

## LEASE

THIS LEASE AGREEMENT made and entered into as of this 4/17/18 day of 2018 (the "Effective Date") by and between Sarah-Frank LLC, a New York State Limited Liability Company with offices at 1850 Rochester Road, Canandaigua, New York 14424 (hereinafter called "Lessor"), and Star Cider LLC, a New York State limited liability company with offices at 3148 Taylor Rd., Clifton Springs, New York 14432 (hereinafter called "Lessee").

### WITNESSETH, THAT:

Lessor, in consideration of the rent to be paid and the covenants and agreements to be performed by Lessee, as hereinafter set forth, does hereby LEASE, DEMISE and LET that certain parcel of land consisting of approximately 1.864± acres known as a portion of 3365 State Route 364, Canandaigua, New York as described on Exhibit "A" attached hereto and made a part hereof (the "Land"); together with all buildings, structures (collectively the "Building") to be erected thereon, and other improvements (collectively the "Improvements") whether now existing or hereafter erected thereon and together with the non-exclusive use of Lessor's rights, privileges, easements, rights of way, licenses and appurtenances thereto, for the term and upon the conditions hereinafter set forth. The term "Premises" as used herein shall be deemed to mean the Land, the Building, the Improvements, and the non-exclusive use of Lessor's rights, privileges, easements, rights of way, licenses and appurtenances to the Land.

#### 1. TERM & OPTION TO RENEW.

The "Term" of this Lease shall commence on a date (the "Rent Commencement Date"), which shall be upon issuance of the Certificate of Occupancy by the Town of Canandaigua. The Term shall continue thereafter until a date (the "Expiration Date") which shall be the last day of the twelfth (12th) "Lease Year" (as hereinafter defined in Section 3 below), subject to earlier termination as provided herein. Upon the signing of this Lease ("Effective Date") Tenant shall have full access to the Premises prior to the Rent Commencement Date to perform all testing, other actions necessary for the development of the Improvements.

While this Lease is in full effect, provided the Tenant, subject to the following, and provided Tenant (a) is not in default, (b) has not been in default in the performance of any of the terms, covenants and conditions of this Lease, or (c) and has not subleased the Premises, or assigned this Lease, except as permitted, in which case all renewal options shall automatically terminate and become null and void, Tenant shall have the option to renew this Lease for an additional three, twelve year terms after the expiration of the original term upon approval of the Landlord and providing Landlord with at least six (6) months prior written notice of its intent to exercise its option, **TIME BEING OF THE ESSENCE** (the "Option Terms"). Such extension or renewal shall be upon terms, covenants and conditions as agreed to by the Landlord and Tenant upon notice of intent to exercise this option. If no notice to exercise this option is given by the Tenant for the period set forth above or if the parties are not able to reach an agreement on the terms of an extension then this Lease shall terminate at the end of the original term without further notice.

If the Tenant does not exercise the option for the Option Term in the manner herein set forth, the Landlord may place a "For Rent" or "For Lease" sign in the front window of the Demised Premises for the last sixty (60) days of the term.

#### 2. INITIAL CONSTRUCTION; LESSEE'S INITIAL IMPROVEMENTS.

(A) The following terms, as used in this Lease and in all amendments to this Lease (unless otherwise specified or unless the context otherwise requires), shall have the meanings set forth below:

(i) Building Department: The building department of the Town of Canandaigua, State of New York.

(ii) Initial Construction: The initial construction of the Improvements described in Section 2(B) below, including all related demolition and excavation activities. The "*Initial Construction Date*" shall be the date Tenant commences Initial Construction.

(iii) Major Contractors: Those contractors and/or subcontractors performing the following work at the Premises: concrete, masonry, carpentry/drywall, HVAC, electrical, roofing, and plumbing.

(iv) Substantial Completion: Alterations (including the Initial Construction) shall be deemed "*Substantially Complete*" or "*Substantially Completed*," and "*Substantial Completion*" shall be deemed to have occurred, when (i) Lessee's architect delivers to Lessor a certification that the Alterations have been completed with the exception of minor punch list items and insubstantial details of construction, mechanical adjustment or decoration, in accordance with the plans and specifications approved by the Governmental Authorities and, if applicable, Lessor, and (ii) Lessee shall have obtained and furnished to Lessor all approvals, permits, sign-offs, and other documents required by Law to be issued in connection with such Alterations, including any letter of completion, permanent or

temporary certificate of occupancy, and/or amendment of certificate of occupancy, and (iii) Lessee delivers to Lessor a final release and waiver of mechanics lien covering all of the Alterations, in form and substance reasonably satisfactory to Lessor, executed by each of (A) the Major Contractors and (B) as applicable, the general contractor, construction manager, and/or design-builder.

(B) Lessee shall construct and reconstruct, in accordance with the requirements of this Lease, certain building(s), and initial improvements on the Land. The proposed development when completed, is intended to consist of a cidery or winery facility and other related improvements and amenities.

(C) Lessee shall not commence the Initial Construction until Lessee has met all of the following conditions:

(i) Lessee has obtained the Financing Commitment (as defined below in Section 41(B) and delivered a copy to Lessor; and

(ii) Lessee has contacted all appropriate utilities and verified the location, depth and nature of all utilities affecting the Land and any areas bordering upon the Land; and

(iii) Lessor has approved the final plans and specifications for the Initial Construction; and

(iv) Lessee has delivered to Lessor (i) copies of all permits, approvals, and authorizations required by the Building Department for the Initial Construction, and (ii) copies of the plans and specifications for the Facility stamped approved by the Building Department; and

(v) Lessee has delivered to Lessor a fully executed and delivered construction contract with a general contractor, or a fully executed and delivered design-build contract, together with executed and delivered contracts for each of the Major Contractors, or a fully executed and delivered construction management contract together with executed and delivered contracts for each of the Major Contractors (collectively, the "*Construction Contracts*"), for the construction of the Facility, meeting the requirements of this Section; and

(vi) Lessee has delivered to Lessor fully executed and delivered agreements between Lessee and the contractor and engineers engaged to design the Facility ("*Design Contracts*") meeting the requirements of this Article.

(D) If any of the Construction Contracts or Design Contracts are materially modified, Lessee shall deliver to Lessor a copy of such modification.

(E) Lessor's approval of the plans and specifications for the Initial Construction shall not be unreasonably withheld, conditioned or delayed. If Lessor fails to grant or deny any such request for Lessor's approval within seven (7) calendar days after Lessor has received Lessee's request for such approval, three (3) complete sets of plans and specifications, and all additional information reasonably requested by Lessor, such approval shall be deemed granted if (and only if) Lessee's consent request contains, on the front page of the request, in bold capitalized letters, a statement that Lessor's approval shall be deemed given pursuant to Sec. 2(E) of this Lease if Lessor fails to deny or grant its approval within seven (7) calendar days of receipt of the such request, plans and specifications, and any reasonably required additional information. No approval by Lessor, and no inspection by Lessor or its representatives of the Initial Construction, shall be deemed an assurance or representation by Lessor that any aspect of the Initial Construction, or the plans and specifications therefor, comply with any applicable legal requirements.

(F) Lessee shall deliver the following documents to Lessor, promptly after the Facility is Substantially Completed: (i) copies of the "as built" plans for the Facility; (ii) all permits, certificates, and sign-offs required to be issued by the Building Department in connection with the



construction of the Facility; and (iii) when issued, any temporary or permanent certificate of occupancy issued with respect to the Facility.

### 3. RENTAL.

(A) Lessee shall pay to Lessor an annual rental ("*Annual Rent*") in equal monthly installments in advance, on the 1<sup>st</sup> day of every calendar month during the Term, as follows:

Lease Year(s)
1-5
6-10
11-15
16-20
21-25
26-30
31-35
36-40
41-45
46-49

The term "*Lease Year*" shall mean the twelve (12) month period commencing on the Rent Commencement Date and each successive twelve (12) month period thereafter throughout the Term.

(B) All monetary obligations (other than Rent) owed by Lessee to Lessor under this Lease, including, but not limited to, taxes and the interest upon unpaid obligations provided for in Section 17 below, shall all be deemed to be "*Additional Rent*", and in the event of nonpayment by Lessee, Lessor shall have all the rights and remedies with respect thereto as Lessor has for the nonpayment of the Rent.

