

# Lease vs. License: Short-Term Property Use, Access and Exclusive Control, Termination, Remedies

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THURSDAY, APRIL 21, 2022

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

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Today's faculty features:

Robin Abrams, Vice Chairman and Licensed Associate Real Estate Broker, **Compass**, New York

Aimee B. Davis, Founder, **Aimee B. Davis Law, P.C.**, Brooklyn, NY

Glenn D. Wright, Principal, **Wright Law Firm**, New York

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The audio portion of the conference may be accessed via the telephone or by using your computer's speakers. Please refer to the instructions emailed to registrants for additional information. If you have any questions, please contact **Customer Service at 1-800-926-7926 ext. 1.**

## LICENSE AGREEMENT

This License Agreement (this "Agreement" or "License") made as of this \_\_\_ day of January, 2020, by and between, LLC, having an address at, Great Neck, New York 11211 ("Licensor"), and LLC, a New York limited liability company having an address at , New York, New York 10014 ("Licensee").

### 1. **Grant of License; License Area; Use; Term.**

(a) Subject to all of the terms and conditions of this Agreement, Licensor grants to Licensee a revocable and non-assignable, exclusive license to utilize and occupy, for a period of six (6) months, a portion of the premises known as Suite No. 200 (the "Leased Premises") in that certain building (the "Building") at Street, Brooklyn, New York, as such portion of the Leased Premises is shown on Exhibit A attached hereto and made a part hereof as space D (the "License Area"), to be used solely as a space for filming virtual reality films, provided that the same is conducted in compliance with all applicable laws and in a manner so as not to unreasonably disturb other occupants of the Building (the "Permitted Use"). In addition the Licensor grants Licensee a revocable and non-assignable, non-exclusive, license to utilize and occupy, for a period of six (6) months, a portion of the premises known as known as the common areas on the first and second floor , including but not limited to food/pantry areas and bathrooms on the second floor in that certain building (the "Building") at Street, Brooklyn, New York, License shall be for no other use or purpose whatsoever without Licensor's prior written consent, which consent may be given or withheld in Licensor's sole and absolute discretion, for a term (the "Term") commencing upon the Licensor delivering the License Area to Licensee pursuant to the terms of this License, particularly Article 24, Licensor's Work, (the "Commencement Date") and expiring on the day immediately preceding the six (6) month anniversary of the Commencement Date (the "Expiration Date"), unless sooner terminated (or extended) pursuant to the terms hereof or law. Provided the Licensee is not otherwise in default during the two (2) month concession period of this Agreement the Licensor shall grant Licensee a concession of the monthly license payment for the **Two (2) Month Period immediately following the Commencement Date** and no license payment shall be due for that time. If Licensor is unable to give possession of the License Area on the Commencement Date because of the holding-over or retention of possession of any licensee or occupant, or for any other reason whatsoever, Licensee may, after a ten (10) day notice to cure, terminate this License. Licensor shall not be subject to any further liability for failure to give possession on said date and the validity of this License shall be cancelled under such circumstances, the provisions of this Section are intended to constitute "an express provision to the contrary" within the meaning of Section 223-a of the New York Real Property Law. As of the Expiration Date, Licensor shall be released from all obligations with respect to the License Area and this Agreement.

(b) Licensee shall, throughout the Term of this Agreement, operate and do business in the License Area in a high class, commercially reputable manner, in compliance with all applicable laws, which shall not detract from the character or appearance of the Building. Notwithstanding the preceding sentence, nothing herein shall give Licensor a right to prohibit

Licensee from completing and distributing his film. The rights of every kind in and to all photographs and sound recordings made hereunder (including, but not limited to, the right to exhibit any and all scenes photographed or recorded at and of the Property or reproduction of the Property throughout the world in perpetuity) shall be and remain vested in Licensee, its successors and assigns, and neither Licensor nor any other party now or hereafter having an interest in the Property, shall have any right of action against Licensee or any other party arising out of any use of said photographs and/or sound recordings regardless if Licensor later determines that Building is presented in a "bad light". . Furthermore, Licensee shall have exclusive access to the License Area twenty-four (24) hours per day seven (7) days per week; provided, however, that Licensee shall not unreasonably interfere in any manner with the use of the remainder of the Leased Premises by any occupant thereof. Licensee will be permitted to use the elevator and stairwell.

**2 License Fee and Additional License Fee.** (a) Licensee shall pay to Licensor (in addition to all other amounts set forth herein), without notice, offset, counterclaim or deduction, a license fee for the use and occupancy of the License Area in an amount equal to \$2,500 per month (the "License Fee") less \$800 (the "Partial Excess Liability Insurance Fee"). The License Fee shall be payable during the Term on each monthly anniversary of the Commencement Date at Licensor's address set forth above or at such other address as Licensor may designate. Upon Licensee's execution and delivery of this Agreement, Licensee shall pay the first month's payment of the License Fee. If Licensee shall fail to pay the License Fee or any other sum due hereunder after the same shall have become due and payable, Licensee shall pay as an additional fee hereunder to Licensor a late charge of five (\$.05) cents for each dollar of the amount of such sum so overdue. In addition, if any payment of the License Fee or any other sum is not paid when due, interest shall accrue on such payment, from the date such payment became due until paid at the Interest Rate (as hereinafter defined). As used in this License, "Interest Rate" shall mean 18% per annum. No additional fees shall be charged for Licensee's use of the Lease Premises in accordance with the terms of this Agreement, including fees for utilities (including electricity), mechanical systems, plumbing, wi-fi, taxes, air conditioning, heat, and common area maintenance.

(b) Subject to the provisions of Section 17 below, in addition to Tenant's License Fee, Tenant covenants and agrees to pay to Licensor, without demand therefor, and without any abatement, setoff or deduction whatsoever, twelve percent (12%) of the Net Profits derived by Licensee or any affiliate thereof through the end of calendar year 2023, less the aggregate License Fees of this Agreement and any future rent payments of future agreements with Licensor (the "Percentage Fee").

(c) Simultaneously with the delivery of each Quarterly Statement (hereinafter defined) with respect to calendar quarter or portion thereof through then end of 2023, Licensee shall pay to Licensor the amount of Percentage Fee payable as set forth on said Quarterly Statement. Failure to timely make any payment of Percentage Fee when due, shall be treated as if Licensee has failed to timely make a payment of License Fee hereunder.

(d) For the purposes hereof, "Net Profits" shall be calculated with respect to any calendar quarter (or part thereof) from the Commencement Date through and including December 31, 2023 as Gross Receipts (as hereinafter defined) less (1) production, launch, distribution and set-

up fees costs and expenses, which costs may include but not be limited to cost of set-up for the applicable film for launch on the electronic media and any rights of guilds and guild members, such as SAG-AFTRA, and rights of musicians, composers and/or music publishers used in connection with the applicable film, (2) Licensee's or the affiliate's reasonable overhead and all reasonable operating costs and expenses related to the applicable film, (3) all deferments related to the applicable film, including but not limited to deferred compensation for all producers, advisors to Licensee or the affiliate and talent related to the applicable film, (4) any reasonable costs associated with the support of a client community or site set up on the electronic media related to the applicable film, including but not limited to application set-up, store costs or fees, advertising, promotion costs, out of pocket expenses, costs for fulfillment, and/or customer service, (5) sales, use, or VAT/GST (as applicable) taxes collected from customers on the electronic media for remittance by or on behalf of Licensee or the affiliate or a billing service provider; (6) any amounts refunded or paid to customers or charged back by or on behalf of Licensee or the affiliate or its billing service provider or other authorized partner; (7) any credit card or other form of payment processing fees and any costs payable to the electronic media, (8) the residuals, royalties and other fees or costs payable in the connection with the production, launch, download and maintenance of the applicable film on the electronic media; and (9) or any reasonable costs incidental to or consequently from the preceding. "Gross Receipts" is defined as all monies actually received and non-refunded by Licensee or the affiliate from end-users on electronic media.

