

SHOPS IN THE CENTRAL BUSINESS DISTRICT PARKING GARAGE  
SHOP LEASE

THIS IS A LEASE, entered into on \_\_\_\_\_, 2008, by and between:

**THE CITY OF FORT LAUDERDALE**, a municipal corporation of the State of Florida, referred to as "City",

and

**SUSHI-KO EXPRESS CORP.**, a corporation organized under the laws of Florida, whose principal address and mailing address is 100 SE 1st Street, Suite 136, Fort Lauderdale, Florida 33301, referred to as "Lessee".

WHEREAS, at its regular meeting of July 15, 2008, the City Commission of the City of Fort Lauderdale, authorized execution of this Lease by the proper City officials; and

WHEREAS, pursuant to Section 8.12 of the Charter of the City of Fort Lauderdale, the City has negotiated this lease of a portion of the City-owned property known as the Shops in Central Business District Parking Garage (hereinafter the AShops≡ or AParking Garage≡); and

WHEREAS, the Lessee wants to continue to lease that portion of the Shops from the City;

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

**1. Premises.**

(a) The City leases to Lessee the following described Premises:

Shop No. 136 of the Shops in the Central Business District Parking Garage, Fort Lauderdale, Florida, consisting of approximately 636 square feet (hereinafter the APremises≡), and as shown on **Exhibit "A,"** which is attached hereto and made a part hereof.

**2. TERM.** The Commencement Date of this Lease shall be August 1, 2008. The City leases the Premises to Lessee for a term commencing **August 1, 2008** and ending **September 30, 2010**. Lessee shall have the option to extend the term of this Lease for one additional term of five (5) years. At least ninety days prior to the expiration of the original term or the applicable option term, Lessee shall notify the City Manager of the City "Attention Real Estate Division", in writing, of its intention to exercise such option. Such option shall not be applicable if, at the time of the exercise, or at any time thereafter prior to the expiration of the original term, Lessee is in default of any of its

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obligations under this Lease.

3. **PURPOSE.** The Premises are leased to Lessee for use as a restaurant.

4. **MUTUAL REPRESENTATIONS AND WARRANTIES.** The parties mutually represent, warrant, and disclose to each other the following:

- (a) **Municipality.** The City is a municipal corporation organized and existing pursuant to the Constitution and Laws of the State of Florida.
- (b) **Disclosure.** The Lessee acknowledges that the City has made full disclosure of all facts set forth above. The Lessee acknowledges that it has made, or had ample opportunity to make, a thorough and complete inspection of the Premises and is fully advised of its condition, services provided, nature of construction, and state of repair. Lessee fully accepts the Premises in its present condition.
- (c) **Authority.** All steps, acts, and conditions required by the Charter of the City as a condition precedent to the execution of this Lease, have been satisfied, and the City has full authority to enter into this Lease.

5. **GENERAL COVENANTS.** The following are general obligations and covenants of the parties, their successors and assigns:

- (a) **Compliance with regulations of public bodies.** LESSEE further covenants and agrees that it shall, at its own cost and expense, make such improvements on the Premises, perform such acts and do such things as shall be lawfully required by any public body having jurisdiction over the Premises, in order to comply with the requirements relating to sanitation, fire hazard, zoning requirements, historic designation regulations, environmental requirements, building code requirements, City of Fort Lauderdale Engineering Standards, Americans With Disabilities Act requirements and other similar requirements designed to protect the public and worker environments. LESSEE shall not use the Premises, nor shall the Premises suffer any such use during the Term of this Lease, which is in violation of any of the statutes, laws, ordinances, rules or regulations of the federal, state, county, municipal government or any other governmental authority having jurisdiction over the Premises.
- (b) **Indemnification against claims.**
  - (1) Lessee shall protect, defend, indemnify and hold harmless the City, its officers, employees and agents from and against any and all lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges and other expenses including attorney's fees or liabilities of every kind, nature or degree arising out of or in connection with the rights, responsibilities and obligations of Lessee under this Lease, conditions contained therein, the location, construction, repair, maintenance use or occupancy of the Premises or improvements located thereon, or the breach or default by Lessee of any

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covenant or provision of this Lease except for any occurrence arising out of or resulting from the intentional torts or gross negligence of the CITY, its officers, agents and employees.

