



## AGENDA REPORT

**Meeting Date:** November 19, 2013

**Item Number:** D-5

**To:** Honorable Mayor and City Council

**From:** Brenda A. Lavender, Real Estate & Property Manager

**Subject:** APPROVAL OF LEASE AND MEMORANDUM OF LEASE BY AND BETWEEN THE CITY OF BEVERLY HILLS AND WINE SOCIETE, LLC; AND OF A BROKER COMMISSION AGREEMENT BY AND BETWEEN THE CITY OF BEVERLY HILLS AND CUSHMAN & WAKEFIELD AT 9400 S. SANTA MONICA BLVD.

**Attachments:**

1. Lease
2. Memorandum of Lease
3. Commission Agreement

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### **RECOMMENDATION**

It is recommended that City Council approve the Lease and Memorandum of Lease by and between the City of Beverly Hills and Wine Societe, LLC dba La Maison du Vin; and the Broker Commission Agreement by and between the City of Beverly Hills and Cushman & Wakefield. A copy of the lease, memorandum of lease and commission agreement is on file with the City Clerk. This lease is for ground floor retail space at 9400 S. Santa Monica Blvd.

### **INTRODUCTION**

Wine Societe LLC dba La Maison du Vin is a French Fine Wine and Gourmet store offering a list of the best wines, bread and other products. The store will be owned and managed by Mr. Jordane Andrieu. Mr. Andrieu is the Owner/Manager of Clos du Moulin aux Moines one of the oldest vineyards in Burgundy (over 1,000 years old). Mr. Andrieu created a brand and transformed a small domain into a well-known organic Estate in Auxey-Duresses, next to Meursault. Since 2008 the Estate has doubled its production and its wine is being sold in 14 countries.

**DISCUSSION**

The lease with the Wine Societe is for five (5) years with one option to extend the term for five (5) additional years. The starting rental rate is \$6.75/SF monthly (\$9,942.75), and will increase annually by 3%. There is a tenant improvement allowance of \$30/SF - \$44,190; a broker commission of \$23,747.12 and four (4) months of free rent. The tenant will also have an option to terminate the lease within 120 days of execution if they are not approved by ABC for the necessary liquor licenses. The tenant will not alter the space, receive their tenant improvement allowance, and the broker commission will not be paid until the termination option has expired.

**FISCAL IMPACT**

The fiscal impact of this lease is out of pocket costs of \$44,190 for the tenant improvement allowance, and \$23,747.12 for the broker commission. These costs will be offset by the first year of revenue of \$79,542 for net revenue of \$11,604.88. There are additional soft costs of \$39,771 for the free rent. The cancellation period will be prior to the start of the lease term.

David Lightner, Director of *Del*  
Capital Assets, Deputy City Manager  
Approved By

# **Attachment 1**

**LEASE**

by and between

**CITY OF BEVERLY HILLS,**  
a municipal corporation

Landlord

and

**WINE SOCIETE LLC,**  
a California limited liability company  
(dba "Vignes & Terroirs")

Tenant

9400 Santa Monica Blvd,  
Beverly Hills, California

DATE: November 19, 2013

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**TABLE OF EXHIBITS**

EXHIBIT "A"	DESCRIPTION OF PREMISES
EXHIBIT "B"	DESCRIPTION OF TENANT SHELL AND CORE UTILITIES AND FINISHES
EXHIBIT "C"	TENANT IMPROVEMENTS AND TENANT IMPROVEMENT ALLOWANCE
EXHIBIT "D"	FORM OF MEMORANDUM OF LEASE
EXHIBIT "E"	RULES AND REGULATIONS

## LEASE

This LEASE (the “**Lease**”) is dated as of November 19, 2013 and is entered into by and between the CITY OF BEVERLY HILLS, a municipal corporation (“**City**” or “**Landlord**”), as landlord, and WINE SOCIETE LLC, a California limited liability company (the “**Tenant**”), as tenant.

1. **TERMS AND DEFINITIONS.** For the purposes of this Lease, the following terms shall have the following definitions and meanings:

(a) Address of Tenant:

Wine Societe LLC (Jordane Andrieu)  
13603 Marina Pointe Drive, #A620  
Marina del Rey, CA 90292

(b) Address of Landlord:

City of Beverly Hills  
455 North Rexford Drive  
Beverly Hills, California 90210  
Attn: Real Estate Property Manager

With a copy to:

City of Beverly Hills  
455 North Rexford Drive  
Beverly Hills, California 90210  
Attn: City Attorney

(c) Premises: Those certain premises described on Exhibit “A”, which constitute a portion of the ground or first floor of the building located at 9400 Santa Monica Blvd., Beverly Hills, California (the “**Building**”) and are designated Suite 101.

(d) Term; Commencement Date; Extension Option: Five (5) years, commencing upon the date that is the earlier of (i) one hundred and twenty (120) days after the execution of this Lease, or (ii) the issuance of Type 20 and Type 42 liquor licenses to Tenant (the “**Liquor Licenses**”) (the “**Commencement Date**”). Tenant may extend the initial term for five (5) years as provided in Section 4.2.

(e) Tenant Right to Terminate. If Tenant uses diligent efforts to promptly apply for and obtain the Liquor Licenses (as shown by reasonable evidence delivered to Landlord), but the Liquor Licenses are not issued by the date described in Section 1(d)(i) above, then Tenant may terminate this Lease by written notice to Landlord given within ten (10) days thereafter.

(f) Monthly Rent; Abatement: During the first four (4) calendar months of the Term, Monthly Rent shall be abated. Monthly Rent shall be as follows:

Months 5-12	\$9,942.75
Months 13-24	\$10,241.03
Months 25-36	\$10,548.26
Months 37-48	\$10,864.71
Months 49-60	\$11,190.65

Extension Term (if any):

Months 61-72 Fair Market Rent (but not less than \$11,190.65).

Each Subsequent Year of Extension Term: Previous year's monthly rent increased by 3%.

(g) CAM Charges: Tenant's Share is 9.94%. See Section 9.2.

(h) Security Deposit: \$33,689.87, subject to Section 5.2.

(i) Permitted Use: Retail wine shop with wine tasting and incidental sales of food.

(j) Parking: Up to five (5) unreserved parking spaces for owners and employees of Tenant (not contractors) on a non-exclusive basis, in the parking structure at 450 N. Crescent Drive at the prevailing market rate charged by Landlord (which shall be additional rent under this Lease) per Section 2.2.

This Section 1 represents a summary of the basic terms of this Lease. In the event of any inconsistency between the terms contained in this Section 1 and any specific provision of this Lease, the terms of the more specific provision shall prevail.

## 2. LEASE OF PREMISES.

2.1 Lease of Premises to Tenant. City hereby leases to Tenant, and Tenant hereby leases from City, space on the third floor of the building at 9400 Santa Monica Boulevard, Beverly Hills, California ("**Building**"), which is described on Exhibit "A" hereto (the "**Premises**"), on the terms and conditions hereinafter set forth.

2.2 Parking. Commencing on the Commencement Date, Tenant shall have the right, but not the obligation, to rent from time to time up to five (5) parking passes for unreserved parking spaces at the 450 N. Crescent Drive parking garage (the "**Parking Structure**"). During the Term, Tenant shall have the right to terminate its rental of some or all of the parking passes, or obtain additional parking passes (subject to the maximum of 5 parking passes) upon thirty (30) days prior written notice to Landlord. Tenant shall pay the prevailing rate charged by Landlord for parking passes for unreserved parking spaces, which shall be subject to periodic increase. Tenant understands and acknowledges that the Parking Structure is currently intended

to be utilized, and shall at all times (in Landlord's sole and absolute discretion) be available and used as a public parking facility.

2.3 Condition. Tenant hereby accepts the Building, Premises and the Parking Structure in their current "AS-IS" condition, without representation or warranty, express or implied.

### 3. USE OF COMMON AREAS AND PROJECT.

3.1 Certain Definitions. As used herein, the term "**Common Areas**" shall mean all areas within the exterior boundaries of the parcel of land on which the Building is located that are now or later made available for the general use of all persons entitled to occupy the Building, including without limitation, all lobbies, common corridors and hallways, stairwells, restrooms, parking facilities and other open areas. "Common Areas" shall not include the roof deck. The term "**Project**" shall mean the Building together with the parcel of land on which the Building is located.

3.2 Tenant Use of Common Area. Tenant and Tenant's customers shall have the right to the reasonable nonexclusive use of the Common Areas.

3.3 City Use. Provided that access to Tenant's Premises and parking is not unreasonably affected, City have the right to: (a) utilize from time to time any portion of the Common Areas for promotional, entertainment and related matters; (b) place permanent or temporary kiosks, displays, carts and stands in the Common Area and lease same to tenants; (c) restrain the use of the Common Areas by unauthorized persons; (d) temporarily close any portion of the Common Areas for repairs, improvements or alterations, or to prevent dedication or an easement by prescription, or for any other reason deemed sufficient in City's reasonable judgment; (e) renovate, upgrade or change the shape and size of the Common Areas or add, eliminate or change the location of improvements to the Common Areas including, without limitation, parking areas, roadways and curb cuts; and (f) construct improvements on the Common Areas.

### 4. TERM.

4.1 Term. The term of this Lease ("**Term**") shall commence on the Commencement Date and shall expire five (5) calendar years thereafter, subject to extension as provided in Section 4.2 below.

4.2 Tenant Option to Extend. Provided Tenant notifies Landlord in writing of Tenant's exercise of the option described in this Section 4.2 ("**Extension Option**") at least one hundred and eighty (180) days prior to the expiration of the Term, and provided, further, that no Event of Default by Tenant exists as of the date of Tenant's notice, Tenant shall have the right to extend the term of this Lease for five (5) calendar years ("**Extension Term**"). Within thirty (30) days after timely receipt of Tenant's extension notice, Landlord will deliver a written statement of Landlord's determination of the prevailing fair market rental rate for the Premises, based on the criteria set forth below (the "**Fair Market Rental Rate**"). If Tenant exercises the Extension Option, Monthly Rent for the first year of the Extension Term shall be adjusted as of the first day of the Extension Term to the greater of the Fair Market Rental Rate or \$11,190.65, and on each

anniversary of the first day of the Extension Term, the Monthly Rent payable during the Extension Term shall be increased by three percent (3%) of the Monthly Rent then in effect.

The Fair Market Rental Rate (applicable in determining Monthly Rent for the first full year of the Extension Term) shall be determined as follows:

(i) If Tenant objects to Landlord's determination of the Fair Market Rental Rate for the Premises, then Tenant shall, within ten (10) business days after receipt of Landlord's notice, notify Landlord in writing that Tenant disagrees with Landlord's determination, whereupon Landlord and Tenant shall meet and endeavor in good faith to agree upon the Fair Market Rental Rate for the Extension Term. If Landlord and Tenant fail to reach agreement within twenty (20) days after Tenant's notice, then, within twenty (20) days thereafter, each party, at its own cost and by giving notice to the other party, shall appoint a licensed commercial real estate broker with at least seven (7) years full-time experience as a real estate broker active in the leasing of commercial space or appraising properties in the City of Beverly Hills and surrounding areas, but not then or previously employed or engaged by either party for any other purpose, to determine the Fair Market Rental Rate for the Extension Term. Fair Market Rental Rate shall be based on prevailing rates for leases of retail space similar to and in the vicinity of the Premises, but shall **not** take into account or afford Tenant with any savings to Landlord by virtue of Landlord's not having to pay additional tenant improvement or inducement costs, or pay additional brokers' commissions, upon such extension, and shall not reflect the value added to the Premises by virtue of tenant improvements made by Tenant at its expense. Until the Fair Market Rental Rate determination is completed, Tenant shall continue to pay to Landlord the amount of Monthly Rent due immediately preceding the commencement of the Extension Term. After the Fair Market Rental Rate determination is completed and the Fair Market Rent Rate for the Extension Term is established, Tenant shall make payment to Landlord for any underpayment of Monthly Rent owing for prior months within ten (10) days after written demand from Landlord. If a party does not appoint a broker within the aforementioned period, the single broker appointed shall determine the Fair Market Rental Rate for the Extended Term. If there are two (2) brokers appointed by the parties as stated above, the brokers shall meet within twenty (20) days after the second agent has been appointed and attempt to determine the Fair Market Rental Rate for the Extension Term. If they are unable to agree on such Fair Market Rental Rate within twenty (20) days after the second broker has been appointed, they shall, within ten (10) days: (i) notify all of the parties in writing as to their respective Fair Market Rental Rate determinations, and (ii) select a third broker who shall be a licensed commercial real estate agent meeting the qualifications stated above. If Landlord's broker and Tenant's broker are unable to agree on the third broker within such ten (10) day period, then either Landlord or Tenant may request the President of the BOMA Chapter including the area of the Project to select a third broker meeting the qualifications stated in this subsection. Each of the parties shall bear one-half (1/2) of the cost of appointing the third broker and the third broker's fee.

