

## LEASE AGREEMENT

**THIS LEASE AGREEMENT** is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City" or "Lessor"), and **SUPERB SANDIES, INC. d/b/a WHICH WICH? SUPERIOR SANDWICHES**, a Colorado corporation, whose address is 2949 S. Lafayette Drive, Englewood, Colorado 80113 (the "Lessee").

### W I T N E S S E T H:

**WHEREAS**, the City is the owner of land at the corner of 14<sup>th</sup> and Champa adjacent to the Colorado Convention Center building in Denver, Colorado, a portion of which is not required for public use and occupancy at present; and

**WHEREAS**, the City is desirous of leasing this land to Lessee for use as a restaurant.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements hereinafter contained, the City and the Lessee agree as follows:

1. **CONTINGENCIES**: This Lease shall be contingent upon the Lessee's ability to secure all necessary licenses, permits, and approvals it deems necessary to construct and operate its intended use, including but not limited to approval by Which Wich Franchise Inc.

2. **LEASED PREMISES**: Subject to the terms of this Lease Agreement (hereinafter referred to as "Lease"), the City agrees to lease, demise, and let unto Lessee and the Lessee does hereby lease from the City those certain premises (the "Leased Premises") located at the corner of 14<sup>th</sup> and Champa adjacent to the Colorado Convention Center building in Denver, Colorado, as more particularly depicted on **Exhibit A**, attached hereto and incorporated herein, containing interior space of approximately 2,600 sq ft and patio space, which patio space is subject to Lessee obtaining any and all required permits and/or licenses for such use and subject to compliance with said permits and/or licenses. The depiction contained on Exhibit A may be modified upon the written authorization of the Director of Real Estate (the "Director") to correct minor, technical errors.

3. **TERM**: The term of this Lease shall begin on the date that the City delivers the Leased Premises to Lessee pursuant to paragraph 9.A. (the "Delivery Date"), and it shall terminate five years later (the "Term"). The Term may be extended for up to three (3) five (5) year terms by the Lessee with written confirmation of the extension provided to the City at least 60 days prior to the end of the Term or the previously exercised option term. The term

extensions may be exercised, if at all, by the Lessee or any and all successors and related assigns of Lessee to operate substantially the same business as is contemplated in this lease.

4. **RENT**: Rent shall be paid by Lessee monthly to SMG at 700 14<sup>th</sup> Street, Denver, CO 80202, or to another party as otherwise specified by the City to receive Rents on its behalf. Should the City specify another party to receive Rents, Lessee will be given written notice of such change no less than seven (7) days prior to the next succeeding Rent due date so that Lessee is allowed time sufficient to deliver Rents on or before the due date. Beginning at the Rent Commencement Date, as hereinafter defined, the Rent payable monthly by Lessee shall be:

Year 1, months 1-4:	\$ 0.00
Year 1, months 5-6:	\$ 3,733.00
Year 1, months 7-12:	\$ 7,466.00
Year 2-Year 5:	\$ 7,616.00
Options:	
Year 6 – Year 10	\$ 8,244.00
Year 11 – Year 15:	\$ 9,102.00
Year 16 – Year 20:	\$10,050.00

The Rent Commencement date shall be one hundred twenty (120) days after the later of: (i) the Delivery Date; or (ii) Lessee's receipt of all required permits, approvals and licenses necessary to construct and operate Lessee's intended use in the Leased Premises. Should the Lessee open for business to the general public on a date occurring during the aforementioned 120 day period, the Rent Commencement Date becomes the date Lessee opens for business to the general public.

5. **SECURITY**: As security for the Rent, payment will be personally guaranteed, in a form satisfactory to City, by Kristi B. Thrasher (“Guarantor”). Thirty-six (36) months after the Delivery Date, Guarantor may replace such personal guarantee with an Irrevocable Letter of Credit, in a form satisfactory to the City, in an amount equal to \$150,000.00. The Irrevocable Letter of Credit shall be in the amounts shown in the table below, except as required herein. In any year in which the Irrevocable Letter of Credit is not provided on or before the first day of the Term year, The Irrevocable Letter of Credit shall be in the amount of \$150,000.00. The Irrevocable Letter of Credit shall allow for presentment for payment in Denver, Colorado at a

Denver-area banking institution.

**Irrevocable Letter of Credit Amount:**

Year 1, months 1 -12 =	\$150,000
Year 2, months 13- 24 =	\$150,000
Year 3, months 25 – 36 =	\$100,000
Year 4, months 37 – 48 =	\$ 75,000
Year 5, months 49 – 60 =	\$ 75,000

6. **USE:** The Leased Premises are to be used and occupied by Lessee, or any and all approved successors and related assigns as allowed in Section 25, solely as a restaurant serving sandwiches and sandwich related items, dessert items, beverages and side dishes, unless the Director agrees to another use. The Lessee shall use the Leased Premises in a careful, safe, and proper manner, and shall not use or permit the Leased Premises to be used for any purpose prohibited by the laws of the United States of America, the State of Colorado, or the Charter or ordinances of the City and County of Denver. The Lessee shall not commit or suffer to be committed any waste or damage upon the Leased Premises or any nuisance to be created or maintained thereon. The Lessee shall also keep the Leased Premises free and clear from all trash, debris, and waste resulting from its use or the use by its employees, officers, agents, invitees and visitors.