- (2) Without limiting the foregoing, any and all such claims, suits, causes of action relating to personal injury, death, damage to property, defects in construction, rehabilitation or restoration of the Premises, alleged infringement of any patents, trademarks, copyrights or of any other tangible or intangible personal or real property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court, is included in the indemnity.
  - (3) Lessee further agrees to investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and agrees to bear all other costs and expenses related thereto even if the claim is groundless, false or fraudulent and if called upon by the City, Lessee shall assume and defend not only itself but also the City in connection with any claims, suits or causes of action, and any such defense shall be at no cost or expense whatsoever to City, provided that the City (exercisable by the CITY's Risk Manager) shall retain the right to select counsel of its own choosing.
- (c) **No liens created.** Each party covenants and agrees that it has no power to incur any indebtedness giving a right to a lien of any kind or character upon the right, title, and interest of the other party in and to the property covered by this Lease and that no third person shall ever be entitled to any lien, directly or indirectly, derived through or under the other party, or its agents or servants, or on account of any act or omission of said other party. All persons contracting with the Lessee, or furnishing materials or labor to said Lessee, or to its agents or servants, as well as all persons whomsoever, shall be bound by this provision of this Lease. Should any such lien be filed, Lessee shall discharge the same within thirty days thereafter, by paying the same or by filing a bond, or otherwise, as permitted by law. Lessee shall not be deemed to be the agent of the City so as to confer upon a laborer bestowing labor upon the Premises, or upon a materialman who furnishes material incorporated in the construction of improvements upon the Premises, a mechanic's lien upon the City's estate under the provisions of Chapter 713, Florida Statutes, or any subsequent revisions thereof. Lessee shall have no power or authority to incur any indebtedness giving a right to a lien of any kind or character upon the right, title or interest of City in and to the Premises, and no person shall ever be entitled to any lien, directly or indirectly derived through or under the Lessee, or its agents, servants, employees, contractors or officers or on account of any act or omission of said LICENSEE as to the License Area. All Persons contracting with the Lessee, or furnishing materials, labor or services to said Lessee, or to its agents or servants, as well as all persons shall be bound by this provision of the Lease. Should any such lien be filed, Lessee shall discharge the same within thirty (30) days thereafter, by paying the same or by filing a bond, or otherwise, as permitted by law. Lessee shall not be deemed to be the agent of City, so as to confer upon a laborer bestowing labor upon the Premises, or upon materialmen who furnish material incorporated in the construction and

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improvements upon the foregoing, a construction lien pursuant to Chapter 713, Florida Statutes or an equitable lien upon the City's right, title or interest in and to the Premises. These provisions shall be deemed a notice under Section 713.10(1), Florida Statutes of the "non-liability" of the City.

**(d) Operating costs.**

- (1)** Lessee agrees promptly to pay when due all operating, maintenance and servicing charges and costs, including those associated with telephone, gas, electricity, garbage, trash or refuse removal services and all other expenses incurred in the use and operation of the Premises.
- (2)** The City shall provide water and sewer services to the Premises without charge, provided, however, that Lessee shall promptly repair any leakages inside the Premises.
- (3)** The Lessee agrees to obtain at its expense all permits and licenses and pay all fees and charges which may be required by any governmental unit, including the City. Upon the City's request, at reasonable intervals, Lessee shall promptly furnish to the City evidence satisfactory to the City showing Lessee's compliance with its obligations under this section.

- (e) Insolvency of Lessee.** Should the Lessee, at any time during the term of this Lease, suffer or permit to be filed against it a composition or arrangement proceeding under state law, or make any assignment for the benefit of its creditors, or should a receiver be appointed for the Lessee's property because of the Lessee's insolvency and the appointment not vacated within thirty days thereafter, or should the Lessee's leasehold interest be levied on and the lien not discharged within thirty days after levy has been made, or should the Lessee fail to promptly make the necessary returns and reports required of it by state and federal law, or should the Lessee fail promptly to comply with all governmental regulations, both state and federal, and should such failure in any manner jeopardize the rights of the City, then, and in such event, and upon the happening of any of those events, the City shall have the right, at its election, to consider the same a default on the part of the Lessee of the terms and provisions of this Lease, and, in the event of such default not being cured by the Lessee within a period of thirty days from the date of the giving by the City of written notice to the Lessee of the existence of such default, the City shall have the option of declaring this Lease terminated and the interest of the Lessee ended, or the City may exercise any other options as prescribed by law or which appear in this Lease. The pendency of arrangement proceedings to which the Lessee shall be a party shall not preclude the City from exercising the options conferred upon it. In the event the Lessee, or receiver of the Lessee's property, shall seek an injunction against the City's exercise of the options conferred, such action on the part of the Lessee, or receiver, shall automatically terminate this Lease as of the date of the making of such application. In the event a court shall enjoin the City from exercising the options conferred in this Lease, such injunction shall automatically terminate this Lease.

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- (f) **Bankruptcy of Lessee.** Should the Lessee, at any time during the term of this Lease, suffer or permit an involuntary or voluntary petition in bankruptcy to be filed against it, or institute a composition or an arrangement proceeding under Chapters 7, 11, or 13 of the Bankruptcy Code or as they may be amended from time to time, the Lessee agrees to provide adequate protection and adequate assurance of future performance to the City which will include but not be limited to the following:
- (1) All monetary and non-monetary defaults existing prior to the institution of the filing of the bankruptcy petition shall be cured within ten days of written demand made upon the Lessee by the City which will include all costs and attorneys' fees expended to the date of the curing of the default; and
  - (2) An additional two months of advance rental will be required as additional security of future performance which must be paid to the City within ten days of the filing of the petition in bankruptcy; and
  - (3) All obligations of the Lessee must be performed in accordance with the terms of the Lease.
- (h) **Litigation Venue.** The parties waive the privilege of venue and agree that all litigation between them in the state courts shall take place in Broward County, Florida, and that all litigation between them in the federal courts shall take place in the Southern District in and for the State of Florida.
- (i) **Property Taxes.** Lessee shall be liable to the City for the proportionate share of ad valorem real property taxes and assessments attributable to the Premises. The City shall bill Lessee monthly for the estimated amount of property taxes owed by Lessee, based upon the latest actual property taxes assessed. The City shall then remit to the Broward County tax collector the total amount of such taxes and special assessments levied against the Downtown Parking Garage. In the event that the actual property taxes paid by the City to Broward County exceed the amount collected from Lessee, the Lessee shall remit the balance owed to the City within thirty days of receiving such notice. In the event that the actual taxes paid by the City are less than the amount paid by Lessee, the Lessee shall receive a tax credit for the amount overpaid by Lessee.
- (j) **Repairs and Maintenance.**
- (1) **Upkeep.** Lessee agrees at its expense to keep and maintain the interior and exterior of the Premises, including all adjacent wall areas, furnishings, fixtures, utility systems and personal property, in a good state of repair, clean and in first-class condition. The City is responsible for maintenance of all common areas in the Garage.
  - (2) **Repairs; Modifications.** Lessee agrees at its expense to make all repairs to the improvements situated in and adjacent to the Premises, including

