shall have the right to install, monitor, service, maintain, repair and replace such equipment, and conduct such remediation activities, as is reasonably necessary. Without limiting Landlord's remedies, Tenant shall fully reimburse Landlord for all loss, cost and expense in the performance by or on behalf of Landlord of remediation or other activities described above to the extent made necessary by contamination caused by Tenant, or arising from, connected with or relating to any Hazardous Substances to the extent arising from, connected with or relating to the business conducted in the Demised Premises, the breach of this Subsection 11(c) or the acts, Culpable Omissions or fault of any Tenant's Party. All such remediation and other activities arising from, connected with or relating to a breach of this Sublease or the conduct of the Tenant's business in or about the Demised Premises shall be at Tenant's sole cost and expense reimbursable to Landlord within ten (10) business days of demand therefor. Without limiting the foregoing, Tenant shall not sell or permit to be kept, used or sold in, upon, or about the Demised Premises, any gasoline, distillate or other petroleum products or any

other substance or material of explosive inflammable or radiological nature in such quantity as may be prohibited by any insurance policy or which may endanger any person or property.

- d. Failure to Make Required Alterations. Notwithstanding anything contained in the Sublease to the contrary, if at any time during the Term Tenant fails to make any Alterations or improvements to the Demised Premises that are required to be made pursuant to any Legal Requirement, which failure continues for ten (10) business days after notice thereof, (or, provided Tenant promptly begins and diligently pursues same, such longer period as shall be reasonably required therefor but in no event beyond the date such Alterations or improvements are required to be completed pursuant to applicable Legal Requirements or, if earlier, the Master Lease) and Landlord thereafter expends any sums therefor, Tenant shall pay to Landlord, as Additional Rent, such sum within ten (10) business days after demand therefor. For the purposes of this Section 11, the cost of any Alteration or improvement made shall be deemed to include the cost of preparing any necessary plans and the fees for filing such plans.
- e. Violations. Tenant shall give prompt notice to Landlord of any notice it receives of any violation of any Legal Requirement with respect to the Demised Premises or the use or occupation thereof. Tenant, at its sole cost and expense, shall (i) procure, comply with and thereafter maintain all necessary licenses, permits, certificates and other permissions (including, without limitation, all health, restaurant and liquor licenses) required from time to time by any Governmental Authority having jurisdiction over the Demised Premises and/or Tenant, for the proper and lawful operation of Tenant's business in the Demised Premises and the use thereof as contemplated by this Sublease or that from time to time may become or are necessary with respect to any Alterations, provided, however, that all such licenses shall be issued solely with respect to Tenant's business at the Demised Premises, and shall in no way be issued in connection with any business operated by any other person or operated by Tenant at any other premises, (ii) submit copies of all such licenses, permits, certificates and other permissions to Landlord, for its inspection, immediately upon the issuance thereof and in any event not later than five (5) Business Days before Tenant undertakes any activity in the Demised Premises for which each such licenses, permits, certificates and other permissions is required, and (iii) at least thirty (30) days before such expiration, submit copies of new or renewal licenses, permits, certificates and other permissions issued in replacement or renewal of any licenses, permits, certificates and other permissions expiring during the term of this Sublease. Tenant shall, at its sole cost and expense, maintain all firefighting and life-safety equipment and all appurtenances thereto that have been installed in the Demised Premises. If any Governmental Authority having jurisdiction over the Demised Premises shall require additional firefighting equipment, Tenant agrees to install and maintain such equipment at its sole cost and expense.
- f. Security. Tenant shall use its best efforts to preserve the security and safety of

Tenant's Guests and Tenant's Personnel, and use reasonable efforts to comply with the reasonable requests made by the Landlord in the event that breaches of security or safety arise from the conduct of, or any nuisance is caused by, any of Tenant's Guests or Tenant's Personnel. Tenant shall keep all entrance doors and windows in the Demised Premises locked at such times when the Demised Premises are not in use.

- g. Payments. Without limiting Section 23 below, Tenant shall pay all costs, expenses, fines, penalties or damages, that may be imposed upon Landlord by reason of Tenant's failure to comply with the provisions of this Section 11.

12. Exculpation and Indemnity. Neither Landlord nor any Superior Lessor or Superior Mortgagee shall be liable to Tenant for any loss, injury or damage to Tenant or to any other person, or to its or their property, irrespective of the cause of such injury, damage or loss, except to the extent caused by or resulting from the gross negligence or willful misconduct of Landlord or the Superior Lessor or Superior Mortgagee in the operation or maintenance of the Premises or the Building. Neither Landlord nor any Superior Lessor or Superior Mortgagee shall be liable (i) for any damage caused by other tenants or persons in, on or about the Building, or (ii) even if resulting from gross negligence or willful misconduct, for consequential damages of Tenant or any subtenant or licensee of Tenant. Neither of the preceding two sentences will prevent Tenant from enforcing the Landlord's obligations under this Lease. Tenant shall indemnify, defend and hold harmless Landlord and each other Landlord Indemnified Party from and against any and all Claims (a) brought by any third party(ies), and any and all judgments, liabilities, damages and losses sought or recovered therein, together with any and all costs, fees, obligations or expenses (including, without limitation, reasonable attorneys' fees and disbursements) paid or incurred in the investigation, defense and/or settlement of any thereof) to the extent caused by the conduct or management of the Demised Premises or of any business therein, or arising from, connected with or related to any work or thing done, or any condition created (other than by Landlord) in or about the Demised Premises during the Term or during the period of time, if any, prior to the Commencement Date that Tenant is given access to the Demised Premises, provided that Landlord's costs and expenses from the ordinary management and operations of the Building and managing the relationship between Landlord and Tenant are not covered by this Section 12 (although, for clarity, other provisions of this Sublease expressly cover reimbursement for certain of such expenses of Landlord), (b) to the extent caused by any act constituting any negligence, willful misconduct, departure from prudent business standards of operating a first-class restaurant, or breach or violation of any duty or obligation under contract (including this Agreement) law or regulation or equity (including in the instance of reliance and/or voluntary assumption of duty), Culpable Omission or fault of Tenant, Tenant's Personnel while in the Building, Tenant's Guest(s) while in the Restaurant (or, to the extent not also a Hotel guest, traveling to or from the Restaurant), or any subtenant or licensee or their respective employees, agents, contractors or invitees, (c) arising from, connected with or related to any accident, injury or damage or loss (unless caused solely by Landlord's negligence or willful misconduct) occurring in, at or upon the

Demised Premises, (d) to the extent caused by the failure of Tenant, Tenant's Personnel (while working for Tenant or while in the Building), Tenant's Guest (while in the Demised Premises or, to the extent not also a Hotel guest, traveling to or from the Restaurant)) or any subtenant or licensee or their respective employees, agents, contractors or invitees to comply with Legal Requirements (including compliance with the Liquor License) and Insurance Requirements, or (e) to the extent caused by any other breach or default by Tenant under this Sublease. For any Claim caused by any act of Tenant or its agents, the burden shall be on Tenant to prove that indemnification is not applicable under this Section 12. Any defense of Landlord or any other Landlord Indemnified Party, whether pursuant to the foregoing or any other provision of this Sublease, shall be with counsel reasonably acceptable to the Landlord and/or such other Landlord Indemnified Party to be defended.

13. Insurance.

- a. Property Insurance. Tenant shall at all times procure and maintain from an insurance company qualified to do business in Washington D.C. and with an AM Best Rating of not less than A-,VII so-called "all-risk" aka "Causes of Loss Special Form" property insurance on a replacement cost basis including business interruption (including Base Rent, Percentage Rent and Additional Rent) and extra expense for a 12 month period and 30 days extended period of indemnity, with respect to Tenant's Property at the Demised Premises.

- b. Operational Insurance. Commencing on or prior to the Commencement Date Tenant shall procure and maintain on behalf of Tenant, the following with an insurance company or companies qualified to do business in Washington D.C. and with an AM Best Rating of not less than A-, VII:
 - i. General Liability. Commercial general liability insurance ("CGL") against claims for bodily injury, death and property damage occurring in conjunction with operations of the Tenant's business and/or on or about the Demised Premises or any appurtenances thereto including but not limited to coverage for liquor liability (may commence on the date liquor is first served or stored in the Premises and may be a separate limit or included within the General Liability limit), products/completed operations (may commence on the date food or beverage is first served or stored in the Premises), with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence / Two Million Dollars (\$2,000,000) general aggregate per location (although product aggregate would be a policy limit); and also Excess Liability or Umbrella liability with limits of not less than Five Million Dollars (\$5,000,000) until opening of the Demised Premises for business and then Ten Million Dollars (\$10,000,000);

- ii. Workers' Compensation. Workers' compensation coverage as may be required under Legal Requirements covering all of Tenant's staff at the Demised Premises, and employer's liability insurance of not less than Five Hundred Thousand Dollars (\$500,000) each accident/policy limit/each employee;
- iii. Crime. Crime coverage including Third Party Coverage in an amount not less than Two Hundred Fifty Thousand Dollars (\$250,000) covering all of Tenant's staff at the Demised Premises. Landlord shall be named as Third Party for client coverage or as loss payee on the fidelity bond coverage;
- iv. Auto. If Tenant is to use vehicles in the operation of Tenant's business or for any catering or delivery services, then Tenant shall procure commercial automobile liability insurance (including owned, non-owned, leased and hired vehicles) covering bodily injury (including personal injury) and property damage with a combined single limit of not less than One Million Dollars (\$1,000,000);
- v. EPL. Employment practices liability insurance for harassment, discrimination and wrongful termination in an amount not less than One Million Dollars (\$1,000,000) covering all of Tenant's staff at the Demised Premises. Said policy shall include coverage for third party claims for harassment and/or discrimination;
- vi. Network. Network liability, including privacy coverage, with a minimum of One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) in the aggregate;
- vii. Construction. Tenant's Construction. During the course of any alteration, restoration, repair or reconstruction of the Demised Premises or Building by Tenant, including Tenant's Work, Tenant shall, at its sole cost and expense (A) if the CGL policy required in clause (i) above contains an exclusion for construction or does not have an exclusion but the carrier will not expressly acknowledge that the subject construction is included, carry CGL and Umbrella liability or Excess Liability identical to that required above in clause (i) covering construction, and (B) carry in the name of Landlord and the other Additional Insureds, with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate Builder's Risk Damage Insurance ("Builders Risk") in amounts no less than the aggregate

amounts of the contract sums for all hard and soft costs for such alteration, restoration, repair or reconstruction, or, in each case, in such higher amounts as are then commercially standard and reasonable and reasonably required by the Landlord, or those holding superior title or interest to the Landlord.

- viii. Contractor's Insurance. Prior to the commencement of each Alteration, Tenant shall furnish to Landlord certificates from all contractors (and, to the extent not covered by Tenant's general contractor's insurance, subcontractors' insurers) evidencing the existence of (A) workmen's compensation insurance covering all persons employed for such work, (B) commercial general liability including bodily injury/property damage and products/completed operations insurance naming Landlord, its designees, its managing agent, any mortgagee or superior lessor or other party or person whose name is furnished by Landlord to Tenant, as additional insureds with coverage of at least \$1,000,000 per occurrence/\$2,000,000 aggregate and \$5,000,000 per occurrence/aggregate excess liability or umbrella and (C) such other types and amounts of insurance as Landlord may reasonably require; provided however if a general contractor maintains all such policies, amounts and coverages then subcontractor need not maintain the excess or umbrella liability coverage so long as the general contractor includes such subcontractor as an additional insured under the general contractors liability policies (including Umbrella liability and Excess Liability).
- ix. Other. Such other insurance as may be required by Landlord from time to time during the Term to the extent customarily carried by operators of similar facilities or such as Landlord may require to account for inflation or changed circumstances.
- x. Avignon. Avignon covenants to obtain and maintain policies of insurance in such amounts as are reasonable and prudent under all relevant facts and circumstances, for all coverages described above under the headings General Liability, Workers' Compensation, Auto and EPL.

c. Policy Requirements.

- i. Primary Coverage. All insurance required to be provided by Tenant under this Section 13 shall include an endorsement or provision providing that such insurance will be written as primary coverage and not contributing and not in excess of any coverage that Landlord or any of its affiliates may carry;

- ii. No Co-Insurance. All insurance required to be provided by Tenant under this Section 13 shall include a separation of insureds endorsement;
- iii. Additional Insureds. All insurance required to be provided by Tenant under this Section 13 shall name as additional insureds thereunder: Trump Old Post Office LLC, Donald J. Trump, Donald J. Trump's family members, The Trump Organization, any subsidiary, affiliated, associated, and/or allied limited liability company, partnership, corporation, trust, firm or organization of any of the foregoing, and every member, shareholder, partner, trustee, manager, officer, director, agent and employee of each of the foregoing, as well as each of the insureds' respective interests in partnerships and/or joint ventures, and/or any owned (wholly or partially) or controlled company or companies in which any insured maintains an interest, as now or hereafter constituted or acquired, and any other party or interest that is required by contract or agreement including, without limitation, any Superior Lessor, Superior Mortgagee and/or other Landlord Indemnified Party named by Landlord in a notice to Tenant (each, an "**Additional Insured**").
- iv. Notice of Changes: Such policies shall provide that the insurer shall endeavor to give Landlord written notice by certified mail, return receipt requested, prior to the effective date of any modification, expiration, cancellation, or termination thereof at least ten (10) days prior to modifications, expirations, cancellations or terminations arising from or pertaining to non-payment of premiums and at least thirty (30) days prior to all other modifications, expirations, cancellations or terminations. Landlord may periodically request certificates of insurance to ensure that coverage remains in effect.
- v. Coverage of Space. All insurance required to be provided by Tenant under this Section 13 shall cover the whole of the Demised Premises, the walkways and interior Building areas with access to the Demised Premises, and the business operated by Tenant within the Demised Premises and shall also cover any act or omission of any employee of Tenant or other members of Tenant's staff and any occurrence involving any Tenant's Personnel or Tenant's Guest that occurs at any other portion of the Building and occurs in the course of such Tenant's Personnel's or Tenant's Guest's employment or other engagement with Tenant. Tenant's insurance coverage will be deemed primary; and

- vi. Deductibles. All insurance required to be provided by Tenant under this Section 13 shall have deductibles or self-insured retentions as reasonably shall be satisfactory to Landlord. All deductibles, self-insured retentions, and retrospective adjustments on these policies shall be the responsibility of Tenant. Landlord must approve in writing the allocation method (e.g., sales or payroll) of any shared insurance policies, which shall be based on the original underwriting method used by the insurance company providing the coverages or a reasonable allocation as provided by the broker, and Tenant if requested shall provide reasonable back-up documentation supporting the allocation.
- vii. Blanket Policies. Any insurance required to be carried by Tenant hereunder may be carried under a blanket policy of insurance, provided that (i) any "all-risk" aka "Causes of Loss Special Form" blanket policy shall have an agreed value endorsement with respect to Tenant's Property in an amount equal to at least 100% of the full replacement cost thereof, (ii) the general aggregate liability limits required under this Sublease are provided under such blanket policies on a "per location" basis, and (iii) all deductibles and self-insured retentions shall be acceptable to Landlord in its reasonable discretion.
- d. Increased Coverage. Tenant acknowledges that inflation may reduce the effective value of coverage, that terms of insurance contracts or endorsements may be revised, that the types of insurance contemplated herein may become unavailable or that other circumstances may arise that affect or threaten to affect the protection to be afforded by the insurance required hereunder. Accordingly, upon the modification, expiration, cancellation or termination of each policy, Tenant shall procure and maintain such other or additional forms and amounts of insurance as Landlord finds sufficient (in the reasonable judgment of its third party professional insurance consultant) to assure that Landlord and the other persons entitled to be named as additional insured parties hereunder receive commercially reasonable protection at least equivalent to that to be provided by the foregoing requirements, or if such protection is not then available, then whatever other available protection Landlord shall reasonably designate.
- e. Payment of Premiums. Tenant shall be solely responsible for payment of all insurance premiums. Landlord shall not be required to pay any premiums.
- f. Certificates of Insurance. Certificates for each policy shall be delivered to Landlord on or before the date which is ten (10) business days following the Effective Date hereof and within ten (10) business days of any policy renewals of each such policy. Each certificate shall provide evidence of coverage as required

by this Sublease (including an express waiver of any and all rights of subrogation or transfer of rights of recovery provision thereunder as required by this Section 13).

- g. No Reduction of Liability. The limits of the commercial general liability policy of insurance shall in no way limit or diminish Tenant's liability hereunder. If Tenant fails to obtain and provide any or all of the aforesaid insurance, and such failure continues for ten (10) business days after notice thereof, then Landlord may, but shall not be required to, purchase such insurance on behalf of Tenant and add the cost of such insurance as Additional Rent payable with the next installment of Base Rent together with an Administrative Fee.
- h. Waiver of Subrogation. Landlord and Tenant shall each look first to any insurance in its favor before making any claim against the other party for recovery for loss or damage resulting from fire or other casualty and to the extent that such insurance is in full force and effect and collectible and to the extent permitted by law, Landlord and Tenant each hereby releases the other and its members, shareholders, partners, managers, directors, officers, employees and agents from all liability, whether for negligence or otherwise, in connection with loss actually covered under the insurance policy maintained by such party. Such release is conditioned upon the inclusion in the policy or policies of a provision whereby any such release shall not adversely affect said policies, or prejudice any right of the releasor to recover thereunder. Each of Landlord and Tenant agrees that its insurance policies aforesaid will include such a provision so long as the same shall be obtainable without extra cost, or if the extra cost shall be charged therefor, so long as the party for whose benefit the clause or endorsement is obtained shall pay such extra cost. If extra cost shall be chargeable therefor, each party shall advise the other thereof of the amount of the extra cost, and the other party, at its election may pay the same, but shall not be obligated to do so. This release and waiver shall be complete and total even if such loss or damage may have been caused by the negligence of the other party, and shall not be affected or limited by the amount of insurance proceeds available to the waiving party regardless of the reason for such deficiency in proceeds. However, if one party's insurance carrier prohibits waiver of subrogation regardless of premium, then the other party's release and waiver shall become null and void, it being understood that in this instance each waiver is given in consideration for the other. Each party covenants that, from and after the date possession of the Demised Premises is delivered to Tenant, its insurance policies will contain waiver of subrogation endorsements, and that if such endorsements, for any reason whatsoever, are about to become unavailable, it will give the other party not less than thirty (30) days' prior written notice of such impending unavailability.

- i. No Landlord Obligation to Insure. Landlord shall have no obligation to carry insurance of any kind on Landlord's Work, Tenant's Work, Tenant's Installations, Tenant's FF&E or Tenant's Property, and, shall not be obligated to repair any damage thereto or replace the same, except for obligations of Landlord set forth elsewhere in this Sublease.