(ii) Within ten (10) business days after the selection of the third broker, the third broker shall notify both parties in writing as to which of the two determinations is closest to the Fair Market Rental Rate for the Extension Term, and the Fair Market Rental Rate determination so selected by the third broker shall be the Fair Market Rental Rate for the first year of the Extension Term.

(iii) Each broker shall consider such information as Landlord and Tenant timely presents regarding the determination of Fair Market Rental Rate for the first year of the Extension Term, and each broker shall be given access to the information used by each other broker.

5. RENT, SECURITY DEPOSIT.

5.1 Commencing on the date that is four (4) calendar months after the Commencement Date, and continuing throughout the Term, Tenant shall pay to City as monthly rent, without deduction, setoff, notice or demand, in advance, on the first day of each calendar month, the amounts set forth in Section 1(f) as “**Monthly Rent**” (provided that Tenant shall pay the first full month’s Monthly Rent concurrently with its execution of this Lease and the next Monthly Rent payment shall be due on the first day of the sixth month of the Term):

5.2 Concurrently with its execution of this Lease, (and in addition to payments of the first full month’s rent in the amount of \$9,942.75) Tenant has deposited with Landlord the sum of Thirty-Three Thousand Six Hundred Eighty-Nine and 87/100 Dollars (\$33,689.87) as a security deposit (the “**Security Deposit**”). Provided no Event of Default by Tenant shall have occurred: (i) the Security Deposit shall be reduced by \$10,241.03 at the beginning of month 16 of the Term, and Landlord shall apply such sum to Monthly Rent for month 16; (ii) the Security Deposit shall be reduced by an additional \$10,241.03 at the beginning of the 28<sup>th</sup> month of the Term and Landlord shall apply such sum to Monthly Rent for month 28; and (iii) the Security Deposit shall be reduced by an additional \$2,659.55 at the beginning of the 40<sup>th</sup> month of the Term, and Landlord shall apply such sum as partial payment of the Monthly Rent payable for month 40 (which is \$10,548.26). The Security Deposit shall be held by Landlord as security for the faithful performance by Tenant of all of the terms, covenants, and conditions of this Lease to be kept and performed by Tenant during the Term hereof. If Tenant defaults with respect to any provisions of this Lease and such default continues beyond any applicable notice and cure period, including but not limited to the provisions relating to the payment of rent, Landlord may (but shall not be required to) use, apply or retain all or any part of the Security Deposit for the payment of any rent or any other sum in default, or for the payment of any other amount which Landlord may spend or become obligated to spend by reason of Tenant’s default or to compensate Landlord for any loss or damage which Landlord may suffer by reason of Tenant’s default. If any portion of the Security Deposit is so used or applied, Tenant shall, within ten (10) days after written demand therefor, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to the then required amount. Landlord shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on such Security Deposit. Tenant waives any rights it may have under Section 1950.7 of the California Civil Code with respect to the Security Deposit. Within sixty (60) days following the expiration of the Term or earlier termination of this Lease and provided that no default then exists, the Security Deposit or any balance thereof shall be returned to Tenant. If Landlord sells its interest in the Building during the Term hereof and deposits with the purchaser thereof the then unappropriated funds deposited by Tenant as aforesaid, Landlord shall be discharged from any further liability with respect to such Security Deposit accruing after the date Landlord deposits such Security Deposit with such purchaser.

6. USE; HOLIDAY DECORATING; DELIVERIES.

6.1 Tenant shall use the Premises solely for the uses set forth in Section 1(i). Tenant shall not use or permit the Premises to be used for any other purpose without the prior written consent of City, which City may withhold in its sole and absolute discretion. At no time shall Tenant cause or permit to be used any advertising, loudspeakers, or unusually bright or flashing lights which may be seen or heard outside the Premises.

6.2 Tenant acknowledges that the City of Beverly Hills ("City") has a significant interest in promoting retail sales in the City in order to maximize sales tax revenues and otherwise benefit both the City and the retail businesses in the City. During the winter shopping/holiday season ("Winter Shopping Season") established or identified by the Beverly Hills Chamber of Commerce (the "Chamber") which begins the Friday after Thanksgiving and continues through the end of the year, Tenant shall: (i) reasonably participate in the extended hours recommended, established or identified for the winter shopping season by the Chamber and (ii) reasonably decorate the Premises for the Winter Shopping Season at Tenant's cost.

6.3 Deliveries shall be made after 6P.M. or prior to 8A.M. (i.e., no deliveries are permitted from 8A.M. to 6P.M.) and all deliveries shall comply with applicable law, including the applicable ordinances of the City of Beverly Hills.

7. ROOF TOP PATIO. Tenant shall have the right, subject to compliance with roof top rules and regulations and a reservation system created by City and delivered to Tenant (as amended from time to time), to use the roof top patio of the Building pursuant to such rules and regulations and reservation system. Tenant shall, as additional rent, reimburse City within thirty (30) days after written demand by City from time to time (but not more frequently than once every 30 days) for all reasonable costs incurred by City in connection with Tenant's use of the roof top patio (including, without limitation, cleaning costs, repair costs, maintenance costs and any applicable insurance costs prorated for the number of days (including partial days) the roof top patio is used by Tenant).

8. INITIAL TENANT IMPROVEMENTS; SUBSEQUENT ALTERATIONS AND IMPROVEMENTS. Tenant may make initial improvements to the Premises in accordance with and subject to Exhibit "C" (which includes provisions for a tenant improvement allowance from City). Tenant shall not make any other material changes, alterations or additions (collectively "**Alterations**") to the Premises without City's prior written approval, in City's sole and absolute discretion. City's approval under this Lease with respect to any request by Tenant to make any Alterations shall be in addition to any municipal code, regulatory and legal requirements. Landlord and Tenant agree that provided Tenant gives City at least thirty (30) days prior written notice of the applicable improvement, alteration or addition, no Landlord approval shall be needed or required in the event Tenant desires to make non-structural improvements, alterations, or additions to the interior of the Premises that do not affect Building utility systems (including HVAC) ("**Minor Alterations**") and the costs of such Minor Alterations do not exceed \$50,000 in the aggregate.

9. MAINTENANCE AND COMMON AREA.

9.1 Maintenance. City shall maintain, in good condition and repair, and in compliance with all laws: (a) the structural portions of the Building, including the foundation, floor/ceiling slabs, roof, exterior walls and glass, columns, beams, shafts, stairs, stairwells and elevator cabs; (b) the Building mechanical, electrical, life safety, plumbing, sprinkler and heating, ventilating and air-conditioning systems (excluding any improvements or equipment installed by Tenant within the Premises); and (c) the Common Areas. Tenant shall keep, maintain and preserve the Premises in a good condition and repair, and shall, as and when needed, at Tenant's sole cost and expense, make all repairs to the Premises and every part thereof and all personal property, trade fixtures and equipment within the Premises. Upon the expiration of the Term or earlier termination of this Lease, Tenant shall surrender the Premises to Landlord in the same condition as when received, as improved by the Tenant Improvements, except for (i) business and trade fixtures installed by Tenant at Tenant's cost (and not with the Tenant Improvement Allowance) which may be removed by Tenant, provided Tenant repairs all damage at its costs; (ii) reasonable wear and tear, and (iii) damage caused by Landlord. There shall be no abatement of Rent and no liability of Landlord by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations or improvements in or to any portion of the Project or in or to fixtures, appurtenances and equipment therein.

9.2 Common Area Charges.

(a) For the purposes of this Section, the capitalized terms "Common Areas" and "Building" shall have the meanings set forth in Section 3.1, and the following capitalized terms are defined as follows:

**"Common Area Operating Expenses"** shall consist of all costs paid by Landlord in respect of operation, management, ownership, maintenance and repair of the Common Area (including Common Area plants and landscaping costs), all as determined in accordance with accepted principles of sound real estate management accounting practice, consistently applied.

(b) Commencing on the date that is four (4) months after the Commencement Date (the "Initial Payment Date") Tenant shall pay to Landlord as additional rent, in equal monthly installments, in advance, on or before the first (1st) day of each month, without prior demand and without offset, abatement or deduction, except as otherwise specifically set forth herein, of \$184.13 monthly as a reasonable estimate by Landlord in good faith (the "**Monthly Operating Expense Payment**") for Tenant's Share of Common Area Expenses. Landlord will use reasonable efforts to notify Tenant of any revised estimate, but if such notice is not given, Tenant shall continue to make payments in the amounts previously estimated until Landlord gives Tenant such notice.

(c) As soon as reasonably practicable after the end of each calendar year after the Initial Payment Date, and each subsequent calendar year, Landlord shall furnish Tenant a statement on a category-by-category basis with respect to the preceding year, showing actual Common Area Expenses owed by Tenant for that year, and the total payments made by Tenant with respect thereto. Unless Tenant raises any objections to Landlord's statement within

one hundred twenty (120) days after it is given to Tenant, such statement shall conclusively be deemed correct and Tenant shall have no right thereafter to dispute such statement or any item therein or the computation of Tenant's share thereof. Any objection of Tenant to Landlord's statement and resolution of any dispute shall not postpone the time for the payment of any amounts due Tenant or Landlord based on Landlord's statement, nor shall any failure of Landlord to deliver Landlord's statement in a timely manner relieve Tenant of Tenant's obligation to pay any amounts due Landlord based on Landlord's statement.

If Tenant's Share, as finally determined for a calendar year, exceeds the total payments made by Tenant on account thereof, Tenant shall pay Landlord the deficiency within thirty (30) days after Landlord's delivery to Tenant of Landlord's statement. If Tenant shall have overpaid, then Tenant's excess payments shall be credited toward the monthly rent next due from Tenant under this Lease, provided that if such overpayment exceeds one month's rent or is determined after the last month of the Lease, Landlord shall refund the amount that is more than the next month's rent payable by Tenant within thirty (30) days after Landlord's delivery to Tenant of Landlord's statement. For any partial calendar year at the end of the Term, sums due hereunder shall be prorated on the basis of a 365-day year by computing Tenant's Share for the entire year and then prorating such amount for the number of days during such year included in the Term. Notwithstanding the termination of this Lease, Landlord shall pay to Tenant or Tenant shall pay to Landlord, as the case may be, within thirty (30) days after Landlord delivers to Tenant a final statement for the calendar year in which this Lease terminates, the difference between Tenant's Share for that year, as finally determined by Landlord, and the total amount previously paid by Tenant on account thereof.