(e) Licensee shall prepare and keep full, complete, and proper books and source documents, in accordance with generally accepted accounting principles consistently applied, of the Net Profits (collectively, "Records"). All Records maintained pursuant hereto shall at all reasonable times be open to the inspection of, and may be copied or extracted from, in whole or in part, by Licensor or Licensor's authorized representative or agent through December 31, 2025.

(f) Licensee shall furnish to Licensor, within thirty (30) days after the expiration of each calendar quarter through the end of 2023, a complete statement, certified by an officer of Licensee (the "Quarterly Statement"), setting forth a detailed computation of Net Profits during such period and the Percentage Fee payable for period.

(g) The provisions of this Section 2 shall survive the termination of this Agreement.

3. **Maintenance and Repairs.** Throughout the Term of this Agreement, Licensee, at Licensee's sole cost and expense, shall, repair and replace, as necessary, the License Area, ordinary wear and tear excepted, where such repairs and replacements are required or recommended as a result of the acts or negligence of Licensee, its agents, employees, contractors or invitees. All deliveries to the License Area shall be made in a manner as reasonably prescribed by Licensor through the Licensor designated freight area using the Building's freight elevator only. Licensee shall perform, or cause to be performed at its sole cost and expense, all cleaning work in the License Area, and shall arrange and pay for all daily rubbish removal, recycling, and carting.

Licensor has the sole and exclusive right to make any decorations, alteration, installation, repair, modification, or change to the Building, whether it is of a structural or non-structural

nature, and shall be responsible for the ongoing maintenance of the Building, including the prompt repair of any damage in the Building reasonably requiring such repair Licensee can make any decorations, window treatments, etc. provided they do not permanently damage the Building or impair the rights of other tenants, Licensor and the reputation of the Building as a first class co-working/studio space.

4. **License and Not a Lease.** This License is not to be construed as in any way granting to Licensee any possessory interest in the License Area. This License merely grants to Licensee a license to enter upon and use the License Area in accordance with the terms hereof and shall not be deemed to grant to Licensee a leasehold or other real property interest in the License Area. Licensor shall have no liability or responsibility to Licensee, and Licensee shall have no claim against Licensor, for any damage or loss incurred by Licensee with respect to property located in the License Area. Licensee understands and agrees that this Agreement does not establish a landlord-tenant relationship between the parties, and that Licensee is not being granted an interest or estate in any real property or the License Area or the Building.

5. **Rules and Regulations.** Licensee is hereby notified that the License Area is subject to any governmental authority having the jurisdiction over the License Area and Building.

6. **Compliance with Laws.** Licensee shall, at Licensee's sole cost and expense, comply with all present and future laws, codes, statutes, ordinances, orders, requirements, rules, and regulations of all federal, state, local and municipal governments and authorities, and the appropriate departments, commissions, boards, and officers thereof (collectively, "Laws").

7. **Insurance.**

**7.01. Required Coverages.** Licensee shall provide General Liability and Property coverage (policy quotes included in Exhibit B) at Licensee's own cost. Licensee and Licensor will split the Excess Liability Coverage (policy quote included in Exhibit B) per the Partial Excess Liability Insurance Fee deduction of \$800.00 as provided in Section 2 of this Agreement.

**7.02. Waiver of Subrogation and Release.** (a) Each party shall include in each of its insurance policies covering loss, damage or destruction by fire or other casualty (insuring the License Area and Licensor's property therein and the rental value thereof, in the case of Licensor, and insuring Licensee's property and the fixtures required to be insured by Licensee pursuant to this Agreement and business interruption insurance in the case of Licensee) a waiver of the insurer's right of subrogation (on behalf of itself and any other insurers or reinsurers in privity therewith) against the other party or, if such waiver should be unobtainable or unenforceable, (i) an express agreement that such policy shall not be invalidated if the insured waives before the casualty the right of recovery against any party responsible for a casualty covered by such policies, or (ii) any other form of permission for the release of and waiver of right of recovery from the other party. If such waiver, agreement or permission shall cease to be obtainable without additional charge, then if the other party shall so elect and shall pay the insurer's additional charge therefor, such waiver, agreement or permission shall be included in the policy, or the other party shall be named as an additional insured in the policy; provided, however, that Licensee shall at no time be named a loss payee under any of Licensor's insurance policies nor the Licensor be named a loss payee under any of Licensee's insurance policies. Notwithstanding

the foregoing, any failure by Licensee as an additional insured promptly to endorse to the order of Licensor any instrument for the payment of money under a policy of which Licensor is the owner or original or primary insured shall be a default under this Agreement.

(b) Each party hereby releases the other party with respect to any claim (including a claim for negligence) which it might otherwise have against the other party for loss, damage or destruction with respect to its property (including rental value or business interruption) occurring during the Term and with respect and to the extent to which it is insured under a policy or policies containing a waiver of subrogation or permission to release liability or naming the other party as an additional insured, as provided in Subsection 8.03(a). If, notwithstanding the recovery of insurance proceeds by either party for loss, damage or destruction of its property (or rental value or business interruption), the other party is liable to the first party with respect thereto or is obligated under this Agreement to make replacement, repair or restoration or payment, then provided the first party's right of full recovery under its insurance policies is not thereby prejudiced or otherwise adversely affected, the amount of the net proceeds of the first party's insurance against such loss, damage or destruction shall be offset against the second party's liability to the first party therefor, or shall be made available to the second party to pay for replacement, repair or restoration, as the case may be.

(c) The waiver of subrogation or permission for release referred to in this Section shall extend to the agents of each party and their employees. The releases provided for in this Section shall also extend to such agents and employees, if and to the extent that such waiver or permission is effective as to them. Nothing contained in this Section shall be deemed to impose upon either party any duty to procure or maintain any of the kinds of insurance referred to therein except as otherwise required in this Agreement. If Licensee shall fail to maintain insurance in effect as required in this Agreement, the release by Licensee set forth in Subsection 7.03(b) shall be in full force and effect to the same extent as if such required insurance (containing a waiver of subrogation) were in effect.

8. **Indemnification.** Licensee hereby indemnifies and agrees to save harmless Licensor, from and against any Claims (as hereinafter defined) that either (w) arise from or are in connection with the possession, use, occupation, management, repair, maintenance or control of the License Area, or any portion thereof by Licensee, its agents, contractors, invitees or employees; (x) arise from or are in connection with any act or omission of Licensee, its agents, contractors, invitees or employees; (y) result from any default, breach, violation or non-performance of this Agreement or any provision therein by Licensee; or (z) result in injury to person or property or loss of life sustained in or about the License Area due to a default, breach, violation or non-performance of this Agreement by Licensee. Licensee shall defend any actions, suits, and proceedings, which may be brought against Licensor, with respect to the foregoing or in which they may be impleaded, by counsel reasonably approved by Licensor. Licensee shall pay, satisfy any discharge and judgments, orders, and decrees, which may be recovered against Licensor in connection with the foregoing. As used herein, "Claims" means, without limitation, any claims, suits, proceedings, actions, causes of action, responsibility, liability, demands, judgments, and executions, including without limitation, reasonable attorney's fees and court costs and any other reasonable professionals' fees incurred in the preparation, and prosecution or defense, of any of the foregoing.

9. **Default.** (a) if Licensee shall fail to perform any of the terms or conditions of this Agreement and such non-performance or noncompliance shall remain uncured for a period of five (5) days after written notice thereof by Licensor, then, Licensor, in addition to all other remedies to which it may be entitled in law and equity, may terminate this Agreement by giving to Licensee three (3) days' notice of its intention so to do and upon the date so specified, this Agreement, the License and the Term shall terminate, be revoked and come to an end and Licensee shall immediately quit, vacate and surrender to Licensor the License Area in accordance with the terms of this Agreement, including, without limitation, Paragraph 10, and Licensee shall have no further rights under this Agreement.