14. Casualty.

- a. Repair. Unless this Sublease is terminated by Landlord or Tenant as hereinafter provided, if the Building shall be partially or totally damaged or destroyed by fire or other cause, then Landlord shall repair the damage and restore and rebuild the Building, after notice to it of the damage or destruction, to the extent of insurance proceeds received by Landlord for such purpose; provided, however, that Landlord shall not be required to repair, restore or rebuild any rentable area in the Building other than the Demised Premises or to repair, restore or rebuild the Demised Premises beyond the condition existing on the Commencement Date, or repair or replace any of those items installed by Tenant as Alterations or Tenant's Work or any other personal property, business or trade fixtures, equipment, furniture, or other items within the Demised Premises installed by or for Tenant or Tenant's Property. Tenant shall cooperate with Landlord's restoration by removing from the Demised Premises as promptly as reasonably possible after reasonable request therefor, of all of Tenant's Property. Except to the extent Landlord is hereby obligated to restore the Building and Landlord's Work, and unless this Sublease is terminated by Landlord as hereinafter provided, Tenant shall rebuild, restore, repair, redecorate and refixture the Demised Premises and restore the contents thereof in accordance with the requirements of this Sublease (including, without limitation, Tenant's Work). For the avoidance of doubt, Landlord shall have no obligation to remake the Tenant's Allowance.
- b. Termination.
 - i. By Landlord. If, (A) as a result of any damage or destruction twenty-five percent (25%) or more of the Building is damaged or destroyed and rendered untenable, (B) the repair or restoration of any damage or destruction would, in the reasonable estimation of Landlord, not be completed prior to the final two (2) Sublease Years or (C) for any reason Landlord is not required to restore the Building pursuant to the Master Lease, by separate agreement with Master Landlord or otherwise, and will not restore the Building, then Landlord may elect to terminate this Sublease by giving notice to Tenant of such election on or before the date which is ninety (90) days after the damage or destruction and (A) upon the date specified in such notice, this Sublease and the Term shall cease and expire; and (B) any Base Rent and Additional Rent shall be adjusted as of the date of termination.

ii. By Tenant. If, (A) as a result of any damage or destruction twenty-five percent (25%) or more of the Demised Premises is damaged, destroyed or rendered untenable or the kitchen is rendered substantially unusable and the time period for the substantial completion of the restoration thereof would, as estimated by Landlord's contractor in the exercise of his reasonable judgment, not be completed prior to the final two (2) Sublease Years or (B) as a result of any damage or destruction twenty-five percent (25%) or more of the Building is damaged, destroyed or rendered untenable for any reason and Landlord elects not to restore the Building, then Tenant may elect to terminate this Sublease by giving notice to Landlord of such election on or before the date which is ninety (90) days after the damage or destruction and upon the date specified in such notice, this Sublease and the Term shall cease and expire and any Base Rent and Additional Rent shall be adjusted as of the date of termination.

- c. Availability of Insurance Proceeds. Notwithstanding anything to the contrary contained in this Sublease, if Landlord is obligated to restore the Building pursuant to this Sublease, all casualty insurance proceeds of Landlord and Tenant (except for proceeds compensating Tenant for the damage to Tenant's Property and to Tenant's Work and Alternations done by Tenant payable as a result of such casualty) shall be made available to Landlord to pay the costs of such restoration. If insurance proceeds available to Landlord for repair and restoration required under Section 14(a) are inadequate, in Landlord's reasonable judgment, to pay the costs of such restoration, Landlord may, without liability to Tenant, terminate this Sublease by giving Tenant notice to such effect within the later to occur of ninety (90) days after the date of the casualty or thirty (30) days after Landlord determines such inadequacy.
- d. No Claims Against Landlord. No damages, compensation or claim shall be made by Tenant against Landlord for inconvenience, loss of business or annoyance arising from any damage or destruction, repair or restoration of any portion of the Demised Premises or the Building pursuant to this Section 14 or any other provision of this Sublease.

The preceding sentence will not prevent Tenant from enforcing Landlord's obligations under this Sublease.

- e. Obligations Continue. None of the Base Rent or Additional Rent payable by Tenant, nor any of Tenant's other obligations under any provisions of this Sublease, shall be affected by any damage or destruction of the Demised Premises by fire or other casualty, except that all Base Rent, CAM Charges, Tax Contributions, Tenant's Cost for electric current, gas service or water supplied by Landlord under Section 16(g), or Landlord's fee for chilled water and heating hot

water under Section 16(j) until Landlord's repair and restoration shall be substantially completed, shall be apportioned from the day of the casualty according to the part of the Demised Premises that is usable excluding for purposes of such calculation the Outdoor Dining Area; provided that if the kitchen is so unusable as to render the remainder of the Demised Premises substantially unusable as a high quality restaurant, then the entire Demised Premises shall be deemed to be unusable until the earlier of the date (i) the kitchen is substantially repaired; (ii) Tenant's business operations are restored, or (iii) ninety (90) days after the completion of the Landlord's repair or restoration.

15. **Eminent Domain.** If the whole or substantially all of Landlord's interest in the Demised Premises, or the whole or substantially all of Landlord's interest in the Building, or the whole or substantially all of the access to the Building or the Demised Premises shall be lost to Landlord and Tenant through eminent domain, then the Term shall cease and terminate from the date of title vesting in such proceeding and Tenant shall have no claim for the value of any remaining portion of the Term. If part, but less than substantially all, of the Demised Premises shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, and Tenant is reasonably still able to operate a first-class high quality restaurant in the Demised Premises, then this Sublease shall continue in full force and effect; provided, however, that the Base Rent payable hereunder shall be reduced proportionately to the number of square feet so acquired or condemned excluding for purposes of such calculation the Outdoor Dining Area and the approximately 1,200 square feet of raised mezzanine space. Tenant shall have the right to make an independent claim to the condemning authority for the value of Tenant's moving expenses and personal property, trade fixtures and equipment, provided Tenant is entitled pursuant to the terms of this Sublease to remove such property, trade fixtures and equipment at the end of the Term, and provided further, such claim does not reduce Landlord's award.

16. **Assignments; Leasehold Mortgages and Encumbrances.**

- a. Generally. Tenant, for itself, its heirs, distributees, executors, administrators, legal representatives, successors and assigns, expressly covenants that it shall not assign, mortgage, or encumber this Sublease or any of its rights or estates hereunder, sublet the Demised Premises or any part thereof, or suffer or permit the Demised Premises, or any part thereof, to be used or occupied by others, without the prior written consent of Landlord in each instance in Landlord's sole and absolute discretion, except as otherwise expressly provided herein. Without limiting Landlord's sole and absolute discretion, Tenant acknowledges that it is Landlord's intent to do business with BVS Acquisition Co., LLC and that continued continuity of the brand "The National" and "Geoffrey Zakarian" for the first seven (7) years of this Sublease term and financial stability will be a major consideration for Landlord's approval of any assignment or sub-sublease. If this Sublease is assigned or if the Demised Premises, or any part thereof, is sublet or occupied by anyone other than Tenant, without the prior written consent of Landlord, Landlord may collect rent from the assignee, subtenant, or occupant,

and apply the net amount collected to the rent herein reserved, but no assignment, subletting, occupancy, or collection shall be deemed a waiver of the provisions hereof or the acceptance of the assignee, subtenant, or occupant as a tenant or a release of Tenant from the further performance by Tenant of Tenant's covenants in this Sublease. Landlord's consent to an assignment, subletting, or other occupancy or transfer or conveyance shall not, in any way, be construed to relieve Tenant from obtaining Landlord's express written consent in Landlord's sole and absolute discretion to any further assignment, subletting, or other occupancy or transfer or conveyance. In no event shall, any permitted sublessee assign or encumber its sublease, further sublet all or any portion of its sublet space, or otherwise suffer or permit the sublet space, or any part thereof, to be used or occupied by others, without Landlord's written consent in Landlord's sole and absolute discretion in each instance. For purposes of this Sublease, or of any sub-sublease, the transfer of a majority, or the controlling interest of the issued and outstanding capital stock of Tenant or of any corporate subtenant, or the transfer of a majority or controlling interest of the total interest in any partnership entity or limited liability company as Tenant or any subtenant, however accomplished, whether in a single transaction or in a series of related or unrelated transactions, or if any transfer of capital stock shall result in Tenant's Principal no longer serving as the chef with a significant financial interest and decision making authority, shall be deemed an assignment of this Sublease, or of such sub-sublease, as the case may be.

- b. Permitted Assignments. Notwithstanding the provisions of Subsection 16(a) hereof, Landlord hereby consents to the following (clauses (i) through (iii)) for so long as all of the following (clauses (a) through (c)) requirements are satisfied in full (a) Geoffrey Zakarian ("**Tenant's Principal**") continues to be the actual chef proprietor of the restaurant in the Demised Premises and possesses and exercises sole dominion and control over menu, décor, technique, sourcing of ingredients, FF&E, OS&E and staffing, and customer service, and the power to direct restaurant operations in the Demised Premises, (b) the Tenant has the right by license, to use the name "The National" and "Geoffrey Zakarian" in the Restaurant Name, and (c) the Zakarian Independent Contractor's Agreement remains in full force and effect and without modification and there are no facts or circumstances that would, or but for the passage of time or the giving of notice (or both) would, give Tenant the right to terminate the Zakarian Independent Contractor's Agreement:
- i. transfers of stock (or other beneficial equity interests) in Tenant to Tenant's Principal;
 - ii. An assignment of this Sublease by Tenant to any entity of which one hundred percent (100%) of the equity interests are owned by Tenant's Principal so long as Tenant's Principal maintains voting control over a majority of the stock (or other equity interests) in such assignee and control of the day to day management and policies of Tenant; and

- iii. transfers of stock (or other beneficial equity interests) in Tenant to any spouse or lineal descendant of Geoffrey Zakarian or Louis Ceruzzi, or to a trust for the benefit of any of the foregoing, provided, so long as Tenant's Principal maintains control of the day to day management and policies of Tenant.
- c. Any provision herein notwithstanding, Landlord shall not withhold consent to an assignment of this Sublease at a time more than seven (7) years after the Grand Opening Date to an assignee meeting all of the following threshold conditions: (i) a majority of the voting interests of the assignee are controlled by an experienced restaurateur having demonstrated success in operating a first-class high-quality restaurant; (ii) the chef affiliated with the assignee shall be comparable in renown to Geoffrey Zakarian, the assignee has a net worth equal to or greater than the net worth of Tenant at the time of the assignment; (iii) the Tenant at the time of the assignment has posted a security deposit equal to the amount of Base Rent for the next six months at the time of the assignment; (iv) no direct or indirect equity owner of the assignee has been convicted of a felony or crime involving moral turpitude; (v) The assignee is not a party prohibited under the Master Lease; (vi) the assignee has provided to Landlord all information and materials about it and its owners available to the assignee and its owners as reasonably requested by Landlord; (vii) Tenant and the assignee have executed such documents reflecting such assignment, affirmation of this Sublease and Landlord's consent as Landlord shall reasonably request; and (viii) Tenant at the time of the assignment has posted a letter of credit pursuant to the terms outlined in Section 25 of this Sublease. This Section 16(c) shall also apply in the case of the death or complete working disability of Geoffrey Zakarian.

17. Subordination and Estoppel.

- a. This Sublease is subject and subordinate to all ground or underlying leases (including the Master Lease) and to all mortgages (including the Existing Mortgage), deeds of trust, security agreements, financing statements, fixture filings and assignments of leases and rents agreements including all those made by Landlord in favor of the holder of the Existing Mortgage (each, a "**Security Instrument**") which may now or hereafter affect such leases or all or part of the real property of which the Demised Premises are a part and to all renewals, modifications, consolidations, replacements and extensions of any such ground or underlying leases or Security Instruments including any provision in any of the foregoing requiring review, approval, consent or supervision by or on behalf of any Superior Lessor or Superior Mortgagee of any Alterations and each advance under any such Security Instruments. Except as set forth in Section 17(b) below, this clause shall be self-operative and no further instrument of subordination shall be required. In confirmation of such subordination, Tenant shall from time to time execute promptly any certificate that Landlord may reasonably request for the purpose of confirming same. In this Sublease, each ground or underlying lease or Security Instrument to which this Sublease is subject and subordinate is

sometimes called a "**Superior Lease**" or "**Superior Mortgage**" respectively, and the lessor under a Superior Lease, its successors and assigns, and each mortgagee and/or agent, its successors and assigns, for the mortgagee or mortgagees holding a Superior Mortgage is hereinafter sometimes called the "**Superior Lessor**" or "**Superior Mortgage**", respectively.

- b. As a condition precedent to the Subordination of this Sublease and the Tenant's rights hereunder to the Existing Superior Mortgage pursuant to Section 17(a), Tenant has entered into the Initial SNDA, a form of which is attached hereto as Exhibit K (the "**Form SNDA**"). As a condition precedent to the subordination pursuant to Section 17(a) of this Sublease and the Tenant's rights hereunder to any Superior Mortgage other than the Existing Superior Mortgage, Landlord shall cause each Superior Mortgagee to execute, acknowledge and deliver to Tenant, an instrument (herein called a "**Nondisturbance Agreement**") that (i) provides Tenant with substantially the same rights, subject to substantially equivalent limitations and/or conditions, as set forth in the Form SNDA, or (ii) is on the respective Superior Mortgagee's reasonable, standard form with customary modifications specific to the District of Columbia. In addition, in connection with any refinancing of the leasehold evidenced by the Master Lease, any other leasehold evidenced by a Superior Lease, the Building or the land on which the Building is situated, or any other transaction involving a Superior Mortgagee (including the holder of the Existing Mortgage), Tenant, if requested by Landlord, any Superior Lessor or any Superior Mortgagee including the holder of the Existing Superior Mortgage, its successors or assigns, shall enter into a new, or amended or substitute Nondisturbance Agreement with such Superior Mortgagee the form of which shall be substantially the same as the foregoing; provided, however, that if this Sublease is amended after the date hereof such new, or amended or substitute Nondisturbance Agreement shall contain such changes as may be reasonably appropriate to reflect such amendment(s).
- c. No prepayment of more than one month's installment of the annual rental shall be valid or binding upon any Superior Lessor or Superior Mortgagee unless expressly approved in writing by such Superior Lessor or Superior Mortgagee or any of its predecessors in interest. If any Superior Lessor or Superior Mortgagee shall succeed to Landlord's estate in the Building or the rights of Landlord under this Sublease, whether through possession or foreclosure action or delivery of a new lease or a deed or otherwise, then at the election of such party so succeeding to Landlord's rights (herein sometimes called "**Successor Landlord**"), Tenant shall attorn to and recognize such Successor Landlord as Tenant's landlord under this Sublease. The foregoing shall be self-operative. Without limiting the preceding sentence, Tenant shall promptly execute and deliver any instrument in recordable form that such Successor Landlord may reasonably request to evidence such attornment. Tenant hereby waives any right Tenant may have under any present or future Legal Requirements to terminate this Sublease or surrender the Demised Premises by reason of the institution of any proceeding to terminate a Superior Lease or action to foreclose a Superior Mortgage and this Sublease shall not be

affected by any such proceeding or action unless and until the Superior Lessor, or Superior Mortgagee, elects in such proceeding or action to terminate this Sublease with Tenant's consent. Except as expressly provided above, nothing contained herein will be deemed to impair any right, privilege or option of any Superior Lessor or Superior Mortgagee. No Successor Landlord shall be (i) bound by any prepayments of rent for more than one month or by any offsets, credits, claims, counterclaims, demands or defenses that may have accrued to Tenant under this Sublease, (ii) liable for any act or omission of any prior landlord under this Sublease, (iii) obligated to complete any construction of the Demised Premises or the Building (provided that if such Successor Landlord elects not to complete Landlord's Work or open the Hotel, Tenant may terminate this Sublease by giving thirty (30) days' prior written notice to such Successor Landlord), (iv) obligated to make any contribution to the cost of tenant improvements or any other payment or loan to or on behalf of Tenant, (v) required to account for any security deposit or other sums delivered to any prior landlord other than any amounts actually delivered to such Successor Landlord or (iv) bound by any modification of this Sublease unless such modification was consented to in writing by such Successor Landlord.

- d. If any act or omission of Landlord would give Tenant the right, immediately or after the lapse of a period of time, to cancel or terminate this Sublease, or to claim a partial or total eviction, Tenant shall not exercise such right until (x) Tenant gives notice of such act or omission to Landlord and to each Superior Lessor and Superior Mortgagee whose name and address were previously furnished to Tenant, and (y) such Superior Lessors or Superior Mortgagees fail to remedy (or cause to be remedied) such act or omission within a reasonable period following the time when such Superior Lessors or Superior Mortgagees become entitled under each Superior Lease or Superior Mortgage respectively to remedy same. Tenant agrees, at any time and from time to time, as requested by Landlord, upon not less than twenty (20) days' prior notice, to execute and deliver to Landlord, or to any, potential purchaser of all or any portion of Landlord's direct or indirect interest in Landlord's interest in the Demised Premises or Building or any present, potential or future Superior Mortgage a statement certifying that this Sublease is unmodified and in full force and effect (or if there have been modifications, that this Sublease is in full force as modified and stating the modifications); certifying the dates to which the Base Rent and Additional Rent have been paid; stating whether or not, to Tenant's knowledge, the Landlord is in default in performance of any of its obligations under this Sublease, and, if so, specifying each such default and certifying as to such other matters as the Landlord or such potential purchaser or present, potential or future mortgagee may reasonably request, it being intended that any such statement delivered pursuant hereto may be relied upon by others with whom Landlord may be dealing. If Landlord defaults in the performance of its obligations hereunder, such default continues after a reasonable time period to cure such default, Landlord shall have lost its interest in the Demised Premises through foreclosure, and such default results in a material impediment to Tenant's conduct of its ordinary business within the Demised

Premises, then Tenant shall have a right, if it can exercise such right without damage to any other part of the Building, to cure such default on Landlord's behalf and at Landlord's reasonable expense.

- e. Landlord shall use reasonable efforts to obtain from the Master Landlord an instrument, in form mutually agreeable to the Master Landlord and Tenant, providing that so long as Tenant is not in default under the terms of this Sublease (beyond the applicable grace period under this Sublease in which to cure such default), the Master Landlord will "not disturb" Tenant's possession of the premises. For purposes of this Section 17(e), "reasonable efforts" shall mean the forwarding of the proposed form of agreement attached hereto as Exhibit M to Master Landlord together with a written request to the Master Landlord to execute same for the benefit of Tenant, and a follow up of up to two (2) additional written requests; provided, however, if at any point Master Landlord's representative or attorney directly engages with Tenant's representative or attorney to negotiate the form or substance of such agreement, Landlord will not be required to make any further efforts to obtain such instrument from the Master Landlord.
 - f. Landlord represents that it did not exercise, and has no remaining right to exercise, a termination of the Master Lease pursuant to Section 4.4(a) or (b) of the Master Lease. The delivery of "Exclusive Possession" under the Master Lease occurred prior to October 1, 2016 and therefore Master Landlord may not terminate the Master Lease under Section 4.4(c) of the Master Lease.
18. **Areas Exterior to Demised Premises.** Tenant shall not use any Lobby, the street areas adjacent to the Building or any other part of the Building other than the Demised Premises. Tenant shall take all reasonable action not to permit Tenant's Personnel to enter any Lobby, or other public areas of the Building except to conduct meetings regarding this Sublease and as otherwise reasonably agreed by Landlord. Tenant shall take all reasonable steps and diligent good faith efforts not to encumber or obstruct or permit to be encumbered or obstructed any hallway, service area, any Lobby, elevator, stairway or passageway in the Hotel. Tenant shall take all reasonable steps and diligent good faith efforts not to permit Tenant's Personnel or Tenant's Guests to congregate or queue, be it in a line or otherwise, in any Lobby, any portion of the Building, or the street area outside the Building. Landlord shall permit Tenant's employees to make ordinary and customary use of the storage conveyor apparatus owned by Landlord for their storage of uniforms and personal items while working in the Demised Premises for a reasonable monthly fee (which fee shall not include a component for Landlord's profit) established by Landlord from time to time subject to such reasonable rules and restrictions on such use as Landlord may adopt from time to time (including exclusion of the right to store any knives, other kitchen apparatus or other dangerous or hazardous things). Landlord shall permit Tenant's employees to make ordinary and customary use of locker rooms for changing and showering and

ordinary and customary use of back of house general employee bathrooms for personal hygienic needs, in each case on the Lower Level as may exist from time to time ("BOH Locker/Bathrooms") and during such times or immediately after or before such times as such employees, on an individual basis, will be on duty at the Restaurant; provided, however, that Tenant's employees shall not be permitted to store anything in such locker room or bathroom. Landlord shall permit Tenant's employees to dine at the employee cafeteria owned by Landlord while working in the Demised Premises for a reasonable fee (which fee shall not include a component for Landlord's profit) established by Landlord from time to time subject to such reasonable rules and restrictions on such use (including restrictions on use based on the time of the day) as Landlord may adopt from time to time. Tenant shall pay to Landlord as an item of Additional Rent an amount (herein called the "BOH Locker/Bathroom Operating Payment") equal to a percentage of the BOH Locker/Bathroom Operating Expenses approximately equal to the actual proportionate usage of such facilities by Tenant's Personnel. For clarity, and as merely an example, if Tenant's personnel do not use the bathrooms at all for a specific period, then Tenant would not pay any landlord's operating expenses for such bathroom for such period. The term "BOH Locker/Bathroom Operating Expenses" shall mean all costs and expenses paid or incurred by Landlord or on Landlord's behalf in respect of the repair, maintenance, stocking and operation of the BOH Locker/Bathrooms. The BOH Locker/Bathroom Operating Payment shall be due and payable within ten (10) business days of Landlord's demand therefor given from time to time. For the avoidance of doubt, Landlord shall only be obligated to provide such aforementioned storage conveyor apparatus, BOH Locker/Bathrooms and employee cafeteria to the degree that they continue to exist. If Tenant's restrooms are constructed in accordance with the Tenant's Plans, which shall include the restrooms indicated on Tenants Initial Concept Design Documents, and in accordance with this Sublease, repaired and maintained as required by this Sublease, and not blocked or used for any other purpose than the personal hygienic needs of individuals, then when the Tenant's restrooms are fully occupied, patrons (but not Tenant's Personnel) of the Restaurant requiring a restroom may be directed to use, subject to the terms and conditions of this Sublease and the Landlord's Building Rules, the common toilets on the Lobby Level designated by Landlord from time to time (the "Washroom Space") provided, however, it is acknowledged that the Washroom Space is intended solely for the ordinary personal hygienic needs of individuals and therefore Tenant shall not be entitled to use such common toilets for any commercial purpose including food and beverage preparation, supply of water for the operation of the Tenant's business, or disposal of any garbage, rubbish or wastewater. Tenant shall not direct, permit or suffer any Tenant's Personnel to use the Washroom Space. Landlord reserves the right to control and operate such common toilets in such manner as it in its reasonable judgment deems best.