7. **“AS IS” CONDITION:** The Leased Premises are accepted by Lessee in an “AS IS, WHERE IS” condition, with all faults and defects. The City does not make and disclaims any warranty or representation whatsoever, express or implied, and shall have no obligation or liability whatsoever, express or implied, as to the condition of or any other matter or circumstance affecting the Leased Premises. The Leased Premises shall, however, be delivered in a broom clean condition with all electrical, mechanical, and plumbing in good operating order and free of any substances considered hazardous.

8. **QUIET ENJOYMENT:** Lessee shall and may peacefully have, hold and enjoy the Leased Premises, subject to the other terms hereof, provided that Lessee pays the rental herein recited and performs all of Lessee's covenants and agreements herein contained. Lessee acknowledges that City permits the use of the Colorado Convention Center, by others pursuant to

separate agreements, and agrees that such use is consistent with Lessee's use under this Lease Agreement.

9. **PREMISES/CONSTRUCTION:**

A. By City: Unless otherwise expressly stipulated herein, the City shall not be required to make any improvements to or repairs of any kind or character on the Leased Premises during the term of this Lease, except repairs as are necessary for normal maintenance operations of the Leased Premises, including exterior, foundation, and structural soundness. City has constructed a demising wall that meets City's Building Code. The City has installed the required 400 AMP, 3-phase 4 wire source power with main feeders from service point to breaker panels in Leased Premises. City has also provided all utility meters, venting for a hood system as well as a 3,000gallon capacity grease trap, shared with co-tenant, with clean outs.

The City represents that, to its Director of Real Estate's actual knowledge, as of the date Lessee takes possession of the Leased Premises (i) City's work shall be substantially complete, (ii) City's Certificate of Occupancy on the core and shell of Leased Premises is current, and (iii) there are no outstanding, unresolved environmental issues or violations of Applicable Laws against Leased Premises.

B. By Lessee: Lessee shall undertake construction of a restaurant within the Leased Premises ("Tenant Improvements") according to the construction plans and specifications submitted to and approved by the Director, in his reasonable discretion. Such work shall be built or made strictly in accordance with the following terms and conditions, and no such work or contracts or subcontracts for the same shall be entered until Lessee has established to the Director's reasonable satisfaction that the following terms and conditions have been fully and appropriately satisfied.

- a. Before the commencement of such work, (i) conceptual/schematic, preliminary and final detailed plans (which shall include samples of colors and materials), and specifications shall be filed with and approved by the Director and all governmental departments or authorities having jurisdiction or design review thereover, (ii) all such work shall be done subject to and in accordance with the requirements of law and applicable regulations of all such governmental departments

and authorities and, when required, each affected public utility company, and (iii) all work shall be fully coordinated with scheduled City Venues' events and with the construction, remodeling, repair and other work being performed by others at the City Venues.

- b. Before the commencement of such work, Lessee shall obtain, and provide to the City Attorney for approval, payment and performance bonds to the extent required by and in accordance with the laws of the State of Colorado, the City Charter and ordinances of the City and County of Denver.
- c. Lessee shall pay and ensure that its construction contractors and subcontractors pay any and all prevailing wage rates to laborers and workmen, as set forth in sections 20-76 through 20-79 of the Denver Revised Municipal Code ("DRMC"), as the same may be amended or recodified from time to time..
- d. Lessee shall obtain insurance as required by the City's Office of Risk Management, and provide evidence thereof to the City Attorney, against all liabilities and claims potentially arising out of or related to the work contemplated by this Section 9. The City's Risk Management Office shall be notified of all such work prior to commencement of the work and, upon receipt of notice thereof, will require appropriate insurance of the Lessee and/or Lessee's General Contractors. Insurance requirements may include, without limitation, Builders' Risk and an Installation Floater covering the property and equipment, with the City and County of Denver listed as an Additional Insured, and professional insurance covering all engineering and architectural work. Per Section 23, all subcontractors and subconsultants are required to procure and maintain the same coverage required of the Lessee, as applicable to the scope of work. All coverage related to the subject work shall be kept in full force at all times during the work and warranty period. Evidence of coverage must be submitted to the City Attorney before commencement of such work. Neither the obligation to obtain such insurance nor the obtaining of such insurance shall relieve or lessen Lessee's indemnification of City, except to the extent of payment under policies of such insurance.

- e. Such work shall be performed in compliance with the provisions for small business enterprise, equal employment opportunity, and minority and women business enterprise participation that are contained in sections 28-31 through 28-90, DRMC, as the same may be amended or recodified from time to time.
- f. Such work shall be performed in a first class workmanlike manner and in accordance with the plans and specifications approved for the same and by contractors satisfactory to the Director. Lessee shall redo or replace, at its sole cost and expense, prior to or after completion of such work, any work as determined by the Director which is not done in accordance with such plans and specifications as approved by the Director.
- g. The risk of loss or damage to all such required or permitted repairs, alterations, modifications or installations prior to completion thereof shall be upon Lessee and Lessee shall, at its own cost and expense, replace and repair any and all such damage in accordance with the provisions of this Section

10. **ALLOWANCE FOR TENANT IMPROVEMENTS**: The City shall pay to the Lessee the actual cost of the Tenant Improvements, not to exceed a total of Ninety-eight Thousand Dollars (\$98,000.00) (“Tenant Improvement Allowance”). The Tenant Improvement Allowance shall be paid within thirty (30) days after Lessee provides to City paid receipts and lien waivers from all contractors, material men and suppliers providing \$5,000 or more for labor and improvements. In the event that a subcontractor unreasonably delays or refuses to deliver a lien waver, Lessee has the right to bond over for the outstanding amount in order to receive the Tenant Improvement Allowance.