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electrical, plumbing, non-loadbearing walls and that portion of the sewer line or sewer connection from the lateral that directly services the Premises, the Lessee's liability being limited to acts or omissions of the Lessee that directly give rise to the need for such repair to the sewer or sewer connections; provided, however, that the City shall repair and keep in a good state of repair structural components of the Premises (floor, roof, loadbearing walls) unless repairs for same are necessitated due to acts or omissions of Lessee, its agents, employees, patrons, licensees, or invitees. Any modification of any utility system (telephone, water, gas, electrical, sewer, lighting, air-conditioning and heating) desired by Lessee for incorporation into the Premises shall first be reviewed by the City Engineer of the City and approved by him in writing before any modification occurs. Any modification shall be considered a "fixture" as defined in this Lease. An air conditioner and heating unit has been installed by the City to serve the Premises. The Lessee shall be responsible for maintenance and repair of the entire air-conditioning and heating system inside the Premises at its own expense.

(3) **Surrender.** The Lessee at its expense agrees to deliver to the City upon the termination of this Lease the entire Premises including all improvements, in a good state of repair and in first class condition, ordinary wear and tear excepted.

(k) **Quiet enjoyment.** The City covenants, warrants and agrees that Lessee shall be entitled peacefully to enjoy, to occupy and to possess the Premises throughout the Lease term without interference, hindrance or molestation.

(l) **Receipts.** Lessee shall, upon written demand by the City, obtain and deliver to the City receipts, satisfactions and discharges showing the payment of any obligation required of Lessee by this Lease.

6. **EASEMENTS.** Lessee shall convey to the City any easements in and through the leased property that may be required for the installation of utilities or any other purposes deemed necessary by the City. In the event there is a loss of beneficial use or impairment of beneficial use resulting from the granting of an easement, proper adjustment of the rent hereinafter required shall be made at the time of the conveyance of such easement by Lessee to the City.

7. **ZONING.** Lessee hereby accepts the existing zoning of the Premises, which the City represents and warrants to be Regional Activity Center – City Center Zoning District ("RAC-CC"), which is compatible and consistent with the usages and purposes contemplated in this Lease. Lessee further accepts and specifically agrees to abide by all existing zoning ordinances of the City of Fort Lauderdale insofar as they are applicable to the Premises.

8. **POSSESSION.** [This Paragraph is intentionally deleted.]

9. **RENTAL.**

(a) Lessee agrees promptly to pay to the City as rent for the occupancy of the Premises

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during the first year of the original term the sum of **\$8,414.28** payable in equal monthly installments of **\$701.19**, in advance and without demand on the first day of each month to which applicable.

For the second year of the Lease, the base rent of the first year shall be adjusted in accordance with the CPI escalation clause set forth in subparagraph (d) below, payable in equal monthly installments, in advance and without demand on the first day of each month to which applicable. The rental provided for in this Lease does not include Florida State sales tax on commercial tenancies, the payment of which is the responsibility of the Lessee and the same will be paid to the City at the office of its City Treasurer, together with rental installments, on the same date rental payments are required in this Lease.

In the event Lessee timely exercises its option to renew for an additional five (5) year term to commence after the completion of the second year of this Lease, Lessee shall promptly pay to the City as rent for the occupancy of the Premises during the first year of the renewal term the sum of **\$10,005.48**, payable in equal monthly installments of **\$833.79**, in advance and without demand on the first day of each month to which applicable. For each successive year thereafter, the base annual rent of **\$10,005.48** shall be adjusted in accordance with the CPI escalation clause set forth in subparagraph (d) below. The rental provided for in this Lease does not include Florida State sales tax on commercial tenancies, the payment of which is the responsibility of the Lessee and the same will be paid to the City at the office of its City Treasurer, together with rental installments, on the same date rental payments are required in this Lease

- (b) **Security Deposit.** Landlord currently holds the sum of **\$1,528.52** for security deposit.
- (1) If the option to extend the term is not timely exercised and granted, and the Lease terminates, or the Lease is terminated prior to expiration of the original term, the City shall inspect the Premises and, if applicable, notify Lessee in writing that the City intends to impose a claim upon all or any portion of the security deposit, and list reasons for such claim. Lessee shall have fifteen days to object in writing to the claim. If no objection is received after that time expires, the City shall deduct the amount claimed and return the balance of the security deposit to Lessee, if any balance remains, within fifteen days after the time for submitting a written objection by Lessee expired.
- (2) If the option to extend the term is timely exercised and granted, within fifteen days prior to the commencement of the extended lease term, Lessee shall pay to the City an additional sum of money which is equal to two months of the new applicable monthly rental amount, less the amount of the existing security deposit, plus all applicable taxes, which sum shall be held by the City as the extended term deposit, as and for the last month rental and security deposit for such extended term. Thirty days prior to the expiration of the

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extended term, the parties agree that the extended term deposit shall be disbursed in the same manner as the original term deposit, as set forth immediately above. This procedure shall apply to all the option terms exercised by Lessee.