(b) All costs and expenses incurred by Licensor in connection with any performance by it of an obligation of Licensee that Licensee has failed to perform after five (5) days' written notice from Licensor and all costs and expenses, including reasonable counsel fees and disbursements, incurred by Licensor as a result of any default by Licensee under this License or in any action or proceeding (including any unlawful detainer proceeding) brought by Licensor or in which Licensor is a party to enforce any obligation of Licensee under this License and/or right of Licensor in or to the License Area, shall be paid by Licensee to Licensor on demand, with interest thereon at the Interest Rate from the date incurred by Licensor.

(c) if Licensor shall fail to perform any of the terms or conditions of this Agreement and such non-performance or noncompliance shall remain uncured for a period of five (5) days after written notice thereof by Licensee, then, Licensee, in addition to all other remedies to which it may be entitled in law and equity, may terminate this Agreement by giving to Licensor three (3) days' notice of its intention so to do and upon the date so specified, this Agreement, the License and the Term shall terminate, be revoked and come to an end and Licensee shall immediately quit, vacate and surrender to Licensor the License Area in accordance with the terms of this Agreement. All costs, expenses, or damages incurred by Licensee in connection with or as a consequence of Licensor's default, shall be paid by Licensor to Licensee on demand, with interest thereon at the Interest Rate from the date damages were incurred by Licensee.

10. **Surrender and Holdover.** Upon the Expiration Date or earlier termination date of the Term, Licensee shall surrender the License Area to Licensor vacant, broom clean, free of debris and Licensee's personal property, with any and all installations and/or alterations by Licensee removed, in good order, condition and state of repair, normal wear and tear excepted. Licensee not vacate the License Area by the Expiration Date or earlier termination of this Agreement, Licensor shall be entitled to all remedies available to Licensor under this Agreement, at law and/or in equity including, without limitation, any and all damages arising as a consequence of Licensee's holding over beyond the Expiration Date which shall include, among other things, the loss of any future license or tenancy for the License Area, and in addition, Licensee shall be liable to pay to Licensor as liquidated damages an amount which is three hundred (300%) percent of the License Fee for the last month of the Term (the "Holdover Fee") measured from the Expiration Date until the date Licensee actually surrenders the License Area (to be calculated on a per diem basis pursuant to this Section in accordance with the terms hereof. The parties acknowledge that it is difficult if not impossible to calculate with precision, at this juncture, the

harm to Licensor from such post-expiration use, and that the Holdover Fee is a fair and reasonable estimate of the damages and is not intended to be a penalty.

11. **Licensee's and Licensor's Representations.** Notwithstanding anything to the contrary set forth in this Agreement, Licensee represents, warrants and acknowledges that Licensee is only visually and superficially familiar with the physical condition and state of repair of the License Area and all other matters relating to this Agreement, and agrees to accept the License Area "as is," in its present state and condition existing as of the date hereof. Likewise, Licensor represents that the License Area is in good condition, any installed equipment there is in good working order and will be maintained by Licensor during the term of this Agreement. Licensor further represents that film and production is a permitted use for the License Area and that Licensor has obtained all necessary permissions and use permits.

12. **Waiver of Responsibility.** Neither (a) Licensor or its principals, members, officers, directors, shareholders, employees, agents, ground lessors, mortgagees, nor (b) or any of their respective successors and assigns, shall be liable for, and Licensee waives, all claims for loss or damage, economic or otherwise, to Licensee's business or damage to person or property sustained by Licensee or any person claiming by, through or under Licensee resulting from any accident or occurrence in, on or about the Building or the License Area, including without limitation, claims for loss, theft or damage resulting from: (i) (ii) construction or renovation (iii) injury caused by wind or weather; (iv) any defect in or failure to operate of any sprinkler, heating or air conditioning equipment, electric wiring, water system, gas system, stairs, escalators or elevators; (v) (vi); (vii) (viii) any act, omission or negligence of other licensees, tenants or occupants of the Building. To the maximum extent permitted by law, Licensee agrees to use the License Area at Licensee's own risk.

13. **Notices.** Written notices, consents, approvals, requests, demands or any other communication hereunder shall be served as follows:

If to Licensee: By reputable overnight courier service (e.g., Federal Express) to the address set forth in the preamble.

If to Licensor: By reputable overnight courier service (e.g., Federal Express) to the address set forth in the preamble.

14. **Alterations; Signage.** Licensee shall make no decoration, alteration, addition, or improvement (collectively, "Alterations") in or to the License Area without the prior written consent of Licensor, which consent shall not be unreasonably withheld. Licensor consents and agrees to allow Licensee to erect set design, set buildouts, and lighting grid.

15. **Subordination.** This Agreement and Licensee's rights hereunder are and shall be subject and subordinate to the underlying lease (including Licensor's lease (the "Overlease") of the premises of which the License Area is a part with Properties, LLC (the "Landlord") and to all mortgages, building loan agreements, leasehold mortgages, spreader and consolidation agreements and other similar documents and instruments, which may now or hereafter affect such leases or Building or the real property of which the License Area is a part and to all

renewals, modifications, consolidations, replacements, extensions, assignments, spreaders, consolidations and refinancing thereof and to all advances made or hereafter made thereunder. This Section shall be self-operative, and no further instrument of subordination shall be necessary. If any subordinations occur which impedes Licensee's shooting requirements, schedule, or timeline, then Licensor is responsible for curing same and for all costs associated with or caused by such Subordination and Percentage Fee will be reduced as defined in Section 17. Licensee is not familiar with the Overlease and has no relationship with the Landlord, thus, Licensor represents and warrants that Licensee's use of the License Area, Leased Premises, and Building are acceptable under the Overlease, based upon Landlord's consent hereof.

16. **Assignment or Sublicensing.** Licensee shall not have any right to (i) assign Licensee's interest in this Agreement, (ii) sublet or sublicense all or any part of the License Area, (iii) permit any other person (other than Licensee's employees) or business to use and occupy the License Area, or (iv) otherwise encumber the License Area or the Building or the land on which the Building is situated. Any transfer contrary to the provisions of this Paragraph shall be void.

17. **Casualty.** If any part of the License Area or Building (to the extent that any such damage to the Building shall materially affect Licensee's use of the License Area) shall be damaged by fire or other casualty, and such damage cannot reasonably be repaired within one week, Licensee may terminate this Agreement as of the date of such fire or other casualty. Licensor shall not be liable for any inconvenience or annoyance to Licensee or injury to the business of Licensee resulting in any way from such fire or other casualty; provided, however, that if, in the event of such a termination, Licensee's filming has not been completed and an alternate location must be secured by Licensee therefor, (i) no further License Fee shall then be payable, and (ii) the twelve percent (12%) amount (the "Percentage Fee") set forth in Section 2(b) above shall be reduced as follows:

(i) If the termination occurs prior to the end of the first month of the Term, then the Percentage shall be reduced to two percent (2%).

(ii) If the termination occurs prior to the end of the second month of the Term but after the first month of the Term, then the Percentage Fee shall be reduced to four percent (4%).

(iii) If the termination occurs prior to the end of the third month of the Term but after the second month of the term, then the Percentage Fee shall be reduced to six percent (6%).

(iv) If the termination occurs prior to the end of the fourth month of the Term but after the third month of the Term, then the Percentage Fee shall be reduced to eight percent (8%).

18. **Impositions; Liens.** Licensee shall immediately pay any lien, fine, penalty, interest or cost may become due or be imposed by operation of law as the result of Licensee.

19. Each party hereby represents to the other that it has not employed or dealt with any broker, agent, or finder in connection with this Agreement.

20. **Entire Agreement.** This Agreement contains all of the agreements and understandings of the parties hereto with respect to its subject matter.