11. **SIGNAGE/MARKETING/EXCLUSIVITY**: The Lessee shall be allowed to place maximum allowable signage displaying Lessee's corporate colors and logos, on and about the premises to the extent permitted by the City's ordinances, subject to the Director's approval of such signage. The City's Colorado Convention Center (the “CCC”) shall provide reasonable effort to “cross market” during conventions and the City and Lessee agree to cooperate in such effort, including interior and directional signage to the Leased Premises within the CCC. The City will provide advertising of the Leased Premises in the CCC at kiosks, media board advertising on the

street, and access to websites, including social media and email announcements, as well as in collateral materials produced for visitors to the CCC. Attached to this Lease and incorporated herein is **Exhibit B**, describing the signage and marketing that the City will make available to the Lessee.

12. **OBSTRUCTIONS**: The City shall not cause, to the best of its ability, obstructions that will impair visibility to the Leased Premises, except those obstructions acknowledged in Exhibit A.

13. **PARKING**: Two (2) parking spaces shall be designated in the CCC parking garage for the Leased Premises. The year 1 parking rate shall be \$50.00 per month, per space. Parking for years 2-5 shall be at the then current rental rate, which is currently \$120.00 per month, per space.

14. **ENTRY BY CITY**: Lessee shall permit representatives of the City to enter into and upon the Leased Premises after receiving reasonable prior notice from the City to inspect the same, except in the case of emergencies, in which case the City may enter into and upon the Leased Premises without notice, and Lessee shall not be entitled to any abatement or reduction of rent by reason thereof. City shall not cause unreasonable interference in the normal course of Lessee's business and Lessee or an authorized employee or agent shall have the right to accompany the City during its inspections.

15. **CARE AND SURRENDER OF THE LEASED PREMISES**: At the termination of this Lease, Lessee shall deliver the Leased Premises, including the Tenant Improvements performed by Lessee pursuant to paragraph 7, to the City in good condition, ordinary wear and tear excepted. Lessee shall remove all of Lessee's movable furniture and other effects at least ten (10) days prior to the end of the Term.. All moveable furniture and other effects that are not so removed shall conclusively be deemed to have been abandoned and may be appropriated, sold, stored, destroyed or otherwise disposed of by the City without notice to Lessee or any other person, and without obligation to account therefor, and Lessee shall pay the City all reasonable expenses incurred in connection with removal of such property. Lessee's obligation to observe or perform this covenant shall survive the termination of this Lease. Lessee shall pay before delinquency any and all taxes, assessments, and other charges levied, assessed or imposed, and which become payable during the term of this Lease upon Lessee's operations, occupancy, or conduct of business at the Leased Premises, or upon Lessee's equipment, furniture, appliances, trade fixtures, and other personal

property of any kind installed or located on the Leased Premises.

16. **UTILITIES, JANITORIAL SERVICE AND MAINTENANCE:**

A. **Lessor's Responsibilities.** Subject to the billing and payment provisions contained in subparagraph 16.B., the City shall provide the following utilities, separately metered, for the Leased Premises, as may be reasonable and necessary for normal intended use of Leased Premises: water, sewer, and electricity and gas services. Further, City shall, at its expense, maintain the building's mechanical systems, including HVAC, and exterior, including snow and ice removal from the public right of way.

B. **Lessee's Responsibilities.** Lessee shall pay for all water, sewer, gas and electricity, or other utilities or services allocable to the Leased Premises, which the City and Lessee agree will equal the actual cost for such services as metered. Lessee's payment shall be due within 30 days of the date of the City's billing statement. Lessee shall pay its pro rata share of the costs to clean the grease trap, which cleaning shall be coordinated with and costs paid to co-tenant Pizza Republica. All past due payments shall accrue interest at the rate of 12% per annum until paid. Lessee shall be responsible for arranging for, and paying all deposits, fees and charges associated with, (i) telephone and other communication services to the Leased Premises, (ii) janitorial services, and (iii) trash hauling. Lessee shall pay prevailing wages, as set by the City's prevailing wage ordinance (§20-76, DRMC) for janitorial services.

The City will not be liable for any reason for any loss or damage resulting from an interruption of any of these services.

The Lessee shall maintain the interior non-structural portions of the leased premises, including electrical, plumbing, casualty damage, and make all repairs to interior and storefront windows and doors. Additionally, the Lessee shall maintain any non-structural portions of exterior patio space for which it has obtained and complies with all required permits and/or licenses and is actively in use by Lessee, its employees and customers.

17. **INDEMNITY:** The Lessee shall defend, indemnify, and save harmless the City, its officers, agents and employees from any and all losses, damages, claims, demands, suits, actions or proceedings of any kind or nature whatsoever, including without limitation Workers' Compensation claims, of or by anyone whomsoever, that the City may sustain or on account of injuries to the person



or property of the City, its agents or employees or to injuries or death of any other person rightfully on the Leased Premises for any purpose whatsoever, where the injuries are caused by the negligence or misconduct of the Lessee, the Lessee's agents, employees, subtenants, assignees, or of any other person entering upon the Leased Premises under express or implied invitation of the Lessee or where such injuries are the result of the violation of the provisions of this Lease by any of such persons. This indemnity shall survive the expiration or earlier termination of this Lease. Lessee need not, however, indemnify or save harmless the City, its officers, agents and employees from damages resulting from the sole negligence of the City's officers, agents and employees. This indemnity clause shall also cover the City's defense costs, in the event that the City, in its sole discretion, elects to provide its own defense. Insurance coverage specified herein constitutes the minimum requirements, and said requirements shall in no way lessen or limit the liability of the Lessee under this Lease. The Lessee shall procure and maintain, at its own expense and cost, any additional kinds and amounts of insurance that it may deem necessary.