10. ASSIGNMENT AND SUBLETTING. Except as otherwise provided herein, Tenant shall not voluntarily, or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease or any interest herein, or any right or privilege appurtenant hereto, or allow any other person (the employees, agents, and invitees of Tenant excepted) to occupy or use the Premises, or any portion thereof, without first obtaining the written consent of City, which consent shall not be unreasonably delayed, conditioned or withheld with respect to subleases of up to fifty percent (50%) of the Premises. A consent to one assignment, subletting, occupation or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Consent to any such assignment or subletting shall in no way relieve Tenant of any liability under this Lease, whether or not the term of the Lease is extended by the assignee or sublessee. Any such assignment or subletting without such consent shall be void, and shall, at the option of the City, constitute an Event of Default under this Lease.

In connection with any request for Landlord's consent to an assignment or sublease as required under the provisions of this Section, Tenant shall pay a processing fee to Landlord equal to \$1,000.

A transfer of more than fifty percent (50%) of the ownership interest(s) in Tenant, in a single transaction or in a series of transactions, to one person or entity or to affiliated persons or entities, shall constitute an assignment requiring Landlord's prior written consent. A transfer of operational control of Tenant shall also constitute an assignment requiring Landlord's prior written consent. A transfer of ownership not described herein shall not required Landlord's

consent (and shall not be subject to the following paragraph), but Tenant must promptly notify Landlord in writing thereof.

Additionally, in the event any assignment or sublease is approved by Landlord, Landlord shall receive as additional rent hereunder fifty percent (50%) of Tenant's Excess Consideration (defined below) derived from such assignment or sublease. In the event of a sublease or assignment, "**Excess Consideration**" shall mean all rent, additional rent or other consideration actually received by Tenant from such subtenant and/or actually paid by such subtenant on behalf of Tenant in connection with the subletting in excess of the rent, additional rent and other sums payable by Tenant under this Lease during the term of the sublease on a per square foot basis, less the sum of Tenant's reasonable (and reasonably documented) out-of-pocket costs incurred in connection with such sublease or assignment for: (i) changes, alterations and improvements to the Premises necessary for the transfer, (ii) brokerage commissions in connection with the transfer, (iii) improvement allowances or other reasonable and bona fide cash allowances (space planning allowance, moving allowance, etc.) paid by Tenant to the transferee in connection with such transfer; (iv) attorneys' fees incurred by Tenant, including attorneys' fees and/or processing fees paid to Landlord (collectively, "**Transfer Costs**"). "**Excess Consideration**" shall also include, but not be limited to, key money, bonus money or other cash consideration paid by transferee to Tenant in connection with such transfer of this Lease (as opposed to the sale of Tenant's business), and any payment in excess of fair market value for services rendered by Tenant to transferee or for assets, fixtures, inventory, equipment, or furniture transferred by Tenant to transferee in connection with such transfer. The payment of the amount of Landlord's applicable share of the Excess Consideration in the case of a sublease shall be made on a monthly basis as rent or other consideration is received by Tenant under the sublease, and in the case of an assignment of this Lease in conjunction with a sale of Tenant's business that is approved by Landlord, the Monthly Rent shall be increased as of the date of the sale (but not decreased) to Fair Market Rental Rate as defined, and in the manner described, in the following paragraphs. Notwithstanding anything contained herein to the contrary, under no circumstance shall Landlord be paid any Excess Consideration until Tenant has recovered all Transfer Costs for such transferred space. If part of the Excess Consideration shall be payable by the assignee or subtenant other than in cash, then Landlord's share of such non-cash consideration shall be in such form as is reasonably satisfactory to Landlord.

Upon Landlord's approval of an assignment of this Lease in connection with a sale of Tenant's business, Landlord shall in good faith determine the Fair Market Rental Rate of the Premises (meaning the fair market rent for the highest and best use of the Premises) as of the projected date of the sale and for the remainder of the Term, and Landlord shall notify Tenant of such rate and shall provide documentation to the Tenant to support the proposed Fair Market Rental Rate. If Tenant objects to Landlord's determination of the Fair Market Rental Rate of the Premises, Tenant shall, within fifteen (15) days after Landlord gives its notice to Tenant, notify Landlord in writing that Tenant disagrees with Landlord's determination of the Fair Market Rental Rate, and provide reasonable documentation to Landlord to support Tenant's position, then Landlord and Tenant shall meet and endeavor in good faith to agree upon the Fair Market Rental Rate. If Landlord and Tenant fail to reach agreement within fifteen (15) days after Tenant's notice, then, within twenty (20) days thereafter, each party, at its own cost and by giving written notice to the other party, shall appoint a licensed commercial real estate broker with at least seven (7) years full-time experience as a real estate agent active in leasing of

commercial space in the area of Beverly Hills to set the Fair Market Rental Rate. (Until the Fair Market Rental Rate determination is completed, Tenant shall continue to pay to Landlord the amount of rent due immediately preceding the assignment. After such Fair Market Rental Rate determination is completed and the Fair Market Rent Rate is established, Tenant shall promptly make payment to Landlord for any underpayment of rent owing for prior months.) If a party does not appoint a broker within twenty (20) days after the other party has given notice of the name of its broker, the single broker appointed shall set the Fair Market Rental Rate. If there are two (2) brokers appointed by the parties as stated above, then brokers shall meet within ten (10) days after the second broker has been appointed and attempt to set the Fair Market Rental Rate. If the two (2) brokers are unable to agree on such Fair Market Rental Rate within thirty (30) days after the second broker has been appointed, they shall, within twenty (20) days after the last day the two (2) brokers were to have set such Fair Market Rental Rate, attempt to select a third broker who shall be a licensed commercial real estate broker meeting the qualifications stated above. If the two (2) brokers are unable to agree on the third broker within such twenty (20) day period, either Landlord or Tenant may request the President of the BOMA Chapter for the area that include the Premises to select a third broker meeting the qualifications stated in this subsection. Each of the parties shall bear fifty percent (50%) of the cost of appointing the third broker. No broker shall be employed by, or otherwise be engaged in business with or affiliated with, Landlord or Tenant.

Within thirty (30) days after the selection of the third broker, a majority of the brokers shall set the Fair Market Rental Rate. If a majority of the brokers are unable to set the Fair Market Rental Rate within that period of time, each broker shall make a separate determination of such Fair Market Rental Rate and the three (3) determinations shall be added together and the total shall be divided by three (3). The resulting quotient shall be the Fair Market Rental Rate for the Premises unless the low determination and/or high determination is/are more than ten percent (10%) lower and/or higher than the middle determination, in which case the low determination and/or the high determination, as applicable, shall be disregarded. If only one (1) determination is disregarded, the remaining two (2) determinations shall be added together and their total divided by two (2), and the resulting quotient shall be Fair Market Rental Rate. If both the low determination and the high determination are disregarded as stated in this subsection, the middle determination shall be the Fair Market Rental Rate.

Each broker shall consider such information as Landlord and Tenant present regarding the determination of Fair Market Rental Rate and shall be given the information delivered to each other broker. Upon determination of the Fair Market Rental Rate, the brokers shall immediately notify the parties hereto in writing of such determination by certified mail, return receipt requested.

11. **INDEMNIFICATION.** Tenant shall indemnify and hold harmless City, the City Council and each member thereof, and City's officers, employees and agents (all collectively referred to as "**City Indemnitee**") against and from any and all claims, losses, damages, liabilities, costs and expenses (including attorneys' fees and costs actually incurred and paid by Landlord) (collectively "**Claims**") to the extent arising from Tenant's use of the Premises or Common Areas or Building, or from the conduct of its business or any activity, work or other things done or suffered by Tenant in or about the Premises, or Common Areas or Building excluding, however, acts and omissions by any City Indemnitee or any of City's contractors,

other tenants, guests or invitees. If any action or proceeding is brought against any City Indemnitee by reason of any Claim, Tenant, upon notice from any City Indemnitee, shall defend such City Indemnitee at Tenant's expense, by counsel reasonably satisfactory to City. Tenant shall give prompt notice to City in case of casualty or any accident on the Premises. If City sells the Building, then commencing on the date of the sale, the subsequent owner of the Building (and its successors-in-interest) shall indemnify, defend and hold Tenant harmless from and against Claims to the extent arising from the negligence or willful misconduct of the subsequent owner (or its applicable successor-in-interest) during its period of ownership.

## 12. INSURANCE.

12.1 Tenant's Insurance. Tenant shall, at all times during the Term, at its own cost and expense, procure and continue in force the following insurance coverage: (a) Commercial General Liability and Automobile Liability Insurance with a combined single limit for bodily injury and property damage of not less than Two Million Dollars (\$2,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the annual aggregate, including contractual coverage covering the insuring and indemnification provisions of this Lease; (b) a policy of standard fire, extended coverage and special extended coverage insurance (all risks), including a vandalism and malicious mischief endorsement, in an amount equal to the full replacement value of all trade fixtures, furniture, equipment and other personal property installed by or at the expense of Tenant; and (c) Worker's Compensation coverage as required by Law.

12.2 Form of Policies. The Commercial General Liability and Automobile Liability Insurance policy of Tenant shall name City, as additional insured with an appropriate endorsement to each policy, which endorsement also shall provide that any cancellation or modification of such policy shall require thirty (30) days notice to the additional insured. All such insurance policies shall be with companies having a rating of not less than A-VIII in Best's Insurance Guide. Tenant shall furnish to City, from the insurance companies, or cause the insurance companies to furnish, certificates of the required coverage. All such policies shall be endorsed to provide that the policy is primary and that any insurance carried by the other party is excess and not contributing with any insurance requirement hereunder. Tenant shall, at least twenty (20) days prior to the expiration of such policies, furnish the City renewals or binders. Tenant agrees that if it does not take out and maintain such insurance or furnish renewals or binders in a timely manner, City may (but shall not be required to) procure said insurance on Tenant's behalf and charge the other the cost thereof, which amount shall be payable by the other upon demand with interest at the rate of ten percent (10%) from the date such sums are extended.

12.3 Waiver of Subrogation. Tenant agrees to require its insurers issuing the insurance described in this Section to waive any rights of subrogation that such companies may have against the other party. Tenant hereby waives any right that Tenant may have against City as a result of any loss or damage to the extent such loss or damage is insurable under such policies and/or would otherwise be insurable.

## 13. UTILITIES

13.1 Utilities. Tenant agrees not to connect any apparatus or device with wires, conduits or pipes, or other means by which such services are supplied, for the purpose of using

amounts of such services in excess of the capacity within the Premises without the written consent of Landlord. Tenant agrees to pay directly to the appropriate utility company all charges for utility services supplied to Tenant for which there is a separate meter and/or submeter to the Premises, including electricity and gas, and Tenant shall install an electrical meter as part of the Tenant Improvements. Tenant agrees to pay to Landlord its share of all charges for utility services supplied to the Premises for which there is no separate meter or submeter upon billing by Landlord of Tenant's share, as reasonably determined by Landlord based upon estimated actual usage. Regardless of the entity which supplies any of the utility services, Landlord shall not be liable in damages for any failure or interruption of any utility or service it being understood that Tenant will maintain business interruption insurance. No failure or interruption of any utility or service shall entitle Tenant to terminate this Lease or discontinue making payments of Rent payable by Tenant under this Lease.

13.2 No City Liability. City shall not be liable in damages or otherwise for any failure or interruption of Utilities or services unless such failure or interruption is caused by the gross negligence or willful misconduct of City or its employees or agents, and no such failure or interruption shall entitle Tenant to terminate this Lease, or to an abatement of or offset against any sums payable to City under this Lease. In the event of any such failure or interruption in Utilities or services, City shall promptly upon telephonic or other notice from Tenant, at City's cost and expense (except for interruptions caused by Tenant or its employees, agents, contractors or invitees), take good faith actions to restore such Utility or service as soon as commercially reasonable.

14. **SIGNS; DIRECTORY BOARD**. City shall, at City's expense, furnish Tenant with space for one name on the Building directory board. Any other Tenant signage must comply with applicable law and, in addition, shall require the prior written consent of Landlord.