19. Utilities and HVAC.

- a. Generally. Anything in this Sublease to the contrary notwithstanding, Tenant

shall, at its sole cost and expense, pay for and maintain all utilities and systems used exclusively in connection with the Demised Premises and make its own arrangements with the serving utility. Tenant shall make all deposits to the public or other utility server that are required to open accounts with said serving utility to obtain all required utilities directly from such serving utility. Tenant shall timely pay, directly to the utility server furnishing said utilities, the cost of all utilities consumed in the Demised Premises. Subject to Subsection 19(g) and (i) below, Landlord is not required to furnish any utility including electric current, gas or water, to the Demised Premises. In no event shall Landlord be responsible for charges for electricity, heat, or any other utilities (other than domestic cold water) consumed in the Demised Premises by Tenant.

- b. Meters. Tenant shall install necessary meters and submeters for the metering or submetering of electric, gas, domestic hot and cold water, heating hot water and chilled water delivered to the Demised Premises at Tenant's sole cost and expense. Tenant shall, throughout the Term of this Sublease, keep all meters in good working order and repair at Tenant's sole cost and expense and shall surrender the meters to Landlord in upon the expiration or sooner termination of this Lease.
- c. Landlord's Option. If Tenant shall fail to timely pay its utility bill, Landlord shall have the option to pay same. Any payment made by Landlord shall be reimbursed by Tenant as Additional Rent within five (5) business days from Landlord's billing therefor together with notice of when such Additional Rent is due.
- d. No Liability for Alteration in Service. Landlord shall not be liable in any way to Tenant for any failure or defect in the supply or character of utility service furnished to the Demised Premises by reason of any requirement, act or omission of the governmental agency or public utility or other utility server serving the Building with utility service or for any other reason.
- e. Capacity Limitation. Tenant's use of electric current in the Demised Premises shall not at any time exceed the capacity of any of the electrical conductors and facilities in or otherwise serving the Demised Premises. Tenant covenants and agrees that its use of any utility in the Demised Premises shall not at any time exceed the capacity of any of the pipes, risers and equipment in or otherwise serving the Demised Premises. In order to insure that such capacity is not exceeded beyond the capacity of and to avert any possible adverse effect upon the Building's electric service, Tenant shall not, without Landlord's prior written consent in each instance, connect any fixtures, appliances or equipment, to the Building's electrical distribution system nor make any alteration or addition to the electric system of the Demised Premises provided, however, this sentence shall not prohibit the addition or replacement of small appliances within the Demised Premises customary for restaurant use that are not reasonably likely to adversely impact the Building's electric service without Landlord's consent. Landlord shall allocate sufficient electrical power capacity in the switchgear room to deliver to

the Demised Premises the lesser of (i) the amount of power indicated in Tenant's load letter approved by the Potomoc Electric Power Company (PEPCO) in connection with the Tenant's Work, or (ii) 270/480 volts in the aggregate to a maximum fuse/circuit breaker of 400 Amps, 480 volts, provided, however, if Tenant reasonably demonstrates that use of the Demised Premises' hot water heater together with the other electrical needs of the Restaurant (in each case as reasonable and necessary for operation of a first class restaurant) then Landlord will allocate sufficient additional electrical power capacity in the switchgear room to deliver power reasonably necessary to operate the hot water heater. Tenant shall not, without Landlord's prior written consent in each instance, connect any fixtures, appliances or equipment, to the Building's electrical distribution system nor make any alteration or addition to the electric system of the Demised Premises. In the event any appliance or other equipment needs to be replaced on account of failure of such appliance or other equipment, Landlord's consent shall be deemed given if notice of such request is properly given in accordance with Section 28 hereof, the envelope containing such notice bears a statement in all capitalized and bolded letter "**RESPONSE REQUIRED IN 5-BUSINESS DAYS OF RECEIPT**" and Landlord fails to respond on or before the expiration of five (5) Business Days from the giving of such notice provided, however, such response (1) may be, in addition to a grant or refusal of such request a conditional grant or a good faith request for additional information, and (2) may be given by e-mail.

- f. Installation of Additional Conduits. Any additional pipes, risers or other equipment proper or necessary to supply Tenant's reasonable utility requirements, will, upon written request of Tenant, be installed by Landlord, at the sole cost and expense of Tenant, so long as such work is done at fair market rates, if, in Landlord's sole judgment, the same will not cause permanent damage or injury to the Building or the Demised Premises, is reasonably feasible, and will not cause or create a dangerous or hazardous condition or interfere with or disturb other subtenants or occupants of the Building.
- g. No Direct Service Available. If as of the Commencement Date electric current, gas service or water service cannot be obtained by Tenant directly from the governmental agency or public utility company servicing the Building but can be obtained through Landlord, then same will be supplied by Landlord, and Tenant will pay Landlord the Tenant's Cost therefor from time to time. Tenant shall install all required submeters at Tenant's sole reasonable cost and expense pursuant to Subsection 19(b) and Tenant shall pay the Tenant's cost of electric current, gas service and water service supplied by Landlord on the basis of such submeters. All costs and expense shall be paid by Tenant as an item of Additional Rent and shall be due within ten (10) business days of demand therefor. If any tax is imposed on the Landlord's receipts from the sale or resale of electricity, gas or water to Tenant by any federal, state or municipal authority, Tenant covenants and agrees that where permitted by Legal Requirements, such taxes shall be passed on to, and included in the bill of, and paid by, Tenant to Landlord as an item of

Additional Rent. For purposes of Section 19(g) and (i):

(a) **Usage** shall mean the number of applicable standard measuring units (for example, kilowatt hours and kilowatts of electronic consumed) consumed in the Demised Premises, as measured by a meter or meters through which the applicable utility supplied to the Demised Premises is drawn, for each calendar month or such other period as Landlord shall determine during the term of this Sublease.

(b) **Rate** shall mean the amount per standard measuring unit (including, with respect to electric current, energy and demand) that would be charged, at the time in question, by the public utility company supplying the subject utility to the Building, at the rate schedule payable by Landlord (including the demand factors for the Building), if the Usage were the total amount of the subject utility being purchased.

(c) **Tenant's Cost** shall mean 100% of an amount equal to the product of the Rate multiplied by the Usage.

- h. Landlord's Option to Provide. Landlord reserves the right to discontinue furnishing one or more of such utilities provided pursuant to Subsection 19(g) above to Tenant at any time upon thirty (30) days' written notice to Tenant but not earlier than the date that such utility or utilities are available to Tenant directly from the governmental agency or public utility company or other utility server servicing the Building, and from and after the effective date of such termination, Landlord shall no longer be obligated to furnish Tenant with such one or more utilities. If Landlord exercises such right of termination, this Sublease shall remain unaffected thereby and shall continue in full force and effect, and thereafter Tenant shall diligently arrange to obtain utility service directly from the governmental agency or public utility company or other utility server servicing the Building. Landlord shall not be obligated to pay any cost related to Tenant's direct utility service nor shall Landlord be liable or responsible to Tenant for any loss, damages or expenses that Tenant may sustain due to a change in the character of utility service
- i. Water. Tenant shall install and maintain in good order and condition any connections to the capped cold water stub in provided by Landlord. It is expressly understood that Landlord shall provide no hot water to the Demised Premises, and that any hot water that Tenant shall require in connection with its business shall, subject to and in compliance with the applicable provisions of this Sublease and the Landlord's Building Rules and Legal Requirements, be generated by Tenant at its sole cost and expense. Tenant shall install a water meter or submeter, at Tenant's sole reasonable cost and expense and thereby measure Tenant's water consumption for all purposes. Tenant agrees to pay for all water consumed, as shown on said meters at Tenant's Cost. All costs and expense of such installation and all charge for water consumed shall be paid by Tenant as an item of

Additional Rent and shall be due within ten (10) business days of demand therefor from time to time.

- j. HVAC. Notwithstanding anything to the contrary, Landlord shall have no obligation to provide any heating, ventilation or air-conditioning services to any portion of the Demised Premises; provided however, Landlord represents that the HVAC equipment is designed to provide conditioned fresh air to the Demised Premises per minimum code requirements and will, subject to temporary malfunctions of equipment, make commercially reasonable efforts to provide such fresh air at a temperature between 68 and 76 degrees Fahrenheit based on weather conditions. Tenant shall furnish its own heat and air conditioning to the Demised Premises at Tenant's sole cost and expense. Landlord will provide to the Demised Premises heating hot water and chilled water for heat and air-conditioning through the existing facilities. Tenant shall install and maintain in good order and condition any connections to any capped heating hot water and chilled water provided by Landlord. As part of the Tenant's Work, Tenant shall install such equipment as may be necessary to furnish heating, air-conditioning and, without limiting Landlord's obligation to perform the Landlord's Work, ventilation to the Demised Premises. Such equipment shall be equipped with motorized valves which will automatically turn off the supply of heating hot water and chilled water when such equipment is not in use in connection with the furnishing of heat or air-conditioning to the Demised Premises. Tenant shall install, at Tenant's sole cost and expense, one or more btu meters and thereby measure Tenant's consumption heating hot water and chilled water for all purposes. Tenant shall, throughout the Term of this Sublease, keep said meters in good working order and repair at Tenant's sole cost and expense and shall surrender the meters to Landlord in upon the expiration or sooner termination of this Sublease. Tenant agrees to pay for water consumed, as shown on said meters at the usual and customary fair market rates established therefor by Landlord from time to time. All reasonable costs and expenses of such installation and all charge for water consumed shall be paid by Tenant as an item of Additional Rent and shall be due within ten (10) business days of demand therefor from time to time. Tenant covenants and agrees to pay any sewer rent charge or any other tax, rent, levy or charge which now or hereafter is imposed or is a lien upon the Demised Premises or the Building pursuant to law, order or regulation made or issued in connection with the use, consumption, maintenance or supply of water (cold, hot, chilled or otherwise), water system, sewage or sewage connection or system with respect to the Demised Premises.
- k. Interruptions of Service. Landlord shall have the right, without liability to Tenant and without constituting any claim of constructive eviction, to stop or interrupt any HVAC or other service (including, without limitation, services provided by public utility companies using feeders, mains, pipes, wires or other facilities passing through portions of the Building other than the Demised Premises), and to stop or interrupt any permitted use of any Building facilities, at

such times as may be necessary and for as long as may reasonably be required by reason of accidents, strikes, or the making of repairs, alterations or improvements, or inability to secure a proper supply of fuel, steam, water, electricity, labor or supplies, or by reason of any other similar or dissimilar cause beyond the reasonable control of Landlord. To the extent that the scheduling of any such work is within the discretion of Landlord, Landlord covenants to use reasonable efforts to minimize the interference of such stoppage or interruption on Tenant's business activities at the Demised Premises. No such stoppage or interruption shall entitle Tenant to any diminution or abatement of rent or other compensation nor shall this Sublease or any of the obligations of Tenant be affected or reduced by reason of any such stoppage or interruption provided, however, to the extent Tenant is not reasonably able to operate the Restaurant during and on account of such stoppage or interruption, the Tenant's failure to operate shall not constitute a breach of Tenant's continuous operation covenant in Section 36(c).

20. **Access to Premises**. Landlord or Landlord's agents shall have the right (but shall not be obligated) to enter the Demised Premises in any emergency at any time, and, at other reasonable times during Tenant's normal business hours (or, at Tenant's option, during hours when Tenant is not required by this Sublease to operate its business, in which case Tenant shall pay Landlord's incrementally increased costs, if any, resulting from off-hours work) and upon reasonable advance notice, except with respect to the Entry Notice Exceptions, of the need for such entry, to examine the same and to make such repairs, replacements and improvements as Landlord may deem necessary and reasonably desirable to any portion of the Demised Premises or which Landlord may elect to perform in the Demised Premises following Tenant's failure to make repairs or perform any work that Tenant is obligated to perform under this Sublease within seven (7) days after notice thereof (provided that if such repair reasonably takes longer and Tenant commences it during such 7-day period and diligently pursues it, then such reasonable time as shall be necessary, but not more than 15 business days), or for the purpose of complying with Legal Requirements. Landlord will use reasonable efforts not to interfere unreasonably with Tenant's operations and to protect property in the Demised Premises provided, however, in an emergency, Landlord will be responsible to make only such efforts as are prudent, in Landlord's business judgment, given the potential risk of injury or property damage, or the exacerbation of same, the time constraints and other factors. Tenant shall permit Landlord to use and maintain and replace pipes and conduits in and through the Demised Premises and to erect new pipes and conduits therein, provided they are concealed within the walls, floors or ceiling wherever practicable and provided that Landlord shall use reasonable efforts not to interfere substantially with either Tenant's operations or the finish of the Demised Premises, and to repair any damage to the Demised Premises caused by Landlord's work. Landlord may, during the progress of any work in the Demised Premises, take all necessary materials and equipment into the Demised Premises without the same constituting an eviction, provided Landlord shall not store any materials or equipment inside the Demised Premises when it is not actually doing work in the Demised Premises, and Tenant shall be entitled neither to any abatement of rent while such work is in progress nor to any damages by reason of loss or interruption of business or

otherwise, other than for an actual breach by Landlord of this Sublease. Throughout the Term, Landlord shall have the right to enter the Demised Premises at reasonable hours for the purpose of showing the same to any potential purchaser of all or any portion of Landlord's direct or indirect interest in the Demised Premises or Building or any present, potential or future holder of a superior mortgage of all or part of Landlord's direct or indirect interest in the Demised Premises or the Building, and during the last six months of the Term for the purpose of showing the same to prospective tenants. In an emergency, or if (after reasonable notice) Tenant is not present to open and permit an entry into the Demised Premises, Landlord or Landlord's agents may enter the Demised Premises whenever such entry may be necessary or permissible by master key or forcibly, provided reasonable care is exercised to safeguard Tenant's property. Such entry shall not render Landlord or its agents liable therefor, nor in any event shall the obligations of Tenant hereunder be affected. If, during the last month of the Term, Tenant shall have removed all or substantially all of Tenant's property from the Demised Premises, Landlord may immediately enter, alter, renovate or redecorate the Demised Premises without limitation or abatement of rent, or incurring liability to Tenant for any compensation and such act shall have no effect on this Sublease or Tenant's obligations hereunder. Landlord shall have the right at any time, without the same constituting an eviction and without incurring liability to Tenant therefor, to change the name, number or designation by which the Building and/or Hotel may be known. Without incurring any liability to Tenant, Landlord may permit access to the Demised Premises and open the same, whether or not Tenant shall be present, upon demand of any receiver, trustee, assignee for the benefit of creditors, sheriff, marshal or court officer entitled to, or reasonably purporting to be entitled to, such access for the purpose of taking possession of, or removing, Tenant's property or for any other lawful purpose (but this provision and any action by Landlord hereunder shall not be deemed a recognition by Landlord that the person or official making such demand has any right or interest in or to this Sublease, or in or to the Demised Premises), or upon demand of any representative of the fire, police, building, sanitation or other department of the city, state or federal governments. If Landlord erects scaffolding at the Building, Landlord will make commercially reasonable efforts to avoid blocking the Tenant's windows.

21. **Bankruptcy.**

- a. If at any time after the date of this Sublease (whether prior to the Commencement Date of or during the Term): (i) any proceeding in bankruptcy, insolvency or reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief shall be instituted against Tenant pursuant to any federal or state law now or hereafter enacted, or any receiver, liquidator or trustee shall be appointed (without the acquiescence of Tenant) of Tenant or of all or any portion of Tenant's property or of the Demised Premises, or any execution or attachment shall issue against Tenant or Tenant's business or property or against the leasehold estate created hereby and any such proceeding or appointment or issuance be not dismissed or vacated within ninety (90) days from the date of such proceeding, appointment or issuance; or (ii) Tenant shall be adjudged a bankrupt or insolvent,

or Tenant shall make an assignment for the benefit of creditors, or Tenant shall file a voluntary petition in bankruptcy or shall file a petition or answer seeking (or enter into an agreement for) reorganization, arrangement, composition, readjustment, liquidation, dissolution or any other similar relief under any federal or state law now or hereafter enacted, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant, or of all or any substantial part of its properties or of the Demised Premises, or this Sublease or the estate of Tenant herein shall pass to or devolve upon, by operation of law or otherwise, anyone other than Tenant, then the occurrence of any one of such contingencies shall be deemed to constitute and shall be construed as a repudiation by Tenant of Tenant's obligations hereunder and shall cause this Sublease *ipso facto* to be canceled and terminated, and Tenant shall remain liable as hereinafter provided, and Landlord shall have the immediate right to re-enter the Demised Premises and to remove all persons and property therefrom and this Sublease shall not be treated as an asset of the Tenant's estate and neither the Tenant nor anyone claiming by, through or under Tenant by virtue of any law or any order of any court shall be entitled to possession of the Demised Premises or to remain in possession thereof.

- b. Upon the occurrence of any of the contingencies described in Section 21(a) above, Landlord shall have the right to retain on account of damages, and not as a penalty, any prepaid rents, security deposit and/or letter of credit proceeds and Landlord shall also be entitled to exercise such rights and remedies to recover from Tenant such amounts as are specified in Section 23(c) and Section 23(d) (provided, however, that clause (x) of such Section 23(d) shall apply), unless any statute or rule of law governing the proceedings in which such damages are to be proved shall lawfully limit the amount of such claims capable of being so proved, in which case Landlord shall be entitled to recover, as and for liquidated damages, the maximum amount which may be allowed under any such statute or rule of law. As used in this Section 21, the term "Tenant" shall be deemed to include and shall apply to Tenant and its successors, permitted sublessees and assigns and the Guarantor, if any.
- c. Tenant acknowledges and agrees that the Demised Premises are part of a mixed use building of the finest quality with due regard to the importance of, among other things, the tenant mix and balance in the Building and, therefore, that any assignee (by operation of law or otherwise) must (a) be compatible in all respects with the character and quality of the then existing tenant mix, and (b) provide Landlord with adequate assurance of its future performance under this Sublease including adequate assurance of the source of payment of Base Rent (of no less than one (1) year of Base Rent) and Additional Rent (including Percentage Rent) and assurance (in the form of a covenant) that the use of the Demised Premises shall only be that permitted under this Sublease. In the event of Tenant's bankruptcy, insolvency or reorganization, the parties hereto specifically intend that the actions of the trustee or Tenant in assuming and/or assigning this Sublease shall be governed by the provisions of Section 365 of Title 11 of the United States

Code applicable to leases of premises in a mixed use building of the quality of the building on the Property.

- d. All amounts payable by Tenant to or on behalf of Landlord under this Sublease whether or not expressly denominated rent or additional rent, shall constitute rent for the purpose of Section 502(b)(6) of the Bankruptcy Code and for the purpose of any similar section of any other present or future federal or state bankruptcy, insolvency or reorganization law.

22. Default.

- a. Events of Default. Each of following shall constitute an "Event of Default" by Tenant under this Sublease:
 - i. Any failure of Tenant to pay Base Rent when due, provided, however, that with respect to up to the first two (2) such failures in any period of twelve (12) consecutive months, such failure shall not constitute an Event of Default unless such failure remains uncured five (5) days after notice thereof by Landlord to Tenant.
 - ii. Any failure of Tenant to pay Percentage Rent or other item of Additional Rent, when due, provided, however, that with respect to up to first two (2) such failures in any period of twelve (12) consecutive months, such failure shall not constitute an Event of Default unless such failure remains uncured five (5) business days after notice thereof by Landlord to Tenant;
 - iii. The Demised Premises become vacant or deserted, and such condition continues for five (5) business days after notice thereof by Landlord to Tenant;
 - iv. Any execution or attachment shall be issued against Tenant, Tenant's subleasehold, or any of Tenant's Property whereupon the Demised Premises shall be taken or occupied by someone other than Tenant;
 - v. This Sublease is rejected under Section 365 of the Bankruptcy Code;
 - vi. If Tenant shall fail to timely open for business on the Required Opening Date and such default shall continue for 30 days and shall not be excused by a force majeure event described in Section 36(d) below or a default by Landlord, or if Tenant opens for business (other than for tastings and trial operations not open to the general public) before the Grand Opening Date;
 - vii. The Restaurant is not operated in accordance with Section 4 for 30 days after notice of such failure provided in precise detail as to the activities or circumstances that are not in conformity with Section 4, provided,

however, if Tenant commits more than two (2) breaches of this Sublease for a violation of the obligation to adhere to Section 4 of the same activities and/or circumstances during any 12-month period, then same shall constitute an Event of Default unless such breach is cured within seven (7) days after notice thereof;

- viii. If any event occurs or any contingency arises whereby this Sublease (or the legal or beneficial interests in Tenant), by operation of law or otherwise, devolves upon or passes to any Person other than Tenant except as expressly permitted under this Sublease (or with respect to the legal or beneficial interests in Tenant, any Person except as expressly permitted under this Sublease;
- ix. Any fact or circumstance that is stated in this Sublease to be an Event of Default;
- x. (A) Upon failing to achieve a "Critical Milestone" listed on Exhibit D3 to this Sublease, Tenant's failure to promptly meet with Landlord and establish a catch-up plan reasonably acceptable to Landlord or Tenant's failure to diligently and continuously pursue achievement of such milestone in accordance with such catch-up plan, (B) Tenant's falling so far behind the schedule of Critical Milestones that it could not be on schedule for opening by the Grand Opening Date; or (C) Tenant fails to deliver any Budget, document, Permit, schedule or other item listed as an item that requires submittal on Exhibit D3 on or before the date set forth therefor on Exhibit D3 and such failure continues for a period of ten (10) days after Landlord gives Tenant notice thereof specifying the items Tenant failed to deliver;
- xi. Tenant shall fail to timely deliver any Monthly Gross Sales Statement, Annual Percentage Rent Statement or Supplemental Percentage Rent Statement and such failure continues for ten (10) days after notice thereof by Landlord to Tenant;
- xii. The Liquor License shall be terminated or Tenant shall be found by the Alcohol Beverage Control Board to have violated the Liquor License on one or more occasions and Tenant fails to cure such violation within the time frame required by the Alcohol Beverage Control Board or any such finding (or all such findings taken in the aggregate) or facts underlying any such finding (or all such findings taken in the aggregate) (i) has a deleterious effect on the ability of the hotel to attract corporate and high net worth clients, (ii) damages the reputation in the community of the Restaurant or the Hotel, (iii) to the extent reflected in media coverage of such violations or such underlying facts, damages the reputation of Donald J. Trump or Geoffrey Zakarian (or the applicable Chef Proprietor of an

assignee), or, (iv) directly or indirectly negatively impact Landlord or its Affiliates' ability to obtain or maintain any gaming or liquor licenses;

xiii. Tenant shall default in the performance of any other covenant or duty hereunder and fails to cure such default to the reasonable satisfaction of Landlord within fifteen (15) days after receiving written notice of default from Landlord setting forth a description of such default in reasonable detail; provided, however, if said default shall not be curable by the payment of money and shall be of a nature that cannot be cured within said fifteen (15) day period and the continuance of which for the period required to cure cannot (A) subject Landlord or any superior lessor or superior mortgagee to being charged with or prosecuted for a crime or (B) result in the termination of any superior lease or foreclosure of any superior mortgage, Tenant shall have such longer period of time, not to exceed sixty (60) days in the aggregate, necessary to cure such default provided that, and so long as, Tenant commences curing such default within said thirty (30) day period and at all times thereafter diligently prosecutes such cure to completion.

- b. No Excusal of Performance. This Sublease and the obligation of Tenant to pay rent hereunder and perform all of the other covenants and agreements hereunder on the part of Tenant to be performed shall in no way be affected, impaired or excused because Landlord is unable to fulfill or is delayed in performing any of its obligations under this Sublease by reason of strike or labor troubles, a government preemption or restrictions or by reason of any rule, order or regulation of any Governmental Authority or by reason of the conditions of which have been or are affected, either directly or indirectly, by war or other emergency, or when, in the judgment of Landlord, temporary interruption of such services is necessary by reason of accident, mechanical breakdown, or to make repairs, alterations or improvements.
- c. No Cancellation or Termination Right. Tenant shall not be entitled to exercise any right of cancellation or termination or other option granted to it by this Sublease (if any) at any time when an Event of Default exists or, but for the passage of time after notice, would exist unless such default is cured within the cure period hereunder.
- d. Avignon. The acts and omissions of Avignon will be deemed to be the acts and omissions of the Tenant for all purposes under this Sublease (including Events of Default), and the Guaranty.

23. Remedies.

- a. Cancellation. If an Event of Default occurs, then Landlord may serve a written notice ("**Landlord's Cancellation Notice**") of cancellation of this Sublease upon Tenant. The Term shall end and expire upon the date specified in the Landlord's Cancellation Notice (the "**Cancellation Effective Date**") as fully and completely as if the expiration of such date specified in the Landlord's Cancellation Notice were the day herein definitely fixed for the end and expiration of this Sublease and the Term and Tenant shall then quit and surrender the Demised Premises to Landlord and shall remain liable as hereinafter provided.
- b. Re-entry. If (i) a Landlord's Cancellation Notice shall have been properly given and the Cancellation Effective Date has occurred, (ii) whether or not Landlord gave a Landlord's Cancellation Notice, if an Event of Default under clause 22(a)(i) above occurs, (iii) if any of the contingencies specified in Section 21(a) occurs (without regard to whether this Sublease is terminated or not, and if this Sublease is terminated, without regard to the manner in which it is terminated), or (iv) this Sublease otherwise terminates, then Landlord may without notice, re-enter the Demised Premises and dispossess Tenant or any other occupant of the Demised Premises by summary dispossess or other action or proceedings, remove and/or retain Tenant's FF&E and other items of Tenant's Property, and hold the Demised Premises as if this Sublease had not been made and Tenant shall remain liable as hereinafter provided. As used in this Sublease, "**re-enter**" and "**re-entry**" are not restricted to their technical legal meaning.
- c. Obligations Upon Repudiation, Default, Cancellation, Termination and/or Re-entry. If (i) a Landlord's Cancellation Notice shall have been properly given and the Cancellation Effective Date has occurred, (ii) whether or not Landlord gave a Landlord's Cancellation Notice, if an Event of Default under clause 22(a)(i) above occurs, (iii) if any of the contingencies specified in Section 21(a) occurs (without regard to whether this Sublease is terminated or not, and if this Sublease is terminated, without regard to the manner in which it is terminated), (iv) this Sublease otherwise terminates by reason of default hereunder on the part of Tenant, (v) Landlord re-enters the Demised Premises under the provisions of Section 23(b) above, or (vi) Landlord re-enters the Demised Premises by or under any summary dispossess or other proceeding or action or any provision of law by reason of default hereunder on the part of Tenant, then
- i. Tenant shall pay to Landlord (within ten (10) days of demand therefor from time to time)
1. the Base Rent and Additional Rent (including the Annual Percentage Rent) payable to the later of Cancellation Effective Date, to the time of termination of the Sublease, or the time of recovery of possession of the Demised Premises by Landlord, as the case may be,
 2. intentionally deleted;
 3. the unamortized portion of the Tenant's Allowance and the

free rent period between the Commencement Date and the Rent Commencement Date, assuming all such amounts would be fully amortized over the initial Term; and

4. damages as provided in Section 23(d) below;

ii. Landlord shall be entitled to

1. retain all monies, if any, paid by Tenant to Landlord, and, in accordance with Section 26 below, draw upon any letter of credit delivered by Tenant to Landlord, in each case, whether as advance rent, security or otherwise, but such monies and, to the extent required by Section 26 below, the proceeds of such letter of credit shall be credited by Landlord against any Base Rent or Additional Rent due from Tenant at the time of such repudiation, default, cancellation, termination or re-entry or, at Landlord's option, against any damages payable by Tenant under Section 23(d) below or pursuant to law; and
2. relet the Demised Premises, or any part thereof, in accordance with Section 23(e) below; and

iii. Tenant agrees that:

1. the Demised Premises then shall be in the same condition as that in which Tenant has agreed to surrender the same to Landlord on the Expiration Date including, in accordance with Section 3(d)(i) above, surrendering to Landlord, , all Tenant's FF&E and other items of Tenant's Property used in the conduct of Tenant's business in the Demised Premises;
2. Tenant shall have performed prior to any such repudiation, default, cancellation, termination, dispossession or re-entry, any obligation of Tenant contained in this Sublease for the making of any Alteration or for restoring or rebuilding the Demised Premises or the Building, or any part thereof; and
3. for the breach of any obligation of Tenant set forth above in this Section 23(c)(iii), *ipso facto* Landlord shall be entitled to recover, and Tenant shall pay (within ten (10) business days of demand therefor from time to time), the cost and expense of performing such obligation (as estimated by an independent contractor selected by Landlord), in addition to any other damages to which Landlord may be entitled under this Sublease or at law or equity as the result of the repudiation, default, or other breach and that resulted in

such cancellation, termination or re-entry.

d. Monetary Damages.

- i. If (i) a Landlord's Cancellation Notice shall have been properly given and the Cancellation Effective Date has occurred, (ii) whether or not Landlord gave a Landlord's Cancellation Notice, if an Event of Default under clause 22(a)(i) above occurs, (iii) if any of the contingencies specified in Section 21(a) occurs (without regard to whether this Sublease is terminated or not, and if this Sublease is terminated, without regard to the manner in which it is terminated), (iv) this Sublease otherwise terminates by reason of default hereunder on the part of Tenant, (v) Landlord re-enters the Demised Premises under the provisions of Section 23(b) above, or (vi) Landlord re-enters the Demised Premises by or under any summary dispossess or other proceeding or action or any provision of law by reason of default hereunder on the part of Tenant, then Landlord may recover from Tenant the following:

(1) all damages Landlord may sustain, including an amount equal to all expenses, including reasonable attorneys' fees and disbursements, incurred by Landlord in recovering possession of the Demised Premises, all expenses incurred for the care, protection and preservation of the Demised Premises while vacant, all expenses incurred in painting, altering or repairing the Demised Premises in order to place the Demised Premises in first-class rentable condition (whether or not the Demised Premises are relet), **and**

(2) either, at the election of Landlord, (x) a sum that, at the time of such cancellation or termination of this Sublease or at the time of any such re-entry by Landlord, as the case may be, represents the then value of the positive difference, if any between, (A) the aggregate amount of Base Rent and Additional Rent (including Annual Percentage Rent) that would have been payable by Tenant (conclusively presuming that the Annual Percentage Rent and other items of Additional Rent would be the same as were payable for the year immediately preceding the cancellation, termination or re-entry, or, if less than 365 days have then elapsed since the Commencement Date until such cancellation, termination or re-entry, the amount of Percentage Rent and other items of Additional Rent equal to the product of 365 and the fraction the numerator of which is the actual amount of Percentage Rent and other items of Additional Rent that accrued during such period of less than 365 days and the denominator of which is the actual number of days in such period of less than 365 days) for the period commencing with such cancellation or termination of this Sublease or the date of any such

re-entry, as the case may be, and ending with the date that would have been the Expiration Date if this Sublease had not so cancelled or terminated or if Landlord had not so re-entered the Demised Premises, minus (B) the aggregate rental value of the Demised Premises for the same period, both discounted to their present value at the rate for United States Treasury Notes or Bills then having a maturity closest to such assumed Expiration Date, provided, however, for the avoidance of doubt, in determining rental value all anticipated Reletting Expenses will be taken into account (whether or not the Demised Premises are actually relet, in whole or in part) provided, further, for purposes of taking into account brokerage commissions as a component of Reletting Expenses, in no event shall the amount thereof be deemed to be less than the brokerage commission for this Sublease, or (y) sums equal to the Base Rent and Additional Rent (including Annual Percentage Rent) that would have been payable by Tenant (as determined pursuant to the same assumptions as used in connection with determining Additional Rent under clause (x) above) had this Sublease not so cancelled or terminated, or had Landlord not so re-entered the Demised Premises, payable upon the due dates therefor (as provided in this Sublease) following such cancellation or termination or such re-entry until the date that would have been the Expiration Date if this Sublease had not been so cancelled or terminated or if Landlord had not so re-entered the Demised Premises, provided however, that if Landlord shall relet the Demised Premises during said period, Landlord shall credit Tenant with the net rents received by Landlord from such reletting, such net rents to be determined by first deducting from the gross rents as and when received by Landlord from such reletting the expenses incurred by Landlord in cancelling or terminating this Sublease or in re-entering the Demised Premises and in securing possession thereof, as well as the Reletting Expenses and any indebtedness other than rents payable hereunder from Tenant to Landlord, it being understood that any such reletting may be for a period shorter or longer than what would have been the unexpired portion of the Term if this Sublease had not been so cancelled or terminated or if Landlord had not so re-entered the Demised Premises, but in no event shall Tenant be entitled to receive any excess of such net rents over the sums payable by Tenant to Landlord hereunder, nor shall Tenant be entitled in any suit for the collection of damages pursuant to this subdivision to a credit in respect of any net rents from a reletting, except to the extent that such net rents are actually received by Landlord.

If the Demised Premises or any part thereof is relet in combination with other space, then proper apportionment on a per square foot basis shall be made of the rent received from such reletting and of the

expenses of reletting. Landlord, may in maintaining the Demised Premises in good condition or preparing the same for reletting, make such alterations, repairs, replacements, and/or decorations in the Demised Premises as Landlord, in Landlord's sole judgment, considers advisable and necessary for the purpose of reletting the Demised Premises. The making of any such alterations, repairs, replacements, and/or decorations shall not operate or be construed to release Tenant from liability.

With respect to a determination of damages under clause (x) above, if the Demised Premises or any part thereof is relet by Landlord for what would have been the unexpired portion of the Term if this Sublease had not been so terminated, or if Landlord had not so re-entered the Demised Premises, before presentation of proof of such damages to any court, commission or tribunal, the amount of rent set forth in any lease(s) in connection with such reletting, less all Reletting Expenses, shall prima facie, be the fair and reasonable rental value for the Demised Premises, or part thereof, so relet during the term of the reletting.

- ii. Suit or suits for the recovery of such damages, or any installments thereof, may be brought by Landlord from time to time at its election, and nothing contained herein shall be deemed to require Landlord to postpone suit until the date when the Term would have expired if this Sublease has not so cancelled or terminated or had Landlord not so re-entered the Demised Premises. Nothing herein contained shall be construed to limit or preclude recovery by Landlord against Tenant of any sums or damages to which, in addition to the damages particularly provided above, Landlord may lawfully be entitled by reason of any default of Tenant hereunder. Nothing herein contained shall be construed to limit or prejudice the right of Landlord to prove for and obtain as damages by reason of the termination of this Sublease or re-entry on the Premises for the default of Tenant under this Sublease an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved whether or not such amount is greater than, equal to, or less than any of the sums referred to in Subsection 23(c).
- e. Injunctive Relief. In the event of a breach or threatened breach by Tenant of any of the covenants or provisions hereof (including the provisions of Section 8 hereof), Landlord shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings and other

remedies were not herein provided for. Without limiting the foregoing, Tenant acknowledges that its failure to abide by the operating obligations set forth in this Sublease shall result in irreparable harm to the business, reputation and good will of the Building and accordingly, a material consideration for this Sublease is the Tenant's promise that it will immediately cease and desist from any method of operation that Landlord deems to be detrimental to the operation or reputation of the Building. As a result of the foregoing, the parties agree that Landlord will be entitled to immediate injunctive relief in regard to the breach of any operating obligations by Tenant in addition to all other remedies that Landlord may have under this Sublease or by Legal Requirements.

- f. Reletting. Landlord may (but shall not be obligated to) relet the Demised Premises or any part or parts thereof, which may, at Landlord's option, be equal to, less than or, greater than the period that would otherwise have constituted the balance of the Term. Landlord may grant concessions or free rent or charge a lower rental than that in this Sublease. The failure of Landlord to relet the Demised Premises or any part or parts thereof shall not release or affect Tenant's liability for damages. Landlord shall in no event be liable in any way whatsoever for failure to relet the Demised Premises, or in the event that the Demised Premises are relet, for failure to collect the rent thereof under such reletting, and in no event shall Tenant be entitled to receive any excess, if any, of such net rent collected over the sums payable by Tenant to Landlord hereunder.
- g. Option to Perform. Without limitation of Subsection 23(c)(iii), if Tenant shall fail to observe or perform any condition or covenant required under this Sublease, then after notice is given by Landlord (if required by this Sublease) and upon the expiration of any applicable grace period (except in an emergency), Landlord may immediately or at any time thereafter and without notice to Tenant perform the Tenant's obligations. Within ten (10) business days of Landlord's demand therefor Tenant shall reimburse Landlord for the costs and expenses of any such performance.
- h. Security. Pursuant to Section 26 below, Landlord shall be permitted to exercise its rights against the security provided by Tenant for the full and faithful performance and observance by Tenant of Tenant's covenants and obligations under this Sublease.
- i. Specific Performance. Landlord shall have the right to seek specific performance of any obligation of Tenant's under this Sublease.
- j. Other Remedies. The remedies provided for in this Sublease shall not preclude Landlord from any other remedy, in law or in equity.

All of the remedies hereinbefore granted to Landlord, and all rights and remedies granted to it by law and equity shall be cumulative and concurrent. No cancellation or termination of this Sublease or re-entry of the Demised Premises

shall deprive Landlord of any of its remedies or actions against Tenant for Base Rent, Additional Rent or Other Charges due at the time or which, under the terms hereof, would in the future become due as if there had been no cancellation or termination, and for any and all other sums due at the time or which, under the terms hereof, would in the future become due as if there has been no cancellation or termination or re-entry, nor shall the bringing of any action for Base Rent, Additional Rent or Other Charges, or for breach of covenant, or the resort to any other remedy herein provided for the recovery of Base Rent, Additional Rent or Other Charges be construed as a waiver of the right to obtain possession of the Demised Premises.

24. **No Waiver.** The failure of Landlord to seek redress for violation of, or to insist upon strict performance of any covenant or condition of this Sublease shall not be deemed a waiver of such or any subsequent breach in any of the covenants or conditions of this Sublease. The receipt by Landlord of Base Rent and/or Additional Rent with knowledge of the breach of any covenant or condition of this Sublease shall not be deemed a waiver of such breach, and no provision of this Sublease shall be deemed to have been waived by Landlord unless such waiver be in writing and signed by Landlord. Neither payment by Tenant or receipt by Landlord of a lesser amount than the Base Rent, nor any endorsement or statement of any check or any letter accompanying any check, payment or letter as Base Rent and/or Additional Rent be deemed an accord and satisfaction; and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided for in this Sublease. No act or omission by Landlord or Landlord's agents during the Term shall be deemed an acceptance of a surrender of the Demised Premises, and no agreement to accept such surrender shall be valid unless in writing and signed by Landlord. No employee of Landlord or Landlord's agent shall have any power to accept the surrender of the Demised Premises prior to the termination of this Sublease, and the delivery of keys to any agent or employee of Landlord shall not operate as a termination of this Sublease or a surrender of the Demised Premises.

25. **Fees and Expenses; Default Interest.** Tenant shall pay Landlord as an item of Additional Rent all costs and expenses paid or incurred by Landlord arising from, in connection with or relating to any breach by Tenant of this Sublease (including reasonable attorney's fees and disbursements in instituting, prosecuting or defending any actions or proceeding or otherwise including any action or proceeding to collect Base Rent or Additional Rent, enforcing or endeavoring to enforce any rights against Tenant and the costs of recovering possession after expiration, cancellation or termination of the Sublease). Such payments by Tenant shall be due and payable within ten (10) business days of demand therefor from time to time. Interest ("Default Interest") shall accrue on each payment required to be made by Tenant under this Sublease for each day from and after the date such payment becomes past due and remains unpaid, through and including the date of payment, at a rate equal to the lesser of (i) 18% per annum and (ii) the maximum applicable legal rate, if any. Such Default Interest shall be paid by Tenant to Landlord as an item of Additional Rent within ten

(10) business days of demand therefor from time to time.

26. Security Deposit; Guaranty; Letter of Credit.

(a) As an inducement to Landlord to enter into this Sublease, and as a pre-condition thereto, BVS Acquisition Co. LLC has delivered a guaranty of even date herewith (the "**Guaranty**") in favor of the Landlord in form and substance of the form of guaranty attached as Exhibit J to this Sublease. Any default by the Guarantor under the Guaranty beyond any applicable notice, cure or grace period expressly set forth in the Guaranty will be an Event of Default hereunder. If such Guaranty is ever determined to be unenforceable, in whole or in part, or the Guarantor ever asserts that it is unenforceable in whole or in part, then without releasing, impairing or otherwise limiting Landlord's rights under the Guaranty, without relinquishing any appeal rights that Landlord may have, and without confessing, stipulating or otherwise agreeing, in whole or in part, to any assertion of Guarantor, it shall be an Event of Default under this Sublease if, within thirty (30) days of demand therefor, Tenant fails to cause an additional guaranty, in form and substance of the form of guaranty attached hereto as Exhibit J, with any corrections to cure any lack of enforceability thereof, from a substitute guarantor acceptable to Landlord in its sole and absolute discretion. Upon an assignment of this Sublease permitted under this Sublease or to which Landlord consents in writing, Tenant may deliver a Guaranty in favor of Landlord (in form and substance of the form of guaranty attached as Exhibit J to this Sublease) from a principal of such assignee and Landlord shall accept such Guaranty in place of the then existing Guaranty if the guarantor named thereunder is reasonably acceptable to Landlord in all respects and has financial wherewithal reasonably sufficient to meet such guarantor's obligations under such Guaranty as demonstrated on or before such date by Tenant and/or BVS Acquisition Co. LLC. Without limiting the Landlord's discretion described in the preceding sentence, the proposed substitute guarantor must, as an additional condition precedent to Landlord's acceptance of such substitute Guaranty, provide Landlord with such financial and other information as Landlord may request in its reasonable discretion, including current financial statements of such substitute guarantor for the three (3) years prior to then current financial statement year prepared in accordance with generally accepted accounting principles by an independent certified public accountant unless Landlord agrees in writing, in its reasonable discretion to accept financial statements prepared on a different accounting basis. Notwithstanding anything to the contrary, in no event will the Guaranty of BVS Acquisition Co. LLC be deemed cancelled, terminated, returned or no longer in full force or effect, in whole or in part, unless and until Landlord marks such Guaranty "VOID" and returns the original thereof to BVS Acquisition Co. LLC under cover of letter on Landlord's letter head and signed by an officer of Landlord expressly stating that such Guaranty is cancelled.

(b) Within four (4) business days of the execution of this Sublease, Tenant shall deliver to Landlord, and Tenant shall maintain in effect at all times thereafter during the Term, as collateral for the full and faithful performance and observance by Tenant of Tenant's covenants and obligations under this Sublease, a clean, unconditional irrevocable letter of credit in the amount of Four Hundred Sixty-One Thousand Dollars (\$461,000) for the first 10 years following the Delivery Date and thereafter in the amount of Two Hundred Thirty

Thousand Five Hundred Dollars (\$230,500), substantially in the form annexed hereto as Exhibit N and issued by a bank with a long-term rating of at least BBB or Baa3 rated by Standard & Poor's Rating Service or by Moody's Investors Service, respectively, while such letter of credit is outstanding and having either its principal place of business or a duly licensed branch or agency in the borough of Manhattan, City and County of New York. Any such letter of credit shall have an expiration date no earlier than the first anniversary of the date of issuance thereof and shall be automatically renewed from year to year unless terminated by the issuer thereof by notice to Landlord given not less than 30 days prior to the expiration thereof. Tenant shall, throughout the Term, deliver to Landlord, in the event of the termination of any such letter of credit, replacement letters of credit in lieu thereof (each letter of credit and such extensions or replacements thereof, as the case may be, is herein called a "**Letter of Credit**") no later than 15 Business Days prior to the expiration date of the preceding Letter of Credit. The term of each such Letter of Credit shall be not less than one (1) year and subject to the next sentence shall be automatically renewable from year to year as aforesaid, without the requirement of an amendment therefor. Notwithstanding the foregoing, (x) if Landlord shall elect (in writing), in its sole discretion, to accept a Letter of Credit which is subject to a final expiration date or (y) at such time it is not customary for banks to issue letters of credit which automatically renew from year to year (i.e., so called "evergreen letters of credit"), then in either case, Tenant shall deliver a replacement of or amendment to such Letter of Credit no later than 30 days prior to such final expiration date, and the final Letter of Credit delivered to Landlord pursuant to this Section 26 shall have a final expiration date occurring not earlier than 30 days following the Expiration Date of this Sublease. At such time as Tenant delivers a replacement Letter of Credit to Landlord pursuant to this Section 26, Landlord shall return the Letter of Credit previously held by Landlord to Tenant (i.e., a simultaneous exchange is intended). If Tenant shall fail to obtain any replacement of or amendment to a Letter of Credit within any of the applicable time limits set forth in this Section 26 Landlord shall have the right (but not the obligation), at its option, to draw down the full amount of the existing Letter of Credit and hold such amount as Cash Security in accordance with the provisions of this Section 26 and use, apply and retain the same pursuant to this Section 26, and notwithstanding such draw by Landlord, Landlord shall retain all other rights and remedies that are available to Landlord under this Sublease or pursuant to law or equity. Upon delivery to Landlord of any such replacement of or amendment to the Letter of Credit prior to the date when such failure to previously deliver the replacement Letter of Credit becomes an Event of Default, such default shall be deemed cured and Landlord shall return to Tenant the proceeds of the Letter of Credit which had been drawn by Landlord pursuant to the preceding sentence or any balance thereof to which Tenant is entitled less any portion thereof applied in accordance with this Sublease) (i.e., a simultaneous exchange is intended).

(c) On the Effective Date, Tenant shall pay to Landlord as collateral for the full and faithful performance and observance by Tenant of Tenant's covenants and obligations under this Sublease, the sum of Twenty-Nine Thousand, One Hundred and Sixty Seven Dollars (\$29,167) (the "**Initial Cash Security Deposit**").

(d) If Tenant defaults in respect of the full and prompt payment or performance of any of

the terms, provisions, covenants or conditions of this Sublease beyond notice (the delivery of which shall not be required for purposes of this Section 26 if Landlord is prevented or prohibited from delivering the same under applicable Legal Requirements, including, but not limited to, all applicable bankruptcy and insolvency law) and the expiration of any applicable cure periods, including, without limitation, the payment of Base Rent or Additional Rent, Landlord may, at its election (but shall not be obligated to) draw down the entire Letter of Credit or the Initial Cash Security Deposit or any portion thereof and use, apply or retain the whole or any part thereof to the extent required for the payment of: (a) Base Rent or Additional Rent or any other sum as to which Tenant is in default, (b) any sum which Landlord may expend or may be required to expend by reason of Tenant's default in respect of any of the terms, provisions, covenants, and conditions of this Sublease, including, without limitation, any reletting costs or expenses (including, without limitation, any free rent, tenant improvement allowance, leasing commissions, attorneys' fees, costs and expenses, and other fees, costs and expenses relating to the reletting of all or any portion of the Demised Premises), or (c) any damages whether accruing before or after summary proceedings or other re-entry by Landlord ((a)-(c), the "**Security Applications**"). To insure that Landlord may utilize the proceeds of the Letter of Credit in the manner, for the purpose, and to the extent provided in this Section 26, each Letter of Credit shall provide that the full amount or any portion thereof may be drawn down by Landlord upon the presentation to the issuing bank (or the advising bank, if applicable) of Landlord's draft drawn on the issuing bank accompanied by a statement by Landlord, as beneficiary under the Letter of Credit, that "Tenant is in default of the Sublease beyond the applicable notice and cure period, and Landlord is entitled to draw under the Letter of Credit pursuant to the terms, if any, of this Sublease." The words "Tenant is in default of the Sublease beyond the applicable notice and cure period, if any," may be stated by Landlord in connection with a draw under Subsection (k) regardless of whether a default has occurred, any notice was given or any cure period has run. In no event shall the Letter of Credit require Landlord to submit evidence to the issuing (or advising) bank of the truth or accuracy of any such written statement and in no event shall the issuing bank or Tenant have the right to dispute the truth or accuracy of any such statement nor shall the issuing (or advising) bank have the right to review the applicable provisions of this Sublease.

(e) If Tenant defaults in respect of any terms, provisions, covenants and conditions of this Sublease beyond notice and the expiration of any applicable cure periods and Landlord utilizes all or any part of the security represented by the Letter of Credit but does not terminate this Sublease, Landlord may, in addition to exercising its rights as provided in Subsection 26(d) above, retain the unapplied and unused balance of the portion of the Letter of Credit drawn down by Landlord (herein called the "**Letter of Credit Draw Balance**") as security for the faithful performance and observance by Tenant thereafter of the terms, provisions, and conditions of this Sublease. If Tenant defaults in respect of the full and prompt payment or performance of any of the terms, provisions, covenants or conditions of this Sublease beyond notice (the delivery of which shall not be required for purposes of this Section 26 if Landlord is prevented or prohibited from delivering the same under applicable Legal Requirements, including, but not limited to, all applicable bankruptcy and insolvency law) and the expiration of any applicable cure periods,

including, without limitation, the payment of Base Rent or Additional Rent, Landlord may, at its election (but shall not be obligated to) use, apply, or retain the whole or any part of said Letter of Credit Draw Balance and/or the Initial Cash Security to any one or more of the Security Applications. Any Cash Security (as defined below) other than the Initial Cash Security Deposit held by Landlord as a security deposit under this Sublease, except to the extent Landlord shall be entitled to and shall have disbursed same to apply to Security Applications, shall be held at all times until disbursed in accordance with this Sublease in an account pledged to such Landlord's mortgagee lender to secure Landlord's obligations to such lender.

(f) In the event Landlord uses, applies or retains any portion or all of the proceeds (including the Letter of Credit Draw Balance) of the Letter of Credit or the Initial Cash Security, Tenant shall within 10 business days after demand restore the amount so used, applied or retained (at Landlord's option, either by the deposit with Landlord of cash or the provision of a replacement Letter of Credit) so that at all times the amount represented by the Letter of Credit and any security held in cash ("**Cash Security**"), including the Letter of Credit Draw Balance and the Initial Cash Security shall be not less than the Required Amount, failing which Tenant shall be in default of its obligations under this Section 26 and Landlord shall have the same rights and remedies as for the non-payment of Base Rent including the right to draw down the entire Letter of Credit or any portion thereof and hold it as additional Cash Security.

(g) If Tenant shall fully and faithfully comply with all of Tenant's covenants and obligations under this Sublease, the Letter of Credit and the Cash Security, if any, shall be returned to Tenant within 30 days after both (i) the expiration of this Sublease, and (ii) the delivery to Landlord of entire possession of the Demised Premises as provided in this Sublease; provided, however, that (x) Landlord shall be entitled to use, apply or retain such amounts as Landlord reasonably requires in connection with any Security Deposit Applications (as permitted by the terms of this Section 26), and (y) in no event shall any such return be construed as an admission by Landlord that Tenant has performed all of its obligations hereunder. Upon Tenant's written request, the Letter of Credit shall be reduced to \$230,500 on or after the 10th anniversary of the Commencement Date if no Event of Default or default of which Tenant has received notice is then continuing. In no event shall any such return be construed as an admission by Landlord that Tenant has performed all of its obligations hereunder. Such return of the Letter of Credit shall be effectuated on or before thirty (30) days after the later of (x) the date Tenant gives such request and (y) the date Landlord receives the Annual Gross Sales Statement and completes any audit it elects to conduct.

(h) In the event of any sale, transfer or leasing of Landlord's interest in the Building whether or not in connection with a sale, transfer or leasing of the Building to a vendee, transferee or lessee, Landlord shall have the right to transfer the Letter of Credit (whether or not any portion thereof has been drawn) and the remaining balance if any of the Cash Security (if any) to the vendee, transferee or lessee or, in the alternative, to require Tenant, upon not less than thirty (30) days prior notice, to deliver a replacement Letter of

Credit naming the new landlord as beneficiary, and, upon such delivery by Tenant of such replacement Letter of Credit, Landlord shall return the existing Letter of Credit to Tenant together with an instrument from Landlord confirming that it no longer has an interest in such Letter of Credit being so replaced (such exchange is intended to take place simultaneously). Upon such transfer or return of the Letter of Credit and the remaining balance if any of the Cash Security (if any), Landlord shall thereupon be released by Tenant from all liability for the return thereof, and Tenant shall look solely to the new landlord for the return of the same. If Cash Security is involved, then Landlord shall procure a signed receipt from the transferee thereof and shall deliver a copy of same to Tenant. The provisions of the preceding sentence shall apply to every subsequent sale, transfer or leasing of the Building, and any successor of Landlord may, upon a sale, transfer, leasing or other cessation of the interest of such successors in the Building, whether in whole or in part, transfer the Letter of Credit and the remaining balance if any of the Cash Security (if any) to any vendee, transferee or lessee of the Building (or require Tenant to deliver a replacement Letter of Credit as hereinabove set forth) and shall thereupon be relieved of all liability with respect thereto. If Tenant shall fail to timely deliver such replacement Letter of Credit, Landlord shall have the right (but not the obligation), at its option, to draw down the existing Letter of Credit and retain the proceeds as Cash Security and/or transfer same to a vendee, transferee or lessee. Landlord and Tenant hereby agree that, in connection with the transfer by Landlord or its successors or assigns hereunder of Landlord's interest in the Letter of Credit, Tenant shall be solely liable to pay any transfer commission and other costs charged by the issuing bank in connection with any such transfer of the Letter of Credit.

(i) Except in connection with a permitted assignment of this Sublease, Tenant shall not assign or attempt to assign the security represented by the Letter of Credit or the Cash Security, and neither Landlord nor its successors or assigns shall be bound by any such assignment, or attempted assignment. Tenant shall not encumber or attempt to encumber the security represented by the Letter of Credit, the Cash Security, and neither Landlord nor its successors or assigns shall be bound by any such encumbrance or attempted encumbrance each of which encumbrance shall be null and void *ab initio*. In any event, in the absence of evidence satisfactory to Landlord of an assignment of the right to receive the funds represented by the Letter of Credit, Landlord may return the Letter of Credit to the original Tenant regardless of one or more assignments of this Sublease.

(j) The term "**Required Amount**" means the aggregate amount of security, whether by letter of credit or cash, with which Tenant is required to provide Landlord under this Sublease. The initial Required Amount is Four Hundred Ninety Thousand One Hundred Sixty-Seven Dollars (\$490,167).

(k) In the event that at any time during the Sublease Term Landlord, in Landlord's reasonable opinion, believes that circumstances have occurred indicating that the issuing bank may be or may imminently become incapable of, unable to, or prohibited from honoring the then existing Letter of Credit ("**Existing L/C**") in accordance with the terms hereof, then, Landlord may send written notice to Tenant ("**Replacement Notice**") requiring Tenant, within ten (10) business days, to replace the Existing L/C with a new

Letter of Credit ("**Replacement L/C**") from an issuing bank reasonably satisfactory to Landlord. Landlord agrees to make the Existing L/C available for a simultaneous exchange of the Existing L/C for a Replacement L/C meeting the qualifications set forth herein. In the event that (i) a Replacement L/C meeting the qualifications set forth herein is not received by Landlord within the time specified, or (ii) Landlord reasonably believes an emergency exists whereby Landlord's ability to draw upon the Existing L/C (regardless of Tenant's default hereunder) and receive the full proceeds thereof will be or may likely be extinguished, then in either event, the Existing L/C may be presented for payment by Landlord and the proceeds thereof shall be held by Landlord in accordance with this Section 26 as Cash Security subject, however, to Tenant's right, at any time thereafter prior to an Event of Default by Tenant hereunder to replace such Cash Security with a new Letter of Credit meeting the qualifications set forth herein. Landlord agrees to make such Cash Security available for a simultaneous exchange of such Cash Security for a new Letter of Credit meeting the qualifications of set forth herein.

27. Matters of Civil Procedure.

- a. WAIVER OF TRIAL BY JURY. IT IS MUTUALLY AGREED BY AND BETWEEN LANDLORD AND TENANT THAT THE RESPECTIVE PARTIES HERETO SHALL AND THEY HEREBY DO WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY SUCH PARTY HERETO AGAINST ANY OTHER SUCH PARTY ON ANY MATTERS WHATSOEVER ARISING OUT OF, CONNECTED WITH OR RELATED TO THIS SUBLEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OF OR OCCUPANCY OF THE DEMISED PREMISES, OR ANY EMERGENCY STATUTORY OR OTHER STATUTORY REMEDY.
- b. Governing Law. This Sublease shall be governed in all respects by the laws of the District of Columbia.
- c. Jurisdiction, Service of Process and Venue. Each party represents and warrants to the other party that it is not entitled, directly or indirectly, to diplomatic or sovereign immunity. In all disputes arising out of this Sublease, Landlord, the original Tenant herein named, each person comprising Tenant, each immediate and remote assignee of Tenant's interest in this Sublease and each person comprising each such assignee, shall be deemed subject to service in Washington D.C. and to the jurisdiction of the Court System of the District of Columbia and federal courts located in Washington D.C. and such service may be accomplished in the same manner as a Notice and agree that all such disputes shall be heard and determined in the federal district courts located in Washington D.C. or in the superior court of Washington D.C.
- d. Waiver of Right to Bring Counter Claims.
 - i. Landlord's Approval. If Landlord commences any proceeding or action for

possession including a summary proceeding for possession of the Demised Premises, Tenant shall not interpose any counterclaim of whatever nature or description in any such proceeding, except for statutory mandatory counterclaims and shall not seek to consolidate such proceeding with any action that may have been or will be brought by Tenant or any other Person.

ii. Redemption. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future Legal Requirements.

e. Waiver of Remedies.

i. Tenant agrees that its sole remedies in cases where Landlord's reasonableness in exercising its judgment or withholding its consent or approval is applicable pursuant to a specific provision of this Sublease, or any rider or separate agreement relating to this Sublease, if any, shall be those in the nature of an injunction, declaratory judgment, specific performance or Tenant's actual monetary damages (but not including any punitive damages or consequential damages), the rights to arbitration (or other forms of alternative dispute resolution) or other remedies being hereby specifically waived except as expressly set forth in clause (ii) below.

ii. If Tenant requests Landlord's consent or approval pursuant to this Lease and this Lease requires Landlord not to unreasonably withhold such consent or approval and Landlord determines not to grant such consent or approval, then Tenant may institute an arbitration to determine whether Landlord unreasonably withheld such consent or approval in Washington, DC before *one* arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules. In such arbitration, the arbitrator shall within 10 days after such arbitration (if acceptable to the arbitrator and otherwise as provided in the above referenced rules and procedures) determine whether Landlord shall have acted reasonably in its determination and if not order Landlord to consent or approve as requested by Tenant. The arbitrator may not award costs or any amount of damages of any kind. In rendering such award, the arbitrator shall enforce, and may not amend or modify any provision of, this Sublease. Such award shall be final and binding on the parties hereto, and judgment thereon may be entered in any court having jurisdiction thereon. The arbitrator shall be bound by each of the provisions set forth in this Lease, and by the substantive laws of the courts of Washington, DC that relate to any controversy arising from this Lease.

iii. Without limitation of Landlord's remedies, if Landlord shall be entitled to institute an arbitration proceeding under the preceding clause (ii) if Tenant

fails to comply with a request or demand of Landlord, or obstructs the fulfillment of a right of Landlord, in each case in whole or in part, which compliance or fulfillment is required or permitted where the request, demand or exercise was reasonable. For example, without limitation, Tenant fails to require Tenant's Personnel to provide information or explanation as reasonably necessary under Section 5(b)(iv), Landlord may institute an arbitration.

- f. **Limited Recourse.** Tenant shall look only to Landlord's estate and interest in the Demised Premises and Building for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) against Landlord in the event of any default by Landlord hereunder, and no other property or assets of such Landlord (or any partner, stockholder, member, officer or director thereof, disclosed or undisclosed), shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this Sublease, the relationship of Landlord and Tenant hereunder, or Tenant's use and occupancy of the Demised Premises.
28. **Notices.** Except as otherwise expressly provided in this Sublease, any bill, statement, notice or communication given pursuant to this Sublease shall be in writing, addressed to the intended recipient party and delivered either by hand delivery or by prepaid United States Postal Service Express Mail (or some other nationally recognized overnight courier service, such as Federal Express), and shall be deemed given upon the earlier to occur of delivery or refusal thereof at the addresses for the intended recipient party set forth in Exhibit E of this Sublease. Either party may change its notice address by notice to the other party pursuant to this Section effective 10 business days after delivery.
29. **Brokerage.** Streetsense/Retail Advisors ("Landlord's Broker") acted as Landlord's broker with respect to this Sublease. Mogull Realty, Inc. ("Tenant's Broker") acted as Tenant's broker with respect to this Sublease. Landlord represents and warrants to Tenant that Landlord has had no dealings or communications with any broker or agent in connection with the consummation of this Sublease other than Landlord's Broker and Tenant's Broker, and Landlord agrees to pay, hold harmless and indemnify Tenant from and against any and all cost, expense (including reasonable attorneys' fees) or liability for any compensation, commissions or charges claimed by any broker or agent claiming to have dealt or communicated with Landlord with respect to this Sublease or the negotiation thereof, including Landlord's Broker but excluding Tenant's Broker, provided, however, Landlord has entered into the Mogull Commission Agreement and will indemnify and hold Tenant harmless from and against claims by Tenant's Broker for the performance of Landlord's obligations thereunder. Tenant represents and warrants to Landlord that neither Tenant nor Principal has had any dealings or communications with any broker or agent in connection with the consummation of this Sublease other than Landlord's Broker and Tenant's Broker and Tenant agrees to pay, hold harmless and indemnify Landlord from and against

any and all cost, expense (including reasonable attorneys' fees) or liability for any compensation, commissions or charges claimed by any broker or agent claiming to have dealt or communicated with Tenant or prior to Tenant's formation, Principal, with respect to this Sublease or the negotiation thereof excluding Landlord's Broker and claims by Tenant's Broker for the performance by Landlord of Landlord's obligations under the Mogull Commission Agreement. "Mogull Commission Agreement" means that certain Commission Agreement dated as of the date hereof between Landlord and Mogull Realty, Inc. regarding the payment of a commission in connection with entry into this Sublease. For the avoidance of doubt, any claims by Tenant's Broker in excess of the Landlord's obligation under the Mogull Commission Agreement are Tenant's obligation.

30. **No Representations by Landlord.** Neither Landlord nor any of Landlord's agents has made any representations or promises with respect to the physical condition of the Building, the land upon which it is erected, or the Demised Premises, the rents, leases, expenses of operation, or any other matter or thing affecting or related to the Demised Premises except as herein expressly set forth, and no rights, easements or licenses are acquired by Tenant by implication or otherwise except as expressly set forth in the provisions of this Sublease. Tenant acknowledges that the taking of possession of the Demised Premises by Tenant shall be conclusive evidence that the Demised Premises were in good and satisfactory condition at the time such possession was so taken subject to Landlord's Work Punchlist, Landlord's repair and maintenance obligations hereunder and Landlord's obligation to remedy defects in Landlord's Work. All understandings, representations and agreements heretofore made between the parties are merged in this Sublease, which alone fully and completely expresses the agreement between Landlord and Tenant, and any executory agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of it in whole or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought. For the avoidance of doubt, it is expressly understood that Landlord may change the name of the Building from time to time in its sole and absolute discretion.
31. **Quiet Enjoyment.** Landlord covenants and agrees with Tenant that, upon Tenant paying the Base Rent and Additional Rent and observing and performing all the terms, covenants and conditions on Tenant's part to be observed and performed, Tenant may peaceably and quietly enjoy the Demised Premises, subject, nevertheless, to the terms and conditions of this Sublease.
32. **Adjacent Excavation and Shoring.** If an excavation shall be made upon land adjacent to the Demised Premise or Building, or shall be authorized to be made, Tenant shall afford to the Person causing or authorized to cause such excavation, license to enter upon the Demised Premises for the purpose of doing such work as said Person shall deem necessary to preserve the Demised Premises or the Building from injury or damage and to support the same by proper foundations without any claim for damages or indemnity against Landlord, or diminution or abatement of rent.

33. **Rules and Regulations.** Tenant, Tenant's Personnel, and Tenant's Guests shall observe faithfully Landlord's Building Rules. Nothing in this Sublease contained shall be construed to impose upon Landlord any duty or obligation to enforce the rules and regulations or terms, covenants or conditions in any other lease, as against any other subtenant and Landlord shall not be liable to Tenant for violation of the same by any other subtenant or their respective servants, employees, independent contractors, agents, visitors or licensees. Any provision herein notwithstanding, the Building Rules shall be equitably enforced among occupants in the Building.

34. **Signage.**

a. **Interior Signs.** The appearance, number, location, nature and subject matter of any kinds or forms of signs displayed in or about the Demised Premises and visible from outside the Demised Premises, will in each instance be only such as meets with Landlord's prior written approval (which approval shall not be unreasonably withheld. Tenant shall submit to Landlord a detailed sketch of any such signs and once approved, the same shall not be altered without Landlord's consent (which approval shall not be unreasonably withheld). All signs shall be maintained by Tenant, at its sole cost and expense, in good order and condition and shall be removed by Tenant at the end of the Term hereof, and Tenant shall repair any damage to the Demised Premises or Building caused by the installation, maintenance or removal of such signs. Tenant shall indemnify, defend and hold harmless Landlord and each other Landlord Indemnified Party from and against any and all Claims arising from, connected with or related to the installation, maintenance or removal of such signs.

b. **Awnings and Exterior Signs.** Landlord shall install, at Tenant's sole cost and expense, at reasonable rates, the awnings and signs depicted on Exhibit I to this Sublease. Tenant shall not install, place or permit any sign (including lettering, window display, awnings or other decor) outside of the Demised Premises that is within the Building or on the perimeter walls of the Building without the prior written consent of the Landlord in its sole and absolute discretion. Each such sign installed pursuant to the two preceding sentences shall be kept clean and in good order and state of repair and appearance by Tenant (using a contractor selected as above) at the sole cost and expense of Tenant, including, whenever necessary in the reasonable judgment of Landlord, the replacement by Landlord at the sole cost and expense of Tenant at reasonable rates of awning coverings that have become faded, weathered or similarly damaged, with materials reasonably approved by Landlord. All reasonable costs and expenses of Landlord for the performance of the foregoing obligation shall be paid by Tenant to Landlord as Additional Rent within fifteen (15) days of demand therefor. Tenant shall cause all such signs to be covered by the property insurance provided for in Section 13.

35. **Tenant's Equipment Leases.** Tenant shall not enter into any leases for any equipment, furniture or fixtures in the Demised Premises (other than a point of

sales system without first obtaining Landlord's prior written consent, which shall be subject to Landlord's sole and absolute discretion. Tenant shall make all payments required under equipment leases (if any) for equipment, furniture or fixtures used by Tenant at the Demised, including, kitchen equipment and a point of sales system, in a timely fashion. Any default by Tenant under any such lease beyond any applicable notice and cure period may be deemed by Landlord to be a default under this Sublease.

36. **Operation of Business.**

- a. **Generally.** Tenant shall not suffer or permit the Demised Premises or any part thereof to be used in any manner, or anything to be done therein, or suffer or permit anything to be brought into or kept therein, which would in any way (i) result in the Demised Premises being operated or maintained in violation of the Master Lease; (ii) make void or voidable any fire or liability insurance policy then in force with respect to the Building; (iii) make unobtainable from reputable insurance companies authorized to do business in Washington D.C. any fire insurance with extended coverage, or liability, elevator, boiler or other insurance at rates generally applicable to comparable restaurants in Washington D.C.; (iv) cause or in Landlord's reasonable opinion be likely to cause physical damage to the Building or any part thereof; (v) constitute a public or private nuisance; or (vi) impair or interfere with any of the Building services or systems or the proper and economic heating, cleaning, air conditioning or other servicing of the Building or the Demised Premises.
- b. **Grand Opening.** It is presently anticipated that the Grand Opening Date will be in July, 2016. Tenant must open for business on the Grand Opening Date provided, however, if the Grand Opening Date occurs on a date that is less than two hundred seventy (270) days after the Delivery Date, then the Tenant's obligation to open the Restaurant for business on the Grand Opening Date will be postponed, provided that Tenant must open for business no later than the date that is two hundred seventy (270) days after the Delivery Date or such earlier date as is twenty one (21) days after the Final Completion of the Tenant's Work. For the avoidance of doubt, if the Grand Opening Date is postponed beyond the date on which such 270 day or 21 day periods expire, then the Required Opening Date shall be the Grand Opening Date as so postponed. The date Tenant must open for business pursuant to the immediately preceding sentences is sometimes referred to in this Sublease as the "**Required Opening Date.**" In no event shall Tenant open for business earlier than the date specified by Landlord in a written notice to Tenant of the opening of the Hotel (the "**Grand Opening Date**"). Landlord shall provide notice of the Grand Opening Date at least Ninety (90) days prior to the Grand Opening Date. If Landlord postpones the Grand Opening Date for more than five (5) days, other than on request of Tenant, Landlord shall provide notice of the new Grand Opening Date at least thirty (30) days prior to the new Grand Opening Date unless the Required Opening Date is after the new (i.e., postponed) Grand Opening Date. If Landlord postpones the Grand Opening Date for more

than ninety (90) days after the later of the originally noticed Grand Opening Date and the Required Opening Date, and Tenant was willing and but for such postponement would have been able to open the Restaurant as required under this Sublease on the Required Opening Date, Tenant shall be entitled to a credit against the first Base Rent payable after the Rent Commencement Date and after any other credit expressly allowed hereunder of one (1) day of Base Rent for each one (1) day that occurs after the date that is ninety (90) days after the later of the originally noticed Grand Opening Date and the Required Opening Date until the actual Grand Opening Date. Landlord may, from time to time, upon notice to Tenant, postpone the Grand Opening Date. In the event Tenant fails to open the Restaurant as and when required under this Sublease, Tenant shall be required to pay immediately upon demand to Landlord 2 days of per diem Base Rent, CAM Charges, and Tax Contributions for each day after the Required Opening Date that Tenant fails to open the Restaurant as required under the Sublease up to 60 days after the date required in this Sublease. Without limiting Landlord's rights and remedies under Sections 22(a)(vi) and 23, if Tenant's failure to open the Restaurant as required under this Sublease continues beyond such 60 day period, or if Landlord reasonably determines on the basis of reliable evidence after giving Tenant an opportunity to discuss its position that it is not possible for Tenant to open within such 60 days, then in any such case Landlord may elect (one or more times), in its sole discretion, instead of immediately exercising its remedies under Sections 22(a)(iv) and 23, to postpone the Required Opening Date, in which event Tenant shall be required to pay, within one (1) business day from demand therefor, an amount equal to Base Rent for such period of postponement (determined without giving effect to any free rent or abatement); provided, however, if Tenant fails to open the Restaurant on the Required Opening Date as so postponed and otherwise in accordance with this Sublease, then Landlord shall have the rights and remedies under Sections 22(a)(vi) and 23.

- c. Continuous Operation. From and after the Rent Commencement Date, including during the period any change is being performed, Tenant agrees to conduct continuously in the entire Demised Premises the business indicated in Section 4 with due diligence and efficiency. Tenant shall: (i) daily (365 or 366 days, as applicable, per year) serve breakfast, lunch and dinner and remain open for business during each such day during, at a minimum, the hours of service, 8:00 a.m. to 9:00 p.m. on Sunday and 7:00 a.m. to 10:00 p.m. on Monday through Saturday, without exception, so that Tenant provides full breakfast, lunch and dinner service; (ii) maintain at all times a full staff of employees and a full and complete stock of food, beverages and other non-edible supplies; (iii) use for office, clerical or non-restaurant purposes only such space in the Demised Premises as is from time to time reasonably required for Tenant's business; and (iv) refrain from conducting or suffering the conduct of any auction, fire or bankruptcy sale upon the Demised Premises. Tenant agrees not to change the advertised name of the business operated in the Demised Premises without the prior consent of Landlord in its sole and absolute discretion for five (5) years, provided that thereafter such consent shall not be unreasonably withheld.

- d. Best Efforts. Tenant agrees that in the operation of its business of the Demised Premises, Tenant shall at all times hire and maintain reasonably adequate personnel for the efficient service of its customers; and employ all efforts and abilities to operate the business in a manner calculated to produce the greatest possible volume of Gross Sales including during the performance of any changes. Any provision herein notwithstanding, neither party hereto shall be held liable or in default for any failure to comply with any of the terms of this Sublease caused solely by fire, strike, war, insurrection, government restrictions, force majeure, or other causes beyond its reasonable control and without its fault, but the non-performing party shall use all reasonable endeavors to resume performance and comply with the terms of this Sublease as quickly as practicable; provided that this Section 36(d) shall not apply to either party's failure to pay money when due.
- e. License Fees. Tenant shall obtain prior to the Rent Commencement Date, and thereafter maintain in full force and effect, any license, permit, authorization or permission necessary or desirable for the operation of its business in the Demised Premises as contemplated hereby (including, without limitation, restaurant and liquor licenses) or any work at or improvements to the Demised Premises. Tenant's inability to so obtain or maintain any such license, permit or authorization shall not operate to release Tenant from any obligation under this Sublease including the obligation to pay Base Rent and Additional Rent except as expressly provided. Tenant represents and warrants to Landlord that Tenant knows of no reason why all such licenses, permits, authorizations and permissions would not be granted to Tenant upon application therefor in accordance with the procedures currently promulgated by the appropriate issuing authority. Tenant shall pay when and as due all license fees, permit fees and charges of a similar nature for the conduct by Tenant of the business to be conducted in the Demised Premises.
- f. Control. Tenant, Avignon and Geoffrey Zakarian each hereby represents and warrants that (a) it or he, as applicable, has delivered to Landlord on or before the date of this Lease, a true, correct and complete copy of that certain binding terms dated as of September 24, 2014 between Geoffrey Zakarian and Louis Ceruzzi, the principal of Tenant and that certain Trademark Licensing and Management Agreement dated as of the date hereof between Avignon and Tenant (collectively, the "Zakarian Independent Contractor's Agreement"), (b) that there are no amendments, modifications, side letters, or other agreements or understandings, written or oral, that modify the Zakarian Independent Contractor's Agreement or review of which are necessary to understand the legal and financial relationship of Tenant with Geoffrey Zakarian with respect to the Restaurant or alter or materially impact the principal benefits granted to each on the face of the document and (c) the Zakarian Independent Contractor's Agreement is the legal, valid and binding obligation of Tenant and Geoffrey Zakarian, enforceable in accordance with its terms. Each of Tenant, Avignon and Geoffrey Zakarian hereby covenants

for the benefit of Landlord (i) that at all times during the Term, it shall observe all of the obligations on its or his respective part to be performed under the Zakarian Independent Contractor's Agreement, (ii) it or he, respectively, shall not amend, modify, supplement, cancel or terminate the Zakarian Independent Contractor's Agreement, or enter into other understandings or agreements that alter legal or economic relationship of the parties thereto with respect to the Restaurant or modifies the principal benefits granted to each of the parties thereto on the face of the document including, but not limited to, in a way that reduces Geoffrey Zakarian's profit interest or control, in each case without the prior written consent of Landlord, and (iii) upon the Landlord's written request from time to time, it or he, respectively, shall deliver an estoppel certificate in form and substance reasonably acceptable to Landlord with respect to the Zakarian Independent Contractor's Agreement confirming compliance with this Agreement. Without limiting the foregoing, Tenant and Geoffrey Zakarian each hereby (1) represents to Landlord that, pursuant to the Zakarian Independent Contractor's Agreement, the following facts and circumstances are true, which representations shall be a continuing representation through the Term, (2) such representations do not omit to state any material fact or circumstance necessary to make any material statements contained therein not misleading in light of the circumstances under which they were made, and (3) warrants and covenants that such representations shall remain true, correct and complete for the duration of the Term: (a) Geoffrey Zakarian is, and is obligated to perform the duties of, Chef Proprietor of the Restaurant and has sole dominion and control over the menu, décor, cooking technique, sourcing and selection of ingredients, OS&E and FF&E, staffing and customer service, and the power to direct restaurant operations of the Restaurant, (b) Geoffrey Zakarian is entitled to receive half of the operating profits of the Restaurant, subject only to the dollar for dollar return of Tenant's investment in the Tenant's Work in the amount projected to be approximately \$2,000,000 plus 6%/annum non-compounded return, and (c) Geoffrey Zakarian is entitled to a percent of gross operating revenue of the Restaurant varying from 4% to 3% by year after opening as an advance against his profit sharing. Geoffrey Zakarian hereby acknowledges and agrees that he expects to derive direct and substantial benefit, including economic benefit, from this Sublease. Tenant and Geoffrey Zakarian acknowledge that the foregoing representations, warranties and covenants are material consideration to Landlord for the granting, execution and delivery of the Sublease.

- g. Formation and Authority. Tenant represents and warrants that (a) Tenant is a duly formed and validly existing Delaware limited liability company, in good standing, and authorized to do business in the District of Columbia, and (b) the execution, delivery and performance by Tenant of this Sublease have been duly authorized by all necessary limited liability company action.
- h. No Joint Venture. Nothing herein shall in any way be construed or deemed to

create a partnership, joint venture or other similar relationship between Landlord and Tenant.

37. Restaurant and Hotel Covenants.

- a. Operating Standards. As an additional inducement to Landlord to enter into this Sublease, Tenant covenants and agrees that at all times the business to be conducted at, through and from the Demised Premises (including, without limitation, the kind and quality of the food, liquors and services offered; the decor of the restaurant, including the furnishings, soft goods and other appurtenances thereof; the service provided by, and the appearance and deportment of, the restaurant staff; the level of staffing maintained by Tenant for the operation of the restaurant; and the public image and reputation of the restaurant) will be of the first-class high quality restaurants in the Washington D.C. metropolitan area (but, for clarity, not white-table cloth or formal dining) and comparable to the standards, as of the date hereof, of "The National" as operated by Geoffrey Zakarian in New York City. Without limiting the foregoing, the restaurant to be operated in the Demised Premises is to be an upscale first class restaurant, with the atmosphere of "The National" as operated by Geoffrey Zakarian in New York City as of the date of this Sublease; the staff will be friendly, courteous and professional. Service in the Demised Premises shall be by waiters and waitresses only, at tables with chairs or banquettes. There shall be no counter service, cafeteria style service or self-service whatsoever (apart from private catered affairs), but the foregoing is not intended to prohibit Landlord from serving food at the bar in the Demised Premises. All of the foregoing operating standards are referenced as the "**Operating Standards**".
- b. Cleanliness. Without limiting Section 10 above, Tenant shall at Tenant's sole cost and expense, keep the Demised Premises in a clean, neat and sanitary condition, in keeping with the Operating Standards (including, without limitation, on matters of noises, odors or nuisances, public or private, including, without limitation, insects or rodents); keep the ventilating hoods over ranges and cooking equipment and duct work serving the Demised Premises clean, in a manner and under conditions reasonably satisfactory to Landlord.
- c. Menu. The Restaurant menu shall be consistent with the Style Concept.
- d. Hotel Harmony. Throughout the term of this Sublease the appearance of the Demised Premises and the personnel employed therein (including, but not limited to, the chefs, managers and waiters), menu and menu prices, services charges, gratuity rates, food and beverages served and any signs, lettering, announcements, floral arrangements, or any other kind or form of descriptions displayed in or about the Demised Premises, together with any lighting or other display appurtenances will be and at all times shall be, in harmony with the dignity and character of the Hotel. If at any time any of the

foregoing are disapproved of by Landlord, Landlord and Tenant agree to act in a manner befitting mutual cooperation to eliminate the grounds for such disapproval within a reasonable time.

- e. Location Events. Provided same does not unreasonably interfere with the Tenant's operation, Landlord shall have the right to use any portions of the Demised Premises for photography and other media location events, upon reasonable prior notice to Tenant. All fees from all location events shall belong to Landlord. Such location events shall not disrupt Tenant's business operations. The copyright of any such photography shall belong to Landlord provided same shall not convey to Landlord any rights to the design, look and feel, trademarks or service marks of the Restaurant or used in its operation, which shall belong to Tenant provided Landlord shall have the right to use, without royalty or other fee or charge, all such photography.
- f. Priority To Hotel Guests. Tenant shall use reasonable best efforts to give priority to guests of the Hotel for dining reservations and to accommodate all Hotel guests desiring to dine at the Demised Premises.
- g. Meal Vouchers. Tenant agrees to accept from its customers any printed, numbered and authorized meal or entertainment vouchers furnished by Landlord to the guests and patrons of, and visitors to, the Hotel. Tenant shall redeem such vouchers from Landlord, and Landlord shall pay such amount by check to Tenant, weekly at the vouchers' face value, or, if specified in terms of meals or dishes, then the listed menu price for the meals and dishes obtained.
- h. Storing Merchandise. Tenant shall store, and/or stock in the Demised Premises only such food, beverages and merchandise as Tenant intends to offer for retail sale in or about the Demised Premises within a reasonable time after receipt thereat.
- i. Non-selling Space. Tenant shall use for office, clerical or other non-selling purposes only such space in the Demised Premises as is reasonably required for Tenant's business thereat, and not perform therein any functions for any other store or restaurant of Tenant or for any other Person.
- j. Tobacco and Sundries. Tenant covenants and agrees that Tenant will not carry, sell or offer to sell, cigarettes or tobacco (provided that cigars will be permitted to be sold) or any newspapers, books and/or magazines at the Demised Premises.
- k. Tenant's Fixtures. Tenant shall operate its business in the Demised Premises with adequate equipment, furniture and trade fixtures ("**Tenant's FF&E**") which shall, when initially installed, be new, functional, sufficient and of first-class workmanship and subject to Landlord's approval, which

shall not be unreasonably withheld. Tenant shall maintain and repair all Tenant's FF&E so as to keep them in first class condition and replace Tenant's FF&E if reasonably necessary to cause the Demised Premises to be operated in accordance with Operating Standards. Landlord and Tenant shall discuss and agree regarding any material change in the arrangement of Tenant's FF&E that can be seen in a direct sight line from the Hotel lobby or exterior, provided Landlord's agreement to any such change shall not be unreasonably withheld. The removal, replacement, alteration, or addition of any Tenant's FF&E that can be seen in a direct sight line from the Hotel lobby or exterior shall be subject to the approval of Landlord, which shall not be unreasonably withheld.

- l. Redecorating. All decorations of the Demised Premises shall be of a first class quality, consistent with the Operating Standards and subject to the approval of Landlord, which shall not be unreasonably withheld. Tenant shall maintain and repair all decorations so as to keep them in first class condition. Tenant shall from time to time during the Term hereof, redecorate the Demised Premises and refinish, renew and/or replace the decorations, if reasonably necessary to cause the Demised Premises to be operated in accordance with the Operating Standards. The removal, replacement, alteration, addition or rearrangement of any decorations that can be seen in a direct sight line from the Hotel lobby or exterior (unless the look and feel of the decorative schemes remain substantially the same thereafter) or that cost more than \$100,000, or that requires a governmental building permit shall be subject to the approval of Landlord, which shall not be unreasonably withheld. All decorations must comply with applicable Legal Requirements.
- m. Music. Tenant shall not use, play or operate or permit to be used, played or operated any musical instrument or other sound making or sound reproducing device in the Demised Premises without the prior consent of Landlord, in Landlord's reasonable discretion, unless the music is consistent with the Style Concept, comparable to the music played at "The National" in New York City, and not audible outside of the Demised Premises.
- n. Deliveries. Tenant shall have all deliveries to, and servicing of, the Demised Premises done at times and in a manner reasonably approved by Landlord and so as not to disturb or inconvenience the guests of the Building and not to interfere with free ingress to, or egress from, the Building or any portion thereof. All delivery trucks or other vehicles servicing the Demised Premises shall park only at service entrances designated by Landlord which shall include the main loading dock for the Building, and at the times reasonably designated by Landlord. Under no circumstances shall deliveries to the Demised Premises be made through any other entrance of the Building except for that/those so designated by Landlord. No food deliveries to or from the Demised Premises shall be made through the Lobby.

- o. Odors. Tenant shall exert all reasonable commercial efforts to not permit odors or smells of any kind or nature to escape from the Demised Premises at any time. Tenant agrees to use the appliances, exhaust fans and ventilating devices existing or required to be installed pursuant to this Sublease and, at Tenant's sole cost and expense, to maintain such devices and install any other exhaust fans, ventilating devices, appliances or ducts that may be necessary (as reasonably determined by Landlord) in order to keep odors and smells from escaping from or permeating out of the Demised Premises at any time. In the event that Tenant shall fail to comply with the terms of this Subsection 37(o), and such failure continues for 10 business days after notice thereof by Landlord, (provided that if such compliance reasonably requires a longer time to complete and the process is commenced during such 10 days and thereafter diligently pursued, then only if such failure continues for more than 30 days after such notice), Landlord, at its option, may cause such apparatus as may be necessary for compliance with this paragraph (o) to be installed and erected at the Tenant's cost and expense, as Additional Rent hereunder, which shall be payable upon Landlord's demand therefor. The Tenant shall keep all ventilating and exhaust systems, including the vents and ducts outside of the Demised Premises in good and proper condition and repair during the Term and upon the expiration or earlier cancellation or termination of this Sublease, shall return the same to the Landlord in good order and repair. This Sublease shall include a license for the maintenance of ventilating ducts in locations reasonably acceptable to Landlord emanating from the Demised Premises as need to comply with this Section 37(o) and all Legal Requirements.
- p. Grease Traps. Tenant shall at Tenant's sole cost and expense and to Landlord's reasonable satisfaction install a grease trap and all other necessary and proper apparatus, and maintain the same in good order and repair for the purpose of preventing any stoppage or interference with the plumbing or sewerage system emanating from the Demised Premises. Tenant shall, at its sole cost and expense, promptly remove and/or repair any stoppage or interference with said plumbing or sewerage system due to the carelessness, improper conduct, negligent acts of omission or commission, of Tenant's Guest while in the Demised Premises, or otherwise originating from the Demised Premises.
- q. Infestation. Tenant shall keep Demised Premises free from rats, mice, insects and other vermin and will, if and when reasonably requested by Landlord, employ and keep employed, at Tenant's sole cost and expense, a competent rodent, insect, or vermin exterminating company. Landlord shall use reasonable efforts to keep the Building apart from the Demised Premises free from rats, mice, insects and other vermin.
- r. Fire Suppression. Tenant shall at Tenant's sole cost and expense install and maintain a state-of-the-art commercial fire suppression system reasonably acceptable to Landlord in good working condition throughout the Term, and

shall install and maintain such equipment and such service contracts as may be required at any time to maintain the lowest insurance premiums available for the uses conducted in the Demised Premises.

- s. Activities Harmful to Hotel. Landlord shall have the right to prohibit the use by Tenant of any method of operation, advertising or interior display if, in Landlord's reasonable opinion, the use thereof would impair the reputation of the Hotel, or is otherwise materially out of harmony with the general character thereof, and upon notice from Landlord, Tenant shall as soon as practicable refrain from or discontinue such activities. Without limiting the foregoing or any other provision of this Sublease, Tenant agrees that all of its advertising, logos, graphics, signs, lettering, announcements, menus, uniforms, lighting and floral arrangements, displays, promotional and public relations literature and all similar items must at all times be consistent with the dignity, reputation and character of the Hotel. The Tenant shall remove and discontinue the use of any of the aforesaid items upon the written objection of Landlord.
- t. Restaurant Head. Subject to the immediately following sentence, Tenant covenants that Geoffrey Zakarian shall serve as head of the Restaurant, and shall supervise, directly or indirectly, all operations of the Restaurant and, for a reasonable period of time during the operating hours of the Restaurant on each of ten (10) calendar days during the first year following the Grand Opening Date (with at least one (1) of such ten (10) calendar days in each calendar quarter of such first year), six (6) calendar days during the second and third year following the Grand Opening Date (with at least one (1) of such six (6) calendar days in each calendar quarter of such second and third years), and on at least one (1) day in each calendar quarter of each subsequent year following the Grand Opening Date, shall be physically present at the Demised Premises directly supervising operations of the Restaurant and promoting the Restaurant. For purposes of the immediately preceding sentence, it is understood that promoting the Restaurant means the leveraging of his personal status and presence as a renowned chef and restaurateur for the benefit of the Restaurant and the Hotel by his in-person interaction with Restaurant guests and implementation of promotional efforts to be discussed with Landlord. Notwithstanding the foregoing, at any time from and after the beginning of the eighth Sublease Year during the Term, Tenant may replace Geoffrey Zakarian as head of the Restaurant and for purposes of fulfilling the requirements of this Section 37(t), with another individual of comparable skill and renown, subject to the prior written approval of Landlord in its reasonable discretion.
- u. Tenant's Employees. Tenant agrees and acknowledges that the conduct, appearance and performance of its staff (i.e. employees and natural person independent contractors) will have a substantial effect on the operation, success and reputation of the Restaurant and, accordingly, the Hotel. Therefore, Tenant covenants and warrants that it will obey and enforce the

following rules and regulations in regard to its staff to insure courteous and business like performance:

- i. All of Tenant's staff will be required to abide by and adhere to the same rules and regulations and standards of conduct provided for hotel staff at the Hotel, including, but not limited to:
 1. staff must be in full uniform while in public areas;
 2. staff must only use the separate employee entrance of the Restaurant;
 3. staff must not use public restrooms (staff must use restroom to be constructed in the Demised Premises by Tenant pursuant to Tenant's Work);
 4. staff may not use the services of the Hotel without the approval of a Hotel general manager;
 5. staff must not loiter on Hotel property or obstruct any Hotel areas; and
 6. all staff will be required to attend "THC" orientation prior to commencement of training and/or working at the Restaurant. Landlord will pay to administer orientation but will not pay for costs associated with Tenant's personnel time, but Tenant shall pay its personnel, to the extent required, to attend.
- ii. Landlord shall have the right to request Tenant to, and Tenant agrees to reprimand (or at Landlord and Tenant's mutual decision) discharge any employee that violates any rules, do not perform up to the required standards, or otherwise act in a manner detrimental to the operation of the Hotel or Restaurant; and
- iii. Tenant agrees to provide such management and supervisory personnel for all periods of time that its restaurant or bar are in operation as may be necessary, to insure the orderly and proper operation of such facilities in a first class manner consistent with the Operating Standards. The Restaurant general manager or sous-chef de cuisine (i.e. chef second in command to the executive chef) shall provide reports to and cooperate with the Hotel management.
- v. Credit Purchases. Tenant shall accept American Express, MasterCard, Discover, Visa and Diner's Club credit cards and all other cards accepted by Landlord at the Hotel for the purchase of food and beverages and gratuities, both for room service and on-premises consumption. Tenant shall permit

registered guests of the Hotel to "sign for" their food and beverage purchases, and otherwise honor house charges. Landlord will collect the amounts due from the house charges and said registered guests for food and beverage purchases and pay same over to Tenant weekly (together with any taxes and gratuities collected), less 2.3% of the gross amount of all funds collected (including taxes and gratuities) as a fixed percentage to cover credit card costs (the "**Stipulated Deduction**"). Notwithstanding the foregoing, Landlord shall not be obligated to pay over any such sums if Tenant has not verified with Landlord, pursuant to a procedure to be agreed upon in writing that the individual signing for the applicable purchase was in fact a hotel guest in good standing at the time he or she signed for such purchase. Owner shall, or shall cause the entity operating the Hotel, to provide Tenant or Tenant's designated representative, at the Demised Premises, with a written list (the "Approved Credit Guest List") of those Hotel guests that have established credit with the Hotel for the purpose of charging the cost of transactions to their respective folio at the Hotel. Owner or such Hotel operator shall prepare the Approved Credit Guest List daily, overnight, and provide it to Tenant or Tenant's representative by 11:00 a.m. each day and, at Owner's or such Hotel operator's election, update the Approved Credit Guest List each afternoon to reflect afternoon check-ins and redeliver the updated Approved Credit Guest List to Tenant or Tenant's designated representative thereafter. Notwithstanding anything to the contrary, Landlord shall not be obligated to pay over any sums, and Tenant shall be solely responsible for all sums, on account of any purchases at the Restaurant by a guest or customer that was not on the Approved Credit Guest List most recently delivered to Tenant or Tenant's representative as of the time of the charge in question. For clarity, an Approved Credit Guest List shall be valid until an updated list is supplied. If the actual average credit card costs in connection with the amounts described above are more or less than the Stipulated Deduction as reasonably demonstrated by Landlord or Tenant, then the Stipulated Deduction shall be increased or decreased as applicable; provided, however, if either Landlord or Tenant do not agree that such increase or decrease has been reasonably demonstrated by the party requesting such increase or decrease, then the Stipulated Deduction shall remain the same unless the party requesting such increase or decrease submits the matter to arbitration and the arbitrator determines that the basis for such increase or decrease has been reasonably demonstrated. Such arbitration must be held in Washington, DC before *one* arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules. In such arbitration, the arbitrator shall within 10 days after such arbitration (if acceptable to the arbitrator and otherwise as provided in the above referenced rules and procedures) determine whether increase or decrease has been reasonably demonstrated. The arbitrator may not award costs or any amount of damages of any kind. In rendering such award, the arbitrator shall enforce, and may not amend or modify any provision of, this Sublease. Such award shall be final and binding on the parties hereto, and judgment thereon may be entered in any court having jurisdiction thereon. The

arbitrator shall be bound by each of the provisions set forth in this Sublease, and by the substantive laws of the courts of Washington, DC that relate to any controversy arising from this Sublease.

w. Liquor Service.

- i. Generally. It is understood and agreed that Tenant shall serve alcoholic beverages in the Demised Premises incidental to Tenant's operation of a first-class restaurant. Tenant shall obtain and at all times during the Term, maintain a license from the applicable Governmental Authority to sell, serve and have consumed alcoholic beverages (including beer, wine and liquor) within the Demised Premises at all times Tenant is required to have the Restaurant open for business (a "**Liquor License**").
- ii. Acquisition of Liquor License. Tenant covenants and agrees that within forty-five (45) days, after the execution of this Sublease, in good faith, to file for, and diligently prosecute to completion, an application(s) to procure a Liquor License. Tenant shall furnish Landlord with copies of all applications, correspondence and other documents relating to Tenant's liquor license application within five (5) days of Tenant's receipt or filing of same, as the case may be.
- iii. Application of Rejected License Application. If notwithstanding Tenant's good faith and diligent efforts to procure the necessary license, Tenant fails to obtain a Liquor License for any reason, Tenant shall notify Landlord within five (5) business days of Tenant's receipt of a determination of disapproval from the licensing authority, with a copy of the notice of refusal to grant a liquor license, and Landlord, within thirty (30) days from receipt of Tenant's notice, may elect to have Tenant seek review of such determination of disapproval by means of an appropriate proceeding at Tenant's sole cost and expense. In the event such proceeding is determined adversely, Landlord may elect within ten (10) days of such determination, to have Tenant appeal such determination at Tenant's sole cost and expense. The parties agree to cooperate with each other in the prosecution of any such proceeding or appeal and execute such documents as are necessary therefor, at no expense, however, to Landlord.
- iv. Failure to Obtain License. In the event Tenant has not obtained approval of a Liquor License conditioned only upon the obtaining the final certificate of occupancy or its equivalent for the Demised Premises (the "**Conditional License**") by a date which shall be three (3) months prior to the Grand Opening Date (the "**License Date**"), then (A) provided Tenant has complied with its obligations hereunder, including diligently applying for and pursuing the grant of a Liquor