18. **LOSS OR DAMAGE**: The City shall not be liable or responsible to Lessee for any loss or damage to any property or person occasioned by theft or fire (unless such loss or damage is caused by the City, its employees, contractors or assigns), Act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of any governmental entity other than the City. In the event of a fire or other casualty in or to the Leased Premises, Lessee shall immediately give notice thereof to City. If the Leased Premises, through no fault or neglect of Lessee, its agents, its employees, invitees, or visitors shall be partially destroyed by fire or other casualty so as to render the Leased Premises untenable, and the City elects to repair the same, the rent herein shall abate from the date of the occurrence until such time as the Leased Premises are made tenantable by City. In the event such repairs cannot be made within 90 days, Lessee may elect to terminate this Lease. In the event of the total destruction of the Leased Premises without fault or neglect of the Lessee, its agents, employees, invitees, or visitors, or if from any cause the Leased Premises shall be so damaged that the City shall decide not to rebuild (which decision City may make in its sole discretion but will not be unreasonably delayed), then all rent owed up to the time of such destruction or termination shall be paid by Lessee and this Lease shall cease and come to an end.

19. **HAZARDOUS SUBSTANCES**: Lessee shall not cause or permit any Hazardous

Substance to be used, stored, generated, or disposed of on or in the Premises by Lessee, Lessee's agents, employees, contractors, or invitees. If Hazardous Substances are used, stored, generated, or disposed of on or in the Premises, or if the Premises become contaminated in any manner due to the actions or inactions of the Lessee, Lessee shall indemnify and hold harmless the City from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, a decrease in value of the premises, damages caused by loss or restriction of rentable or usable space, or any damages caused by adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys' fees, consultant, and expert fees) arising during or after the Lease Term and arising as a result of those actions or inactions by Lessee. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any cleanup, removal, or restoration mandated by a federal, state, or local agency or political subdivision.

Without limitation of the foregoing, if Lessee causes or permits the presence of any Hazardous Substance on the Leased Premises and that results in contamination, Lessee shall promptly, at its sole expense, take any and all necessary actions to return the Leased Premises to the condition existing prior to the presence of any such Hazardous Substance on the premises. Lessee shall first obtain City's approval for any such remedial action. As used herein, "Hazardous Substance" means any substance that is toxic, ignitable, reactive, or corrosive and that is regulated by any local government, the State of Colorado, or the United States Government. "Hazardous Substance" includes any and all material or substances that are defined as "hazardous waste", "extremely hazardous waste", or a "hazardous substance" pursuant to state, federal, or local governmental law. "Hazardous Substance" includes but is not restricted to asbestos, polychlorobiphenyls ("PCBs"), and petroleum.

20. **HOLDING OVER:** If after the expiration of the Term and any extensions of the Term of this Lease, Lessee shall remain in possession of the Leased Premises or any part thereof, and continue to pay rent, without any express agreement as to such holding, then such holding over shall be deemed and taken to be a periodic tenancy from month-to-month, subject to all the terms and conditions of this Lease, except for the provisions relating to the period of Lessee's occupancy, and at a rent equivalent to 125% of the then current monthly installment of rent due hereunder, payable in advance on the first day of each calendar month thereafter. Such holding over may be terminated by City or Lessee upon ten (10) days' notice. In the event that Lessee fails to surrender the Leased

Premises upon termination or expiration of this Lease, or such month-to-month tenancy, then Lessee shall indemnify City against loss or liability resulting from any delay of Lessee in not surrendering the Leased Premises.

21. **REMEDIES UPON BREACH:** In the event of a breach of this Lease by Lessee, the City may have any one or more of the following described remedies, in addition to all of the rights and remedies provided at law or in equity:

(a) The City may present the Irrevocable Letter of Credit for payment of any unpaid rent up to through the time of the presentment.

(b) The City may terminate this Lease and forthwith repossess the Leased Premises and be entitled to recover as damages a sum of money equal to the total of (i) the cost of recovering the Leased Premises, including reasonable attorneys' fees; (ii) the unpaid rent earned at the time of termination, plus interest thereon at the rate of twelve percent (12%) per annum from the due date; (iii) the balance of the rent for the remainder of the term less any rents the City receives for the Leased Premises for said period; (iv) damages for the wrongful withholding of the Leased Premises by Lessee; (v) unpaid taxes or assessments and (vi) any other sum of money in damages owed by Lessee to City as a result of its use and occupancy of the Leased Premises. The City may retake possession of the Leased Premises, including the Tenant Improvements, and shall have the right, but not the obligation, without being deemed to have accepted a surrender thereof, and without terminating this Lease, to relet same for the remainder of the then current term provided for herein; and if the rent received through such reletting does not at least equal the rent provided for herein, Lessee shall pay and satisfy any deficiency between the amount of the rent so provided for and that received through reletting; and, in addition thereto, Lessee shall pay all reasonable out-of-pocket expenses of Lessor incurred in connection with any such reletting.

(c) Before exercising any remedy or right herein or in law or equity, the City shall supply written notice of such default to the Lessee and provide fifteen (15) days from the date of such notice to cure the noted default.

22. **NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under this Agreement, the Lessee agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise

qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all subcontracts hereunder.