15. **COMPLIANCE WITH LAWS**. Tenant, at its expense, shall comply promptly with all applicable laws pertaining to Tenant's use or occupancy of the Premises or pertaining to improvements made by Tenant, including laws pertaining to non-structural improvements required by law, the location and maintenance of trade fixtures, equipment and other personal property; the conduct of Tenant's employees; and the preparation, storage, and service of food and drink by Tenant but excluding laws requiring structural changes, changes to Building utility systems or Common Areas.

16. **RIGHT OF ACCESS**. The City and City's officers, employees, and agents shall at all reasonable times, upon no less than twenty-four (24) hours prior written or telephonic notice to Tenant except in an emergency, have the right to enter the Premises for the purpose of inspecting the same, posting notices of non-responsibility or any other notices required by law for the protection of the City, doing any work that City is permitted or required to perform under this Lease, and making any reasonable repairs which the City determines may be required. Tenant shall furnish City with a pass key to the Premises which the City shall use only in case of emergency to prevent or investigate a crime, or in such cases where access is necessary to prevent damage to the Building or to the Premises or to make repairs necessary to ensure continuous operation of the Building. City shall have the right to enter the Premises and post "For Lease" or "For Rent" signs in any windows of the Premises after delivery of any notice of termination. In conducting its activities on the Premises as allowed in this section City shall use

good faith efforts to attempt to minimize material inconvenience, annoyance, or disturbance to Tenant. If City enters the Premises without prior notice to Tenant (i.e., in the event of an “emergency”), City shall give Tenant written notice as soon as reasonably practicable thereafter describing the emergency.

17. TAXES. Tenant shall pay or cause to be paid, before delinquency, any and all taxes levied and assessed which become payable, or which become a lien upon the Premises or the Property, during the term hereof, upon or against: (a) improvements made by Tenant; (b) any equipment, furniture, fixtures and other personal property located in or on the Premises; and (c) Tenant’s interest in the Premises arising as a result of this Lease, including without limitation, the possessory interest evidenced by this Lease (i.e., possessory interest taxes).

18. RULES AND REGULATIONS. Tenant shall comply with the rules and regulations attached hereto as Exhibit “E” and amendments thereto provided by City to Tenant from time to time (which may include rules and regulations regarding parking). City shall not be responsible to Tenant for the nonperformance of any rules and regulations by any other lessees or occupants of the Building. Landlord shall not enforce the rules and regulations against Tenant in a discriminatory manner without rational basis or adopt rules and regulations that discriminate against Tenant without rational basis. Additionally, no rules and regulations shall increase Tenant’s monetary obligations or materially reduce Tenant’s rights under this Lease.

19. TENANT’S DEFAULT.

19.1 Event of Default. Any of the following events shall constitute an “**Event of Default**” by Tenant under this Lease:

19.1.1 Tenant fails to make any payment of money called for by any provision of this Lease (whether to City or any third party) when due, where such failure continues for a period of five (5) Business Days (as defined in Section 12.3) following written notice from City to Tenant; or

19.1.2 Tenant fails to perform fully and when due any of its other covenants, conditions or obligations under this Lease and within thirty (30) days following receipt of written notice from City specifying the nature of such failure of Tenant, Tenant: (a) does not commence taking all necessary and appropriate actions to remedy such failure; or (b) does not thereafter diligently and continuously pursue all such remedial actions until such failure is remedied; or

19.1.3 Tenant dissolves or Tenant violates Section 10; or

19.1.4 Tenant makes a general assignment for the benefit of creditors or a voluntary or involuntary petition is filed by or against Tenant under any law for the purpose of adjudicating Tenant a bankrupt, or for extending time for payment, adjustment or satisfaction of Tenant’s liabilities, or for reorganization, dissolution or arrangement on account of or to prevent bankruptcy or insolvency, unless such assignment or proceeding, and all consequent orders, adjudications, custodies and supervisions are dismissed, vacated or otherwise permanently stayed or terminated within ninety (90) days after such assignment, filing or other initial event.

19.2 City Remedies Upon Tenant Default. Upon the occurrence of any Event of Default by Tenant, and without giving any additional notice not otherwise required hereunder or by law, City may (unless the Event of Default has been expressly waived by City in writing) exercise the following rights and remedies in addition to all other rights and remedies provided by law or equity, either cumulatively or in the alternative:

19.2.1 Terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to City. In such event City shall be entitled to recover from Tenant: (i) the worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental that Tenant proves could have been reasonably avoided; plus (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus (iv) any other amount necessary to compensate City for all actual damages caused by Tenant's failure to perform Tenant's obligations under this Lease or which in the ordinary course of timings would be likely to result therefrom. If any notice required under Section 19.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Tenant under the unlawful detainer statute shall also be deemed to constitute the notice required by Section 19.1. In such case, any applicable grace period required by Section 18.1 and the unlawful detainer statute shall run concurrently, and the failure of Tenant to cure the Event of Default within the greater of the two such grace periods shall constitute both an unlawful detainer and an Event of Default entitling City to the remedies provided for in this Lease and/or by said statute. **TENANT HEREBY EXPRESSLY WAIVES ANY DEFENSE TO AN UNLAWFUL DETAINER ACTION BASED ON "HARDSHIP" AND ANY SIMILAR DEFENSE.**

19.2.2 Maintain this Lease and Tenant's right to possession of the Premises in effect and continue to enforce all of City's rights and remedies hereunder, including the remedy described in California Civil Code Section 1951.4 (granting a City the right to continue a lease in effect after a tenant's breach and abandonment and to recover all rent as it becomes due if the tenant has the right to sublet or assign, subject only to reasonable limitations) provided that upon City's election of such remedy, City may not unreasonably withhold its consent to any assignment or subletting. Acts of maintenance or preservation or efforts to relet the Premises or the appointment of a receiver upon initiative of City to protect City's interest under this Lease shall not constitute a termination of this Lease or Tenant's right to possession unless written notice of termination is given by City to Tenant.

19.2.3 Pursue any other remedy now or hereafter available under the laws or judicial decisions of the State of California. The expiration or termination of this Lease and/or the termination of Tenant's right to possession shall not relieve Tenant from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the Term or by reason of Tenant's occupancy of the Premises.

19.2.4 If Tenant fails to perform any affirmative duty or obligation under this Lease within ten (10) days after written notice (or in case of an emergency, without notice), the City may, at its option, perform such duty or obligation on Tenant's behalf. The costs and

expenses of any such performance by City shall be due and payable by Tenant within thirty (30) days after City's written demand therefore.

19.2.5 If any check given to City by Tenant shall not be honored by the bank upon which it is drawn, City, at its option, may require that all future payments by Tenant to City be made by bank cashier's check.

19.2.6 The remedies given to City in this Section shall not be exclusive but shall be cumulative with and in addition to all remedies now or hereafter allowed by law and elsewhere provided in this Lease.

20. **DEFAULT BY CITY.** City shall not be in default unless City fails to perform obligations required of City within thirty (30) days after written notice by Tenant to City specifying wherein City has failed to perform such obligation; provided, however, that if the nature of City's obligation is such that more than thirty (30) days are required for performance then City shall not be in default if City commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

21. **WAIVER.** The waiver by City of any breach of Tenant of any of the provisions of this Lease shall not constitute a continuing waiver or a waiver of any subsequent breach by Tenant either of the same or a different provision of this Lease. The subsequent acceptance of rent pursuant to this Lease shall not constitute a waiver of any preceding default by Tenant other than default in the payment of the particular rental payment so accepted, regardless of City's knowledge of the preceding breach at the time of accepting the rent, nor shall acceptance of rent or any other payment after termination constitute a reinstatement, extension or renewal of the Term or revocation of any notice or other act by City. No waiver, benefit, privilege or service voluntarily given or performed by either party shall give the other any contractual right by custom, estoppel or otherwise.

22. **DAMAGE; RECONSTRUCTION.** Within thirty (30) days after the date City learns of the necessity for any repairs to the Premises, the Building or the Project as a result of damage, City shall notify Tenant of City's estimated assessment of the period of time in which the repairs will be completed ("**Damage Repair Estimate**"). If any part of the Project is damaged by fire or other insured casualty (and/or would be insured if the City self-insures) and the Damage Repair Estimate indicates that repairs can be completed within one hundred eighty (180) days, City shall repair the damage, except Tenant shall be responsible for any damage to Tenant's trade fixtures, furniture, equipment and other personal property required to be covered by Tenant's insurance pursuant to Section 12.1(b). Until City's repairs are completed; rent shall be abated in proportion to the part of the Premises which is unusable by Tenant in the conduct of its business. If the Damage Repair Estimate indicates that repairs cannot be completed within one hundred eighty (180) days, City may, at its option, either: (i) make such repairs in a reasonable time and in such event this Lease shall continue in effect, rent shall be abated; or (ii) elect not to effect such repairs and instead terminate this Lease, by notifying Tenant in writing of such termination within thirty (30) days after City learns of the necessity for repairs as a result of damage, such notice to include a termination date giving Tenant sixty (60) days to vacate the Premises. If City does not elect to terminate this Lease pursuant to City's termination right as provided above, and the Damage Repair Estimate indicates that repairs cannot be completed

within one hundred eighty (180) days, Tenant may elect, not later than thirty (30) days after Tenant's receipt of the Damage Repair Estimate, to terminate this Lease by written notice to City effective as of the date specified in Tenant's notice. Except as expressly provided in this Section, there shall be no abatement of rent and no liability of City by reason of any injury to or interference with Tenant's business or property arising from any damage or destruction, or the making of any repairs, alterations or improvements to repair such damage, in or to any portion of the Project, the Building or the Premises or in or to fixtures, appurtenances and equipment therein. Tenant understands that City will not carry insurance of any kind on Tenant's trade fixtures, furniture, equipment and other personal property required to be covered by Tenant's insurance pursuant to Section 12.1(b), and that City shall not be obligated to repair any damage thereto or replace the same. Tenant acknowledges that, except as expressly provided in this Section, Tenant shall have no right to any proceeds of insurance carried by City relating to property damage. With respect to any damage which City is obligated to repair or elects to repair, Tenant, as a material inducement to City entering into this Lease, irrevocably waives and releases its rights under the provisions of Sections 1932 and 1933 of the California Civil Code.

23. EMINENT DOMAIN. If the whole of the Premises or the Project or so much thereof as to render the balance unusable by Tenant shall be taken under power of eminent domain by any governmental authority other than City, or is sold, transferred or conveyed in lieu thereof, this Lease shall automatically terminate as of the date of such condemnation, or as of the date possession is taken by the condemning authority, at City's option. In the event of such termination, City shall have the right to all condemnation awards and damages; provided, however, that nothing contained herein shall be deemed to prevent Tenant from making a claim for, or give City any interest in or any right to require Tenant to assign to Landlord, any award made to Tenant for relocation expenses, the taking of personal property and trade fixtures belonging to Tenant and removable by Tenant at the expiration of the Term hereof as provided hereunder or for the interruption of, or damage to, Tenant's business. In the event of a partial taking described in this Section, or a sale, transfer or conveyance in lieu thereof, which does not result in a termination of this Lease, the rent shall be apportioned according to the ratio that the part of the Premises remaining useable by Tenant bears to the total area of the Premises. Tenant hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of the California Code of Civil Procedure.

24. PAYMENTS AND NOTICES. All payments hereunder shall be paid by Tenant to the Office of the Cashier of the City at 455 North Rexford Drive, Beverly Hills, California 90210 or at such other address or to such other persons as the City may from time to time designate in writing, and all notices shall be delivered to the addresses indicated in Section 1(b) by certified mail, return receipt requested, or overnight delivery service, or at such other addresses or to such other persons as the City may from time to time designate in writing. All notices given by City to Tenant hereunder shall be in writing and delivered to Tenant to the addresses indicated in Section 1(a), by overnight delivery service or certified mail, return receipt requested.