21. **No Oral Modification or Waiver.** Neither this Agreement, nor any provision hereof,

may be amended, modified, waived, discharged, or terminated orally except by an instrument in writing, signed by the party against whom enforcement of such modification, waiver, discharge, or termination is sought.

22. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which may be a “pen” original, telecopy or electronic file portable data format (.PDF), and each of which shall be deemed to be an original, binding the signor thereof against the other signing party, and all of which, when taken together, shall constitute one and the same instrument.

23. **Option.** Upon 30 days’ notice prior to the Expiration Date, Licensor hereby grants to Licensee and Licensee shall have the right and option to extend the term of this License for a one-year period immediately following the Expiration Date at the rate of \$6,000 per month plus Licensee’s portion of electric utility expense. Included in this renewal, Licensee will be granted permission to use the Cinema Theatre and Event Space for 12 days each respectively during the term of the Agreement.

**24. Licensor’s Work**

a. Licensor shall install a lighting grid in the License Area and increase electricity to the License Area. Licensor acknowledges that this Licensor’s Work will be a permanent improvement to the License Area. Licensor will complete Licensor’s Work prior to the delivery of License Area to Licensee. Licensor’s work shall be performed in full compliance with prevailing laws, rules, and regulations.

b. Licensor grants Licensee permission to construct and erect and strike set design panels and store props in the License Area.

c. Prior to expiration or within ten (10) days of the termination of the Agreement, Licensee will remove all theatrical lights, fixtures, temporary power distribution centers, lighting grid, and electrical extension cords that will power the theatrical lights on the lighting grid.

**d. Sufficient Electricity** – Licensee has met with the Licensor’s electrician who informed Licensee that electricity in the License Area is insufficient. The electrician will provide a quote to meet requirements and this quote will be presented to Licensor and Licensee for approval. If electrical requirements are unacceptable to Licensor or Licensee for any reason, this Agreement may be terminated by either of them within 10 days after said quote by the electrician is received by the respective party.

25. **ARBITRATION.** The parties agree that any and all disputes or controversies of any nature between them arising in connection with the Picture and/or this Agreement shall be determined by binding arbitration in accordance with the rules of American Arbitration Association (“AAA”) (or, with the agreement of the parties, ADR Services) before a single neutral arbitrator (“Arbitrator”) mutually agreed upon by the parties. If the parties are unable to agree on an Arbitrator, the Arbitrator shall be appointed by the arbitration service. The Arbitrator's decision shall be final and binding as to all matters of substance and procedure and may be enforced by a petition to the Supreme Court, which may be made ex parte, for confirmation and enforcement of the award. Prior to the appointment of the Arbitrator or, in

the case or remedies beyond the jurisdiction of an arbitrator, at any time, Company may seek pendente lite without thereby waiving its right to arbitration of the dispute or controversy under this section. All arbitration proceedings shall be closed to the public and confidential and all records relating thereto shall be permanently sealed, except as necessary to obtain court confirmation of the arbitration award.

**REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK  
SIGNATURES ON FOLLOWING PAGE**

**IN WITNESS WHEREOF**, the undersigned have executed this Agreement as of the date and year first above written.

LICENSOR:

Street, LLC

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

Member

LICENSEE:

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

Name:

Title:

EXHIBIT A

LICENSE AREA

EXHIBIT B

INSURANCE POLICY REQUIREMENTS

FOOD VENDOR  
LICENSE AGREEMENT

This Agreement ("License") is dated on this \_\_\_ day of December, 2018 ("Effective Date"), and is entered into between,

FOODS HALL LANDLORD Inc. , ("Licensor"), and

FOOD VENDOR LLC, ("Licensee").

WHEREAS, Licensor and Licensee agree that Licensor shall grant to Licensee, in consideration of the agreements and fees set forth in this Agreement, a non-transferable and revocable for cause license to use the Vendor Station in the Market as specified below and, together with Licensor's other Licensees, a license to use Licensor's Market facilities and services, in accordance with the following terms and conditions:

1. DEFINED TERMS. The following defined terms are used throughout this Agreement, and all provisions of this Agreement are to be read in accordance with them:

Market Location: NEW YORK, NY  
("Market")

Vendor Station Number: #\_\_ ("Station")

Commencement Date:  
("Commencement Date")

License Fee Commencement Date: Sixty (60) days after the Opening Date

Opening Date: The date on which the Food Hall has opened for business to the general public ("Opening Date"), subject to Section 8.

End of Initial Term: The day preceding the four year anniversary date of the License Fee Commencement Date ("Expiration Date")

Initial Term: 2 YEARS ("Term")

FOOD VENDOR ("Use")

~: PIZZA ("Type")

TOTAL LICENSE FEE: \$ \_\_ per month

The "License Fee" shall be calculated as a sum of the following:

A. Monthly Base Service Charge (CAM): \$ \_000.00

B. Monthly License Fee: \$ \_000.00

C. and Additional Service Charges

Base Services: Licensor's vendor package, including the use of a designated vendor station located in the Market, complete with {00036392 3}

the services described in the attached Schedule "B", also known as "CAM" or "Common Area Maintenance" charges.

Additional Services: Variable cost services, such as electric, water and sewer services, but also access to additional services for purchase as elected by Licensee, including the services described in the attached Schedule "B".

PERCENTAGE FEE: In addition to the Total License Fee set forth above, Licensee shall pay \_\_\_ % of all gross sales in excess of \$ \_\_\_\_\_ per annum. Licensee shall keep an accurate record of all sales as a part of all their business conducted at the Building. Such record shall be maintained at the Building or at an office of Licensee or an affiliate of Licensee, in English, which shall be preserved for \_ months or as long as required to settle any dispute, claim or audit. Licensee must produce a monthly statement of its business to Licensor in English at the end of each month. Licensee's second and each subsequent failure to produce such monthly statement within ten (10) days following notice thereof shall incur an expense payable by Licensee to Licensor as an Additional Service Charge for the time and expense involved in obtaining such monthly statements, in the amount of \$ \_\_ per occurrence. Licensee's business at the Building shall include all eat-in services, take-out services, catering which uses the Building premises in any portion, and any activity which generates income from any use or partial use of the Station or Building.

Security RETAINER FEE: \$ .00, deposited in accordance with the terms of Section 6 hereof.

2. LICENSE. Licensor grants Licensee a license to use and occupy the Station in the Market, subject to these terms and conditions. Licensee shall have no real property interest in or other rights to the Market; and this License is non-exclusive, and not transferable. Licensor agrees that it shall not permit any other licensee of the Market to use or occupy the Licensee's

Station or any other portion of it during the Term, unless otherwise permitted by this License.

Licensor shall not license any other Station of the Market to a licensee whose business is primarily the sale of raw fish, which shall expressly include any other sushi products, and shall not permit any other licensee in the Market to sell any

This License is not intended to create a lease or any other interest in real property in favor of Licensee, but merely creates a license.

### 3. TERM; TERMINATION; OPTION TO EXTEND.

A. The Term of this License shall commence on the Commencement Date and shall expire on the Expiration Date, unless sooner terminated by Licensor pursuant to this License.

B. Intentionally Omitted.

C. So long as Licensee is not in default under the provisions of this License, Licensee shall have the right to terminate this License by serving Licensor with a ninety (90) day written notice of the intention to terminate, and the Term of this License shall expire on such date thereafter upon the expiration of the ninety (90) days after the service upon Licensor; and Licensee shall be relieved of further liability subject to the provisions of this License regarding the obligations of the Licensee upon the expiration or sooner termination of the Term.

D. So long as Licensee is not in default under the provisions of this License, and provides Licensor written notice of Licensee's desire to extend the License for any duration, Licensor shall consider such extension to be determined at Licensor's sole discretion, and at terms to be negotiated.