23. **LESSEE'S INSURANCE**: From the commencement of this Lease, and at all times throughout the term, Lessee (or its contractor(s)) shall carry and maintain the following insurance policies:

(a) Such policies covering the construction of the Tenant Improvements as required pursuant to Section 9 herein;

(b) Sufficient Workers' Compensation Insurance to fully insure its responsibilities under Colorado law;

(c) Fire and extended coverage insurance on all of its personal property, including without limitation fixtures and removable trade fixtures, located in the Leased Premises;

(d) A policy or policies of comprehensive general liability insurance, issued by and binding upon an insurance company authorized to do business in the State of Colorado, such insurance to afford minimum protection of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate. Commercial general liability coverage shall be at least as broad as insurance services office standard form CG 0001 or equivalent. The City and County of Denver, its officers, officials and employees shall be named as additional insureds, with coverage at least as broad as insurance services office standard form CG 2026. Defense costs coverage shall include defense costs coverage for additional insureds outside the limits of insurance;

(e) Contractual liability coverage;

(f) Waiver of Subrogation and Rights of Recovery against the City, its officers, officials and employees for both Worker's Compensation and commercial general liability (per ISO form CG2404 or equivalent) coverage;

(g) The certificates evidencing the existence of the above policy or policies, all in such form as the City's Risk Administrator may require, are to be provided to the City upon execution of this Agreement. Each such policy or certificate shall contain a valid provision or endorsement stating "This policy will not be canceled or materially changed or altered without first giving thirty (30) days' written notice thereof to the City's Risk Administrator, 201 West Colfax Avenue, Dept.

1105, Denver, Colorado 80202, and sent by certified mail, return receipt requested."

Lessee understands and acknowledges that the City does not provide any insurance coverage for any property of the Lessee, its agents, employees or assignees located in the Leased Premises and Lessee acknowledges and agrees that the Lessee, its agents, employees and assignees have no claim against the City for any damage or loss of personal property and belongings of Lessee, its agents, employees or assignees in the Leased Premises.

24. **VENUE, GOVERNING LAW:** This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, without regard to the choice of law thereof, and the Charter and Revised Municipal Code of the City and County of Denver. Venue for any legal action relating to this Agreement shall lie in the State District Court in and for the City and County of Denver, Colorado.

25. **ASSIGNMENT AND RIGHT TO SUBLEASE:** The Lessee shall not assign or transfer its rights under this Lease, or sublet the Leased Premises without first obtaining the written consent of the Director, whose consent will not be unreasonably withheld. Lessee may assign its rights under this Lease to a successor or related entity, including a Which Wich franchisee, without further written approval of the City. Should another Which Wich franchisee become successor and said Which Wich franchisee provide Personal Guarantee and/or Letter of Credit securing performance under this Lease, then Lessee will be discharged from its obligations under this Lease. The City shall supply written notice to the Lessee should a default occur, regardless of whether the Lessee has sublet or assigned this Lease pursuant to this Lease.

26. **NO SALE OR ADVERTISING OF TOBACCO PRODUCTS:** The Lessee, its officers, agents, and employees shall cooperate and comply with the provisions of Executive Order No. 13, which prohibits the sale or advertisement of tobacco products on City owned property and in facilities owned or operated or controlled by the City and County of Denver. "Sale" includes promotional distribution, whether for consideration or not, as well as commercial transactions for consideration. "Advertising" includes the display of commercial and noncommercial promotion of the purchase or use of tobacco products through any medium whatsoever, but does not include any advertising and sponsoring which is a part of a performance or show or any event displayed or held in City facilities.

27. **EXAMINATION OF RECORDS:** The Lessee agrees that any duly authorized representative of the City shall, until the expiration of three (3) years after final payment under this Lease, have access to and the right to examine any directly pertinent books, documents, and records of the Lessee involving matters directly related to this Lease.

28. **AMENDMENT:** No alteration, amendment or modification of this Lease shall be valid unless evidenced by a written instrument executed by the parties hereto with the same formality as this Lease; however, the Director shall have the authority to execute agreements which make technical, minor, or non-substantive changes to this Lease. The failure of either party hereto to insist in any one or more instances upon the strict compliance or performance of any of the covenants, agreements, terms, provisions or conditions of this Agreement, shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision or condition, but the same shall remain in full force and effect.

29. **SEVERABILITY:** If any portion of this Lease is determined by a court to be unenforceable for any reason, the remainder of the Lease remains in full force and effect.

30. **BINDING EFFECT:** This Lease when executed and when effective, shall inure to the benefit of and be binding upon the successors in interest or the legal representative of the respective parties hereto, subject to assignment or sublease in accordance with paragraph 25 above.

31. **THIRD PARTIES:** This Agreement does not, and shall not be deemed or construed to, confer upon or grant to any third party or parties any right to claim damages or to bring any suit, action or other proceeding against the parties hereto because of any breach hereof or because of any of the terms, covenants, agreements and conditions herein.

32. **NOTICES:** All notices hereunder shall be given to the following by hand delivery or by certified mail, return receipt requested:

To the City:

Director of Real Estate  
201 W. Colfax Ave., Dept. 1010  
Denver, CO 80204

To Lessee:

**SUPERB SANDIES, INC.,**  
2949 S. Lafayette Drive

Either party hereto may designate in writing from time to time the address of substitute or supplementary persons to receive such notices. The effective date of service of any such notice shall be the date such notice is deposited in the mail or hand-delivered to the Party.