25. SUCCESSORS. Each and every one of the terms, covenants, and conditions of this Lease shall inure to the benefit of and shall bind, as the case may be, not only the parties hereto but each and every one of their successors, assigns, and legal representatives; provided,

however, that any subletting or assignment by Tenant of the whole or any part of the Premises or any interest therein shall be subject to the provisions of Section 9 of this Lease.

26. **HOLDING OVER.** If Tenant, with City's prior written consent, remains in possession of the Premises after expiration or termination of the term, or after the date in any notice given by City to Tenant terminating this Lease, such possession by Tenant shall be deemed to be tenancy at will (or as otherwise expressly agreed by City in its written consent), terminable upon notice given at any time by either Party, at a monthly rental equal to one hundred and fifty percent (150%) of the rent previously in effect. All provisions of this Lease except those pertaining to rent and term shall apply to the tenancy.

27. **NOTICE PRIOR TO EXPIRATION; SURRENDER.** At the expiration or termination of the Term, Tenant shall surrender the Premises to the City in the same condition as received, reasonable wear and tear excepted, with all of Tenant's machinery, equipment, building signage and other trade fixtures having been removed. Tenant shall repair all damage to the Premises and Building caused by such removal.

28. **GENERAL PROVISIONS.**

28.1 **Time.** Time is of the essence of this Lease and each and all of its provisions.

28.2 **Prior Agreements.** This Lease contain all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreements or understanding other than this Lease pertaining to any such matters shall be effective for any purpose.

28.3 **Inability to Perform.** This Lease and the obligations of Tenant hereunder shall not be affected or impaired because City is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, labor troubles, acts of nature, or any cause, other than financial inability, beyond the reasonable control of City.

28.4 **Partial Invalidity.** Any provision of this Lease which shall prove to be invalid, void, or illegal shall in no way affect, impair or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

28.5 **Amendments In Writing.** No provision of this Lease may be amended or supplemented except by an agreement in writing signed by City and Tenant or their successors in interest.

28.6 **Attorneys' Fees.** In any action to enforce the terms of this Lease, including any suit by City for the recovery of rent or possession of the Premises, the losing party shall pay the successful party a reasonable sum for attorneys' fees and costs incurred by such party in such suit and such attorneys' fees and costs shall be deemed to have accrued prior to the commencement of such action and shall be paid whether or not such action is prosecuted to judgment.

28.7 Quiet Possession. Upon Tenant's paying Rent and other sums provided herein and observing and performing all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall have quiet possession of the Premises for the entire Term hereof, subject to all of the provisions of this Lease.

28.8 City's Approvals. Except as expressly provided to the contrary herein, neither City's execution of this Lease nor any consent or approval given by City hereunder in its capacity as City shall waive, abridge, impair or otherwise affect City's powers and duties as a governmental body. Any requirements under this Lease that Tenant obtain consents or approvals of City are in addition to and not in lieu of any requirements of law that Tenant obtain approvals or permits. The City Manager of City may give approvals and consents on behalf of City provided they are in writing, or may refer the matter to the City council for approval.

28.9 Brokers. Each of City and Tenant represents and warrants to the other that it has not had any dealings with realtors, brokers or agents in connection with the negotiation of this Lease except for Cushman & Wakefield, which will be paid a brokerage commission by Landlord pursuant to a separate written agreement between Landlord and Cushman & Wakefield.

28.10 Recordable Memorandum of Lease. Concurrently with Tenant's execution of this Lease, Tenant shall execute and acknowledge a short form memorandum of this Lease for recording purposes in the form attached hereto as Exhibit "D" and shall deliver it to the escrow for the sale of the Project by Tenant to City.

28.11 Counterparts. This Lease may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, taken together, shall be deemed to be one and the same instrument.

28.12 Late Charges. If any payment to be made by Tenant is not paid within ten (10) business days after written notice that it is past due, Tenant shall pay City four percent (4%) of the amount due as liquidated damages. Tenant acknowledges, stipulates and agrees that such late payment of any sums due will cause the City to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to determine. Such costs include, without limitation, processing and accounting charges, and cash-flow/budgeting costs, as well as other material adverse effects and damages. Therefore, the parties have agreed upon the late charge described above as liquidated damages for such costs, effects and damages.

28.13 Limitation of Landlord's Liability. City's liabilities under this Lease shall be limited to City's interest in the Project (including the Building of which the Premises are a part and the land on which such Building is situated) as well as the rents, issues, profits and other income Landlord actually receives from the operation of the Building after the liability of Landlord arises and is finally determined, and Tenant will have no claim against Landlord or any of Landlord's other personal assets for satisfaction of any judgment with respect to this Lease.

Executed as of the date first written above.

**CITY:**

CITY OF BEVERLY HILLS,  
a municipal corporation

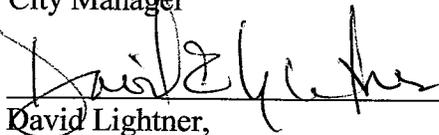
By: \_\_\_\_\_  
John A. Mirisch,  
Mayor

ATTEST:

\_\_\_\_\_  
BYRON POPE,  
City Clerk

(SEAL)

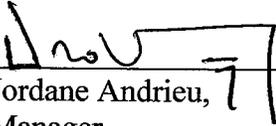
Approved as to content:

\_\_\_\_\_  
JEFFREY KOLIN, ICMA,  
City Manager  
  
\_\_\_\_\_  
David Lightner,  
Director of Capital Assets & Deputy City  
Manager

Approved as to form:  
  
\_\_\_\_\_  
LAURENCE S. WIENER,  
City Attorney

**TENANT:**

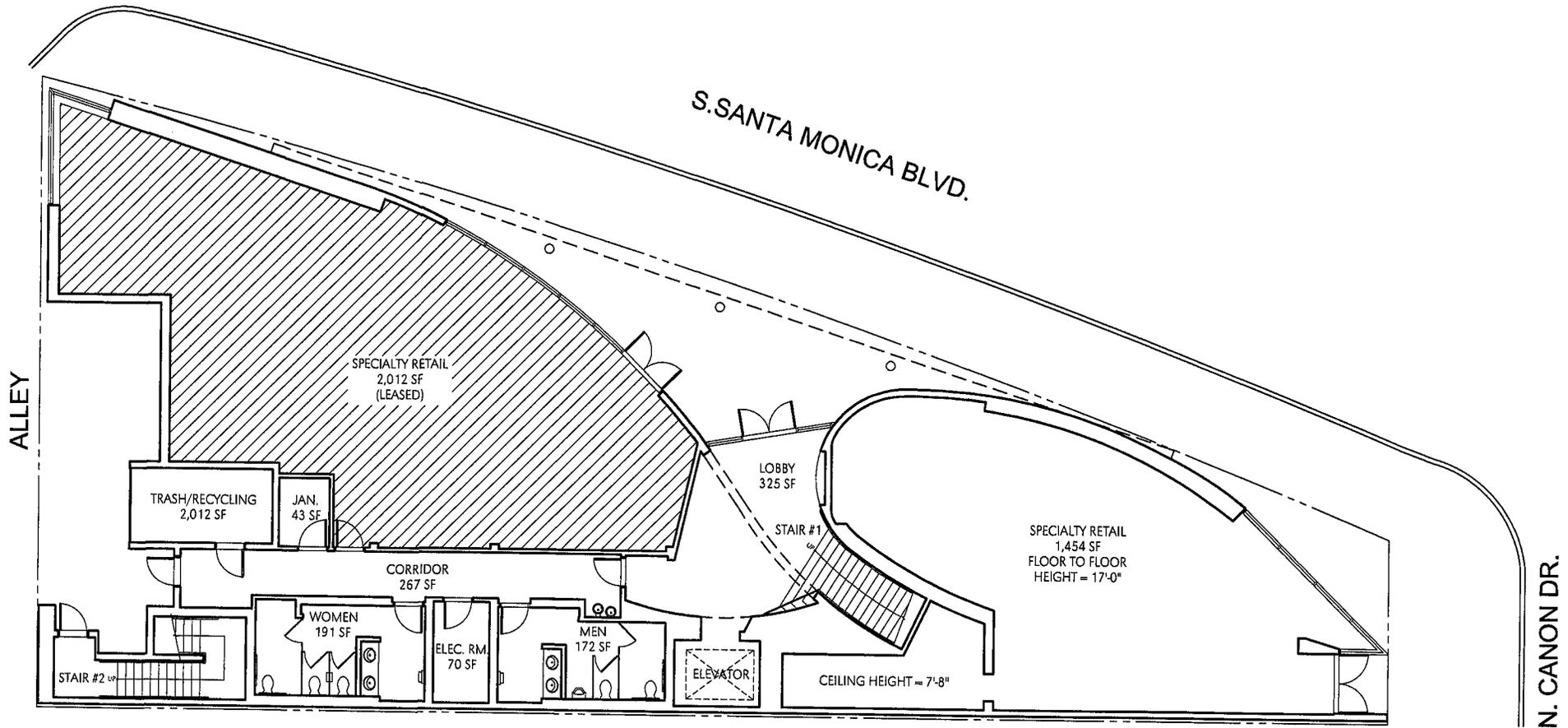
WINE SOCIETE LLC,  
a California limited liability company

By:   
\_\_\_\_\_  
Jordane Andrieu,  
Manager

**EXHIBIT "A"**

**DESCRIPTION OF PREMISES**

[Attached.]



S. SANTA MONICA BLVD.

ALLEY

N. CANON DR.

SPECIALTY RETAIL  
2,012 SF  
(LEASED)

TRASH/RECYCLING  
2,012 SF

JAN.  
43 SF

CORRIDOR  
267 SF

WOMEN  
191 SF

ELEC. RM.  
70 SF

MEN  
172 SF

ELEVATOR

LOBBY  
325 SF

STAIR #1

SPECIALTY RETAIL  
1,454 SF  
FLOOR TO FLOOR  
HEIGHT = 17'-0"

CEILING HEIGHT = 7'-8"

STAIR #2

## EXHIBIT "B"

### DESCRIPTION OF TENANT SHELL AND CORE UTILITIES AND FINISHES

#### TENANTS ON FIRST FLOOR (RETAIL)

1. Concrete floor
2. The HVAC system is based upon the following assumptions:
  - The lighting allowance is 1.0 watts/sf.
  - The occupancy assumption is 1 person/30sf (typical for retail)
  - Ventilation provisions shall be based on 2008 CA T-24
  - The power assumption is 3.5 watts/sf.
  - Up to (1) 5-Ton water source heat pump is allowed in this space. No extra capacity is allowed unless with proper justification. Split systems are not allowed as the building has after hour condenser water system.
  - The cooling tower is located on the roof with piping down a mechanical shaft stubbed to area in ceiling near restrooms for future water source heat pumps to be added by tenants for the conditioning the leased space.
  - The HVAC system (cooling tower) allows water source heat pumps to be added by tenant as needed to meet their requirements.
3. The HVAC condenser water system can be lowered to 30% of capacity so that after hours use is available. Typical building hours of operation are 8am to 6pm. Outside of these hours tenant shall make specific arrangements for the provision of air conditioning at tenants cost.
4. The electrical system is based upon
  - The lighting allowance is 1.6 VA/sf.
  - The power assumption is 2.0 VA/sf.
5. Electrical power is from a panel in the electrical room. Tenant shall install a separate electrical meter and the conduit to distribute power to leased premises.
6. The exterior perimeter is generally building "Low E" vision glass and mullion storefront to a height of 10 feet. The northeast corner glazing is floor to ceiling "Low E" vision glass.

7. Demising walls are steel studs and drywall, and insulated. Note: If doors to Ground Floor building lobby are considered for First Floor tenant improvements, the openings will be rated accordingly for a 2-hour rated wall condition.
8. Principal demising doors are double doors. Other doors that may be required for exiting and convenience shall be by tenant and shall meet the building standard specifications.
9. Height from floor to underside of floor above, excluding beams and utilities approximately 16'-7".
10. Common toilets are provided near the lobby.
11. There is an emergency power inverter system to provide emergency lighting.
12. The building is required to be sprinklered. Distribution from sprinkler mains is by tenant.
13. All tenant improvements shall be performed in accordance with the "Tenant Design and Construction Guidelines" (see page 4)
14. All tenant construction plans require Owner's approval.

#### **TENANT DESIGN & CONSTRUCTION GUIDELINES**

This development has been design and built to meet the standards set forth in the City of Beverly Hills Green Building Ordinance criteria based on 2010 CALIFORNIA GREEN BUILDING STANDARDS CODE (CALGREEN). As part of our sustainability commitment, we have recognized that energy conservation, sensitive site development, use of recycled materials and implementing new sources of energy efficiency are the responsibility of our developments and aim to provide the highest quality office environment.

The following guidelines **require** tenant compliance and have been developed to comply with the City of Beverly Hills Green Building Ordinance and to continue our efforts to provide an environmentally sensitive development with the health of the tenant and the environment at the center of our mission.

For additional information regarding program details for the City of Beverly Hills Green Building Program see the City of Beverly Hills Ordinance No. 08-02-2555 at [http://www.beverlyhills.org/services/building/green\\_building\\_program/default.asp](http://www.beverlyhills.org/services/building/green_building_program/default.asp)

## EXHIBIT "C"

### TENANT IMPROVEMENTS AND TENANT IMPROVEMENT ALLOWANCE

#### **A. GENERAL**

Except for the payment of the Tenant Improvement Allowance (described in Section E1 below) by Landlord, the preparation of all design and working drawings and specifications relating to completion of the Premises for occupancy by Tenant and the letting of contracts relating to the Tenant Improvements and the supervision and completion of the Tenant Improvements and payment therefor shall be the responsibility of Tenant, and comply with Exhibit "B".

All Landlord approvals under this Lease and its exhibits must be obtained in writing from the City Manager of Landlord or his or her designee who is designated in writing by the City Manager. No approval by Landlord under the Lease and its exhibits shall relieve Tenant of the obligation to obtain any other required governmental permits or approvals (including such permits or approvals from the City of Beverly Hills). Tenant must obtain such permits or approvals for its work from the applicable building department of the City of Beverly Hills and other authorities having jurisdiction therefore. Tenant must submit evidence of these approvals to Landlord before commencing the Tenant Improvement work. Tenant shall be responsible for payment of all fees and charges incurred in obtaining said permits and approvals for the Tenant Improvements and for obtaining a certificate of occupancy for the Premises prior to commencing business in the Premises.

Tenant shall ensure that all the provisions and conditions contained or imposed in Exhibit "B" and in this Exhibit "C" are observed and performed by all designers, contractors, subcontractors and consultants engaged by Tenant.

#### **B. PLANS AND SPECIFICATIONS FOR THE TENANT IMPROVEMENTS**

So that the Tenant Improvements may proceed without delay and in an efficient manner, the following provisions shall apply:

**1. Preliminary Work.** Tenant acknowledges receipt of a copy of the base Building drawings. All designers or engineers employed by Tenant shall be familiar with the plans for the Building made available to Tenant and with Exhibit "B" to the extent necessary to complete the required architectural, mechanical and electrical working drawings and specifications.

**2. Approval of Preliminary Space Plans and Specifications.** Within thirty (30) days after the execution of this Lease, Tenant shall provide Landlord with preliminary plans and specifications for the Tenant Improvements and Landlord shall approve or disapprove of them in writing within seven (7) business days which approval shall not be unreasonably withheld or conditioned.

**3. Submission of Final Plans and Specifications.** Within sixty (60) days after Landlord's approval of Tenant's preliminary plans and specifications (or conditional approval), Tenant shall submit three (3) printed sets of final plans and specifications, finish material samples and such other information as may be reasonably necessary for the Tenant Improvements to be approved by Landlord. Tenant's final plans shall include a schedule and other documentation reasonably acceptable to Landlord identifying all trade fixtures and equipment (along with the costs thereof) that Tenant proposes to be reimbursed from the Tenant Improvement Allowance.

**4. Approval of Final Plans and Specifications; Later Changes.** Landlord within seven (7) business days following receipt of the final plans and specifications shall notify Tenant in writing of (i) its approval of Tenant's final plans and specifications, (ii) approval with conditions (which shall be stated in a reasonably clear matter), or (iii) disapprove the final plans and specifications and return them to Tenant with requested revisions (which disapproval shall not be unreasonable). If Landlord disapproves the final plans and specifications, Tenant may resubmit the final plans and specifications to Landlord at any time, and Landlord shall approve or disapprove in writing the resubmitted final plans and specifications within five (5) business days after Landlord receives such resubmitted final plans and specifications, which approval shall not be unreasonably withheld or conditioned, and such procedure shall be repeated until the final plans and specifications are approved.

**5. Change Orders.** In the event Tenant desires to materially change the approved final plans and specifications, Tenant shall deliver notice of the same to Landlord setting forth in detail the changes Tenant desires to make to the approved final plans and specifications. Landlord shall, within five (5) business days after Landlord receives a written notice from Tenant of such notice of a change order, approve the change or disapprove the change in writing together with notice specifying the reasons for disapproval which approval shall not be unreasonably withheld or conditioned; provided, however, that Landlord will not have the right to disapprove changes that would constitute Minor Alterations provided they comply with law and no prior written notice of such Minor Alterations shall be required.

**6. Working Drawings and Specifications.** Each set of working drawings and specifications shall be of uniform size to a minimum scale of 1/8" to each foot and shall include, but not be limited to, the following:

- (1) floor plans;
- (2) reflected ceiling plans (including planned access points for equipment service);
- (3) specifications, identification and colors of materials for all plans and work;
- (4) interior elevations and finish schedule;
- (5) engineered plans and specifications for all electrical, mechanical, and plumbing work, including details and performance information relating to all

fixtures, equipment and any under-floor services, including conduit runs to be recessed or buried in the floor; and

(6) roof plan (if applicable).

**C. GENERAL REQUIREMENTS**

**1. Architect, General Contractor and Subcontractor Approval.** Tenant shall competitively bid the Tenant Improvements with no less than three (3) reputable, licensed and bonded general contractors. Landlord shall have the right to approve, which approval shall not be unreasonably withheld, conditioned or delayed, the architect and all contractors and subcontractors designing or performing construction of the Tenant Improvements and who will be working in the Building. All contractors and subcontractors who will perform such work must have in force: (i) workers' compensation insurance in the amount required by law; (ii) such other employer's and comprehensive general liability insurance in accordance with the standards set forth in the Lease (but with a liability limit of not less than Two Million Dollars (\$2,000,000.00) for contractors and One Million Dollars (\$1,000,000) for subcontractors), (iii) One Million Dollars (\$1,000,000.00) of automobile liability insurance, and (iv) such other insurance as Landlord reasonably deems necessary to supplement the insurance coverage provided for in the Lease and which is consistent with requirements of Comparable Buildings for comparable construction projects.

**2. Workmanship, Materials and Design and Construction Guidelines Compliance.** All of the Tenant Improvements required by Tenant to complete the Premises for occupancy:

a) shall be carried out with good workmanship and with first class materials consistent with those in use at the Building, which shall all be of a high quality and shall be conforming to the commercially reasonable standards of practice, and shall conform with applicable Laws.

b) shall be constructed or performed in compliance with the Tenant Design and Construction Guidelines attached hereto at the end of Exhibit "B".

**3. Proof of Insurance.** Before commencing Tenant Improvements, Tenant shall furnish written proof to Landlord that the insurance required under Section C1 above has been obtained and is in force. Landlord shall be named as an additional insured in such insurance.

**4. Access and Rules.** Unless other arrangements are proposed to and approved by Landlord in advance, Tenant's contractors shall access the Premises through the Building stairs, only, in order to execute Tenant Improvements (and the delivery of materials for which elevator access shall be arranged with Landlord in advance), subject to compliance with all non-discriminatory rules, regulations and stipulations which Landlord may make from time to time. If Tenant desires after-hours access for its contractors, such access must be scheduled with Landlord in advance. These rules, regulations and stipulations may include, but shall not be limited to, matters relating to:

- a) the handling and storage of material and equipment;
- b) hours of work and coordination of activity so long as Tenant is provided reasonable access during normal construction hours (or other hours, if arranged with Landlord in advance);
- c) scheduling of work;
- d) deliveries; and
- e) clean-up of work and the disposition of refuse.

**5. Refuse Removal.** Tenant shall at all times keep the Premises and all other areas clear of all waste materials and refuse caused by itself, its suppliers, contractors or by their work. Tenant shall remove all waste materials and refuse directly from the Premises and shall deposit them in places or in receptacles provided by Tenant at Tenant's sole cost and expense specifically for the disposal of waste materials and refuse in connection with the Tenant Improvements (which receptacles shall be located at a place reasonably designated by Landlord). In no event shall Tenant's construction debris be placed in with the rubbish and trash of other tenants. Landlord may require Tenant to clean up on a daily basis, and after reasonable prior notice, shall be entitled to clean up at Tenant's expense if Tenant fails to comply with Landlord's reasonable requirements in this respect.

At the completion of Tenant Improvements, Tenant shall remove all waste material and refuse from the Premises and deposit them in places or in receptacles provided by Tenant. The final clean-up shall include the cleaning of all lighting fixtures, millwork units, windows, stairwells, common areas and space which may be affected by the Tenant Improvement work.

**6. Damage by Tenant.** Subject to the waiver of subrogation contained in the Lease, any damage caused by Tenant's contractor or subcontractors constructing the Tenant Improvements to the Building structure or the Building Systems or to any property of Landlord or of other tenants shall be repaired by Tenant to the reasonable satisfaction of Landlord.

**7. Failure to Perform Work.** If Tenant's contractor performs any work which does not substantially conform with the approved plans and specifications, then Landlord, after ten (10) business days' prior written notice to Tenant and Tenant's contractor, may without prejudice to any right or remedy Landlord may have, complete the work, remedy the defaults or make good any such deficiencies and Tenant shall reimburse Landlord for such costs, as additional rent, within thirty (30) days after written demand, or the same shall be deducted from the Tenant Improvement Allowance.

**8. Security.** Tenant shall be entirely responsible for the security of the Premises during construction and Landlord shall not be liable for any loss or damage suffered by Tenant or its contractors.

**9. Fire Protection.** Tenant shall maintain and keep on the Premises at all times during construction and the term of the Lease, a suitable portable fire extinguisher for Class A,

B and C fires and shall comply with any additional requirements and regulations imposed by the fire marshal and all other appropriate governmental agencies.

**10. Performance of Construction.** Tenant shall diligently complete the Tenant Improvements.

**11. Preparation of "As-built" Plans.** Within sixty (60) days after the completion of the Tenant Improvements, Tenant shall deliver to Landlord both a "hard" copy and a copy on CAD diskette of the "as-built" plans and specifications (including all working drawings) for the Tenant Improvements.

**D. Public Work; Prevailing Wage Requirement**

Tenant acknowledges that the Tenant Improvements are a "public work" under Section 1720 of the California Labor Code and Tenant agrees that Tenant shall: (i) pay prevailing wages for all Tenant Improvement Work in accordance with Section 1720, et seq. of the California Labor Code; (ii) otherwise comply with the provisions of Sections 1773.8, 1775, 1776, 1777.5, 1777.6 and 1813 of the California Labor Code and all other applicable Laws and regulations with respect to prevailing wages; and (iii) obtain payment and performance bond(s) for the Tenant Improvement Work.

**E. Tenant Improvement Allowance**

1. Landlord shall contribute the sum of Forty-Four Thousand One Hundred and Ninety and No/100 Dollars (\$44,190.00) for the actual costs of design and construction of the Tenant Improvements, including without limitation, payment of the fees and costs of the space planner, architect, engineer and other consultants in connection with the design and construction of the Tenant Improvements, actual costs of construction of the Tenant Improvements, and permitting costs, but not for Tenant's moving expenses, furniture or fixtures (the "Tenant Improvement Allowance"). In no event shall any unused portion of the Tenant Improvement Allowance be paid to Tenant or credited against any obligation payable by Tenant under this Lease.

2. Subject to Section 3 below, after the Commencement Date (and provided Tenant does not terminate this Lease under Section 1(d)), Landlord shall pay to Tenant the Tenant Improvement Allowance for the actual costs of Tenant Improvements incurred after the Commencement Date, in monthly installments, within thirty (30) days after Tenant delivers written request to Landlord for payment describing the applicable Tenant Improvement Work completed by Tenant after the Commencement Date for which the funds are requested (together with any additional supporting documentation reasonably requested by Landlord), subject to the satisfaction of the following conditions:

a) All building permits for the Tenant Improvements have been issued by the applicable governmental authorities and copies of such building permits have been delivered to Landlord;

b) Tenant has submitted to Landlord (i) all invoices for that portion of the Tenant Improvements for which payment is requested; and (ii) appropriate conditional lien

releases and waivers from any and all contractors and materialmen that provided services or installed supplies to or for the account of Tenant (unconditional as to any work for which a disbursement of the Tenant Improvement Allowance was previously made); and

c) Tenant has completed that portion of the Tenant Improvements described on the invoices submitted for which the installment payment is requested; and

d) Tenant is not in default of any provisions of this Lease.

3. Landlord shall be entitled to retain ten percent (10%) of each requested installment for the hard costs of the Tenant Improvements (but not with respect to payments to the architect, project manager and other consultants).

4. Landlord shall pay a final payment of the Tenant Improvement Allowance equal to ten percent (10%) of the hard costs of the Tenant Improvements (i.e., the retention described in Paragraph 3 above) within thirty (30) days after Landlord's receipt of Tenant's written request thereof, together with documentation sufficient (in Landlord's reasonable determination) to establish that items (a) through (f) below have been satisfied:

a) All required inspections of the Tenant Improvements by the applicable governmental agencies have taken place and the completed Tenant Improvements have passed all such inspections;

b) Tenant has completed the Tenant Improvements;

c) Tenant has received a temporary certificate of occupancy;

d) Tenant has submitted to Landlord (i) all invoices and proof of payment for all of the Tenant Improvements evidencing expenditures by Tenant of any amount equal to or greater than the amount of the Tenant Improvement Allowance; and (ii) appropriate final lien releases and waivers, conditioned only upon final payment of the applicable sum specified therein, from any and all contractors and materialmen which provided services or installed supplies to or for the account of Tenant with respect to the Tenant Improvements;

e) Tenant is not in default of any provisions of the Lease beyond applicable notice and cure periods.

f) Tenant has provided to Landlord two (2) sets of as-built plans and a disk with an electronic file of same.

5. Within thirty (30) days after Landlord's final payment of the Tenant Improvement Allowance, Tenant shall submit to Landlord final, unconditional lien releases and waivers from any and all contractors and materialmen which provided services or installed supplies to or for the account of Tenant with respect to the Tenant Improvements.

6. All items of the Tenant Improvements paid for with the Tenant Improvement Allowance shall be deemed Landlord's property.

7. Landlord will not charge Tenant any supervisory or administrative fees in connection with Landlord's work or Tenant's initial tenant improvement work, and Landlord will not charge any fee to review Tenant's plans and specifications (other than normal permit fees charged by Landlord in its governmental capacity).

**F. NON-COMPLIANCE**

**1. Non-Compliance.** If Tenant or Landlord does not comply with the provisions of the Lease or any other agreement relative to the construction or occupation of the Premises, including this Exhibit, the non-defaulting party, in addition to and not in lieu of any other rights or remedies, may (subject to applicable notice and cure provisions) declare and treat such noncompliance as a default or breach of covenant under this Lease and exercise any right available under the provisions of this Lease, including the right of termination.

**2. Termination; Retention or Demolition of Tenant Improvements.** In any event of termination pursuant to the above provision by Landlord, Landlord may further elect either to:

a) retain for its own use without payment therefor all or any of the Tenant Improvements which has been commenced, installed or completed to the date of such termination; or

b) forthwith demolish or remove all or any work and restore the Premises to the condition in which the same were prior to the commencement, installation or completion of all or such of the Tenant Improvements and recover the cost of so doing from Tenant.

**EXHIBIT "D"**

**FORM OF MEMORANDUM OF LEASE**

[Attached.]

RECORDING REQUESTED BY, AND  
WHEN RECORDED RETURN TO:

City of Beverly Hills  
455 North Rexford Drive  
Beverly Hills, California 90210  
Attention: City Clerk

---

[Space Above For Recorder's Use Only]

The undersigned declare that this Memorandum of Lease is exempt from Recording Fees pursuant to California Government Code Section 27383 and exempt from Documentary Transfer Tax pursuant to California Revenue and Taxation Code Section 11922.

### MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (this "**Memorandum**") is dated as of November 19, 2013, and is entered into by and between the CITY OF BEVERLY HILLS, a municipal corporation ("City"), and WINE SOCIETE LLC, a California limited liability company ("Tenant").

### RECITALS

A. Tenant and City have entered into that certain Lease dated November 19, 2013 (the "**Lease**"), pursuant to which City has agreed to lease and demise to Tenant, and Tenant has agreed to lease and accept from City, a portion (the "**Premises**") of that certain building ("**Building**") located on land in the City of Beverly Hills, County of Los Angeles, State of California, commonly known as 9400 Santa Monica Boulevard, Beverly Hills, California more particularly described in Exhibit A attached hereto. The Premises are more particularly described in the Lease.

B. Tenant and City now desire to enter into and record this Memorandum as required under applicable California law.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Tenant and City agree as follows:

1. Lease. City hereby leases and demises the Premises to Tenant, and Tenant hereby leases and accepts the Premises from City, on the terms and conditions in the Lease for five (5) years, and subject to one (1) option in favor of Tenant to extend the term for five (5) years, and upon the rental rate(s) and the other terms and conditions set forth in the Lease, all of which are incorporated herein by this reference.

2. Purpose. This Memorandum is prepared for the purposes of recordation only and in no way modifies the terms and conditions of the Lease. In the event any provision of this Memorandum is inconsistent with any term or condition of the Lease, the term or condition of the Lease shall prevail.

3. Counterparts. This Memorandum may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, taken together, shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Lease as of the date first written above.

**CITY:**

CITY OF BEVERLY HILLS

**TENANT:**

WINE SOCIETE LLC,  
a California limited liability company

By: \_\_\_\_\_  
John A. Mirisch,  
Mayor

By: \_\_\_\_\_  
Jordane Andrieu,  
Manager

ATTEST:

\_\_\_\_\_ (SEAL)

By: \_\_\_\_\_  
Byron Pope  
City Clerk

**ACKNOWLEDGMENT**

State of California )  
County of \_\_\_\_\_ )  
 )

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)  
Signature of Notary Public

**ACKNOWLEDGMENT**

State of California )  
County of \_\_\_\_\_ )  
 )

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)  
Signature of Notary Public

**ACKNOWLEDGMENT**

State of California )  
County of \_\_\_\_\_ )  
 )

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)  
Signature of Notary Public

EXHIBIT A TO MEMORANDUM OF LEASE

LEGAL DESCRIPTION

**The land referred to herein is situated in the State of California, County of Los Angeles, and described as follows:**

Lot 23 in Block 3 of Beverly, in the City of Beverly Hills, County of Los Angeles, State of California, as per map recorded in Book 11 Page 94 of Maps, in the Office of the County Recorder of said County.

APN: 4343-011-903

## EXHIBIT "E"

### RULES AND REGULATIONS

1. Except as may be specifically provided in the Lease to which these Rules and Regulations are attached, no sign, placard, picture, advertisement, name or notice shall be installed or displayed on any part of the outside or inside of the Building (except within the Premises) without the prior written consent of Landlord. Tenant shall not place anything against or near exterior windows or doors which may appear unsightly from outside the Premises or which are visible from the exterior of the Premises (other than approved window coverings). Landlord shall have the right to remove, at Tenant's expense and without notice, any sign installed or displayed in violation of this rule.

2. Tenant shall not obstruct any sidewalks, halls, passages, exits, entrances, elevators, escalators or stairways of the Building. Landlord shall in all cases retain the right to control and prevent access thereto of all persons whose presence in the reasonable judgment of Landlord would be prejudicial to the safety and interest of the Building. Without Landlord's written consent, neither Tenant nor any employee or invitee of Tenant shall go upon the roof of the Building or enter any other areas restricted by Landlord.

3. Upon the termination of its tenancy, Tenant shall deliver to Landlord all keys in Tenant's possession to all doors and locks in the Premises.

4. All contractors and technicians rendering any service to Tenant after completion of the Tenant Improvements shall be referred to Landlord for approval (which approval shall not be unreasonably withheld, conditioned or delayed) prior to performing any such service. This applies to all work performed in the Building, including but not limited to, installation of telephone and telegraph equipment and electrical devices and installations affecting floors, walls, woodwork, windows, ceilings and any other physical portion of the Building. None of Tenant's contractors or subcontractors shall be entitled to (1) display identification or other signage at the Building, or (2) park anywhere in the Parking Structure except in the area, if any, designated by Landlord.

5. Without limiting Landlord's approval rights of Tenant Improvements, Landlord also shall have the right to prescribe the weight, size and position of all heavy equipment, materials, furniture or other property brought into the Building. Heavy objects shall, if considered reasonably necessary by Landlord, stand on such platforms as reasonably determined by Landlord to be necessary to properly distribute the weight, which platforms shall be provided at Tenant's expense. The persons employed to move such equipment in or out of the Building must be approved by Landlord which approval shall not be unreasonably withheld, delayed or conditioned. Landlord will not be responsible for loss of, or damage to, any such equipment or other property from any cause, and all damage done to the Building by maintaining or moving such equipment or other property shall be repaired at the expense of Tenant.

6. Tenant shall not use or keep in the Premises any kerosene, gasoline or inflammable or combustible fluid or material other than those limited quantities necessary for office cleaning or office supplies. Tenant shall not use or permit to be used in the Premises any

foul or noxious gas or substance, or permit or allow the Premises to be occupied or used in a manner which allows noise, odors or vibrations to emanate from the Premises, nor shall Tenant bring into or keep in or about the Premises any birds or animals other than assist animals.

7. Tenant shall not use any method of heating or air conditioning other than that approved by Landlord.

8. Tenant agrees to use commercially reasonable efforts to cooperate with Landlord to assure the most effective operation of the Building's heating and air conditioning and to comply with any governmental energy-saving rules, laws or regulations. Tenant shall keep corridor doors closed.

9. Landlord reserves the right, exercisable upon thirty (30) days' prior written notice to Tenant, to change the name and/or street address of the Building.

10. Landlord reserves the right to exclude from the Building during hours other than Building hours of operation, any person unless that person is known to the person or employee in charge of the Building or has a pass or is properly identified. Tenant shall be responsible for all persons for whom it requests passes and shall be liable to Landlord for all acts of such persons. Landlord shall not be liable for damages for any good faith error with regard to the admission to or exclusion from the Building of any person. Landlord reserves the right to prevent access to the Building in case of invasion, mob, riot, public excitement or other commotion by closing the doors or by other appropriate action.

11. Tenant shall close and lock the doors of its Premises before Tenant and its employees leave the Premises.

12. The toilet rooms, toilets, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein. The expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the Tenant who, or whose employees or invitees, shall have caused it.

13. Tenant shall not install any radio or television antenna, loudspeaker or other devices on the roof(s) or exterior walls of the Building. Tenant shall not interfere with radio or television broadcasting or reception from or in the Building or elsewhere.