4. COMMENCEMENT OF TERM. Licensor shall not be liable to Licensee for inability to deliver possession of the Station on the Commencement Date due to reason(s) outside of its control! In such event, this License shall remain in full force and effect; the Commencement Date shall become that day upon which Licensor is able to deliver possession.

### 5. LICENSE FEE.

A. Licensee agrees to pay to Licensor the License Fee on the first day of each month during the Term, at the office of Licensor at the Building, or such other place as Licensor may designate in writing, without set-off or counterclaim.

B. During the Term of this License, the Base Services Fee portion of the License Fee shall be increased by \_\_\_\_\_% on each one-year anniversary of the License Fee Commencement Date ("Anniversary Date").

C. In addition to the License Fee, Licensee shall pay, on demand, as additional fees, the greater of: (i) if the License Fee is paid more than thirty (30) days after its due date (a) interest on the unpaid License Fee at the rate of 5% per month from the date first due until it has been paid in full; and (ii) \$\_.00 for any check which is returned unpaid; collectively called "Late Charges", to be collected by Licensor as additional Service Charges.

D. In the event the Term of this License is less than twelve months, Licensee shall pay a non-refundable charge of \$\_.00 to cover the cost of repairs, maintenance and administrative fees in connection with Licensee's occupancy.

### 5A. LICENSOR LOAN.

A. Licensor shall provide financing to Licensee in the amount of \_\_\_\_\_, (the "Loan") towards the cost of Licensee's improvements to the Station, which Loan shall accrue interest monthly at the rate of \_\_\_\_\_ per year (the prime rate as of the date hereof). Licensor shall pay such amount upon the execution hereof.

B. Licensee shall repay to Licensor, the principal and accrued interest of the loan on or before the one year anniversary date of the execution of this License.

C. In consideration of making this Licensor Loan described in this Section SA, Licensee by executing this License Agreement, hereby also grants to Licensor a security interest in all furniture, fixtures and equipment ("FFE") that shall be built, constructed, affixed, or otherwise included at the Vendor Station which is the subject of this License Agreement, until such time that Licensee has repaid and satisfied this Loan as provided in this Section S A (B).

D. Licensor shall be entitled to file UCC financing statements to perfect Licensor's security interests created hereunder. Upon satisfaction of this Loan, Licensor shall execute a form to acknowledge the same and shall file a UCC termination statement.

E. Upon Licensee's failure to repay and satisfy the Loan, Licensor may take all action permitted by law, including but without limitation, reclaim, remove, and take possession of all FFE at the Vendor Station, upon five (5) days prior notice to Licensee, provided that Licensor shall not take possession if the Loan is paid in such time.

### 6. SECURITY RETAINER.

A. Licensee has deposited the Security Retainer to ensure Licensee's compliance with this License. The remaining and unused portion of the Security Retainer, if any, will be returned, without interest, upon the completion of the following conditions: (i) the expiration of the Term of this License, (ii) the removal of Licensee's personal property from the Station, and (iii) Licensee's payment in full of any and all License Fees and other fees due hereunder.

B. Licensee shall not use the Security Retainer as payment for the License Fee or the Percentage Fee for the last (or any other) month of the Term, or any extension thereof. However, in the event Licensee defaults in respect of any of the terms, provisions and conditions of this License, Licensor may apply the Security Retainer to the extent required for the payment of any money due to Licensor.

C. If all or part of the Security Retainer has been utilized by the Licensor as permitted herein; Licensee shall replenish the Security Retainer immediately, and upon failure to do so, shall be deemed to be in default hereunder.

D. In the event of a transfer by Licensor of its interest in this License to a third part ("Transferee") in connection with a sale, transfer or assignment of any underlying lease, or of the Building, Licensor may transfer the Security Retainer to Transferee, and Licensor shall thereupon be released from any and all liability for the return of the Security Retainer, and Licensee shall look solely to the Transferee for this purpose.

E. Licensee agrees (i) that any such transfer or assignment shall not be deemed a waiver, by either the Licensor or the

Transferee, of any of the rights granted to and reserved by the Licensor under this License, (ii) that any such transfer or assignment shall not be construed as evidence of the Licensor's and Licensee's intentions that this License be deemed anything other than a license, and (iii) that any such Transferee shall enjoy and enforce all of the rights conferred on the Licensor by this License.

#### 7. USE; COMPLIANCE WITH LAW.

A. The Station shall not be used by Licensee for any purpose other than as set forth in paragraph 1, not for any entity other than Licensee, not for any type of food sales except that specified in paragraph 1, provided that Licensee shall be able to sell food and beverage items ancillary to the sale of sushi (including, without limitation, beverages and desserts), and such use shall be further governed by the terms and conditions set forth below:

B. Licensee, at Licensee's sole expense, shall promptly comply with all laws and regulations of any governmental authority. Licensee shall obtain all documentation necessary to lawfully sell goods and services as may be applicable, including but not limited to, certificates, licenses, and permits, which may include Food Service Establishment Permits, Food Protection Certificates, and Sales Tax Certificates of Authority. Licensee shall pay all fines, penalties, costs and expenses imposed upon Licensor for Licensee's failure to comply with any applicable governmental rules, regulation or laws.

C. Sales Tax: Licensee represents and warrants to Licensor that sales conducted at the Market that are subject to sales tax will be made only in accordance with all applicable provisions of New York law including, without limitation, that Licensee shall be registered with the New York State Department of Taxation and Finance, shall have a validated Certificate of Authority (e.g., Form DTF -17 A or DTF-17R) and that a copy of the Certificate of Authority shall be delivered to Licensor no later than fourteen (14) days prior to the Required Opening Day. Licensee understands and acknowledges that Licensee shall not be permitted to make any sales at the Market which are subject to sales tax without a valid Certificate of Authority and that Licensor shall have the absolute right at any time to prohibit Licensee from making any sales of any type unless Licensor has received a copy of a valid Certificate of Authority for Licensee. In the event Licensee shall fail to provide such copy, Licensor shall have the absolute right to require Licensee to remove all property from the Market and Building. In the event Licensor provides any services to Licensee that are subject to sales tax in the Building, Licensee understands and acknowledges that in addition to the License Fee, Licensee shall be obligated to pay to Licensor the sales tax in effect at such time on the full amount of the License Fee. Such payment shall be due upon demand of Licensor.

D. Licensee represents and warrants that it will not: (i) use any area outside its designated Station, for any purpose, except as otherwise agreed to in writing by the Parties, (ii) store any garbage in its designated Station, except as permitted by Section (12)(D)(i)(d) or as otherwise agreed to in writing by the Parties, (iii) permit its visitors to loiter outside its designated Station or the Building, (iv) place any sign, flag, antenna or the like outside its designated Station, except with the consent of Licensor, which shall not be unreasonably withheld, (v) use its designated Station

for residential purposes, (vi) permit any liens against its designated Station or the Building, (vii) keep any hazardous, combustible, inflammable or explosive substances in its designated Station, or Storage Area if applicable, (viii) advertise in any manner which, in Licensor's sole opinion, impairs the reputation of Licensor or the Building, (ix) intentionally omitted, (x) move freight or other bulky items (which may be inspected by Licensor) on passenger elevators, (xi) permit any utility facility to be overloaded, (xii) park in the loading bays of the Building, or (xiii) permit animals in its designated Station, or Storage Area if applicable, or the Market.

E: Intentionally Deleted

F. Licensee shall at all times maintain a fully stocked supply of inventory, and shall otherwise diligently operate its business at the Premises during the Term in a first-class manner as determined by Licensor, in its sole discretion. Licensee shall not conduct or permit any fire, bankruptcy, auction or "going out of business" sale (whether real or fictitious) in the Premises, or utilize any unethical method of business operation.

8. **CONDITION OF STATION.** Licensee has inspected the Station and agrees to accept the Station "AS IS" on the date of this License except as to latent defects. Licensor makes no representation as to the condition of the Station, the Building, or the land upon which the Building is erected, but represents and warrants that as of the Opening Date, all communal areas of the Market shall have been completed and all permits shall have been obtained therefor.

