

## LEASE

This Lease (“Lease”) is made effective as of July 1, 2020 (the “Effective Date”), by and between the City of South Bend, Indiana, Department of Redevelopment, acting by and through its governing body the South Bend Redevelopment Commission (the “Landlord”), and Haunt of Hounds, LLC d/b/a Fatbird, an Indiana limited liability company (the “Tenant”) (each a “Party,” and together, the “Parties”).

### RECITALS

A. Landlord exists and operates pursuant to the Redevelopment of Cities and Towns Act of 1953, as amended, being I.C. 36-7-14 (the “Act”).

B. Landlord owns certain real property and improvements located in South Bend, Indiana, described as Lot 1 of Morris Civic Minor Subdivision recorded on July 13, 1998, as Document No. 9836277, with Parcel Key No. 018-1002-0043 (the “Property”), legally described in the attached Exhibit A.

C. Landlord and Tenant desire to enter into a lease , under which Landlord will lease to Tenant a portion of the Property comprised of approximately 3,500 square feet of commercial space located on the first (main) floor of the building and excluding the lower (basement) level in Lease Year One subject to an option thereafter for 2,400 square feet in the lower level. (further described herein and identified as the “Premises”).

D. The term of the Lease of the Premises shall be three (3) years.

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth in this Lease, the adequacy of which is hereby acknowledged, the Parties agree as follows:

### ARTICLE I BASIC LEASE PROVISIONS

1.1. Basic Lease Provisions. The following basic provisions of this Lease (the “Basic Lease Provisions”) constitute an integral part of this Lease and are set forth in this Section 1.1 for the convenience of the Parties. The following Basic Lease Provisions shall be applied to and construed with the other relevant terms of this Lease and the Lease as a whole.

(a) Premises:

Defined in Section 2.1, consisting of approximately 3,500 square feet of commercial space located on the ground floor and excluding all of 2,400 square feet in the lower level, in Lease Year One with an option for that space in Lease Year Two and thereafter, commonly referred to as 103 W. Colfax, within

the Building commonly referred to as 201 N. Michigan Street.

- (b) Term: Three (3) Lease Years, as provided for in Section 3.1.
- (c) Tenant's Use: Restaurant operation and other ancillary functions associated with such operation.
- (d) Landlord's Address: 1400 S. County-City Building  
227 West Jefferson Boulevard  
South Bend, Indiana 46601  
Attn:DCI Executive Director
- (e) Tenant's Address: 103 West Colfax Avenue.  
South Bend, IN 46601  
Attn: Austin Cabello
- (f) Building: The Palais Royale and Morris Civic Theater Complex, located on the Property and in which the Premises is situated, commonly referred to as 201 North Michigan Street, South Bend, Indiana.

## ARTICLE II PREMISES

2.1. Premises. Landlord, in consideration of the Rent, as defined in Section 4.1, to be paid and the covenants to be performed by Tenant, hereby leases to Tenant, and Tenant hereby leases from Landlord, that certain Premises located in the Building and described in Exhibit B, subject to the terms and conditions of this Lease. Landlord reserves the right, with respect to the Building, to modify, increase or decrease the number, location, dimension, size, and height of other premises within the Building and other improvements in the Building; and the identity and type of other tenants of the Building. Tenant's interest in the Premises is and shall be subject to all easements, restrictions, liens, encumbrances, rights-of-way, or other matters now or hereafter of record affecting the Premises or the Building.

2.2. Common Areas. Tenant shall have the right, in common with all other tenants in the Building, to use the areas in and around the Building designated by Landlord from time to time as common areas (the "Common Areas"). Landlord shall operate, maintain and insure the Common Areas for their intended purposes in such a manner as Landlord shall determine to be necessary or appropriate, including, without limitation, that Landlord at any time may close or change any part of the Common Areas as Landlord determines to be necessary or appropriate. Tenant understands that Landlord does not control the sidewalks located in the Michigan Street and Colfax Avenue right of way. Tenant shall be required to file any request for use of a portion of the sidewalk area for outdoor seating with the South Bend Board of Public Works, and shall

comply with any laws, regulations, or other restrictions applicable to the sidewalk area outdoor seating, including but not limited to the Americans with Disabilities Act (ADA).

2.3. Quiet Enjoyment. Landlord warrants that it is the owner in fee simple of the Premises, and that it has full right and authority to enter into this Lease, subject to all easements, restrictions, liens, encumbrances, rights-of-way and other matters of record. Landlord agrees that if Tenant observes all of the terms and conditions of, and performs all of its obligations under, this Lease, then, at all times during the Term, subject to the terms and conditions of this Lease, Tenant shall have the peaceful and quiet enjoyment of possession of the Premises, without any manner of hindrance from Parties claiming under, by, or through Landlord.

### ARTICLE III TERM

3.1. Term. The term of this Lease will commence on the Effective Date and end on that date that is three (3) Lease Years after the Effective Date, unless earlier terminated in accordance with the provisions of this Lease (the "Termination Date"). A "Lease Year" shall mean each period of twelve (12) consecutive full months, beginning on the Effective Date (such that if the Commencement Date is not the first day of a calendar month, then the first Lease Year shall begin on the first day of the first calendar month following the Commencement Date, and any partial month in which the Commencement Date occurs will be included within the first Lease Year).

3.2. Renewal Option. Provided that no Event of Default, as hereinafter defined, or any facts which with the giving of notice or passage of time, or both, would constitute an Event of Default, exists at the time of the exercise of any option to renew the Term (the "Renewal Option") or exists at the end of the Term, Tenant may renew this Lease for an additional period of two (2) years (the "Extended Term"), on the same terms and provisions as provided in this Lease, except that the Rent due in the Extended Term shall be negotiated with delivery of written notice of the exercise of such option not later than ninety (90) days before the expiration of the Term. If Tenant fails to exercise its option to extend the Term in the time periods set forth in this Section 3.2, Tenant's option to renew shall immediately terminate and have no further force or effect, without further notice from Landlord.

3.3. Holding Over. If Tenant fails to surrender the Premises upon the expiration of the Term or earlier termination of the Lease (it being agreed that Tenant shall not be permitted to so hold over without Landlord's written consent), Tenant shall pay Landlord for each day of such holding over a sum equal to one hundred and fifty percent (150%) of the Rent payable during the preceding Lease Year prorated for the number of days for such holding over, plus all other amounts which Tenant would have been required to pay had this Lease been in effect (the "Holdover Rent"). If Tenant holds over without Landlord's written consent for a period in excess of thirty (30) days without any action from Landlord to dispossess Tenant, Tenant shall be deemed to occupy the Premises on a tenancy from month-to-month at the Holdover Rent, and all other terms and provisions of this Lease shall be applicable to such period. At any time, either Party may terminate such tenancy from month-to-month upon written notice delivered to the other Party at least thirty (30) days in advance. Tenant hereby waives any and all notice to which Tenant may otherwise be entitled under the laws of the State of Indiana (the "State") as a prerequisite to a suit against Tenant

for unlawful detention or possession of the Premises. Tenant shall Indemnify, as hereinafter defined, Landlord from any Loss, as hereinafter defined, resulting from such hold over, including without limitation any liability incurred by Landlord to any succeeding tenant of the Premises.

ARTICLE IV  
RENT AND COMMON EXPENSES

4.1. Rent.

- (a) The First Rental Amount, Second Rental Amount, Third Rental Amount, and Fourth Rental Amount, as those terms are defined below, shall collectively be referred to herein as “Rent.” Rent shall be paid to Landlord as set forth below, in lawful United States currency without notice, demand, deduction, set-off, counterclaim or recoupment, and without relief from valuation or appraisal laws, in monthly installments commencing on the Effective Date and during the entire Term on or before the first (1st) day of each calendar month, in advance.
- i. The First Rental Amount is payable and shall commence on the Effective Date (July 1, 2020) and continue until the last day of the third month of the lease term (September 30, 2020) during which Tenant shall pay Base Rent in the sum of Two Thousand Five Hundred Dollars (\$2,500) per month less pre-opening incentive of Two Thousand Five Hundred Dollars (\$2,500) per month plus a reduced sum for Common Expenses and Real Estate Taxes of Seven Hundred thirty dollars per month, for a total amount of Seven Hundred Thirty Dollars (\$730.00) per month.
  - ii. The Second Rental Amount is payable and shall commence on October 1, 2020 and continue through June 30, 2021 during which Tenant shall pay Base Rent of Two Thousand Five Hundred Dollars (\$2,500) per month (\$8.57 per square foot) plus Real Estate Taxes and Common Expenses, of Nine Hundred Thirty Dollars (\$930.00) per month for an estimated total amount of Three Thousand Four Hundred Thirty Dollars ( \$3,430) per month.
  - iii. The Third Rental Amount is payable and shall commence on July 1, 2021 and continue through June 30, 2022 (Lease Year Two) during which Tenant shall pay Base Rent of Two Thousand Seven Hundred Dollars (\$2,700) per month (\$9.23 per square foot) plus Real Estate Taxes and Common Expenses, of Nine Hundred Fifty Dollars (\$950.00)per month for an estimated total amount of Three Thousand Six Hundred Fifty Dollars ( \$3,650) per month.
  - iv. The Fourth Rental Amount is payable and shall commence on July 1, 2022 and continue through June 30, 2023 (Lease Year Three) during which Tenant shall pay Base Rent of Two Thousand Eight Hundred Dollars (\$2,800) per month (\$9.60 per square foot) plus Real Estate Taxes and Common Expenses, of Nine Hundred Seventy-five Dollars (\$975.00) per month for an estimated total amount of Three Thousand Seven Hundred Seventy-five Dollars ( \$3,775) per month.
- (b) Lower Level Lease Option and Rental. Beginning in Year Two of the Lease (the lease term coinciding with the Third Rental Amount payable above), Tenant may exercise an Option to include within the leasehold Premises the lower level of the building consisting of approximately

2,500 square feet of space. Upon Tenant's exercise in writing of the Lower Level Lease Option set forth in this Section, Base Rent shall include an additional sum of One Thousand Five Hundred Dollars (\$1,500) per month for the life of the option except that payment of this sum shall be reduced by the incentive sum of One Thousand Five hundred Dollars (\$1,500) per month for each of the first three consecutive months of the lease option term.

(c) The lease payments as described above and including common area maintenance (CAM) fees described in Section 4.4 of this Article are set forth in Schedule C hereto.

4.2. Late Charge. Any amount of Rent that is overdue shall bear interest at the lesser of: (a) the maximum rate payable by Tenant under State law; or (b) the rate of eighteen percent (18%) per annum from the date when such amount is due and payable under this Lease until the date paid.

4.3. Real Estate Taxes. Tenant shall be liable for any and all real property taxes and assessments of any nature levied against the Premises during the Term (the "Real Estate Taxes"), and the Parties acknowledge that Real Estate Taxes are subject to applicable assessments and may be increased or decreased during the Term or Extended Term depending on such assessments. The Parties further acknowledge that because of the uncertainty related to the amounts due yearly for Real Estate Taxes, the Rent to be paid hereunder after the First Rental Term may similarly increase or decrease accordingly. The obligations of Tenant hereunder with respect to the payment of Real Estate Taxes levied during the final year of the Term or Extended Term shall survive the Termination Date.

4.4. Common Expenses.

(a) Payment. Tenant shall pay to Landlord its pro rata share of the common expenses, as hereinafter defined, which share shall equal the amount of all Common Expenses multiplied by Tenant's pro rata share. Notwithstanding the foregoing, and as set out previously in Section 4.1(a), the Parties acknowledge that Common Expenses will be fixed in the following amounts: of Seven hundred Thirty Dollars (\$730) for the first three months of Lease Year One; Nine Hundred Thirty Dollars (\$930) for the remaining nine months of Lease Year One ; Nine Hundred Fifty Dollars for Lease Year Two; and Nine Hundred Seventy-five Dollars (\$975) for Lease Year Three.

(b) Common Expenses. "Common Expenses" shall mean all costs and expenses of every kind or nature paid or incurred by Landlord during the Term or Extended Term in operating, managing and servicing the Building, including, without limitation: (i) reasonable and customary management fees; (ii) wages, salaries and benefits of maintenance personnel (not to exceed the amount fairly and equitably allocated to the Building); (iii) charges under maintenance contracts; (iv) costs and expenses to perform or provide maintenance or repairs and to satisfy Landlord's obligation to operate, maintain and insure the Common Areas under this Lease; (v) sewer, water and storm water drainage charges attributable to the Common Areas; (vi) costs for signage located in the Common Areas, including, without limitation, costs for light bulbs and electricity, and costs incurred with respect to any exterior sign for the Building; (vii) costs and expenses to provide light, heat, air conditioning and ventilation for the Common Areas; (viii) exterior building maintenance

which is not of a structural or roof repair nature; and (ix) alley maintenance and sidewalk cleaning, including snow and ice shoveling.

ARTICLE V  
MAINTENANCE AND REPAIRS TO THE PREMISES

5.1. Landlord Maintenance and Repairs. Landlord shall, at its expense: (a) keep the foundations and roof of the Premises in good order, repair and condition; and (b) maintain the exterior walls of the Premises in a structurally sound condition, except to the extent that there is damage caused by any act or omission of Tenant or its employees, agents, contractors, invitees or licensees, and (c) replace window glass that may be damaged or broken with glass of the same or substantially similar quality, except to the extent that any damage or breakage is caused by any act or omission of Tenant or its employees, agents, contractors, invitees or licensees. Landlord shall be responsible for the replacement and maintenance of all heating, ventilating, and cooling equipment and systems serving the Premises (the “HVAC Systems”); provided, however, that Landlord may bill Tenant for such replacement if Landlord’s consultant determines with reasonable certainty that the need to replace the HVAC Systems was as a result of Tenant’s misuse of it or Tenant’s failure to notify the Landlord of its malfunctioning. Except as provided in this Section 5.1, Landlord shall not be obligated to make repairs, replacements or improvements of any kind to or for the Premises, or any trade fixtures or equipment contained therein, all of which such repairs, replacements or improvements shall be the responsibility of Tenant.

5.2. Tenant Maintenance and Repairs. Except for repairs to be performed by Landlord pursuant to Section 5.1, Tenant shall: (a) keep the Premises clean, neat, sanitary and safe, and in good order, repair and condition, including, without limitation, that Tenant shall make all maintenance, repairs, alterations, additions, or replacements to the Premises and shall provide routine janitorial services at Tenant’s expense; (b) keep all glass in windows, doors, fixtures, and other locations clean and in good order, repair, and condition, and replace interior light bulbs or fluorescent lights as needed; and (c) paint and decorate the Premises as necessary or appropriate to comply with the terms and conditions of this Section 5.2. Notwithstanding any provision to the contrary, including Section 6.1, the Tenant shall be responsible for notifying the Landlord of any damage to, malfunctioning of, or apparent repairs necessary to be made to the HVAC Systems or to the plumbing, electrical or other systems used by or for the Premises. Plumbing and electrical maintenance and repair expenses which are directly attributable to the plumbing and electrical systems utilized by and exclusively serving Tenant shall be the responsibility of Tenant.

ARTICLE VI  
ALTERATIONS AND IMPROVEMENTS TO THE PREMISES

6.1. Tenant Alterations.

(a) Alterations. Tenant, at its sole cost and expense, may install in the Premises such improvements and equipment as Tenant reasonably determines to be necessary or appropriate to conduct its business. Tenant, at its cost and expense, also may make non-structural alterations or improvements to the interior of the Premises if: (i) Tenant delivers to Landlord written notice

describing the proposed alteration or improvement with particularity, and provides to Landlord copies of any plans and specifications for the alteration or improvement; and (ii) on the Termination Date, Tenant surrenders the part of the Premises altered or improved in as good a condition as on the Effective Date. Tenant shall not, without the prior written consent of Landlord, make any: (1) alterations, improvements, or additions of or to the exterior of the Premises; or (2) except as described above, structural or other alterations, improvements, or additions of or to any part of the Premises. All alterations, improvements, or additions to the Premises, exclusive of moveable equipment and furniture, shall become the sole property of Landlord on the Termination Date.

(b) Permits. Before making any alterations, improvements, or additions, Tenant shall: (i) obtain all permits, licenses, and approvals necessary for the completion of the improvements, alterations, or additions; and (ii) deliver to Landlord: (A) copies of such permits, licenses, and approvals; and (B) evidence reasonably satisfactory to Landlord that Tenant has procured workers' compensation, builder's risk, general liability, and personal and property damage insurance as Landlord reasonably may require. Tenant shall at Tenant's cost and expense: (1) complete the construction of any alterations, improvements or additions in a good and workmanlike manner and in compliance with all Laws and all permits, licenses and approvals; and (2) assure that all contractors, subcontractors, laborers, and suppliers performing work or supplying materials are paid in full.

(c) Liens. Tenant shall not suffer or cause the filing of any mechanic's or other lien against the Premises or the Building. Tenant shall further not enter into any contract or agreement that provides explicitly or implicitly that a lien may be attached against the Premises, the Building or any improvements. If any mechanic's or other lien is filed against the Premises, the Building, or any part thereof for work claimed to have been done for Tenant, or materials claimed to have been furnished to Tenant, then Tenant shall: (i) cause such lien to be discharged of record within twenty (20) days after notice of the filing by bonding or as provided or required by law; or (ii) provide evidence satisfactory to Landlord that the lien is being contested by proceedings adequate to prevent foreclosure of the lien, together with indemnity satisfactory to Landlord (in an amount equal to at least one hundred fifty percent (150%) of the claimed lien) to Landlord within thirty (30) days after notice of the filing thereof. All liens suffered or caused by Tenant shall attach to Tenant's interest only. Nothing in this Lease shall be deemed or construed to: (1) constitute consent to, or request of, any Party for the performance of any work for, or the furnishing of any materials to, Tenant; or (2) give Tenant the right or authority to contract for, authorize, or permit the performance of, any work or the furnishing of any materials that would permit the attaching of a mechanic's lien to the Premises or the Building or Landlord's interest therein.

## ARTICLE VII USE

7.1. Use of the Premises. Tenant shall operate the Premises for purposes of a restaurant operation open to the general public under such assumed name as Tenant determines appropriate, subject to Landlord's advance written approval, and for other associated ancillary operation purposes. Tenant may, subject to requirements of the Americans with Disabilities Act (ADA) and approval and limitation by the City of South Bend Board of Public Works, be permitted to use an

outdoor seating area. (See Section 7.7 of this Article). The Premises may not be used for any other purpose without the prior written approval of the Landlord. Tenant shall not permit, allow, or cause to be conducted in the Premises: (a) a public or private auction; or (b) a sale that would indicate to the public that Tenant: (i) is bankrupt, (ii) is going out of business, or (iii) has lost or is preparing to terminate its possession of the Premises. The Premises shall not be used except in a manner consistent with the general high standards of the neighborhood and shall not be used in a disreputable or immoral manner or in violation of federal, state or local laws or ordinances.

7.2. Compliance with Law. Tenant shall comply with all federal, state and local laws and ordinances, lawful orders, and regulations affecting the Premises, and the health, cleanliness, safety, construction, occupancy and use of same, in effect from time to time. Tenant shall fully comply with all federal, state and local laws and ordinances in effect from time to time prohibiting discrimination or segregation by reason of race, color, religion, disability, gender or national origin or otherwise.

7.3. Operation by Tenant. Tenant covenants and agrees that it: will not place or maintain any merchandise or vending machines outside the building on the Premises; will store garbage, trash, rubbish and other refuse in rat-proof and insect-proof containers with adequate screening to hide such garbage, trash, rubbish and refuse from view on the Premises and the Building, and will remove the same frequently and regularly; will not permit any sound system to be audible or objectionable advertising medium to be visible outside the Premises; will not commit or permit waste or a nuisance upon the Premises; will not permit or cause objectionable odors to emanate or be dispelled from the Premises; will not permit the loading or unloading or the parking or standing of delivery vehicles outside any area designated therefore, nor permit any use of vehicles which will interfere with the use of any portion of the Building; and will comply with all laws, recommendations, ordinances, rules and regulations of governmental, public, private and other authorities and agencies, including those with authority over insurance rates, with respect to the use or occupancy of the Premises, and including, but not limited to, the Occupational Safety and Health Act (“OSHA”) and the Americans With Disabilities Act (“ADA”), as the same may be amended from time to time. Tenant shall not do or permit anything to be done in and about the Building or Premises which will obstruct or interfere with the rights of other tenants or occupants of the Building or which will increase the rate of fire insurance for the building.

7.4. Emissions and Hazardous Materials.

(a) Emissions. Tenant shall not, without the prior written consent of Landlord:

i. make, or permit to be made, any use of the Premises or any portion thereof which emits, or permits the emission of, an unreasonable amount of dust, sweepings, dirt, cinders, fumes or odors into the atmosphere, the ground or any body of water, whether natural or artificial (including without limitation rivers, streams, lakes, ponds, dams, canals, sanitary or storm sewers, or flood control channels), which is in violation of any Laws;

ii. create, or permit to be created, any sound level which will interfere with the quiet enjoyment of any real property by any tenant or occupant of the Building, or which will create a nuisance or violate any Laws;



iii. create, or permit to be created, any ground vibration that is discernible outside the Premises; or

iv. produce, or permit to be produced, any intense glare, light or heat except within an enclosed or screened area and then only in such manner that the glare, light or heat shall not be discernible outside the Premises.

(b) Hazardous Materials. Tenant shall be permitted to use and store those Hazardous Materials, as defined below, which are used in the normal course of Tenant's Use at the Premises, so long as such Hazardous Materials are used, stored, handled and disposed of in compliance with applicable laws. Subject to the exception contained in the preceding sentence, Tenant shall not, without the prior written consent of Landlord, cause or permit, knowingly or unknowingly, any Hazardous Material to be brought or remain upon, kept, used, discharged, leaked, or emitted in or about, or treated at, the Premises or the Building. As used in this Lease, "Hazardous Material(s)" shall mean any hazardous, toxic, infectious or radioactive substance, material, matter or waste which is or becomes regulated by any federal, state or local law, ordinance, order, rule, regulation, code or any other governmental restriction or requirement, and shall include, but not be limited to, asbestos, petroleum products, and the terms "Hazardous Substance" and "Hazardous Waste" as defined in the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Sec. 9601 et seq. ("CERCLA"), and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Sec. 6901 et seq. ("RCRA"), and the term "Hazardous Chemical" as defined in OSHA (hereinafter "Environmental Laws").

In addition to, and in no way limiting, Tenant's duties and obligations under this Lease, should Tenant breach any of its duties and obligations as set forth in this Section 7.4(b), or if the presence of any Hazardous Material(s) on the Premises results in contamination of the Premises, the Building, any land other than the Building, the atmosphere, or any water or waterway (including without limitation groundwater), or if contamination of the Premises or of the Building by any Hazardous Material(s) otherwise occurs for which Tenant is otherwise legally liable to Landlord for damages resulting therefrom, Tenant shall Indemnify, as hereinafter defined, Landlord from and against any Loss, as hereinafter defined, arising during or after the Term as a result of such contamination. The term "Loss," in this Section 7.4(b) includes, without limitation, costs and expenses incurred in connection with any investigation of site conditions or any cleanup, remediation, removal, fines, monitoring, or restoration work required or imposed by any federal, state or local governmental agency or political subdivision because of the presence of Hazardous Material(s) on or about the Premises or the Building, or because of the presence of Hazardous Material(s) anywhere else which came or otherwise emanated from Tenant or the Premises. The indemnification contained in this Section 7.4(b) shall survive the Termination Date.

7.5. Rights Reserved to Landlord. Landlord shall have the following rights exercisable upon reasonable prior notice, but without liability to Tenant for damage or injury to property, person, or business (all claims or damage being hereby released), and without effecting a constructive eviction or disturbance of Tenant's use or possession or giving rise to any claim for offsets or abatement of rent:

- (a) To change the name or street address of the Building;
- (b) To install and maintain signs on the exterior and interior of the Building which signs will not affect the access to or visibility of the Premises or Tenant's signs;
- (c) To designate and/or approve, prior to installation, all types of window coverings, awnings, covered entrances and signs and lettering (in accordance with Section 7.6) on windows and building exteriors and elsewhere visible from the sidewalk around the Building, and to control all internal lighting that may be visible from outside the Building;
- (d) To have pass keys to the Building, Premises, and all portions thereof;
- (e) To grant to anyone the exclusive right to conduct any business or render any service in the Building if such exclusive right shall not operate to exclude Tenant from the use expressly permitted in Section 7.1;
- (f) To decorate, remodel, repair, alter or otherwise prepare the Premises for re-occupancy (i) during the last three (3) months of the Term, but only if during or prior to such time Tenant vacates the Premises, or (ii) at any time after Tenant abandons the Premises;
- (g) To enter the Premises to make inspections, repairs, alterations, or additions in or to the Premises, or during the final three (3) months of the Term to exhibit the Premises to prospective tenants, purchasers, or others, at reasonable hours and at any time in the event of an emergency, and to perform any acts related to the safety protection, preservation, re-letting, sale or improvement of the Premises;
- (h) To require all persons entering or leaving the Premises during such hours as Landlord may from time to time reasonably determine to identify themselves to a watchman by registration or otherwise and to establish their right to enter and to exclude or expel any peddler, solicitor, or unruly or loud person at any time from the Premises;
- (i) To close the Premises during time of emergency and, subject to Tenant's right to admittance under such regulations as shall be prescribed from time to time by Landlord, after regular business hours Emergency shall include a health epidemic or quarantine as declared by an authorized federal, state or local official;
- (j) To approve the weight, size and location of safes and other heavy equipment and articles in and about the Premises and to require all such items to be moved in and out of the Premises only at such times and in such manner as Landlord shall direct and in all events at Tenant's sole risk and responsibility;
- (k) With prior written notice to Tenant and without the interruption of Tenant's business, to decorate, alter, repair or improve the Building at any time, and Landlord and its representative for that purpose may enter on and about the Building with such materials as Landlord may deem necessary, may erect scaffolding and all other necessary structures on or about the Building and may close or temporarily suspend operations of entrances, doors, corridors, elevators and other facilities. Tenant waives any claim for damages including the loss of business resulting from such action by Landlord, but in the exercise of its rights under this subparagraph, Landlord shall not unreasonably

interfere with the conduct of Tenant's business and shall provide access to the Premises for Tenant's customers and staff during business hours; and

- (l) To erect a barrier to access of the basement area during any portion of the Lease Term that Tenant has not exercised its option to occupy that space.
- (m) To do or permit to be done any work in or about the Building or any adjacent or nearby building, land, street or alley.

7.6. Exterior Signs. Tenant shall comply with all zoning regulations and other state and local laws governing the installation and use of exterior signs and window and door graphics, and Landlord's approval shall be required in advance of installation, which approval shall not be unreasonably withheld.

7.7. Sidewalks. Tenant acknowledges that the use of the sidewalks adjoining the Premises is controlled by the South Bend Board of Public Works (the "BPW"). The Landlord makes no representation concerning the availability of such use for dining or other purposes. Tenant understands that it must make application to the BPW for a permit to use the adjoining sidewalks, and that use of such space must comply with the Americans with Disabilities Act (ADA).

7.8. Parking. During the term of this Lease, the Landlord will not be required to provide any parking spaces to the Tenant, and it is expressly understood by Tenant that no parking spaces are provided to or designated for use by Tenant under this Lease.

## ARTICLE VIII UTILITIES

8.1. Utility Services. Landlord shall provide the necessary mains, meters, and conduits for water and sewer facilities and electric service to the Premises, as well as water for operation of the heat pumps located in the Premises. Tenant shall: (a) promptly pay all charges for sewer, water, gas, electricity, telephone, and other utility services used in, on, at, or from, the Premises (the "Utility Charges"); and (b) deliver to Landlord, upon demand, receipts or other satisfactory evidence of payment of the Utility Charges.

8.2. Landlord's Reserved Rights. With prior written notice to Tenant, Landlord reserves the right to suspend or reduce the services of heating, elevators, plumbing, electrical, air conditioning or other mechanical systems in the Building when necessary by reason of governmental regulations, civil commotion, riot, accident or emergency, or for repairs, alterations or improvements which are in the reasonable judgment of Landlord desirable or necessary, or for any other reason beyond the power or control of Landlord (including without limitation, the unavailability of fuel or energy or compliance by Landlord with any applicable laws, rules or regulations relating thereto), without liability in damages and without any reduction in rent payable by Tenant. The exercise of such right by Landlord shall not constitute an actual or constructive eviction in whole or in part, nor entitle Tenant to any abatement or diminution of Rent, relieve Tenant from any of Tenant's obligations under this Lease, or impose any liability upon Landlord or its agents by reason of inconvenience or annoyance to tenant or injury to or interruption of Tenant's business or otherwise. Landlord shall not in any way be liable or responsible to Tenant

for any loss, damage or expense which Tenant may sustain or incur if, during the Lease Term and for reasons beyond the control of Landlord, either the quality or character of electric current is changed or is no longer available or suitable for Tenant's requirements.

ARTICLE IX  
INSURANCE AND INDEMNIFICATION

9.1. Tenant's Liability Insurance. Tenant, at its expense, shall maintain during the Term, commercial general liability insurance on the Premises covering Tenant as the named insured and identifying Landlord as an "additional insured" with terms satisfactory to Landlord and with companies qualified to do business in the State, for limits of not less than \$700,000.00 for bodily injury, including death resulting therefrom, and personal injury for any one (1) occurrence, \$1,000,000.00 property damage insurance, or a combined single limit in the amount of \$5,000,000.00. At all times, Tenant shall maintain limits naming Landlord as an "additional insured" in an amount sufficient to cover any possible liability Landlord may have pursuant the amounts set forth at Indiana Code § 34-13-3-4, as the same may be amended, superseded or recodified from time to time.

9.2. Dram Shop Coverage. In addition to the insurance required under this Article, for any such period of time as Tenant shall serve liquor or other alcoholic beverages in or from the Premises, Tenant agrees to maintain minimum limits of coverage of at least \$2,000,000 covering "liquor law" liability (sometimes also known as "dram shop" insurance) which shall insure Tenant, as the named insured, and Landlord, as the additional insured, and all those claiming by, through or under Landlord, against any and all claims, demands or actions for personal or bodily injury to, or death of, one person or multiple persons in one or more accidents, and for damage to property, as well as for damages due to loss of means of support, loss of consortium, and the like so that at all times Landlord will be fully protected against claims that may arise by reason of or in connection with the sale and dispensing of liquor and alcoholic beverages in and from the Premises.

9.3. Hazardous Materials Coverage. Notwithstanding the above-mentioned commercial general liability insurance policy limit for Tenant, if Tenant does or intends to bring, possess, use, store, treat or dispose any Hazardous Material in or upon the Premises, Tenant shall purchase additional public liability insurance and supply Landlord with certificates of insurance reflecting the additional insurance, with coverage of no less than Five Million Dollars (\$5,000,000.00) and purchase environmental impairment liability insurance with coverage of not less than Five Million Dollars (\$5,000,000.00) with a deductible of not greater than Fifty Thousand Dollars (\$50,000.00) to insure that anything contaminated with or by the Hazardous Material be removed from the Premises, and that the Premises be restored to a clean, neat, attractive, healthy, sanitary and non-contaminated condition. Each of Landlord and the City of South Bend will be named as an "additional insured" on any such policies.

9.4. Coverage Verification. All policies of insurance required by this Article to be maintained by Tenant shall: (a) be in a form, and maintained with an insurer, reasonably satisfactory to Landlord; and (b) provide that such policies shall not be subject to cancellation, termination, or change without written notice to Landlord at least thirty (30) days in advance.

Tenant shall deposit with Landlord the policy or policies of insurance required to be maintained by Tenant pursuant to this Article, or proper certificates of such insurance, duly executed by the insurance company or the general agency writing such policies and effective not later than the Commencement Date. Tenant shall deposit appropriate renewal or replacement policies or certificates with Landlord not less than ten (10) days prior to the expiration of any such policy or policies. Tenant shall also furnish Landlord with certificates evidencing such coverages from time to time upon Landlord's request. If Tenant shall fail to timely procure or renew any of the insurance required under this Article, Landlord may obtain replacement coverage and the cost of same shall be payable by Tenant with the next installment of Rent thereafter becoming due and payable.

9.5. Indemnity.

(a) Definition of Loss. The term "Loss," as used throughout this Lease, shall mean any and all claims, demands, damages, expenses, fees, costs, fines, penalties, suits, proceedings, actions, causes of action, and losses of any and every kind and nature (including, without limitation, sums paid in settlement of claims and for attorney's fees and court costs).

(b) Definition of Indemnify. The term "Indemnify," as used throughout this Lease, shall mean that Tenant shall indemnify Landlord, save it harmless and, at Landlord's option and with attorneys approved in writing by Landlord, defend Landlord, and its contractors, agents, employees, members, managers, officers, and mortgagees, if any, from any Loss arising out of the condition specified in the particular indemnity provision.

(c) General Indemnity. Except for loss, injury or damage caused solely by the willful misconduct or gross negligence of Landlord, its employees, contractors, or agents, Tenant covenants to Indemnify Landlord for any Loss in connection with or arising from any use or condition of the Premises or occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, licensees, invitees or visitors, occurring on or about the Premises and in the case of Tenant, its agents, contractors or employees occurring on or about the Building. Except for loss, injury or damage caused by the negligent acts or willful misconduct of Tenant, its employees, contractors, invitees, licensees, visitors or agents, Landlord covenants to Indemnify Tenant, and save it harmless, from and against any and all claims, actions, damages, injuries, accidents, liability and expense, including reasonable attorneys' fees, in connection with or arising from, or occasioned wholly or in part by, any act or omission of Landlord, its agents, contractors or employees occurring on or about the Building, excluding the Premises.

(d) Covenant to Hold Harmless. Landlord shall be defended and held harmless by Tenant from any liability or claims for damages to any person or any property in or upon the Premises unless caused by the willful act of Landlord, including but not limited to the person and property of Tenant and its officers, agents, employees, and shall pay all expenses incurred by Landlord in defending any such claim or action, including without limitation attorney fees of Landlord and any judgment or court costs. All property kept, stored or maintained in the Premises shall be so kept, stored or maintained solely at the risk of Tenant.

Except for loss, injury or damage caused solely by the willful misconduct or gross negligence of Landlord, its employees, contractors, or agents, the Landlord shall not be liable for damage caused by hidden defects or failure to keep said Premises in repair, and shall not be liable for any damage done or occasioned by or from plumbing, gas, water, steam, or other pipes, or sewerage, or the bursting or leaking of plumbing or of any plumbing or heating fixtures or waste or soil pipe existing in connection with the Building or Premises, nor for damage occasioned by water, nor for any damages arising from negligence of co-tenants or other occupants of the Building, or the agents, employees or servants of any of them, or of any owners or occupants of adjacent or contiguous property.

The Landlord shall not be liable for any injury to the Tenant, its employees and agents or any other person, occurring on said Premises, irrespective of whether said injury is caused by a defect in said Premises or by reasons of said Premises becoming out of repair or arising from any other cause whatsoever, and the Landlord shall not be liable for damage to Tenant's property or to the property of any other person which may be located in or upon said Premises and the Tenant agrees to indemnify, defend, and save harmless the Landlord from any and all claims arising out of injuries to persons or property occurring on said Premises.

9.6. Release of Subrogation. Each Party hereto does hereby release and discharge the other Party from any liability, which the released Party would have had (but for this section) to the releasing Party, arising out of or in connection with any accident or occurrence or casualty: (a) which is or would be covered by a fire and extended-coverage policy with vandalism and malicious mischief endorsement or by a sprinkler leakage or water damage policy, regardless of whether or not such coverage is being carried by the releasing Party, and (b) to the extent of recovery under any other casualty, which accident, occurrence or casualty may have resulted in whole or in part from any act or neglect of the released Party, its officers, agents or employees; and insofar as Tenant is the releasing Party, it will also release the other tenants in the Building from any such liability as if the other tenants were each a released Party under this section. Notwithstanding anything contained in this Lease to the contrary, Landlord shall not be liable for any damage to person or Party arising from the negligent act or omission or willful misconduct of any other tenant or occupant of the Building and Tenant hereby expressly waives any claim for such damages.

## ARTICLE X CASUALTY AND CONDEMNATION

### 10.1. Casualty.

(a) Insubstantial Damage. If the Premises is damaged by fire or any other casualty (the "Casualty Damage"), and the estimated cost to repair such Casualty Damage is less than fifty percent (50%) of the estimated cost to replace the Premises, then Landlord shall repair such Casualty Damage so long as sufficient insurance proceeds recovered as a result of such Casualty Damage remain after deducting the amount of any expenses incurred in collecting the insurance proceeds. Notwithstanding anything to the contrary set forth herein, in no event shall Landlord be required to repair or replace: (1) the improvements to the Premises made by Tenant; or (2) any trade fixtures, equipment, or inventory of Tenant (or any other person or entity) located on, in, or about the Premises.

(b) Substantial Damage. If: (i) there is Casualty Damage to the Premises, and the cost to repair such Casualty Damage is equal to or greater than fifty percent (50%) of the estimated cost to replace the Premises; or (ii) there is Casualty Damage to the Building of which the Premises is a part, and the cost to repair such Casualty Damage is equal to or greater than twenty-five percent (25%) of the cost to replace the Building; then Landlord may elect either to: (1) repair or rebuild the Premises, or the Building of which the Premises is a part; or (2) terminate this Lease upon delivery of written notice to Tenant within ninety (90) days after the occurrence of the Casualty Damage.

(c) Partial Abatement of Base Rent. Base Rent shall be abated proportionately (based upon the proportion that the unusable space in the Premises due to the Casualty Damage bears to the total space in the Premises) for each day that the Premises or any part thereof is unusable by reason of any Casualty Damage.

(d) Repair of Tenant Improvements. If Landlord is required or elects to repair the Premises, then Tenant shall repair or replace: (i) the alterations, improvements, and additions to the Premises made by Tenant; and/or (ii) any equipment of Tenant located on, in, or about the Premises.

(e) Notice. Tenant shall give Landlord prompt written notice of any Casualty Damage in or to the Premises, or to the Common Areas of which Tenant has knowledge.

## ARTICLE XI SURRENDER

11.1. Surrender of Leased Premises. Except as herein otherwise expressly provided in this Article XI, Tenant shall surrender and deliver up the Premises, together with all property affixed to the Premises, to Landlord at the expiration or other termination of this Lease or of Tenant's right to possession hereunder, without fraud or delay, in good order, condition and repair except for reasonable wear and tear after the last necessary repair, replacement, or restoration is made by Tenant, free and clear of all liens and encumbrances, and without any payment or allowance whatsoever by Landlord on account of any improvements made by Tenant.

11.2. Removal of Certain Property. All moveable equipment and furniture furnished by or at the expense of Tenant shall be removed by or on behalf of Tenant at or prior to the expiration or other termination of this Lease or of Tenant's right of possession hereunder, but only if, and to the extent, that the removal thereof will not cause physical injury or damage to the Premises or necessitate changes or repairs to the same. Tenant shall repair and restore any injury or damage to the Premises arising from such removal so as to return the Premises to the condition described in Section 11.1 above, or alternatively, at Landlord's discretion, Tenant shall pay or cause to be paid to Landlord one hundred ten percent (110%) of the cost of repairing or restoring injury or damage which costs shall be deemed due and payable as of the date on which surrender by Tenant is required under this Lease.

11.3. Property Not Removed. Any personal property of Tenant which shall remain in or upon the Premises after Tenant has surrendered possession of the Premises shall be deemed to have been abandoned by Tenant, and at the option of Landlord, such property: (a) shall be retained by Landlord as its property; (b) shall be disposed of by Landlord in such manner as Landlord shall determine, without accountability to any person; or (c) shall be removed by Tenant within three (3) business days at Tenant's expense upon written request from Landlord; provided, however, that if Tenant fails to remove such property within such timeframe, Landlord may remove such property at Tenant's expenses, charging Tenant one hundred ten percent (110%) of the costs incurred by Landlord to remove said items, which funds shall be due immediately upon notification of Tenant of such charges. Landlord shall not be responsible for any loss or damage occurring to any property owned by Tenant remaining in the Premises after Tenant surrenders possession thereof.

11.4. Survival of Terms. The terms of this Article XI shall survive any termination of this Lease.

## ARTICLE XII DEFAULT

12.1. Events of Default. Each and all of the following events shall be deemed an "Event of Default" by Tenant under this Lease:

(a) Nonpayment. Tenant's failure to pay Rent or other sums or charges that Tenant is obligated to pay by any provision of this Lease when due and that is not paid within ten (10) days of notice from Landlord. Landlord's prior acceptance of late payment shall not be deemed or interpreted as a waiver of this provision.

(b) Insurance Not Maintained. Any failure to maintain the insurance coverages required to be maintained by Tenant under this Lease.

(c) All Other Lease Violations. Tenant's failure to perform or observe any other covenant, condition, or agreement of this Lease, which failure is not cured by Tenant within thirty (30) days after the giving of notice thereof by Landlord specifying the items in default.

(d) Falsification of Information. If Tenant or any agent of tenant falsifies any report in any material respect or misrepresents other information in any material respect required to be furnished to Landlord pursuant to this Lease.

(e) Merger or Consolidation. If Tenant is merged or consolidated with any other entity, or there is a transfer of a controlling interest in Tenant.

(f) Tenant's Dissolution or Liquidation. The commencement of steps or proceedings toward the dissolution, winding up, or other termination of the existence of Tenant or toward the liquidation of its assets, which includes Tenant's failure to maintain a business license or any other license in accordance with state or local law.



(g) Bankruptcy. The commencement of a case under any chapter of the United States Bankruptcy Code by or against Tenant, or the filing of a voluntary or involuntary petition proposing the adjudication of Tenant as bankrupt or insolvent, or the reorganization of Tenant, or an arrangement by Tenant with its creditors, unless the petition is filed or case commenced by a Party other than Tenant and is withdrawn or dismissed within thirty (30) days after the date of its filing.

(h) Assignment or Attachment. The making of an assignment by Tenant of Tenant's obligations hereunder for the benefit of its creditors, or if in any other manner Tenant's interest in this Lease passes to another by operation of law, including, without limitation, by attachment, execution, or similar legal process, which is not discharged or vacated within thirty (30) days, except as permitted under this Lease.

(i) Appointment of Receiver or Trustee. The appointment of a receiver or trustee for the business or property of Tenant, unless such appointment shall be vacated within ten (10) days after its entry.

(j) Inability to Pay. The admission in writing by Tenant of its inability to pay its debts when due.

(l) As Otherwise Provided. The occurrence of any other event described as a default elsewhere in the Lease or any amendment thereto, regardless of whether such event is defined as an "Event of Default."

12.2. Remedies. Upon the occurrence of an Event of Default, Landlord, without notice to Tenant in any instance (except where expressly provided for below or by applicable law) may do any one or more of the following:

(a) Satisfy Tenant Obligations. Landlord may perform, on behalf of and at the expense of Tenant, any obligation of Tenant under this Lease which Tenant has failed to perform and of which Landlord has given Tenant notice (entering upon the Premises for such purpose, if necessary), the cost of which performance by Landlord, plus interest thereon at the lesser of (i) the highest rate permitted by law, or (ii) eighteen percent (18%) per annum from the date of such expenditure, and reasonable cost and expense incurred by Landlord, shall be payable by Tenant to Landlord with the first Rent installment thereafter becoming due and payable. The performance by Landlord of any Tenant obligation under this Section 12.2(a) shall not be construed either as a waiver of the Event of Default or of any other right or remedy of Landlord with respect to such Event of Default or as a waiver of any term or condition of this Lease. Notwithstanding the provisions of this Section 12.2(a) and regardless of whether an Event of Default shall have occurred, Landlord may exercise the remedy described in this Section 12.2(a) without any notice to Tenant if Landlord, in its good faith judgment, believes that it or the Premises would be materially injured by failure to take rapid action or if the unperformed obligation of Tenant constitutes an emergency.

(b) Termination of Lease. Landlord may terminate this Lease, by written notice to Tenant, without any right by Tenant to reinstate its right by payment of Rent due or other

performance of the terms and conditions hereof. Upon such termination, Tenant shall immediately surrender possession of the Premises to Landlord, and Landlord shall, in addition to all other rights and remedies that Landlord may have, immediately become entitled to receive from Tenant: (i) an amount equal to the aggregate of all Rent which then remains due to Landlord but unpaid by Tenant; (ii) reasonable costs and expenses incurred by Landlord in connection with a re-entry or taking of possession of the Premises; (iii) reasonable costs and expenses incurred by Landlord in connection with making alterations and repairs for the purpose of re-letting the Premises; and (iv) reasonable attorneys' fees.

(c) Termination of Possessory Rights. Landlord may terminate Tenant's rights to possession of the Premises without terminating this Lease or Tenant's obligations hereunder and Tenant shall continue to be obligated to pay all Rent which then remains due to Landlord but unpaid by Tenant and Tenant shall continue to be obligated for future Rent as the same comes due under this Lease.

(d) Acceleration of Rent. Landlord may, whether it terminates the Lease or Tenant's possessory rights to the Premises, accelerate and declare immediately due all of the Rent that otherwise would have been due from the date of the Event of Default through the stated expiration date of the Term or Extended Term, the option for which has been exercised.

(e) Rent Minus Fair Market Value. Landlord may declare immediately due and payable from Tenant, in addition to any damages or other amounts becoming due from Tenant under any other provision of this Lease, an amount equal to the difference between (i) the Rent reserved in this Lease from the date of the Event of Default through the stated expiration date of the Term or Extended Term, the option for which has been exercised, and (ii) the then-fair market value of the Premises for the same period.

(f) Other Remedies. Pursue any legal or equitable remedy allowed by applicable laws of the State.

12.3. Failure to Surrender. If Tenant fails to surrender the Premises upon expiration of the Term or earlier termination of the Lease pursuant to Section 12.2(b), or termination of Tenant's possession rights, the provisions of Section 3.3 shall apply, and Landlord may, without further notice and with or without process of law, enter upon and re-enter the Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess Tenant and remove Tenant and all other persons and property from the Premises and may have, hold and enjoy the Premises and Tenant's property under Section 11.3 of Article XI, and the right to receive all rental and other income of and from the same.

12.4. Reimbursement of Landlord's Costs in Exercising Remedies. Landlord may recover from Tenant, and Tenant shall pay to Landlord upon demand, such reasonable and actual costs and expenses as Landlord may incur in recovering possession of the Premises, placing the same in good order and condition and repairing and altering the same for reletting, and all other reasonable and actual costs and expenses, commissions and charges incurred by Landlord in reletting and otherwise exercising any remedy provided herein or as a result of any Event of Default by Tenant hereunder (including, without limitation, reasonable attorneys' fees).

12.5. Remedies Are Cumulative. No right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy herein or by law provided, but each shall be cumulative and in addition to every other right or remedy given herein or now or hereafter existing at law or in equity or by statute.

ARTICLE XIII  
ASSIGNMENT AND SUBLETTING

13.1. Assignment and Subletting. Tenant shall not assign, sublet, mortgage, encumber, or in any manner transfer, in whole or in part, any interest in this Lease or the Premises, or otherwise allow the occupancy or possession of the Premises by any person or entity other than Tenant,

13.2. Assignment by Landlord. Landlord, at any time and from time to time, may assign its interest in this Lease, and, if: (a) Landlord assigns its interest in this Lease; and (b) the assignee assumes all of the obligations of Landlord under the terms and conditions of this Lease; then Landlord and its successors and assigns (other than the assignee of this Lease) shall be released from any and all liability hereunder.

ARTICLE XIV  
ATTORNMEN, SUBORDINATION, AND ESTOPPEL CERTIFICATES

14.1. Attornment. In the event any proceedings are brought for the foreclosure of, or in the event of conveyance by deed-in-lieu of foreclosure of, or in the event of exercise of the power of sale under any mortgage made by Landlord covering the Premises, Tenant hereby attorns to the successor-in-interest of Landlord and covenants and agrees to execute an instrument in writing reasonably satisfactory to same whereby Tenant attorns to such successor-in-interest and recognizes such successor-in-interest as Landlord hereunder.

14.2. Subordination.

(a) Landlord shall have the right at any time and from time-to-time to create security interests in the form of a mortgage, deed of trust or other similar lien or encumbrance (a "Mortgage") upon or affecting Landlord's fee estate in the Premises, or any part thereof, and the rights of Tenant under this Lease shall be subject and subordinate to any such Mortgage; provided, however, that in the event of any foreclosure or sale under any such Mortgage or the delivery by Landlord of any deed-in-lieu of foreclosure to the holder of any such Mortgage, then the holder of any such Mortgage agrees not to disturb Tenant's possession so long as Tenant is not in default under the terms of this Lease beyond any notice and/or cure periods provided for under this Lease and attorns to such holder or the foreclosure purchaser as Landlord under this Lease. Said subordination shall be self-operative and no further instrument of subordination shall be necessary unless required by any such Mortgage holder, in which event Tenant agrees to, within ten (10) days after request by Landlord or the Mortgage holder, execute any agreement reasonably required by such Mortgage holder to memorialize said subordination and to memorialize the terms of any

related agreements between Tenant and such Mortgage holder. Any holder of any such Mortgage is herein referred to as “Landlord’s Mortgagee(s).” Notwithstanding the foregoing, a Landlord’s Mortgagee may at any time subordinate its Mortgage to this Lease without Tenant’s consent by notice in writing to Tenant, and thereupon this Lease shall be deemed prior to such Mortgage without regard to their respective dates of execution and delivery and, in that event, such Landlord’s Mortgagee shall have the same rights with respect to this Lease as though it had been executed prior to the execution and delivery of any such Mortgage and had been assigned to such Landlord’s Mortgagee.

(b) This Lease shall be subject to and subordinate to all easements, restrictions, liens, encumbrances, rights-of-way, or other matters affecting the Premises of record.

14.3. Estoppel Certificates. Tenant and Landlord agree to execute and deliver, within ten (10) days after a request by the other Party, a statement, in writing, certifying to Landlord and/or any Party designated by Landlord, or Tenant and/or any Party designated by Tenant, as the case may be, that: (a) this Lease is in full force and effect; (b) the Commencement Date; (c) that Rent is paid currently without any off-set or defense thereto, (d) the amount of Rent, if any, paid in advance; (e) that there are no known uncured defaults by Landlord or Tenant, or stating those known and claimed, provided that, in fact, such facts are accurate and ascertainable, and (f) any other information reasonably requested.

## ARTICLE XV MISCELLANEOUS

15.1. Security Deposit. The security deposit paid by Tenant pursuant to a Letter of Intent between the parties shall be carried over by Landlord into the Term of this Lease. The Security Deposit will be held by Landlord, without interest, and shall be applied to the Common Expense portion of the First Rental Amount per the Lease Agreement and thereafter it shall be applied to the full monthly rental payment until depleted. If the Lease is terminated before depletion of the security deposit, then it may be applied to any liability, costs or damages caused to Landlord, including but not limited to cleaning, breakage, repairs, non-payment, and/or non-performance, without waiving or limiting Landlord’s right to hold Tenant liable for any liability, costs or damage otherwise due. Any portion of the Security Deposit not so expended will be returned forty-five (45) days after termination or expiration of the Lease and surrender of the Premises and all keys to Landlord.

15.2. Recordation. The Parties agree that this lease shall not be recorded, but upon the request of either Party, a Memorandum of Lease shall be prepared by Landlord, and shall be promptly executed, delivered, and recorded in the Office of the Recorder of St. Joseph County, and the costs of recordation shall be charged to the Party requesting the Memorandum of Lease.

15.3. Notices. Any notice, demand, request or other instrument (any “Notice”) which may be or is required to be given under this Lease shall be in writing and shall be deemed given and received: (a) on the date of delivery when delivered in person (with receipt for delivery); (b) three (3) business days after deposit with the U.S. Postal Service, when sent by United States certified or registered mail, return receipt requested, postage prepaid; or (c) on the next business

day following deposit of any such Notice with a national overnight delivery carrier (with receipt evidencing such delivery) such as, but not limited to, Federal Express or UPS. Any Notice to be delivered in person or by mail shall be addressed: (a) if to Landlord, at the address set forth in Section 1.1(d) hereof, or at such other address as Landlord may designate by written notice; and (b) if to Tenant, at the address set forth in Section 1.1(e) hereof, or at such other address as Tenant may designate by written notice.

15.4. Waiver. One or more waivers of any covenant or condition by Landlord shall not be construed as a waiver of a subsequent breach of the same covenant or condition, and the consent or approval by Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed to render unnecessary Landlord's consent or approval to or of any subsequent similar act by Tenant.

15.5. Entire Agreement; Amendment. This Lease and the exhibits attached hereto (which exhibits are incorporated herein by reference) set forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Premises, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between Landlord and Tenant other than as are herein set forth. No alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by authorized representatives of both Landlord and Tenant.

15.6. Dispute Resolution; Remedies Cumulative. Any litigation over the terms or performance of this Lease will be commenced in the courts of St. Joseph County, Indiana. In any legal proceeding concerning this Lease, each Party irrevocably waives the right to trial by jury with respect to any and all causes of action, counterclaims, and disputes. The rights and remedies of Landlord and Tenant hereunder shall be cumulative, and no one of them shall be deemed or construed as exclusive of any other right or remedy hereunder, at law, or in equity. The exercise of any one such right or remedy by Landlord or Tenant shall not impair its standing to exercise any other such right or remedy. Unless time is of the essence, the parties agree to submit their dispute to pre-suit mediation under Indiana ADR Rules before filing cause of action in a court of law.

15.7. Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent due hereunder shall be deemed to be other than on account of the Rent first due hereunder. No endorsement or statement on any check or letter accompanying any check or payment of Rent shall be deemed to be an accord and satisfaction, and Landlord may accept any such check or payment without prejudice to the right of Landlord to recover the balance of such Rent or to pursue any other right or remedy.

15.8. Relationship. Nothing contained herein shall be deemed or construed to create between the Parties any relationship other than that of landlord and tenant.

15.9. Information. Tenant shall provide to Landlord, upon request, accurate financial statements of Tenant certified by the highest-ranking financial officer of Tenant.

15.10. Construction. The laws of the State of Indiana shall govern the validity, performance, and enforcement of this Lease. The invalidity or unenforceability of any term or

condition of this Lease shall not affect the other terms and conditions, and this Lease shall be construed in all respects as if such invalid or unenforceable term or condition had not been contained herein. The Parties acknowledge that this Lease was negotiated and prepared by the Parties and their respective counsel; therefore, if any provision of this Lease requires judicial interpretation, the court interpreting or construing such provision shall not construe it more strictly against either Party. The captions of this Lease are for convenience only and do not in any way limit or alter the terms and conditions of this Lease. Whenever in this Lease a singular word is used, it also shall include the plural wherever required by the context and vice versa. All references in this Lease to periods of days shall be construed to refer to calendar days, not business days, unless business days are specified.

15.11. Force Majeure. Notwithstanding anything to the contrary set forth herein, if Landlord or Tenant is delayed in, or prevented from observing or performing any of its obligations hereunder (other than the payment of any amount of money due hereunder) as the result of: (a) an act or omission of the other Party; or (b) any other cause that is not within the control of the delayed or prevented Party (including, without limitation, inclement weather, the unavailability of materials, equipment, services or labor, and utility or energy shortages or acts or omissions of public utility providers); then: (A) such observation or performance shall be excused for the period of the delay; and (B) any deadlines for observation or performance shall be extended for the same period.

15.12. Public Health Disaster. Notwithstanding the force majeure terms in the above Section, the parties acknowledge that this contract is being executed during or following a public health disaster emergency caused by the COVID-19 disease pandemic as declared by Indiana Governor Eric Holcomb and South Bend Mayor James Mueller. If after the effective date of this contract there should be a subsequent declaration or extension of public health disaster caused by COVID-19 or another disease, or other health disaster, and declared by an authorized federal, State of Indiana, City of South Bend, or St. Joseph County executive or other legally qualified person or entity, and if that subsequent or extended disaster declaration includes required shutdown of restaurants and bars for more than 30 consecutive days, then after 30 consecutive days of shutdown Tenant shall be entitled thereafter to rent adjustment of 50% of then applicable rent, but no change in or to the common area maintenance charge (CAM). The rent adjustment shall be effective for the remainder of that portion of the lease term during which the disaster emergency and required shutdown remain in effect.

15.13. Counterparts. This Lease may be executed in separate counterparts, each of which when so executed shall be an original, but all of which together shall constitute but one and the same instrument.

15.14. Successors and Assigns. Except as otherwise expressly provided herein, this Lease, and all of the terms and conditions hereof, shall inure to the benefit of, and be binding upon, the respective heirs, executors, administrators, successors, and assigns of Landlord and Tenant. All indemnities set forth herein shall survive the Termination Date.

15.15. Authority. Each person executing this Lease represents and warrants that: (a) he or she has been authorized to execute and deliver this Lease by the entity for which he or she is signing; and (b) this Lease is the valid and binding agreement of such entity, enforceable in accordance with its terms.

15.16. Exculpation. If there is a breach or default by Landlord under this Lease, Tenant shall look solely to the equity interest of Landlord in the Premises and any rentals derived therefrom; provided that in no event shall any judgment be sought or obtained against any individual person or entity comprising Landlord.

15.17. Equal Opportunity Obligation. Tenant agrees not to (1) discriminate against any employee or applicant for employment, to be employed by Tenant with respect to his or her hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of his or her race, color, religion, sex, handicap, national origin, or ancestry, or (2) violate the City of South Bend Human Rights Ordinance. Pursuant to the policy of the City's Inclusive Procurement and Contracting Plan, Tenant agrees to identify and do business with qualified and available minority business enterprises whenever possible.

15.18. Anti-Collusion Requirement. By executing this Lease, Tenant certifies that it has not, nor has any member, employer, representative or agent of its firm, directly or indirectly, entered into or offered to enter into any combination, collusion, or agreement to receive or pay, that it has not received nor paid any sum of money or other consideration for the negotiation and execution of this Lease other than that which is set out herein.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the Effective Date stated above.

“LANDLORD”

CITY OF SOUTH BEND, INDIANA,  
DEPARTMENT OF REDEVELOPMENT  
by and through the South Bend Redevelopment Commission

\_\_\_\_\_  
Marcia L. Jones, President

ATTEST:

\_\_\_\_\_  
Quentin M. Phillips, Secretary

Date: \_\_\_\_\_

“TENANT”

HAUNT OF HOUNDS, LLC d/b/a Fatbird, an Indiana limited liability company

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Signature

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Printed Name and Title

Date: \_\_\_\_\_



STATE OF INDIANA        )  
  ) SS:  
ST. JOSEPH COUNTY        )

Before me, the undersigned, a Notary Public for and in said County and State this \_\_\_\_\_ day of \_\_\_\_\_, 2020, personally appeared \_\_\_\_\_, known to me to be the President and Secretary, of the South Bend Redevelopment Commission and acknowledged execution of the foregoing Lease on behalf of said Commission.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

\_\_\_\_\_, Notary Public  
Resident of St. Joseph County, Indiana

My commission expires:

STATE OF INDIANA        )  
  ) SS:  
ST. JOSEPH COUNTY        )

Before me, the undersigned, a Notary Public for and in said County and State this \_\_\_\_\_ day of \_\_\_\_\_, 2020, personally appeared \_\_\_\_\_, member of Haunt of Hounds LLC and acknowledged execution of the foregoing Lease on behalf of said company.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

\_\_\_\_\_, Notary Public  
Resident of St. Joseph County, Indiana

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

## **EXHIBIT A**

### Legal Description of Property

Lot Numbered One (1) as shown on the recorded Plat of Morris Civic Minor Subdivision, recorded July 13, 1998 as Document Number 9836277 in the Office of the Recorder of St. Joseph County, State of Indiana.

## **EXHIBIT B**

### Description of Premises

Approximately 3,500 square feet of commercial space on the ground floor, and if and only if Tenant has exercised its option during Lease Year Two, then an additional 2,400 square feet in the lower level), all of which is commonly referred to as 103 W. Colfax, within the Building commonly referred to as 201 N. Michigan Street.

**Exhibit C**

Schedule of Fees

<b>Year</b>	<b>Month</b>	<b>Rent - Main Floor (3,500 sq ft)</b>	<b>Incentive</b>	<b>Rent - Basement (2,500 sq ft)</b>	<b>CAM/Property Tax</b>	<b>Total</b>	<b>Notes</b>
<b>2020</b>	July	\$2,500	\$2,500	\$ -	\$730	\$ 730	Basement not included
<b>LEASE YEAR 1</b>	August	\$2,500	\$2,500	\$ -	\$730	\$ 730	Basement not included
	September	\$2,500	\$2,500	\$ -	\$730	\$ 730	Basement not included
	October	\$2,500	\$ -	\$ -	\$930	\$ 3,430	Basement not included
	November	\$2,500	\$ -	\$ -	\$930	\$ 3,430	Basement not included
	December	\$2,500	\$ -	\$ -	\$930	\$ 3,430	Basement not included
<b>2021</b>	January	\$2,500	\$ -	\$ -	\$930	\$ 3,430	Basement not included
	February	\$2,500	\$ -	\$ -	\$930	\$ 3,430	Basement not included
	March	\$2,500	\$ -	\$ -	\$930	\$ 3,430	Basement not included
	April	\$2,500	\$ -	\$ -	\$930	\$ 3,430	Basement not included
	May	\$2,500	\$ -	\$ -	\$930	\$ 3,430	Basement not included
	June	\$2,500	\$ -	\$ -	\$930	\$ 3,430	Basement not included
<b>LEASE YEAR 2</b>	July	\$2,700	\$ 1,500	\$1,500	\$950	\$ 3,650	Basement as option
	August	\$2,700	\$ 1,500	\$1,500	\$950	\$ 3,650	Basement as option
	September	\$2,700	\$ 1,500	\$1,500	\$950	\$ 3,650	Basement as option
	October	\$2,700	\$ -	\$1,500	\$950	\$ 5,150	Basement as option
	November	\$2,700	\$ -	\$1,500	\$950	\$ 5,150	Basement as option
	December	\$2,700	\$ -	\$1,500	\$950	\$ 5,150	Basement as option

<b>2022</b>	January	\$2,700	\$ -	\$1,500	\$950	\$ 5,150	Basement as option
	February	\$2,700	\$ -	\$1,500	\$950	\$ 5,150	Basement as option
	March	\$2,700	\$ -	\$1,500	\$950	\$ 5,150	Basement as option
	April	\$2,700	\$ -	\$1,500	\$950	\$ 5,150	Basement as option
	May	\$2,700	\$ -	\$1,500	\$950	\$ 5,150	Basement as option
	June	\$2,700	\$ -	\$1,500	\$950	\$ 5,150	Basement as option
<b>LEASE YEAR 3</b>	July	\$2,800	\$ -	\$1,500	\$975	\$ 5,275	Basement as option
	August	\$2,800	\$ -	\$1,500	\$975	\$ 5,275	Basement as option
	September	\$2,800	\$ -	\$1,500	\$975	\$ 5,275	Basement as option
	October	\$2,800	\$ -	\$1,500	\$975	\$ 5,275	Basement as option
	November	\$2,800	\$ -	\$1,500	\$975	\$ 5,275	Basement as option
	December	\$2,800	\$ -	\$1,500	\$975	\$ 5,275	Basement as option
<b>2023</b>	January	\$2,800	\$ -	\$1,500	\$975	\$ 5,275	Basement as option
	February	\$2,800	\$ -	\$1,500	\$975	\$ 5,275	Basement as option
	March	\$2,800	\$ -	\$1,500	\$975	\$ 5,275	Basement as option
	April	\$2,800	\$ -	\$1,500	\$975	\$ 5,275	Basement as option
	May	\$2,800	\$ -	\$1,500	\$975	\$ 5,275	Basement as option
	June	\$2,800	\$ -	\$1,500	\$975	\$ 5,275	Basement as option