### 4. REAL ESTATE TAXES, ASSESSMENTS AND UTILITIES.

(A) Commencing on the Effective Date, and continuing throughout the Term, Lessee shall pay when due all real estate taxes and assessments, excises, levies and other charges by any public authority levied or imposed against the (1) Premises or any part thereof, (2) the buildings or improvements now or hereafter constructed on the Premises, and (3) the appurtenances to the Premises or the sidewalks or streets adjacent thereto (all of which are hereinafter referred to as "*Impositions*"). Lessor shall arrange with the appropriate authorities which assess such Impositions to have the bills for the Impositions forwarded directly to Lessee.

(i) Lessee must pay any Imposition in full by the due date of the Installment; however, Lessee shall be liable for any interest and/or penalties, which accrue as a result of Lessee's not making payment in full by the due date. Lessee shall be required to pay only such Impositions or portions thereof as shall become due and payable during the Term and only to the extent such Impositions cover a part of the Term. All Impositions for the tax year in which this Lease shall commence or terminate shall be equitably apportioned between Lessor and Lessee.



(ii) Anything to the contrary contained in this Lease notwithstanding, in no event shall Impositions include any inheritance, estate, succession, transfer, gift, franchise, corporation, excise, income or profit tax or capital levy that is or may be imposed upon Lessor including, but not limited to (i) any annual reporting or other fees imposed upon Lessor in connection with maintaining Lessor's organizational existence under the laws of the State of its formation or creation or (ii) imposed in connection with the Lessor's right to do or conduct business. Notwithstanding anything herein to the contrary, if at any time during the term of this Lease there shall be levied or assessed in substitution of real estate taxes, in whole or in part, a tax, assessment or governmental imposition (other than a general gross receipts or income tax) on the rents received from the Premises or the rents reserved herein, and said tax, assessment or governmental imposition shall be imposed upon Lessor, Lessee shall pay same as herein provided, but only to the extent that such new tax, assessment or governmental imposition is a substitute for real estate taxes previously imposes.

(iii) Lessee shall pay the Impositions for the Premises directly to the appropriate taxing authority and deliver to Lessor copies of paid tax receipts within ten (10) days after the final due date for payment in that tax year.

(B) Notwithstanding anything contained in this Lease to the contrary, any Imposition (including but not limited to any assessment either general or special) relating to a fiscal period of the taxing authority, a part of which is included within the Term and a part of which is included in a period of time prior to the Rent Commencement Date or after the Expiration Date or earlier termination of this Lease, will, whether or not such Tax or installments are assessed, levied, confirmed, imposed upon or in respect of, or become a lien upon the Premises, or become payable, during the Term, be adjusted between Lessor and Lessee as of the Rent Commencement Date or the Expiration Date or earlier termination of this Lease determined over the longest possible period that such Imposition is payable to such taxing authority so that Lessee will pay the portion of the Imposition or installment that the part of the fiscal period included in the Term bears to the entire fiscal period, and Lessor will pay the remainder.

(C) Lessee shall have the right to contest, at Lessee's cost and expense, the amount or validity of any Imposition by appropriate proceeding. Lessee shall give Lessor written notice of any such contest and Lessor agrees it shall join, at no cost to Lessor, in any such proceeding if any law, rule or regulation at the time in effect shall so require. Any proceeding for contesting the validity or amount of any Imposition or to recover any Imposition paid by Lessee may be brought by Lessee in the name of Lessor or in the name of Lessee, or both, as Lessee shall deem advisable.

(D) Lessee shall pay all charges for heat, water, gas, sewage, electricity and other utilities used or consumed at the Premises and shall contract for the same in its own name. Lessor shall not be liable for any interruption or failure in the supply or character of any such utility services unless the acts or negligence of Lessor, its agents, servants, employees, contractors, or licensees causes such interruption or failure.

(E) All charges due from Lessee to Lessor for which Lessee must be billed by Lessor, must be billed within twelve (12) months after the date on which the charge is incurred by Lessor or Lessor will have waived its right to reimbursement which may have been established in any section or paragraph of this Lease.

## **5. USE.**

Lessee may use and occupy the Premises for the purpose of operating a cidery, winery or similar operation. This use may include events and activities (live music, etc), alcohol production, and sale of food. The initial use of the Premises shall be for a "Star Cider" facility (the "*Initial Use*"). Lessee may thereafter alter the Initial Use of the Premises without obtaining Lessor's consent so long as the Premises is used as a cidery, winery or similar operation. A change in the use of the Premises to one which is other than a cidery, winery or similar operation shall not be permitted except with consent of Lessor, which consent Lessor covenants and agrees shall not be unreasonably withheld, conditioned or delayed. Lessee shall not permit any operation that is in violation

of any "Laws" (as such term is defined in Section 12). The failure of Lessor to respond in writing to a request for change in use as provided herein within ten (10) days of such request shall be deemed consent thereto by Lessor.

#### **6. MAINTENANCE AND REPAIRS.**

(A) Except as otherwise provided herein, Lessee, at its sole cost and expense, will take good care of the Premises and will keep the same in good order and condition and make all necessary repairs and replacements thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, and foreseen and unforeseen. The necessity for and adequacy of repairs to the Building and the Premises pursuant to this Section shall be measured by the standard that is appropriate for buildings of similar construction and use, giving due consideration to the remaining portion of the Term.

(B) Repairs and replacements necessitated as a result of fire or other casualty shall be made pursuant to the provisions of Section 9. Lessor will transfer to Lessee, or otherwise make available, any roof, heating and air conditioning, general contractor or other builder's, construction or equipment warranties related to the Building and the Premises.

#### **7. ALTERATIONS AND IMPROVEMENTS; FIXTURES AND EQUIPMENT.**

(A) During the Term and from time to time therein, Lessee shall have the right, but not the obligation, at its sole discretion and without obtaining the prior consent from Lessor, to make any additions, alterations, and/or improvements to the Premises and/or the Building including, without limitation, performing a "scrape and rebuild" of the Building, and/or replacing the Building and/or improvement(s) (all hereinafter collectively with the Initial Construction referred to as "*Lessee Improvements*"), that Lessee shall deem necessary.

(B) Without material out-of-pocket cost or expense to Lessor, Lessor shall cooperate with Lessee in the obtaining of any and all licenses, building permits, certificates of occupancy or other approvals which may be required in connection with any such Lessee Improvements and Lessor shall execute, acknowledge, and deliver any documents reasonably required in furtherance of such purposes. No Lessee Improvements shall be undertaken until Lessee shall have procured and paid for all municipal and other governmental permits and authorizations of all municipal departments and governmental subdivisions having jurisdiction. All work done in connection with any alteration, addition or improvement shall be done in a good and workmanlike manner and in compliance with all Laws.

(C) Any and all movable or removable furnishings, fixtures, equipment and personalty purchased by or belonging to Lessee, or leased from third parties by Lessee and installed on the Premises by Lessee (whether or not affixed), including, but not limited to, Lessee's lighting fixtures, counters and counter tops, chairs, tables (including all public seating components), décor items, fans, stoves, ovens, broilers, refrigerators, bars, walk-in cold storage boxes, restaurant and office equipment, software and other personal property shall be herein called "*Lessee's FF&E*". All Lessee Improvements and Lessee's FF&E during the Term of this Lease shall be and remain the property of Lessee to the exclusion of Lessor, and upon request of Lessee, Lessor shall execute such documents as shall be reasonably requested by Lessee to evidence Lessee's ownership of the Lessee Improvements. At any time and from time to time during the term of this Lease, Lessee may remove and/or replace any of Lessee's FF&E from the Premises. Notwithstanding anything contained in this Lease to the contrary, it is acknowledged and agreed that any trademarks, service marks, trade names, logotypes, commercial symbols and trade dress used by Lessee shall remain Lessee's exclusive property or use, and Lessor shall not be permitted at any time to use any such property in any manner or for any purpose.



## 8. INSURANCE.

(A) Beginning on the Initial Construction Date through the end of the Term, Lessee, at its sole cost and expense, shall keep the Premises, the Building, and any other improvements located or being constructed on the Premises insured during the Term against loss or damage by fire or other casualty in amounts not less than one hundred percent (100%) of the then "full replacement cost". The term "full replacement cost" shall mean the actual replacement cost of the Building and other improvements less foundation and excavation costs.