8.5. **INCONVENIENCE FEE.** At any time after Licensee has initially opened for business to the public, there shall be a \$ \_\_\_ fee chargeable by Licensor to Licensee, for the failure or refusal to open the Station on any regular operating day which the Market is open for business, for the Term of this License. Licensee understands that Licensee's failure to refuse to open its Retail Shop for business on any regular operating day which the Market is open for business, for the Term of this License, has a latent effect on the success of the entire Market. As such, Licensee also agrees that the \$ \_ inconvenience fee is a fee to offset the damage to the Market as a whole that may be caused by Licensee's absence from business for each regular operating day which the Market is open for business (after the Licensee has initially opened for business to the general public), and that this fee is not a penalty, but is a reasonable estimated fee for the damage to the Market as a whole, which is difficult to determine. Notwithstanding the foregoing, the Inconvenience Fee shall not apply in the case of any closures (a) resulting from any inability to operate that is not within the reasonable control of Licensee (e.g., Licensor's failure to provide services or provide repairs, or any acts of God), (b) during any periods of construction or renovation approved by Licensor materially affecting Licensee's regular business, (c) resulting from a casualty at the Station or Market, or (d) during any Market defined holidays.

9. **RULES AND REGULATIONS.** Licensee represents that it will comply with all of Licensor's rules and regulations attached hereto as Schedule "A" ("Rules & Regulations").

**10. ALTERATIONS AND REPAIRS.** Licensor has the sole and exclusive right to make any decoration, alteration, installation, repair, modification, or change to the Station the Market or the Building, and to perform work of any kind or nature in and to the Station, whether it is of a structural or non-structural nature, and shall be responsible for the ongoing maintenance of the Market and Building, including for the prompt repair of any damage in the Market and Building reasonably requiring such repair. Licensee shall be entitled to make decorative changes and to install kitchen equipment in the Station as per Licensee's plans approved by Licensor. In the event Licensee wishes the Licensor to undertake any work on Licensee's behalf in the Station, Licensee shall notify Licensor in writing, setting forth the precise nature of the request. Licensor shall diligently review and consider such request, and respond in a timely manner. No such work may be performed by the Licensee, without the express prior written consent and approval of the Licensor, which may be withheld by Licensor in its sole discretion. Licensor, at Licensor's expense shall make all repairs, ordinary and extraordinary, interior and exterior, structural or otherwise, in and about the Station, the Market and the Building if deemed necessary by Licensor. However, if the need for repair has been caused or the work has been requested by Licensee or its visitors, then such repair shall be at Licensee's expense.

**11. MAINTENANCE.** Licensor agrees and warrants that it shall maintain the Station, Market and Building in and to a reasonable and customary first class standard.

## **12. SERVICES.**

A. Licensor agrees, in consideration of the License Fee, to provide Base Services to Licensee as described in Schedule "B". From time to time during the Term of this License, Licensor may, at its option make Additional Services available to Licensee described in or added to Schedule "B," at fees established by Licensor. Base Services include the following:

(i). Air Conditioning: air conditioning shall be provided for the duration of the season requiring air conditioning (approximately May 1<sup>st</sup> through September 30<sup>th</sup>), and during the Building's hours of business), and shall be included as part of the Base Service Charge.

(ii). Heat: heat shall be provided for the duration of the year requiring heat (as required by law, and during the Building's hours of business), and shall be included as part of the Base Service Charge.

(iii). Other Services Designated in Schedule B.

B. Licensor's obligation to furnish to Licensee, the Base or Additional Services, shall be subject to Licensee's default status.

C. In the event Licensee is in default of this License, Licensor may, at its option, cease furnishing any and all services.

D. Except as otherwise provided in this License, Licensor's provision of services and utilities for the Station is subject to the following:

(i). The License Fee shall include all of the Monthly Base License Fee, Base Service Charge and the Additional Service Charge; while the Base Service Charge shall be a fixed amount as provided in Section 1 with annual increases, the Additional Service Charge shall reflect the cost of service items

provided by Licensor upon request of Licensee, as well as variable charges for the following utility/other items:

a. Electricity: electric current of a minimum 100 amp service shall be provided, sub-metered direct to each Station, and shall be charged to each Station as part of their monthly Additional Service Charge based on usage.

b. Water and Sewer: hot and cold water service, and sewer service to each Station shall be provided, sub-metered direct to each Station, and shall be charged to each Station as part of their monthly Additional Service Charge based on usage.

c. Excess Garbage: Licensee shall, at its expense, keep its designated Station clean and deposit garbage daily in the container provided by Licensor. Licensee will pay to Licensor, on demand, as an Additional Service Charge, Licensor's standard charge (as adjusted from time to time) for garbage that exceeds normal volume.

d. Overtime Costs: Licensee shall pay to Licensor overtime costs for use of the Building outside of the Operating Hours as an Additional Service Charge, except as otherwise agreed to by the parties with respect to hours for food prep.

e. Estimated Additional Service Charge: As for the practical payment of the Additional Service Charge, Licensee shall pay to Licensor within ten (10) business days following receipt of an estimated invoice therefor, any amounts due that constitute Additional Service Charges hereunder. This Estimated Charge shall reflect the amount for the month as anticipated by Licensor in Licensor's sole discretion. Prior to the first of the following month, or as soon as it may reasonably be calculated, an adjustment shall be calculated by Licensor to account for the difference in the estimated and actual charge for the preceding month, and Licensee shall receive a credit or be charged the difference to be added to the next month's Estimated Additional Service Charge.

E. No Warranties. Except as expressly set forth herein, Licensor does not warrant that any Building system of service to be provided by Licensor, or any other systems or services which Licensor may provide, including but not limited to the services listed on Schedule "B": (a) shall be adequate for Licensee's particular purposes or (b) shall be free from interruption or reduction. Building systems and services, including, without limitation, access, may be interrupted or reduced by reason of repairs or changes which are, in Licensor's judgment, necessary or desirable, or which are beyond Licensor's control. Such interruption or reduction shall not, unless otherwise provided in this License (i) constitute a breach or default of this License, or disturbance of Licensee's use of the Station, (ii) entitle Licensee to any compensation or abatement of the License Fee (provided, however, that if the Market is closed for any reason, or Licensee cannot operate the Station for the purposes set forth herein for more than twenty-four (24) hours for any reason not within the reasonable control of Licensee that materially affects Licensee's regular business, then any License Fee due hereunder shall be abated during any such period, (iii) relieve Licensee from any obligation under this License, or (iv) impose any obligation or liability on Licensor by reason of inconvenience or annoyance to Licensee, injury to or interruption of Licensee's business, or otherwise.

Licensee expressly waives, and agrees not to make any claim for damages against Licensor, direct or consequential, arising out of any failure of Licensor to furnish any utility, service or facility,

any error or omission with respect thereto, or any delay or interruption of the same. In the event that any scaffolding is erected in front of the facade/entrance to the Market, Licensor shall provide signage upon such scaffolding to offset any confusion as to the Market's whereabouts and the Market's being open for business.

### 13. ACCESS.

A. Access by Licensee. During the Term of this License, so long as Licensee shall not be in default hereunder, Licensee may have LIMITED ACCESS to the Station and Building as follows:

(i). Seven (7) days a week.

(ii). Public Business Hours of the Market shall be between the hours of 10 A.M. and 7 P.M. Licensee shall open for business by 11 a.m.

(iii). Operating Hours of the Market shall be between the hours of 8:00 A.M. and 9 P.M. to allow Licensees access to the Building and their Station two hours prior to and two hours after public hours for purposes of preparation and/or clean-up. Licensee shall have access to the Station by 8 a.m. on a daily basis for purposes of preparation and receipt of deliveries.