14. Tenant shall not affix any floor covering to the floor of the Premises in any manner except as reasonably approved by Landlord to the extent required by the provisions of the Lease pertaining to Tenant improvements or Alterations. Tenant shall repair any damage resulting from noncompliance with this rule.

15. Canvassing, soliciting and distribution of handbills or any other written material, and peddling in the Building or Common Areas (collectively, the "Project") are prohibited, and Tenant shall cooperate to prevent such activities.

16. Landlord reserves the right to exclude or expel from the Project any person who, in Landlord's reasonable judgment, is intoxicated or under the influence of liquor or drugs or who is in violation of any of these Rules and Regulations.

17. Tenant shall store all its trash and garbage within its Premises or in other facilities provided by Landlord. Tenant shall not place in any trash box or receptacle any material which cannot be disposed of in the ordinary and customary manner of trash and garbage disposal. All garbage and refuse disposal shall be made in accordance with reasonable directions issued from time to time by Landlord.

18. Tenant shall comply with all reasonable safety, fire protection and evacuation procedures and regulations established by Landlord or any governmental agency.

19. There shall be no smoking within the Building or immediately adjacent to Building entrances (except in areas, if any, expressly designated therefor by Landlord).

20. Upon written notice to Tenant, Landlord reserves the right to rescind any of these Rules and Regulations and to make future Rules and Regulations as, in its good faith judgment, may from time to time be needed for safety, comfort and security, for care and cleanliness of the Building and for the preservation of good order therein, which Rules and Regulations shall not be discriminatorily modified or enforced in a manner which shall materially interfere with the conduct of Tenant's permitted use from the Premises or Tenant's use of or access to the Premises or the Parking Structure. Tenant agrees to abide by all such Rules and Regulations herein above stated and any additional rules and regulations which are adopted and of which Tenant has been given written notice.

21. Tenant shall use commercially reasonable efforts to ensure the observance of all of the foregoing rules by Tenant's employees, agents, customers, invitees and guests.

22. Landlord reserves the right to charge, as additional Rent to Tenant, any extra reasonable costs incurred by Landlord as a result of the violation of these Rules and Regulations by Tenant or by Tenant's employees, agents, customers, invitees and guests.

# **Attachment 2**

RECORDING REQUESTED BY, AND  
WHEN RECORDED RETURN TO:

City of Beverly Hills  
455 North Rexford Drive  
Beverly Hills, California 90210  
Attention: City Clerk

---

[Space Above For Recorder's Use Only]

The undersigned declare that this Memorandum of Lease is exempt from Recording Fees pursuant to California Government Code Section 27383 and exempt from Documentary Transfer Tax pursuant to California Revenue and Taxation Code Section 11922.

### **MEMORANDUM OF LEASE**

THIS MEMORANDUM OF LEASE (this "**Memorandum**") is dated as of November 19, 2013, and is entered into by and between the CITY OF BEVERLY HILLS, a municipal corporation ("City"), and WINE SOCIETE LLC, a California limited liability company ("Tenant").

### **RECITALS**

A. Tenant and City have entered into that certain Lease dated November 19, 2013 (the "**Lease**"), pursuant to which City has agreed to lease and demise to Tenant, and Tenant has agreed to lease and accept from City, a portion (the "**Premises**") of that certain building ("**Building**") located on land in the City of Beverly Hills, County of Los Angeles, State of California, commonly known as 9400 Santa Monica Boulevard, Beverly Hills, California more particularly described in Exhibit A attached hereto. The Premises are more particularly described in the Lease.

B. Tenant and City now desire to enter into and record this Memorandum as required under applicable California law.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Tenant and City agree as follows:

1. **Lease.** City hereby leases and demises the Premises to Tenant, and Tenant hereby leases and accepts the Premises from City, on the terms and conditions in the Lease for five (5) years, and subject to one (1) option in favor of Tenant to extend the term for five (5) years, and upon the rental rate(s) and the other terms and conditions set forth in the Lease, all of which are incorporated herein by this reference.

2. Purpose. This Memorandum is prepared for the purposes of recordation only and in no way modifies the terms and conditions of the Lease. In the event any provision of this Memorandum is inconsistent with any term or condition of the Lease, the term or condition of the Lease shall prevail.

3. Counterparts. This Memorandum may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, taken together, shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Lease as of the date first written above.

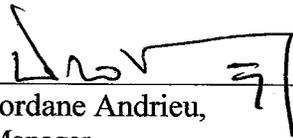
**CITY:**

CITY OF BEVERLY HILLS

**TENANT:**

WINE SOCIETE LLC,  
a California limited liability company

By: \_\_\_\_\_  
John A. Mirisch,  
Mayor

By:  \_\_\_\_\_  
Jordane Andrieu,  
Manager

ATTEST:

\_\_\_\_\_ (SEAL)

By: \_\_\_\_\_  
Byron Pope  
City Clerk

**ACKNOWLEDGMENT**

State of California )  
County of Los Angeles )  
 )

On 11/14/13 before me, Lourdes Sy-Rodriguez, Notary Public  
(insert name and title of the officer)

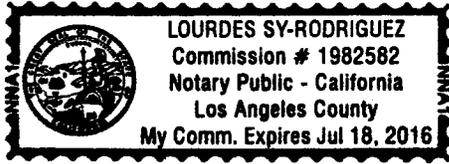
personally appeared Jordane Andrieu \_\_\_\_\_,

who proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~s~~)~~is~~ are subscribed to the within instrument and acknowledged to me that ~~he~~/~~she~~/~~they~~ executed the same in ~~his~~/~~her~~/~~their~~ authorized capacity(~~ies~~), and that by ~~his~~/~~her~~/~~their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Lourdes Sy-Rodriguez \_\_\_\_\_ (Seal)  
Signature of Notary Public



**ACKNOWLEDGMENT**

State of California )  
County of \_\_\_\_\_ )  
 )

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)  
Signature of Notary Public

**ACKNOWLEDGMENT**

State of California )  
County of \_\_\_\_\_ )  
 )

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)  
Signature of Notary Public

EXHIBIT A TO MEMORANDUM OF LEASE

LEGAL DESCRIPTION

**The land referred to herein is situated in the State of California, County of Los Angeles, and described as follows:**

Lot 23 in Block 3 of Beverly, in the City of Beverly Hills, County of Los Angeles, State of California, as per map recorded in Book 11 Page 94 of Maps, in the Office of the County Recorder of said County.

APN: 4343-011-903

# **Attachment 3**

**COMMISSION AGREEMENT - LEASE TRANSACTION**

City of Beverly Hills ("Owner") and Cushman & Wakefield of California, Inc. ("C&W") agree that in the event of the consummation of a lease, and the execution and delivery thereof, at the property located at 9400 Santa Monica Blvd, Beverly Hills, CA (the "Property"), between Owner and Wine Societe, LLC ("Tenant"), Owner will pay to C&W a brokerage commission as follows:

- 1) **COMMISSION:** If the Owner and the Tenant enter into a lease of all or any portion of the Property, Owner will pay to C&W a commission in accordance with the attached Schedule of Commissions.
- 2) **FEES & EXPENSES:** If either party institutes legal action to enforce its rights under this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and other costs so incurred. Any portion of a commission not paid to C&W when due will bear interest from the due date until paid at the legal rate of interest.
- 3) **PROPERTY INFORMATION:** Owner represents that it has no knowledge of toxic, contaminated or hazardous substances, or defective conditions, at the Property except as Owner has informed C&W in writing. Owner authorizes C&W to transmit such information to the Tenant.
- 4) **AUTHORITY:** Owner represents that it is the owner of the Property and/or has the full right, power and authority to execute this Agreement and to consummate a transaction as provided herein, and to perform Owner's obligations hereunder. The individuals signing this Agreement represent that they are authorized signatories.
- 5) **PROFESSIONAL ADVICE:** C&W recommends that Owner obtain legal, tax or other professional advice relating to this Agreement and the proposed lease of property, including, but not limited to, the Property's improvements, equipment, soil, tenancies, title, environmental aspects and compliance with the Americans With Disabilities Act. C&W will have no obligation to investigate any such matters unless expressly otherwise agreed to in writing by Owner and C&W. Owner further agrees that in determining the financial soundness of any prospective tenant, Owner will rely solely upon Owner's own investigation and evaluation, notwithstanding C&W's assistance in gathering any financial information.
- 6) **SURVIVAL:** This Agreement is binding upon the parties hereto and their respective successors and assigns. The terms "Owner" and "Tenant" include affiliates, successors, assigns and nominees.
- 7) **PUBLICITY:** Owner hereby consents to C&W's publicizing its role in any transaction entered into, subject to Owner's reasonable editorial approval of such publicity.
- 8) **COUNTERPARTS:** This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement.
- 9) **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between Owner and C&W and supersedes all prior discussions as to the subject matter hereof. No modifications of this Agreement will be effective unless made in writing and signed by both Owner and C&W. Owner acknowledges receipt of a copy of this Agreement and the Schedule of Commissions.

**CITY OF BEVERLY HILLS**

**CUSHMAN & WAKEFIELD OF CALIFORNIA, INC.**

By: \_\_\_\_\_  
John A. Mirisch

By: \_\_\_\_\_  
*[Signature]*

Title: Mayor

Title: EVP

ATTEST:  
\_\_\_\_\_  
Byron Pope, City Clerk

Address: \_\_\_\_\_  
\_\_\_\_\_

Address: 10250 Constellation Blvd., Suite 2200  
Los Angeles, CA 90007

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

Date: 11/13/13

## SCHEDULE OF COMMISSIONS

### LEASES

#### Office/Commercial Property:

3 % of the monthly rent (as defined in the Lease) payable for the first five (5) years or any fraction thereof.,.

### CONDITIONS REGARDING LEASES

**Cancellation Clauses:** C&W will be paid a commission based upon the entire lease term notwithstanding any right of Landlord to cancel the lease. If Tenant has a right to cancel the lease after the term has commenced (and for reasons unrelated to casualty, condemnation, default and the like), the commission will initially be based upon the rental for the non-cancellable portion of the lease term plus the amount of any cancellation payment payable by Tenant; if such right is not thereafter exercised, Landlord will promptly pay C&W the balance of the commission. A lease will be deemed canceled only if Tenant vacates the premises. If a lease is terminated or amended and Tenant remains under a new or different arrangement, C&W shall be paid the balance of its commission. If a cancellation payment includes the unamortized commission, then C&W will be paid a full commission as if no right of cancellation existed.

**Computation of Commissions:** Commissions shall be computed in accordance with the above rates based upon the aggregate rental set forth in the lease, including rental attributable to rent increases (but not tax or operating expense escalation's) and to additional space required to be leased by Tenant.. If rental concessions are granted in lieu of Landlord performing construction or alteration work and with respect to any other allowances or concessions granted to Tenant whether in the form of a credit against rent, construction, decoration or otherwise, there shall be no deduction from the aggregate rent set forth in the lease.

**Time of Payment:** Commissions on leases shall be paid 50% upon Tenant not exercising its termination option and 50% on Tenant opening for business.

**Sale by Landlord:** In the event of a sale, conveyance or other disposition of all or any portion of Landlord's interest in the Property at which the lease is made, Landlord shall remain responsible to pay C&W the commissions due and/or which may become due hereunder, unless Landlord shall obtain from the grantee of its interest and deliver to C&W an agreement, in form and substance and from a party acceptable to C&W, whereby the grantee assumes Landlord's commission obligations hereunder.

**General:** The term "lease" as used herein shall also be deemed to mean "sublease" and the terms "Landlord" and "Tenant" shall also be deemed to mean "Sublandlord" and "Subtenant", as the case may be, and, together with the terms "Purchaser" and "Seller", shall be deemed to include any subsidiaries, affiliates, successors and nominees of any of same.