- (3) If Lessee defaults in one or more of its obligations under this Lease at any time during the original term or any extended term, and does not remedy and cure such default in accordance with the terms of this Lease, the parties agree that the City shall retain any deposit monies held by it at the time the lease is terminated as and for its liquidated damages, since the parties acknowledge that, at the time of the execution of this Lease, actual damages attributable to default are not ascertainable or otherwise susceptible to calculation. The provisions of this subparagraph shall not, however, prevent the City from exercising any or all other remedies or rights it has under this Lease, including the right to seek actual damages when such damages are ascertainable or otherwise susceptible to calculation.
- (c) If the Lessee timely exercises its option to extend the term of the Lease and if the City determines that the Lessee is not in default and accepts Lessee's exercise of the option term, the option term shall commence upon the expiration of the original term, with the rent and security deposit to be determined as set forth herein.
- (d) **Rent Adjustments; CPI Escalator Clause.** To the extent the annual rent is to be adjusted, such annual rents shall be adjusted annually in accordance with the terms of this subsection. The annual rent shall be adjusted in accordance with the fractional increase or decrease in the Consumer Price Index, as more particularly set forth below. The adjustment to the annual rent to be made and, therefore, the adjusted annual rent for each year shall be determined as follows:

(1) In the event the "Consumer Price Index for All Urban Consumers, U.S. City Average (1982 - 1984 = 100)" (hereinafter referred to as the "Price Index") published by the Bureau of Labor Statistics of the United States Department of Labor, or a comparable successor or substitute index designated by City, appropriately adjusted, reflects increases (but not decreases) in the cost of living as contrasted with the cost of living as reflected by the Price Index in effect on the anniversary date of the beginning of the preceding lease year, then the annual rent shall be adjusted in accordance with subsection (2) below.

(2) The annual rent for the applicable annual rental periods, as set forth in subsection (4) below, and for all applicable successive annual rental periods thereafter as set forth in subsection (4) below, shall be adjusted by multiplying the annual rent for the preceding lease year by a fraction, the numerator of which shall be the Price Index in effect on the appropriate anniversary date of the Commencement Date for the new lease year under consideration, and the denominator of which (for each such fraction) shall be the Price Index in effect on the anniversary date of the beginning of the preceding lease year. In no event shall the adjusted rents hereunder be less than the amount of the annual rent specified

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above.

(3) In the event the Price Index ceases to use the 1982-84 average of 100 as the basis of calculation, or if a substantial change is made in the terms or number of terms contained in the Price Index, or in the event the U.S. Department of Labor ceases to prepare and publish such Price Index, the adjustment of annual rent thereafter shall be in accordance with the most closely comparable price index published by the U.S. Department of Labor or U.S. Department of Commerce appropriately adjusted. If such is not determined by either of those Departments, then the most closely comparable price index as determined by the LESSOR shall apply to the adjustments.

(4) This rent adjustment clause shall be applied to the increase in rent between the first and second year of the lease term. It shall not be applicable to the increase in rent to the increase from the second year to the first year of the five (5) year renewal term, in the event the Lessee timely exercises its option to renew for an additional five (5) year term. The rent adjustment clause shall thereafter be applied in such a manner as to apply to an increase in rent each successive year of the renewal term after the first year of the renewal term until the conclusion of the Lease term.

(e) **Late Fee.** Lessee recognizes that late payment of any Rent or other sum due hereunder from Lessee to City will result in administrative expense to City, the extent of which additional expense is extremely difficult and economically impractical to ascertain. Lessee therefore agrees that if Rent or any other payment due hereunder from Lessee to City remains unpaid for a period of fifteen (15) days after the same is due, the amount of such unpaid Rent or other payment shall be increased by a late charge to be paid City by Lessee in an amount equal to six percent (6%) per month of the amount of the delinquent Rent or other payment. The amount of the late charge to be paid to City by Lessee for any particular month shall be computed on the aggregate amount of delinquent Rent and other payments, including all accrued late charges then outstanding. Lessee agrees that such amount is a reasonable estimate of the loss and expense to be suffered by City as a result of such late payment by Lessee and may be charged by City to defray such loss and expense. The terms of this paragraph in no way relieves Lessee of the obligation to pay Rent or other payments on or before the date on which they are due, nor do the terms of this paragraph in any way affect City's remedies under this Lease in the event said Rent or other payment is unpaid after the date due.

**10. INSPECTION OF PREMISES.** The City or its agents shall have the right to enter the Premises at all reasonable hours for the purpose of inspecting the same, or for any other purposes not inconsistent with the terms of this Lease.

**11. IMPROVEMENTS BY LESSEE.**

(a) Lessee shall not make any alterations, improvements, additions or modifications to the Premises without first having obtained the written approval of the City Engineer

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and the Fire Rescue and Building Services Departments of the City. Lessee shall submit plans and specifications of any proposed improvements at least thirty days in advance of the intended date of installation or construction. No variations from approved plans shall be permitted without the approvals set forth above.