(iv). Without limiting the foregoing in any way, Licensor agrees that it shall not unreasonably withhold or delay any written request from Licensee, to permit access into the Station at such time(s) not expressly provided for above.

B. Access by Licensor. Licensor shall have the right to enter the Station at any time. So long as Licensee shall not be in default, Licensor shall provide prior notice of entry (except no notice shall be required in an emergency). Licensor may perform any repair of maintenance in the Station, and install, use and maintain pipes, ducts and conduits within the Station. In the event of an emergency, Licensor may force entry into the Station and Licensee agrees to pay all costs for repair of the damage resulting from such forced entry to the extent Licensor's need to enter by force was caused by Licensee's acts or failure to act.

**14. LICENSOR'S AND LICENSEE'S PROPERTY.** All fixtures, equipment and improvements attached to or built into the Station, by the Licensor shall become or remain a part of the Station (but excluding any kitchen equipment, custom trade fixtures, equipment or any personal property, to the extent not permanently attached to the Station) and will be deemed Licensor's property and may not be removed by Licensee, unless otherwise provided in this License or specifically agreed in writing to be removed by Licensor, at Licensee's expense, at the expiration or earlier termination of the Term. Any of Licensee's property remaining in the Station after this License ends will be deemed abandoned, and may be retained by Licensor or disposed of by Licensor, without liability to Licensor, in such manner as Licensor determines. However, any and all such costs and expenses incurred shall be chargeable to Licensee. This paragraph shall be subject to Licensor's security interest in the FFE as set forth in the provisions of Section SA.

### 15. INDEMNIFICATION.

A. Except to the extent resulting from the negligence or willful misconduct of Licensor, Licensee will defend, indemnify, and hold Licensor and their respective members, officers, partners, principals, directors, shareholders, employees, servants, and

agents (collectively, the "Licensor's Indemnified Parties") harmless, from and against any and all suits, claims, causes of action, liabilities, loss, costs, damages and expenses of whatever kind (including, but not limited to, attorneys' fees and court costs) arising in any manner, directly or indirectly, out of or in connection with or incident to (i) Licensee's use of the Station or Building; or (ii) all claims arising from any negligent or other act or omission of Licensee or its partners, directors, officers, employees, agents, invitees, or contractors. Licensee, on notice from Licensor, will defend any such claim and promptly furnish the parties defended by Licensee with copies of all papers served or filed. Licensee shall maintain adequate insurance for all of the foregoing. Licensor and Licensee each waives any and all rights of recovery against the other, or against the directors, Licensors, officers, agents, servants and employees of the other, for loss of or damage to its property or the property of others under its control, to the extent such loss or damage is covered and fully compensated by any insurance policy.

B. Except to the extent resulting from the negligence or willful misconduct of Licensee, Licensor will defend, indemnify, and hold Licensee and their respective members, officers, partners, principals, directors, shareholders, employees, servants, and agents (collectively, the "Licensee's Indemnified Parties") harmless, from and against any and all suits, claims, causes of action, liabilities, loss, costs, damages and expenses of whatever kind (including, but not limited to, attorneys' fees and court costs) arising in any manner, directly or indirectly, out of or in connection with or incident to all claims arising from any negligent or other act or omission of Licensor or its partners, directors, officers, employees, agents, invitees, or contractors at the Building. Licensor, on notice from Licensee, will defend any such claim and promptly furnish the parties defended by Licensor with copies of all papers served or filed.

**16. LICENSOR'S LIABILITY.** Neither Licensor nor Licensor's Indemnified Parties will be liable to Licensee for any injury, damage or loss, including, without limitation, inconvenience, annoyance or injury to business, nor shall there be a reduction of License Fee, or any obligation of Licensee, and Licensee shall not be entitled to any right of setoff in connection with any matter including, without limitation, (i) making or not making repairs or changes, (ii) the interruption of any service or utility, (iii) the inability to fulfill, or delay in fulfilling, any obligation of Licensor for any reason beyond Licensor's control, or (iv) failure to arrange for any utility or services, except to the extent that any of the foregoing were the result of Licensor's negligence, misconduct or a breach of Licensor's obligations hereunder (subject to any abatements as set forth in Section 12 (E)). Anything in this License to the contrary notwithstanding, Licensor and Licensor's Indemnified Parties shall have no personal liability with respect to any of the terms and obligations of this License or Licensee's use of the Station. Neither Licensee or Licensee's employees, members, or agents will be liable to Licensor or to any third party for any injury, damage or loss, including, without limitation, inconvenience, annoyance or injury to business in connection with any claims alleging the misconduct or negligence of Licensor.

**17. SUBORDINATION.** This License, and the rights of Licensee under this License, are subject and subordinate in all

respects to the underlying lease, if any, as well as all present and future underlying leases and mortgages in any way relating to the Building, including, without limitation, all renewals, extensions, supplements, modifications, consolidations, replacements and advances thereof. This Section is self-operative and no further instrument of subordination is required. Licensee shall, within ten days following receipt of Licensor's request therefore, sign and deliver to Licensor an instrument evidencing such subordination.

**18. END OF TERM.** Upon the expiration, revocation, or other termination of the Term, Licensee shall vacate the Station, leaving it in good order and condition, broom clean, ordinary wear and tear excepted. No act by Licensor or its agents will be deemed an acceptance of a termination of the License, and no termination will be valid unless in writing signed by Licensor. If the Station is not vacated at the time of expiration or sooner termination of the Term of the License (or in the instance of a revocation, on or before the Vacate Date), Licensee shall be liable to Licensor for (a) all losses, costs, liabilities and damages which Licensor may incur by reason thereof, including, without limitation, attorneys' fees, and Licensee shall indemnify, defend and hold harmless Licensor against all claims made by any succeeding Licensees against Licensor or otherwise arising out of or resulting from the failure of Licensee to timely vacate the Station in accordance with the provisions of this License, and (b) per diem use and occupancy of the Station equal to two times the daily License Fee payable under this License for the Term of this License (which amount Licensor and Licensee presently agree is the minimum to which Licensor would be entitled, is presently contemplated by them as being fair and reasonable under such circumstances and is not a penalty). In no event, however, shall this Paragraph be construed as permitting Licensee to license and use the Station after the expiration or termination of the Term.

**19. INSURANCE.** Licensee, at its expense, will maintain commercial general liability insurance in respect of Licensee's Station and the conduct of Licensee's business, with Licensor and Building Owner as additional insureds, with limits of not less than Dollars (\$\_,000,000) per occurrence, \_ Dollars (\$\_,000,000) aggregate, which policy shall include coverage for bodily injury and/or property damage, Independent Contractor's Liability and Broad Form Comprehensive General Liability endorsements, as well as a special endorsement to the effect that such insurance is primary, not contributory, with any insurance Licensor carries and that any insurance maintained by Licensor and other Insured Entities is contingent and secondary. Licensee will obtain and maintain property coverage written on a "Special Causes of Loss" ("All Risk") form, for all of Licensee's materials, exhibits, machinery, equipment and other property of Licensee and Licensee's agents, employees, contractors and invitees and any other property for which Licensee is legally liable, or which was installed by or on behalf of Licensee and which is located within the Facility; such coverage should be written on a replacement cost basis in an amount equal to the full replacement value thereof, and Worker's Compensation Insurance, as required by law. Licensee agrees to waive all rights of subrogation against Licensor and Building Owner. Licensee will properly deliver to Licensor all Certificates of Insurance issued by duly authorized agents of the carriers providing

coverage required by this License, before the Commencement Date and at least ten (10) days prior to the expiration of each policy found in said certificates.

**20. AFFIRMATIVE WAIVERS.** Licensor and Licensor's Indemnified Parties shall not, to the extent permitted by law, except upon the affirmative showing of Licensor's negligence or willful misconduct, be liable for, and Licensee waives all right of recovery against such entities and individuals for, any damage or claim with respect to any injury to person or damage to any property of Licensee, its employees, authorized persons and invitees due to any act, omission or occurrence in or about the Market or the Building.