License following License Date, and provided that if Tenant's application has been rejected by the ABC Commission such rejection was for reasons other than the acts or omissions of Tenant, its affiliates, or their respective officers, directors, stockholders, members and/or partners, Tenant may assign this Sublease within thirty (30) days after the earlier of the date the ABC Commission finally (without regard to any court proceedings) rejects Tenant's application and the License Date, under and subject to all of the terms and conditions of Section 16(c) despite the fact that it is prior to seven (7) years after the Grand Opening Date; (B) provided that Tenant has not theretofore delivered a detailed letter of intent or assignment agreement for assignment pursuant to the preceding clause (A), within such thirty (30) day period Landlord shall have a right to elect to acquire the Sublease by reimbursing Tenant for Tenant's total Build-Out Costs as defined herein (less any Tenant's Allowance previously funded by Landlord) without interest or premium, such election to be made in writing, and (C) it shall be an Event of Default and Landlord shall have its rights and remedies under Sections 22(a)(vi) and 23 of this Sublease if for any reason Tenant has not obtained the Conditional License within thirty (30) days after the License Date and neither clause (A) nor (B) above have been elected. Notwithstanding the foregoing, it shall be an Event of Default if (1) Tenant's application for a Liquor License is rejected by the ABC Commission, or the Conditional License fails to issue on or before the License Date, due, in whole or material part, to the acts or omissions of the Tenant, its affiliates, or their respective officers, directors, stockholders, members and/or partners, or, (2) the Conditional License is timely obtained but, on or before the date that is the sixtieth (60th) day after the Required Opening Date, the Liquor License subsequently fails to issue by action of the ABC Commission based on the application or the acts or omissions of Tenant, its affiliates or their respective officers, directors, stockholders, members and/or partners. The term "**Build Out-Costs**" means the documented Hard Costs of those portions of the Tenant's Work as are substantially complete as of the date Landlord elects to acquire the Sublease that were actually paid to third party arms-length contractors as demonstrated by such detailed receipts and other documentation reasonably requested by Landlord. If the Landlord acquires the Sublease pursuant to clause (B) above, such acquisition shall be by assignment agreement reasonably acceptable to Landlord, provided, however, whether or not as a matter of law the estate of the Tenant under the Sublease merges with the estate of the Landlord under the Master Lease, Tenant shall remain liable for, and the Guaranty shall continue to guaranty, the obligations of the Tenant under the Sublease that accrued prior to the date of such assignment and the obligations of the Tenant under the Sublease that are stated to survive a termination, cancellation or expiration of the Sublease. If the Tenant assigns the Sublease pursuant to clause (A) above, then without limiting Section 16(c), (i) the License Date for the assignee shall be deemed to be the date that is three (3) months after the date of the

assignment, (ii) the forty-five (45) day period set forth in clause (ii) of this Section 37(w) shall be deemed to be fifteen (15) days from the date of the assignment, and (iii) clause (iv) for this Section 37(w) shall be deleted in its entirety and replaced with the following text, "It shall be an Event of Default if (1) Tenant has not obtained approval (conditioned only on the receipt of a Certificate of Occupancy or the equivalent for the Demised Premises) of an ABC License by the date that is thirty (30) days prior to the Required Opening Date or, (2) the Liquor License subsequently fails to issue on or before the date that is the sixtieth (60th) day after the Required Opening Date."

v. Suitability for Licensing. Tenant represents on its own behalf and on behalf of its officers, directors, stockholders, members and/or partners, as the case may be that:

1. Each of them is a Person reasonably likely to be entitled to receive a Liquor License and has never been convicted of any crime or offense in any jurisdiction;
2. No such Person has ever been served with any summons or violation of any Alcoholic Beverage Control Laws of any jurisdiction;
3. No license or application made by any such Person has ever been denied, or once granted has ever been suspended, cancelled, revoked or otherwise involuntarily terminated in any jurisdiction; and
4. Tenant knows of no reason why a Liquor License should not be issued as herein contemplated.

vi. This Sublease shall constitute a security agreement and Tenant grants to Landlord a security interest in any Liquor License issued to Tenant for use at the Demised Premises and to all renewals, replacements or extensions thereof as collateral security for performance of all of Tenant's obligations and liabilities under this instrument and under the Sublease, all in accordance with the provisions of the Uniform Commercial Code in effect in the District of Columbia from time to time. Tenant authorizes Landlord to file financing statements in order to perfect the security interest granted hereby. At the expiration of the term of this Sublease or earlier termination or cancelation hereof, the Liquor License shall become the property of Landlord without further act or deed or payment of additional consideration by Landlord. The intention of the parties is that the Liquor License remains available for use at the Demised Premises and not be transferred to any other location without the explicit written consent of the

Landlord. At the request of the Landlord from time to time, Tenant will execute such additional instruments as reasonably may be required to give effect to such intention, including, without limitation, instruments of conveyance of ownership of the Liquor License, at the expiration or earlier termination of this Sublease, all at no expense to the Landlord, except that at the expiration of the full term hereof, Landlord shall pay Tenant's reasonable costs for same. Tenant shall cause the Liquor License to be maintained in full force and effect and in good standing at all times. Tenant shall pay all fees and assessments in connection with the Liquor License and shall operate its business in such a manner as not to jeopardize the Liquor License.

x. Room Service. Tenant shall not provide room service to the Hotel without the prior written consent of Landlord in its sole and absolute discretion.

y. Valet Parking. If Landlord operates, or causes to be operated, a valet parking service for visitors of the Building, then such valet parking service shall be available to those visitors of Tenant that present a then current parking chit validated by Tenant, or other physical or electronic evidence of validation by Tenant as determined by Landlord or the applicable third party operator of such valet parking service in a manner consistent with customary practice for such validation. With respect to any such valet parking service, if Landlord operates such valet parking service, then Landlord will charge no more than the lesser of (i) fifteen dollars (\$15.00) or (ii) twenty-five percent (25%) off the then prevailing daily parking rate at the Building, per each parker with a validated parking stamp from Tenant (the lesser of (i) and (ii), the "**Discounted Parking Rate**"). Parking for Restaurant guests and Hotel guests will be on a first come/first served basis. The rate described in clause (i) of the preceding sentence shall be increased every three hundred sixty five (365) days starting 365 days after the Grand Opening Date by three percent (3%) of the then prevailing rate under clause (i). The Discounted Parking Rate is in addition to applicable taxes, surcharges required by Legal Requirements, and any additional amounts charged for particular vehicles (e.g. SUV or truck parking). Notwithstanding anything to the contrary, in no event shall Tenant charge or collect, directly or indirectly, any sums in excess of Discounted Parking Rate from its guests. It is acknowledged that Landlord may enter into agreements with third party garages to supplement Landlord's parking resources during high volume demand periods. In such event, Landlord may charge more than the Discounted Parking Rate provided that such increased parking charge does not include a premium above the rate charged to Landlord to park at such neighboring garages. (If higher rates for particular vehicles e.g. SUV or truck are charged, the marginal increase of those charges above the charge for a standard car will be added to the Discounted Parking Rate.) Tenant's employees shall not be entitled to valet parking. Landlord does not promise or guaranty that such valet parking service, if available, will be available at any specific price level or tiers. Notwithstanding the foregoing, Landlord shall not have any obligation to commence or continue, or cause to be commenced or continued, any valet parking service.

z. Hotel Room Night. During the first Sublease Year, so long as there is no Event of Default under this Sublease and there is no default under Section 36(c), 37(a) or 37 (t), Landlord shall permit Geoffrey Zakarian to reserve, on a space available basis, up to twelve (12) room nights at the Hotel, for his personal stay at the Hotel, during the period from the Grand Opening Date to the end of the first full calendar year occurring during the Term on a complimentary basis (excluding all ancillary items on the folio, including, without limitation, food and beverage, minibar, spa, retail, laundry, valet and taxes). For any calendar year during the Term thereafter, so long as there is no Event of Default under this Sublease and compliance with Section 36(c), 37(a) and 37 (t), Landlord shall permit Geoffrey Zakarian to reserve, on a space available basis, up to twelve (12) room nights at the Hotel, for his personal stay at the Hotel, during such calendar year (i) on a complimentary basis (excluding all ancillary items on the folio, including, without limitation, food and beverage, minibar, spa, retail, laundry, valet and taxes), provided that Tenant paid Annual Percentage Rent in excess of zero (0) dollars on account of the calendar year immediately preceding such calendar year, or (ii) for a room rental charge equal to fifty percent (50%) of the average daily rate. During any room night stay at the Hotel by Geoffrey Zakarian, regardless of whether afforded complimentary, discounted or otherwise (as described in this paragraph), Geoffrey Zakarian shall receive a fifty percent (50% discount on all food and beverage provided by Landlord owned and operated venues (other than banquet venues) at the Hotel (for food and beverages served for consumption by him). All such room night reservations shall be on a space available basis only. Notwithstanding anything to the contrary, Landlord shall have no obligation to provide any such room nights unless on such night and the day following or preceding such night Geoffrey Zakarian physically appears for a period of time in the Building and actively promotes the Restaurant. No unused room nights in any Sublease Year shall be available in any future Sublease Year and no party shall be entitled to any refund or monetary or other credit or other consideration with respect thereto.

38. Miscellaneous.

- a. No Reliance. Landlord has not made and is not making, and Tenant, in executing and delivering this Sublease, is not relying upon, any warranties, representations, promises or statements except to the extent that they are expressly set forth in this Sublease.
- b. Entire Agreement. All prior understandings and agreements between the parties are merged in this Sublease which alone fully and completely express the agreement of the parties and which are entered into after full investigation.
- c. Severability; Maximum Interest. If any of the provisions of this Sublease, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Sublease, or the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected

thereby, and every provision of this Sublease shall be valid and enforceable to the fullest extent permitted by Legal Requirements.

d. Modifications.

- i. Generally. No agreement shall be effective to change, modify, waive, release, discharge, terminate or effect an abandonment of this Sublease, in whole or in part, unless such agreement is in writing, refers expressly to this Sublease and is signed by the party against whom enforcement of the change, modification, waiver, release, discharge, termination or effectuation of the abandonment is sought.
 - ii. Required Modifications. If, in connection with obtaining financing for the Building, a bank, insurance company or other lending institution shall request reasonable modifications in this Sublease as a condition to such financing, Tenant will not unreasonably withhold, delay or defer its consent thereto; provided that such modifications do not increase the monetary obligations of Tenant hereunder other than to a *de minimis* extent. In the event Tenant fails to execute and deliver to Landlord a duly executed modification or amendment of the Sublease incorporating such modification within fifteen (15) days of request therefor, Landlord may execute such amendment or modification for and on behalf of Tenant as its attorney-in-fact coupled with an interest solely to execute and deliver any instruments required to carry out the intent of this Subsection 38(d)(ii) on behalf of Tenant.
- e. Drafts. Submission by Landlord of this Sublease for review and/or execution by Tenant shall not confer any rights or impose any obligations on either party unless and until both Landlord and Tenant execute this Sublease and duplicate originals thereof are unconditionally delivered to the respective parties.
 - f. Exhibits. The Exhibits and Schedules, if any, annexed to this Sublease shall be deemed part of this Sublease with the same force and effect as if such Exhibits and Schedules were numbered Sections of this Sublease.
 - g. Captions. The table of contents, captions, headings and titles in this Sublease are solely for convenience of reference and shall not affect its interpretation.
 - h. No Construction Against Draftsperson. This Sublease shall be construed without regard to any presumption or other rule requiring construction against the party causing this Sublease to be drafted.
 - i. Independent Obligations. Each obligation of Tenant under this Sublease shall be deemed and construed as a separate and independent covenant of Tenant, not dependent on any other provision of this Sublease.

- j. Time of Essence. Time shall be of the essence with respect to the time periods set forth in this Sublease.
- k. Number and Gender. All terms and words used in this Sublease, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require.
- l. Certain Words. As used in this Sublease, the term
- i. "include," "includes" and "including" will be understood as if they were followed by the words "without limitation";
 - ii. "and/or" when applied to two or more matters or things shall be construed to apply to any one or more or all such matters or things as the circumstances warrant;
 - iii. "herein" and "hereunder" and words of similar import shall be construed to refer to this Sublease as a whole and not to any particular Article or Section unless expressly so stated; and
 - iv. "land on which the Building is situated" and words of similar import mean all parcels of land leased under the Master Lease and "Building" includes the entire structure, including the Old Post Office Building and the Pavilion Annex.
- m. Successors and Assigns. Except as otherwise expressly provided in this Sublease, the obligations under this Sublease shall bind and benefit the successors and assigns of the parties hereto with the same effect as if mentioned in each instance where a party is named or referred to; provided, however, that (a) no violation of the provisions of Section 16 shall operate to vest any rights in any successor or assignee of Tenant and (b) the provisions of this Section shall not be construed as modifying the defaults and/or conditions of limitation contained in Section 22.
- n. No Third Party Beneficiaries. No provision in this Sublease shall be construed for the benefit of any third party except as expressly provided herein.
- o. Survival. Sections 3(d), 4(b)(iii), 5(b), 8(b)(viii), 8(l), 8(m), 10, 11(g), 12, 13 (to the extent related to claims made policies to cover claims based on facts and circumstances that exist during the term hereof), 23, 25, 27, 29, 37(w)(vi), and 38 of this Sublease will survive the cancellation, termination and expiration of this Sublease. In addition, such obligations as by their nature or under the circumstances can only be, or by the provisions of this Sublease, may be, performed after cancellation, termination or expiration, and, in any event, unless expressly otherwise provided in this Sublease, any liability to pay or pay over any sums which liability shall have accrued before or with respect to any period ending at the time of cancellation, termination or expiration shall survive the

cancellation, termination or expiration of this Sublease.

- p. Governmental Matters. The provisions attached hereto as Exhibit H are incorporated as if fully set forth in the body of this Sublease and shall be equally binding on Tenant. Notwithstanding the provision under Section 2 of such Exhibit H subordinating this Sublease to the Master Lease, if the Master Lease is amended after the date hereof Tenant shall not be bound by any amendment therein to the extent that it increases Tenant's monetary obligations hereunder other than to a *de minimus* extent or imposes on Tenant any material additional obligation or materially reduced Tenant's rights or benefits.
- q. Attorneys Fees. If any legal proceeding or arbitration ensues out of this Sublease then the party in whose favor award or judgment is predominantly made shall be entitled to recover in full its reasonable attorneys' fees and other costs incurred in such legal proceeding or arbitration.

(SIGNATURES FOLLOW ON THE NEXT PAGE)

Agreement of Sublease dated
February 19, 2014 between
Trump Old Post Office LLC, as Landlord and
CZ-National, LLC, as Tenant

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

LANDLORD:

TENANT:

TRUMP OLD POST OFFICE LLC

CZ-NATIONAL, LLC

By: 

Name: Donald J. Trump
Title: President

By: _____

Name:
Title:

PRINCIPALS

**Solely to evidence their agreement to be personally bound in their individual capacity
by the provisions set forth in Subsection 4(b)(ii), (iii) and (iv) (Zakarian and not
Tenant with respect to (iv)) and 36(f):**

BVS ACQUISITION CO., LLC

By: _____

Name:
Title:

Geoffrey Zakarian

AVIGNON

**Solely to evidence ITS agreement to be personally bound by the provisions set forth in
Subsection 4(b)(ii), (iii) and (iv), 13b(x) and 36(f):**

AVIGNON ENTERPRISES, LLC

By: _____

Name:
Title:

EXHIBIT B

SIGHT DRAFT

FOR VALUE RECEIVED

PAY AT SIGHT BY WIRE TRANSFER IN IMMEDIATELY AVAILABLE FUNDS TO TRUMP OLD POST OFFICE LLC, ACCOUNT NO.: 7527 02909 5, ABA ROUTING NO. 065 000 090 (CAPITAL ONE BANK, 90 PARK AVENUE, NEW YORK, NY 10016) THE SUM OF U.S. FOUR HUNDRED SIXTY ONE THOUSAND DOLLARS (\$461,000).

DRAWN UNDER IRREVOCABLE LETTER OF CREDIT NO. SB1816500001 DATED MARCH 24, 2015 ISSUED BY M AND T BANK.

TO:
M AND T BANK
BALTIMORE, MD

TRUMP OLD POST OFFICE LLC

By: 

Name: Donald J. Trump

Title: President

STATEMENT

Att: M and T Bank
Trade Finance Operations
1800 Washington Boulevard 8th Floor, MC-MD1-MP37
Baltimore, MD 21230

*Letter of Credit: M and T Bank Irrevocable Letter of Credit No.
SB1816500001
Account Party: CZ-National LLC c/o BVS Acquisition Co., LLC
Beneficiary (a/k/a Landlord): Trump Old Post Office LLC
Amount: \$461,000 U.S. Dollars
Sublease: Agreement of Sublease dated February 19, 2015 between
Landlord and Account Party*

Tenant is in default of the Sublease beyond the applicable notice and cure period, and Landlord is entitled to draw under the Letter of Credit pursuant to the terms, if any, of this Sublease.

TRUMP OLD POST OFFICE LLC


By: 
Name: Donald J. Trump
Title: President

EXHIBIT C

From: [Baum, Deborah B.](#)
To: [Izfar, Sarah](#); [Dunn, Alvin](#); [Baker, Adya S.](#)
Cc: [Woods, Rebecca](#)
Subject: RE: Draft Protective Order
Date: Monday, November 23, 2015 3:07:24 PM
Attachments: [image001.png](#)
[image002.png](#)

Dear Rebecca and Sarah: We do not feel that there is a need for a protective order of this scope. Can you tell us what kind of information you would expect to designate as Confidential in this case, and what kind would warrant Attorneys' Eyes Only protection?

Also, we are going to be sending you today a deposition notice for Donald J. Trump, for February 18. There will of course be others whom we want to depose, but we understand his schedule is likely more difficult than others' so we wanted to give you plenty of notice. We are of course willing to work with you on a mutually convenient date in that same general timeframe, but wanted to get the ball rolling so you have plenty of time to get something on the calendar.

Thanks,

Debby

Deborah B. Baum, P.C. | Partner
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street, NW | Washington, DC 20036
t [202.663.8772](tel:202.663.8772) | f [202.663.8007](tel:202.663.8007) | m [703.969.6487](tel:703.969.6487)
deborah.baum@pillsburylaw.com | [website bio](#)

ABU DHABI AUSTIN BEIJING HOUSTON LONDON LOS ANGELES NASHVILLE NEW YORK
NORTHERN VIRGINIA PALM BEACH SACRAMENTO SAN DIEGO SAN DIEGO NORTH COUNTY
SAN FRANCISCO SHANGHAI SILICON VALLEY TOKYO WASHINGTON, DC



From: Izfar, Sarah [<mailto:SIzfar@seyfarth.com>]
Sent: Friday, November 13, 2015 12:34 PM
To: Baum, Deborah B.; Dunn, Alvin; Baker, Adya S.
Cc: Woods, Rebecca
Subject: Draft Protective Order

Debbie,

We received your discovery requests yesterday and will need to have a mutually-agreed upon protective order in place before responding. Attached is a draft protective order for your review. Please propose any revisions that you have, and we will discuss.

Thanks,
Sarah

Sarah Izfar | Seyfarth Shaw LLP
975 F Street, N.W. | Washington, DC 20004
Direct: +1-202-828-3564 | Mobile: +1-267-312-9669 | Fax: +1-202-641-9267
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EXHIBIT D

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

TRUMP OLD POST OFFICE, LLC,)	
)	
Plaintiff,)	
)	Civil Action No. 2015 CA 005890 B
vs.)	Judge Brian F. Holeman
)	
CZ-NATIONAL, LLC AND)	
BVS ACQUISITION CO., LLC,)	
)	
Defendants.)	
)	

NOTICE OF DEPOSITION OF DONALD J. TRUMP

PLEASE TAKE NOTICE, pursuant to D.C. Superior Court Rules 26 and 30, that beginning at 10 a.m. on Thursday, February 18, 2016, or on another mutually convenient date, Defendants CZ-National LLP and BVS Acquisition Co., LLC, by and through their counsel, will take the deposition upon oral examination of Mr. Donald J. Trump. The deposition will take place at the offices of Pillsbury Winthrop Shaw Pittman LLP, 1200 Seventeenth Street, N.W., Washington, D.C. 20036.

The deposition testimony will be recorded by stenographic and/or audiotape and/or videotape or similar means and may be used for any purpose allowed by the D.C. Superior Court Rules.

Dated this 23rd day of November, 2015

Respectfully submitted,

/s/

Deborah B. Baum (D.C. Bar No. 393019)

Email: deborah.baum@pillsburylaw.com

Alvin Dunn (D.C. Bar No. 423229)

Email: alvin.dunn@pillsburylaw.com

Adya S. Baker (D.C. Bar No. 1025477)

Email: adya.baker@pillsburylaw.com

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Washington, D.C. 20036

Tel: (202) 663-8000

Fax: (202) 663-8007

*Counsel for CZ-National, LLC and BVS
Acquisition Co., LLC*