- (b) Lessee acknowledges that standards promulgated by the City Architect and Engineering Standards of the City of Fort Lauderdale (hereinafter, collectively "Standards") shall govern all interior motifs, window displays, and signage. In cases in which ordinances of the City are less restrictive than the Standards, the Standards shall control. Lessee shall strictly observe all sign requirements, whether imposed by ordinance or the Standards, when applicable.
- (c) Any construction or installation performed by Lessee shall be free and clear of any and all encumbrances whatsoever. Lessee shall deliver to the City a written, detailed statement of the costs of construction or installation of any improvements and shall furnish proof, by affidavit or otherwise, that all claims, liabilities, and obligations incurred in the construction or installation of improvements, and costs associated with furnishings, fixtures and equipment necessary or incidental to the business use of the Premises, have been paid in full.
- (d) The failure of Lessee to comply with any term, condition or covenant of this paragraph shall constitute a material breach and default under this Lease, entitling the City to all remedies, rights and privileges granted to it in this Lease and by law.

## **12. GENERAL OBLIGATIONS OF LESSEE.**

- (a) All garbage or trash generated by or from use of the Premises by Lessee shall be stored in a place or places designated by the City for removal.
- (b) Lessee shall not place or distribute any advertising materials, merchandise, or any item whatsoever in the adjacent mall area or in, on or about the Parking Garage structure, including vehicles parked therein, without the express written consent of the City Manager of the City.
- (c) Lessee shall not use, keep, or permit to be used or kept, any noxious gas or substance or do anything or create any noise or cause any vibration whatsoever which, in the opinion of the City, is objectionable or offensive to other tenants of the Shops, or users of the Parking Garage facility, or in any manner constitutes a nuisance, whether public or private.
- (d) The Premises shall not be used for lodging or sleeping purposes at any time.
- (e) No illumination of the Premises other than by electric light shall be permitted.
- (f) The Lessee shall promptly obtain any and all permits, licenses and fees required by any governmental agency having jurisdiction.

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- (g) Lessee shall be responsible for security of the Premises.
- (h) Lessee shall comply in all particulars with all pertinent rules, regulations, laws and ordinances duly and legally promulgated by any governmental authority having jurisdiction over the Premises and the Premises shall not be used for any improper or immoral purposes.

**13. CONDEMNATION.** Lessee waives any claim of loss or damage, and any right or claim to any part of an award that results from the exercise of eminent domain power of any governmental body, regardless of whether the loss or damage arise because of condemnation of all or part of the Premises. If any eminent domain power that is exercised interferes with Lessee's use of the Premises, the rentals under this Lease will be proportionately abated. If a partial taking or condemnation renders the Premises unsuitable for Lessee's purposes under this Lease, the Lease Term will cease as of the date the condemning authority requires possession. If an eminent domain power is exercised, Lessee has no claim against City for the value of an unexpired term of this Lease.

**14. ACCELERATION; GRACE PERIOD; DEFAULT.**

- (a) **Time of the essence.** The Lessee agrees promptly to perform, comply with and abide by this Lease, and agrees that time of payment and of performance are of the very nature and essence hereof.
- (b) **Default in rent; grace period.** The Lessee shall have a grace period of fifteen (15) days within which to pay any and all sums of rent due hereunder, which sums shall be due and payable without notice or demand, which Lessee hereby waives. If any of said sums of money herein required to be paid by the Lessee to the City shall remain unpaid for such period of fifteen (15) days, then the City, acting through its City Manager, shall have the following options and rights:
  - (1) **Total acceleration.** To accelerate the maturity of the rent installments for the balance of the term. This option shall be exercised by an instrument in writing signed on behalf of the City and transmitted to the Lessee notifying it of the intention of the City to declare all future rent installments for the balance of the lease term presently due and payable.
  - (2) **Partial acceleration.** In lieu of the option in subparagraph (1) above, the City may, in like manner, declare as presently due and payable the unpaid rent installments for such period of years as may be fixed in the City's said notice to the Lessee. The exercise of this option shall not be construed as a splitting of a cause of action, nor shall it alter or affect the obligations of the Lessee to pay rent under the terms of this Lease for the period unaffected by said notice.
  - (3) **Other remedies.** In addition to the options herein granted above, the City may exercise any and all other options available to it hereunder, which options may be exercised concurrently or separately with the exercise of the

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above options.

- (c) **Default in other provisions.** If the Lessee shall default in the performance of any other term of this Lease (except the payment of rent), then the City, acting through its City Manager, shall send to the Lessee a written notice of default, specifying the nature of the default, and the Lessee shall, within thirty (30) days after the date of said notice, cure, and remedy said default, whereupon this Lease shall continue as before.

If the Lessee shall fail to cure and remedy such default within said time, the City, acting through its City Manager, shall have the right to declare, by written notice to the Lessee, that the Lease is in default, and to use any or all remedies available to the City hereunder or by law.

**15. OWNERSHIP AT TERMINATION.** All improvements, structures and fixtures of every kind now existing or hereafter erected, installed or placed within the Premises, with the exception of specially designed and fabricated fixtures employed by Lessee, shall, at the end of the term or earlier termination of this Lease, for any reason, be and become the property of the City and shall be left in good condition and repair, ordinary wear and tear excepted. A fixture is defined as an article which was a chattel, but which, by being physically annexed or affixed to the Premises by the Lessee and incapable of being removed without structural or functional damage to the Premises, becomes a part and parcel of it. Non-fixture personalty owned by the Lessee at the expiration of the term or earlier termination of this Lease, for any reason, shall continue to be owned by Lessee, and at the time of such expiration or earlier termination, Lessee at its option, may remove all such personalty, provided the Lessee is not then in default of any covenant or condition of this Lease; otherwise, all such property shall remain on the Premises until the damages suffered by the City from any such default have been ascertained and compensated. Any damage to the Premises caused by the removal by Lessee of any such personalty shall be repaired by Lessee forthwith at its expense.