**21. NO WAIVERS.** The failure of Licensor to insist in any instance on the strict performance of any obligations of this License or to exercise any election, will not be deemed a waiver for the future of the performance of that obligation or of the right to exercise that election. The receipt by Licensor of the License or additional License Fees with knowledge of a breach or default by Licensee will not be a waiver of the breach or default.

**22. NO BROKER.** Licensee represents that no broker brought about this License and the Licensee had no conversations with any broker concerning the Licensing of the Station. Licensee will indemnify, defend and hold harmless Licensor against any claims for any brokerage commissions and all costs, expenses and liabilities in connection therewith, including attorneys' fees and expenses, arising out of any conversations between Licensee and any broker.

**23. SURVIVAL.** Sections 1,3,5,6, 7, 8, 14, 15-19, 20, 22-33 shall survive the termination of this License.

**24. INTENTIONALLY OMITTED.**

**25. NOTICES.** A bill, statement, notice or communication from Licensor to Licensee, shall be deemed sufficiently given or rendered if, in writing, delivered to Licensee at the Station. Such bill, notice or demand shall be deemed to have been given at the time of delivery or mailing. Any notice to Licensor under this License must be in writing and must be sent by personal delivery, by overnight courier or by certified mail, return receipt requested, to the following address:

Any notice given to Licensee by Licensor may be given by the attorney(s) for Licensor, and in such instance shall be deemed to have been given by Licensor for all purposes.

**26. NO SUBLICENSE OR ASSIGNMENT.** Licensee may not assign this License nor sublicense the Station or any part thereof or permit its use by any person except Licensee's employees and business invitees. Licensor, however, may freely assign this License and/or any fees hereunder. Licensee agrees (i) that any such assignment by the Licensor shall not be deemed a waiver, by either the Licensor or the Licensor's assignee, of any of Licensor's rights under this License, (ii) that any such

assignment shall not be construed as evidence of the Licensor's and Licensee's intentions that this License be deemed anything other than a license, and (iii) that any assignee of the Licensor shall enjoy and enforce all of Licensor's rights under this License.

## 27. DEFAULT.

A. Licensee shall be deemed to be in default under this License as follows: (i) if Licensee defaults in the payment of the License Fee or other sums due, which default is not cured within ten (10) days following notice from Licensor (ii) (iii) if Licensee abandons the Station, (iv) if Licensee assigns or sublets this License or any portion thereof in violation of this License, or (v) if Licensee defaults in the prompt and full performance of any other provision of this License.

B. Upon the occurrence of one or more of the above events of default, this License shall automatically be terminated upon notice from Licensor.

C. In the event of default and termination of this License as a result of such default, Licensor shall have the option to pursue one or more of the following remedies without any additional notice or demand and without limitation to Licensor in the exercise of any other remedy:

(i). Licensor may deny Licensee access to the Station, and may enter the Station, and take possession of the contents thereof, without releasing Licensee from any of its obligations hereunder; and

(ii). Licensor may exercise any remedy now or hereafter available to it at law or in equity upon Licensee's breach or default of this License, or upon Licensor's revocation or other termination of this License in accordance with its terms, and Licensee hereby agrees that Licensor shall not have a duty to seek a court order or to provide due process before evicting Licensee from the licensed space and removing Licensee's property therefrom.

D. In the event of such termination as a result of Licensee's default (and except as to any termination in accordance with Section 3(C) hereof), Licensor may, at its option, declare the entire amount of the License Fee which would become due and payable during the remainder of the Term to be due and payable immediately, in which event Licensee agrees to pay same immediately.

E. Licensee agrees to pay all costs and expenses (including, without limitation, reasonable attorneys' fees, disbursements and court costs) expended or incurred by Licensor in connection with the enforcement of this License, the collection of any sums due hereunder, and action for declaratory relief in any way related to this License, and/or the protection or preservation of any rights of Licensor hereunder.

28. **UNENFORCEABLE PROVISIONS.** The invalidity or unenforceability of any provision hereof shall not effect or impair the validity of any other provision.

28a. **ESTOPPEL CERTIFICATE:** Licensee shall, at any time and from time to time, upon not less than five (5) days prior written notice from Licensor, execute, acknowledge and deliver to Licensor a statement in writing certifying the following information (but not limited to the following information in the event further information is requested by Licensor): (a) that this

License is in full force and effect, (b) the dates to which the License Fee and other charges are paid in advance, if any, (c) acknowledging there are not to Licensee's knowledge, any uncured defaults or other events or conditions that would constitute a default on the part of Licensor.

29. **CAPTIONS.** The captions herein are inserted only for convenience, and are in no way to be construed as a part of this License or as a limitation of the scope of any provision of this License.

30. **ENTIRE AGREEMENT.** This License and any attachments thereto supersede any prior License or agreement, and embodies the entire agreement between Licensee and Licensor in connection with this License. It may not be modified, changed or altered in any way except by a writing signed by both parties hereto.

31. **SUCCESSORS AND ASSIGNS.** This License shall be binding upon and inure to the benefit of Licensor and its successors, heirs, legal representatives, and assigns.

32. **GOVERNING LAW.** This License shall be governed by, and construed in accordance with, the laws of the State of New York, without giving effect to its conflict of law rules.

## 33. MISCELLANEOUS.

A. This License may not be amended except by writing signed by all parties hereto.

B. All waivers must be in writing and signed by the waiving party.

C. All Schedules attached hereto are incorporated herein and are made a part hereof.

D. If Licensee seeks the consent or approval of Licensor and Licensor fails to give consent or approval and unduly delays giving the same, Licensee will not be entitled to any damages or recourse against Licensor, other than to seek injunctive relief.

E. All parties signing this License on behalf of Licensee, as partnership or co-signing individuals, shall be jointly and severally liable for all obligations of Licensee.

F. This License may be executed in any number of counterparts, all of which taken together shall constitute a single instrument.

G. Facsimile copies shall be deemed to be originals for all purposes.

H. Notwithstanding anything to the contrary herein contained, it is expressly agreed and understood as follows: (i) this agreement is a license and not a lease, (ii) intentionally omitted, (iii) Licensee does not have any exclusive possessory right or interest in the Station, (iv) this License is non-transferable by Licensee, (v) the Licensee has limited access to the Station, (vi) the License Fee reflects consideration for a license and not a lease, (vii) Licensor has the right to deny access to the Station, enter the Station and exercise self-help remedies without court approval in enforcing its rights when (a) this License and the term has been terminated early, b) Licensee is in default, which default is not cured within ten (10) days following notice thereof (unless the default is of a nature that it cannot be cured in such time period, which in which case Licensee shall be in default if Licensee has not commenced

curing the default in such time), or (c) as otherwise may be provided herein, (viii) Licensee specifically covenants and agrees, for Licensor's benefit, and as a material condition to this agreement that:

(a) Neither this License nor any of Licensee's rights in connection herewith shall constitute a lease;

(b) Licensee shall not bring any action against Licensor or interpose any defense against Licensor based upon the theory that this License constitutes a lease; and

(c) Licensee expressly waives any substantive or procedural rights that Licensee may have that are predicated upon the rights of a tenant of real property. Notwithstanding the provisions of the preceding sentence to the contrary, should this agreement be deemed by any court, governmental authority or quasi-governmental authority to constitute a lease, in such event Licensor shall have all of the rights and remedies of a landlord of real property available under the applicable law.

**IN WITNESS WHEREOF**, the parties have caused this License to be executed as of the Effective Date.

**LICENSOR: FOOD HALL  
LANDLORD Inc.**

**LICENSEE:FOOD VENDOR  
LLC**

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

Print name & title \_\_\_\_\_

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

Print Name:

Title: