



filed of record Filing # 92684804 E-Filed 07/17/2019 10:53:08 AM which will be withdrawn by separate filing.

It is respectfully suggested that leave of court should be granted in this matter because:

1. This Honorable Court granted the Plaintiff leave to amend the complaint to include an indemnification count.
2. During discovery conducted in this matter additional evidence was discovered which led to additional fine tuning and clarification of the complaint as well as additional counts.
3. Newly discovered evidence has come to the knowledge of the Plaintiff which is included in this pleading.

For the reasons set forth herein it is respectfully requested that this Honorable Court enter its order deeming the Second Amended Complaint filed of record as Exhibit A hereto and served on the Defendants contemporaneously herewith as the superseding and operative complaint in this action for the Plaintiffs and giving the Defendants 20 days to file a responsive pleading.

## MEMORANDUM OF LAW

### I. LEGAL STANDARD

Florida Rule of Civil Procedure 1.190 provides that "leave of court [to amend pleadings] shall be given freely when justice so requires." Public policy favors the liberal amendment of pleadings so that cases may be decided on their merits. *Craig v. East Pasco Med. Ctr., Inc.* 650 So.2d 179 (Fla. 2d DCA 1995); *State Farm Fire Cas. Co. v. Fleet Fin. Corp.*, 724 So.2d 1218 (Fla. 5th DCA 1998); *Adams v. Knabb Turpentine Co., Inc.*, 435 So.2d 944 (Fla. 1st DCA 1983).

The trial court's discretion should be exercised in accordance with the public policy of this state to freely allow amendments so that cases may be resolved on their merits. All doubts should be resolved in favor of allowing amendment. *See Hatcher v. Chandler*, 589 So.2d 428 (Fla. 1st DCA 1991). This is especially true when leave to amend is sought at or before a summary judgment hearing. *See Montero v. Compugraphic Corp.*, 531 So.2d 1034 (Fla. 3d DCA 1988). "As a general rule, refusal to allow amendment of a pleading constitutes an abuse of discretion unless it clearly appears that allowing the amendment would prejudice the opposing party; the privilege to amend has been abused; or amendment would be futile." *Bill Williams Air Conditioning & Heating, Inc.*

*v. Haymarket Cooperative Bank*, 592 So.2d 302, 305 (Fla. 1st DCA 1991). All doubts must be resolved in favor of allowing amendment of pleadings. *Thompson v. Publix Supermarkets, Inc.*, 615 So.2d 796 (Fla. 1st DCA 1993).

The failure to permit amendment constitutes an abuse of discretion unless it clearly appears the amendment would prejudice the opposing party, the privilege to amend has been abused, or amendment would be futile *Carter v. Ferrell*, 666 So.2d 556 (Fla. 2d DCA 1995) and, where as here, the amendment is based on the same conduct, transaction, or occurrence as the original Petitioner to modify judgment, leave to amend is particularly appropriate. *Knipp v. Weinbaum*, 351 So.2d 1081 (Fla. 3d DCA 1\_977).

Further, Rule 1.170(f), Florida Rules of Civil Procedure, provides that, "[w]hen a pleader fails to set up a counterclaim ... through oversight, inadvertence or excusable neglect or when justice requires, the pleader may set up the counterclaim ... by amendment with leave of the court." Numerous decisions suggest that this provision should be interpreted especially broadly when a compulsory counterclaim is involved; and that, in such a case, denial of leave to file the counterclaim will almost always be found to be an abuse of discretion. *See, e.g., Moline v. Square Builders of Ormond Beach, Inc.*, 557 So.2d 963 (Fla. 5th DCA 1990); *Advanced Energy Concepts, Inc. v. Waugh*, 510 So.2d 1081 (Fla. 1st DCA 1987); *Branscomb v. Ploof Truck Lines, Inc.*, 454 So.2d 59 (Fla. 1st DCA 1984); *Bratcher v. Wronkowski*, 417 So.2d 1132 (Fla. 5th DCA), *review denied*, 424 So.2d 760 (Fla. 1982); *Romish v. Albo*, 291 So.2d 24 (Fla. 3d DCA 1974).

#### Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing document was filed with the Clerk of the Courts and served via email through the Florida Courts eFiling Portal in accordance with Rule 2.516 of the Florida Rules of Judicial Administration upon all counsel of record.

On August 9, 2019

Respectfully submitted,

**Baron, Breslin & Sarmiento**  
**Fl. Rule of Jud. Admin. 2.516 Notice**  
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**s/ Jerry Breslin**  
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# EXHIBIT A



of \$15,000.00.

2. At all times material hereto, the Plaintiff C&A 900 COLLINS was and is a Limited Liability Company registered in the state of Delaware and is otherwise sui juris.

3. At all times material hereto, the Defendant SOUTH BEACH CIGAR BAR, LLC was and is a Limited Liability Company registered in the state of Florida with a principal address in Miami-Dade County, Florida and is otherwise sui juris.

4. At all times material hereto, the Defendant NEPTUNE CIGARS, INC., was and is a Corporation registered in the state of Florida with a principal address in Miami-Dade County, Florida and is otherwise sui juris.

THE CORAL ROCK HOUSE – HISTORY OF THE CORAL WALLS:

5. The property that is the subject to this lawsuit is located at 900 Collins Avenue in Miami Beach, Florida and is the subject of the in rem jurisdiction of this court. (the “Subject Premises”).

6. The Subject Premises was built in 1916 and has often been referred to as the “Coral Rock House” or the “Avery Smith House”.

7. The Subject Premises is now designated as a preserved landmark property because of its unique and historic coral rock walls.

8. The property was purchased by the Plaintiff in 2011.

9. In 2007 the prior owner, a developer, demolished a great part of the coral rock house leaving only certain unsupported coral rock walls – which were in danger of falling down. (attached hereto and incorporated herein as Exhibit A 1.)

10. Due to a public outcry, the demolition was stopped and the remaining unsupported coral rock was left standing. See A 1.

11. The prior owner then chose, or was required, to preserve the coral stone and an expert engineer was needed for this unique project.

12. The expert engineer elected and hired to design a system to reinforce the walls was Youssef Hachem, Ph.D., P.E., S.I., of YHCE engineering.

13. In 2008, Dr. Hachem designed and engineered a support structure approved by the preservation boards to support the coral rock walls from the interior.

14. This system that he designed and engineered involved drilling anchors into the coral rock from the inside and then building a retaining wall on the inside of the walls and pouring concrete into the frame and securing the anchors. This system was designed to support the unsupported rocks from the inside so as not to deface or change the exterior of the walls which was not permitted to be changed by the preservation board. (picture of support system installation in progress attached hereto and incorporated herein as Exhibit A 2.).

15. As is seen in Exhibit A 2, the coral rock is both anchored by rebar and fastened by concrete to the support wall that was poured on the interior of the building.

16. The system and support designed and installed by Dr. Hachem and YHCE was and is unique as it was designed specifically for this unique property. Due to the nature of the support system installed, the coral rock cannot be removed without completely destroying it.

17. Dr. Hachem is the person with the most knowledge and expertise regarding this unique coral rock structure and its support system.

NEGOTIATIONS PRIOR TO ENTRY INTO A LEASE AGREEMENT:

18. In March of 2017, the Landlord and Tenant engaged in negotiations for the lease of the Subject Premises and ultimately executed a letter of intent. (attached hereto and incorporated herein as Exhibit B.)

19. As is evidenced in the letter of intent, as a part of these pre-lease negotiations the parties contemplated that the Landlord would:

Deliver Condition and Landlord's Work

“Landlord shall deliver the premises in vanilla box condition inclusive of: HVAC, walls, ceiling, electrical, fire sprinklers, lighting, and one ADA compliant restroom. deliver the premises.”

and

Possession

“Upon substantial completion of Landlord's Work”.

and

(Rent) Commencement

“The earlier of (i) one hundred twenty (120) days from Possession *or* (ii) Tenant opening for business.”

(attached hereto and incorporated herein as Exhibit B.)

20. As such, at the time of the letter of intent in March of 2017, the Landlord agreed to do all the initial buildout construction, deliver the property in a “vanilla box” condition and give the Tenant four (4) month’s rent forgiveness.

THE TENANT AGREES TO THE INITIAL BUILDOUT FOR SUBSTANTIAL FINANCIAL INCENTIVES:

21. However, prior to the execution of the Lease Agreement (on July 17, 2019), in exchange for substantial financial incentives and payments, the Landlord and Tenant renegotiated the “Landlord’s Work” outlined in the Letter of Intent, and instead agreed the Tenant would take the property “as is” and it would be the Tenant that performed all the initial construction of the premises to turn the premises into a “first class retail establishment”. (See Lease Agreement, Section 6).

22. These financial incentives received by the Tenant included a “Free Rent Period” of 270 days (Lease Agreement, Section 1) which had a cash value of approximately \$216, 675.00 as well as a cash payment of \$125,000.00 (“Construction Allowance”) to Tenant within forty-five (45) days of the completion of the “Initial Work”. See Lease Agreement, Section 8 – “Tenant Improvement Allowance”.

23. The value of the Free Rent Period and Construction Allowance from Landlord to Tenant totaled \$341,675.00 (hereinafter collectively “Incentive Funds”).

24. Although the Landlord agreed to permit the Tenant to do the initial build out and to pay the Tenant to do it, the time in which the Tenant had to act was clearly defined in the lease agreement.

25. The Landlord and Tenant agreed that Tenant’s construction obligations and the opening of the business were time critical. (See Lease Agreement, Section 32 – time of essence). The Tenant agreed that it was obligated to:

- a) perform “Initial Work” not later than 180 days following the “Commencement Date”, or on January 16, 2018. See Lease Agreement, Section 6(b);
- b) maintain “the look and feel of the Building [that] are of paramount importance to Landlord” and that Tenant was required to open its retail “Cigar Bar” business not later than the “Latest Opening Date”, or January 16, 2018. See Lease Agreement, Section 6(b) and 7(a);

THE LEASE AGREEMENT:

26. Landlord and Tenant entered into a lease agreement regarding the Subject Premises on July

19, 2017 (attached hereto and incorporated herein as Exhibit C) (the "Lease Agreement").

27. The Lease Agreement defined the "Commencement Date" and the "Possession Date" as the same date. See Lease Agreement, Section 1(b). Here the Commencement Date and Possession Date is July 19, 2017. (attached hereto and incorporated herein as Exhibit D.)

28. The Lease Agreement between Landlord and Tenant granted rights and imposed liabilities and obligations on the parties

29. Section 6 of the Lease Agreement explicitly states that the Subject Premises were being accepted by the Tenant "as is," providing that:

Subject to the provisions of this Lease, Tenant shall accept the Premises "as is". Tenant acknowledges that, except as expressly set forth in this Lease, **Landlord makes no representation or warranty, express or implied in fact or by law, as to the nature or condition of the Premises** or its fitness or availability for any particular use, or the income from or expenses of operation of the Premises.

30. The Landlord's only obligations at the time of delivery were that the premises be vacant and broom clean and in compliance with historic certifications. See Lease Agreement, Section 6(a);

31. At the time of execution of the Lease Agreement and at all times material hereto, the Tenant was fully aware that the Subject Premises had been designated as a historic landmark property due in part to its coral rock exterior of the storefront.

32. Section 12(f) of the Lease Agreement states:

Tenant acknowledges that the Building is located in the "Art Deco" district and is on the **Historic Landmark's registry**. The **exterior storefront** of the Building and the interior floating are considered part of the **historical landmark components** of the Building. **Tenant shall comply with all Legal Requirements in connection with Tenant's Work including, without limitation, any alterations to the storefront, flooring and the Building.** (emphasis added).

Section 18(A) of the Lease Agreement states:

In addition, and not in limitation, all signs shall comply with all Legal Requirements of appropriate governmental authorities including, without limitation, those of the City of Miami Beach, **Art Deco district overlay committee, Board of Adjustment and/or Historic Preservation Board**, and all necessary permits or licenses shall be obtained by Tenant prior to erecting said sign. (emphasis added).

33. Tenant had obligations to make monetary payments to the Landlord over the term the Lease

Agreement as defined therein.

34. Tenant had other express obligations defined in the Lease Agreement including, without limitation, in pertinent part:

- a) Tenant was obligated to do “Initial Work” construction to fixture the premises as a “first class retail establishment”. See Lease Agreement, Section 6(b);
- b) Tenant was obligated to pay annual real estate property taxes and assessments. See Lease Agreement, Section 5(i);
- c) Tenant was obligated to perform “Initial Work” not later than 180 days following the “Commencement Date”, or on January 16, 2018. Tenant acknowledged that “the look and feel of the Building are of paramount importance to Landlord” and that the Landlord would not have agreed to the Lease without the Tenant’s agreement of these rights. See Lease Agreement, Section 6(b);
- d) Tenant was required to initially open for business not later than 180 days following the “Commencement Date”, the “Latest Opening Date” or on January 16, 2018. See Lease Agreement, Section 6(b) and 7(a);
- e) Other than the Landlord’s obligations to keep the “structural roof, structural components of the exterior walls, structural floor slabs and foundations of the premises, the Tenant was required to: “at Tenant's expense, shall make all repairs and replacements to keep and maintain the Premises in good condition and repair, including, but not limited to, the heating, ventilating, and air conditioning system (HV AC) and the hot water, electrical, and other mechanical installations exclusively serving the Premises (whether or not located within the Premises); the plumbing and sewer systems exclusively serving the Premises; the exterior and interior portions of all doors including door checks and hardware; grease traps and similar systems (whether or not located within the Premises); all windows including hardware and other appurtenances, and all other glass and ceiling”;
- f) Tenant was responsible for providing Landlord with “reasonable time” to make “commercially reasonable” repairs required by the Lease Agreement. See Lease Agreement, Section 13;
- g) Tenant was required to maintain the Subject Premises in “good condition and repair” and upon surrendering possession, to ensure the Subject Premises were in the conditions as when Tenant “opens for business.” See Lease Agreement, Sections 14 and 28;
- h) Tenant was responsible for maintaining business interruption and rent loss insurance equal to twelve months’ rent, insurance premiums, and maintenance costs. See Lease Agreement, Section 17(e); and
- i) Tenant was required to provide the Landlord with a sufficient time as “reasonably required” to cure any defaults after written notice from the Tenant. See Lease Agreement, Section 24(c).

35. Tenant was provided with a negotiated “Free Rent Period” of 270 days, where Tenant was

not required to pay rent to the Landlord during its possession of the Subject Premises. See Lease Agreement, Sections 1(b) and 4(a).

36. This provision was in lieu of the obligations outlined in a letter of intent prior to the entry of the lease wherein the Landlord would supply the Subject Premises in “vanilla box” condition. As such, the Tenant agreed to make all repairs and modifications to put the Subject Premises in “vanilla box” condition for the consideration of nine (9) months lease forgiveness – or approximately \$215,685.00 plus a cash payment of \$125,000.00.

#### THE SUBTERFUGE AND BAD FAITH OF SOUTH BEACH CIGAR

##### THE LEASE IS SIGNED AND THE TENANT FAILS TO ACT:

37. The lease was signed and the Tenant took possession on July 19, 2017. (Exhibit D).

38. The “Commencement Date” under the lease was July 19, 2018.

39. After signing the lease in July of 2017, Tenant failed to obtain permits to perform any of the discussed renovations for the remainder of 2017.

40. In fact, Tenant failed to obtain any permits to conduct any construction on the premises until August 25, 2018, over thirteen (13) months from the Commencement Date and over seven (7) months from the Latest Opening Date.

41. The Tenant knew no later than the fall of 2017 that the Tenant could not comply with its contractual obligations to finish the initial work and open the business by the required Latest Opening Date of January 16, 2018.

42. The tenant did not seek extensions or modifications of the lease.

43. Instead, the Tenant commenced in the fall of 2017 to engage in a pattern of self-serving emails attempting to shift blame for its own failure to comply with the Lease Agreement to the Landlord for contrived delays and breaches of the Lease as well as fabricated claims of structural damages of the premises that did not actually exist.

##### TENANT’S ONGOING BREACH OF THE LEASE FROM JANUARY 16, 2018:

44. Tenant breached the Lease Agreement on January 16, 2018 by failing to complete the “Initial Work” as required under the Lease Agreement, Section 6(b).

45. Tenant breached the Lease Agreement on January 16, 2018 by failing to open for business



on the “Latest Opening Date” as required under the Lease Agreement, Section 7.

46. At no time from January 16, 2018 through the date the Tenant abandoned the premises in October of 2018 did Tenant cure or otherwise come into compliance with the terms of the Lease Agreement and was, at all times, in breach.

47. At no time did the Landlord waive any of the Tenant’s breaches in writing as required under the Lease Agreement. See Lease Agreement, Section 27.

TENANT’S DEMANDS WHILE IN BREACH OF THE LEASE:

48. Through the spring of 2018, Tenant **still** did not have any permits to begin either its renovations or the work the Landlord paid the Incentive Funds to the Tenant to perform.

49. The Tenant instead chose to further its false blame-shifting scheme through fabricated excuses and accusations that the Landlord was causing delays by failing to repair water intrusion into the property from the roof and/or walls.

50. All of this was done in an attempt to shift blame and escape liability for the Tenant’s own breaches.

51. While the Landlord disputes that any minor repairs were necessary, any minor repairs claimed by the Tenant were not necessary for the Landlord to deliver the premises to the Tenant in “vanilla box” and for the Tenant do the “Initial Work” required under the Lease Agreement.

52. Additionally, any “minor repair” work would have easily and promptly been accomplished without delaying the Tenant’s required buildout and renovations at all.

53. This is particularly evident in the emails from Tenant to Landlord wherein it had been made clear that any landlord repairs would be made during the larger renovations:

*(all email addresses are truncated)*

EMAILS PRIOR TO THE TENANT’S BREACH ON JANUARY 16, 2018.

From: Christophe Normand <cnormand@XXX.com>  
Date: 8/10/2017 6:05PM (GMT-05:00)  
To: Dylan Cecchini <DylanC@XXX.com>  
Subject: Your voicemail

Hi Dylan,

I got your voicemail, I just returned from Europe and Jeff just left on vacation but he did send me earlier this week your request for the letter. You should have it by tomorrow.

In regards to GL, we just signed up as we had to go to a different provider, you should receive a copy by mail soon. Also, I wanted to mention that with the heavy rain we had the last few weeks, we realized there is a leak in the coral house roof. It's not very important now but will be when we start construction in a few months, let me know if you want me to get some quote to fix it.

Thank you,  
Chris

From: Christophe Normand [mailto:cnormand@XXX.com] ·  
Sent: Wednesday, December 20, 2017 1:49PM  
To: Dylan Cecchini  
Subject: RE: ceiling and structural damages on the coral house  
Dylan,

I believe our emails messed up two conversation. One for the leak which is fixed and the other one is in the bottom of this email. Those are structural damage on the east side of the coral house, north and south side seems ok. But the entrance has big damage that will need to be addressed before build out

Let me know  
Thanks  
Chris

EMAILS AFTER THE TENANT'S BREACH ON JANUARY 16, 2018.

From: Christophe Normand <cnormand@XXX.com>  
Sent: Tuesday, April 17, 2018 10:30 AM  
To: Dylan Cecchini <DylanC@XXX.com>  
Cc: lujanjl@aol.com  
Subject: RE: 900 Collins structural damage

Dylan,  
Please find below the structural damages in the east wall of the coral house. Those are not related with the roof leak you fixed a few months ago. Those damages are not water related but need to be fixed before we can start working in the building.  
Thank you,  
Chris

From: Christophe Normand <cnormand@XXX.com>  
Sent: Thursday, May 17, 2018 9:51AM  
To: Dylan Cecchini <DylanC@XXX.com>; Rizzy Byckovas <rizzy@XXX.com>; Rafael Reyes <rafael@XXX.com>; Linda Brockmann <linda@XXX.com>  
Subject: Coral House Rebar and damages remedies

Hi Rafael,  
As you know, some work need to be done in the coral house mainly rebar, waterproofing on the roof and walls. The property manager Dylan, copied to this email, is having some hard time finding contractor in Miami as he's based in NY and would like a quote from you to include this work in the project. I'm waiting for a report from a structural consultant to see what needs to be done. Will forward it to you when I get it so you can send us a quote and timeframe for repair.

Thank you,  
Chris

THE IBA REPORT:

54. In June of 2019 the Tenant contracted with a firm to have the premises tested for water intrusion. The firm, IBA Consultants, Inc., issued its report on June 25, 2019. The report is filed of record by the Tenant.

55. The part of the report critical to these proceedings opined as follows:

A. Core/Concrete wall

a. There is not an effective way to waterproof the Coral Stone without changing its appearance due to its irregular surface and texture. A *[sic]* such, will be necessary reaching the substrate where the stone is installed by removing the coral wall and clean the substrates in accordance with the waterproofing Manufacturer's requirements.

b. Install Tamoseal Cement-Based Waterproofing Coating throughout the entire substrate, paying special attention to existing cold joints and change of substrates (base of the wall with floor slab).

c. Install coral stone once the Tamoseal has cured.

See IBA report, p. 21.

56. The IBA report was incorrect as removal / and then replacement – was impossible. The IBA report did not even address whether the historic nature of the building precluded the Landlord from making these claimed recommendations related to the coral rock.

57. The IBA report was incorrect as there is a way to waterproof the coral stone without changing its appearance – by waterproofing from the inside.

58. The authors of the report did not consult with Dr. Hachem or YHCE. Had they done, so they would have been advised by Dr. Hachem that due to the unique nature of the support system and anchors, that any attempt to remove the coral stone would destroy the stone. Dr. Hachem, if asked by an IBA representative, would have immediately advised the representative that removal of the stone was impossible.

59. Due to the nature of the anchoring system, any attempt to remove the coral stone would result in the stones breaking to rubble.

60. As such, the recommendations of the IBA report that suggested that the coral stone could

be removed were incorrect. IBA knew or should have known on reasonable inquiry that the report was incorrect.

61. Likewise, the Tenant knew or should have known on reasonable inquiry that the report was incorrect.

62. Dr. Hachem has further confirmed that the property can be waterproofed from the inside without the necessity of removing and destroying the coral stone.

EMAILS AFTER THE IBA REPORT.

From: Christophe Normand <cnormand@XXX.com>

Sent: Friday, July 20, 2018 9:19AM

To: Desika Pesara

Cc: Rizzy Byckovas

Subject: Dylan

Importance: High

Desika,

I just talked to him.

I sent him the letter, he will fill it up and mail it back to us today.

Regarding the repair, He wants me to get a quote from you .... So can you please send me a quote for:

- Roof repair
- Coral house inside water proofing
- Windows and Door fixes

I'm talking with him but he or I (then he will refund) will do that.

Thanks

Chris

From: Dylan Cecchini

Sent: Monday, July 30, 2018 2:59 PM

To: 'Christophe Normand'

Subject: leak repairs

Christophe- have your contractors given any estimates on repairs? Again, I think it may be best to have your guys do it and for us to provide you with a credit. Please advise, thanks.

Hi Dylan,

I'm still waiting for them to tell me ....

Will keep you posted

From: Christophe Normand <cnormand@XXX.com>

Sent: Thursday, August 09, 2018 10:55 AM

To: Dylan Cecchini <DylanC@XXX.com>

Subject: RE: leak repairs

Yes, but everything is currently blocked because I can't advance my construction.

I unfortunately won't take care of those repairs, I have enough with mine and will wait until repairs are done to resume rent. We'll suspend rent as for now until repairs addressed correctly and construction resume.

Thanks

From: Christophe Normand <cnormand@XXX.com>

Sent: Thursday, August 09, 2018 11:22 AM

To: Dylan Cecchini <DylanC@XXX.com>

Subject: RE: leak repairs

You have done nothing to remind you:

I spend \$10,000 in a report to show you haven't fixed the leak

Read the report, and address you issue.

You are in default since December

From: Dylan Cecchini <DylanC@cavre.com>

Sent: Thursday, August 9, 2018 11:08 AM

To: Christophe Normand <cnormand@XXX.com>

Subject: RE: leak repairs

Christophe- common. I have been responsive and reasonable all along here for a landlord who doesn't operate in the same state. Under the lease, I am pretty sure you were required to obtain a permit and open for business months ago. We could technically default you, but have tried to work with you. Also, I know the lease requires you to obtain business interruption insurance. You don't have a remedy under the lease to withhold rent for something like this.

My idea was to simply have you incorporate these repairs into your GC's scope and then give you a credit for the work. don't understand what was wrong with that. You have taken weeks to confirm whether that's the route we will go. If not, I can do it.

Please advise- you're not being reasonable.

From: Christophe Normand <cnormand@XXX.com>

Sent: Thursday, August 09, 2018 11:38 AM

To: Dylan Cecchini <DylanC@XXX.com>

Subject: RE: leak repairs

No worry, my attorney is already working on that....

A lease is a contract, that doesn't mean this is right, a judge decision will prevail

63. At no time during any of the above emails did Tenant even have a permit to commence its buildout construction.

64. Further, as the July 20th e-mail evidences, the Tenant was aware that the Subject Premises would be repaired by means of "inside water proofing" to the coral stone.

65. At no time was any construction or renovation delayed by any actions of the Landlord.

66. The Tenant's e-mail communications above were manufactured in furtherance of its contrived default scenario as his "attorney" was working on having a "judge decision" and were

to obtain more “free rent” while failing to comply with its obligations.

67. The South Beach Cigar permit to commence construction was not obtained until August 26, 2018, more than seven months after South Beach Cigar was required to open for business.

68. Within weeks of the Tenant obtaining a permit to commence the work on the premises, the Landlord contracted with the Tenant South Beach Cigar’s contractor U.S. Construction Corp. to perform the minor repairs requested by the Tenant as part of the overall renovation.

69. *After* the Landlord already contracted to perform the repairs as part of the overall renovation project, South Beach Cigar was actively shopping for other space despite its contractual obligations to the Plaintiff.

From: Ericka Witkowski/USA <Ericka.Witkowski@XXX.com>

Sent: Wednesday, September 26, 2018 3:49 PM

To: Christophe Normand <cnormand@XXX.com>

Subject: 909 Collins

Hi Chris,

Hope you are enjoying your trip!

After speaking with the Brokers further, who have spoken with their client, they are desperate to do a deal. They

verbally stated to go in with an offer around \$40 NNN. They asked us to draft the LOI.

Attached is a drafted LOI for your review:

o Not your business

Please review the proposal and let me know if you would like to make any changes.

I believe this is a really competitive offer. It may be helpful to ask the General Contractor the timeframe they would

need to build out the space so we can ask for the appropriate amount of days before rent commences.

70. Then on September 27, 2018 Tenant insultingly notified the Landlord of his intentions to further breach the Lease Agreement.

From: Christophe Normand <cnormand@XXX.com>

Date: 9/27/18 5:58AM (GMT-05:00)

To: Rizzy Byckovas <rizzy@XXX.com>, Desika Pesara <desika@XXX.com>, Luz Normand

<luz.normand@XXX.com>, Rafael Reyes <rafael@XXX.com>

Cc: Dylan Cecchini <DylanC@XXX.com>

Subject: FW: 909 Collins

Damn, hard choice to make now!!!!

Since current landlord is out of his mind and he hasn't started the work either .... Sorry Rafael, I thought he had signed once you pressure me for an answer if I was going to stay there

But my answer right now is I really don't know. Let meet on Monday for final decision

but honestly, this is a DEAL!

This place is ready to move and I can definitely open this year (not for the bar) and price wise I'll save millions. Since landlord is currently in default, we have to move quickly I'm copying Dylan who still believe 900 collins is the only building in south beach and that I should accept all his terms like he was my customer

What's your thoughts guys? Can we all meet Monday at 10am there? Dylan, I can pay you the trip if your company wants to save their last drop. I do think Monday will be an important day.

71. Shortly thereafter, notwithstanding that the Landlord contracted with the Tenant's contractor to perform the necessary repairs as part of the overall renovation project and so as to not interrupt Tenant's buildout, and prior to the commencement of meaningful work on the renovation project, the Tenant abandoned the premises, falsely declared a breach by the Landlord, and breached its agreement with its contractor U.S. Construction Corp.

72. Defendant South Beach Cigar abandoned the premises in a substantially damaged condition. (attached hereto and incorporated herein as Exhibit E.)

NOTICE UNDER THE LEASE AGREEMENT:

73. The Lease Agreement specially defined the manner in which formal notice was required to be served on the parties to the Lease Agreement. The Lease Agreement states in material part:

Section 31. NOTICES. Any notice or consents required to be given by or on behalf of either party upon the other shall be in writing and shall be given by sending them by Fed Ex or other recognized one-day national delivery service which obtains a receipt for delivery, or by mailing such notices or consents by registered or certified mail addressed (i) to Landlord at c/o SCF Management LLC, The Cayre Group, 1407 Broadway; 4P1 Floor, New York, New York 10018; Attn: Mr. Robert Cayre with a conforming copy to Seyfarth Shaw LLP, 620 Eighth Avenue, New York, New York 10018, Attn: Marc J. Gurell, Esq., and (ii) to Tenant at the Premises with a conforming copy to Baxter Trouby, LLP, One Datan Center, 9100 S. Dadeland Blvd., Ste. 700, Miami, Florida 33156; Attn: Jeffrey L. Baxter, Esq. or at such other address as may be specified from time to time, in writing, delivered to the other party. Notice shall be deemed received on the date of delivery as set forth in the records of the national delivery service or the return receipt card, as the case may be, the date that such notice shall be rejected if rejected by the addressee, or the date of first attempted delivery of such notice, whichever shall be the first to occur.

TENANT'S FIRST NOTICE TO LANDLORD:

74. Tenant sent Landlord two (2) purported notices as defined in the Lease Agreement, the first on September 4, 2018 and the second on October 11, 2018.

75. On or about September 4, 2018, **more than seven months after the Tenant was required**

**to open for business, and while in breach of the Lease**, Tenant gave Landlord the first notice as defined under the terms and obligations of the Lease Agreement (attached hereto and incorporated herein as Exhibit F).

76. In its September 4, 2018 first notice to the Landlord, Tenant claimed that the Landlord was in default of the Lease and demanded that the Landlord perform repairs to the premises and ceiling and that the Landlord:

- (i) abate all future rent until December 15, 2018, the anticipated opening of the premises (assuming the roof is repaired quickly);
- (ii) fix or replace ceiling in both buildings;
- (iii) fix all door and window frames;
- (iv) fix structural damages on east and north wall of the coral house;
- (v) re-run the Waterproofing test to confirm roof is watertight; and
- (vi) any other items listed in the Report.

77. The Lease at Section 12 makes clear that the Tenant was responsible for all repairs to the ceiling.

78. Tenant's notice of default / demand dated 9/4/2018 – Exhibit F – states as follows:

You are hereby notified that Landlord is in default under Section 13 REPAIRS BY LANDLORD of the Lease.

Written demand is hereby made for the repair of the items listed in that certain Condition Assessment report prepared by Innovative Building and Architecture Consultants prepared June 25th, 2018 (the "Report") and attached hereto.

79. Tenant's notice of default / demand dated 9/4/2018 – Exhibit F – incorrectly suggested that because the lease was silent on the procedure to effect repairs, F.S. § 83.201 applied and Tenant was permitted to withhold rent.

80. Tenant's reliance on F.S. § 83.201 was improper given the Lease Agreement's explicit procedures for Landlord's repairs in Sections 13 and 24(c).

81. Tenant's notice of default / demand dated 9/4/2018 – Exhibit F – created an artificial deadline of September 24, 2018, **only 20 days**, to complete all of the repairs identified in its first notice. The notice of default / demand provided that, "If the necessary repairs are not completed by September 24, 2018, Tenant will withhold rent from the date forward and thereafter until repairs are finished and pass inspection."



82. In response, Landlord agreed to make all of the listed repairs in Tenant's demand dated 9/4/2018 – Exhibit F – that were commercially reasonable notwithstanding the Landlord's position that it was not the Landlord's obligation to do so.

83. The arbitrary 20-day period created by Tenant did not provide the Landlord with a commercially "reasonable" time to make "commercially reasonable" repairs or with sufficient time as "reasonably required" to cure the claimed defect as required by Sections 13 and 24(c) of the Lease Agreement (Exhibit C).

84. Tenant's notice claimed that its own delay in opening its business at the Subject Premises was due to the Landlord's failure to repair the roof since July, 2018 - notwithstanding the fact that Tenant was in breach and was required to open its business **six months prior** to the claimed July, 2018 default date. See Lease Agreement, Section 6(b) and 7(a).

LANDLORD'S TIMELY EFFORTS TO CURE THE CLAIMED DEFAULT:

85. In response and within a commercially reasonable time of the notice / demand of Tenant to perform repairs, on September 13, 2018 (only nine days after the notice) Landlord dutifully and timely commenced the repairs, entering into an agreement with general contractor U.S. Construction Corp. to perform the repair work (attached hereto and incorporated herein as Exhibit G).

86. Landlord contracted with U.S. Construction Corp. because it was the contractor already being used by Tenant to perform its buildout and the Landlord wanted to ensure that the repairs would be coordinated and would not interfere with or delay the renovation buildout being done by Tenant.

87. Tenant at all times knew and understood the nature and extent of the repairs contracted by the Landlord as depicted in Exhibit F and agreed to same.

88. In fact, the repairs that the Landlord agreed to perform were to be performed during and as part of the Tenant's renovation project. See Tenant's buildout schedule attached hereto and incorporated herein as Exhibit H showing a completion date in January of 2019 and the Landlord's schedule attached and incorporated herein as Exhibit I showing the repairs requested of the Plaintiff / Landlord to be performed well within the build out period.

89. Among the repairs to be made by U.S. Construction Corp. and identified in the agreement was interior waterproofing of the Subject Premises. See Exhibit G, "Scope of Work Summary".

The agreement did not include repairs to the actual coral rock on the exterior of the Subject Premises.

90. To immediately address the Tenant's concerns and to not delay the Tenant's build out, on September 25, 2018, U.S. Construction Corp. notified the roofing subcontractor to immediately commence the leak repairs. (attached hereto and incorporated herein as Exhibit J.)

TENANT'S FAILURE TO PROVIDE LANDLORD WITH REASONABLE TIME TO CURE CLAIMED DEFECT:

91. Notwithstanding the Landlord's immediate and prompt response to cure the claimed default in the Tenant's first notice, the Tenant failed to give the Landlord reasonable time to perform the contracted repairs.

92. Just thirty days after its first notice, on October 4, 2018 Tenant notified contractor U.S. Construction Corp. to stop all work on the site. (attached hereto and incorporated herein as Exhibit K).

93. Then, on October 8, 2019, Tenant sent correspondence feigning ignorance about the historical and special status of the building and falsely accusing both the Landlord and U.S. Construction Corp. of failing to obtain the proper permits for "structural building envelope repairs, especially to the coral rock exterior, which apparently is a unique historic building?" (attached hereto and incorporated herein as Exhibit L).

94. The October 8, 2018 notice by Tenant was intentionally false as Tenant knew at all times that no coral rock would be removed, that it was impossible or commercially impracticable to do so, that it was unnecessary to do so, that both U.S. Construction Corp. and the Landlord would not and could not remove the coral rock from the historic building without destroying it, and that the repairs would instead involve sufficient internal waterproofing. See email from Tenant to its contractor US Construction dated 7.20.2019. (attached hereto and incorporated herein as Exhibit M.) See contract that was emailed to Tenant on August 10, 2018 clearly indicating the extent of the repairs by both US Construction and the Landlord attached hereto and incorporated herein as Exhibit N.)

95. The letter of October 8, 2018 (Exhibit L) was contrived as part of the Tenant's overall scheme to shift blame for its own defaults (including failure to timely complete its buildout and open for business) under the Lease to Landlord and create false grounds for withholding rent and early termination of the Lease in an attempt to absolve itself of its own financial obligations under

the Lease to the Landlord.

TENANT'S SECOND AND FINAL NOTICE TO LANDLORD:

96. On October 11, 2018, Tenant sent Landlord its second and final notice claiming that Landlord was in default and that the Lease was terminated and notifying Landlord that Tenant abandoned the premises. (attached hereto and incorporated herein as Exhibit O.)

97. Tenant's second notice recognized its obvious breach of the Lease noting that it did not even receive a permit to conduct its buildout until August, 2018, **seven months after the required opening date**. See Second Notice, Exhibit O, p. 2.

98. The second notice also reiterated the arbitrary 20-day and commercially unreasonable deadline for the Landlord to complete the requested repairs, while contrastingly noting that the Plaintiff/Landlord must be provided with "reasonable time" to make repairs and that it could take years for the Landlord to make the repairs that Tenant is requesting due to its historic designation. See Second Notice, Exhibit O, p. 1-2.

99. Again, Tenant wrongly suggested that the Landlord agreed to, was required to, was permitted to, or was even able to remove the coral rock on the historic building.

100. The Landlord was at no time required under the Lease Agreement to perform repairs on or to the coral rock, perform repairs that would involve the removal of the coral rock, or perform repairs that the Tenant *desired* as opposed to repairs that were actually *necessary, possible, permissible* and/or *commercially practicable*.

101. Any repairs that involved the removal of the coral rock as demanded by the Tenant were impossible, unnecessary, unreasonable or commercially impracticable.

102. The Tenant knew or should have known on reasonable inquiry that the removal of the coral rock was impossible, unnecessary, unreasonable or commercially impracticable, especially given its acknowledgment of the premises as a historic landmark and its acknowledgement that the overall "look and feel of the Building are of paramount importance to Landlord."

103. The Landlord contracted with U.S. Construction Corp. to make "commercially reasonable" repairs that included interior waterproofing repairs that would protect the property from water intrusion because removal of the coral rock is impossible, unnecessary, unreasonable and/or commercially impracticable.

104. The Tenant at all times agreed to repairs that did not require the removal of the coral rock and instead, agreed to internal waterproofing. (See Exhibit M).

105. The Landlord relied on the Tenant's agreement to the interior waterproofing repairs in commencing its repairs.

106. The removal of the coral rock was not required to make any repairs necessary for the Landlord to perform under the terms of the Lease Agreement.

107. In serving this second notice, Tenant failed to honor its obligations under the Lease Agreement by failing to permit the Plaintiff a reasonable time to perform the repairs after the notice of default as required under the Lease Agreement and failed to even follow its own material representations in the default / demand of 9/4/2018 -- Exhibit F.

#### THE BREACH OF THE LEASE AGREEMENT BY SOUTH BEACH CIGAR

108. Tenant breached the lease on January 16, 2019 and at no time thereafter came into compliance. Landlord never waived that or any other breach in writing. Lease Agreement, Section 27.

109. All of the Tenant's demands of the Landlord in the spring, summer and fall of 2018 occurred when the Tenant was in breach.

110. The above defined actions of Tenant and those other breaches outlined in this complaint comprise a default and a breach of its obligations to Plaintiff under the Lease Agreement entitling the Plaintiff to the remedies under the Lease Agreement.

#### THE PAYMENT BREACH:

111. Tenant breached the Lease Agreement and failed to pay the Plaintiff the monthly minimum rent of \$24,075.00 plus additional charges due under the Lease Agreement on September 2018 and all months thereafter.

#### OTHER BREACHES:

112. Tenant further breached its obligations of the Lease Agreement including (and as further defined in this complaint) failing to timely complete its Initial Work and open for business, abandonment of the Subject Premises without providing the Landlord with reasonable time to make commercially reasonable repairs, failing to maintain business interruption and rent loss insurance, failing to surrender the Subject Premises in the proper "open for business" condition,

and failing to provide the Landlord with “reasonable time” to cure any defaults under the Lease Agreement, failing to act in a commercially reasonable manner and breaching the implied covenant of good faith and fair dealing.

113. Plaintiff dutifully complied with all obligations under the Lease Agreement.

114. Tenant further breached the Lease Agreement by causing substantial damage to the premises prior to abandonment and abandoned the premises in a condition that will require substantial sums to repair. (attached hereto and incorporated herein as Exhibit E.)

115. Landlord is currently attempting to mitigate its damages to re-let the premises.

116. Landlord has been required to spend substantial sums to bring the premises to a condition to re-let.

117. The Landlord has signed a contract to pay a contractor the sum of \$200,000.00 to perform the work that the Tenant agreed to, and was required to perform under the Lease, but failed to perform due to Tenant’s breach and bad faith.

118. Landlord is owed, is entitled to and demands all damages due the Landlord pursuant to the terms of the Lease Agreement and Florida law. Such damages include but are not limited to:

- a) The rent due for the entire ten-year term of the lease;
- b) Costs of the repairs to repair the damage done to the premises by Defendant South Beach Cigar.
- c) Costs of repairs, renovations and alternations to re-let the premises and bring it to “open for business” condition;
- d) Rental commissions on re-rental;
- e) Attorney’s fees on the prosecution of this action and on re-rental;
- f) Litigation costs and expenses;
- g) Rental concessions to a new tenant;
- h) All additional charges defined in the Lease Agreement.

119. The damages to Landlord are increasing, continuing and ongoing.

#### THE GUARANTY:

120. Defendant Neptune Cigar executed a Guaranty for the sums due Landlord under the Lease Agreement with Tenant. (attached hereto and incorporated herein as Exhibit P.)

121. Defendant Neptune Cigar is owned by the same principal as Defendant South Beach Cigar who is aware of the sums due under the Lease Agreement.

122. Neptune Cigar's liability in the Guaranty is defined as follows:

2. (b) Guarantor's liability under this Guaranty shall not exceed the aggregate of (i) twelve (12) months of Minimum Fixed Rent and Additional Charges due under the Lease (with Fixed Minimum Rent and Additional Charges for such period being calculated based upon the date of Tenant's default under the Lease) and (ii) all of Owner's reasonable costs in connection with the enforcement of this Guaranty, whether or not suit is brought, including, without limitation, reasonable attorneys' fees and disbursements.

123. Twelve months of minimum fixed rent under the Lease Agreement from the date of default is \$288,900.00.

124. Additional Charges under the Lease Agreement are continuing and ongoing.

125. The Landlord's reasonable costs and attorney's fees in enforcing the Guaranty are continuing and ongoing.

126. Plaintiff demands all sums due to Plaintiff from Defendant Neptune Cigar under the terms of the Guaranty and Lease Agreement.

CONDITIONS PRECEDENT AND ATTORNEY'S FEES:

127. All conditions precedent have occurred, been met or waived.

128. Plaintiff has retained undersigned counsel and has agreed to pay undersigned counsel a reasonable fee.

129. Plaintiff is entitled to all attorney's fees and costs associated with the requirement of bringing this action and demands same from Defendant SOUTH BEACH CIGAR BAR, LLC and Guarantor NEPTUNE CIGAR in addition to those sums due the Plaintiff / Landlord as pled herein.

COUNT I

BREACH OF CONTRACT  
DEFENDANT SOUTH BEACH CIGAR BAR, LLC

130. Plaintiff realleges paragraphs 1 through 129.

131. The Lease Agreement imposed obligations on the parties.

132. The Plaintiff has complied with all duties and obligations under the Lease Agreement.

133. The Defendant materially breached its duties and obligations under the Lease Agreement.

134. The obligations of the lease survive the termination of the Lease Agreement.

135. Defendant failed to comply with the obligations of the Lease Agreement, *inter alia*, by

- a) Failing to pay rent when due;
- b) Failing to pay other charges and sums due under the Lease Agreement;
- c) Failing to complete its buildout and open for business within 180 days of the Commencement Date, on or before January 16, 2018;
- d) Failing to maintain “the look and feel of the Building” by failing to timely commence its business operations;
- e) Failing to obtain business interruption insurance;
- f) Contriving to manufacture a breach when no breach existed;
- g) Failing to permit landlord a commercially reasonable time to make commercially reasonable repairs;
- h) Failing to provide Landlord with the “reasonably required” time to cure the claimed defaults as required under the Lease Agreement;
- i) Demanding repairs not required under the Lease Agreement;
- j) Demanding repairs that were impossible and unnecessary;
- k) Damaging the premises;
- l) Declaring a breach and abandoning the premises when the Plaintiff was not in breach of the terms of the Lease Agreement; and
- m) Failing to surrender possession of the property in an “open-for-business” state and abandoning the premises in an unreasonable and substantially damaged condition;

136. That as a direct and proximate result of the aforescribed breach of the contract, Plaintiff has sustained direct and consequential monetary damages in the amount of in excess of the jurisdiction limits of this court and the Plaintiff's damages are continuing and ongoing and such damages continue to accrue on a daily basis.

137. Plaintiff was required to retain undersigned counsel to prosecute this action and have agreed to pay undersigned counsel a reasonable fee.

138. Plaintiff demands attorney's fees and costs pursuant to the contract between the parties.

WHEREFORE, the Plaintiff demands judgment against Defendant South Beach Cigar for an amount within the jurisdictional limits of this Court, court costs, attorney's fees, prejudgment interest, and additionally demands any other relief as this Court deems just and proper in order to do justice.

## COUNT II

### CONTRACTUAL INDEMNITY AND HOLD HARMLESS DEFENDANT SOUTH BEACH CIGAR BAR, LLC

139. Plaintiff realleges paragraphs 1 through 129.

140. The Lease Agreement imposed obligations on the parties.

141. Specifically, the Lease Agreement provided for contractual indemnification by the Tenant of the Plaintiff/Landlord for certain damages under the Lease Agreement as follow:

#### **Section 17. INDEMNIFICATION AND INSURANCE.**

(a) Except due to the gross negligence or willful misconduct of Landlord, Tenant shall and does **hereby indemnify Landlord and save Landlord harmless from and against any and all claims, actions, damages, liability, cost and expense in connection with loss, damage or injury to persons or property occurring in, on or about, or arising out of the Premises or any loading platforms, or the use or occupancy thereof, or the conduct or operation of Tenant's business, or in connection with any construction or alterations, or due to water leakage** or occasioned wholly or in part by any act or omission of Tenant, Tenant's agents, invitees, contractors, customers or employees. (emphasis added).

142. The Plaintiff is the subject of suit by the Defendant South Beach Cigar for claims, actions, damages, liability, cost and expense in connection with loss, damage or injury to persons or property occurring in, on or about, or arising out of the Premises or any loading platforms, or the use or occupancy thereof, or the conduct or operation of Tenant's business, or in connection with any construction or alterations, due to water leakage.

143. These claims and damages are matters within the scope of the indemnification provisions of the Lease Agreement and are due to the wrongful acts and omissions of the Defendant/Tenant in relation to the Subject Premises including, but not limited to, the Tenant's failure to timely



perform the required construction and alterations of the Subject Premises so that the Tenant could use and occupy the property to conduct and operate its business, failure to provide reasonable time for the Plaintiff/Landlord to perform commercially reasonable repairs and alterations to the property to prevent water leakage, failure to mitigate its damages, wrongful abandonment of the Subject Premises, damaging the property, etc.

144. Indemnify is defined as: Indemnify v. to guarantee against any loss which another might suffer. (<https://dictionary.law.com/Default.aspx?selected=936>).

145. Hold Harmless is defined as: hold harmless n. a promise to pay any costs or claims which may result from an agreement. (<https://dictionary.law.com/Default.aspx?selected=876>)

146. The Defendant/Tenant materially breached its duties and obligations under the Lease Agreement requiring contractual indemnification by failing to indemnify and hold harmless the Plaintiff / Landlord and, in fact, suing the Plaintiff for the exact claims that it was required to indemnify and hold the Plaintiff harmless from.

147. Instead, the Defendant/Tenant's indemnification duties relating to these pending claims have been required to be enforced by the Plaintiff who has been forced to defend against/prosecute the claims by and against the Defendant and incur attorney's fees and costs in doing so.

148. The Plaintiff/Landlord is without any fault in connection with the claims for which Defendant/Tenant is responsible for indemnification.

149. That as a direct and proximate result of the Defendant/Tenant's breach of the contract and failure to discharge its duties to indemnify and hold the Plaintiff harmless, Plaintiff has sustained direct and consequential monetary damages in the amount of in excess of the jurisdiction limits of this court and the Plaintiff's damages are continuing and ongoing and such damages continue to accrue on a daily basis.

150. Plaintiff was required to retain undersigned counsel to prosecute this action and have agreed to pay undersigned counsel a reasonable fee.

151. Plaintiff demands attorney's fees and costs pursuant to the contract between the parties.

WHEREFORE, the Plaintiff demands judgment against Defendant South Beach Cigar for an amount within the jurisdictional limits of this Court, court costs, attorney's fees, prejudgment interest, and additionally demands any other relief as this Court deems just and proper

in order to do justice.

### COUNT III

#### BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING DEFENDANT SOUTH BEACH CIGAR BAR, LLC

152. Plaintiff realleges paragraphs 1 through 129 and further alleges:

153. Defendant South Beach Cigar and Plaintiff are parties to the Lease Agreement, which includes an implied covenant that the parties will perform in good faith and deal fairly.

154. Defendant South Beach Cigar owed Plaintiff a duty of good faith and fair dealing in its performance and enforcement of the Lease Agreement, including, specifically, Tenant's performance of its obligations under the Lease Agreement and to take all reasonable actions necessary to perform those obligations in good faith.

155. Defendant South Beach Cigar was obligated to permit the Plaintiff to complete the interior waterproofing repair work that Plaintiff contracted to perform on the premises within commercially reasonable time period after notice from the Defendant and to not abandon the premises despite Plaintiff's efforts to conduct the repair work.

156. Defendant South Beach Cigar was obligated to work in good faith and use the Incentive Funds to complete its buildout within a commercially reasonable time period and without delay.

157. Defendant South Beach Cigar was obligated to act in good faith to perform its buildout of the premises to make it in "open for business" condition, to conduct business at the premises as a cigar bar establishment, and to not use the lease to profit from the Incentive Funds paid to it by the Plaintiff so that it could then operate at an alternative rental space.

158. Defendant South Beach Cigar was obligated to act in good faith and return the Incentive Funds paid to it by the Plaintiff when the Defendant unlawfully abandoned the premises and chose not to buildout the premises.

159. Defendant South Beach Cigar was obligated to act in good faith to complete its buildout and conduct business at the premises as a cigar bar establishment and not to use the Lease Agreement as a means to

160. Defendant South Beach Cigar's bad faith actions and omissions unfairly interfered with

Plaintiff's receipt of the value that it bargained for in the Lease Agreement and agreed to pay and did in fact pay to the Defendant in financial incentives.

161. Plaintiff received no value for its financial incentives and cash value conferred on the Defendant.

162. Plaintiff lost the use of the property for fifteen months and received nothing but a substantially damaged property in return, all for the payment of approximately three months' rent.

163. Defendant, through conscious and deliberate actions, failed or refused to discharge its contractual responsibilities as pled in this complaint.

164. Defendant did not comport with and disappointed Plaintiff's reasonable commercial contract expectations and as a result frustrated the purpose of the Lease.

165. Defendant failed to exercise discretion afforded it by the contract to act in a reasonable manner.

166. Defendant's actions or omissions unfairly interfered with Plaintiff's reasonable expectations under the contract that Defendant would act in a commercially reasonable manner.

167. Plaintiff has at all times acted in good faith.

168. Defendant has acted in bad faith.

169. As a direct result of Defendant's breach and intentional failure to comply with Defendant's covenant of good faith and fair dealing, as outlined in this complaint, Plaintiff was prevented from using the Subject Premises, lost its payments to the Defendant in cash and value in financial incentives, was prevented from having a rentable commercial property, lost its competitive advantage in having the bargained for first class retail establishment opened on its property and has been, and continues to be severely damaged.

170. Plaintiff demands all damages from Defendant for the breach of the implied covenant of good faith and fair dealing.

WHEREFORE, the Plaintiff demands judgment against Defendant South Beach Cigar for an amount within the jurisdictional limits of this Court, court costs, prejudgment interest, and additionally demands any other relief as this Court deems just and proper in order to do justice.

#### COUNT IV

**BREACH OF GUARANTY**  
**DEFENDANT NEPTUNE CIGAR**

171. Plaintiff realleges paragraphs 1 through 129 and further alleges:

172. On or about July 2017, Defendant Neptune Cigar executed a guaranty guaranteeing all payments owed to Plaintiff under the Lease Agreement. (attached hereto and incorporated herein as Exhibit M).

173. The Guaranty imposed rights, duties and obligations on Plaintiff and Defendant Neptune Cigar.

174. Plaintiff complied with all duties and obligations imposed under the Guaranty.

175. The obligations of Defendant Neptune Cigar under the Guaranty were absolute and unconditional:

3. This Guaranty is an absolute and unconditional guaranty of payment and of performance. It shall be enforceable against Guarantor without the necessity for the commencement of any suit or proceeding on Owner's part of any kind or nature whatsoever against Tenant or any other party and without the necessity of any notice of non-payment, nonperformance or nonobservance or any notice of acceptance of this Guaranty or any other notice or demand to which Guarantor might otherwise be entitled, all of which Guarantor hereby expressly waives. Guarantor hereby expressly agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall in no way be terminated affected or impaired by reason of the assertion or the failure to assert by Owner against Tenant or any other party of any of the rights or remedies reserved to Owner pursuant to the provisions of the Lease or pursuant to applicable law.

176. Defendant Neptune Cigar breached his duties and obligations imposed under the Guaranty.

177. Defendant Neptune Cigar has failed to pay its obligations under the Guaranty.

178. That as a direct and proximate result of the aforescribed breach of the Guaranty, the Plaintiff has sustained direct and consequential monetary damages in an amount within the jurisdictional limits of this Court.

179. Plaintiff demands all sums due under the Guaranty from the Defendant Neptune Cigar.

180. In light of the aforementioned, Plaintiff has been required to retain the services of the undersigned attorney to prosecute this claim and pay undersigned counsel a reasonable fee.

181. Plaintiff is entitled to and demands its attorney's fees and costs in enforcing the Guaranty.

WHEREFORE, Plaintiff demands judgment against Defendant Neptune Cigar for an amount within the jurisdictional limits of this Court, court costs, attorney's fees, prejudgment interest, and additionally demands any other relief as this Court deems just and proper in order to do justice.

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing document was filed with the Clerk of the Courts and served via email through the Florida Courts eFiling Portal in accordance with Rule 2.516 of the Florida Rules of Judicial Administration upon all counsel of record.

On August 9, 2019

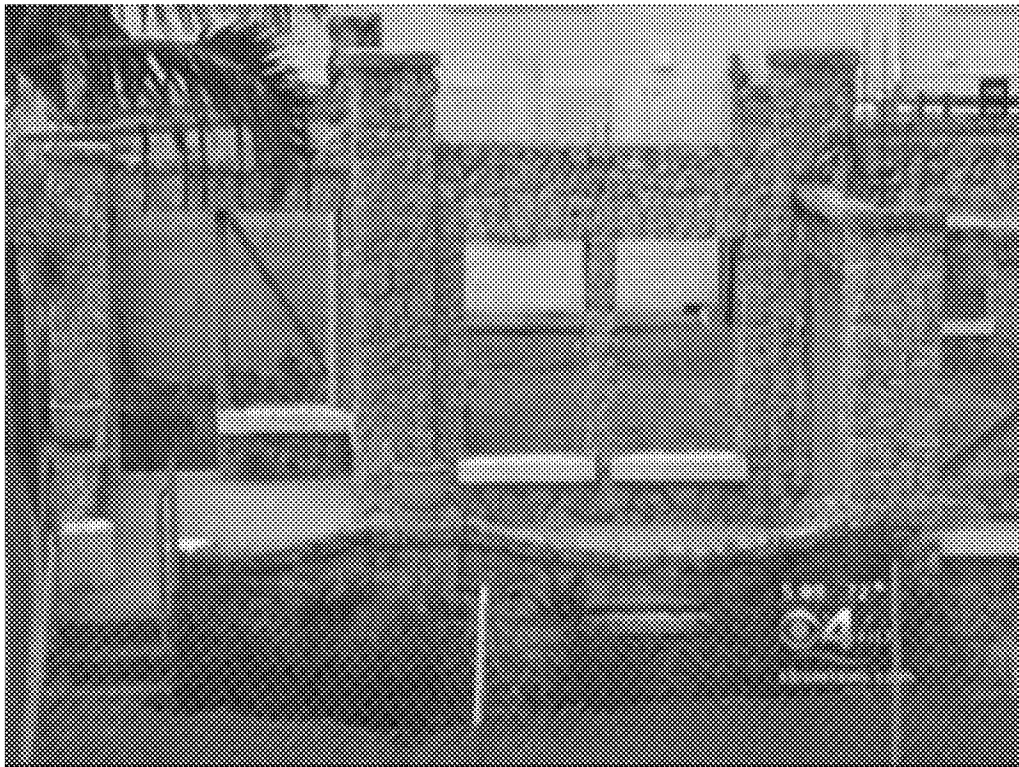
Respectfully submitted,

**Baron, Breslin & Sarmiento**  
**Fl. Rule of Jud. Admin. 2.516 Notice**  
**Primary email: [EService@RichardBaronLaw.com](mailto:EService@RichardBaronLaw.com)**  
**Secondary Email: [JB@RichardBaronLaw.com](mailto:JB@RichardBaronLaw.com)**

**s/ Jerry Breslin**  
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# Exhibit A 1



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# Historic Miami Beach House To Get Coral Makeover

December 15, 2011 at 7:13 pm

**Filed Under:** 900 Collins Avenue, Avery Smith, Coral House, Dr. Edward Roth, Historic Home, Isadore Roth, Landmark, Miami Beach, Miami Dade County Historical Preservation Board, Mitch Novick, Restored, Tiffani Helberg



(Source: CBS4)

MIAMI BEACH (CBS4)- It's a rare landmark home in Miami Beach, and now it's getting a new look.

Only the shell of the coral rock home remains at 900 Collins Avenue. But it was once almost totally demolished. Now the Miami Beach Historic Preservation Board has approved a design to restore the property.

The house will be rebuilt using the rare coral that made up the original home. But the new property will also be linked to a retail store.

"It has quite a history past and present," said Mitch Novick, Chairman of the Miami Dade County Historical Preservation Board. "It's a huge victory for this preservation community. Once again,

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Father Of Boy Who Drowned In Daytona Lagoon Wave Pool Said He Looked Away Briefly

this building will become a viable part of Miami's social and architectural history."

The coral rock home was built back in 1916 by Avery Smith. He lived in it with his family until 1931.

"Smith ran a ferry service from the mainland to the beaches," said Novick. "That was at a time before there were any bridge connectors and it's often stated that tourism began with Avery Smith."

Smith sold the home to Isadore Roth. Roth's son, Dr. Edward Roth, was the first physician to open a practice on Miami Beach. The home went through only a handful of owners.

In 2007 an overzealous developer began to bulldoze the property. Local preservationists waged a war against it.

Ultimately three city officials were arrested in connection to taking bribes related to the coral rock property.

"They sit in jail as we speak for taking an excess of \$100,000 in bribes in an effort to get the building demolished," said Novick.

Flash forward to the future and preservationists are applauding the news that the home will be rebuilt, South Beach style. It won't be a quaint cottage anymore. This time it will be connected to a business. But regardless, the history will remain, transformed for all to admire.

Comments

## Florida Woman Convicted Of Killing Mother, Stepfather, Sentenced To Life

A Florida woman was sentenced to life in prison after she was convicted of killing her mother and stepfather.

## Palm Beach Man Who Killed Wife With Sledgehammer Given Life Sentence

A Palm Beach man who killed his wife with a sledgehammer has been sentenced to life in prison.

## FBI Asks For Public's Help In Finding Accused South Florida Bank Robber



Miami Weather: Severe Thunderstorm Warning In Northern Broward, Flood Watch Across All Of South Florida



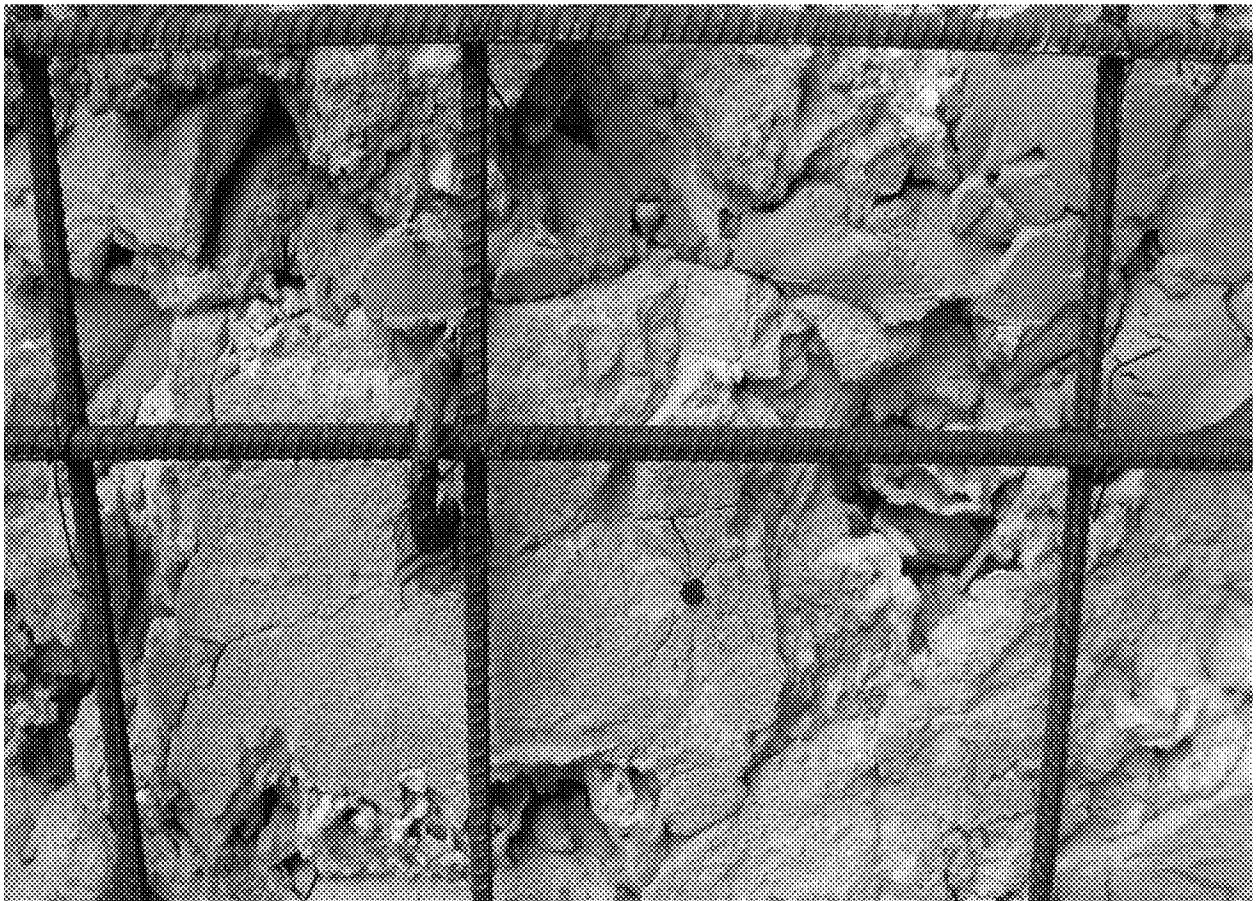
First Case Of Locally-Acquired Dengue Virus Reported In Miami-Dade



Florida Day Care Worker Charged After 4 Toddlers' Legs Broken



# Exhibit A 2



# EXHIBIT B



March 8, 2017

Ms. Ericka Witowski  
Avison Young  
2020 Ponce de Leon Blvd.  
Suite 1200  
Coral Gables, FL 33134

**RE: 900 Collins Avenue, Miami Beach, FL.**

Dear Ericka,

I am pleased to present the following revised proposal which outlines the terms upon which the Landlord would consider entering into a lease for the above referenced property and which sets forth a few terms to be agreed upon.

**TENANT:** Neptune Cigars Parent Company, entity TBD

**LANDLORD:** C & A 900 Collins, LLC

**USE:** Tenant may use the leased Premises for the operation of a cigar retail store, cigar bar and lounge.

**PREMISES:** A 3,210 square foot subdivide of 900 Collins Avenue per the attached site plan Exhibit A.

**BASE RENT:** Ninety Dollars (\$90) per square foot, triple net plus sales tax.

**ANNUAL BASE RENT INCREASES:** Three percent (3%) per annum.

**ADDITIONAL RENT:** Tenant will pay its pro rata share of all Real Estate Taxes, Insurance and common area maintenance currently estimated at \$10.50 per square foot.

**TERM:** Ten (10) years from Rent Commencement.

**POSSESSION:** Upon substantial completion of Landlord's Work as defined in Delivery Condition and Landlord's Work.

**RENT**



**comras company**

1261 20th Street at West Avenue | Miami Beach, FL 33139 | L 305.532.0433 | F 305.532.5212 | [comrascompany.com](http://comrascompany.com)

EXHIBIT 126

DYLAN CECCHINI

7/9/19

Stenographer: Edward Kidd

**SBCB/NEPTUNE00318T**



**COMMENCEMENT:** The earlier of (i) one hundred twenty (120) days from Possession or (ii) Tenant opening for business.

**UTILITIES:** Directly metered and paid for by the Tenant.

**SIGNAGE:** Tenant shall have the right to install signage, subject to Landlord's reasonable approval and the City of Miami Beach.

**DELIVERY CONDITION & LANDLORD'S WORK:** Landlord shall deliver the premises in vanilla box condition inclusive of: HVAC, walls, ceiling, electrical, fire sprinklers, lighting, and one ADA compliant restroom.

**LANDLORD'S RESPONSIBILITIES:** Landlord to be responsible for the structure and roof and subgrade utilities. To be further defined in Lease.

**TENANT RESPONSIBILITIES:** Tenant shall directly maintain the building except for base structure, roof, and subgrade utilities which shall be the responsibility of the Landlord. Tenant shall repair and maintain the HVAC in good working order through a preventative maintenance program with a licensed and insured HVAC contractor. Should the HVAC fail beyond repair and/or reach end of useful life and need replacement during the term of the lease it shall be at the sole cost and expense of the Landlord. To be further defined in Lease.

**TENANT'S WORK:** Tenant may install such tenant improvements, fixtures and finishes in the Premises, as Tenant deems necessary or desirable. The Landlord will have the right to review and approve all plans for which Landlord's consent will not be unreasonably withheld.

**TI ALLOWANCE:** Landlord shall deliver the premises in vanilla box condition, as outlined in Delivery Condition and Landlord's work.

**ADVANCE RENT:** First (1<sup>st</sup>) month's Minimum and Additional Rent due at lease signing.

**SECURITY DEPOSIT:** Two (2) month's Minimum, Additional Rent and sales tax due at lease signing.

**GUARANTY:** Parent company to sign as Tenant.



comras company

1261 32nd Street of West Avenue | Miami Beach, FL 33139 | T. 305.532.0433 | F. 305.532.5210 | comras@comrascorp.com



- TRASH:** Tenant to have access to the building's trash dumpster
- SIGNAGE:** Tenant shall have the ability to install exterior signage above its storefront and the right to install a monument sign in substantially the same size and design as the rendering in Exhibit B; subject to code and the City of Miami Beach.
- EXCLUSIVE:** Tenant will have an exclusive to operate a cigar retail store, cigar bar and lounge at the property.
- BROKERAGE:** Tenant is represented by Avison Young. Landlord is represented by Comras Company. Brokerage commissions shall be paid by Landlord pursuant to a separate agreement.

This is a proposal and shall not be deemed to be a commitment by or binding upon the Landlord or Tenant until all appropriate documentation has been negotiated and executed by the parties. Should the foregoing meet with your approval, please indicate your acceptance in the space provided below.

I look forward to working with you towards the successful conclusion of this transaction.

Sincerely,

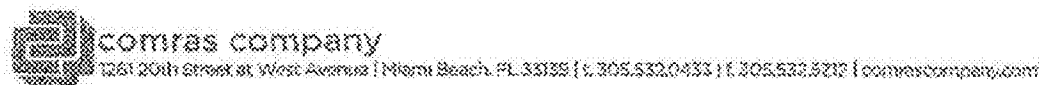
Jonathan Carter

cc: Dylan Cecchini  
Elie Mamye

AGREED TO AND ACCEPTED AS STATED ABOVE ON THIS 10 DAY OF NOVEMBER 2017.

Tenant:  
By: [Signature]  
Name: Christopher Noomani

AGREED TO AND ACCEPTED AS STATED ABOVE ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2017.





Landlord: C & A 900 Collins, LLC

By: *[Signature]*

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



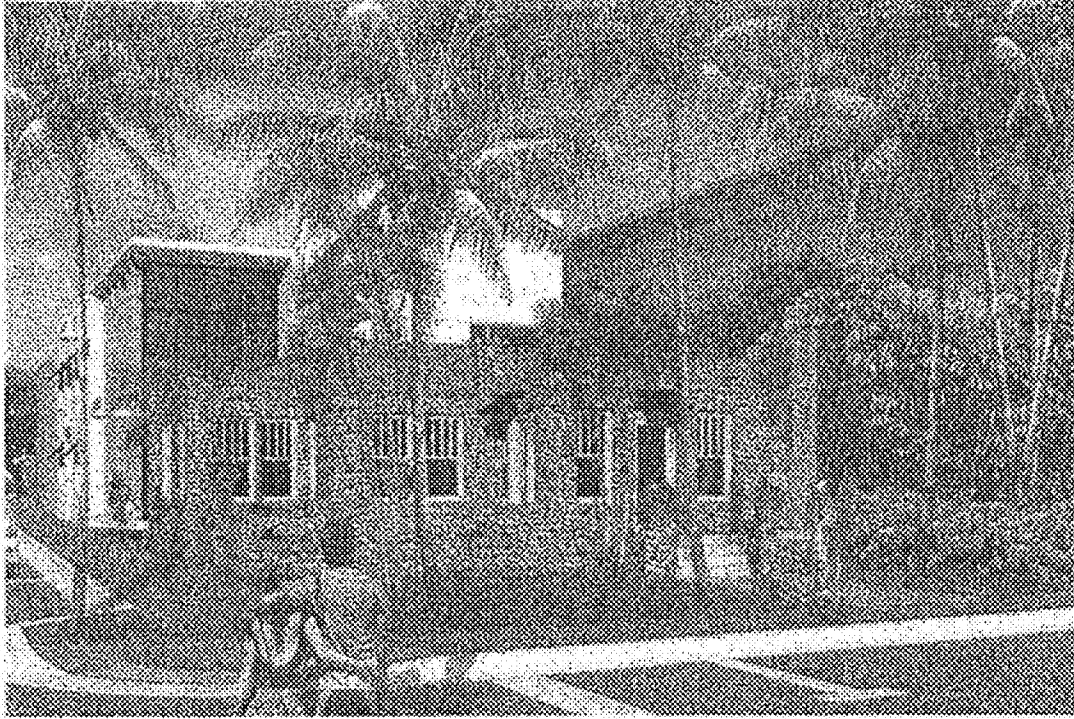
comras company

1261 30th Street at West Avenue | Miami Beach, FL 33139 | t. 305.532.6433 | f. 305.532.5212 | [comrascompany.com](http://comrascompany.com)

SBCB/NEPTUNE003184



**Exhibit B: Monument Sign**



**comras company**

1281 20th Street at West Avenue | Miami Beach, FL 33139 | t. 305.532.0433 | f. 305.532.3212 | [comrascompany.com](http://comrascompany.com)

# EXHIBIT C



# EXHIBIT C

**RETAIL LEASE**  
**BETWEEN**  
**C&A 900 COLLINS LLC**  
**AND**  
**SOUTH BEACH CIGAR BAR, LLC**

## Table of Contents

|   | <u>Page</u>                  |
|---|------------------------------|
| Section 1. EXHIBITS TO LEASE AND DEFINITIONS.....   | 1                            |
| Section 2. PREMISES – MEASUREMENT.....  | 2                            |
| Section 3. TERM - LEASE YEAR.....   | 2                            |
| Section 4. FIXED MINIMUM RENT.....  | 3                            |
| Section 5. ADDITIONAL CHARGES.....  | 3                            |
| Section 6. CONSTRUCTION OF PREMISES.....  | 5                            |
| Section 7. USE – OPERATION.....   | 6                            |
| Section 8. intentionally omitted.....   | Error! Bookmark not defined. |
| Section 9. UTILITIES.....   | 10                           |
| Section 10. INTENTIONALLY OMITTED.....  | 11                           |
| Section 11. RULES AND REGULATIONS.....  | 11                           |
| Section 12. ALTERATIONS; REMOVAL OF IMPROVEMENTS BY TENANT;<br>MECHANIC'S LIENS AND ROOF..... | 11                           |
| Section 13. REPAIRS BY LANDLORD.....  | 13                           |
| Section 14. REPAIRS BY TENANT.....  | 14                           |
| Section 15. WAIVER OF LIABILITY BY TENANT.....  | 14                           |
| Section 16. WAIVER OF SUBROGATION.....  | 15                           |
| Section 17. INDEMNIFICATION AND INSURANCE.....  | 15                           |
| Section 18. SIGNS – ADVERTISING.....  | 16                           |
| Section 19. ASSIGNMENT AND SUBLETTING.....  | 17                           |
| Section 20. DAMAGE OR DESTRUCTION.....  | 19                           |
| Section 21. EMINENT DOMAIN.....   | 20                           |
| Section 22. LANDLORD'S REMEDIES UPON DEFAULT.....   | 21                           |
| Section 23. HOLDOVER BY TENANT.....   | 23                           |
| Section 24. RIGHTS OF LANDLORD.....   | 24                           |

Table of Contents  
(continued)

|  | <u>Page</u> |
|--|-------------|
| Section 25. SUBORDINATION; ATTORNMEN T.....                              | 24          |
| Section 26. [INTENTIONALLY OMITTED.].....                                | 26          |
| Section 27. NO WAIVER BY LANDLORD.....                                   | 26          |
| Section 28. VACATION OF PREMISES.....                                    | 26          |
| Section 29. RECORDATION.....   | 26          |
| Section 30. RENT DEMAND; ACCORD AND SATISFACTION.....                    | 26          |
| Section 31. NOTICES.....   | 26          |
| Section 32. APPLICABLE LAW AND CONSTRUCTION.....                         | 27          |
| Section 33. TRANSFER OF LANDLORD'S INTEREST; LIABILITY OF LANDLORD. .... | 27          |
| Section 34. NO PARTNERSHIP.....  | 28          |
| Section 35. ESTOPPEL/ FINANCING.....                                     | 28          |
| Section 36. QUIET ENJOYMENT.....   | 29          |
| Section 37. BROKER.....  | 29          |
| Section 38. FORCE MAJEURE.....   | 29          |
| Section 39. AUTHORITY TO SIGN LEASE.....                                 | 29          |
| Section 40. SECURITY DEPOSIT.....  | 30          |
| Section 41. RADON GAS.....   | 31          |
| Section 42. INTENTIONALLY OMITTED.....                                   | 31          |
| Section 43. MOLD REQUIREMENTS.....                                       | 31          |

## RETAIL LEASE

THIS INDENTURE OF LEASE ("Lease") dated as of July \_\_\_\_, 2017, by and between C&A 900 COLLINS LLC, a Delaware limited liability company ("Landlord"), and South Beach Cigar Bar, LLC, a Florida limited liability company ("Tenant").

### RECITALS:

Now, therefore, for good and valuable consideration, the parties agree as follows:

#### Section 1. EXHIBITS TO LEASE AND DEFINITIONS.

(a) The following listed exhibits are attached to and made a part of this Lease:

EXHIBIT A. Lease Outline Drawings.

EXHIBIT B. Use Restrictions.

EXHIBIT C. Intentionally Omitted.

EXHIBIT D. Intentionally Omitted.

EXHIBIT E. Rules and Regulations

(b) The following definitions are applicable to the provisions of this Lease:

"Commencement Date" means the Possession Date; provided, however, that neither Fixed Minimum Rent nor Tenant's Pro-Rata Share of Maintenance, Real Estate Taxes and Insurance shall be due or payable to Landlord for the period ("Free Rent Period") from the Commencement Date through the date that is two hundred and seventy (270) days thereafter; provided, however, that the Free Rent Period shall be reduced day for day for each day that the Tenant has opened at the Premises sooner than two hundred and seventy (270) days following the Commencement Date.

"Legal Requirements" means all laws, ordinances, codes, rules and regulations of all applicable public authorities and the rules, regulations and requirements of any fire rating organizations or rating bureaus; and any rules, orders or directives issued by Landlord's insurance companies or agents.

"Premises" means the specific area leased to the Tenant.

"Property" means the real property on which the Building is situated.

"Possession Date" means the date that is the date on which Landlord shall have delivered of a fully executed counterpart of this Lease by Landlord.

"Pro-rata Share" means sixty-five percent (65%) of Common Expenses (defined below) of the Building.

## **Section 2. PREMISES – MEASUREMENT.**

(a) For the rent and upon the agreements contained in this Lease, Landlord leases to Tenant and Tenant rents from Landlord approximately 3,210 rentable square feet of space (the "Premises") in the retail building located at 900 Collins Avenue, Miami Beach, Florida ("Building"). The Premises includes appurtenances to the extent that same are exclusively appurtenant to the Premises. To the extent that the Building contains Common Areas, Landlord grants Tenant the exclusive use of such portion of the Common Areas as are immediately adjacent to Tenant's Premises (including, without limitation, such portions of the Common Areas as are situated on Collins Avenue); provided, however, that use of such Common Areas shall be in compliance with Legal Requirements. In addition, in no event shall Tenant install fixtures or store items of Tenant within Common Areas.

(b) It is acknowledged and agreed that the Premises contain approximately 3,210 rentable square feet of floor area and are outlined on Exhibit A for the purpose of more specifically locating the space leased to Tenant. In no event shall rent be increased or decreased based upon a re-measurement of the Premises (whether due to the installation of a mezzanine or otherwise).

(c) Landlord expressly reserves the use of the exterior surfaces of the exterior walls, the areas within those exterior walls which do not comprise Tenant's storefront (provided that Landlord shall not penetrate the interior surface of any such wall), the exterior surface of the unfinished ceiling (or finished ceiling if there is no unfinished ceiling) and the entire area above the Premises, including the roof, in connection with the construction and operation of other elements of the Building, the right to construct and operate facilities, businesses, offices and residences above and below the Premises, and the right to install, maintain, use, repair and replace utilities through the Premises in locations which will serve other parts of the Building, together with access thereto through the Premises. Landlord reserves the right to enlarge, expand, contract or relocate the physical space designated for other portions of the Building; provided, that Landlord shall minimize interference with Tenant's business operations in connection with same.

## **Section 3. TERM - LEASE YEAR.**

(a) The term of this Lease ("Term") shall be for a period of ten (10) lease years beginning with the "Commencement Date" and ending on the last day of the tenth (10<sup>th</sup>) lease year thereafter unless sooner terminated as provided herein.

(b) The first lease year shall begin on the Commencement Date and shall end on the last day of the twelfth (12<sup>th</sup>) full month thereafter. Subsequent lease years shall begin on the first day following the end of the preceding lease year. When the Possession Date and/or Commencement Date shall have been determined, as applicable, Tenant shall promptly execute an appropriate writing memorializing such date and deliver such writing promptly to Landlord. If Tenant shall have failed to promptly provide such writing to Landlord, the Possession Date

and/or Commencement Date, as applicable, may nonetheless be memorialized by Landlord and shall be communicated in writing by Landlord to Tenant. The failure of Tenant to execute a certificate in favor of Landlord and/or the failure of Landlord to memorialize the Possession Date and/or Commencement Date by letter to Tenant shall not affect the Possession Date or Commencement Date or the enforceability of this Lease upon Tenant. The determination of Landlord shall be final, binding and conclusive absent manifest error.

**Section 4. FIXED MINIMUM RENT.**

(a) Fixed Minimum Rent and Additional Charges due for each day commencing with the first day of a calendar month shall be computed on the basis of Tenant's monthly installments of Fixed Minimum Rent and Additional Charges hereinafter set forth. Tenant shall commence payment of Fixed Minimum Rent and Additional Charges (including any pro-rated charges for all days in a pro-rated month) on the Commencement Date (subject to the Free Rent Period set forth within the definition of Commencement Date).

(b) Tenant agrees without demand and without any deduction, set-off, counterclaim, or abatement, to pay to Landlord, at Landlord's office or such place as Landlord may from time to time designate, as the "Fixed Minimum Rent", the following sums for the following lease years:

| Lease Year | Annual Fixed Minimum Rent | Monthly Fixed Minimum Rent |
|------------|---------------------------|----------------------------|
| 1          | \$288,900.00              | \$24,075.00                |
| 2          | \$297,567.00              | \$24,797.25                |
| 3          | \$306,494.01              | \$25,541.17                |
| 4          | \$315,688.82              | \$26,307.40                |
| 5          | \$325,159.47              | \$27,096.62                |
| 6          | \$334,914.24              | \$27,909.52                |
| 7          | \$344,961.66              | \$28,746.815               |
| 8          | \$355,310.50              | \$29,609.21                |
| 9          | \$365,969.80              | \$30,497.48                |
| 10         | \$376,948.88              | \$31,412.41                |

Monthly installments of Fixed Minimum Rent shall be paid in advance on the first day of each and every calendar month.

(c) Intentionally Omitted.

**Section 5. ADDITIONAL CHARGES.**

(a) In addition to all other rents and sums payable hereunder, Tenant agrees to pay to Landlord, at the times hereinafter set forth, without deduction, set-off, counterclaim, or abatement, beginning on the Possession Date (prorated for a partial month), the following "Additional Charges," deemed to be rent for all purposes of this Lease:

(i) Maintenance, Real Estate Taxes and Insurance. Tenant shall pay to Landlord Tenant's Pro-rata Share of any and all Landlord's costs of repairing, refurbishing and maintaining the non-structural portions of the Common Areas, janitorial, maintenance, security, and other services to the Common Areas, power, fuel, water and any other utilities consumed in connection with the Common Areas, waste disposal and garbage removal from the Common Areas, landscaping care, system maintenance, materials and supplies, insurance and annual real property taxes and assessments and commercially reasonable management fee (which management fee shall not exceed 3% of the gross rental receipts of the Property) (the "Common Expenses"). Tenant shall pay to Landlord monthly in advance on the first day of each and every calendar month, one-twelfth (1/12th) of Tenant's Pro-rata Share. "Common Areas" means all improved and unimproved areas and facilities within or adjacent to the boundaries of the Property (including the sidewalks ancillary thereto) that are now or hereafter made available for the general use, convenience and benefit of Landlord, other persons entitled to occupy rentable square footage in the Property and/or their customers, patrons, employees and invitees. Landlord shall have the sole and exclusive control of the Common Areas.

(ii) Taxes. In addition and not in limitation of the Tenant's Pro-rata Share, Tenant shall pay to Landlord the amount of any tax or excise on rent or similar charges, including sales tax (except net income or estate taxes) which is assessed or imposed by any governmental authority upon Landlord or upon Tenant and which is so assessed, imposed or paid as a result of Landlord's ownership of the Premises or of this Lease or the rentals accruing under this Lease; and any tax or surcharge of any kind or nature imposed upon Landlord which is otherwise measured by or based in whole or in part upon the Premises or any portion thereof; it being the intention of the parties hereto that the rentals to be paid hereunder shall be paid to Landlord absolutely without deduction or set-off of any nature whatsoever.

(iii) Other Charges. All sums of a liquidated nature otherwise payable by Tenant to Landlord pursuant to the terms of this Lease.

(b) Payment. Unless otherwise stated, the foregoing amounts shall be paid by Tenant within thirty (30) days after Landlord's invoice; or said amounts may be estimated by the Landlord in which event Landlord shall notify Tenant of Landlord's estimate. Tenant shall pay said estimate in advance, on the first day of each and every calendar month. When Landlord has calculated the exact amount actually payable by Tenant, Landlord shall deliver to Tenant an annual statement for such calendar year. Any deficiency in payment by Tenant for any item shall be paid by Tenant to Landlord upon receipt of notice. Any surplus in respect thereto shall be credited against the next ensuing installments of Landlord's estimates for the next year. The amounts payable by Tenant for the first year and last year of this Lease shall be prorated for the parts of such first and last years that Tenant is obligated to pay Additional Charges under this Lease including any fraction of a month.

Notwithstanding anything contained herein to the contrary, Tenant's obligation hereunder to reimburse Landlord for payment of real estate taxes shall not include penalties imposed for late payment of any real estate tax or assessment and shall not include any real estate tax or assessment levied prior to the Commencement Date. Nothing herein contained shall be



construed to include as a real estate tax any inheritance, estate, succession, transfer, gift, franchise, corporation, income, net profit tax or capital levy that is or may be imposed on Landlord other than the tax specifically stated in the preceding paragraph. In regard to any assessment or charge that may be payable in installments, Tenant's share of taxes shall be determined as if Landlord had elected to pay the assessment in installments, and Tenant shall be responsible for only those installments or parts of installments which would be attributable to the Term of this Lease.

Landlord shall endeavor to promptly deliver to Tenant, annually, a statement in reasonable detail setting forth the total amount of real estate taxes payable for the Building or the tax parcel which includes the Premises for the subject year and Tenant's Pro-rata Share thereof.

(c) Interest - Late Payment Charge. Any payment due from Tenant not received within ten (10) days of the date herein specified to be paid shall bear interest from the eleventh (11<sup>th</sup>) day following the date such payment was due to the date of actual payment at the rate of twelve percent (12%) per annum or the rate then permitted by Legal Requirements, if less. In addition, in the case of a payment due from Tenant, Tenant shall pay to Landlord a late payment charge of three percent (3%) of any amount not received by Landlord within ten (10) days from the date required to be paid hereunder; provided, however, that Landlord shall not assess the late payment charge with respect to the first late payment that occurs within any lease year.

#### Section 6. CONSTRUCTION OF PREMISES.

(a) Tenant acknowledges that Landlord and Landlord's agents and employees have made no representations or warranties with respect to the Premises or the physical condition thereof and none shall be implied in law. Subject to the provisions of this Lease, Tenant shall accept the Premises "as is". Tenant acknowledges that, except as expressly set forth in this Lease, Landlord makes no representation or warranty, express or implied in fact or by law, as to the nature or condition of the Premises or its fitness or availability for any particular use, or the income from or expenses of operation of the Premises. Except as specifically set forth in this Lease, Landlord shall have no obligation whatsoever to alter, improve, decorate or otherwise prepare the Premises for Tenant's occupancy. Except as specifically set forth in this Lease, Tenant acknowledges and agrees that Landlord has not made, and does not make, any representation or warranty, and Landlord shall have no further obligation with respect to any matter relating to the delivery of the Premises.

Landlord represents and warrants to Tenant as follows:

(i) that possession of the Premises shall be delivered to Tenant in vacant and broom clean condition and that, as of the date thereof, the rights of all prior occupants to possess the Premises shall have been legally terminated;

(ii) that upon delivery of the Premises to Tenant, the Premises shall be in compliance with historic certifications required by the City of Miami Beach;

(iii) that upon delivery of the Premises to Tenant, the Premises shall be free of asbestos other than legally encapsulated asbestos, if any;

- (iv) that Landlord has good title to the Premises;
- (v) that Landlord has the right to enter into this Lease and no approval of any third party is required or if such approval is required, Landlord has obtained such approval; and
- (vi) that upon delivery of the Premises, connections to water, gas and sewer lines currently service the Premises.

(b) Any and all work (including, without limitation, cosmetic work) of any nature or description whatsoever that Tenant desires or is required to do in the Premises shall be known as "Tenant's Work." Tenant's Work shall be done in conformance with plans and specifications ("Tenant's Plans") prepared by Tenant or its agents. Tenant shall use only new high quality materials and shall cause all work to be performed in a good and workmanlike manner and in accordance with all Legal Requirements. All of Tenant's Work shall be subject to Landlord's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed but shall otherwise be subject to the requirements of Section 12. Subject to the provisions of Section 12, Tenant shall be obligated to perform initial work ("Initial Work") to fixture the Premises as a first class retail establishment for the sale of cigars, tobacco and related accessories (which may include a cigar lounge); such initial work shall include (A) the separation of electricity and water from other premises in the Building, the installation of meters for the consumption of electricity and water as well as grease traps, ventilation and similar systems to the extent necessary or desirable in connection with Tenant's use of the Premises pursuant to Section 7 and (B) may include, at Tenant's option, the installation of a mezzanine in accordance with Legal Requirements. The Initial Work shall be completed by Tenant not later than one hundred and eighty (180) days following the Commencement Date (the "Latest Opening Date"). Tenant acknowledges that the look and feel of the Building are of paramount importance to Landlord and Landlord would not agree to the execution or delivery of this Lease without the foregoing approval rights. (If Tenant shall have installed the mezzanine, Tenant shall not be required to remove the mezzanine upon the expiration or earlier termination of this Lease).

(c) Tenant shall perform or cause Tenant's contractors and subcontractors to perform all work, repairs, alterations or improvements at any time following the delivery of the Premises to Tenant and continuing during the Term of this Lease in a manner so as to avoid any labor dispute which causes or is likely to cause stoppage or impairment of work, delivery or any other services or any operations in the Building. In the event there shall be any such stoppage or impairment as the result of any such labor dispute or potential labor dispute, Tenant shall immediately undertake such action as may be reasonably necessary to eliminate such dispute or potential dispute.

#### **Section 7. USE - OPERATION.**

(a) Tenant shall initially open for business as first class first class retail establishment for the sale of cigars, tobacco and related accessories (which may include a cigar lounge) ("Cigar Bar") not later than the Latest Opening Date. Tenant shall be permitted to serve alcoholic beverages subject to Tenant's obtaining necessary licenses and otherwise complying

with Legal Requirements and the terms of this Lease (including, without limitation, dram shop insurance). Tenant covenants that the Premises shall be opened for business, kept open for business and used by Tenant and any assignee, subtenant or occupant, continuously during the Term of this Lease, except for the Permitted Closing Periods provided for herein below. The Premises may contain ancillary office space, storage and employee areas. In no event shall Tenant use the Premises in violation of the restrictions set forth on Exhibit B. Tenant agrees that Tenant will not use or permit or suffer the Premises or any part thereof to be used for any other business or purpose than that specifically defined and permitted by this Section 7. Tenant acknowledges that the covenant to use the Premises as set forth in this Section 7 is a material inducement for Landlord to enter into this Lease and without such covenant, Landlord would not have entered into this Lease. Therefore, Landlord may in Landlord's sole discretion withhold consent to any requested change of the use of the Premises. Except with respect to tenants having executed leases prior to the date hereof, Landlord agrees not to lease other space within the Building to any business the exclusive purpose of which is to (i) sell cigars or cigar paraphernalia or (ii) operate a cigar lounge.

(b) Subject to Landlord's advance consent, Tenant may employ a trade name owned or licensed to it or its affiliates so long as such trade name is not offensive in nature (of which Landlord shall be the sole but reasonable judge).

(c) So long as Tenant is not in default of this Lease, Landlord agrees that it shall not lease any other space in the Building as a Cigar Bar; provided, however, that the ancillary sale of tobacco and related products shall not be deemed a violation hereof (for example, the sale of cigarettes by a convenience store).

(d) Tenant, at Tenant's sole cost and expense, shall obtain all building permits, use and occupancy permits and licenses required by applicable governmental authorities whether for any construction or remodeling by Tenant or otherwise (including, without limitation the conduct of Tenant's business); Tenant shall operate its business in accordance with all Legal Requirements. Tenant agrees to comply with all Legal Requirements applicable to the Premises. Tenant, at Tenant's cost and expense, shall make all installations, replacements, alterations and any and all repairs to the Premises (including with respect to Building systems that exclusively serve the Premises) required to comply with such Legal Requirements including, without limitation, replacements, alterations and repairs which relate to fire prevention, detection, control or extinguishment, or which are structural in nature. Tenant shall obtain Landlord's written approval before commencing structural work.

(e) Daily, subject to Legal Requirements, the Premises shall be open for business to the public at such hours as Tenant shall elect. The Premises shall be regularly open for business but may be closed, however, for the purpose of making repairs or improvements or for vacations and the like (but, in each instance, not to exceed thirty (30) days) or during the period of strikes, lockouts, or other causes beyond Tenant's control, including severe weather emergencies (the "Permitted Closing Periods"), so long as Tenant shall make all reasonable efforts to shorten such periods. Landlord reserves the right to permit certain tenants to observe different hours of business operation.

(f) Tenant at Tenant's expense shall: purchase or rent a dumpster or compactor unless Landlord furnishes same for Tenant; keep all rubbish, garbage, trash and refuse only within the Premises and only in rat-proof and odor proof containers which shall be delivered daily to and emptied by Tenant in the dumpster or compactor designated by Landlord (and Tenant shall keep all areas adjacent to the dumpster or compactor reasonably clear of rubbish, garbage, trash and refuse emanating from the Premises); cause said dumpster or compactor to be emptied and all garbage, rubbish and trash disposed of when reasonably required by a reputable waste hauler (unless Landlord elects to furnish such service and charge Tenant as provided in this Lease, which charge must be reasonable and not exceed the amount Tenant would pay to the hauler of its choice); not permit any rubbish, garbage, trash and litter emanating from the Premises to accumulate outside of the Premises; keep any vestibules or entries to the Premises and sidewalks and other Common Areas adjacent to the Premises free and clear of all trash and refuse; not use any objectionable advertising medium such as loudspeakers, phonographs, sound amplifiers, or the reception of radios or television broadcasts; not place a load upon any floor which exceeds the floor load which the floor was designed to carry; not cause or permit objectionable odors to emanate or to be dispelled from the Premises; keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the Premises; regularly exterminate the Demised Premises and all areas in which Tenant stores rubbish outside of the Premises. Tenant shall contract with a trash removal company and extermination company reasonably acceptable to Landlord and shall provide evidence of such contract to Landlord promptly following request therefor.

(g) Tenant shall not (either with or without negligence) cause or permit within the Premises the escape, disposal or release of any biologically- or chemically-active or other hazardous or toxic substances, materials or wastes (collectively, "Hazardous Substances"). Tenant shall not allow the generation, storage or use of any Hazardous Substances within the Premises in any manner unless in accordance with Legal Requirements and approved in advance in writing by Landlord. Any use of Hazardous Substances shall only be in the ordinary course of Tenant's business and in accordance with the highest standards prevailing in the industry for the generation, storage and use of such Hazardous Substances. Without limitation, Hazardous Substances shall include those described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., any applicable state or local laws and the regulations adopted under these acts, petroleum and related by-products, hydrocarbons, radon, asbestos, urea, formaldehyde and polychlorinated biphenyl compounds. If Tenant uses Hazardous Substances within the Premises and Landlord or any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of Hazardous Substances because of such use, then the reasonable costs thereof shall be reimbursed by Tenant to Landlord upon demand as Additional Charges. In addition, Tenant shall execute affidavits, representations and the like from time to time at Landlord's request concerning Tenant's best knowledge and belief regarding the presence of Hazardous Substances in the Premises. Further, Tenant shall indemnify and save Landlord harmless from and against any and all clean-up costs, remedial or reasonable restoration work, claims, judgments, damages, penalties, fines, costs, liabilities or losses, including, without limitation, diminution in value of the Premises, and reasonable attorneys', consultants' and expert fees, which arise during or after the Term of this Lease solely as a result of any Hazardous Substances being generated, released, used or disposed of in or on, or brought to, the Premises by Tenant

and conclusively established to have been caused solely by Tenant. The within covenants shall survive the expiration or earlier termination of the Term.

**Section 8. TENANT IMPROVEMENT ALLOWANCE.**

Within forty five (45) days after fulfillment of the requirements set forth below, Landlord agrees to pay to Tenant One Hundred Twenty Five Thousand Dollars (\$125,000.00) as and for Landlord's contribution to Tenant's Initial Work ("Construction Allowance"). Tenant's FEIN: 82-2126313. The requirements are:

- (A) Completion of Tenant's Initial Work, in a manner satisfactory to Landlord's Architect.
- (B) Presentation to Landlord of the following:
  - (i) General Contractor's executed and notarized originals of Sworn Statement and final Waiver of Lien/Affidavit form listing all subcontractors and material suppliers and the amounts they were paid for work and materials supplied for the Premises;
  - (ii) Executed and notarized final Waiver of Lien/Affidavit form from every subcontractor and material supplier, and other evidence satisfactory to Landlord that the general contractor and every subcontractor and material supplier has, in fact, been paid in full;
  - (iii) Waivers/Affidavits must be satisfactory to Landlord.
- (C) Presentation to Landlord of a Certificate of Occupancy.
- (D) Tenant shall have opened its business to the general public for business.
- (E) Tenant shall have not been in default under the terms and conditions of this Lease.

Unless Landlord receives verification that the general contractor and all subcontractors and material suppliers have been paid in full, Landlord may pay Tenant's general contractor, subcontractors and material suppliers directly and deduct said amounts from the Construction Allowance, or Landlord may issue joint checks for all or part of the Construction Allowance to the general contractor and the subcontractors and material suppliers.

If this Lease terminates for any reason prior to its stated expiration date, Tenant shall reimburse Landlord for the unamortized amount of the Construction Allowance (based on a straight-line amortization).

The Construction Allowance may not be used to offset Fixed Minimum Rent, Additional Charges or other amounts due from Tenant under this Lease.

## Section 9. UTILITIES.

(a) As part of Tenant's Initial Work, Tenant shall obtain utility services from the applicable utility providers and Tenant shall promptly pay for utilities rendered or furnished to the Premises from the date Landlord delivers possession of the Premises to Tenant and continuing throughout the Term of this Lease, including water, electricity, sewer charges, telephone, internet, cable and gas. To the extent that a particular utility is not metered, Tenant shall install a meter to measure consumption. In the event that a particular utility is not metered and charged directly against the Premises, Tenant will pay to the Landlord within thirty (30) days after receipt of an invoice, all such utility (including, without limitation, water and sewer) charges at city or utility rates (without mark up) for the amount of use registered during the Term. Tenant shall be solely responsible for all water charges resulting from any overhead sprinkling system and any costs incurred by Landlord to read said meters.

(b) Tenant shall have the right to purchase electric service from the supplier of Tenant's choice, as determined by Tenant in its sole discretion, provided Tenant's choice of electric supplier shall not materially interfere with the electricity service of Landlord or any other tenant of the Building. In such event, Tenant's electricity service shall at all times be separately and directly metered, and Tenant shall be invoiced by and pay directly to its supplier for all electricity service in the Premises. Landlord shall not attempt to change or convert Tenant's then existing electricity provider account to any other electricity provider.

(c) Tenant shall pay all charges for all public or private utility services and all sprinkler systems (if applicable) and protection services at any time rendered to or in connection with the Premises or any part thereof; shall comply with all contracts relating to any such services; and shall do all other things required for the maintenance and continuance of all such services.

(d) Throughout the duration of Tenant's occupancy, Tenant shall keep the utility meters and submeters within or exclusively serving the Premises in good working order and repair, at Tenant's sole cost and expense, in default of which Landlord may, on thirty (30) days' notice to Tenant, cause such meters and equipment to be replaced or repaired and collect the cost thereof from Tenant, as Additional Charges.

(e) Tenant agrees that Tenant's use of electrical capacity ("Electric Service") in the Premises shall in no event exceed the capacity of the existing conductors, feeders, risers, wiring installations or other equipment servicing the Premises. Tenant, at Tenant's expense, shall contract directly with the public electric utility company for such Electric Service. In connection with the Electric Service, Tenant, as part of Tenant's Plans, shall deliver to Landlord a commercially standard load workletter which shall be subject to Landlord's reasonable consent and approval.

Section 10. INTENTIONALLY OMITTED.

Section 11. RULES AND REGULATIONS.

LANDLORD RESERVES THE RIGHT TO AND TENANT AGREES THAT LANDLORD MAY AT ANY TIME AND FROM TIME TO TIME FOR THE GENERAL WELFARE OF THE BUILDING, THE AVOIDANCE OF NUISANCE, OR THE MAINTENANCE OF A GOOD REPUTATION, SAFETY, ORDER AND CLEANLINESS IN THE PREMISES AND AT THE DEVELOPMENT, IMPOSE REASONABLE RULES AND REGULATIONS OF GENERAL APPLICATION GOVERNING THE CONDUCT OF TENANTS IN THE BUILDING AND THE USE OF THE PREMISES OR COMMON AREAS. TENANT AGREES TO COMPLY WITH AND PERFORM ANY AND ALL SUCH RULES AND REGULATIONS IMPOSED BY LANDLORD AS IF THEY HAD EXISTED AND BEEN ATTACHED HERETO AT THE TIME OF EXECUTION OF THIS LEASE. THE RULES AND REGULATIONS IN FORCE AND EFFECT AT THE TIME OF THE EXECUTION OF THIS LEASE AND WHICH MAY BE SUPPLEMENTED OR AMENDED BY LANDLORD AT ANY TIME AND FROM TIME TO TIME ARE ATTACHED HERETO AS EXHIBIT E, MARKED "RULES AND REGULATIONS," AND MADE A PART OF THIS LEASE AS IF EXPRESSLY WRITTEN.

Section 12. ALTERATIONS; REMOVAL OF IMPROVEMENTS BY TENANT; MECHANIC'S LIENS AND ROOF.

(a) Tenant shall not make any alterations, changes or improvements to the Premises, interior or exterior, structural or nonstructural, without first obtaining Landlord's prior written consent. Tenant shall submit to Landlord Tenant's Plans prepared by a licensed Florida architect showing all of the alterations, changes or improvements Tenant desires to make. Following receipt of Tenant's Plans, Landlord shall approve or deny consent to any (1) non-structural alteration within fifteen (15) days and (2) structural alteration within thirty (30) days. The failure of Landlord to reply within such periods shall be deemed denial of consent. Tenant shall revise (and re-revise if necessary) Tenant's Plans in accordance with Landlord's comments and thereafter resubmit same using the foregoing procedure until approval is granted or denied. Tenant shall pay all costs and expenses in connection with any alterations, changes and improvements made by or through Tenant, and Tenant shall make such alterations, changes and improvements in a good and workmanlike manner, in accordance with all Legal Requirements using only new high quality materials and using only labor which is compatible with other labor then being used in the Building. Tenant shall reimburse Landlord for any out-of-pocket costs incurred by Landlord in the review and approval of Tenant's Plans. Prior to the making of such alterations, changes and improvements, Tenant shall procure all necessary permits and builder's risk insurance covering such alterations during the period of construction.

(b) Except as otherwise provided, all signs, furnishings, trade fixtures and equipment installed in or on the Premises by Tenant and paid for by Tenant shall remain the property of Tenant and shall be removed by Tenant upon the expiration of the Term or earlier termination of this Lease. Tenant shall repair any damage caused by such removal and shall



restore the Premises to its condition prior to installation. If Tenant shall not have removed all of such property upon the expiration of the Term or termination of this Lease, Landlord shall have the right to treat such remaining property as abandoned and keep all or any portion thereof for Landlord's account or dispose of all or any portion of such property in any way determined by Landlord at Tenant's expense; and Tenant shall reimburse Landlord for the cost of such disposal. Notwithstanding the foregoing, all floor and wall coverings, sinks, vanities, light fixtures, and the complete electrical, plumbing, air conditioning and heating systems, including ducts, diffusers, grills, controls and all other equipment and parts related to such systems, shall be and remain in the Premises at all times for the benefit of Landlord.

(c) Tenant shall not do or suffer anything to be done whereby the Premises and/or the Building may be encumbered by any mechanics' liens or any other liens. Tenant shall, whenever and as often as any such liens are filed against the Premises and/or the Building purporting to be for labor or material furnished or to be furnished to Tenant, discharge the same of record within thirty (30) days after the date of written notice of such filing by payment, bonding or otherwise as provided by law. Tenant, upon reasonable notice and request in writing from Landlord, shall also defend Landlord, at Tenant's sole cost and expense with counsel reasonably approved by Landlord, any action, suit or proceeding which may be brought on or for the enforcement of any such lien and will pay any damages and satisfy and discharge any judgments entered in such action, suit or proceeding and save harmless Landlord from any liability, claim, damages, costs and expenses, including reasonable attorneys' fees resulting therefrom. In default of Tenant procuring the discharge, as aforesaid, of any such lien, Landlord may, without further notice, procure the discharge thereof by bonding, payment or otherwise, and all costs and expenses to which Landlord may be put in obtaining such discharge shall be paid by Tenant as Additional Charges within thirty (30) days after notice from Landlord of the amount due.

(d) Notwithstanding anything to the contrary, Tenant shall not be deemed to be a partner, joint venturer or agent of Landlord; and in no event shall any lien resulting from Tenant's improvements to the Premises encumber Landlord's underlying estate. Tenant agrees that it shall not enter into any contract (and that its contractors will not enter into any subcontracts) for alterations, improvements or repairs to the Premises unless the following language is included in such contract:

"Notwithstanding anything herein contained to the contrary, the contractor acknowledges that Tenant holds only a leasehold interest in the property which is the subject of this contract. Tenant is not the agent or the owner of the property, and no lien resulting from work performed under this contract shall attach to the interest of such owner."

(e) Tenant, its agents, employees or contractors shall not go upon the roof for any reason, including any repairs, maintenance or replacements of Tenant's heating, air conditioning, or other equipment on the roof without first obtaining Landlord's prior written approval, including approval of the contractor to perform such work, and subject to Landlord's right to require its roofing contractor to do any work affecting the roof. Tenant shall not make or permit any installations through, to or on the roof, ceiling, or any portions of the building above the Premises without first obtaining Landlord's prior written consent to the work to be done and the contractor to perform such work; and Landlord shall have the right to require Tenant to use



Landlord's roofing contractor in connection with any work affecting the roof of the Premises. Tenant shall do nothing which will affect Landlord's roofing warranties, recognizing that Landlord's roofing warranty may be jeopardized by any use of the roof by Tenant, its employees, agents or contractors.

(f) Tenant acknowledges that the Building is located in the "Art Deco" district and is on the Historic Landmark's registry. The exterior storefront of the Building and the interior flooring are considered part of the historical landmark components of the Building. Tenant shall comply with all Legal Requirements in connection with Tenant's Work including, without limitation, any alterations to the storefront, flooring and the Building.

**Section 13. REPAIRS BY LANDLORD.** Except as otherwise provided in this Lease, Landlord will, within a reasonable time after receipt of written notice from Tenant of the necessity of such repair, keep the structural roof, structural components of the exterior walls, structural floor slabs and foundation portions of the Premises and the Building in good and tenantable condition and repair during the Term of this Lease. Within a reasonable time after receipt of written notice from Tenant that repairs for which Landlord is responsible are required, Landlord shall make such repairs. Except as set forth herein, Landlord shall not be required to make any other improvements or repairs of any kind with respect to the Premises and appurtenance thereto. Notwithstanding the foregoing, Tenant shall pay to Landlord the cost of any repairs and replacements to any portion of the Premises or the building in which the Premises are located necessitated by reason of: (a) the acts, neglect, omission, fault or default of Tenant, or Tenant's agents, employees, invitees, contractors or customers, (b) the operations of Tenant or the storage of Tenant's merchandise within the Premises, (c) acts of trespassers, thieves or other unauthorized persons who enter or attempt to enter the Premises or the building in which the Premises are located, and (d) structural and exterior work done or installed by Tenant. Further, and notwithstanding anything in this Lease to the contrary, Tenant shall pay to Landlord the cost of all repairs, alterations and replacements to the property which Landlord is required to maintain which may be required as the result of repairs, alterations, other improvements or installations made by Tenant or the agent(s) of Tenant. Landlord shall use commercially reasonable efforts to make any repairs, additions or alterations in, about or affecting the Premises or adjoining premises during non-business hours and shall promptly restore the Premises following any such work or activity.

Tenant acknowledges that Landlord may install scaffolding or a sidewalk bridge in front of and adjacent to the Building in connection with work Landlord may be performing to the Building or portions thereof during the Term. Subject to Landlord's compliance with this paragraph, Tenant agrees that the installation of such sidewalk bridge or scaffolding, or the work performed by Landlord, shall not subject Landlord to any liability to Tenant or give Tenant any right of offset, reduction or claim against Landlord. Landlord agrees, however, that such sidewalk bridge or scaffolding shall, to the extent possible, shall not materially block Tenant's entrances to the Premises, shall be lighted and Landlord will, at no cost to Tenant, install temporary signage of Tenant, as provided by Tenant, provided same is in compliance with the Legal Requirements. Landlord agrees to remove any such scaffolding or sidewalk bridge promptly after Landlord has completed the work which caused the need for the installation of such sidewalk bridge scaffolding. Landlord agrees to diligently prosecute all such work for which such scaffolding was installed. Except for an emergency, Landlord shall use reasonable

efforts such that no scaffolding is installed for a period of fifteen (15) days prior to the "grand opening" of Tenant's store and for a period of sixty (60) days thereafter.

**Section 14. REPAIRS BY TENANT.** Except as otherwise specifically provided in Section 13 above, Tenant, at Tenant's expense, shall make all repairs and replacements to keep and maintain the Premises in good condition and repair, including, but not limited to, the heating, ventilating, and air-conditioning system (HVAC) and the hot water, electrical, and other mechanical installations exclusively serving the Premises (whether or not located within the Premises); the plumbing and sewer systems exclusively serving the Premises; the exterior and interior portions of all doors including door checks and hardware; grease traps and similar systems (whether or not located within the Premises); all windows including hardware and other appurtenances, and all other glass and ceiling; and Tenant shall promptly replace all broken or cracked glass. All items that Tenant shall replace during the Term of this Lease shall be new and be of equal or better quality, specifications, type and style than the item being replaced. Tenant will maintain and keep in good condition and repair the storefront and sidewalk and all structural and exterior work done or installed by Tenant. Tenant shall not permit any waste, damage or injury to the Premises. Tenant shall keep in full force and effect a contract with a reputable HVAC contractor approved in advance in writing by Landlord for not less than the semi-annual inspection, maintenance, and repair of the air-conditioning and heating systems serving the Premises, including oiling, filter changes, required compliance with any environmental laws, rules, regulations, ordinances with respect to such systems, and similar maintenance and minor repair procedures. Tenant shall furnish a current copy of said contract to Landlord during the entire Term of this Lease. Tenant shall further keep the Premises clean, attractive and free of rubbish, rubble, debris, insects, rodents and other pests. Tenant, at its sole cost and expense, shall be responsible, at all times during the Term of this Lease, for the removal of (A) dirt and debris from the sidewalk in front of and immediately adjacent to the Premises and (B) graffiti from the façade of the Building.

The foregoing notwithstanding, if Tenant shall have installed an HVAC system (of a new and first class nature) and properly maintained said system and, during the term of this Lease, replacement of such system becomes necessary (other than due to the misuse, neglect, action or omission of Tenant), Landlord shall replace such system.

**Section 15. WAIVER OF LIABILITY BY TENANT.** Landlord and Landlord's agents and employees shall not be liable for and Tenant waives and releases all claims for damage to person or property, loss of business, loss due to business interruption, loss of income, and any and all other losses or damages sustained by Tenant or any person claiming through Tenant resulting from any accident or occurrence in or upon the Premises or any other part of the Building unless such accident or occurrence is as a result of a direct action of Landlord or Landlord's gross negligence.

Subject to the foregoing, such waiver shall include but not be limited to claims resulting from the following: (a) any equipment or appurtenances becoming out of repair; (b) injury done or occasioned by wind; (c) any defect in or failure of plumbing, heating, cooling or air conditioning equipment, sprinkler system, electric wiring, gas, pipes and installations, stairs, rails or walks; (d) broken glass; (e) the backing up of any sewer pipe or downspout; (f) the bursting, leaking or running of any pipe, line, tank, water closet, waste pipe, or drain upon or about the

Premises; (g) the escape of steam or hot water; (h) water coming through the roof, skylight, trap door, stairs, walks, foundation, exterior walls, or any other place upon or near the Premises; (i) the falling of any fixture, plaster or stucco; and (j) any act, omission or negligence of trespassers, thieves, or cotenants or of other persons or occupants of the building, or adjoining or contiguous buildings or of owners of adjacent or contiguous property.

**Section 16. WAIVER OF SUBROGATION.** Notwithstanding anything in this Lease to the contrary, Landlord and Tenant agree, that, with respect to any loss which is or is required to be covered by the insurance of Tenant or Landlord, or the sublessees, assignees or transferees of Tenant or other occupants of the Premises (notwithstanding any deductible or self insurance), regardless of cause or origin, including negligence, the rights, if any, of Landlord or Tenant or any sublessee, licensee or other occupant of the Premises against the party causing such damage or destruction or against the employees, agents, sublessees or licensees of such party, with respect to such damage or destruction and with respect to any loss resulting therefrom, including the interruption of the business, are hereby waived, and the parties further mutually agree that their respective insurance companies shall have no right of subrogation against the other on account thereof.

**Section 17. INDEMNIFICATION AND INSURANCE.**

(a) Except due to the gross negligence or willful misconduct of Landlord, Tenant shall and does hereby indemnify Landlord and save Landlord harmless from and against any and all claims, actions, damages, liability, cost and expense in connection with loss, damage or injury to persons or property occurring in, on or about, or arising out of the Premises or any loading platforms, or the use or occupancy thereof, or the conduct or operation of Tenant's business, or in connection with any construction or alterations, or due to water leakage, or occasioned wholly or in part by any act or omission of Tenant, Tenant's agents, invitees, contractors, customers or employees.

(b) Tenant shall, at its own expense, keep in full force and effect commercial general liability insurance with "personal injury", property damage, contractual liability and, if Tenant serves or sells any alcoholic beverages, host and liquor liability coverage, with minimum single limits of TWO MILLION DOLLARS (\$2,000,000.00) per occurrence, written on an occurrence basis.

(c) If Tenant sells alcoholic beverages for consumption upon the Premises, dram shop insurance in an amount reasonably satisfactory to Landlord; and

(d) If a sprinkler system is located in the Premises, provide sprinkler leakage insurance in amounts reasonably satisfactory to Landlord, and provide and keep in force a sprinkler supervisory, maintenance and alarm service contract. A separate sprinkler leakage insurance policy shall not be required provided that damage from sprinkler leakage is not excluded under either Tenant's commercial general liability policy or Tenant's property policy.

(e) Provide for the benefit of Landlord, business interruption and rent loss insurance in an amount equal to at least the sum of twelve (12) months' Fixed Minimum Rent

and Additional Charges plus twelve (12) months' insurance premiums and the estimated amount of annual maintenance costs for the Premises.

(f) Such other or additional insurance as Landlord deems reasonably necessary.

(g) Tenant shall obtain special form, difference in conditions and all-risk insurance coverage on all personal property, leasehold improvements and betterments, furnishings, furniture, trade fixtures, floor covering, contents and merchandise in an amount equal to their full replacement cost.

(h) All of the insurance set forth in this section shall be in form and with companies licensed and admitted in Florida and shall provide that said policies shall not be subject to cancellation, termination or change except after at least thirty (30) days prior written notice to Landlord. All insurance provided by Tenant as required herein shall name Landlord as an additional named insured and such other parties as Landlord shall identify as additional insured. The policy or policies or duly executed certificates for the same, shall be deposited with Landlord on the date Tenant first enters the Premises to perform work, fixture or otherwise and upon renewals of such policies not less than fifteen (15) days prior to the expiration of the term of such coverage. If Tenant fails to comply with such requirements, Landlord may, after thirty (30) days prior written notice to Tenant, but shall not be obligated to, obtain such insurance and keep the same in effect and Tenant shall pay Landlord the premium cost thereof upon demand. In any event, Tenant shall be entitled to self-insure the risk of damage to the Premises' plate glass. Tenant shall have the right to insure and maintain the insurance coverages required by this Lease under blanket insurance coverages covering other premises so long as such blanket insurance policy specifies stated value for the Premises and complies with the amounts of insurance and other requirements hereof.

(i) Intentionally Omitted.

#### Section 18. SIGNS – ADVERTISING.

(a) Tenant agrees not later than the date upon which Tenant shall open for business to erect an appropriate sign advertising Tenant's business on the portion of the exterior of the Premises designated by Landlord for the placement of Tenant's sign in conformity with Tenant's usual signage at other of Tenant's locations. The size, type, design, wording, appearance and location of all signs shall require Landlord's written approval which will not be unreasonably withheld prior to installation. It is understood and agreed that the signage containing cigar manufacturer logos shall not be deemed objectionable. All of Tenant's signage shall be located above Tenant's storefront or in such other areas as may be reasonably acceptable to Landlord. In addition and not in limitation, all signs shall comply with all Legal Requirements of appropriate governmental authorities including, without limitation, those of the City of Miami Beach, Art Deco district overlay committee, Board of Adjustment and/or Historic Preservation Board, and all necessary permits or licenses shall be obtained by Tenant prior to erecting said sign. Tenant shall maintain all signs in good condition and repair, and shall save the Landlord harmless from injury to person or property arising from the erection, use, maintenance, or

removal of said signs. Upon vacation of the Premises, Tenant shall remove all signs and repair any damage caused thereby.

(b) No sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed on any part of the outside of the Premises, or on the building of which the Premises are a part, or on the exterior side of any window, nor shall any awning, antenna, satellite dish, or other projecting thing be attached to the roof or outside walls of the Premises or the building of which the Premises are a part, without first obtaining the Landlord's written approval in each instance.

(c) To the extent permitted by Legal Requirements, display lights and lighting for Tenant's storefront and exterior sign shall be operated until at least 9:00 p.m. daily except on Sundays when they may be turned off at 8:00 p.m.

#### **Section 19. ASSIGNMENT AND SUBLETTING.**

(a) This Lease shall not be assigned, mortgaged, pledged, encumbered or in any other manner transferred by the Tenant, voluntarily or involuntarily, by operation of law or otherwise, nor shall the Premises or any part thereof be sublet, licensed, granted to a concessionaire or used or occupied by anyone other than Tenant without first obtaining the written consent of Landlord (which consent may be granted or withheld in Landlord's sole discretion). Tenant shall reimburse Landlord for its legal fees in connection with any proposed sublet, license or assignment hereunder. Any permitted assignment shall specifically state that: (i) it is subject to all of the terms, covenants and conditions of this Lease; (ii) the assignee shall not have the right to a further assignment thereof, or to allow the Premises to be used by others, without the prior written consent of Landlord in each instance, except as otherwise provided in this Lease; (iii) a consent by Landlord thereto shall not be deemed to modify or amend the provisions of this Lease or Tenant's obligations hereunder, which shall continue to apply to the Premises involved and the occupants thereof as if the assignment had not been made; (iv) if Tenant defaults in the payment of any rent, Landlord is authorized to collect any rents due and accruing from any assignee or other occupant of the Premises and to apply the net amounts collected to the rents reserved in this Lease; and (v) the receipt by Landlord of any amounts from any assignee or other occupant of any part of the Premises shall not be deemed or construed as releasing Tenant of Tenant's obligations hereunder or the acceptance of that party as a direct tenant. No such assignment or transfer, irrespective of any consent by Landlord, shall be effective unless the assignee shall execute, acknowledge and deliver to Landlord a recordable agreement, in form and substance satisfactory to Landlord, whereby the assignee shall assume the obligations and performance of this Lease and shall agree to be bound by all of the terms, covenants and conditions of this lease, including restrictions on use, to be observed, performed or complied with by Tenant, and whereby the assignee shall agree that the provisions of this Lease shall continue to be binding upon it in the future notwithstanding such assignment or transfer, provided, however, in the case of a transaction in which such assumption occurs as a matter of law (i.e. merger or equity acquisition), no such document shall be required. The Landlord's consent to an assignment, subletting, encumbering, or transfer shall not be deemed or construed as a consent to any further assignment, encumbering, transfer or subletting, or a waiver of this provision of this Section, all of which shall be governed by the terms of this Lease. Any

person or representative of Tenant to whom Tenant's interest under this Lease passes by operation of law, or otherwise, shall be bound by the provisions of this Section.

Nothing in this Lease shall be deemed to limit or restrict the rights of Tenant to, without Landlord's consent, sublet the Premises, or any portion thereof, or assign this Lease, or any interest therein, to (i) any parent, subsidiary or affiliated company of Tenant; (ii) any subsidiary of any parent of Tenant; (iii) any company with which Tenant may merge or consolidate; (iv) any company acquiring all or substantially all of the assets or stock of Tenant without restriction to trade name or permitted use; or (v) a public offering of Tenant's stock. Tenant shall remain obligated to Landlord hereunder notwithstanding an assignment of this Lease.

(b) A change in the control of Tenant whose stock is not publicly traded, whether said change of control shall consist of the transfer of stock or any agreement creating a right in anyone other than the original shareholders, partners, members, or other owners of said Tenant to conduct Tenant's business or to control any such guarantor, shall be deemed to be an assignment of this Lease for all purposes of this Lease.

(c) If at any time during the Term of this Lease Tenant shall request Landlord's consent to assign this Lease or to sublet all or substantially all of the Premises, Tenant shall include with such requests the name and business experience of the proposed assignee or sublessee, complete financial statements of said assignee or sublessee, and the rent and other terms of the proposed assignment or subletting. Landlord, in its sole discretion, may withhold consent to any proposed assignment or sublet. Landlord shall have the right at any time to deal directly with Tenant's proposed assignee or sublessee.

(d) If Landlord permits any such assignment or subletting, Tenant agrees to pay Landlord's reasonable outside legal fees in connection therewith. Landlord shall have the right in Landlord's sole discretion to withhold consent to an assignment of this Lease, subletting of the Premises, and any other matters which require Landlord's consent hereunder.

(e) If Tenant shall at any time during the Term of this Lease sublet all or any part of said Premises, Tenant shall nevertheless remain fully liable under all of the terms, covenants, and conditions of this Lease. If this Lease is assigned as permitted herein, from and after the effective date of such assignment, Landlord shall only look to the new tenant with respect to the performance of obligations first arising from and after the effective date of such assignment. If this Lease is assigned, or if the Premises or any part thereof are subleased or occupied by anybody other than Tenant, Landlord may collect from the assignee, sublessee or occupant any rent or other charges payable by Tenant under this Lease and apply the amount collected to the rent and other charges herein reserved, but such collection by Landlord shall not be deemed an acceptance of the assignee, sublessee or occupant as a tenant nor a release of Tenant from the performance by Tenant under this Lease.

(f) Notwithstanding Landlord's consent to any assignment, subletting or other activity specified in this Section 19, any subsequent assignment, subletting or activity shall require Landlord's prior written consent.



(g) Notwithstanding anything to the contrary contained in this Section 19, Landlord shall have the option, by giving written notice to Tenant within twenty (20) days after receipt of any request (the "Transfer Notice") for sublet or assignment to recapture that portion of the space that is the subject of the proposed assignment or sublet (the "Subject Space"). Such recapture shall cancel and terminate this Lease with respect to the Subject Space as of the date of Landlord's delivery of Landlord's notice of recapture. In the event of a recapture by Landlord, if this Lease shall be canceled with respect to less than the entire Premises, the Rent reserved herein shall be prorated on the basis of the number of rentable square feet retained by Tenant in proportion to the number of rentable square feet contained in the Premises (which, for this purpose are agreed at 3,210 square feet), and this Lease as so amended shall continue thereafter in full force and effect, and upon request of either party, the parties shall execute written confirmation of the same. If Landlord declines, or fails to notify Tenant within twenty (20) days of receipt of the Transfer Notice of its election to recapture the Subject Space under this section, then, provided Landlord has consented to the proposed transfer, Tenant shall be entitled to proceed to transfer the Subject Space to the proposed transferee, subject to the other provisions of this Lease.

(h) If Landlord consents to any transfer pursuant to the terms of this Section 19 (and does not exercise any recapture rights Landlord may have under Section 19 (g) of this Lease), Tenant may within three (3) months after Landlord's consent, but not later than the expiration of such three (3) month period, enter into such transfer of the Premises or portion thereof, upon substantially the same terms and conditions as are set forth in the Transfer Notice furnished by Tenant to Landlord pursuant to the terms hereof, provided that if there are any material changes in the terms and conditions from those specified in the Transfer Notice (i) such that Landlord would initially have been entitled to refuse its consent to such transfer under this Lease, or (ii) which would cause the proposed transfer to be more favorable to the transferee than the terms set forth in Tenant's original Transfer Notice, Tenant shall again submit the transfer to Landlord for its approval and other action under this Section 19 (including Landlord's right of recapture, if any).

(i) If Landlord consents to a transfer, as a condition thereto which the parties hereby agree is reasonable, Tenant shall pay to Landlord when received by Tenant any "Transfer Premium," as that term is defined hereafter. "Transfer Premium" shall mean fifty percent (50%) of all Fixed Minimum Rent, Additional Charges or other consideration payable by such transferee in excess of the Rent and Additional Charges payable by Tenant under this Lease, on a per rentable square foot basis. "Transfer Premium" shall also include, but not be limited to, fifty percent (50%) of any key money and bonus money paid by transferee to Tenant in connection with such transfer, and any payment in excess of fair market value for services rendered by Tenant or assets sold or leased to transferee.

#### **Section 20. DAMAGE OR DESTRUCTION.**

(a) If (i) the Building shall be damaged to the extent of more than sixty percent (60%) of the cost of replacement thereof or (ii) the proceeds of Landlord's insurance paid to Landlord as a result of the damage shall be insufficient to pay reasonably for the cost of replacement of the Building, less any deductibles or self insurance or (iii) the Premises shall be damaged in whole or in part during the last two (2) years of the Term or (iv) Landlord's

mortgage elects to require Landlord to make advanced payments upon or full payment of the outstanding mortgage indebtedness from the proceeds recoverable under Landlord's insurance policies with respect to such damage or (v) the Building of which the Premises are a part shall be damaged to the extent of seventy-five percent (75%) or more of the cost of replacement thereof, whether or not the Premises shall be damaged, then in any such event Landlord may terminate this Lease by notice given within ninety (90) days after such event and upon the date specified in such notice, which shall not be less than thirty (30) days nor more than sixty (60) days after the giving of said notice, this Lease shall terminate and come to an end, and Tenant shall vacate and surrender the Premises to Landlord.

(b) If this Lease shall not be terminated as provided in Section 20(a) above, Landlord, at Landlord's expense, shall, following the receipt of the insurance proceeds, diligently proceed with the repair or restoration of the Premises and the Building (excluding any leasehold improvements and betterments) to place the damaged Premises and Building (excluding leasehold improvements and betterments) in substantially the same condition they were in immediately preceding the damage or destruction.

#### **Section 21. EMINENT DOMAIN.**

(a) In the event that the Building or the Premises or any part thereof shall at any time after the execution of this Lease be taken for public or quasi-public use or condemned under eminent domain or conveyed under threat of such a taking or condemnation, Tenant shall not be entitled to claim, or have paid to Tenant any compensation or damages whatsoever for or on account of any loss, injury, damage, taking or conveyance of any right, interest or estate of Tenant and the Tenant hereby relinquishes and hereby assigns to Landlord any rights to any such damages. Landlord shall be entitled to claim and have paid to it for the use and benefit of Landlord all compensation and damages for and on account of or arising out of such taking, condemnation or conveyance without deduction from the amount thereof for or on account of any right, title, interest or estate of Tenant in or to said property. Tenant upon request of Landlord will execute any and all releases, transfers or other documents as shall be required by such public or quasi-public authority to effect and give further evidence and assurances of the foregoing. For clarification and not limitation, to the extent not inconsistent with the foregoing, Tenant may file a separate claim with the condemning authority with respect to Tenant's improvements, fixtures and loss of rights.

(b) In case of any taking, condemnation or conveyance referred to in this Section, then if and when there is an actual permanent taking or conveyance of physical possession of any material portion of the Premises or more than twenty-five percent (25%) of Building, then Landlord may cancel and terminate this Lease by giving notice to Tenant within one hundred eighty (180) days after such an actual taking or conveyance of physical possession. If this Lease is not terminated following any of said actual takings or conveyances of any part of the Premises, then Landlord shall at Landlord's own expense, but only to the extent of an equitable proportion of the award (after payment of all of Landlord's costs and expenses (including attorney's fees) with respect to such taking, condemnation or conveyance) for the portion of the Premises taken (excluding any award of land), make such repairs to the Premises as are necessary to constitute a complete architectural and tenantable unit.



(c) In the event that such portion of Premises or the Building is taken as renders the portion remaining, in Tenant's reasonable judgment, unsuitable for Tenant's continued use, Tenant may terminate this Lease upon thirty (30) days' prior written notice to Landlord, such notice to be given within thirty (30) days following the date of such taking.

(d) Notwithstanding anything contained herein to the contrary Landlord shall not have the right to terminate this Lease pursuant to this Section 21 unless Landlord simultaneously terminates the leases and/or occupancy agreements of all other tenants and occupants of the Building.

## Section 22. LANDLORD'S REMEDIES UPON DEFAULT.

(a) If (i) Tenant shall at any time be in default in the payment of rent without requirement of notice from Landlord or (ii) Tenant shall at any time be in default in the payment other sums of money required to be paid by Tenant or Tenant shall at any time be in default of the performance of any of the covenants, terms, conditions, provisions, rules and regulations of this Lease, and Tenant shall fail to remedy such default within thirty (30) days after the giving of notice thereof by Landlord, or (iii) Tenant shall commit waste, or Tenant shall assign this Lease or sublet the Premises except as expressly permitted by this Lease (including, without limitation, a change of control of Tenant ), or (iv) Tenant shall vacate the Premises or fail to continuously occupy and conduct Tenant's business in the Premises (except during Permitted Closing Periods), or (v) Tenant shall sell all or substantially all of its assets, or (vi) Tenant or any assignee or sublessee of the entire Premises shall file or have filed against it a petition for adjudication as a bankrupt, reorganization, an arrangement, or for any other debtor or capital structure relief under any existing or future Bankruptcy Code as same may be amended, supplemented or replaced, or make an assignment for the benefit of creditors, or a receiver of any property of Tenant be appointed in any action, suit or proceeding by or against Tenant or if the interest of Tenant in the Premises or in any assets or property of Tenant shall be offered for sale or sold under execution or other legal process and such petition, assignment or receivership is not dismissed within ninety (90) days of filing, then (in any such instance) Tenant shall be in default of this lease, Landlord in addition to all other remedies given to Landlord in law or in equity may terminate this Lease, or without terminating this Lease terminate Tenant's right of possession, and in either event Landlord may re-enter the Premises by summary proceedings or otherwise and dispossess the Tenant.

(b) Tenant agrees to be liable for and to pay to Landlord (i) all rent and other charges and sums due under this Lease at the time of termination of this Lease or termination of Tenant's right of possession, as the case may be, and (ii) all other charges and sums due under this Lease for the entire Term which liability shall survive the termination of this Lease, the re-entry into the Premises by Landlord, and the commencement of any action to secure possession of the Premises. Landlord shall have the right to maintain a single action against Tenant for recovery as they come due of all damages including, without limitation, amounts equal to the rents and other charges and sums payable under this Lease so that such court shall retain jurisdiction for a period equal to the remainder of the Term of this Lease if this Lease would not have been terminated. Such court shall obtain judgments for such rents and other amounts due as and when said rents and other charges and sums are payable under this Lease; and Landlord shall not be required to file separate monthly actions or legal proceedings or to wait until this

Lease would have expired. In addition, at Landlord's election, Landlord shall have the right to obtain a judgment for the total of all of the rents and other charges and sums due to Landlord at the time of the termination of this Lease or Tenant's right of possession, plus an amount equal to all rents and other charges due under this Lease for the remainder of the Term hereof, minus the fair rental value of the Premises at the time such judgment is obtained. If Landlord shall have leased the Premises to another tenant, then the rental payable by that tenant shall be deemed to be the fair rental value of the Premises for this purpose.

(c) Landlord's damages in the event of Tenant's default under this Lease shall include, in addition to any other damages set forth in this Lease or permitted at law or in equity, all of Landlord's expenses incurred with respect to such default including, (i) reasonable attorneys' fees, commissions, rental concessions to new tenants; and (ii) the cost of any repairs, renovations or alterations of the Premises. In all events and in addition to any other rights and remedies of Landlord hereunder, Landlord may elect, in its sole discretion and at any time, to retain any security deposit posted by Tenant pursuant to this Lease as liquidated damages.

(d) If this Lease be terminated for any reason whatsoever or if Landlord should re-enter the Premises as a result of any breach of Tenant hereunder without terminating the Lease, Tenant covenants, any other covenant herein to the contrary notwithstanding (except where this Lease is terminated following eminent domain proceedings) that (i) the Premises shall then be in the condition required by all applicable provisions of this Lease, and (ii) Tenant shall perform any covenant contained in this Lease for the construction of the Premises or the making of any repair, improvement, alteration or betterment to the Premises or for restoring or rebuilding any part thereof. For the breach of either of the foregoing obligations Landlord shall be entitled to recover and Tenant shall pay forthwith, without notice or other action by Landlord, the then cost of performing such obligation(s).

(e) If the obligation to pay Fixed Minimum Rent and/or Additional Charges has not commenced prior to the termination of this Lease as a result of Tenant's default, whether or not possession of the Premises has been delivered to Tenant, Landlord shall have the right to determine the date that such obligations would most likely have commenced if Tenant had not defaulted, and the date so determined by Landlord shall be used in the calculation of damages payable by Tenant to Landlord as a result of such default.

(f) In the event Landlord obtains possession of the Premises, Landlord may, without being obligated so to do, relet the whole or any portion of the Premises, or the whole or any portion thereof with additional space, for any period equal to, greater than or less than the remainder of the Term of this Lease, for any sum (including any rental concessions and rent-free occupancy) which it may deem reasonable, to any tenant which it may deem suitable and satisfactory, and for any use and purpose which it may deem appropriate. In the event of any reletting, Landlord may apply the rent therefrom first to the payment of Landlord's expenses, including attorneys' fees incurred by reason of Tenant's default, commissions and the repair, renovation or alteration of the Premises and then to any other damages Landlord is entitled to including, without limitation, amounts equal to the rent and all other sums due from Tenant hereunder, Tenant remaining liable for any deficiency. In no event shall Tenant be entitled to any payment or credit if any subsequent tenant pays rent and other charges in excess of those required to be paid under this Lease.

(g) No surrender of the Premises shall be effected by Landlord's acceptance of the keys of the Premises, or by any other means whatsoever, unless the same is evidenced by Landlord's written agreement to accept surrender of the Premises; and if Landlord does accept surrender of the Premises, Tenant's obligations to pay rents and to perform the duties and provisions of this Lease required of Tenant hereunder shall not be released or terminated but shall continue for the remainder of the Term of this Lease.

(h) Any obligation imposed by law upon Landlord to relet the Premises shall be subject to the right of Landlord to develop and maintain the "tenant mix" Landlord determines, in Landlord's sole discretion, to be appropriate for the Building; and the failure of Landlord to relet, or if relet, to collect the rent under such reletting, shall not release or affect Tenant's liability for damages hereunder. In any event, if the Premises and other stores in the Building are vacant, Landlord shall not be required to show or lease the Premises until the other stores are leased.

(i) In the event of a default or threatened default by Tenant of any of the terms, provisions, covenants, conditions, rules and regulations of this Lease, Landlord shall have the right to injunction and the right to invoke any remedy permitted to Landlord in law or in equity.

(j) All remedies available to Landlord under this Lease are declared to be cumulative and concurrent and may be exercised at one time or at separate times. No termination of this Lease nor any taking or recovering of possession of the Premises shall deprive Landlord of any of its remedies or actions against Tenant for all damages resulting from Tenant's default.

(k) Landlord and Tenant shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters not relating to personal injury or property damage but otherwise arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises and any statutory remedy.

**Section 23. HOLDOVER BY TENANT.** If Tenant remains in possession of the Premises after the expiration of the tenancy created hereunder and without the execution of a new lease, Tenant shall be deemed to be occupying the Premises as a tenant from month to month and subject to all of the rents and provisions of this Lease in effect on the day before the expiration of the tenancy, except those relating to Term and except that the Fixed Minimum Rent shall be two hundred percent (200%) of the amount payable during the last month of the Lease Term, without prejudice to any damages or other rights Landlord may have against Tenant for Tenant's failure to vacate the Premises on the date required hereunder. Said month-to-month tenancy may be terminated by Landlord or Tenant by giving written notice to the other, in which event this Lease shall terminate on the last day of the calendar month next following the month in which such notice was received; except that neither Landlord nor Tenant shall be required to give notice with respect to vacation of the Premises at the end of the Term or upon the earlier termination of this Lease.

#### **Section 24. RIGHTS OF LANDLORD.**

(a) Landlord and Landlord's agents shall have the right (i) at reasonable times and upon one (1) day prior notice to Tenant, to (a) show the Premises to prospective purchasers, mortgagees and lessees; (b) go upon and inspect the Premises and every part thereof; (ii) at Landlord's option cure Tenant's defaults, upon expiration of the thirty (30) day cure period as set forth in Section 22 herein above (with the exception of emergency repairs which may be remedied immediately), and/or make emergency repairs or other repairs which are the obligation of Tenant hereunder; and (iii) construct other portions of retail space and/or the Building and to make repairs, alterations and additions to the Premises, retail space or the Building; and Landlord shall not be liable to Tenant in connection with the exercise of Landlord's rights, pursuant to this Section. Landlord shall use all commercially reasonable efforts to mitigate interference with Tenant's operations.

(b) If Landlord shall make any payments on behalf of Tenant or otherwise cure any default of Tenant, or if Landlord shall make repairs to the Premises which are Tenant's obligation under this Lease (whether or not an emergency situation exists) then any reasonable amounts so paid or incurred by Landlord are agreed and declared to be "Additional Charges" and shall be due and payable to Landlord from Tenant within thirty (30) days after submission to Tenant of an invoice, bill or statement therefor with such supporting documentation as Tenant may reasonably request.

(c) Landlord shall not be deemed to be in default of any provision of this Lease unless Tenant shall have given written notice specifying the default to Landlord and Landlord shall not have cured such default within thirty (30) days after receipt thereof; provided, however, that such 30-day period shall be extended to the extent reasonably required to cure such default.

#### **Section 25. SUBORDINATION; ATTORNMENT.**

(a) Subject to the provisions of Section 25(c), this Lease is subject and subordinate to each mortgage (a "Superior Mortgage") and each underlying lease (a "Superior Lease") which may now or hereafter affect all or any portion of the Building or any interest therein. The lessor under a Superior Lease is called a "Superior Lessor" and the mortgagee under a Superior Mortgage is called a "Superior Mortgagee". Tenant shall execute, acknowledge and deliver any instrument reasonably requested by Landlord, a Superior Lessor or Superior Mortgagee to evidence such subordination, but no such instrument shall be necessary to make such subordination effective. Tenant shall execute any amendment of this Lease requested by a Superior Mortgagee or Superior Lessor, provided such amendment shall not result in a material increase in Tenant's obligations under this Lease or a material reduction in the benefits and rights available to Tenant under this Lease. In the event of the enforcement by a Superior Mortgagee of the remedies provided for by law or by such Superior Mortgage, or in the event of the termination or expiration of a Superior Lease, Tenant, upon request of such Superior Mortgagee, Superior Lessor or any person succeeding to the interest of such mortgagee or lessor (each, a "Successor Landlord"), shall automatically become the tenant of such Successor Landlord without change in the terms or provisions of this Lease (it being understood that Tenant shall, if requested, enter into a new lease on terms identical to those in this Lease); provided, that

any Successor Landlord shall not be (i) liable for any act, omission or default of any prior landlord (including, without limitation, Landlord); (ii) liable for the return of any moneys paid to or on deposit with any prior landlord (including, without limitation, Landlord), except to the extent such moneys or deposits are delivered to such Successor Landlord; (iii) subject to any offset, claims or defense that Tenant might have against any prior landlord (including, without limitation, Landlord); (iv) bound by any Rent which Tenant might have paid for more than the current month to any prior landlord (including, without limitation, Landlord) unless actually received by such Successor Landlord; (v) bound by any covenant to perform or complete any construction in connection with the Premises or to pay any sums to Tenant in connection therewith; or (vi) bound by any waiver or forbearance under, or any amendment, modification, abridgment, cancellation or surrender of, this Lease made without the consent of such Successor Landlord. Upon request by such Successor Landlord, Tenant shall execute and deliver an instrument or instruments, reasonably requested by such Successor Landlord, confirming the attornment provided for herein, but no such instrument shall be necessary to make such attornment effective.

(b) Tenant shall give each Superior Mortgagee and each Superior Lessor a copy of any notice of default served upon Landlord, provided that Tenant has been notified of the address of such mortgagee or lessor. Landlord shall use reasonable efforts to promptly notify Tenant of such contact information. If Landlord fails to cure any default as to which Tenant is obligated to give notice pursuant to the preceding sentence within the time provided for in this Lease, then each such mortgagee or lessor shall have an additional thirty (30) days after receipt of such notice within which to cure such default or if such default cannot be cured within that time, then such additional time as may be necessary if, within such thirty (30) days, any such mortgagee or lessor has commenced and is diligently pursuing the remedies necessary to cure such default (including, without limitation, commencement of foreclosure proceedings or eviction proceedings, if necessary to effect such cure), in which event this Lease shall not be terminated and Tenant shall not exercise any other rights or remedies under this Lease or otherwise while such remedies are being so diligently pursued. Nothing herein shall be deemed to imply that Tenant has any right to terminate this Lease or any other right or remedy, except as may be otherwise expressly provided for in this Lease.

(c) Landlord shall use reasonable efforts to obtain for Tenant from any future Superior Lessor and Superior Mortgagee a non-disturbance and attornment agreement in such Superior Lessor's and Superior Mortgagee's standard form (a "Non-Disturbance Agreement"). If such Superior Lessor or Superior Mortgagee executes and delivers to Landlord a Non-Disturbance Agreement and Landlord delivers the same to Tenant, and Tenant either fails or refuses to execute and deliver said Non-Disturbance Agreement within ten (10) days following Landlord's delivery of such Non-Disturbance Agreement to Tenant, this Lease shall be subject and subordinate to such Superior Lease or Superior Mortgage and Tenant shall automatically be deemed to be subject to and subordinate to such Superior Lessor or Superior Mortgagee and Landlord shall have no further obligation to obtain a Non-Disturbance Agreement for Tenant from such Superior Lessor or Superior Mortgagee.

**Section 26. [INTENTIONALLY OMITTED.]**

**Section 27. NO WAIVER BY LANDLORD.** No waiver of any of the terms, covenants, provisions, conditions, rules and regulations required under this Lease and no waiver of any legal or equitable relief or remedy of one party against the other shall be implied by the failure of party to assert any rights or for any other reason, unless said waiver shall be in writing signed by the party to be charged. The failure of Landlord to provide an annual statement pursuant to Section 8(b) or any other statement or bill required under this Lease shall not be construed as a waiver of Landlord's right to bill and collect any sums or amounts due under this Lease.

**Section 28. VACATION OF PREMISES.** Tenant shall deliver up and surrender to Landlord possession of the Premises, including all Tenant's work (and all replacements thereof), all fixtures permanently attached to the Premises during the Term (except such fixtures and improvements as Landlord shall direct Tenant to remove) and all property required to be left in the Premises pursuant to this Lease upon the expiration of this Lease or its termination in any way, in the same condition as the Premises shall be when Tenant opens for business (ordinary wear and tear only excepted) and Tenant shall deliver the keys to the office of Landlord or Landlord's agent.

**Section 29. RECORDATION.** Neither this Lease nor any memorandum hereof shall be recorded.

**Section 30. RENT DEMAND; ACCORD AND SATISFACTION.**

(a) After the service of any notice, the commencement of any suit, or the rendering of a final judgment therein, Landlord may receive and collect any rent due and such collection or receipt shall not operate as a waiver of nor affect or prejudice any such notice, suit or judgment.

(b) No payment by Tenant or receipt by Landlord of a lesser amount than the rental herein stipulated shall be deemed to be other than on account of the earliest stipulated rent nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction. Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided for in this Lease or available at law or in equity.

**Section 31. NOTICES.** Any notice or consents required to be given by or on behalf of either party upon the other shall be in writing and shall be given by sending them by FedEx or other recognized one-day national delivery service which obtains a receipt for delivery, or by mailing such notices or consents by registered or certified mail addressed (i) to Landlord at c/o SCF Management LLC, The Cayre Group, 1407 Broadway, 41<sup>st</sup> Floor, New York, New York 10018; Attn: Mr. Robert Cayre with a conforming copy to Seyfarth Shaw LLP, 620 Eighth Avenue, New York, New York 10018, Attn: Marc J. Gurell, Esq., and (ii) to Tenant at the Premises with a conforming copy to Baxter Trouby, LLP, One Dairan Center, 9100 S. Dadeland Blvd., Ste. 700, Miami, Florida 33156; Attn: Jeffrey L. Baxter, Esq. or at such other address as may be specified from time to time, in writing, delivered to the other party. Notice shall be



deemed received on the date of delivery as set forth in the records of the national delivery service or the return receipt card, as the case may be, the date that such notice shall be rejected if rejected by the addressee, or the date of first attempted delivery of such notice, whichever shall be the first to occur.

**Section 32. APPLICABLE LAW AND CONSTRUCTION.** The laws of the State of Florida shall govern the validity, performance and enforcement of this Lease. Any provision of this Lease which is contrary to a law which the parties cannot legally waive or contract against (such, for example, as antitrust laws) is and shall be void and not binding on either party hereto; provided, however, that the invalidity or unenforceability of any provision of this Lease shall not affect or impair the Lease or any other provision. The submission of this document for examination does not constitute an offer to lease, or a reservation of or option for the Premises, and becomes effective only upon execution and delivery thereof by Landlord and Tenant. All negotiations, considerations, representations and understandings between the parties are incorporated herein and may be modified or altered only by agreement in writing between the parties; and this Lease supersedes any prior agreements or understandings between the parties. Any previous agreements, understanding, warranties or representations made by a party or the agents, employees or contractors of such party shall not be binding on such party unless expressly set forth in this Lease. To the maximum extent permitted by law, Tenant hereby waives the benefit of all warranties, express or implied, with respect to the Premises including, without limitation, any implied warranty that the Premises are suitable for any particular purpose. In making any yearly calculations required hereunder, Landlord shall utilize the convention of a 365 day year. The headings of the several paragraphs contained herein are for convenience only and do not define, limit or construe the contents of such paragraphs. This Lease has been negotiated by Landlord and Tenant and the Lease, together with all of the terms and provisions hereof, shall not be deemed to have been prepared by either Landlord or Tenant but by both equally. Notwithstanding the termination of this Lease for any reason whatsoever, including, without limitation, as the result of the mutual agreement of the parties or the default by Tenant, the provisions relating to the indemnity by the parties and the covenants regarding liability insurance shall survive such termination. Time is declared to be of the essence in all provisions of this Lease. Unless a provision of this Lease specifically requires that a party shall not unreasonably withhold consent or approval, such party shall have the right in its sole discretion to deny such consent or approval. The word "including" shall be deemed to mean "including, without limitation" unless otherwise set forth in the sentence in which such word is contained. If this Lease is executed by more than one person or entity as "Tenant," each such person or entity executing this Lease as Tenant shall be jointly and severally bound and liable hereunder. Notwithstanding the Commencement Date of this Lease, Tenant shall comply with all of the obligations and duties of Tenant hereunder following execution of this Lease, except for the payment of rent and other sums which shall be due and payable at the times set forth in this Lease.

**Section 33. TRANSFER OF LANDLORD'S INTEREST; LIABILITY OF LANDLORD.**

(a) If Landlord should sell or otherwise transfer Landlord's interest in the Premises, Tenant agrees that Landlord shall thereafter have no liability to Tenant under this Lease or any modification or amendment thereof or extensions or renewals thereof, except for

such liabilities which might have accrued prior to the date of such sale or transfer of Landlord's interest. The Landlord shall be liable under this Lease only while owner of the Premises.

(b) If Landlord shall fail to perform any covenant, term or condition of this Lease upon Landlord's part to be performed or if Landlord shall be liable to Tenant in any way arising out of this Lease, or pursuant to statute, law, ordinance or regulation, or under the common law, whether arising out of contract, tort or otherwise, and, as a consequence, if Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only out of the proceeds received at a judicial sale upon execution and levy against the right, title and interest of Landlord in the Building. If Landlord is an individual, corporation, a trustee of a trust or a partnership (general or limited), or limited liability company, there shall be no personal liability on the part of the individual, corporation, the trustees of said trust, the beneficiaries of said trust, the partnership, or the partners of the partnership, or the members, and any such liability shall be limited only to the interest of the Landlord in the Building.

**Section 34. NO PARTNERSHIP.** Landlord is not and shall not become by this Lease or by any rights granted or reserved herein a partner or joint venturer of or with Tenant in the conduct of Tenant's business or otherwise.

**Section 35. ESTOPPEL/ FINANCING.**

(a) Tenant will reasonably cooperate with Landlord so that Landlord will be able to sell, transfer or the Building or to procure mortgage financing for the Building. Within ten (10) days after request by Landlord, Tenant agrees to execute and deliver to Landlord estoppel or offset letters as required by Landlord or by Landlord's mortgage lenders. The estoppel letters shall certify the date of this Lease and any amendments, that Landlord is not in default of any of the terms and provisions of this Lease or specifying the provisions as to which Landlord is in default if Landlord shall be in default, that Landlord has performed all inducements required of Landlord in connection with this Lease including any construction obligations, or specifying any inducements which have not been fulfilled by Landlord, the date to which rent has been paid, and any other matters which Landlord or its proposed lenders may reasonably require. In the event that Tenant shall fail to comply with the provisions hereunder, and Tenant shall have failed to respond within five (5) days to a second request sent to Tenant's address set forth above, then Tenant shall be deemed to have represented to any prospective purchaser or mortgagee that the information contained in the estoppel certificate is true and complete in all respects and shall be bound thereby.

(b) Intentionally Omitted.

(c) Provided that Landlord shall have notified Tenant of such party, Tenant agrees to deliver to any of Landlord's mortgagees and to the holder of any trust deed concerning the Premises, a copy of any notice of default served upon Landlord, provided that prior thereto Tenant has been notified, in writing (by way of Notice of Assignment of Rents and Leases, or otherwise) of the address of such mortgagees and/or trust deed holders. Anything contained herein to the contrary notwithstanding, Tenant agrees that if Landlord shall fail to cure the default recited in such notice of default within the time provided for herein, then such mortgagees and/or trust deed holders shall have an additional thirty (30) days within which to



cure such default; provided, however, that if such default cannot be cured within said thirty (30) days, then such mortgagees and/or trust deed holders shall have such additional time as may be necessary to cure such default, if within said thirty (30) days such mortgagee and/or trust deed holder have commenced and are diligently pursuing the cure of such default (including, but not limited to, commencement of foreclosure proceedings if necessary to effect such cure). This Lease shall not be terminated by Tenant while such remedies and cures are being so pursued.

(d) Tenant acknowledges that Landlord may seek to obtain financing or other economic incentives from applicable economic development corporations or programs, whether through a nonprofit organization or governmental agency. Tenant agrees to comply with all reasonable requests in connection with any such financing or incentives including, but not limited to, executing reasonable documentation as may be requested, so long as such documentation does not materially modify the terms of this Lease. Tenant agrees to comply with any rules established in connection with such financing or incentives.

**Section 36. QUIET ENJOYMENT.** Landlord hereby covenants and agrees that if Tenant shall perform all of the covenants and agreements herein stipulated to be performed on Tenant's part, Tenant shall at all times during the continuance hereof have peaceable and quiet enjoyment and possession of the Premises without hindrance from Landlord or any person or persons lawfully claiming the Premises by or through Landlord, subject, however, to the terms of this Lease and to all mortgages, and agreements to which this Lease is subordinate.

**Section 37. BROKER.** Other than Comras Company and Avison Young, each party hereto warrants and represents to the other that it has dealt with no real estate broker, agent or finder in connection with this transaction; and each party agrees to indemnify and save the other harmless from and against any and all liabilities, costs, causes of action, damages and expenses, including, without limitation, attorneys' fees, for any claims made by any real estate broker, agent or finder with respect to this Lease. Landlord shall pay the brokers named herein pursuant to the terms of a separate agreement.

**Section 38. FORCE MAJEURE.** If either Landlord or Tenant is prevented or hindered from timely satisfying any provisions set forth herein because of a shortage or inability to obtain materials or equipment, strikes or other labor difficulties, governmental restrictions, fire, casualties, acts of God, or any other cause beyond such party's reasonable control, said party shall be permitted an extension of time of performance by the number of days during which such performance was prevented or hindered; provided, however, that this paragraph shall not apply to the payment of rent or other monies by Tenant, nor shall the provisions of this paragraph postpone the date that rent is payable pursuant to this Lease.

**Section 39. AUTHORITY TO SIGN LEASE.** If Tenant is a corporation, limited liability company or a partnership (general or limited), each person(s) signing this Lease as a officer, member, manager, or partner of Tenant represents to Landlord that such person(s) is authorized to execute this Lease without the necessity of obtaining any other signature, that the execution of this Lease has been properly authorized, and that this Lease is fully binding on the Tenant. Each person(s) signing this Lease as an officer, member, manager or partner of Landlord represents to Tenant that such person(s) is authorized to execute this Lease without

the necessity of obtaining any other signature, that the execution of this Lease has been properly authorized, and that this Lease is fully binding on Landlord

#### **Section 40. SECURITY DEPOSIT.**

(a) Simultaneous with the execution hereof, Tenant shall deliver to Landlord an amount equal to two (2) months of Fixed Minimum Rent (\$48,150) as security for the payment of Fixed Minimum Rent and Additional Charges required by this Lease and to secure the performance by Tenant of all the other terms, conditions, covenants and provisions of this Lease (the "Security Deposit"). Said Security Deposit is to be retained by Landlord through the Term of this Lease and any extension thereof. At the end of the Term of this Lease, or if this Lease should be extended, at the end of the last extension thereof, and upon the vacation of the Premises by Tenant, provided that Tenant has paid all of the Fixed Minimum Rent and other Additional Charges due to Landlord pursuant to this Lease and has otherwise performed all covenants of this Lease, then Landlord will return to Tenant said Security Deposit without interest. Notwithstanding the foregoing and in lieu of a cash Security Deposit, at Landlord's option, Tenant shall deposit with Landlord a clean, irrevocable "evergreen" letter of credit drawn on a New York City Clearinghouse Bank reasonably acceptable to Landlord and for which presentment for payment may be made in New York City or Miami Beach, naming Landlord as sole beneficiary, in the amount of the Security Deposit ("Letter of Credit"); which Letter of Credit may be drawn upon by Landlord in whole or in part for the same purposes and use as are described in this Section 40. Further, Landlord shall be authorized to draw on the Letter of Credit if, thirty (30) days prior to the expiration date thereof, (i) Tenant has not delivered to Landlord a replacement Letter of Credit with a term of no less than one (1) year or (ii) has not provided Landlord with a certificate from the issuing bank extending the expiration date of the Letter of Credit for no less than one (1) year.

(b) If Tenant shall not have paid the Fixed Minimum Rent and Additional Charges or performed this Lease as required, then Landlord may apply at any time after a default shall have occurred and from time to time all of the Security Deposit or so much thereof (without interest) as shall be required in Landlord's opinion to correct or compensate Landlord for any such default of Tenant, or to make up any deficiencies in the payment of Fixed Minimum Rent or Additional Charges, without in any manner restricting or limiting the Landlord's right to pursue additional remedies available to Landlord pursuant to this Lease, at law or in equity. Upon any such application by Landlord pursuant to this Section 40, Tenant shall immediately redeposit with Landlord all sums required to restore such Security Deposit to the amount required under this Section 40.

(c) If Landlord shall sell, assign or transfer Landlord's interest in the Building, and if Landlord shall deliver to the purchaser, assignee or transferee the Security Deposit held hereunder, Landlord shall be relieved of any liability to Tenant for the return of said Security Deposit and Tenant shall look only to the purchaser, assignee or transferee for any claims with respect to said security.

(d) If a default by Tenant occurs more than two (2) times within any twelve (12) month period, irrespective of whether or not such default is cured, then, without limiting, Landlord's other rights and remedies provided for in this Lease at law or equity, Tenant shall be obligated to increase the Security Deposit, if any then exists, by an amount equal to five (5)

months Fixed Minimum Rent (such that the Security Deposit shall then equal ten (10) months of Fixed Minimum Rent), which amount shall be paid by Tenant to Landlord on demand.

**Section 41. RADON GAS.**

(a) Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit."

(b) Landlord shall have no obligation to mitigate any radon.

**Section 42. INTENTIONALLY OMITTED.**

**Section 43. MOLD REQUIREMENTS.**

(a) Tenant is required to undertake reasonable measures are necessary to prevent mold from forming by taking the following action when required:

(i) Tenant must be cognizant in the case of any water leaks. Plumbing leaks, roof leaks, foundations leaks or any other source of water that penetrates into the Premises **MUST** be reported to Landlord immediately. Tenant is obligated and required to so report any such leak by phone or fax communication and failure to make such a report shall be a breach under this Lease.

(ii) Intentionally Omitted.

(iii) In the event there is a bathroom or bathrooms within the Premises, regular mopping and/or vacuuming is required as well as having the responsibility to remove standing water wherever Tenant sees it.

(iv) If Tenant becomes aware of any mold growth, Tenant **MUST** immediately notify Landlord in writing so that Landlord can have the growth examined, to determine the cause of growth and effect proper repairs. Tenant is required under the terms of this Lease to give this notice to Landlord as soon as possible.

(v) Intentionally Omitted.

**Section 45. LIABILITY.** Tenant agrees that it does not have and will not have any claims or causes of action against any disclosed or undisclosed trustee, partner, affiliate, subsidiary, beneficiary, principal, member, agent, managing entity, shareholder, director, officer, or employee of Landlord (whether direct or indirect), including, without limitation, its attorneys, accountants, consultants, engineers, brokers, and advisors (collectively, "Landlord's Affiliates"), arising out of or in connection with this Lease or the transactions contemplated hereby and further agrees not to sue or otherwise seek to enforce any personal obligation against any of

Landlord's Affiliates with respect to any matters arising out of or in connection with this Lease or the transactions contemplated hereby.

**Section 46. OFAC.** Each of Landlord and Tenant, each as to itself, hereby represents and warrants its compliance with all applicable anti-money laundering laws, including, without limitation, the USA Patriot Act, and the laws administered by the United States Treasury Department's Office of Foreign Assets Control ("OFAC"), including, without limitation, Executive Order 13224 ("Executive Order"). Each of Landlord and Tenant further represents and warrants (i) that it is not, and it is not owned or controlled by or acting for or on behalf of any person or entity on OFAC's List of Specially Designated Nationals and Blocked Persons or any other list of persons or entities with whom either Landlord or Tenant, as the case may be, is restricted by law from doing business with; and (ii) that it is not a person otherwise identified by government or legal authority as a person with whom Landlord or Tenant, as the case may be, is prohibited from transacting business. Landlord and Tenant each shall indemnify and hold the other party harmless from and against any and all losses, damages, liabilities, costs, and expenses (including, without limitation, reasonable attorneys' fees and expenses) that are incurred by the other party and/or its affiliates that derive from a claim made by a third party against such other party and/or its affiliates arising from or alleged to arise from a misrepresentation made by the representing party hereunder or a breach of any covenant to be performed by such party hereunder.

(Signature page next)

IN WITNESS WHEREOF, the parties hereto set their hands to four (4) counterparts hereof, each of which shall have the same force and effect as if it were an original, this \_\_\_\_ day of July 2017, as to Landlord, and this 14<sup>th</sup> day of July 2017, as to Tenant.

Signed in the presence of:



(Witness Signature)

Dylan Cecchini

(Print Name)



(Witness Signature)

Sylvia Duddel

(Print Name)



(Witness Signature)

Ericka Witekowski

(Print Name)

Maria Fuentes

(Witness Signature)

Maria Fuentes

(Print Name)

LANDLORD:

C&A 900 COLLINS LLC

By: 

Name: Robert Cayre

Its: Manager

TENANT:

SOUTH BEACH CIGAR BAR, LLC

By: 

Name: CHRISTOPHE NORMAND

Its: PRESIDENT

EIN: 82-2126313

STATE OF NEW YORK

COUNTY OF NEW YORK

} SS

The foregoing instrument was acknowledged before me, a Notary Public, this 25<sup>th</sup> day of July 2017, by Robert Cayre, manager of C&A 900 Collins LLC, a Delaware limited liability company, on behalf of the limited liability company.

*Sylvia Dudek*

Notary Public

My Commission Expires:

SYLVIA DUDEK  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 81DU032376  
Qualified in New York County  
My Commission Expires November 03, 2019

STATE OF FLORIDA

COUNTY OF Miami-Dade

} SS

The foregoing instrument was acknowledged before me, a Notary Public, this 19<sup>th</sup> day of July 2017, by Christophe Normand President a South Beach Cigarette a Florida limited liability company on behalf of the corporation.



MARIA FUENTES  
NOTARY PUBLIC  
STATE OF FLORIDA  
Comm# FF076776  
Expires 12/15/2017

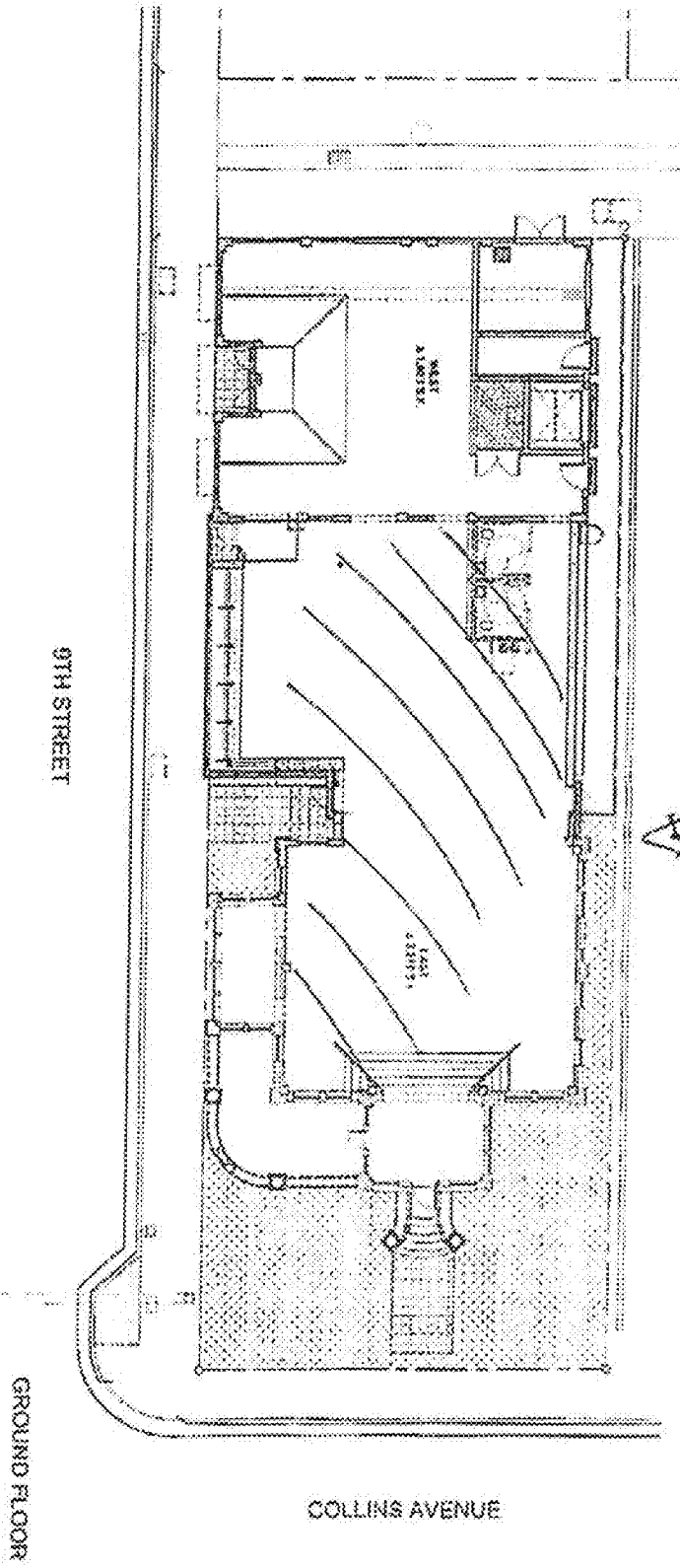
*Maria Fuentes*

Notary Public

My Commission Expires: 12/15/17

**EXHIBIT A**  
**LEASE OUTLINE DRAWINGS**

[see next page]



←  
 Tenant's  
 premises



## EXHIBIT B

### USE RESTRICTIONS

1. Recreational or amusement use for public assembly
2. Truck stop or car wash
3. Automobile, mobile home or trailer dealership
4. Massage parlor
5. Adult bookstore or other establishment primarily selling, leasing, loaning, or exhibiting pornographic materials
6. Funeral parlor
7. Drug paraphernalia store/head shop; provided, however, that lighters, wooden tobacco pipe, rolling paper and similar items that would otherwise be sold by a "cigar" shop shall not be deemed a violation hereof.
8. Bowling alley
9. Flea market or close-out store
10. Theater
11. Billiard parlor
12. Gambling facility or operation
13. Massage parlor, topless bar, or other operation which provides striptease or other similar entertainment
14. A swap or pawn shop
15. Laundry, dry-cleaning plant, or laundromat providing on-site cleaning and/or dry-cleaning services
16. Any activity involving the use of Hazardous Substances
17. Convenience and/or liquor store (including, without limitation, ancillary sales of lottery tickets).

EXHIBIT C  
INTENTIONALLY OMITTED

EXHIBIT D  
INTENTIONALLY OMITTED

## EXHIBIT E

### RULES AND REGULATIONS

Tenant shall obey, comply with and perform the following Rules and Regulations, as the same may be amended from time to time:

- Unless specifically defined herein, the words and phrases and capitalized terms set forth herein shall have the meanings ascribed to such words, phrases or terms in the Lease.
- All requirements of constituted public authority applicable to the conduct of Tenant's business or use of the Premises, shall be complied with, and Tenant shall save Landlord harmless from penalties, fines, costs, expenses or damages resulting from failure to so comply.
- The lights within the windows in the front of the Premises shall be illuminated together with all signs and external lights every evening from dusk until at least 11:00 p.m. Sunday through Thursday and until 12:00 midnight on Friday and Saturday, including evenings when the Premises is not open for business.
- As promptly as shall be possible under the circumstances then existing, written notice of any accident, fire, casualty or damage occurring on or about the Premises shall be given by Tenant to Landlord. In the event of any emergency (e.g. fire, personal injury, accident), Tenant shall call local police before calling Landlord.
- All loading and unloading of merchandise or supplies and all deliveries of any kind shall be done only at such times and at such locations and through such entrances as shall be designated in writing by Landlord for such purposes. Tenant shall be responsible for any and all damage caused by Tenant or its agents, invitees or contractors as a result of a violation of these restrictions.
- All garbage, rubbish and refuse shall be kept in airtight and watertight containers. Tenant, at Tenant's expense, shall dispose of or cause to be disposed of and carried away all garbage, rubbish and refuse quickly and expeditiously in dumpsters, containers, or compactors designated by Landlord. Tenant shall break down all boxes before being placed in any designated dumpster, container, or compactor. In no event shall Tenant place or allow to be placed any rubbish outside the Premises at any time. Tenant agrees to comply with all orders, rules and regulations of public authorities and Landlord relating to the disposition of rubbish. If any Tenant violates the requirements set forth herein, Landlord shall have the right (but not the obligation) to clean up Tenant's trash, rubbish or refuse and to charge Tenant the cost thereof plus an additional administration fee of twenty percent (20%).
- The Premises shall be kept in a clean, orderly and sanitary condition free from objectionable odors (for clarification, tobacco smoke shall not be deemed objectionable) and from insects, vermin and other pests. Tenant shall cause no objectionable odors to emanate from the Premises. Tenant shall not block any exits from the Premises and Tenant shall insure all exit signs and emergency lighting are cleaned on a regular basis and are in good working order.

Tenant is not permitted to hang any item from any exit sign, emergency light or any sprinkler head within the Premises. All non-enclosed areas under the control of Tenant (such as vestibules and store entranceways) shall be kept clean of debris and free from ice and snow, and no rubbish, obstructions or merchandise shall be placed in such areas.

- No music or noise shall be permitted in the Premises the volume of which shall be heard outside the Premises or which shall be reasonably objectionable to Landlord or to other tenants without the express prior written consent of Landlord.
- There is no parking at the Premises.
- Business shall be conducted in a dignified manner and in accordance with high standards of retail merchandising and service operation. No auction, distress, fire, bankruptcy, going out of business sale, "lost lease" sale or similar sales shall be conducted. No sidewalk sales or other special events shall be held without prior written notice to Landlord (and with respect to sidewalk sales or other events outside the Premises, without the express written consent of Landlord).
- No machinery or equipment shall be installed, used or operated that in Landlord's opinion is harmful to the Premises or to the building of which the Premises are a part, or constitute a disturbance to other tenants.
- Tenant shall not operate or permit the operation on, in or about the Premises of any coin- or token-operated vending machines or similar device for the sale of any goods, wares, merchandise, food, beverage or service, including, but not limited to, pay telephones, pay lockers, pay toilets, scales, amusement devices and machines for the sale of beverages, foods, candy or similar type commodities, without the prior written consent of Landlord.

# EXHIBIT D

**South Beach Cigar Bar LLC**  
3420 NW 7 St  
Miami FL 33125

Miami, August 11, 2017

**Subject:** Possession Letter – 900 Collins Ave

Hi,

This letter is to confirm we took possession of the space at 900 Collins Ave on July 19<sup>th</sup>, 2017 and received keys for the space.

Best Regards,

Christophe Normand

Authorized Signature 

# EXHIBIT E





# EXHIBIT F

# BAXTER TOUBY, LLP

Attorneys-at-Law

Direct: (305) 639-8833

E-mail: JBaxter@BaxterTouby.com

## TRANSMITTED VIA FEDEX & E-MAIL

### § 83.201 NOTICE OF DEFAULT

September 4<sup>th</sup>, 2018

C&A 900 Collins LLC  
c/o SCF Management LLC  
The Cayre Group  
1407 Broadway, 41<sup>st</sup> Floor  
New York, New York 10018

Marc J. Gurell, Esq.  
Seyfarth Shaw LLP  
620 Eighth Avenue  
New York, New York 10018

Re: Section 83.201 Florida Statutes - Notice of Default  
RETAIL LEASE by and between C&A 900 Collins LLC, as landlord (the "Landlord"),  
and SOUTH BEACH CIGAR BAR, LLC, as tenant (the "Tenant") dated July 25<sup>th</sup>, 2017  
(the "Lease")

Dear Landlord:

Our office represents the Tenant. Reference is made to that certain Lease defined above. Unless otherwise indicated, all capitalized terms used herein shall have the meanings ascribed to them in the Lease .

You are hereby notified that Landlord is in default under Section 13 REPAIRS BY LANDLORD of the Lease.

Written demand is hereby made for the repair of the items listed in that certain Condition Assessment report prepared by Innovative Building and Architecture Consultants prepared June 25<sup>th</sup>, 2018 (the "Report") and attached hereto.

Pursuant to F.S. 83.201 when the lease is silent on the procedure to be followed to effect repair or maintenance and the payment of rent relating thereto, yet affirmatively and expressly places the obligation for same upon landlord, and the landlord has failed or refused to do so, rendering the lease premises wholly untenable, the tenant may withhold rent after notice of the landlord.

Although Landlord has known about the defective roof for at least three (3) months, as a gesture of good faith, Tenant has continued to remit rent up to and including **September 1<sup>st</sup>, 2018**. However, the Tenant can no longer sit and wait for Landlord to start/finish the required repairs. If the necessary repairs are not completed by September 24<sup>th</sup>, 2018, Tenant will withhold rent from the date forward and thereafter until repairs are finished and pass inspection.

Further, Tenant respectfully requests that Landlord (at Landlord's expense):

- (i) abate all future rent until December 1<sup>st</sup>, 2018, the anticipated opening of the premises (assuming the roof is repaired quickly);
- (ii) fix or replace ceiling in both buildings;
- (iii) fix all door and window frames;
- (iv) fix structural damages on east and north wall of the coral house;
- (v) re-run the Waterproofing test to confirm roof is watertight; and
- (vi) any other items listed in the Report.

Tenant has been paying all rental payments despite failing to open the premises as anticipated. The delays now (since July 2018) are due to Landlord's failure to repair the roof to allow the landlord-approved tenant improvements to begin.

Tenant is committed to opening the store as soon as possible, which includes Landlord's assistance to overcome these final hurdles.

Please direct all responses **directly** to the Tenant representative, Chris Normand at the e-mail address below.

Sincerely,



Jeffrey L. Baxter, Esq.  
Managing Partner

cc: South Beach Cigar Bar, LLC (via e-mail transmission [CNormand@neptunecigar.com](mailto:CNormand@neptunecigar.com))

# EXHIBIT G

#100

# Agreement Between Owner and Contractor

## AGREEMENT

is made as of the 24th day of September in the year 2018, between:

The Owner: C & A 900 Collins LLC, 1407 Broadway, 41<sup>st</sup> Floor, New York, NY 10018

And the Contractor: U.S. Construction Corp. (USCC), 6355 NW 36 Street, Suite 608, Miami, FL 33166

The Project is: Cigar Bar Landlord Repairs, 900 Collins Ave, Miami Beach 33139

The Architect is: N/A

The Owner and Contractor agree as follows.

## ARTICLE 1 - THE CONTRACT DOCUMENTS

1.1 The Contract Documents consist of this Agreement, Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications, pursuant to Article 5, issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein.

1.2 Procurement and payment of all architectural and/or engineering drawings is the responsibility of the Owner. Measurements, sizes and shapes are understood to be approximate and are subject to field dimensions. Contractor shall not be responsible for accuracy, correctness or completeness of the plans and or specifications.

1.3 In the Event of conflicts or discrepancies among the Contract Documents, interpretations will be based solely on the following priorities:

- .1 Duly executed change orders
- .2 Exhibit "A" Project Budget Schedule
- .3 This Agreement

1.4 The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

1.5 Other Documents not listed above forming part of this Agreement are as follows:

Exhibit "A" Project Budget Schedule

## ARTICLE 2 - THE WORK OF THIS CONTRACT

2.1 The Contractor shall execute the entire Work as covered in the Contract Documents and Project Cost Estimate, except to the extent specifically indicated in the Contract Documents to be the responsibility of others ("Work"). To the extent of any inconsistencies between the Contract Documents regarding the scope of work, the scope of work covered in this Agreement shall be governed by the Project Cost Estimate.

## ARTICLE 3 - DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

3.1 The date of Commencement shall be three working days after the occurrence of all of the following conditions: execution of this Agreement, the issuance of a building permit, and delivery to contractor of the recorded Notice of Commencement.

3.2 Substantial completion shall be achieved no later than fifty three (53) calendar days from the date of commencement, except as may be extended by the terms of the Agreement.

## ARTICLE 4 - CONTRACT SUM

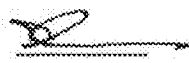
4.1 The Owner agrees to pay the Contractor in current funds, subject to additions and deletions as provided in the Contract Documents, the sum of: Fifty-Three Thousand One Hundred Three & 27/100 Dollars (\$53,103.27) in accordance with Exhibits "A" and "B".

4.2 Unit Prices, if any, are as follows:

N/A

4.3 In the event that the Contractor is required to pay or bear the burden of any new federal, state or local tax, or of any rate increase of an existing tax (except a tax on net profits), as a result of any statute, court decision, written ruling, or regulation taking effect after the Contract date, the Contract Price shall be increased by the amount of the new tax or tax increase.

4.4 NOT USED.





100

## ARTICLE 5 - CHANGES IN THE WORK

5.1 Changes in the Work may be accomplished after execution of the Contract, without invalidating this Contract, to make changes in the Work within the general scope of this Contract consisting of additions, deletions or other revisions to the Contract Sum and the Contract Time. The Contractor will submit to the Owner written copies of claim for adjustment to the Contract Sum and Contract Time for such revised Work to include, but not limited to, materials, labor, and time adjustments.

5.2 Unless otherwise directed and agreed to in writing by the Owner, the Contractor shall not order materials or perform Work which would incorporate Changes in the Work as requested by the Owner, Architect, or regulatory agencies. In the event that a written proposal for the Change in the Work cannot be prepared due to time limitations, quantity or scope of work cannot be ascertained, or if Owner gives Contractor an "order to proceed" without first obtaining a proposal, then the Owner and Contractor agree to perform the change in the Work on a "cost plus basis" and Owner shall be responsible for all costs.

5.3 For additive Changes in the Work the Contractor shall include a sum of the cost of the work for overhead and a sum of the cost of the work for Profit.

5.4 For deductive Changes in the Work the Owner shall be entitled to a credit for the portion of the Work being removed, deleted or credited.

## ARTICLE 6 - DELAYS AND EXTENSION OF TIME

6.1 If the Contractor is delayed at any time in the commencement or progress of the Work by acts of God, civil unrest, labor disputes, fire, unusual delay in deliveries, material shortages, acts of Tenants or Landlords, regulatory agencies, existing code violations, Owner, Owner's agents, Owner's contractors, Owner provided materials, unavoidable casualties, adverse weather conditions, other causes or actions beyond the Contractor's control, then the Contract Time shall be extended by a reasonable time and the Contract Sum adjusted for Contractor's additional general conditions and other costs as necessitated by the occurrence of the above.


6.2 Owner understands and agrees that Contractor is bound by the terms and conditions regarding start and progress of the Work imposed by the licensing and regulatory agencies having jurisdiction over the Project and Contractor shall be entitled to an increase in the Contract Time for any delays caused by the authorities having jurisdiction over the Project.

## ARTICLE 7 - PROGRESS PAYMENTS

~~7.1 Based on application for payment submitted to the Owner by the Contractor, the Owner shall make progress payments on account of the Contract Sum to the Contractor. The Owner shall make payment to the Contractor no later than 30 days from the date that the application of payment is received. No retainage shall be withheld on amounts due to Contractor.~~

7.2 Payment schedule will be as follows:

1. 30% deposit due at Commencement
2. 30% due at 2 weeks
3. 30% due at the 4<sup>th</sup> week
4. 10% due at Completion

30 DAYS.  


7.3 Payments due and unpaid under the Contract Documents shall bear 1.5 % monthly interest from the date payment is due.

7.4 The Owner acknowledges that he understands and agrees to the terms and conditions of the payments as outlined in this section of the contract.

7.5 The Owner shall, within five days of written demand from Contractor, furnish evidence that financial arrangements have been made to fulfill the Owner's obligations under this Agreement. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. After such evidence has been furnished, the Owner shall not vary such financial arrangements without prior notice to the Contractor.

## ARTICLE 8 - FINAL PAYMENT

8.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when the Contractor's Work is fully performed on accordance with the requirements of the Contract Documents.

8.2 The Owner's final payment to the Contractor shall be made no later than 30 days after submittal of final payment requisition.

## ARTICLE 9 - FAILURE OF PAYMENT

9.1 If the Owner fails to pay the Contractor as stipulated above then the Contractor may, upon 3 days' written notice to Owner, stop the Work until payment of the amount owing has been received. The Contractor further holds the right to terminate this contract within 3 additional days' written notice of "intention to terminate" this Contract. In such case the Contractor shall be



entitled to recover for all costs of subcontracted work, labor and materials furnished by Contractor, including overhead plus Contractor's reasonable cost of supervision, general conditions, shutdown, delay, start-up, and lost profit.

#### ARTICLE 10 - TERMINATION OF THE CONTRACT

10.1 In the event the Owner terminates this Contract through no fault of the Contractor, the Contractor shall be entitled to receive payment for the Work executed along with all expenses incurred by reason of such cancellation.

10.2 If the Work is stopped for a period of 14 days through no fault of the Contractor, the Contractor may, upon 3 additional days' written notice to the Owner terminate the Contract and recover from the Owner payment for Work executed including reasonable overhead and profit in the amount of 15%, and costs incurred by reason of such termination and damages.

#### ARTICLE 11 - DISCLAIMED WORK

11.1 Contractor shall not be held responsible for any abnormal or unusual pre-existing condition including, but not limited to, existing code violations, work done by others, damage caused by termites or rot, loose ground or ground inadequate bearing capacity, rock or other material not removable by ordinary hand tools, inadequate electrical wiring systems for the load imposed by the Work under this Agreement, and any fire protection, mechanical, electrical, or communication systems not shown on documents or plans furnished by Owner. Contractor shall further not be held responsible for delays and/or damages caused for any work or materials supplied and/or provided by Owner.

#### ARTICLE 12 - SUBSTANTIAL COMPLETION

12.1 Substantial Completion is the stage in the progress of work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use or the date on which the Certificate of Completion or Occupancy, temporary or final, is issued by the appropriate governmental authorities having jurisdiction, whichever date is earlier.

#### ARTICLE 13 - CONCEALED OR HIDDEN CONDITIONS

13.1 Should unknown or hidden conditions exist in the ground or in an existing structure which are unusual in nature, different from conditions encountered, different from that depicted by the Architect/Engineer in the Contract Documents, or not covered in the scope of work then the Contractor reserves the right to request a change in the Contract Sum as stipulated in Article 5.

#### ARTICLE 14 - ACCESS AND UTILITIES

14.1 Owner agrees to provide free access to work areas for workers and vehicles, and to provide areas to store materials and debris.

14.2 Unless otherwise specified, all water, sanitary, electric, and other utilities from servicing agencies to the project or Owner's property (or to the metering devices) are at Owner's responsibilities. Owner agrees, at Owner's expense, to provide electricity, drinking and toilet facilities (where available) during the duration of the Project.

#### ARTICLE 15 - PROPERTY RIGHT AND RESTRICTIONS

15.1 The Owner shall be responsible for locating and pointing out boundary lines of the property to Contractor. Owner shall be solely responsible for the accuracy of markers, elevations, property and tenant separations lines or boundaries indicated to Contractor verbally or as detailed in Contract Documents provided to Contractor. All property surveys will be provided by Owner to Contractor indicating easement, encumbrances or rights of way relating to the property and disclose any hidden obstacles or conditions.

#### ARTICLE 16 - LABOR AND MATERIALS

16.1 Contractor reserves the right to subcontract any or all portions of the Work.

16.2 All materials furnished under this agreement shall be construction grade and meet industry standards. Where brand names have been specified and are not readily available due to time constraints or other circumstances beyond the Contractor's controls, Contractor may at his option select substitutes to be consistent in quality and character as the originally specified product.

16.3 It is understood that when matching existing conditions or samples given to the Contractor, the Contractor will provide materials so as to match as close as possible the existing conditions or given sample. However, Contractor cannot and does not guarantee that new materials will be an exact match.





## ARTICLE 17 - INSURANCE

17.1 Contractor agrees to carry workman's compensation, general liability and other insurances as required by law. Contractor at Owner's request will supply a certificate of insurance as proof. Owner shall maintain property insurance for the duration of the Project which insures the property and the value of the Work and Owner agrees to name the Contractor as additional loss payee on Owner's property insurance, so as to secure Contractor for loss due, but not limited to fire, vandalism, flood, hurricane, or other insurable peril not within the control of the Contractor. Both parties agree to furnish each other with evidence of said insurance upon request. Contractor shall not be responsible for losses due to fire, vandalism, flood, hurricane, windstorm, rain, theft or other insurable peril regardless of whether Owner's property insurance actually covers such perils. Owner is responsible for all such losses including, but not limited to losses due to theft and vandalism.

## ARTICLE 18 - LIMITED WARRANTY

18.1 Contractor grants Owner a one-year warranty from the date of Substantial Completion, provided Owner has paid Contractor in full, for labor and materials supplied by Contractor and provided that the Owner has paid Contractor in full. This Warranty does not include glass, fading of paint and reasonable wear and tear. The Warranty shall not apply if the defective portion of the Work, elements, fixtures or items of personal property has resulted from or been caused, in whole or in part, by normal wear and tear, the misuse of same (whether intentional or unintentional) by any person, firm or entity other than Contractor or from accident or casualty. The Warranty is further conditioned upon routine maintenance being performed by the Owner. Contractor's warranty is not extended by any manufacturer or subcontractor warranties which may exceed one year.

18.2 The maximum liability of Contractor under the Warranty shall be the replacement cost of the defective portion of the Work. Contractor shall have sole right to determine whether the defect shall be corrected by repair or replacement. In no event shall Contractor be liable to Owner, any other person or entity for consequential or exemplary damages or personal injuries arising from any breach of the Warranty.

18.3 The foregoing warranty is expressly in lieu of any other warranties, express or implied. The Contractor disclaims any and all implied warranties of merchantability and fitness for the purposes or uses intended for the work, elements and all fixtures or items or personal property contained therein, whether arising from custom, usage course or trade, case law or otherwise.

18.4 Contractor does not warranty any waterproofing work in any coral rock.

## ARTICLE 19 - CONSTRUCTION LIENS

~~19.1 Under Florida Law a Contractor who is not paid is entitled to file claim of lien against the Property to secure payment for the debt of the Work performed. The Contractor shall provide lien waivers for payments received and cleared.~~

## ARTICLE 20 - LEGALITY AND VENUE

20.1 The Owner and Contractor agree that all actions arising out of performance of this Agreement shall be construed in accordance by the Laws of the State of Florida and brought in a court of competent jurisdiction in Miami-Dade County without giving effect to conflicts of law rules. Both parties hereby agree that if any litigation arises out of this contract, they both waive the right to a jury by trial. In case one or more of the provisions of this agreement or any application thereof shall be invalid unenforceable or illegal, the validity, enforceability and legality of the remaining provisions and any other application thereof shall not in any way be impaired thereby.

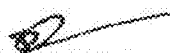
## ARTICLE 21 - CLAIMS AND DISPUTES

21.1 Any claim arising out of or related to this Contract shall be subject to mediation as a condition precedent to the institution of litigation by either party.

21.2 In the event of any disputed claim and/or controversy the Parties shall proceed to mediation within 10 days of written demand thereof, unless otherwise mutually agreed. In such an event the Parties shall hold mediation within 10 days of the date of written demand, unless otherwise mutually agreed. Both Parties agree to mediate using a mediator certified by the Supreme Court of The State of Florida and mediation will take place in Miami-Dade County Florida. In the event the Parties cannot agree as to mediator, each party is free to pursue litigation.

21.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Miami-Dade County, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

21.4 In connection with any arbitration or litigation, including appellate proceedings arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees, through and including all trial and appellate levels and post-judgment, administrative and bankruptcy procedures, expert witness fees, and costs.



21.5 CLAIMS FOR CONSEQUENTIAL DAMAGES: The Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages for losses of financing, business and reputation, and for loss of profit except Contractor's anticipated profit arising directly from the Work. Consequential damages do not include Contractor's lost profits in the event this Agreement is terminated by Owner.

ARTICLE 22 - MISCELLANEOUS PROVISIONS

22.1 No prior or present agreement or representations shall be binding upon any of the parties unless incorporated in the Contract. No modifications or change in this Contract shall be valid or binding upon the parties unless in writing, executed by the Parties to be bound hereby.

22.2 This Contract and its Modifications have been extensively negotiated between the Parties. As such, neither party shall be considered the author of the Contract, nor any ambiguities shall be neutrally construed.

22.3 SEVERABILITY: The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision. If any restriction or limitation in this Agreement is deemed to be unreasonable, onerous or unduly restrictive by a court or arbitrator of competent jurisdiction, it shall not be stricken in its entirety and held totally void and unenforceable, but shall remain effective to the maximum extent permissible within reasonable bounds.

22.4 COUNTERPARTS: This Agreement may be executed in multiple counterparts by the parties hereto. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Agreement, all of which shall constitute one agreement to be valid as of the date of this Agreement. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Agreement and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

22.5 WRITTEN NOTICE: Written notice shall be deemed to have been fully served if delivered in person to the Contractor or the Owner showing confirmation of receipt, or shall be deemed to have been duly given on the date said notice was mailed by United States Certified or Registered Mail, Return Receipt Requested, postage prepaid, and addressed as follows (or to such other address as any party may specify by notice to all other parties as aforesaid):

FOR OWNER:

C&A 900 Collins LLC  
1407 Broadway, 41<sup>st</sup> Floor  
New York, NY 10018

FOR CONTRACTOR:

U.S. Construction Corp.  
6355 NW 36 Street, Suite 608  
Miami, Florida, 33166

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

Dylan Cecchini, Director of Property Management  
(Printed name and title)

CONTRACTOR (Signature)

Rafael Reyes, President  
(Printed name and title)

EXHIBIT A



6255 NW 36 Street, Suite 803  
 Miami, FL 33166  
 Phone: 305-443-8808 Fax: 305-443-8838

**Project Cost Proposal**

To: C & A 900 Collins LLC  
 Dylan Cecchini  
 Date: 8/7/2018  
 Via: email  
 Project: 900 Collins Ave - Landlord Repairs  
 Address: 900 Collins Ave  
 Miami Beach, FL

**Scope of Work Summary**

The below work is based off of detailed condition assessment report provided by IBA Consultants, Inc dated 8/25/18

|         |  |           |
|---------|--|-----------|
| 01-3000 | <p><i>Administration and Cleaning</i></p> <p>Coordination, Project Management, Cleaning, Supervision, etc</p>  | 4,000.00  |
| 03-3000 | <p><i>Stucco patch, Fix rebar and Seal penetrations, etc</i></p> <p>H# strength grout at storefront door in vestibule facing 5th st<br/>                 Clean interior corroded rebar and patch stucco (Photo 6)<br/>                 Seal around exterior penetrations/outlets - Photo 10 in prelim report<br/>                 Furnish and install missing 1 dome strainer on the roof - photo 13 in prelim report<br/>                 Apply regular waterproofing(Vulkrem 250) where columns meet steel roof's parapet- Photo 22, 23, 24<br/>                 Spot waterproofing included to take care of leaks at Photos 2, 4, 7, 8, 14, 15, 16, 18, 20</p> <p>Note: IBA Reports recommendation of waterproofing on the exterior removing coral rock is not priced</p>   | 4,800.00  |
| 07-1000 | <p><i>Roofing</i></p> <p>1 Reroofing - Roof above the lounge/terrace sans the roof above vestibule (also called coral house)<br/>                 Install thermoplastic Energy Star Environmental Protection Agency approved roof system mechanically approved<br/>                 Cause for leaks in the coral house roof (Photo 26, 27) not determined in IBA's report(item E). Priced reroofing<br/>                 10 years limited warranty is included<br/>                 If structural repairs are uncovered on roof, it will be priced separately</p> <p>Note: \$ 14,500.00</p> <p>2 Reroofing - Vestibule roof<br/>                 IBA's recommendation(item F) of removal of existing waterproofing is difficult, tedious and not cost effective.<br/>                 We recommend reroofing - install thermoplastic roof system mechanically fastened<br/>                 7 yr limited warranty on vestibule roof included<br/>                 If structural repairs are needed that get uncovered on roof, it will be priced separately</p> <p>Note: \$ 4,500.00</p> | 19,000.00 |
| 08-8000 | <p><i>Windows and Storefront Doors</i></p> <p>Exterior single hung windows(Qty - 28) and 2 doors (at vestibule) - Remove existing perimeter wood, apply waterproofing and reinstall<br/>                 Existing Fixed windows/ Clerestory windows - Remove existing waterproofing and apply new waterproofing<br/>                 Existing storefront doors (on the N and S)- Remove existing unsalvageable/damaged door leafs and replace with new<br/>                 Remove and replace front door in the vestibule as its broken up and cant be reused<br/>                 NOTE: No rework of masonry openings is included and no work on the existing storefront windows on the South is included</p>  | 18,376.70 |

EXHIBIT A

To: C & A 900 Collins LLC  
Dylan Cecchini

Date: 6/7/2018

Via: email

Project: 900 Collins Ave - Landlord Repairs  
Address: 900 Collins Ave  
Miami Beach, FL

Notes:


- Permits or permit processing is not included
- No MEP work is involved
- No work for interior doors is included
- No flashing is included
- No warranty of the roof deck is included
- Above roof work doesn't address the issue of ponding water. If ponding water is noticed, it will be priced separately to correct it.
- Roof warranty doesn't include mold related liabilities or defects.
- Warranty on waterproofing at or near coral rack is not included
- All work to be performed during regular hours
- If proposal is acceptable, provide us a signed copy of this proposal along with a retainer of 35%.
- Owner is responsible to perform water test after work is completed to see if any additional leaks are found
- Any additional items not mentioned will be priced separately
- Rebar and concrete repairs are cosmetic in nature
- Priced as a complete job, not piecemeal

|          |            |
|----------|------------|
| SUBTOTAL | 48,178.76  |
| Fees     | \$8,926.51 |
| TOTAL    | 563,103.27 |



Contingencies

I hereby accept this Proposal and authorize the Contractor to proceed with the above described work.

BY   
 \_\_\_\_\_  
 Dylan Cecchini 9.13.18  
 Print Name Date



June 25, 2018

Mr. Christophe Normand  
Neptune Cigars Inc.  
3420 NW 7<sup>th</sup> Street  
Miami, FL 33125

Telephone: 786-473-1805  
Email: cnormand@neptunecigar.com

Subject: Coral House 900  
Miami Beach, Florida  
Detail Condition Assessment



Reference  
Documents: None

Dear Mr. Normand:

As requested, IBA Consultants performed a detailed condition assessment of the subject project building envelope on June 20, 2018. The purpose of our survey is to assess the building's fenestrations and façade with regards to the reported water intrusion. The following are the results of our review, our comments, and our recommendations.

#### **Executive Summary**

IBA performed a visual assessment of the building based on the reported water infiltration. Further, IBA performed testing to reproduce the reported water intrusion that occurred during prior rain events.

IBA performed in situ field testing on two single hung windows, a roof drain, a section of a parapet wall, three locations of the building's façade and the fixed windows.

IBA observed water infiltration through the single hung windows, roof, building's façade and fixed windows.

IBA recommends specific remedial work be performed to the fenestrations, roof and building's facade.

#### **Background**

1. The subject project is located at 900 Collins Ave, Miami Beach, Florida.
2. The building was constructed in 1920; and as such the house is 98 years old.
3. IBA was hired by Mr. Christophe Normand to perform a Due Diligence Assessment on May 17, 2017; refer to IBA proposal of May 14, 2018.
4. IBA performed a Due Diligence assessment on May 17, 2018.

IBA CONSULTANTS, INC. - MIAMI

7104 N.W. 51<sup>ST</sup> STREET | MIAMI, FLORIDA 33166  
P: 305.594.8950 | F: 305.593.0617 | WWW.IBACONSULTANTS.COM



## Description of Survey

5. IBA Consultants performed a detailed condition assessment in general compliance with ASCE 30 *Guideline for Condition Assessments of Building Envelopes*.
6. IBA conducted the assessment June 20, 2018 with U.S. Construction Corp (Michael Thomas).
7. The following condition assessment is based on the condition of the subject project existing and apparent on the date and time of our survey; not all conditions may have been apparent on the date and time of our survey due to weather conditions, inaccessibility of areas of the subject project or for other reasons. Environmental changes, either naturally occurring or artificially induced, may cause changes or alterations to the subject project as compared to the conditions present at the time of our survey.
8. The following condition survey should not be relied upon to represent conditions at any other location or for conditions beyond that indicated in the following report.
9. As such, the Client understands and agrees that our preliminary condition assessment can only report deficiencies in existence on the date of the survey and as observed by IBA Consultants, Inc.
10. The following report is not a building code inspection report, title examination, home inspection or by-law compliance inspection. Nothing herein is intended as an opinion as to the advisability or inadvisability of the purchase, sale, or replacement of the property or its components. This report is not a home warranty, guaranty, insurance policy or substitute for real estate transfer disclosures which may be needed by law.
11. The following report is not a building code inspection report, title examination, home inspection or by-law compliance inspection. Nothing herein is intended as an opinion as to the advisability or inadvisability of the purchase, sale, or replacement of the property or its components. This report is not a home warranty, guaranty, insurance policy or substitute for real estate transfer disclosures which may be needed by law.

## Observations

### Single Hung window #1

12. Observation: IBA noted a cavity between the window's wood buck and coral wall was left exposed; refer to photograph 1 on page 3.

As such, IBA performed a water test in accordance with a modified AAMA 501.2 *Quality Assurance and Diagnostic Water Leakage Field Check of Installed Storefronts, Curtain Walls and Sloped Glazing Systems*. That is, water was applied with a Monarch Nozzle -- at the cavity between the wood buck and coral wall.

During testing, IBA observed water migrating at the sill of specimen at left jamb; refer to photograph 2 on page 3.

Comment A: Open cavities can allow water to migrate into the building.



**Photograph Number #1-Test Location**  
**Description:** Cavity between wood buck and coral wall.



**Photograph Number #2-Leak Location**  
**Description:** Water between wall and buck.



**Observations**

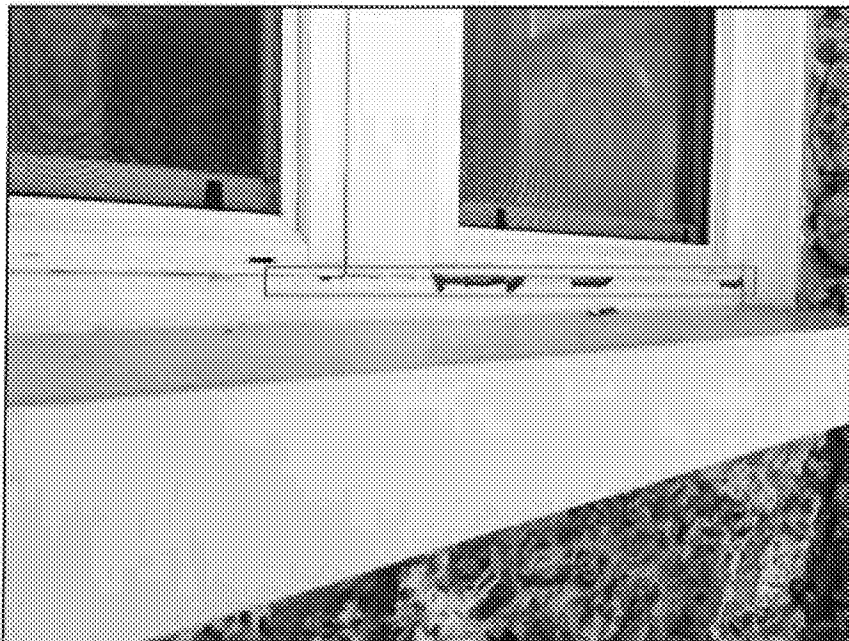
**Single Hung window #2**

13. Observation: IBA noted a cavity between window sill and perimeter sealant; refer to photograph 3 below.

As such, IBA performed a water test in accordance with a modified AAMA 501.2 *Quality Assurance and Diagnostic Water Leakage Field Check of Installed Storefronts, Curtain Walls and Sloped Glazing Systems*. That is, water was applied with a Monarch Nozzle – at the cavity between the window frame and wall.

During testing, IBA observed water migrating at the sill of specimen at left jamb (interior); refer to photograph 4 on page 5.

Comment: Missing sealant will allow water to migrate into the building.



**Photograph Number # 3-Test Location#2**  
**Description:** Cavity between window frame and wall.





**Photograph Number #4-Leak Location**  
**Description:** Water between buck and wall.

**Observations**

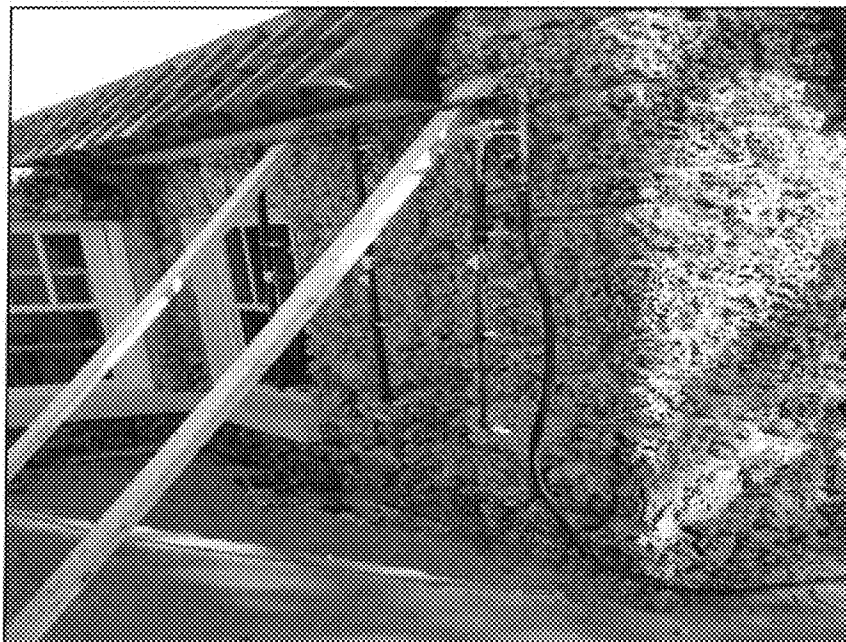
**Coral Wall-Test Location #3**

14. Observation: IBA noted corroded rebars and concrete spalling; refer to photograph 6 on page 6.

As such, IBA performed a water test in accordance with a modified ASTM 1105 *Standard Test Method for Field Determination of Water Penetration of Installed Exterior Windows, Skylights, Doors and Curtain Walls, by Uniform or Cyclic Static Air Pressure Difference*. That is, we applied water using a calibrated spray rack.

During testing, IBA observed water migrating between wall and slab; refer to photograph 7 on page 7.

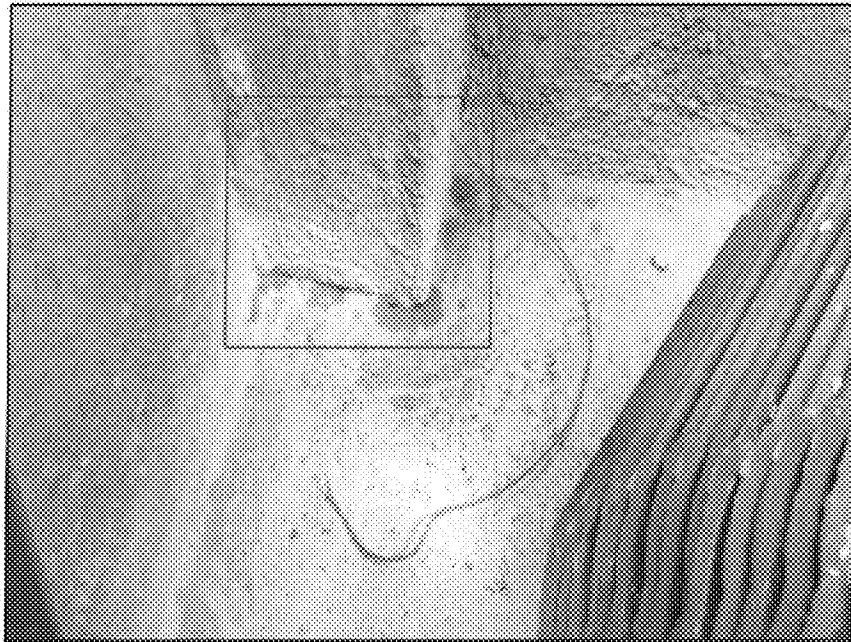
Comment: IBA observed waterproofing approximately six feet up the wall; refer to photograph 8 on page 7.



**Photograph Number # 5-Test Location # 3**  
**Description:** Cavity between wood buck and coral wall.



**Photograph Number # 6**  
**Description:** Corroded and spalling concrete.



**Photograph Number # 7- Leak Location**  
**Description:** Water migrating between wall and slab.



**Photograph Number # 8**  
**Description:** Waterproofing approximately four feet up the wall.



**Observations**

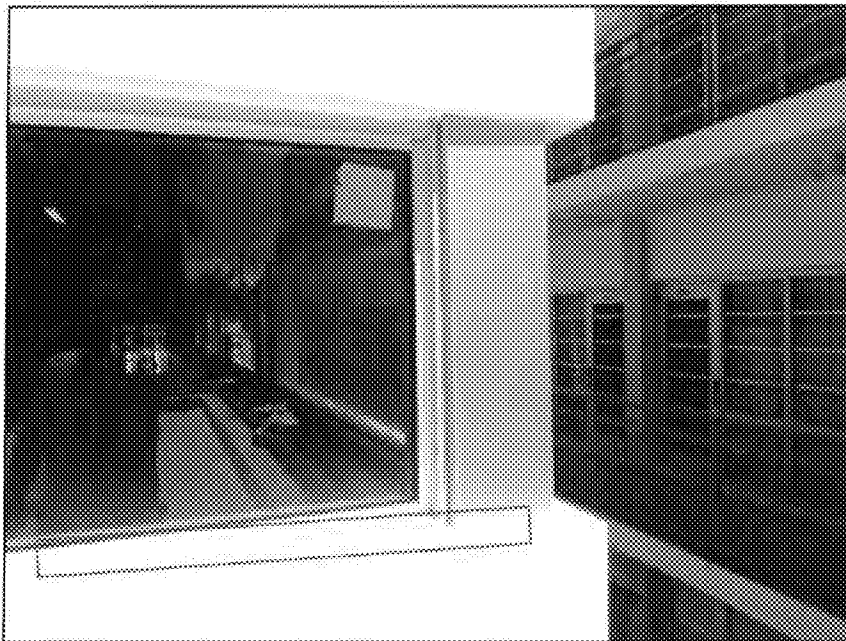
**Fixed Window-Test Location #4**

15. Observation: IBA noted a cavity between window sill and perimeter sealant; refer to photograph number 9 below.

As such, IBA performed a water test in accordance with a modified AAMA 501.2 *Quality Assurance and Diagnostic Water Leakage Field Check of Installed Storefronts, Curtain Walls and Sloped Glazing Systems*. That is, water was applied with a Monarch Nozzle -- at the cavity between the window and stucco.

During testing, IBA observed water migrating between concrete and frame; refer to photographs 10 through 12 on pages 9 and 10.

Comment: Missing sealant will allow water to migrate into the building.



**Photograph Number # 9**

**Description:** Cavity between stucco and frame.



**Photograph Number # 10**  
**Description:** Water entering sill of window.



**Photograph Number 11**  
**Description:** Water entering sill of window.



**Photograph Number 12**  
**Description:** Water entering sill of window.

#### **Observations**

##### **North Entrance Door-Test Location #5**

16. Observation: IBA noted voids in the perimeter sealant between frame and sill; refer to photograph number 13 on page 11.

As such, IBA performed a water test in accordance with a modified AAMA 501.2 *Quality Assurance and Diagnostic Water Leakage Field Check of Installed Storefronts, Curtain Walls and Sloped Glazing Systems*. That is, water was applied with a Monarch Nozzle -- at the sill of frame.

During testing, IBA observed water migrating between sill and perimeter sealant; refer to photograph 14 on page 11.

Comment: IBA observed voids in perimeter sealant.



**Photograph Number 13**  
**Description:** Test Location



**Photograph Number 14**  
**Description:** Water migrating between sill and frame.





**Observations**

**South Entrance Door-Test Location #6**

17. Observation: IBA noted previous water intrusion between door frame and sill.

As such, IBA performed a water test in accordance with a modified AAMA 501.2 *Quality Assurance and Diagnostic Water Leakage Field Check of Installed Storefronts, Curtain Walls and Sloped Glazing Systems*. That is, water was applied with a Monarch Nozzle -- at the sill of frame.

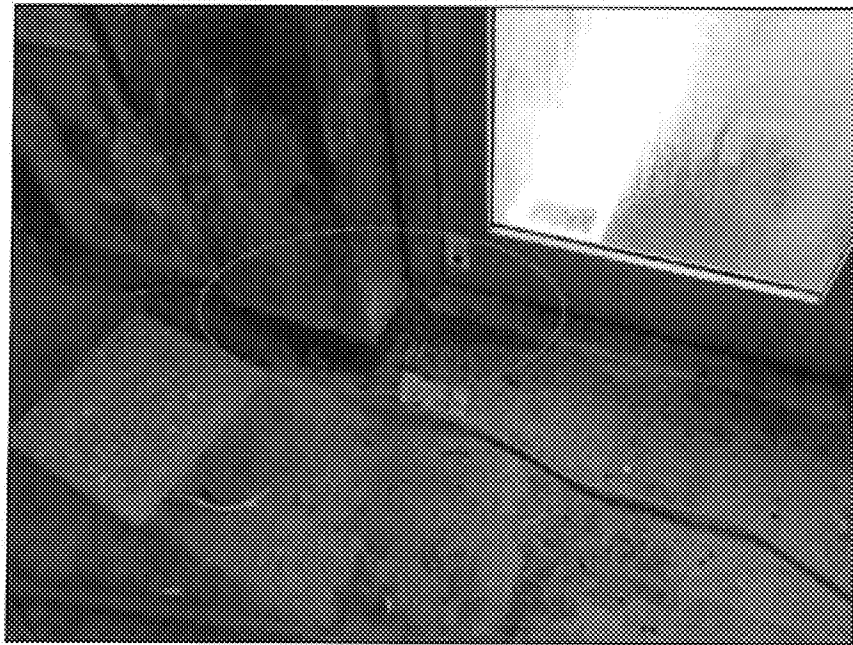
During testing, IBA observed water migrating between sill and concrete adjacent to the entrance door; refer to photograph 16 on page 13.

Comment: IBA did not observe water intrusion when testing the fixed panel adjacent to the door.



**Photograph Number 15**  
**Description:** Test Location





**Photograph Number 16**

**Description:** Water migrating between sill and concrete wall adjacent the entrance door

**Observations**

**South East-Single Hung Window -Test Location #7**

18. Observation: IBA noted corroded rebars and concrete spalling; refer to photograph 17 on page 19.

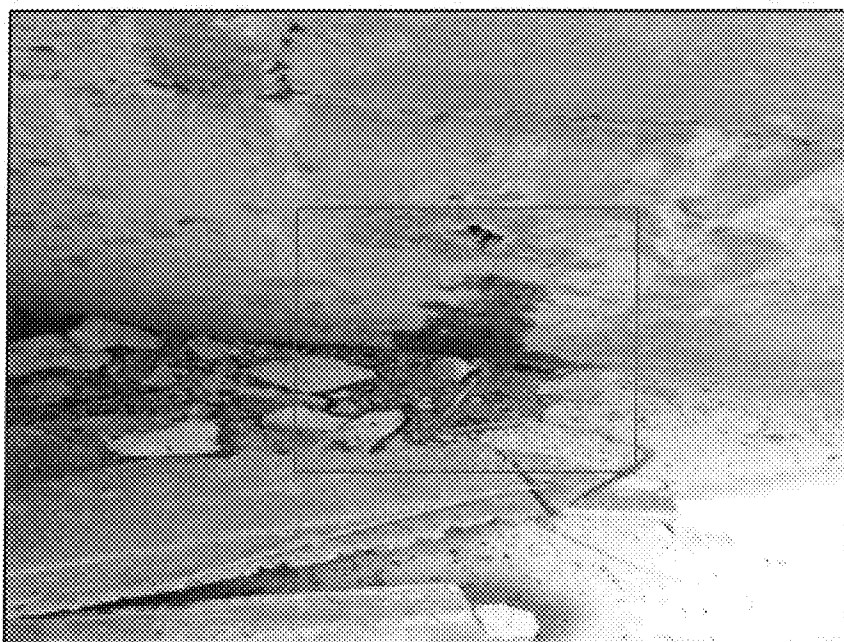
As such, IBA performed a water test in accordance with a modified AAMA 501.2 *Quality Assurance and Diagnostic Water Leakage Field Check of Installed Storefronts, Curtain Walls and Sloped Glazing Systems*. That is, water was applied with a Monarch Nozzle -- at the sill of frame.

During testing, IBA observed water migrating between concrete and grout; refer to photograph 16 on page 14.

Comment: The water was applied at the sill of specimen, testing the coral wall and concrete wall only.



**Photograph Number 17**  
**Description:** Test specimen



**Photograph Number 18**  
**Description:** Water migrating between sill and concrete wall adjacent the entrance door.



**Observations**

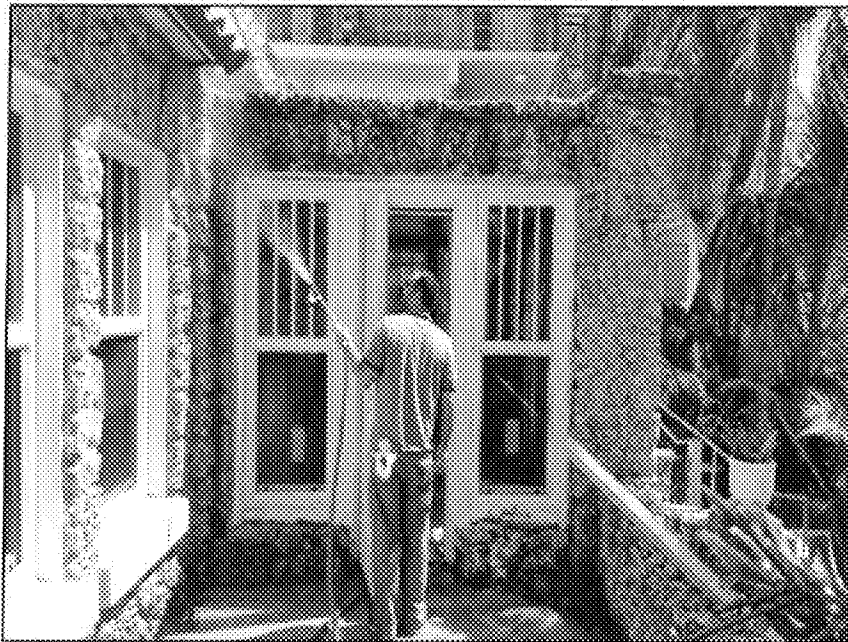
**South West-Single Hung Window-Test Location #8**

19. Observation: IBA noted corroded rebars and concrete spalling.

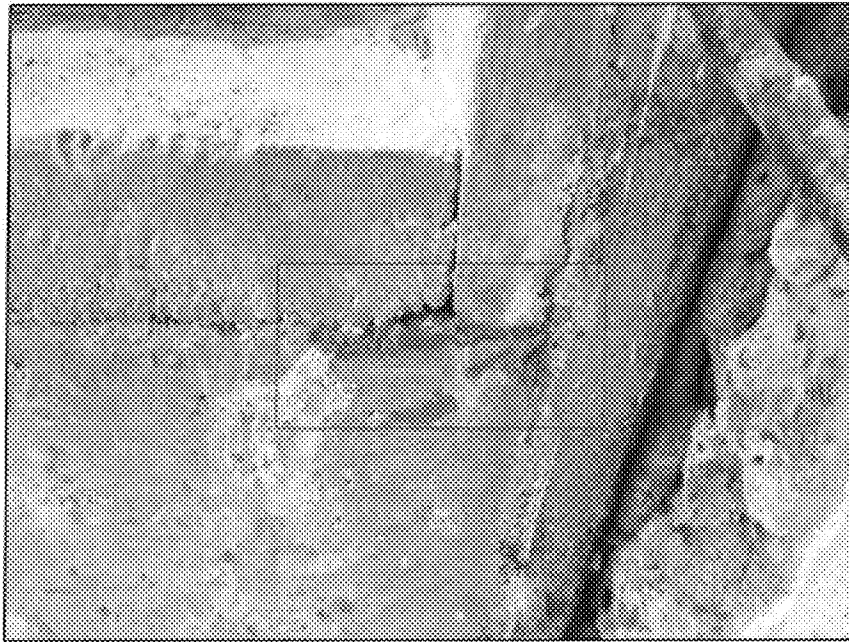
As such, IBA performed a water test in accordance with a modified AAMA 501.2 *Quality Assurance and Diagnostic Water Leakage Field Check of Installed Storefronts, Curtain Walls and Sloped Glazing Systems*. That is, water was applied with a Monarch Nozzle – to the coral wall.

During testing, IBA observed water migrating between concrete and grout; refer to photograph 20 on page 16.

Comment: Water was only applied to the coral wall.



**Photograph Number 19**  
**Description:** Test specimen



**Photograph Number 20**

**Description:** Water migrating between sill and concrete wall.

**Observations**

**Steel Columns- Test Location # 9**

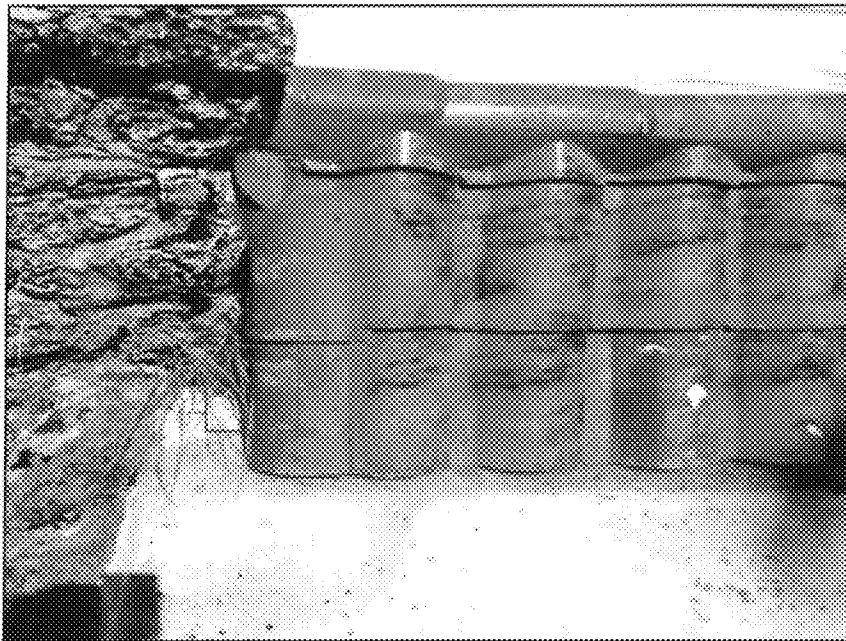
20. Observation: IBA noted corroded rebars and concrete spalling.

As such, IBA performed a water test in accordance with a modified AAMA 501.2 *Quality Assurance and Diagnostic Water Leakage Field Check of Installed Storefronts, Curtain Walls and Sloped Glazing Systems*. That is, water was applied with a Monarch Nozzle – at the top of the steel columns.

During testing, IBA observed water migrating down from the roof where the columns are detailed; refer to photographs 23 and 25 on pages 18 and 19.



**Photograph Number 21-South Column**  
**Description: Test Location**

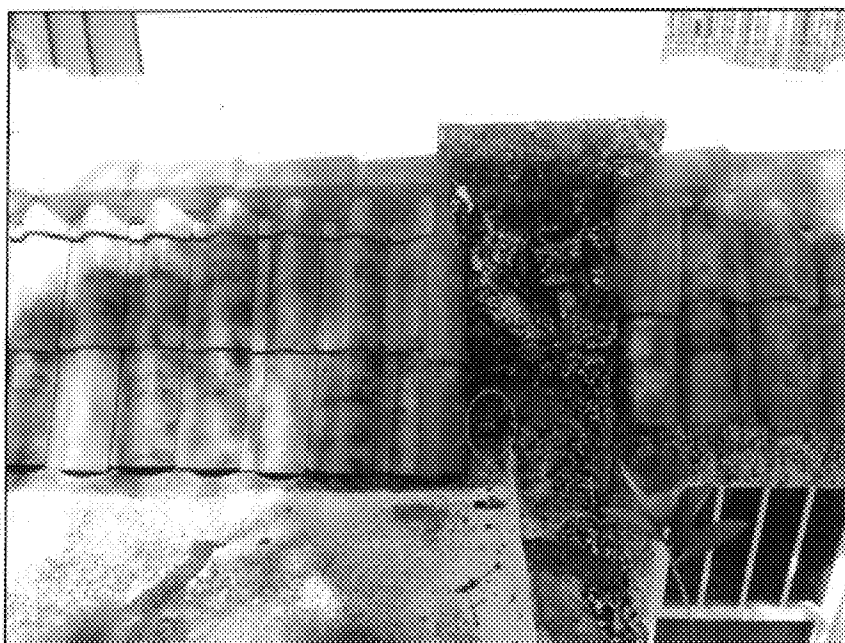


**Photograph Number 22**  
**Description: Column location**



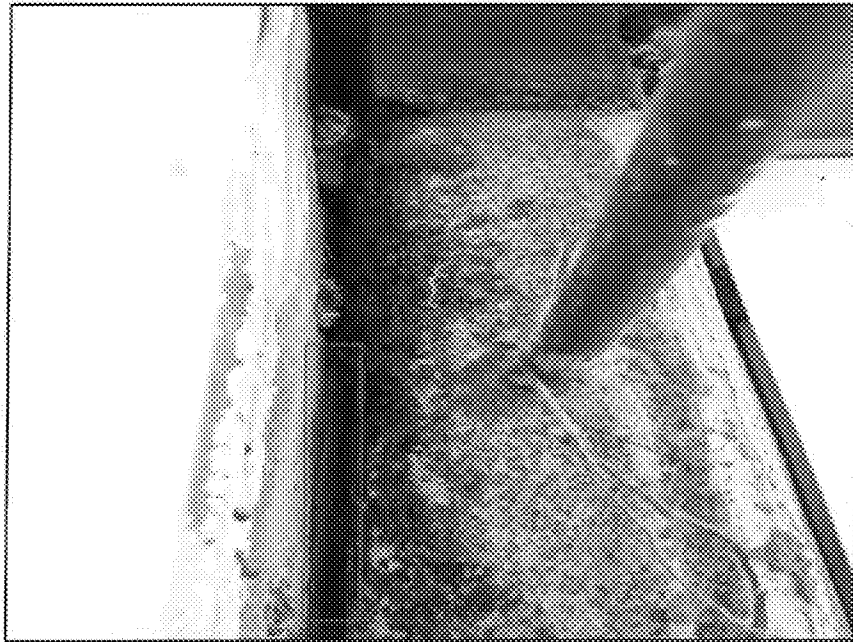
**Photograph Number 23**

**Description:** IBA observed water migrating down from the roof where the columns are detailed.



**Photograph Number 24**

**Description:** Column location



**Photograph Number 25**

**Description:** IBA observed water migrating down from the roof where the columns are detailed.

### **Observations**

#### **Drains- Test Location #10**

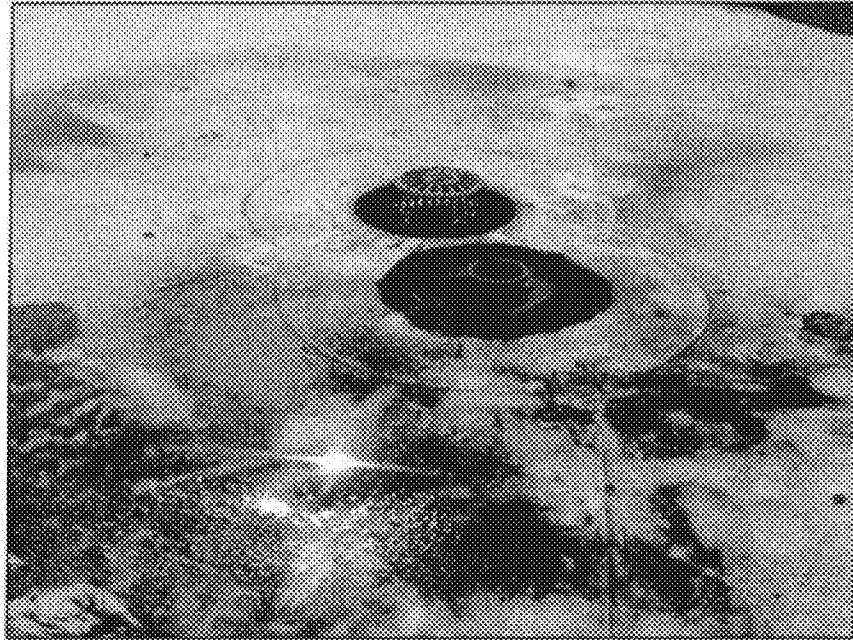
21. Observation: IBA noted water stains on the roof of the metal ceiling.

As such, IBA performed a water test in accordance with a modified AAMA 501.2 *Quality Assurance and Diagnostic Water Leakage Field Check of Installed Storefronts, Curtain Walls and Sloped Glazing Systems*. That is, water was applied with a Monarch Nozzle -- at the drains.

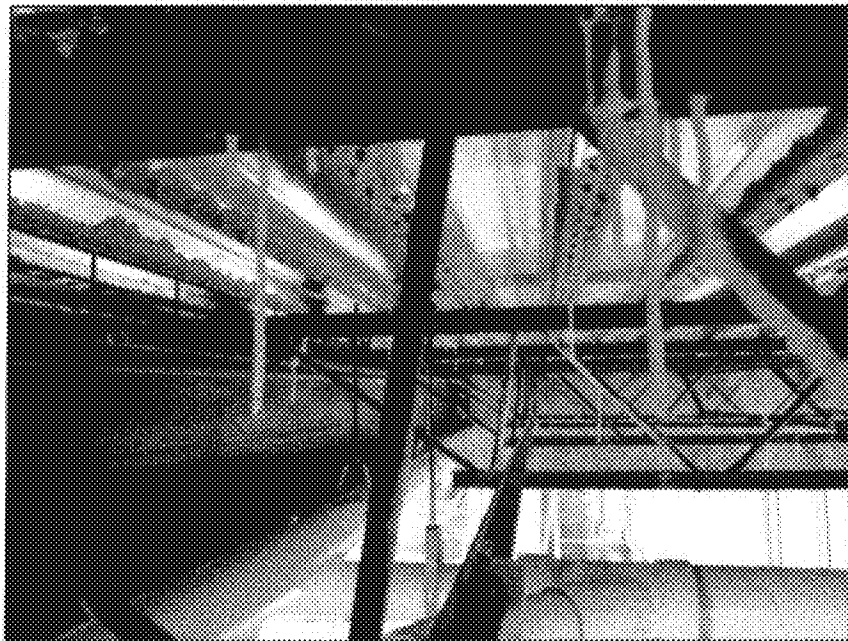
During testing, IBA observed water migrating through the metal roof; refer to photograph 27 on page 23.

Comment:





**Photograph Number 26**  
**Description:** Drain location



**Photograph Number 27**  
**Description:** IBA observed water migrating through the roof when testing the drains





## Recommendations

### A. Core/Concrete wall

- a. There is not an effective way to waterproof the Coral Stone without changing its appearance due to its irregular surface and texture. A such, will be necessary reaching the substrate where the stone is installed by removing the coral wall and clean the substrates in accordance with the waterproofing Manufacturer's requirements.
- b. Install Tamoseal Cement-Based Waterproofing Coating throughout the entire substrate, paying special attention to existing cold joints and change of substrates (base of the wall with floor slab).
- c. Install coral stone once the Tamoseal has cured.

### B. Fixed windows

#### Perimeter Sealant

- a. Remove existing perimeter sealant and clean the substrates in accordance with the Sealant Manufacturer's requirements.
- b. Install a neutral cure, low-modulus, 100 percent silicone sealant -- such as Dow Corning 790 or Tremco Spectrum 1 -- at the perimeter of the fixed window. All surfaces contacting sealant must be clean, dry and free of all contaminants prior to application of the sealant.

#### Metal-to-metal joints

- c. Seal the metal-to-metal joints using a neutral cure, medium modulus, 100 percent silicone such as Dow Corning 795 or Tremco Spectrum II.

### C. Single Hung Windows

- a. Remove exterior wood buck and clean the substrates in accordance with the Sealant Manufacturer's requirements.
- b. Remove existing perimeter sealant and clean the substrates in accordance with the Sealant Manufacturer's requirements.
- c. Install a neutral cure, low-modulus, 100 percent silicone sealant -- such as Dow Corning 790 or Tremco Spectrum 1 -- at the perimeter of the single hung windows and joint between buck and coral. All surfaces contacting sealant must be clean, dry and free of all contaminants prior to application of the sealant.

### D. Entrance Doors

#### Perimeter Sealant

- a. Remove existing perimeter sealant and clean the substrates in accordance with the Sealant Manufacturer's requirements.



- b. Install a neutral cure, low-modulus, 100 percent silicone sealant – such as Dow Corning 790 or Tremco Spectrum 1 – at the perimeter of the entrance door. All surfaces contacting sealant must be clean, dry and free of all contaminants prior to application of the sealant.

**E. Drains/Roof**

- a. A detailed assessment be provided at the roof. The purpose of the detailed assessment is to determine if the sources of water intrusion are from the drains or if the water is migrating through the TPO.
- b. IBA recommends the detailed assessment include water testing in accordance with modified ASTM D5957, to isolate the source or sources of water intrusion.

**F. Front Concrete Roof**

- a. Remove existing waterproofing, remove dust, laitance, grease, curing compounds, bond inhibiting impregnations, waxes, and any other contaminants.
- b. Remove stucco minimum 4- inches up substrate wall.
- c. All concrete should be cleaned and prepared to achieve a laitance and contaminant free, open textured surfaces by blast cleaning or equivalent means (CSP 3-4 per ICRI guidelines). Route out all cracks and joints as part of surface preparation.
- d. Install a cant strip such as Sikaflex 1a between concrete deck and substrate wall.
- e. Apply Sikalastic 710/715 pedestrian Traffic System on concrete deck and substrate wall in accordance with manufacturer's requirements.

- G. IBA recommends performing third-party inspections during the remedial work to insure the Work is in accordance with the Scope of Work.

- H. Finally, after completion of the remedial work, IBA recommends re-testing the remedial work to confirm the work is appropriate and applicable.

Please contact me at 786-554-7868 should you have any questions or concerns regarding the above assessment.

Respectfully submitted by,

Larry Zavala  
Project Consultants  
IBA Consultants, Inc.

Reviewed by,

Javier Hernandez  
Senior Consultant  
IBA Consultants, Inc.

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# EXHIBIT H

| Task                                  | Duration | Start         | End           | Summary        |
|---------------------------------------|----------|---------------|---------------|----------------|
| 1. Test frame                         | 1 day    | June 18, 2018 | June 19, 2018 | External tasks |
| 2. CHINA BAR                          | 1 day    | June 18, 2018 | June 19, 2018 | External tasks |
| 3. Internal wall construction         | 1 wk     | June 18, 2018 | June 25, 2018 | Internal tasks |
| 4. External wall construction         | 2 wks    | June 18, 2018 | July 2, 2018  | External tasks |
| 5. Foundation work                    | 3 wks    | June 18, 2018 | July 5, 2018  | External tasks |
| 6. Roofing work                       | 3 wks    | June 18, 2018 | July 5, 2018  | External tasks |
| 7. Electrical work                    | 1 wk     | June 18, 2018 | June 25, 2018 | Internal tasks |
| 8. Mechanical work                    | 2 wks    | June 18, 2018 | July 2, 2018  | Internal tasks |
| 9. Plumbing work                      | 2 wks    | June 18, 2018 | July 2, 2018  | Internal tasks |
| 10. Drywall work                      | 2 wks    | June 18, 2018 | July 2, 2018  | Internal tasks |
| 11. Painting work                     | 2 wks    | June 18, 2018 | July 2, 2018  | Internal tasks |
| 12. Flooring work                     | 2 wks    | June 18, 2018 | July 2, 2018  | Internal tasks |
| 13. Final inspection                  | 1 day    | June 18, 2018 | June 19, 2018 | External tasks |
| 14. Mechanical rough in               | 1 day    | June 18, 2018 | June 19, 2018 | Internal tasks |
| 15. Electrical rough in               | 1 day    | June 18, 2018 | June 19, 2018 | Internal tasks |
| 16. Plumbing rough in                 | 1 day    | June 18, 2018 | June 19, 2018 | Internal tasks |
| 17. Mechanical rough inspection       | 1 day    | June 18, 2018 | June 19, 2018 | Internal tasks |
| 18. Electrical rough inspection       | 1 day    | June 18, 2018 | June 19, 2018 | Internal tasks |
| 19. Plumbing rough inspection         | 1 day    | June 18, 2018 | June 19, 2018 | Internal tasks |
| 20. Backflow preventer and water base | 1 day    | June 18, 2018 | June 19, 2018 | Internal tasks |
| 21. Framing backlogs and bar          | 1 day    | June 18, 2018 | June 19, 2018 | Internal tasks |
| 22. Install new electrical panel      | 1 day    | June 18, 2018 | June 19, 2018 | Internal tasks |
| 23. Insulation, hang etc. - 1st fl    | 1 day    | June 18, 2018 | June 19, 2018 | Internal tasks |
| 24. Insulation, hang etc. - 2nd fl    | 1 day    | June 18, 2018 | June 19, 2018 | Internal tasks |

*[Handwritten signature]*



# EXHIBIT I

Chlor Bar - Landlord Response

| Task Name  | Duration | Start       | Finish       | June 2018 | July 2018 | August 2018 | September 2018 | October 2018 | November 2018 |
|--|----------|-------------|--------------|-----------|-----------|-------------|----------------|--------------|---------------|
| Total Project Completion   | 40 days  | Mon 8/24/18 | Fri 10/12/18 | 1         | 2         | 3           | 4              | 5            | 6             |
| 1  |          |             |              |           |           |             |                |              |               |
| 2  |          |             |              |           |           |             |                |              |               |
| 3  | 1 wk     | Mon 8/24/18 | Fri 8/28/18  |           |           |             |                |              |               |
| Concrete patch, Sand exterior wall penetrations etc              |          |             |              |           |           |             |                |              |               |
| 4  | 4 wks    | Mon 8/24/18 | Fri 10/12/18 |           |           |             |                |              |               |
| Exterior single hung windows, secondary windows, doors - Sealing |          |             |              |           |           |             |                |              |               |
| 5  | 3 wks    | Mon 8/24/18 | Fri 10/12/18 |           |           |             |                |              |               |
| Replace 2 storefront doors on the 18 and 5                       |          |             |              |           |           |             |                |              |               |
| 6  | 5 days   | Mon 8/24/18 | Fri 8/28/18  |           |           |             |                |              |               |
| Realing period   |          |             |              |           |           |             |                |              |               |
| 7  | 1 wk     | Mon 10/1/18 | Fri 10/5/18  |           |           |             |                |              |               |
| Op A - floor cover reating                                       |          |             |              |           |           |             |                |              |               |
| 8  | 2 wks    | Mon 10/1/18 | Fri 10/12/18 |           |           |             |                |              |               |
| Op B - If AAU requires translation to be replaced                |          |             |              |           |           |             |                |              |               |
| 9  | 2 wks    | Mon 8/24/18 | Fri 10/5/18  |           |           |             |                |              |               |
| Asst Budget - Storefronting interior walls                       |          |             |              |           |           |             |                |              |               |

# EXHIBIT J





# Notice to Proceed

SC-18518-001

U.S. Construction Corp.  
6355 NW 36th Street, Suite 608  
Miami, Florida 33166  
Phone: (305) 443-5808  
Fax: (305) 443-5939

Project: 18-518 - Cigar Bar Landlord Repairs  
900 Collins Avenue  
Miami Beach, Florida 33139

## Roofing

**DATE:** 09/25/2018

**SUBCONTRACTOR:** A-Star Contractors, Inc  
2314 Hayes Street  
Hollywood, Florida 33020  
Phone: (954) 922-5990  
Fax: (954) 922-5486

**CONTRACTOR:** U.S. Construction Corp  
6355 Northwest 36 Street, Suite 608  
Miami, Florida 33166

**COMMENCEMENT DATE:** 10/01/ 2018      **COMPLETION DATE:** 12/05/ 2018

**DESCRIPTION:**  
Reference is made to the Agreement number ACI2018001 and dated 7/18/2018 between U.S. Construction Corp. (USCC) and A-Star Contractors, Inc. USCC has an agreement with C & A 900 Collins LLC ("Owner") for construction dated ("Prime Contract") for the above referenced project ("Project"). Pursuant to plans and specifications prepared by .

**Contingencies:**

Pursuant to the payment provision in the Subcontract Agreement between Contractor and Subcontractor, receipt of payments from the Owner to USCC corresponding to work performed or materials supplied by the subcontractor shall be an absolute condition precedent to the Subcontractor's right to receive progress or final payments for such work performed or materials supplied.

Final payment will be executed provided Subcontractor has furnished final releases of lien, As-Builts, final cleaning performed, all warranties and instruction manuals submitted, and upon satisfactory completing all punch-list items and Subcontractor has otherwise complied with the Subcontract Documents.

**Notes:**

NO WORK WILL COMMENCE UNTIL SUBCONTRACTOR/SUPPLIER HAS PROVIDED U.S. CONSTRUCTION CORP. WITH A CERTIFICATE OF INSURANCE AND SIGNED NTP WITH EXHIBITS.

**INCLUSIONS:**

Subcontract Attachments:

- Exhibit A Scope of Work
- Exhibit B Invoice Procedures, Requisition for Payment and Lien Releases
- Exhibit C Insurance Requirements
- Exhibit D Cleanup Program
- Exhibit E Safety Requirement and Rules
- Exhibit F Drawings and Specifications Log
- Exhibit G Project Schedule

**Scope:**

- 31x38 Roof - 10,000.00
- Small flat roof - 3,000.00

**EXCLUSIONS:**

**ATTACHMENTS:**

Exhibit A - Scope of Work.pdf Exhibit A.1.pdf Exhibit B.pdf Exhibit C - Insurance Requirements.pdf Exhibit E - Safety Requirements.pdf Exhibit D - Cleanup Program.pdf

| #             | COST CODE | DESCRIPTION | AMOUNT              |
|---------------|-----------|-------------|---------------------|
| 1             | 07-5000-S | Small Roof  | \$ 3,000.00         |
| 2             | 07-5000-S | Bigger Roof | \$ 10,000.00        |
| <b>Total:</b> |           |             | <b>\$ 13,000.00</b> |



U.S. Construction Corp.  
 6355 NW 36th Street, Suite 608  
 Miami, Florida 33166  
 Phone: (305) 443-5808  
 Fax: (305) 443-5939

# Notice to Proceed

SC-18518-001

Project: 18-518 - Cigar Bar Landlord Repairs  
 900 Collins Avenue  
 Miami Beach, Florida 33139

U.S. Construction Corp.  
 6355 NW 36th Street, Suite 608  
 Miami, Florida 33166

A-Star Contractors, Inc  
 2314 Hayes Street  
 Hollywood, Florida 33020

\_\_\_\_\_  
 SIGNATURE DATE

**Rafael Reyes, President**

\_\_\_\_\_  
 NAME TITLE

\_\_\_\_\_  
 SIGNATURE DATE

\_\_\_\_\_  
 NAME TITLE

# EXHIBIT K

## Meghan Celestin

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# 116

**From:** Victoria Garcia Massimo <victoria@climantia.com>  
**Sent:** Wednesday, October 24, 2018 1:06 PM  
**To:** Desika Pesara  
**Subject:** Re: Cigar Bar - Stop work

Hello,

The customer is still interested in returning the units?  
The Lennox can't be returned. I'm finding out the rest. There will be restocking fees of course.

Victoria Garcia Massimo  
Climantia LLC  
Ph: (954) 940 - 2137

On Oct 17, 2018, at 3:29 PM, Desika Pesara <[desika@usconstructioncorp.com](mailto:desika@usconstructioncorp.com)> wrote:

Please do not close the permits yet per the client.

**Desika Pesara**  
954-554-8565  
[desika@usconstructioncorp.com](mailto:desika@usconstructioncorp.com)

<image001.jpg>

6355 Northwest 36<sup>th</sup> Street, Suite 608  
Miami, Florida 33166  
Office: (305) 443-5808 Fax: (305) 443-5939  
[www.usconstructioncorp.com](http://www.usconstructioncorp.com)

**From:** Desika Pesara  
**Sent:** Wednesday, October 17, 2018 3:10 PM  
**To:** Ruth Salas <[royal@royalplumbingcorp.com](mailto:royal@royalplumbingcorp.com)>; Yairis Gonzalez <[yairis@royalplumbingcorp.com](mailto:yairis@royalplumbingcorp.com)>;  
Quentin Gomez <[FIRSTDOORS@cs.com](mailto:FIRSTDOORS@cs.com)>; Walter Perez <[walter@harmisongroup.com](mailto:walter@harmisongroup.com)>;  
[nelconlakes@yahoo.com](mailto:nelconlakes@yahoo.com); Mark Cameron <[astarroofing@bellsouth.net](mailto:astarroofing@bellsouth.net)>; Victoria Garcia Massimo  
<[victoria@climantia.com](mailto:victoria@climantia.com)>; Oscar Vilatoro <[oscar@climantia.com](mailto:oscar@climantia.com)>; [mgedrywall@gmail.com](mailto:mgedrywall@gmail.com); Rocco  
Construction <[rccsmiami@gmail.com](mailto:rccsmiami@gmail.com)>; Guillermo Tejera <[gtejera@glasslandinc.com](mailto:gtejera@glasslandinc.com)>;  
[eastcoastwelders@gmail.com](mailto:eastcoastwelders@gmail.com)  
**Cc:** Mike Thomas <[mike@usconstructioncorp.com](mailto:mike@usconstructioncorp.com)>  
**Subject:** FW: Cigar Bar - Stop work  
**Importance:** High

Team

The cigar bar work is being stopped. (Not the cigar bar landlord repairs, please note. This is still being continued). I need you to let me know what material can be returned as soon as possible and how the permits can be closed.

**Desika Pesara**  
954-554-8565  
[desika@usconstructioncorp.com](mailto:desika@usconstructioncorp.com)

<image001.jpg>

6355 Northwest 36<sup>th</sup> Street, Suite 608  
Miami, Florida 33166  
Office: (305) 443-5808 Fax: (305) 443-5939  
[www.usconstructioncorp.com](http://www.usconstructioncorp.com)

**From:** Christophe Normand <[cnormand@neptunecigar.com](mailto:cnormand@neptunecigar.com)>  
**Sent:** Thursday, October 4, 2018 9:11 PM  
**To:** Desika Pesara <[desika@usconstructioncorp.com](mailto:desika@usconstructioncorp.com)>  
**Cc:** Christina Decespedes <[christina@usconstructioncorp.com](mailto:christina@usconstructioncorp.com)>  
**Subject:** RE: Cigar - AFP 004

Please as mentioned previously , you can stop all work on 900 Collins on site AND off site.  
Thank you

# EXHIBIT L

October 8, 2018

VIA EMAIL: [rafael@usconstructioncorp.com](mailto:rafael@usconstructioncorp.com)

U.S. CONSTRUCTION CORP.

Rafael Reyes, President

6355 NW 36<sup>TH</sup> STREET, SUITE 608

MIAMI, FL 33166

VIA EMAIL: [DylanC@cayre.com](mailto:DylanC@cayre.com)

C&A 900 COLLINS, LLC

Attn: Dylan Cecchini

RE: *South Beach Cigar Bar, LLC ("Tenant") regarding Permit #BC1706187 for that certain "Premises" located at 900 Collins Avenue, Miami Beach, FL 33139 ("Building") pursuant to Lease between Tenant and C&A 900 Collins, LLC ("Landlord")*

Dear Rafael and Dylan:

As you are aware, Tenant obtained two reports (dated May 24, 2018 and June 25, 2018) prepared by our engineer IBA Consultants (both IBA reports are included with this letter). For many months, in fact since October of 2017, Landlord has been advising us that it would fix and repair the Landlord's Building responsibilities, such as the structural problems. To date, it was not done. In fact, the Building's roof and exterior facades currently cause interior water leaks and water infiltration into our Premises and those structural items are Landlord responsibilities under the Lease. It makes no sense to do the interior work absent the exterior Building envelope water intrusion issues being remediated. These Building envelope issues were set forth in the IBA reports. We believe, and have contended for over a year, that these conditions are issues that are the responsibility of the Landlord.

The Landlord has recently promised us that he will repair these conditions, and the Landlord has apparently hired US Construction to perform these repairs. We are very concerned that the proposed roof and exterior structural repairs for which Landlord presumably signed a contract with US Construction recently, are not allowed to be performed under our existing permit (#BC1706187) that we obtained from the City for the work to be performed by US Construction for our separate interior build-out project. We have not been shown any plans, specifications, or permits for this new proposed work by either Landlord or US Construction. Did you obtain a building permit for structural building envelope repairs, especially to the coral rock exterior, which apparently is a unique historic building?

Absent proper permits and approvals from the City (presuming our permit cannot be utilized for those Landlord structural repairs), we believe the City could potentially red-tag our interior remodeling job project under our Tenant permit. So far, it appears Landlord and US Construction did not follow the proper rules and requirements of the City. To the extent Landlord and/or US Construction are intending to bootstrap our Tenant permit, we object and don't want to get in trouble with the City, nor the City's historic preservation board for doing anything to the

10/8/2018

Letter to US Construction and Landlord -- 900 Collins, Miami Beach, FL

Building's exterior or roof that could get us fined by the City. Our investment to date in this project is at risk and we are very concerned that this Lease cannot be performed because the Landlord cannot legally perform the repairs without going to the historic board of the City.

We certainly do not want to be exposed to these potential liabilities and risk - - especially since our interior build-out work for the Premises will require us to invest over \$560,000 (plus all the other costs to get our business staffed and operational).

The proposed roof and exterior structural repairs at the Building must be properly approved and permitted by the City. Please check with the City on this permit issue and let us know the response and next steps immediately. Also clarify if you have City approval to do those repairs under our permit, and if so, where is the City approval of that work scope and the plans to the City since we have never seen them. Please respond asap since we are at risk of losing our investment.

Regards,

Christophe Normand and Luz Normand  
*On behalf of South Beach Cigar Bar, LLC*

Enclosures: IBA Reports



# EXHIBIT M

Meghan Celestin

---

#82

**From:** Christophe Normand <cnormand@neptunecigar.com>  
**Sent:** Friday, July 20, 2018 9:19 AM  
**To:** Desika Pesara  
**Cc:** Rizzy Byckovas  
**Subject:** Dylan  
  
**Importance:** High

Desika,

I just talked to him.

I sent him the letter, he will fill it up and mail it back to us today.

Regarding the repair, He wants me to get a quote from you.... So can you please send me a quote for:

- Roof repair
- Coral house inside water proofing
- Windows and Door fixes

I'm talking with him but he or I (then he will refund) will do that.

Thanks

Chris

# EXHIBIT N

AGS

**From:** Desika Pesara  
**To:** Christophe Barmand  
**Cc:** Dylan Cecchini; Rafael Reyes  
**Subject:** Cigar Bar - Landlord Repairs  
**Date:** Friday, August 10, 2018 5:39:32 PM  
**Attachments:** image002.jpg  
Landlord Repairs - C. & A. Collins.pdf

---

Good afternoon Dylan

Attached is the pricing

**Desika Pesara**  
954-554-8565  
[desika@usconstructioncorp.com](mailto:desika@usconstructioncorp.com)

USCC VECTOR FILE



6355 Northwest 36<sup>th</sup> Street, Suite 608  
Miami, Florida 33166  
Office: (305) 443-5808 Fax: (305) 443-5939  
[www.usconstructioncorp.com](http://www.usconstructioncorp.com)

SBCB/NEPTUNE000918



6355 NW 36 Street, Suite 608  
 Miami, FL 33166  
 Phone: 305.443.5906 Fax: 305.443.5939

## Project Cost Proposal

**To:** C & A 900 Collins LLC  
 Dylan Cecchini

**Date:** 8/7/2016

**Via:** email

**Project:** 900 Collins Ave - Landlord Repairs  
**Address:** 900 Collins Ave  
 Miami Beach, FL

### Scope of Work Summary

The below work is based off of detailed condition assessment report provided by IBA Consultants, Inc dated 6/25/16

|                |  |                  |
|----------------|--|------------------|
| <b>01-3000</b> | <b>Administration and Cleaning</b>   | <b>4,900.00</b>  |
|                | Coordination, Project Management, Cleaning, Supervision, etc   |                  |
| <b>03-3000</b> | <b>Stucco patch, Fix rebar and Seal penetrations, etc</b>  | <b>4,900.00</b>  |
|                | Hi strength grout at storefront door in vestibule facing 8th st<br>Clean interior corroded rebars and patch stucco (Photo 6)<br>Seal around exterior penetrations/outlets - Photo 10 in prelim report<br>Furnish and install missing 1 dome strainer on the roof - photo 12 in prelim report<br>Apply regular waterproofing (Vulkrem 250) where columns meet tiled roof's parapet- Photo 22, 23, 24<br>Spot waterproofing included to take care of leaks at Photos 2, 4, 7, 8, 14, 15, 16, 18, 20<br>Note: IBA Reports recommendation of waterproofing on the exterior removing coral rock is not priced |                  |
| <b>07-1000</b> | <b>Roofing</b>   | <b>18,000.00</b> |
|                | 1 Reroofing - Roof above the lounge/bar sans the roof above vestibule (also called coral house)<br>Install thermoplastic Energy Star Environmental Protection Agency approved roof system mechanically approved<br>Cause for leaks in the coral house roof (Photo 26, 27) not determined in IBA's report (Item E). Priced reroofing<br>10 years limited warranty is included<br>If structural repairs are uncovered on roof, it will be priced separately  | \$ 14,500.00     |
|                | 2 Reroofing - Vestibule roof<br>IBA's recommendation (Item F) of removal of existing waterproofing is difficult, tedious and not cost effective<br>We recommend reroofing - install thermoplastic roof system mechanically fastened<br>7 yr limited warranty on vestibule roof included<br>If structural repairs are needed that get uncovered on roof, it will be priced separately   | \$ 4,500.00      |
| <b>08-3000</b> | <b>Windows and Storefront Doors</b>  | <b>18,378.79</b> |
|                | Exterior single hung windows (Qty - 26) and 2 doors (at vestibule) - Remove existing perimeter wood, apply waterproofing and reinstall<br>Existing Fixed windows/ Clearstory windows - Remove existing waterproofing and apply new waterproofing<br>Existing storefront doors (on the N and S)- Remove existing unopenable/damaged door leafs and replace with new<br>Remove and replace front door in the vestibule as its beaten up and cant be reused<br>NOTE: No rework of masonry openings is included and no work on the existing storefront windows on the South is included                      |                  |

**To:** C & A 900 Collins LLC  
Dylan Cecchini  
**Via:** email

**Date:** 8/7/2018  
**Project:** 900 Collins Ave - Landford Repairs  
**Address:** 900 Collins Ave  
Miami Beach, FL

**Notes:**

Permits or permit processing is not included  
No MEP work is involved  
No work for interior doors is included  
No flashing is included  
No warranty of the roof deck is included  
Above roof work doesn't address the issue of ponding water. If ponding water is noticed, it will be priced separately to correct it  
Roof warranty doesn't include mold related liabilities or defects  
Warranty on waterproofing at or near coral rock is not included  
All work to be performed during regular hours  
If proposal is acceptable, provide us a signed copy of this proposal along with a retainer of 35%  
Owner is responsible to perform water test after work is completed to see if any additional leaks are found  
Any additional items not mentioned will be priced separately  
Rebar and concrete repairs are cosmetic in nature  
Priced as a complete job, not piecemeal

|                 |                    |
|-----------------|--------------------|
| <b>SUBTOTAL</b> | <b>46,176.75</b>   |
| <b>Fees</b>     | <b>\$6,926.51</b>  |
| <b>TOTAL</b>    | <b>\$53,103.27</b> |

**Alternates:**

|   |  |    |          |
|---|--|----|----------|
| 1 | Add for waterproofing 4' high on all perimeter walls in the coral house and vestibule, on the interior side, 200 sf. | \$ | 4,380.00 |
|---|--|----|----------|

**Contingencies**

I hereby accept this Proposal and authorize the Contractor to proceed with the above described work.

BY \_\_\_\_\_

Print Name

Date

# EXHIBIT O



DAVID B. HABER, ESQ.  
305-379-2400 Ext.105  
dhaber@haber.law

October 11, 2018

**VIA FEDERAL EXPRESS AND EMAIL:**

C&A 900 COLLINS LLC  
c/o SCF Management LLC  
The Cayre Group  
1407 Broadway, 41<sup>st</sup> Floor  
New York, NY 10018  
[DylanC@cayre.com](mailto:DylanC@cayre.com)

**VIA FEDERAL EXPRESS AND EMAIL:**

C&A 900 COLLINS LLC  
c/o Richard Baron, Esq.  
Baron, Breslin & Sarmiento  
169 East Flagler Street, Suite 700  
Miami, FL 33131  
[RB@RichardBaronLaw.com](mailto:RB@RichardBaronLaw.com)

**Re: Retail Lease by and between C&A 900 COLLINS LLC, as landlord (the "Landlord), and SOUTH BEACH CIGAR BAR, LLC, as tenant (the "Tenant") dated July 25th, 2017 (the "Lease"), for that certain premises located at 900 Collins, Miami Beach, FL 33139 ("Subject Premises")**

Dear Messrs. Baron and Cecchini:

This Law Firm represents the Tenant in connection with the above-referenced Lease and claims against the Landlord related thereto. All future correspondence related to this matter should be directed to this Law Firm. A copy of the Lease is attached hereto for reference as **Exhibit 1**.

As a result of Landlord's failure to cure its material breaches of Section 13<sup>1</sup> of the Lease, Tenant served Landlord with written notice of Landlord's default, notice of the untenable condition of the Subject Premises and demand for the repairs to be completed within the statutorily prescribed twenty (20) day deadline. A copy of Tenant's "Notice of Default", dated September 4, 2018, is attached hereto for reference as **Exhibit 2**. Tenant's Notice of Default also notified Landlord of Tenant's right to withhold rent under Florida Statute Section 83.201.

---

<sup>1</sup> Section 13 of the Lease provides as follows: *Except as otherwise provided in this Lease, Landlord will, within a reasonable time after receipt of written notice from Tenant of the necessity of such repair, keep the structural roof, structural components of the exterior walls, structural floor slabs and foundation portions of the Premises and the Building in good and tenantable condition and repair during the term of this Lease. Within a reasonable time after receipt of written notice from Tenant that repairs for which Landlord is responsible are required, Landlord shall make such repairs.* [emphasis added] See **Exhibit 1** at Page 13.



**Landlord has failed to complete the Structural and Exterior Repairs (defined below) required under Section 13 of the Lease, and otherwise failed to render the Subject Premises tenable within the twenty (20) day deadline. Accordingly, Tenant is hereby withholding all future Rent payments from Landlord and depositing same in escrow with the Court's registry under F.S. Section 83.232, terminating the Lease, and Tenant has authorized this Law Firm to institute legal action against the Landlord unless Tenant is immediately reimbursed for all damages (set forth below). Additionally, Tenant is mitigating its damages and seeking an alternative and tenable premises in order to open its cigar retail and bar business as soon as possible.**

Landlord's excessive delays in failing to repair the Subject Premises have already resulted in months of lost business for the Tenant. Landlord's excessive delays will also cause Tenant to miss the high season in Miami Beach and best sales months of the year (November, December, January, February, and possibly longer). As set forth below, it will take many months - - if not years - - for Landlord to properly submit and obtain approval from the City of Miami Beach ("City") and its Historical Preservation Board ("HPB") for Landlord's Structural and Exterior Repairs and to actually complete the repairs.

It is undisputed that Tenant previously made numerous written demands to the Landlord to make certain structural repairs to the Subject Premises, which demands commenced in October 2017. On numerous occasions in late 2017 and early 2018, Landlord agreed **in writing** to make said repairs. However, Landlord failed at all times to obtain structural plans, seek and obtain a structural building permit and City approval for those Structural and Exterior Repairs, and Landlord failed to ever commence said repairs. IBA Consultants, Tenant's expert engineer, prepared two (2) reports (dated May 24, 2018, and June 25, 2018) identifying the necessary structural, foundation, roof, building envelope, and other Landlord repairs required for the Subject Premises (collectively, the "Structural and Exterior Repairs"). Copies of the reports from IBA Consultants are attached hereto as **Exhibit 3** and **Exhibit 4**, respectively.

Landlord has been provided more than the statutory twenty (20) day period and more than a "*reasonable*" amount of time (Section 13 of the Lease), in fact approximately one (1) year, to make the necessary Structural and Exterior Repairs to the Subject Premises. Tenant's Notice of Default was delivered to Landlord over thirty (30) days ago. Further, **Tenant also provided Landlord with written notice of these specific conditions and demanded the repairs, including, but not limited to, the following: (i) almost one (1) year ago, as set forth in the Tenant's email correspondence, with pictures, to the Landlord on October 23, 2017; and (ii) over three (3) months ago when Tenant provided Landlord a copy of the June 25, 2018 report from IBA Consultants and again demanded repairs via email dated July 6, 2018.** Copies of the aforementioned correspondence are attached hereto as **Exhibit 5** and **Exhibit 6**, respectively. Despite being provided sufficient notice and an opportunity to cure the material breaches of the Lease, the Landlord repeatedly refused to make the Structural and Exterior Repairs for months and months.

Landlord's proposed one (1) month Rent credit is a ludicrous offer that is completely disproportionate to the reality of this situation. Tenant's build-out plans were fully approved, US Construction was hired as the general contractor, and the permit was issued by August 25, 2018.

The schedule to complete Tenant's build-out is only ten (10) weeks.<sup>2</sup> There is absolutely no way for Tenant to proceed with its approved build-out, which requires a minimum investment by Tenant of approximately \$560,000.00 in construction costs plus additional costs for Tenant's business, staff, etc., until Landlord has obtained the proper approvals for and actually completed the Structural and Exterior Repairs at the Subject Premises. Without Landlord completing the repairs, the condition of the Subject Premises will continue to deteriorate and would certainly cause damage to Tenant's improvements and property if same were completed before Landlord's repairs.

Further, it is ridiculous for Landlord to have realistically believed that Landlord ever could have proceeded with Landlord's Structural and Exterior Repairs by bootstrapping Landlord's work to Tenant's separate building permit for Tenant's build-out. Without preparing and submitting the extensive application(s) and supporting information (including signed and sealed engineering plans/specifications) to the City's building department and the HPB for review, approval, and issuance of a separate structural building permit. The approval and permitting process for Landlord's repairs will take months - - if not years to finish - - and this is assuming Landlord's repairs are even feasible and permissible under the strict City code and HPB requirements explained below.

Landlord's has recently claimed that it: (i) will make the Structural and Exterior Repairs to the Subject Premises; and (ii) has contracted with US Construction to do so. No other information has been provided. Landlord's latest representations regarding performance of Landlord's Structural and Exterior Repairs are simply more empty promises and demonstrate Landlord's total lack of honesty, competency, and/or sincerity to properly and timely complete the Structural and Exterior Repairs. It is clear that Landlord is in no position to actually commence, no less complete, these repairs in a timely or legal manner:

1. The Structural and Exterior Repairs cannot be performed under Tenant's existing building permit for the separate build-out of the Subject Premises, and Tenant has expressly objected to any attempts by Landlord to illegally bootstrap Landlord's repairs to Tenant's existing permit for Tenant's build-out;
2. No evidence has been provided that Landlord has even hired a licensed design professional nor obtained signed and sealed plans/specifications for Landlord's Structural and Exterior Repairs;
3. No evidence has been provided that Landlord is even close to preparing the required application(s) to the HPB for the proposed Structural and Exterior Repairs, which would require (Chapter 118, Article X, Div. 3, Sec. 1118-562): a written description of proposed action; survey; complete site plan; architectural elevations and plans showing proposed

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<sup>2</sup> The building permit for Tenant's build-out work was submitted to Landlord for signature on August 1, 2018 along with the proposed Notice of Commencement; however, Landlord delayed a week in executing the permit application and Landlord delayed and never signed the Notice of Commencement - - thus further causing Tenant to be unable to open its business timely.

changes; a historical resources report; and a structural evaluation and corrective action report that shall include a review and analysis of structural conditions, based upon the engineer's direct on-site inspection and analysis of the structural conditions of the Subject Premises, as well as any and all earlier structural records and drawings (as may be available), results of testing and analysis of structural materials and concrete core samples, taken at a sufficient number of locations in and about the Subject Premises (including, but not limited to, foundations, columns, beams, walls, floors and roofs); proposed corrective measures for monitoring the work including written descriptions of any and all structural corrective measures that will be undertaken for any and all areas of the Subject Premises; and a signed and sealed certification that the structural integrity and stability of the Subject Premises, and its architectural features, shall not be compromised in any way during the course of any and all proposed work on the Subject Premises;

4. No evidence has been provided that Landlord has submitted the required application for the proposed Structural and Exterior Repairs to the HPB for review and approval and no evidence has been provided that the Certificate of Appropriateness has been issued (*See* Ch. 118, Article X, Division 2; *See also* Ch. 118, Article II, Division 4, Sec. 118-102);
5. The City has not approved of the proposed Structural and Exterior Repairs - - nor has the City issued a separate building permit allowing structural work, and no building permit can be issued until the HPB has issued a Certificate of Appropriateness or otherwise approved of Landlord's proposed repairs (*See* Ch. 118, Article X, Division 1, Sec. 118-503); and
6. Even if all of the documentation and approvals had been obtained by Landlord (which they have not), Landlord is nowhere close to commencing the repairs, finishing the repairs, completing all necessary testing, and obtaining final approvals of the repairs - - so that Tenant could commence the interior build-out and then open for business.

The June 25, 2018 IBA Report, which Landlord was provided over three (3) months ago, unequivocally identifies defective conditions with the structural roof, structural components of the exterior walls and structural floor slabs that are the Landlord's responsibility to repair.

**Defective Conditions Landlord has failed to repair:**

- \* "IBA observed water infiltration through the single hung windows, roof, building's façade and fixed windows." *See Exhibit 4* at Page 1.

- “IBA recommends specific remedial work be performed to the fenestrations, roof and building’s façade.” See Exhibit 4 at Page 1.
- “14. Observation: IBA noted corroded rebars and concrete spalling;” and “During testing, IBA observed water migrating between wall and slab;” See Exhibit 4 at Page 5 and Photograph 6 on Page 6.
- “Cavity between wood buck and [exterior] coral wall.” See Exhibit 4 at Page 6.
- “Water migrating between wall and slab.” See Exhibit 4 at Page 7.
- “IBA noted corroded rebars and concrete spalling;” See Exhibit 4 at Page 13, and see Photographs 17 and 18 on Page 14 showing the conditions and water infiltration from the structural concrete wall and/or slab.
- “IBA noted corroded rebars and concrete spalling.” See Exhibit 4 at Page 15. During testing, IBA observed water migrating between concrete and grout - - and Photographs 19 and 20 show the exterior façade location (coral wall) where this requires remediation.
- Observation 20, “IBA again noted corroded rebars and concrete spalling.” “During testing, IBA observed water migrating down from the roof where the columns are detailed; refer to Photographs 23 and 25 on Pages 18 and 19.”

Further, Page 21 of the June 26, 2018 IBA Report details necessary repairs that are the responsibility of the Landlord and that clearly will require signed and sealed structural repair plans from a licensed design professional, approval from the City and the HPB, and issuance of a new structural permit for the Landlord’s repairs. These include, but are not limited to, the following (See Exhibit 4 at Pages 21 to 22):

**A. Core/Concrete wall**

- a. There is not an effective way to waterproof the Coral Stone without changing its appearance due to its irregular surface and texture. A such, will be necessary reaching the substrate where the stone is installed by removing the coral wall and clean the substrates in accordance with the waterproofing Manufacturer’s requirements.
- b. Install Tamoseal Cement-Based Waterproofing Coating throughout the entire substrate, paying special attention to existing cold joints and change of substrates (base of the wall with floor slab).
- c. Install coral stone once the Tamoseal has cured.

**F. Front Concrete Roof**

- a. Remove existing waterproofing, remove dust, laitance, grease, curing compounds, bond inhibiting impregnations, waxes, and any other contaminants.
- b. Remove stucco minimum 4- inches up substrate wall.
- c. All concrete should be cleaned and prepared to achieve a laitance and contaminant free, open textured surfaces by blast cleaning or equivalent means (CSP 3-4 per ICRI guidelines). Route out all cracks and joints as part of surface preparation.
- d. Install a cant strip such as Sikaflex 1a between concrete deck and substrate wall.
- e. Apply Sikalastic 710/715 pedestrian Traffic System on concrete deck and substrate wall in accordance with manufacturer’s requirements.

The exterior structural façade and the front concrete roof of the Subject Premises are contributing to the untenable condition, the water infiltration and leaks, and are indisputably the Landlord's responsibility under Section 13 of the Lease. Further, the "Coral Stone" on the exterior structural façade, fundamental to the appearance and historical nature of the Subject Premises, is also the Landlord's repair responsibility. It is ridiculous for Landlord to even dream that Landlord could proceed with these repairs by illegally bootstrapping the work to Tenant's separate building permit and/or without submitting signed and sealed structural plans to the City and HPB for review, approval, and a new structural permit. Even assuming the necessary approvals are obtained by Landlord, it will likely take months and months, if not years, for testing and inspections for the City and HPB to issue a final approval (especially related to the necessary remediation of the Coral Stone exterior façade of the building) - - further delaying the Tenant's ability to have a tenable premises and open for business.<sup>3</sup>

To date, Tenant has complied with all provisions of the Lease, including, but not limited to, payment of all monthly Rent to Landlord in the sum of \$144,450.00 (representing monthly payments from April 2018 through and including September 2018.). Landlord has materially breached the Lease under Section 13 and has been grossly negligent in failing to make the Structural and Exterior Repairs to the Subject Premises. As a result of Landlord's direct action and/or gross negligence, the liability limitations in Sections 15 and 17(a) of the Lease do not apply. Landlord's material breaches, gross negligence, fraudulent inducement, fraudulent and negligent misrepresentations regarding the timing of Landlord's repairs and Landlord's ability to timely complete same, and relating to trying to defraud the City by illegally bootstrapping Tenant's building permit, have caused and will continue to cause substantial damages to Tenant. To date, these damages include, but are not limited to the following:

|   |              |
|---|--------------|
| * Rent paid 04/2018 through 09/18:              | \$186,210.00 |
| * Engineering, and other professional expenses: | \$265,000.00 |
| * Initial construction costs:                   | \$285,000.00 |
| * Lost Profits (10/18 through 01/19)            | \$300,000.00 |

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<sup>3</sup> Further, the Landlord's delays and refusal to complete the Structural and Exterior Repairs is also a violation of the City's minimum maintenance standards under Ch. 118, Article X, Division 1, Section 118-503(g). This standard provides, in pertinent part under Sub-section (a) of 118-503(g), that all historical buildings shall be maintained according to minimum maintenance standards, preserved against decay, deterioration and demolition and shall be free from structural defects through prompt and corrective action to any physical defect which jeopardizes the building's historical, architectural and structural integrity; and such defects specifically include: deteriorated or decayed facades; deteriorated walls; deteriorated or ineffective waterproofing of exterior walls, roofs, foundations or floors; and spalling of the concrete of any portion of the interior or exterior of the building. Landlord's on-going violation of the Code further subjects the Tenant to unreasonable risk and damages if the City were to enforce its injunctive relief rights against the Landlord.

• **TOTAL DAMAGES**

**\$1,036,210.00**

Accordingly, absent Landlord immediately reimbursing Tenant for the damages incurred to date as a direct result of Landlord's actions, material breaches of the Lease, and gross negligence, Tenant has authorized this Law Firm to institute legal proceedings against Landlord for damages for breach of the Lease, fraudulent inducement, fraudulent and/or negligent misrepresentations, breach of the implied duty of good faith and fair dealing in contracts, and any and all attorneys' fees and costs incurred by Tenant in this matter.

Tenant hereby reserves all rights and remedies under the Lease and available at law as a result of the occurrence and continuance of Landlord's specific breach of the Lease, and any future event which would constitute an additional breach of the Lease. Tenant has not agreed to waive or forbear from exercising any such rights and remedies with respect to Landlord's specific breach or any future breach of the Lease.

Tenant hereby reserves all of said rights and remedies pursuant to the Lease and applicable law without limitation and/or further reservation.

Sincerely,

**HABER SLADE, P.A.**

DAVID B. HABER, ESQ.  
DAVID T. PODEIN, ESQ.

Enclosures: As noted

CC: Christophe and Luz Normand (via email)

# EXHIBIT P

Lease Guaranty

GUARANTY (this "Guaranty") dated as of the 19<sup>th</sup> day of July, 2017 made by Neptune Cigars, Inc. ("Guarantor"), a Florida corporation having an address of 9308 South Dixie Highway, Miami, Florida 33156 in favor of C&A 900 Collins LLC ("Owner"), a Delaware limited liability company c/o The Cayre Group, LTD., 1407 Broadway, 41st Floor, New York, New York 10018.

WITNESSETH:

WHEREAS, simultaneous with the execution and delivery hereof, Owner and South Beach Cigar Bar, LLC, a Florida limited liability company ("Tenant") are entering into a certain Agreement of Lease (the "Lease") pursuant to which Tenant leases certain premises at 900 Collins Avenue, Miami Beach, Florida, as more particular identified in the Lease (the "Premises");

WHEREAS, [**Guarantor is the parent of Tenant owning all of the interests therein**], will derive substantial benefit from the Lease; and

WHEREAS, Owner would not have entered into the Lease unless Guarantor executed and delivered this Guaranty.

NOW, THEREFORE, in consideration of the execution and delivery of the Lease by Owner, and for other good and valuable consideration, the receipt and legal sufficiency of which Guarantor hereby acknowledges, Guarantor hereby agrees as follows:

1. Unless otherwise specifically noted, all capitalized terms used in this Guaranty shall have the meanings ascribed to them in the Lease.

2. (a) Guarantor hereby unconditionally and irrevocably guarantees to Owner the full performance and observance of all of the terms, covenants and conditions of the Lease on Tenant's part to be observed and performed under the Lease, including, without limitation, the full and prompt payment of rent, including, but not limited to, the fixed rent, base rent, additional rent and any and all other sums and charges payable by Tenant under the Lease, and the full performance and observance of all the covenants, terms, conditions and agreements therein provided to be performed and observed by Tenant. Guarantor hereby covenants to Owner that if Tenant, or Tenant's successors or assigns, shall at any time during the term of the Lease default in the payment of any fixed rent, base rent, additional rent or other charges payable with respect to the Premises or in the performance of any of the terms, covenants, provisions or conditions contained in the Lease, Guarantor shall forthwith pay such sums to the Owner and will forthwith faithfully perform and fulfill all of such terms, covenants, conditions and provisions, and will forthwith pay to the Owner any damages, consequential and otherwise, that may arise as a result of any default by Tenant under the Lease, including, without limitation, all attorneys' fees, disbursements and court costs incurred by Owner or caused by any such default and/or by the enforcement of this Guaranty.

(b) Guarantor's liability under this Guaranty shall not exceed the aggregate of (i) twelve (12) months of Minimum Fixed Rent and Additional Charges due under the Lease (with Fixed Minimum Rent and Additional Charges for such period being calculated based upon the



date of Tenant's default under the Lease) and (ii) all of Owner's reasonable costs in connection with the enforcement of this Guaranty, whether or not suit is brought, including, without limitation, reasonable attorneys' fees and disbursements.

3. This Guaranty is an absolute and unconditional guaranty of payment and of performance. It shall be enforceable against Guarantor without the necessity for the commencement of any suit or proceeding on Owner's part of any kind or nature whatsoever against Tenant or any other party and without the necessity of any notice of non-payment, non-performance or non-observance or any notice of acceptance of this Guaranty or any other notice or demand to which Guarantor might otherwise be entitled, all of which Guarantor hereby expressly waives. Guarantor hereby expressly agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall in no way be terminated, affected or impaired by reason of the assertion or the failure to assert by Owner against Tenant or any other party of any of the rights or remedies reserved to Owner pursuant to the provisions of the Lease or pursuant to applicable law.

4. Guarantor's obligations under this Guaranty shall remain in full force and effect without regard to, and shall not be impaired or affected by: (a) any amendment, extension or modification of or addition or supplement to any of the terms, conditions or provisions of the Lease or any assignment thereof; or (b) any compromise, release, consent, extension, indulgence or other action or inaction relating to any of the terms, conditions or provisions of the Lease; or (c) any substitution or release, in whole or in part, of any security for the Lease or this Guaranty which may be held at any time by Owner; or (d) any exercise or non-exercise by Owner of any right, power or remedy under or in respect of the Lease or any security held by Owner with respect thereto, or any waiver of any such right, power or remedy; or (e) any bankruptcy, insolvency, reorganization, arrangement, adjustment, composition, liquidation, or the like of Tenant or any other guarantor, or the discharge or release of Tenant or any other guarantor in any such bankruptcy proceeding; or (f) any limitations of Tenant's liability under the Lease or any limitation of Tenant's liability that may now or hereafter be imposed by any statute, regulation or rule of law, or any illegality, irregularity, invalidity or unenforceability, in whole or in part, of the Lease or any term thereof; or (g) any sale, lease or transfer of any or all of the assets of Tenant to any other person, firm or entity; or (h) any other circumstance, whether or not the Guarantor shall have had notice or knowledge thereof.

5. Guarantor represents and warrants to Owner that:

(a) Guarantor represents and warrants that Guarantor a principal of Tenant and has determined that it is in the best interests of Guarantor to provide Owner with this Guaranty;

(b) This Guaranty constitutes the legal, valid and binding obligation of Guarantor, and is enforceable in accordance with its terms.

(c) No authorization, approval, consent or permission (governmental or otherwise) of any court, agency, commission or other authority or entity is required for the due execution, delivery, performance or observance by Guarantor of this Guaranty or for the payment of any sums hereunder.

(d) Neither the execution and delivery of this Guaranty, nor the consummation of the transactions herein contemplated, nor compliance with the terms and provisions hereof, conflict or will conflict with or result in a breach of any of the terms, conditions or provisions of any order, writ, injunction or decree of any court or governmental authority or of any agreement or instrument to which Guarantor is a party or by which he is bound, or constitutes or will constitute a default thereunder.

(e) Guarantor is not entitled to immunity from judicial proceedings and agrees that, if Owner brings any suit, action or proceeding in Florida or any other jurisdiction to enforce any obligation or liability of Guarantor arising, directly or indirectly, out of or relating to this Guaranty, no immunity from such suit, action or proceeding will be claimed by or on behalf of Guarantor.

6. Guarantor acknowledges that Guarantor's liability hereunder is immediate and primary, and that Owner, at Owner's option, may join Guarantor in any action or proceeding commenced by Owner against Tenant in connection with or based upon the Lease or any term, covenant or condition thereof, and recovery may be had against Guarantor in such action or proceeding or in any independent action or proceeding against Guarantor without Owner's first asserting, prosecuting or exhausting any remedy or claim against Tenant.

7. Guarantor acknowledges that this Guaranty is an absolute and unconditional guaranty of payment and performance and not merely of collection.

8. If Owner shall be obligated by any bankruptcy, insolvency or other legal proceedings to repay to Guarantor or to Tenant, or to any trustee, receiver or other representative or any of them, any amounts previously paid by Guarantor pursuant to this Guaranty, this Guaranty shall be deemed reinstated to the extent of that repayment made by Owner. Owner shall not be required to litigate or otherwise dispute its obligation to make such repayments if, in good faith and on the advice of counsel, Owner believes that such obligation exists.

9. Guarantor hereby waives notice of the acceptance of this Guaranty and presentment and demand for payment, notice of nonpayment, notice of dishonor, protest, notice, of protest, nonperformance, nonobservance and any other notice or demand to which Guarantor might otherwise be entitled.

10. Guarantor hereby waives trial by jury of any and all issues arising in any action or proceeding between the parties, upon, under or in connection with this Guaranty.

11. Guarantor's obligations hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including, without limitation, any claim of waiver, release, surrender, attention or compromise, and shall not be subject to, and Guarantor hereby irrevocably waives, any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any of Guarantor's obligations hereunder or otherwise.

12. Guarantor hereby irrevocably:

(a) submits to the jurisdiction of the state courts of the State of Florida and to the jurisdiction of the United States District Court for the Miami Florida Southern District, for the purposes of each and every suit, action or other proceeding arising out of or based upon this Guaranty or the subject matter hereof brought by Owner, it being expressly understood and agreed that this consent to jurisdiction shall be self-operative and no further instrument or action, other than service of process in one of the manners specified in this Guaranty or as otherwise permitted by such law, shall be necessary in order to confer jurisdiction upon Guarantor in any such court; and

(b) waives, and agrees not to assert, by way of motion, as a defense or otherwise, in any such suit, action or proceeding brought in any such court, any claim that Guarantor is not subject personally to the jurisdiction of the above named courts, that such Guarantor's property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by the court, and further agrees to waive, to the fullest extent permitted under applicable law, the benefit of any defense that would hinder, fetter or delay the levy, execution or collection of any amount to which Owner or its successors or assigns are entitled pursuant to the final judgment of any court having jurisdiction.

13. Guarantor hereby consents to service of process by certified or registered mail to such Guarantor's address as first set forth above or in any other manner permitted by law. Guarantor agrees that service in the foregoing manner shall be deemed, in every respect, effective service of process upon Guarantor and be taken and held to be valid personal service upon, and personal delivery to, Guarantor. Guarantor agrees that Guarantor's submission to jurisdiction and consent to service of process by mail is made for the express benefit of Owner.

14. All notices, demands, requests, consents, approvals or other communications (collectively, "Notices") desired or required to be given under this Guaranty shall be in writing, and, any law or statute to the contrary notwithstanding, shall be effective for any purpose if sent by hand or by registered or certified mail, return receipt requested, prepaid, or by reputable overnight courier, addressed to the party to receive Notices at its address first above set forth. All Notices shall be deemed given or served when personally delivered (or if refused, on the date of such refusal) or, if served by mail, on the third (3rd) business day after the date of mailing, or if by overnight courier, on the next business day following deposit by the sender with such courier. Any party to this Guaranty may change the address to which Notices shall be delivered to it and its representatives by notice in accordance with this Paragraph 14.

15. Guarantor shall have no right of subrogation to the rights of Owner against Tenant by reason of any payments or acts of performance by Guarantors in compliance with the obligations of Guarantor hereunder. Guarantor hereby waives any right to enforce any remedy that Guarantor now or hereafter shall have against Tenant by reason of any one or more payments or acts of performance in compliance with the obligations of Guarantor hereunder. Guarantor hereby subordinates any liability or indebtedness of Tenant now or hereafter held by Guarantor or any affiliate of Guarantor to the obligations of Tenant to Owner under the Lease.

16. If Owner shall employ counsel to enforce Guarantor's obligations under this Guaranty or any part thereof, Guarantor agrees to pay on demand all of Owner's reasonable costs in connection therewith, whether or not suit is brought, including, without limitation, reasonable attorneys' fees and disbursements.

17. The provisions of this Guaranty shall be binding upon and shall inure to the benefit of Owner and Guarantor and their respective heirs, executors, representatives and assigns. All references in this Guaranty to Owner and Tenant shall be deemed to mean Owner's and Tenant's respective permitted successors and assigns.

18. No delay on the part of Owner in exercising any right, power or privilege under this Guaranty, nor any failure to exercise the same, shall operate as a waiver of, or otherwise affect, any right, power or privilege of Owner under this Guaranty, nor shall any single or partial exercise thereof preclude the further exercise of, or the exercise of any other, right, power or privilege of Owner under this Guaranty.

19. Neither any waiver or modification of any provision of this Guaranty, nor any termination of this Guaranty, shall be effective unless in writing and signed by the party against which the waiver, modification or termination is sought to be enforced, nor shall any waiver be applicable except in the specific instance for which it is given.

20. The validity and enforcement of this Guaranty shall be governed by and construed in accordance with the internal laws of the State of Florida without regard to principles of conflicts of law, and such laws shall apply in any action or proceeding arising out of or under this Guaranty.

21. All remedies afforded to Owner by reason of this Guaranty are separate and cumulative remedies and no one remedy, whether exercised by Owner or not, shall be deemed to be in exclusion of any other remedy available to Owner and shall not limit or prejudice any other legal or equitable remedy that Owner may have.

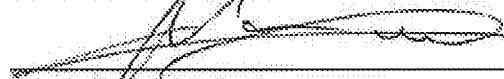
22. If any provision of this Guaranty or the application thereof to any person or circumstance shall to any extent be held void, unenforceable or invalid, then the remainder of this Guaranty or the application of such provision to persons or circumstances other than those as to which it is held void,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

23. Guarantor hereby authorizes Owner at any time and from time to time while this Guaranty is in effect to obtain consumer credit report and history reports relating to Guarantor and her/his financial status. Presentation of a copy of this Guaranty executed by Guarantor to any entity or agency shall be deemed to provide Owner with such authorization and no other signatures or consents from Guarantor shall be required for Owner to obtain such reports.

24. If this Guaranty is executed by more than one party, then each of the undersigned shall be jointly and severally liable hereunder.

IN WITNESS WHEREOF, Guarantor has duly executed and delivered this Guaranty as of the date first above written.

NEPTUNE CIGARS, INC.  
a Florida corporation



EIN: 45-0486691

STATE OF Florida }  
COUNTY OF Miami-Dade } SS

The foregoing instrument was acknowledged before me, a Notary Public, this 19<sup>th</sup> day of July 2017, by Christophe an individual resident of the State of Florida.  
Normand



MARIA FUENTES  
NOTARY PUBLIC  
STATE OF FLORIDA  
Comm# FF076775  
Expires 12/15/2017

Maria Fuentes  
Notary Public

My Commission Expires: 12/15/2017