**16. INSURANCE.** Lessee shall indemnify and save the City harmless from all liability or damages of any nature arising out of any use of the Premises by Lessee, including, but not limited to, its agents, employees, licensees and invitees. The parties further agree to the following provisions pertaining to insurance:

- (a) **Fire and extended coverage by Lessee.** The Lessee, at its expense, shall provide full theft, windstorm, fire and extended coverage (and glass breakage insurance at the option of Lessee) on any improvements constructed, and personal property located, within the Premises by the Lessee, for the benefit of the City and the Lessee, as each party's interests may appear, in an amount satisfactory to the City up to one hundred percent, but not less than ninety percent of the replacement value of the improvements. Such insurance shall provide that the interests of the City are included as a loss payee and contain a waiver of subrogation rights by Lessee's carrier against the City.
- (b) **Fire and extended coverage by the City.** The City represents that it has comprehensive insurance coverage pertaining to the entire Parking Garage

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structure, which coverage does not include improvements or personal property of Lessee. If Lessee, including, but not limited to, its agents, employees, licensees, or invitees does, or omits to do, any act or conducts any business resulting in an increase in such insurance premiums payable by the City, Lessee shall pay the City an amount of money equal to such increase.

- (c) **Workers' Compensation.** The Lessee shall provide, carry, maintain and pay for all necessary Workers' Compensation insurance for the benefit of its employees with the following limits: Workers' compensation - statutory limits; Employer's Liability - one hundred thousand dollars (\$100,000.00).
- (d) **Liability Insurance.** Lessee shall, at its own expense, provide, pay for, and continuously maintain, comprehensive and all inclusive public liability and property damage insurance for the benefit of the City, with a policy limit of not less than one million dollars (\$1,000,000.00), combined single limits, which coverage shall include property damage and personal injuries, including death, and shall include the City of Fort Lauderdale as an additional named insured. If all other Lessees of the Shops are required to increase their insurance coverage with the City to an amount in excess of one million dollars (\$1,000,000.00), then and in that event, the insurance herein required of Lessee shall be increased to the same amount as required for all other such Lessees.
- (e) **Policies.** All of the policies of insurance provided for in this Lease:
  - (i) shall be in the form and substance approved by the Department of Insurance of the State of Florida ("DOI"),
  - (ii) shall be issued only by companies licensed by DOI,
  - (iii) Certificates of Insurance pertaining to same shall be delivered to CITY, at least fourteen (14) days prior to the Effective date of the License Term,
  - (iv) shall be with a carrier having an A. M. Best's Rating of not less than A, Class VII,
  - (v) shall bear endorsements showing the receipt by the respective companies of the premiums thereon or shall be accompanied by other evidence of payment of such premiums to the insurance companies, including evidence of current annual payment, if on any installment payment basis, and

Whenever under the provisions of this Lease, insurance is required of the Lessee, the Lessee shall upon execution of this Lease provide the following:

- (1) Certificates of insurance evidencing the required coverages; and
- (2) Names and addresses of companies providing coverages; and

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- (3) Effective and expiration dates of policy; and
  - (4) A provision in all policies according the City thirty days' written notice by any carrier of any cancellation or material change in any policies; and
  - (5) Submission of the Certificates to the City's Real Estate Division.
- (f) **Collection of Insurance.** In the event of destruction of or damage to any of the Premises and contents covered by insurance, the funds payable in pursuance of said insurance policies for repair or reconstruction shall be deposited in a commercial national bank located in Fort Lauderdale, Florida, selected by the City, as a trust fund, and said funds shall be used for the purpose of reconstruction or repair, as the case may be, of first, all or any portion of the Premises, second, improvements and third, personal property, so damaged or destroyed. Such reconstruction and repair work shall be done by Lessee in strict conformity with the ordinances of the City and all governmental agencies having jurisdiction.

Should the cost of reconstruction or repair exceed the amount of funds available from the proceeds of such insurance policy, then in such event, such funds shall be used as far as the same will permit in paying the cost of said reconstruction or repair.

In the event that the cost of such reconstruction or repair work shall be less than the proceeds derived from such insurance policies, the surplus shall be payable to Lessee.

- (g) **Precautions.** In order to reduce the hazards and risks of interruption of business occasioned by windstorm and other acts of God, the Lessee agrees that it will at its expense take all reasonable precautions to protect the Premises from such damage or destruction by the elements.
- (h) **Primary coverage.** All insurance referred to hereunder shall apply as primary coverage and shall not be affected by any insurance which the City may carry in its own name.
- (i) **Destruction of Premises.** If the Premises is rendered partially or wholly untenable by fire or other casualty and if such damage cannot, in City's reasonable estimation, be materially restored within one-hundred eighty (180) days of such damage, then the City may, at its sole discretion, terminate this Lease as of the date of such fire or casualty. Landlord shall exercise its option provided herein by written notice to Lessee within sixty (60) days of such fire or other casualty.

If this Lease is not terminated in accordance with the foregoing, then City shall proceed with all due diligence to repair and restore the Premises (except that the City may elect not to rebuild if such damage occurs during the last year of the term of this Lease and further except that the City's obligation to repair the Premises shall be limited to repairing the same to their original condition prior to the execution of the Lease, and shall not extent to repairing improvements made to the Premises by or for Lessee or repairing Lessee's furniture, equipment or fixtures). City's obligation to repair the Premises is conditioned on the proceeds of insurance actually paid to the

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City being sufficient to pay the cost of such restoration and repair.

If this Lease is not terminated by the City in the manner set forth above and if the Premises are untenable in whole or in part following such damage, the Rent payable during the period in which the Premises are untenable shall be reduced in proportion to the part of the Premises rendered untenable as compared to the entire Premises. The City shall be the final arbiter of the reasonable apportionment of the proportion of the part of the Premises rendered untenable.

**17. ASSIGNMENT AND SUBLEASING.** Lessee may assign or sublease its interest in this Lease, in whole or in part, only with the written consent of the City, authorized by appropriate municipal action, taken at a public meeting of the City Commission of the City. Such consent shall not operate to release the Lessee from its obligations under this Lease. Notwithstanding anything in Paragraph 9 of this Lease, in the event of an assignment, the assignee shall be liable for a cost-of-living adjustment in rent at the next anniversary date of the lease term in accordance with the terms of the Lease.

**18. SUCCESSORS IN INTEREST.** The covenants and agreements herein contained shall be binding on and inure to the benefit of the respective successors and assigns of the parties hereto. Wherever used, the singular number shall include the plural and the use of any gender shall be applicable to all genders.

**19. NOTICES.** All notices required by law and by this Lease to be given by one party to the other shall be in writing, and the same may be served as follows:

(a) By certified mail, return receipt requested, to the following:

The City            City of Fort Lauderdale  
                              c/o City Manager  
                              100 North Andrews Avenue  
                              Fort Lauderdale, Florida 33302  
                              Attn: Real Estate Division

Lessee                Jung Hee Choi  
                              2382 Good Speed Lane #B  
                              Hoffman Estates, IL 60191

or to such other addresses as the City or Lessee, may by writing to the other designate.

(b) The notice may also be served by personal delivery to the City or Lessee, or to an agent of the Lessee in charge of the Premises.

**20. SEVERABILITY.** If any section, subsection, sentence, clause, provision or part of this Lease shall be held invalid for any reason, the remainder of this Lease shall not be affected thereby.

**21. LEASE NON-EXCLUSIVE.** It is specifically understood and agreed that the City reserves the right to lease other shops in the Parking Garage to competitors of Lessee.

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**22. MORTGAGE INTERESTS.**

- (a) Notwithstanding any provisions in this Lease to the contrary, Lessee may, from time to time, pledge its leasehold interest as security for a bona fide loan or loans from reputable established lenders or lending institutions, such pledges to be subject to the approval of the City. Lessee shall not subordinate the City's interest in the Premises to any such security holder.
- (b) The provisions hereinafter set forth shall apply to the holder of record of a first mortgage on Lessee's interest herein:
  - (1) In the event the holder of the first mortgage interest succeeds to Lessee's interest under this Lease, pursuant to the remedies provided in the mortgage instrument, or by foreclosure of mortgage or by assignment in lieu of foreclosure, the City agrees to recognize such first mortgage holder as the Lessee under the terms and provisions of this Lease, provided however, that the City has previously given its written approval to such first mortgage holder.
  - (2) It is the responsibility of Lessee to provide the City the name and address of any mortgage holder.
  - (3) There shall be no subordination of City's fee simple interest in the Premises and Lessee shall have no authority to subject the Premises to any mortgage liens, statutory construction liens, equitable liens or otherwise which are in any manner superior to City's fee simple interest in the Leased Premises.

**23. FINAL REPOSITORY.** The parties hereto mutually represent and warrant unto each other that this Lease, consisting of the recitals and paragraphs 1 through 33, inclusive, and Exhibit "A," constitutes the final repository of the parties on the subject matter hereof and may not be changed, modified, discharged or extended except by written instrument duly executed by the parties hereto. The parties agree that, whether written or oral, no previous or prior representations or previous or prior warranties shall be binding upon either party. The execution hereof has not been induced on the part of any party except as expressed in writing in this Lease.

**24. NON-DISCRIMINATION.** The Lessee, in exercising any of the rights or privileges herein granted to it shall not, on the grounds of religion, race, color, or national origin discriminate or permit discrimination against any persons or group of persons in any manner prohibited by law.

**25. SUBROGATION.** The City shall have the option, without waiving or impairing any of its rights hereunder, to pay any sum or perform any act required of the Lessee, and the amount of any such payment and the value of any such performance, together with interest thereon, shall be secured by this Lease, and shall be promptly due and payable to the City.

**26. INTEREST.** All delinquent payments to the City shall bear interest at the rate of **six** percent per month on any unpaid balances at the date of the delinquency. Said interest shall be calculated

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from the due date to the date of payment, on a daily basis and shall be due and payable when billed.

**27. LIEN UPON REVENUES, INCOME, ETC.** In the event of a breach by Lessee of any of the provisions of this Lease, the City shall thereupon have a lien upon all revenues, income, rents, earnings, and profits from the Premises as additional security to the City for the faithful performance by Lessee of each of the terms and provisions hereof, and to secure payment of all sums owing to the City hereunder in addition to any lien afforded under general law. Such lien shall be superior to the rights of the Lessee and any of its creditors or assignees or any trustee or receiver appointed for the Lessee's property, or any other person claiming under the Lessee. Upon the City's termination of the Lessee's rights under this Lease by reason of the Lessee's default, all such revenues, income, rents, earnings and profits derived or accruing from the Premises from the date of such termination by the City shall constitute the property of the City and the same is hereby declared to be a trust fund for the exclusive benefit of the City and shall not constitute any asset of the Lessee or any trustee or receiver appointed for the Lessee's property. The provisions of this paragraph shall be effective without the City's re-entry upon the Premises or repossession thereof, and without any judicial determination that the Lessee's interest under the Lease has been terminated.