33. **ENTIRE AGREEMENT:** The parties acknowledge and agree that the provisions contained herein and Exhibits hereto constitute the entire agreement and that all representations made by any officer, agent or employee of the respective parties unless included herein are null and void and of no effect.

34. **WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event shall any performance hereunder constitute or be construed to be a waiver by any party of or any breach of covenant or condition or of any default which may then exist. The rendering of any such performance when any breach or default exists shall in no way impair or prejudice any right or remedy available with respect to such breach or default. Further, no assent, expressed or implied, to any breach of any one or more covenants, provisions, or conditions of the Lease shall be deemed or taken to be a waiver of any other default or breach.

35. **NO PERSONAL LIABILITY:** No elected official, director, officer, agent or employee of the City, nor any director, officer, employee or personal representative of Lessee shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or because of any breach thereof or because of its or their execution, approval or attempted execution of this Lease.

36. **CONFLICT OF INTEREST BY CITY OFFICER:** Lessee represents that to the best of its information and belief, no officer or employee of the City is either directly or indirectly a party or in any manner interested in this Lease, except as such interest may arise as a result of the lawful discharge of the responsibilities of such elected official or employee.

37. **BROKER:** Other than Eli Boymel of Crosbie Real Estate Group, LLC, representing the Lessee, and Dennis McLin of Excell Fund Brokerage, LLC, representing the Lessor ("Brokers"), Lessee warrants that it has not had dealings with any broker or agent in connection with this Lease. The City or another party it specifies will pay a commission to said Brokers per a separate written

agreement. With the exception of these specifically named Brokers, above, Lessor and Lessee shall have no payment obligation to the Brokers.

38. **APPROPRIATION:** All obligations of the City under and pursuant to this Agreement are subject to prior appropriation of monies expressly made by the City Council for the purposes of this Agreement and paid into the Treasury of the City.

39. **AUTHORITY TO EXECUTE:** Lessee represents that the persons who have affixed their signatures hereto have all necessary and sufficient authority to bind Lessee.

40. **PARAGRAPH HEADINGS:** The paragraph headings are inserted only as a matter of convenience and for reference and in no way are intended to be a part of this Lease or to define, limit or describe the scope or intent of this Lease or the particular paragraphs to which they refer.

41. **CITY'S EXECUTION OF AGREEMENT:** This Lease is expressly subject to, and shall not be or become effective or binding on the City until approval by its City Council and full execution by all signatories set forth below.

42. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:**

Lessee consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.



## WHICH WICH LEASE ADDENDUM

(a) Landlord acknowledges that Tenant is a franchisee of Which Wich Franchise, Inc., a Texas corporation ("Franchisor"), and that the restaurant located at the Premises ("Unit") is operated under the Which Wich franchise system, pursuant to a franchise agreement ("Franchise Agreement") between Tenant and Franchisor. Landlord consents to Tenant's use at the Premises of such marks and signs, decor items, color schemes and related components of the Which Wich system as Franchisor may prescribe for the Unit. During the term of the Franchise Agreement, the Premises may be used only for the operation of the Unit.

(b) Landlord agrees to furnish to Franchisor copies of any and all letters and notices sent to Tenant pertaining to the Lease and the Premises at the same time that such letters and notices are sent to Tenant. Without limiting the foregoing, in the event of any default by Tenant, Landlord shall give Franchisor written notice of such default. If Tenant has failed to cure such default at the expiration of the applicable cure period, Landlord shall give Franchisor further written notice of such failure ("Franchisor Notice"). Following Franchisor's receipt of the Franchisor Notice, Franchisor shall have the right (but not the obligation) to cure Tenant's default before Landlord shall exercise any of Landlord's remedies arising as a consequence of Tenant's default. Any such cure shall be affected within fifteen (15) days following Franchisor's receipt of the Franchisor Notice. Such cure by Franchisor shall not be deemed to be an election to assume the terms, covenants, obligations and conditions of the Lease.

(c) If Franchisor cures Tenant's default, or if Franchisor notifies Landlord that the Franchise Agreement has been terminated (which termination shall constitute a non-curable default pursuant to the Lease upon Landlord's receipt of Franchisor's notice thereof), Landlord agrees, upon Franchisor's written request, to pursue the enforcement of the rights that Landlord may have under the Lease to remove and evict Tenant from the Premises and shall cooperate with Franchisor in order to pursue such action to a conclusion.

(d) If Franchisor cures Tenant's default or notifies Landlord of the termination of the Franchise Agreement, Franchisor shall have the right and option, upon written notice to Landlord, to do the following:

1. Undertake to perform the terms, covenants, obligations and conditions of the Lease on behalf of the Tenant (notwithstanding any removal or eviction of Tenant) for a period not to exceed six (6) months from the first (1<sup>st</sup>) date of any cure by Franchisor; or

2. At any time within or at the conclusion of such six (6) month period, assume the terms, covenants, obligations and conditions of the Lease for the remainder of the term, together with any applicable renewal options. In such event, Landlord and Franchisor shall enter into an agreement to document such assumption. Franchisor is

not a party to the Lease and shall have no liability under the Lease unless and until said Lease is assigned to, and assumed by, Franchisor as herein provided.

(e) If, during the six (6) month period set forth in section (d)(1) above or at any time after the assignment contemplated in section (d)(2), Franchisor shall notify Landlord that the franchise for the Unit is being granted to another Which Wich Restaurant franchisee, Landlord shall permit the assignment of the Lease to said franchisee without the payment of any fee or other cost requirement, provided that said franchisee meets Landlord's reasonable financial qualifications. Landlord shall not unreasonably withhold consent to such assignment. Thereafter, Franchisor shall be released from any and all further liabilities under the Lease. The parties agree to execute any commercially reasonable documents in furtherance of this section.

(f) Tenant will not assign the Lease or renew or extend the term thereof without the prior written consent of Franchisor, nor shall Landlord and Tenant amend or otherwise modify the Lease in any manner that could materially affect any of the foregoing requirements without the prior written consent of Franchisor.

(g) Franchisor shall have the right to enter the Premises to make any modification or alteration necessary to protect the Which Wich system and marks or to cure any default under the Franchise Agreement or under the Lease, without being guilty of trespass or any other crime or tort. Landlord shall not be responsible for any expenses or damages arising from any such action by Franchisor. Tenant hereby releases, acquits and discharges Franchisor and Landlord, their respective subsidiaries, affiliates, successors and assigns and the officers, directors, shareholders, partners, employees, agents and representatives of each of them, from any and all claims, demands, accounts, actions and causes of action, known or unknown, vested or contingent, which any of them may have, ever had, now has, or may hereafter have by reason of any event, transaction or circumstance arising out of or relating to the exercise of Franchisor's rights pursuant to the Addendum.

(h) All notices sent pursuant to this Addendum shall be sent in the manner set forth in the Lease, and delivery of such notices shall be effective as of the times provided for in the Lease. For purposes of notice under the Lease, Franchisor's mailing address shall be 1310 Elm St., Suite 180LL, Dallas, TX 75202, Attention: President, which address may be changed by written notice to Landlord in the manner provided in the Lease.

**Contract Control Number:**

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at  
Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By\_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By\_\_\_\_\_

By\_\_\_\_\_

By\_\_\_\_\_



Contract Control Number: FINAN-201309730-00

Contractor Name: Superb Sandies, Inc.

By: Kristi B. Thrasher 8/30/2013

Name: KRISTI B. THRASHER  
(please print)

Title: PRESIDENT  
(please print)

ATTEST: [if required] Not applicable

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

Name: \_\_\_\_\_  
(please print)

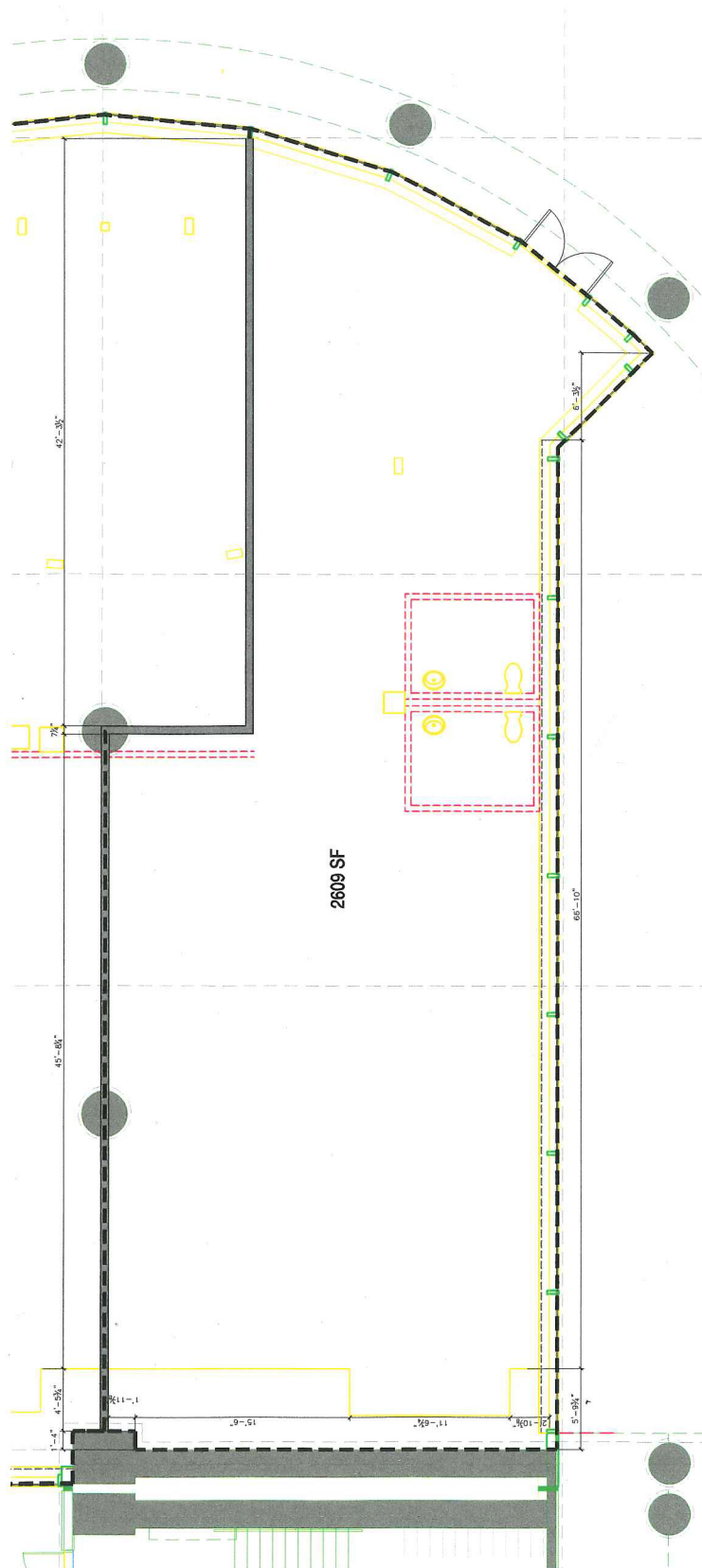
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(please print)

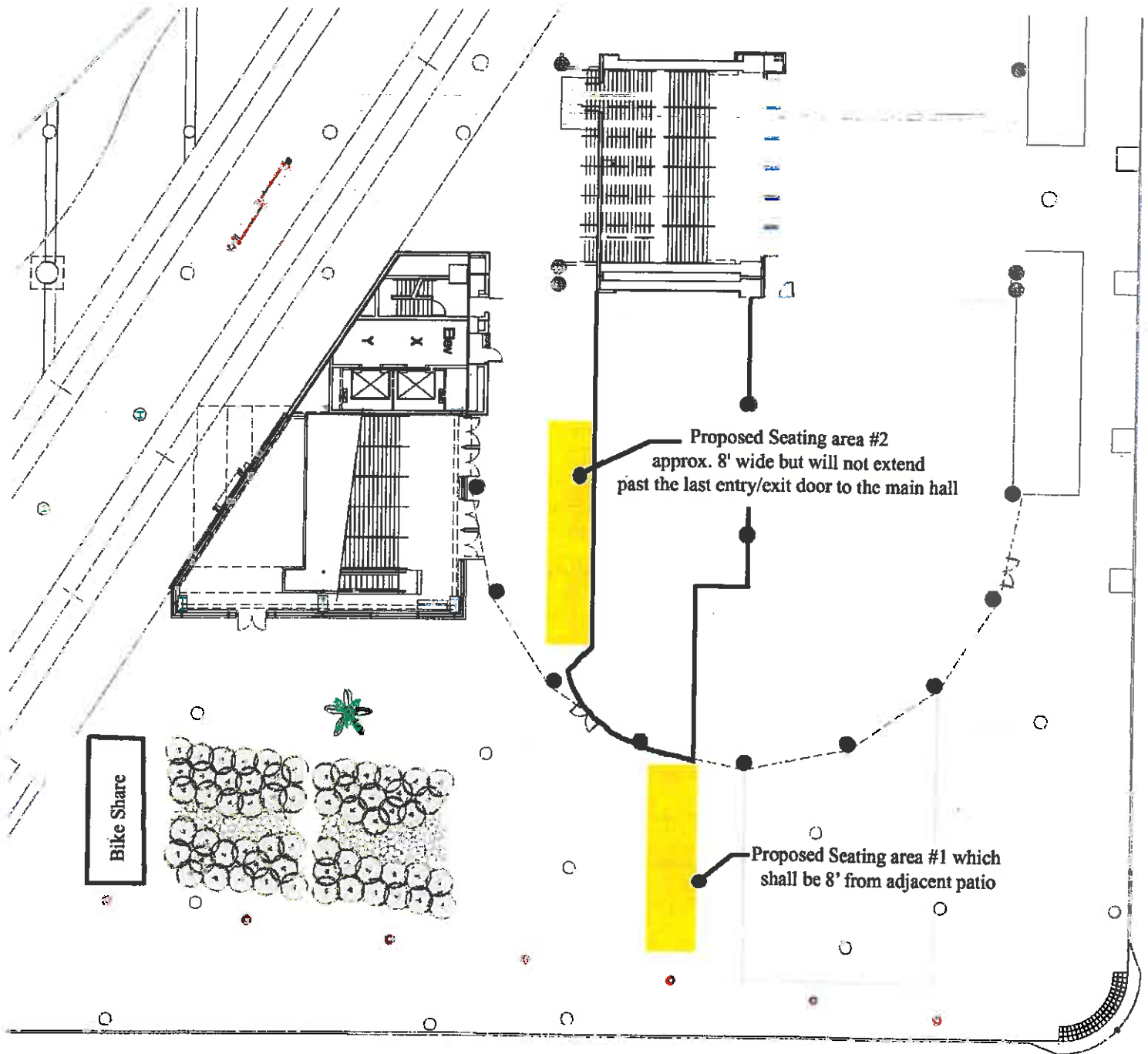


EXHIBIT A

DEPICTION OF LEASED PREMISES

DEPICTION OF OUTDOOR SEATING (PART OF LEASED PREMISES)





## EXHIBIT B

### MARKETING BENEFITS

<b>Media</b>
Colorado Convention Center Digital Marquee (estimated half schedule - every 6 minutes - on seven signs all year)
Full-schedule advertisement on thirty five (35) digital information kiosks located throughout the Convention Center
Presence on www.denverconvention.com - inclusion on a page dedicated to other amenities
Presence on www.wellsfargotheatre.com - a page dedicated to nearby restaurants with available offers
Home page rotating banner ad on www.artscomplex.com
Dedicated Grand Opening Announcement to CCC list of 40,000 local e-mail addresses
Promotions through the Convention Center's Facebook, Twitter and other Social Networking Sites
<b>SIGNAGE</b>
Permanent indoor directional signage (estimated 6 signs total - locations TBD)
Two (2) free-standing backlit kiosks located on the main interior spine of the Colorado Convention Center
Opportunity to install ad signs inside the parking garage (size and location TBD; printing and installation not included)
<b>COLLATERAL MATERIALS</b>
Ad/ coupon inclusion in electronic Exhibitor Kit (sent to 42,000 e-mail addresses)
Map inclusion in 4,000 brochures annually printed by Visit Denver
Coupon on the back of parking stubs at the Colorado Convention Center garage