**28. OTHER REMEDIES.** In addition to the options herein granted above, the City may exercise any or all other options available to it hereunder, which options may be exercised concurrently or separately with the exercise of the above options.

**29. RE-ENTRY AND REPOSSESSION.** If the Lessee shall fail to keep and perform any of the covenants, conditions and agreements provided in this Lease to be performed by Lessee, and such default shall not be remedied within the grace period provided elsewhere in this Lease, the City shall have the right to treat such default as intentional, inexcusable and material, and the City, by notice in writing transmitted to the Lessee, as provided in the paragraph entitled "NOTICES," may at its option declare the Lessee's interest under this Lease ended and without further force and effect. The City is then authorized to peaceably reenter and repossess the Premises, and the improvements and personal property in them, with or without legal process, and the Lessee does in such event waive any demand for possession of the property, and agrees to surrender and deliver up the Premises and property peaceably to the City. In such event, the Lessee shall have no claim whatsoever against the City by reason of improvements made upon the Premises, rents paid, or from any other cause whatsoever.

**30. NON-WAIVER.** Failure of the City to insist upon the strict performance of any of the covenants, conditions, and agreements of this Lease in any one or more instances, shall not be construed as a waiver or relinquishment in the future of any such covenants, conditions and agreements. The Lessee covenants that no surrender or abandonment of the Premises or of the remainder of the term herein shall be valid unless accepted by the City in writing. The City shall be under no duty to relet the Premises in the event of an abandonment or surrender or attempted surrender or attempted abandonment of the Premises by the Lessee. Upon the Lessee's abandonment or surrender or attempted abandonment or attempted surrender of the Premises, the City shall have the right to retake possession of the Premises or any part thereof, and such retaking of possession shall not constitute an acceptance of the Lessee's abandonment or surrender thereof.

**31. INDEMNITY AGAINST COSTS AND CHARGES.** The prevailing party shall be entitled to all costs, expenses, attorneys' fees and damages which may be incurred or sustained by the prevailing

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party by reason of the breach of any of the provisions of this Lease. Any sums due the City under this paragraph shall constitute a lien against the interest of the Lessee in the Premises and all its improvements situated therein to the same extent and on the same condition as delinquent rent would constitute a lien on said Premises and improvements.

**32. PARKING.** Lessee shall be entitled to the use of two parking spaces in the Parking Garage, one space each on the first and second levels in areas designated by the Parking Manager of the City as parking for Shop lessees. Lessee shall obtain the appropriate permits from the Parking Manager of the City.

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

**34. MISCELLANEOUS.**

**(a) No Waiver of Sovereign Immunity.** Nothing contained in this Lease is intended to serve as a waiver of sovereign immunity by any agency to which sovereign immunity may be applicable.

**(b) No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Lease. None of the parties intend to directly or substantially benefit a third party by this Lease. The parties agree that there are no third party beneficiaries to this Lease and that no third party shall be entitled to assert a claim against any of the parties based on this Lease. Nothing herein shall be construed as consent by any agency or political subdivision of the State of Florida to be sued by third parties in any manner arising out of any contract.

**(c) Non-Discrimination.** Lessee shall not discriminate against any person in the performance of duties, responsibilities and obligations under this Lease because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

**(d) Entire Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Lease that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

**(e) Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this License Agreement has been their joint effort.

**(f) Waiver.** The parties agree that each requirement, duty and obligation set forth herein

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is substantial and important to the formation of this Lease and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Lease shall not be deemed a waiver of such provision or modification of this Lease. A waiver of any breach of a provision of this Lease shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Lease.

**(g) Governing Law.** This Lease shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Lease and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida. To that end, Lessee expressly waives whatever other privilege to venue it may otherwise have.

**(h) Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Lease if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds alone on the part of Lessee be deemed Force Majeure.

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

WITNESSES:

CITY OF FORT LAUDERDALE

\_\_\_\_\_

By \_\_\_\_\_  
Mayor

[Witness print/type name]

\_\_\_\_\_

By \_\_\_\_\_  
City Manager

[Witness print/type name]

ATTEST:

(CORPORATE SEAL)

\_\_\_\_\_  
City Clerk

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Approved as to form:

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Assistant City Attorney

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WITNESSES:

SUSHI-KO EXPRESS CORP., a  
Florida corporation

\_\_\_\_\_

\_\_\_\_\_

[Witness print/type name]

[Print name and title]

\_\_\_\_\_

[Witness print/type name]

ATTEST:

(CORPORATE SEAL)

\_\_\_\_\_

STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_,  
2008, by \_\_\_\_\_ and \_\_\_\_\_ as \_\_\_\_\_  
and \_\_\_\_\_, respectively, of SUSHI-KO EXPRESS COR., a Florida corporation.  
He/She/They is/are personally known to me or has produced \_\_\_\_\_ as  
identification and did not take an oath.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Florida  
(Signature of Notary taking  
Acknowledgment)

\_\_\_\_\_  
Name of Notary Typed,  
Printed or Stamped

My Commission Expires:

\_\_\_\_\_  
Commission Number

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