(B) Lessee, at its sole cost and expense, shall also maintain:

(i) Public liability insurance against claims for bodily injury, death or property damage, occurring on, in, or about the Premises, in or about the adjoining streets, property and passage ways, such insurance to afford protection of not less than One Million and 00/100 Dollars (\$1,000,000.00) in respect of bodily injury or death, and of not less than Two Hundred Fifty Thousand and 00/100 Dollars (\$500,000.00) for property damage.

(ii) Workers' Compensation Insurance covering all persons employed in connection with any work done on or about the Premises with respect to which claims for death or bodily injury could be asserted against Lessor, Lessee, or the Premises, or in lieu of such Workers' Compensation Insurance, a program of self-insurance complying with the rules, regulations and requirements of the applicable statutes and regulations of the state in which the Premises are located.

(iii) Business interruption insurance in amounts sufficient to cover rent and reoccurring financial obligations under this Lease for a period of not more than one (1) year.

(C) All insurance provided for in this Section shall be effected under valid and enforceable policies issued by insurers of recognized responsibility. All policies of insurance provided for in this Section shall name Lessor as an additional insured. If requested in writing by Lessor and upon receipt of a "Non-Disturbance Agreement" (as defined in Section 13 below) by Lessee acceptable to Lessee in its reasonable discretion, each certificate shall also bear a mortgage endorsement in favor of the holder of any mortgage encumbering the Premises provided that Lessor shall provide the name and address of each such mortgagee to the Lessee. Any loss under such policy shall be made payable as the interests of the parties may appear subject to the provisions of Section 9 hereof. Lessee may provide any insurance required by this Lease in the form of a blanket or umbrella policy, provided that Lessee shall furnish, upon request by Lessor, proof that such blanket policy complies in all material respects with the provisions of this Lease. Lessee shall have the right, but not the obligation, to provide all insurance as provided herein in more than one policy. If Lessee shall default in the obtaining or maintaining of any insurance required hereunder, Lessor shall have the right, but not the obligation, to pay all appropriate premiums to obtain or maintain such insurance, in which event any amount paid for premiums by Lessor shall be paid by Lessee to Lessor as Additional Rent.

(D) Lessor shall notify Lessee if Lessor in its sole discretion Lessor elects to secure its own insurance coverage in which event Lessor and Lessee shall each endeavor to secure an appropriate clause in, or an endorsement upon, each fire or extended coverage insurance policy obtained by it and covering the Premises, Lessee's FF&E and any other property located therein or thereon, pursuant to which the respective insurance companies waive subrogation or permit the insured, prior to any loss, to agree with a third party to waive any claim it might have against said third party. The waiver of subrogation or permission for waiver of any claim hereinbefore referred to shall extend to the agents of each party and its employees and, in the case of Lessee, shall also extend to all other persons and entities occupying or using the Premises in accordance with the terms of this Lease. If and to the extent that such waiver or permission can be obtained only upon payment of an additional charge, the party benefiting from the waiver or permission shall pay such charge upon demand, or shall be deemed to have agreed that the party obtaining the insurance coverage in question shall be free of any further obligations under the provisions hereof relating to such waiver or permission. Subject to the foregoing provisions of this Section, and insofar as may be permitted by the terms of the insurance policies carried by it, each party hereby releases the other



with respect to any claim (including a claim for negligence) which it might otherwise have against the other party for loss, damages or destruction with respect to its property by fire or other casualty.

## 9. CASUALTY.

(A) In the event the whole or any part of the Premises is damaged or destroyed during the Term by fire or casualty (hereinafter "*Casualty*"), then, except as otherwise provided in this Lease, Lessee shall repair, restore or rebuild the Building and Improvements on the Premises substantially in the condition in which the same were immediately prior to such Casualty subject to the terms and provisions of this Section 9. Lessee shall have three hundred sixty five (365) days from the date of receipt of insurance proceeds to substantially complete the restoration or rebuilding of the Building and Improvements (except with respect to the interior finish-out of the Building).

(B) Notwithstanding the foregoing, if any Casualty shall amount to twenty five percent (25%) or more of the then replacement cost of the Improvements on the Premises, this Lease may be terminated at the election of Lessee, provided notice of such election is delivered to Lessor within sixty (60) days after the occurrence of the Casualty. If Lessee so terminates this Lease: (i) Lessee shall, if requested by Lessor in writing within thirty (30) days of notice of election to terminate, raze any remaining portion of the Building and Improvements on the Premises, remove all debris, and grade and landscape the Premises; (ii) the insurance proceeds payable as a result of such Casualty shall first be paid first to reimburse Lessee for the costs and expenses to raze any remaining portion of the Building and Improvements on the Premises, remove all debris, and grade and landscape the Premises if required by Lessor, next to Lessee to reimburse Lessee for the greater of any amount owed by Lessee to any lender or other party having a lien, mortgage, or other encumbrance against the Premises or the unamortized cost of the leasehold improvements based on an amortization on a straight-line basis over the Term ("*Unamortized Cost of Improvements*"), and then the balance remaining shall be payable to Lessor; (ii) Lessee shall pay to Lessor all Rent and other sums due under this Lease up to and including the date termination of the Lease and any unearned Rent or other charges paid in advance by Lessee shall be refunded to Lessee; and (iii) and the parties shall be released hereunder, each to the other, from all liability and obligations thereafter arising. If Lessee elects not to terminate this Lease under this Section 9(B), Lessee shall promptly repair, replace, restore and reconstruct any improvements located on the Premises pursuant to the provision of Section 9(A) of this Lease.

(C) Unless the Casualty shall have been caused by the negligent acts or omissions of Lessor, Lessee shall not be entitled to any compensation or damages from Lessor for the loss of the use of the whole or any part of Premises and/or for any inconvenience or annoyance occasioned by any damage, destruction, repairs or restoration referred to in this Section, however, notwithstanding the foregoing, the Rent and all Additional Rent shall abate on a proportionate basis to the extent the Premises is rendered unusable during any such period of repair or restoration.

## 10. CONDEMNATION.

(A) In the event that the Premises are rendered substantially and permanently unusable for Lessee's then Use by reason of the taking by any public authority under the power of eminent domain, or eminent domain or in a condemnation or by conveyance made in response to the threat of the exercise of the right eminent domain or condemnation (in any case a "*Taking*"), Lessee may terminate this Lease as of the date of possession under the Taking by the public authority or its designee (the "*Taking Date*"), and the award in the Taking (the "*Taking Award*") will be distributed as follows: (i) first, to the payment of all reasonable fees and expenses incurred in collecting such award, (ii) next to Lessee to reimburse Lessee for the greater of any amount owed by Lessee to any lender or other party having a lien, mortgage, or other encumbrance against the Premises or the Unamortized Cost of Improvements; and (iii) the balance of the Taking Award shall be distributed to Lessor. After the determination and distribution of the Taking Award as herein provided, and the termination of this Lease, the Lessor and Lessee shall have no further rights, duties or obligations under this Lease. For the purposes of this Section 10, the phrase

*“substantially and permanently unusable for Lessee’s use”* shall mean any one or more of the following: (v) a Taking of ten percent (10%) or more of any of the parking area on the Premises; (w) a Taking of any portion of the parking area serving the Premises, the effect of which Taking would cause the Premises to have a parking area below that for which the Premises is zoned or otherwise below that which is legally required; (x) a Taking of any portion of the drive-thru or escape lane; (y) a Taking of any portion of the Building; (z) a Taking which materially adversely affects the visibility of, or access to or from the Premises. Lessor shall notify Lessee, in writing, as to the Taking Date. Any Rent paid in advance of the termination of the Lease shall be proportionately refunded as of the Taking Date.

(B) In the event of any Taking not resulting in the termination of the Lease: (i) this Lease will end as to the part of the Premises that is taken on the Taking Date; (ii) any prepaid Rent will be appropriately allocated to the part of the Premises that is taken and prorated to the Taking Date; (iii) beginning on the day after the Taking Date, Rent for so much of the Premises as remains will be reduced in the proportion of the area of the Premises remaining after the Taking to the area of the Premises before the Taking; (iv) the Taking Award shall be paid into escrow with and held by a national title agency (the *“Title Company”*) located in the general area where the Premises is located and to be selected by Lessor and Lessee in their reasonable discretion (or, if Lessor and Lessee are unable to so agree, as selected by the American Arbitration Association located in the area where the Premises is located), and such proceeds shall be disbursed by the Title Company in progress payments for the purpose of reimbursing Lessee for its cost of repairing or restoring the Premises as provided in section (v) following; (v) Lessee will restore so much of the Premises as remains to a sound architectural unit substantially suitable for the purposes for which they were used immediately before the Taking; (vi) upon the completion of restoration and payment in full to Lessee of its costs and expenses to restore so much of the Premises as remains to a sound architectural unit substantially suitable for the purposes for which they were used immediately before the Taking, the Title Company will pay Lessor the balance remaining of the Taking Award, if any. The Rent shall also be proportionately reduced to reflect the reduction in the square footage of the Premises. Lessee shall, however, be entitled to claim, prove, and receive in the condemnation proceedings, such separate award as may be allowed for Lessee’s FF&E and for its adjusted book value as of the date of the Taking of its improvements (excluding trade fixtures) made to the Premises. In computing its adjusted book value, improvements will be conclusively presumed to have been depreciated or amortized for federal income tax purposes over their useful lives with a reasonable salvage value.

(C) If the Taking is for an emergency or other temporary condition and does not involve a Taking under Section 10 (A) (v) through (z) above ( a *“Temporary Taking”*), then this Lease will continue in full force and effect without any abatement of Rent, but the Taking Award payable with respect to any period of time prior to the expiration or sooner termination of this Lease will be paid to Lessor and the public authority or its designee will be considered a subtenant of Lessee. Lessor will apply the Taking Award received to the Rent due from Lessee for that period. Lessee will pay Lessor any deficiency between the Taking Award and the amount of the Rent, or Lessor will pay Lessee any excess of the amount of the award over the amount of the Rent.

(D) Lessor and Lessee shall immediately notify the other of the commencement of any eminent domain, condemnation, or other similar proceedings with regard to the Premises. Lessor and Lessee covenant and agree to fully cooperate in any condemnation, eminent domain, or similar proceeding in order to maximize the total award receivable in respect thereof.

## **11. ASSIGNMENT AND SUBLETTING.**

(A) This Lease cannot be assigned without the prior consent of the Lessor.



## **12. COMPLIANCE WITH LAWS.**

Except as otherwise expressly provided in this Lease, Lessee, at its sole expense, shall comply with all building and zoning laws and with all other laws, ordinances, orders, rules, regulations, and requirements of all federal, state and municipal governments and the appropriate departments, commissions, boards and officers thereof and in accordance with the rules, orders and regulations of any national or local Board of Fire Underwriters or any other body hereafter constituted exercising similar functions (collectively "Laws") regarding the use or operation of the Premises, and Lessor shall be responsible for compliance with all Laws concerning the Premises arising prior to the Commencement Date. Notwithstanding the foregoing, in the event the foregoing compliance obligations shall require Lessee to incur a capital expense in excess of Fifty Thousand Dollars (\$50,000), and such obligation shall occur in the last five (5) years of the Term, Tenant shall have the right to terminate this Lease.

## **13. NON-DISTURBANCE, SUBORDINATION AND ATTORNMENT.**

(A) If requested, Lessor shall deliver to Lessee prior to the expiration or waiver of the Inspection Period, a Non-Disturbance Agreement, as required by Tenant's Lender ("*Non-Disturbance Agreement*") fully executed by Lessor or any party holding a mortgage on the Premises and otherwise in form capable of recording. From time to time after the expiration or waiver of the Inspection Period, Lessor covenants and agrees to cause any party acquiring a mortgage on the Premises after the date hereof to execute and deliver to Lessee a fully executed and recordable Non-Disturbance Agreement acceptable to Lessee's lender prior to such party's acquisition thereof.

(B) This Lease shall at all times be and remain prior and paramount to the lien or charge of all mortgages affecting the Premises except that, promptly after receipt by Lessee of an executed and binding and recordable Non-Disturbance Agreement, Lessee agrees to subordinate this Lease to such bona fide existing mortgage affecting the Premises. Lessee agrees that if the Lessor or mortgagee, beneficiary or any other person claiming under such mortgage shall succeed to the interest of the Lessor in this Lease, Lessee will recognize said mortgagee as its Lessor under the terms of this Lease, provided that said mortgagee during the period in which it shall be in possession of the Premises, and thereafter its successors in interest, shall assume all of the obligations of Lessor hereunder and shall have executed and delivered the non-disturbance agreement referred to hereinabove. It is further understood and agreed that any purchaser taking title to the Premises by reason of such foreclosure (or deed in lieu thereof) shall take title subject to the foregoing conditions of this Section 13.

(C) Anything to the contrary set forth herein notwithstanding, in the event Lessor shall default under a mortgage affecting the Premises, Lessee and Lessee's lender shall have the right, but not the obligation, to cure such default, and deduct any and all amounts expended in curing such default from any amounts owed by Lessee to Lessor or any person claiming by, through, under, or by virtue of Lessor under this Lease.

## **14. LEASEHOLD MORTGAGE.**

(A) Lessee may from time to time, and without the consent of Lessor, secure financing or general credit lines from banks, insurance companies or other lenders, granting to such lenders as security for such financing or general credit lines a mortgage encumbering Lessee's leasehold interest in the Premises (which may include a collateral assignment of Lessee's leasehold interest in the Premises with rights of reassignment, hereinafter a "Leasehold Mortgage") and/or a security interest in Lessee's FF&E.

(B) Upon request of Lessee, Lessor agrees to execute such documents or instruments as shall evidence Lessor's consent to a Leasehold Mortgage and/or security interest and give such lenders the same right to notice of and time to cure any default of Lessee as is provided Lessee under the provisions of this Lease. Lessor and Lessee agree to execute or make such further modifications or amendments to this Lease as a prospective or existing holder of any Leasehold Mortgage may request, provided that any such modification or amendment shall not materially and adversely modify any material terms of this Lease. A failure of Lessor to respond in writing to such a request for consent within twenty (20) days of such request shall be deemed consent by Lessor to such request or an acceptance of such document, as the



case may be.

(C) Lessor shall give to the then holder of any Leasehold Mortgage (provided such holder shall have given to Lessor a notice specifying such holder's name and address) a copy of any notice, consent, approval, request, demand or communication given to Lessee under this Lease at the same time as and whenever any such notice shall thereafter be given by Lessor to Lessee, and no such notice by Lessor shall be deemed to have been duly given to Lessee unless and until a copy thereof shall have been so given to such holder.

(D) If Lessor shall give any such notice, such holder shall (provided it notifies Lessor of its intention to do so) thereupon have the right to remedy a default by Lessee ("Default") or to cause such Default to be remedied for a period of thirty (30) days (or five (5) days in the case of monetary Default) more than is given Lessee hereunder to remedy such Default or to cause such Default to be remedied. Lessor will accept performance by such holder with the same force and effect as though performed by Lessee. No such Default shall be deemed to exist and Lessor shall not exercise any rights it may have as a result of such Defaults as long as such holder shall, in good faith, have commenced promptly to cure the claimed Default and to prosecute the same to completion with diligence and continuity. The time in which such holder may cure any Default which is not susceptible of being cured by the payment of a sum of money, shall be deemed extended to include the period of time required by said holder: (i) to obtain possession of the Premises with due diligence, or (ii) if such Default is not susceptible of being cured by such holder upon obtaining such possession, to institute and complete foreclosure proceedings or otherwise acquire the Lessee's estate hereunder; provided, however, that during any such period all of the other obligations of Lessee under this Lease to the extent they are reasonably susceptible of being performed by such holder are being performed.

#### **15. SURRENDER UPON TERMINATION.**

Lessee shall, on the termination of the Term, surrender to Lessor the Premises free of all leases, tenancies and rights of occupancy of all parties. Anything to the contrary notwithstanding, upon termination and surrender to Lessor, Lessee shall be under no obligation or duty to remove any Building or Improvements located on the Premises.

#### **16. EVENTS OF DEFAULT.**

(A) The following events shall be deemed to be events of default by Lessee under this Lease: Lessee shall fail to pay any installment of the Rent due hereunder, or shall fail to perform any material obligation hereunder, and Lessee shall not cure its failure to pay Rent or Additional Rent within fifteen (15) days after written notice thereof is given to Lessee, and as to any other default as to a material obligation which Lessee shall not cure within thirty (30) days after written notice thereof to Lessee, provided that, if the nature of the default is such that it cannot reasonably be cured within said thirty (30) day period, and/or if Lessee commences an action to cure such default during such thirty (30) day period, and thereafter diligently continues to prosecute such cure, Lessee's time to cure such default shall be extended for such additional period as may be reasonably necessary for that purpose.

(B) If an event of default shall have occurred and remained uncured within that time set forth in this Lease, Lessor may, upon twenty (20) days written notice, declare this Lease terminated and of no further effect, and Lessor shall thereupon be entitled to take possession of the Premises as their former estate. In the event of the termination of this Lease by Lessor as provided above, Lessor shall be entitled to recover from Lessee all Rent or Additional Rent for the period up to and including such termination date, which may be then owing and unpaid but no Rent or Additional Rent for the period after the termination of this Lease.

(C) If, as of the date hereof, Lessor shall have made any misrepresentations in this Lease, or, if after the date thereof, Lessor shall fail to perform any of their obligations, covenants and/or agreements as required by this Lease, Lessee shall have its rights and remedies at law or in equity, and if Lessor shall fail to cure such misrepresentation or failure of performance then Lessee may also elect to: (i) take such steps as may be necessary to cure Lessor's default, in which event Lessee shall be entitled to recover from Lessor or deduct from subsequent Rent payments all amounts expended by Lessee for said

purposes, together with attorney's fees and interest thereon from the date due until the date paid at the interest rate specified in Section 17 hereof, or (ii) terminate this Lease.

(D) Anything to the contrary herein notwithstanding, Lessor hereby expressly waives any and all rights granted by or under any present or future laws (whether common law, statutory, or otherwise) to any lien or claim of any nature in Lessee's FF&E for rent, or to levy or distrain for rent, in arrears, in advance, or both, upon Lessee's FF&E.

(E) If at any time and from time to time a dispute shall arise as to any amount or sum of money to be paid by one party to this Lease to the other party to this Lease or any work to be performed by either Lessor or Lessee under the provisions of this Lease, the party against whom the obligation to pay or perform is asserted shall have the right to make payment or perform such work and pay the costs thereof "under protest", and such payment or performance shall not be regarded as a voluntary payment or performance and the right of that party to institute suit to recover the amount paid or performed or both "under protest" shall survive. If it is determined that there was no obligation on the part of the party to pay or perform or both or if it is determined that the right to require such payment or performance, or both was barred, the party that paid or performed or both shall be entitled to recover the amount paid "under protest", plus interest thereon at the rate equal to the lesser of eighteen percent (18%) per annum or the maximum interest rate permitted by law from the date such payment, performance or both was made until the date that reimbursement is received.

#### **17. CHARGES ON PAST DUE OBLIGATIONS.**

In the event any amount due from Lessee to Lessor or from Lessor to Lessee is not paid when due, and the time for curing said non-payment has expired, such amount shall bear interest at the then current "Prime Rate" as reported by the "Wall Street Journal" from the date due until paid, unless otherwise specifically provided herein, but the payment of such interest or late charge shall not excuse or cure any default by Lessee under this Lease.

#### **18. HOLDING OVER BY LESSEE.**

If Lessee shall remain in possession of the Premises after the expiration of the Term, with the consent of Lessor, then Lessee shall be deemed to be a lessee of the Premises on a month-to-month basis, cancelable upon thirty (30) days' notice, at the same rental and subject to all the terms and provisions hereof.

#### **19. COVENANT OF QUIET ENJOYMENT.**

Lessor hereby covenants that Lessee shall at all times during the Term peaceably and quietly enjoy the Premises without any disturbance from Lessor or from any other person claiming under or through Lessor including any mortgagees of the Premises.

#### **20. EASEMENTS AND SIGNAGE.**

Upon request of Lessee, Lessor will join with Lessee in the granting of any easement or right-of-way that may reasonably be required for utility purposes on, over or affecting the Premises for non-exclusive parking, vehicular and pedestrian access, including driveways and curb cuts, in recordable form, covering all parking and driveway areas within the overall development parcels, provided such easement or right-of-way is of a nature and in a location that does not unreasonably interfere with the use of the Premises for the purpose of which it is now designed, and Lessor will execute and acknowledge an appropriate instrument or instruments evidencing such easement or right-of-way, all at Lessee's sole expense.

Lessor grants to Lessee, its successors and/or assigns and their officers, agents, employees, contractors, customers, and business invitees, the right, at Lessee's sole cost and expense, to install maximum signage permitted by governing codes of authority and subject to Lessor's approval, such approval shall not be unreasonably withheld, conditioned or delayed. Lessor shall grant easements to



Lessee, its successors and/or assigns and their officers, agents, employees, contractors, customers, and business invitees for access to all signage which shall include the right to lay and maintain electric or other utility lines to such signs. Lessee shall properly repair any parking lot curb cuts that may be damaged during the installation of any Lessee's signage. Lessor shall assist Lessee in acquiring such approvals as are necessary for the installation of such signage. Upon execution of this Lease, Lessor agrees to provide Lessee with copies of any public and/or private agreements that might govern signage.

**21. EXCUSE FOR NONPERFORMANCE.**

If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, Laws, adverse weather, unusual delay in transportation or other cause without fault and beyond the control of the party obligated (financial inability excepted), then upon written notice to the other party, the performance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for a period equivalent to the period of such delay; provided, however, Lessee or Lessor shall exercise its best efforts to remedy any such cause of delay or cause preventing performance.

**22. NOTICES.**

Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered:

(A) Three (3) days after the same shall have been deposited in the United States mail, postage prepaid, registered or certified, return receipt requested; or

(B) The next business day if same shall be sent by a national overnight courier with a tracking system and addressed to the parties hereto at the respective addresses set out opposite their names below or at such other address as they have theretofore specified by written notice delivered in accordance herewith:

Lessor: Sarah-Frank LLC  
1850 Rochester Road  
Canandaigua, NY 14424

With copy to: John A. Polimeni, Esq  
540 South Main St.  
Canandaigua NY 14424

Lessee: Star Cider LLC  
3148 Taylor Rd  
Clifton Springs, NY 14432

With copy to Tracy Jong, Esq.  
2300 Buffalo Road, Building  
100A  
Rochester, NY 14624

**23. PARAGRAPH HEADINGS.**

The paragraph headings contained in this Lease are for convenience only and shall in no way enlarge or limit the scope of meaning of the various and several paragraphs hereof.

**24. BINDING EFFECT; ENTIRE AGREEMENT.**

All of the covenants, agreements, terms and conditions to be observed and performed by the parties hereto



shall be applicable to and binding upon their respective successors and, to the extent assignment is permitted hereunder, their respective assigns.

This Lease sets forth the entire agreement between the parties and no amendment or modification of this Lease shall be binding or valid unless expressed in writing and executed by all parties hereto.

**25. WAIVER.**

(A) One (1) or more waivers of any covenant or condition by Lessor shall not be construed as a waiver of a subsequent breach of the same covenant or condition, and the consent or approval by Lessor to or of any act by Lessee requiring Lessor's consent, or approval shall not be deemed to render unnecessary Lessor's consent or approval to or of any subsequent similar act by Lessee. No breach of a covenant or condition of this Lease shall be deemed to have been waived by Lessor unless such waiver is in writing, signed by Lessor.

(B) One (1) or more waivers of any covenant or condition by Lessee shall not be construed as a waiver of a subsequent breach of the same covenant or condition and the consent or approval by Lessee to or of any act by Lessor requiring Lessee's consent, or approval shall not be deemed to render unnecessary Lessee's consent or approval to or of any subsequent similar act by Lessor. No breach of a covenant or condition of this Lease shall be deemed to have been waived by Lessee unless such waiver is in writing, signed by Lessee.

**26. GOVERNING LAW.**

This Lease shall be governed by and construed in accordance with the laws of the State in which the Property is located, without giving effect to such State's choice of law rules. The parties further agree that any suit, action, or proceeding arising out of this Lease shall be submitted exclusively to and brought before the appropriate state and/or federal courts of the State in which the Property is located. The parties acknowledge that this Lease has been prepared, negotiated, executed, and entered into as a contract in the State in which the Property is located. The parties further acknowledge that they are knowingly submitting to the jurisdiction of the said state and the state and/or federal courts therein. The parties further acknowledge that the terms of this Section have been fully and fairly bargained for. Nothing in this Lease precludes either party from bringing any suit, action or proceedings related to this Lease ("Proceedings") in any other jurisdiction if (A) the courts of the State in which the Property is located or the United States Federal Courts located in the State in which the Property is located lack jurisdiction over the parties or the subject matter of the Proceedings or decline to accept the Proceedings on the grounds of lacking such jurisdiction; (B) the Proceedings are commenced by a party for the purpose of enforcing against the other party's property, assets or estate any decision or judgment rendered by any court in which Proceedings may be brought as provided hereunder; (C) the Proceedings are commenced to appeal any such court's decision or judgment to any higher court with competent appellate jurisdiction over that court's decisions or judgments if that higher court is located outside the State in which the Property is located, such as a federal court of appeals or the U.S. Supreme Court; or (D) any suit, action or proceeding has been commenced in another jurisdiction by or against the other party or against its property, assets or estate and, in order to exercise or protect its rights, interests or remedies under this Lease, the party (1) joins, files a claim, or takes any other action, in any such suit, action or proceeding, or (2) otherwise commences any Proceeding in that other jurisdiction as the result of that other suit, action or proceeding having commenced in that other jurisdiction.

**27. REPRESENTATIONS AND WARRANTIES OF LESSOR.**

Lessor represents and warrants that:

(A) Lessor is the owner of the Premises in fee simple absolute, free and clear of all encumbrances except such mortgages or deeds of trust as Lessor may place on the Premises for the purpose of financing the acquisition thereof and the construction of improvements thereon (provided that such mortgages or deeds of trust shall not interfere with Lessee's rights under this Lease or Lessee's

use of the Premises).

(B) Neither Lessor nor, to Lessor's actual knowledge, any third party has dumped, discharged, buried or otherwise placed any Hazardous Substances or Hazardous Materials on the Premises; to the Lessor's knowledge, there are no storage tanks, storage vessels, drums or containers located on the Premises; Lessor has no knowledge of any spillage or accidental release of Hazardous Substances or Hazardous Materials onto or into the Premises; and Lessor has not received and is not aware of any summons, citation, letter, warning, notice, notice of violation, administrative complaint, or other formal or informal notice from any federal, state or local agency or other source whatsoever, that a condition on the Premises is in violation of any Laws.

(C) Lessor has full right, power and lawful authority to execute, deliver and perform its obligations under this Lease for the Term, in the manner and upon the conditions and provisions herein contained and to grant the estate herein demised, with no other person needing to join in the execution hereof in order for this Lease to be binding on all parties having an interest in the Premises: the execution and delivery of this Lease by Lessor and the due consummation of the transactions contemplated hereby constitute a valid and binding agreement of Lessor; neither the execution and delivery of this Lease nor the consummation by Lessor of the transactions contemplated hereby will constitute a violation of any provisions of law, result in the breach of, or the imposition of any lien on, or constitute a default under, any indenture or bank loan or credit agreement, license, permit, trust, custodianship or other restriction, which violations, breach, imposition of lien of default would affect the validity of this Lease.

(D) Except as otherwise provided in this Lease, (i) all water, gas, sewer, electric, telephone, and drainage (including storm sewer and sanitary sewer) facilities and all other utilities required by law or by the intended use and operation of the Premises are installed or will be installed to the boundary of the Premises and separately metered, and (ii) all streets, curbing and curb cuts adjoining the Premises are installed or will be installed.

(E) Lessor shall not construct or permit to be constructed any improvements on any adjacent lands now owned or hereafter acquired by Lessor which would obstruct or interfere with the visibility of Lessee's Building or sign improvements. Lessee may remove any natural or manmade obstruction, which now or hereafter exists on the Premises and interferes with such visibility.

(F) The Premises is properly zoned for Lessee's intended use of the Premises as a cidery or winery facility; no restrictions exist which would prohibit Lessee from applying for a permit (or variance, as the case may be) for a freestanding pylon sign, and Lessee's Initial Use of the Premises is not prohibited under any of the restrictions affecting the Premises and will not conflict with or violate and restrictions applicable to the Premises.

(G) The Premises will, at the time possession thereof is delivered to Lessee, comply with all Laws of all federal, state and municipal governments, departments, commissions, boards and officers, and all orders, rules, regulations of the National Board of Fire Underwriters, the State Board of Fire Underwriters or any other body or bodies exercising similar functions, which may be applicable to the Premises and to the sidewalks, alleyways, passageways, curbs and vaults adjoining the same or to the use or manner of use of the Premises or the owners, tenants or occupants thereof. The obligations of Lessor under this paragraph shall survive Lessee's acceptance of the Premises.

(H) All representations and warranties herein made by Lessor shall be in full force and effect as of the date Lessor delivers possession of the Premises to Lessee, and shall survive such date.

(I) All references in Lease to "*Lessor's knowledge*" or "*Lessor's actual knowledge*" or the "*best of Lessor's knowledge*" (i) shall refer solely to the actual knowledge (as opposed to constructive, deemed or imputed knowledge) of the individual signing this Agreement on behalf of the Lessor who Lessor represent and warrants is the individual with direct knowledge of all such matters set forth in this Lease, (ii) shall not be construed to refer to the knowledge of any other employee, officer, director, shareholder or agent of Lessor or any affiliate of Lessor, (iii) shall not impose upon the foregoing individual(s) any duty to investigate the matter to which the actual knowledge, or the absence thereof, pertains and (iv) shall not impose any personal liability upon such person for the



inaccuracy of such representation or warranty.

**28. REPRESENTATIONS AND WARRANTIES OF LESSEE.**

Lessee represents and warrants that:

(A) Lessee has full right, power and lawful authority to execute, deliver and perform its obligations under this Lease for the Term, in the manner and upon the conditions and provisions herein contained and to grant the estate herein demised, with no other person needing to join in the execution hereof in order for this Lease to be binding on all parties having an interest in the Premises; the execution and delivery of this Lease by Lessee and the due consummation of the transactions contemplated hereby constitute a valid and binding agreement of Lessee; neither the execution and delivery of this Lease nor the consummation by Lessee of the transactions contemplated hereby will constitute a violation of any provisions of law, result in the breach of or the imposition of any lien on, or constitute a default under, any indenture or bank loan or credit agreement, license, permit, trust, custodianship or other restriction, which violations, breach, imposition of lien of default would affect the validity of this Lease.

(B) There is no action, suit, proceeding, or investigation pending or threatened against Lessee that challenges or questions the legality or validity of this Lease or any of the transactions contemplated hereby.

(C) All representations and warranties herein made by the Lessee shall be in full force and effect as of the date Lessor delivers possession of the Premises to Lessee, and shall survive such date.

(D) All references in Lease to "*Lessee's knowledge*" or "*Lessee's actual knowledge*" or the "*best of Lessee's knowledge*" (i) shall refer solely to the actual knowledge (as opposed to constructive, deemed or imputed knowledge) of the individual signing this Agreement on behalf of the Lessee who is the individual with direct knowledge of all such matters set forth in this Lease, (ii) shall not be construed to refer to the knowledge of any other employee, officer, director, shareholder or agent of Lessee or any affiliate of Lessee, (iii) shall not impose upon the foregoing individual(s) any duty to investigate the matter to which the actual knowledge, or the absence thereof, pertains and (iv) shall not impose any personal liability upon such person for the inaccuracy of such representation or warranty.

**29. ENFORCEMENT.**

If either party hereto fails to perform its obligations under this Lease, or if a dispute arises concerning the meaning or interpretation of any provision of this Lease and any action or steps are taken in furtherance thereof including, but not limited to, the commencement of legal proceedings, lawsuits, arbitration, or other proceedings arising out of, relating to, or based in any way on this Lease, including, without limitation, tort actions and actions for injunctive and declaratory relief, the defaulting party or the nonprevailing party in the dispute, as the case may be, shall pay any and all actual costs and expenses incurred by the prevailing party in enforcing or establishing its rights hereunder, including, without limitation, all court costs, all fees and costs incurred in any appellate process, and all actual reasonable attorney's fees. Notwithstanding any judgment related to this Lease, the fee, costs, and expenses shifting provisions contained in this Section 34 shall not be merged into such judgment but shall survive the same and shall be binding and conclusive on the parties for all time. Post-judgment attorneys' fees and costs incurred related to the enforcement of such judgment related to this Lease shall be recoverable hereunder in the same or separate actions.

**30. INTERPRETATION.**

This Lease shall not be construed in favor or against either party, but shall be construed as if all parties prepared this Lease.

**31. COUNTERPARTS; PDF.**



This Lease may be executed in multiple counterparts, each of which is deemed an original and all of which constitute one and the same document. This Lease may be executed and delivered by facsimile, PDF or other electronic means and such execution and delivery shall render this Lease binding on the parties as if an original signature page had been delivered.

**32. INVALIDITY.**

If any provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each provision of the Lease shall be valid and enforceable to the fullest extent permitted by law.

**33. CREATION OR MODIFICATIONS OF EASEMENTS.**

Lessor covenants and agrees that during the Term, Lessor shall not, under any circumstances create, grant, convey, extend, or terminate any easements, licenses, or rights of way to, for, or on the Premises nor shall lessor agree to do the same without the prior written consent of Lessee (which may be withheld in Lessee's sole discretion).

**34. LESSOR'S COVENANTS.**

(A) Lessor covenants and agrees that it shall, within five (5) business days after the Effective Date, deliver to Lessee:

- (i) A copy of the most recent survey prints, if any, of the Premises;
- (ii) A copy of the recorded deed to Lessor for the Premises;
- (iii) Copies of the most recent property tax bills, or, if the Premises is not yet on the tax rolls, an estimate of the proposed assessment and taxes for the Premises;
- (iv) Any other documents reasonably requested by Tenant to perform Tenant's inspections pursuant to Paragraph 41 (A) below.

**35. CONDITIONS TO PERFORMANCE.**

The following conditions are conditions precedent ("Conditions to Performance"), to Lessee's obligation to fulfill its obligations under this Lease:

(A) Receipt by Lessee of "Approvals" (as defined in Section 41 of this Lease). Lessor shall assist Lessee in obtaining Approvals;

(B) Lessor shall have performed all of its covenants set forth in Section 39 of this Lease;

(C) Lessor shall be responsible to subdivide the larger parcel into two separate tax parcels at its sole cost and expense except that Tenant will reimburse the cost of the survey up to \$1,000.00. Lessor will provide three stamped copies of the survey upon receipt which shall additionally be certified to "Tracy Jong Law Firm, lenders, and lenders attorney"

**36. CONTINGENCIES.**

On the Date of execution of this Lease, Lessee shall pay to Lessor the nonrefundable sum of \$3,000.00 in return, the Lessee shall have until September 1, 2018 (the "Inspection Period"), to:

- (A) examine the Survey, all of the environmental and soil conditions of the Premises and all

pd CX # 137 \$3,000.00 [Signature]

zoning, land use, environmental, building and construction laws and regulations restricting or regulating or otherwise affecting the use, occupancy or enjoyment of the Premises. If at any time during the Inspection Period, Lessee, in its sole and absolute discretion, determines that the Premises are not suitable for the Initial Use, Lessee may terminate this Lease, and the parties shall have no further obligations toward each other.

(B) obtain a financing commitment for the construction of the Initial Construction on terms and conditions satisfactory to Lessee in its sole discretion. If Lessee does not receive the Financing Commitment during the Inspection Period on terms and conditions satisfactory to Lessee in its sole discretion, Lessee may terminate this, and the parties shall have no further obligations toward each other.

(C) apply for and obtain any and all governmental, non-governmental, and third-party permits, licenses, approvals, variances, and consents of any nature needed or reasonably required to construct and operate for the Initial Use. If at any time during the Inspection Period Lessee, in its sole and absolute discretion, determines that it is unable to obtain the approvals or that the Premises are not suitable for the Initial Use, Lessee may terminate this Lease, and the parties shall have no further obligations toward each other.

### **37. BROKER'S COMMISSION.**

Lessee and Lessor represent and warrant to each other that neither party has had any contact or dealings regarding the Premises, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or other person who can claim a right to a commission or finder's fee as a procuring cause of the transaction contemplated herein. Lessor and Lessee each agrees to indemnify the other and hold it harmless from all liabilities arising from claims from any brokers or finders, claiming to have dealt with Lessee or Lessor, as the case may be, (which indemnification shall include, without limitation, attorney's fees and costs). The foregoing indemnification shall survive the termination of this Lease.

### **38. HAZARDOUS MATERIALS.**

(A) As used in this Lease the following terms shall have the following meanings:

(i) "*Hazardous Material*" means (1) any "hazardous material", "solid waste", "hazardous waste", "extremely hazardous waste", "hazardous substance", or "toxic substance" as those or similar terms are defined under any Environmental Laws; (2) any asbestos or asbestos-containing materials, whether in a friable or non-friable condition; (3) any polychlorinated biphenyls ("PCBs") or PCB-containing materials; (4) radon gas; (5) any other hazardous, radioactive, toxic or noxious material, substance, pollutant, or contaminant that is or becomes regulated by any Governmental Authority; and (6) any petroleum, petroleum hydrocarbons, petroleum products, or crude oil and any by-products, fractions or derivatives thereof.

(ii) "*Environmental Laws*" means any and all laws, statutes, rules, regulations, ordinances, orders, codes, determinations, permits, licensing, or rules of common law of any Governmental Authority pertaining to health, safety or the environment now or hereafter in effect in any and all jurisdictions in which the Premises is located and any judicial or administrative interpretation thereof (including, but not limited to, any judicial or administrative order, consent decree or judgment relating to the environment, Hazardous Materials, or exposure to Hazardous Materials), including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, as amended, the Resource Conservation and Recovery Act of 1976, as amended, the Clean Air Act, as amended, the Federal Water Pollution Control Act, as amended, The Oil Pollution Act of 1990, as amended, the Safe Drinking Water Act, as amended, the Hazardous Materials Transportation Act, as amended, the Toxic Substances Control Act, as amended, and other environmental conservation or protection laws.

(iii) "*Governmental Authority*" means any legislative, executive or judicial body, branch or political subdivision of any federal, state, county, city or local government (including any



court), which exercises jurisdiction over the Premises, or activities conducted thereon, and including any agency, department, commission, board, bureau, instrumentality or authority of any of them which exercises jurisdiction over any such property.

(iv) "*Release*" shall have the same meaning as is described to it in the CERCLA.

(v) "*Remedial Work*" means any investigation, assessment, or monitoring of the Premises environmental conditions or any cleanup, containment, restoration, removal, or other remedial activities.

(B) Lessee and Lessor shall promptly notify each other (and all governmental authorities, when required) of: (i) any enforcement, Remedial Work or other regulatory action taken or threatened by any Governmental Authority with respect to the presence of any Hazardous Material on the Premises or the migration thereof from or to other property; (ii) any demands or claims made or threatened by any third party relating to any loss or injury resulting from any Hazardous Material; (iii) any Release, discharge or non-routine, improper or unlawful disposal, transportation or other management of any Hazardous Material on or from the Premises; and (iv) any matters where Lessee is required under Environmental Law to give a notice to any Governmental Authority respecting any Hazardous Materials on the Premises. Lessor shall have the right (but not the obligation) to join and participate, as a party, in any legal proceedings or actions affecting the Premises initiated in connection with any Environmental Law.

(C) Lessee hereby agrees that it shall be fully liable for all costs and expenses related to the use, generation, storage, treatment and disposal of Hazardous Material on the Premises that results from Hazardous Materials brought onto the Premises by Lessee after the date hereof, and Lessee shall give immediate written notice to Lessor of any violation or potential violation of the provisions of this Section (C). Lessee shall to the fullest extent permitted by Laws indemnify, defend and hold Lessor harmless from and against any claims, demands, penalties, fines, liabilities, settlements, judgments, damages, losses (including, without limitation, a decrease in value of the Premise, damages caused by loss or restriction of rentable or usable space or any damages caused by adverse impact on marketing of the space), costs or expenses (including without limitation, attorneys' and consultants' fees, court costs and litigation expenses and any and all sums paid for settlement of claims) of whatever kind or nature, known or unknown, contingent or otherwise, arising during or after the Term and out of or in any way related to: (i) the presence, disposal, Release or threatened Release of any such Hazardous Material that is on, from or affecting the soil, water, vegetation, buildings, personal property, persons, animals or otherwise located on or around the Premises and that results from Lessee (or any person or entity acting on Lessee's behalf) bringing such Hazardous Material onto the Premises; (ii) any personal injury (including wrongful death), property damage (real, personal or economic) arising out of or related to such Hazardous Material brought to the Premises by or on behalf of Lessee; (iii) any lawsuit brought or threatened, settlement reached or government order relating to such Hazardous Material brought to the Premises by or on behalf of Lessee; (iv) any violation of any Environmental Laws applicable thereto directly resulting from Hazardous Materials brought to the Premises by or on behalf of Lessee; or (v) a breach or violation by Lessee of the covenants contained in this Section 4.3. This indemnification includes, without limitation, any and all costs incurred because of any Remedial Work mandated by Governmental Authorities. All costs and expenses of such Remedial Work that are the responsibility of Lessee under this Lease shall be paid solely by Lessee including, without limitation, the reasonable charges of such contractor(s) and/or the consulting engineer, and Lessor's reasonable attorney fees and reasonable costs incurred in connection with monitoring or review of such Remedial Work. In the event Lessee shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Lessor shall have the right, but not the obligation, to cause such Remedial Work to be performed, and all reasonable costs and reasonable expenses thereof, or incurred in connection therewith shall be "costs" within the meaning above. All such reasonable costs shall be immediately due and payable upon demand therefore by Lessor.

(D) Lessor shall to the fullest extent permitted by Laws, indemnify and defend Lessee, its permitted sublessees and assignees and their respective agents, employees, officers and directors, and customers from and against any and all claims, damages, penalties, fines, liabilities, settlements, judgments, damages, losses actions, awards, fines, clean-up costs, necessary expenses, reasonable attorneys' fees and court costs (including, without limitation, a decrease in value of the leasehold interest or



of the leasehold improvements caused by loss or restriction of rentable or usable space), costs or expenses (including without limitation, attorneys' and consultants' fees, court costs and litigation expenses and any and all sums paid for settlement of claims) which arise as a result of any Hazardous Materials or underground storage tanks present within, upon or beneath the Premises as of the Effective Date or caused by or attributable to Lessor or Lessor's directors, officers, partners, members, employees, agents, or contractors, but only to the extent in violation of Environmental Laws, and Lessor shall, at Lessor's sole cost, properly remedy, remove and abate such Hazardous Materials ("*Lessor Remedial Work*") in accordance with and to the extent required by any applicable Environmental Laws. All costs and expenses of such Lessor Remedial Work that are the responsibility of Lessor under this Section shall be paid solely by Lessor including, without limitation, the reasonable charges of such contractor(s) and/or the consulting engineer, and Lessee's reasonable attorney fees (including the costs of in-house counsel) and reasonable costs incurred in connection with monitoring or review of such Remedial Work. In the event Lessor shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Lessor Remedial Work, Lessee shall have the right, but not the obligation, after written notice to Lessor followed by a ten (10) day cure period in favor of Lessor, to cause such Lessor Remedial Work to be performed, and all reasonable costs and reasonable expenses thereof, or incurred in connection therewith shall be "costs" that Lessee may deduct from Minimum Rent or Percentage Rent due until paid in full. All such reasonable costs shall be immediately due and payable upon demand therefore by Lessor unless subject to a good faith dispute being diligently pursued.

(E) The provisions of this Section, including all remedies of Lessor and Lessee hereunder (as well as the provisions of Section entitled "Enforcement" in this Lease), shall survive the expiration or termination of this Lease. In the event any provision of this Lease is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease will nonetheless remain in full force and effect.

### **39. LESSOR ACCESS TO PREMISES.**

(A) Lessor may only enter the Premises with Tenant present only for the purpose of (i) compliance with laws; (ii) showing the Premises to prospective purchasers and to existing and prospective mortgagees; and (iii) during the last 90 days of the Term for the purpose of showing the Premises to prospective tenants. In any instance that Lessor seeks access to the Premises, Lessor must provide Lessee with at least 48 hours prior written notice specifying proposed date, time, and purpose of such access and proof of commercial liability insurance coverage naming Lessee as an additional insured and that otherwise meets the standards set forth in Sections 8 (B) (i) and 8 (B) (ii) of this Lease.

(B) In the event that Lessor desires to have third parties access the Premises for the purposes permitted herein, such third parties must sign an indemnification agreement fully indemnifying Lessee against all matters arising out of such entry in form and content acceptable to Lessee in its reasonable discretion and must provide proof of commercial liability insurance coverage naming Lessee as an additional insured and that otherwise meets the standards set forth in Sections 8 (B) (i) and 8 (B) (ii) of this Lease. Lessee shall have a designated representative present and in attendance at the time of access.

(C) Neither Lessor nor its representatives shall discuss or disclose the purpose of its access with nor make any inquiries of employees of Lessee other than the Lessee's designated representative, Lessee's officers, or Lessee's counsel. Under no circumstances shall Lessor place "For Sale" or "For Rent" signs or any other signs of similar import on or near the Premises. Under no circumstances shall Lessor have access to the kitchen or back area of the Premises. Lessor agrees in each instance to indemnify and hold Lessee harmless from any and all injuries to persons or property while on the Premises caused in whole or in part by the acts or omission of Lessor or its authorized representatives, or both.

### **40. RIGHT OF FIRST REFUSAL**

In the event that Landlord receives a bona fide purchase contract for the purchase of the Premises from anyone other than Tenant, its successors and assigns, any relative of the Member of the Landlord LLC, or related company of the Landlord, the Tenant shall enjoy the right to match the terms of the bona fide purchase contract, by submitting a written purchase offer to Landlord within Ten (10) days of



Landlord's delivery to the Tenant of a copy of the purchase contract. The Tenant shall forfeit the Tenant's right of first refusal herein if the Tenant fails to submit a written purchase offer containing the same, or better, terms than the offer received by the Landlord. If the Tenant does not exercise his right of first refusal the Tenant agrees to attorn to the new owner and the Landlord's liability under this Lease shall terminate with the understanding that the new owner shall be required to comply with the terms of the Lease. Landlord agrees to provide a copy of the Lease to any Purchaser at the time of closing.

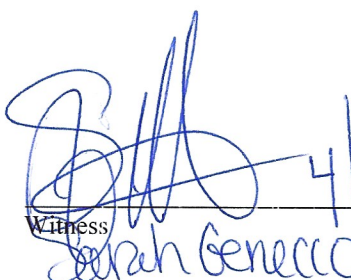
#### 41. PATRIOT ACT

(A) For purposes of this Section 48: (a) the term "*Lessor Related Entity*" shall mean any corporation, limited liability company, partnership, limited partnership, joint venture, joint stock association, business trust and other form of entity in which Lessor has a controlling interest; (b) the term "*Lessee Related Entity*" shall mean any corporation, limited liability company, partnership, limited partnership, joint venture, joint stock association, business trust and other form of entity in which Lessee has a controlling interest; and (c) the term "*controlling*" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Related Entity, whether through the ownership of voting securities or otherwise by any entity or person.

(B) Lessor (which for this purpose includes the officers, directors, partners, members, principal stockholders of Lessor) represents, warrants, and covenants to the Lessee that Lessor or any Lessor Related Entity: (i) have not been designated as a "specifically designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <<http://www.treas.gov/ofac/t11sdn.pdf>> or at any replacement website or other replacement official publication of such list; (ii) are currently in compliance with and will at all times during the term of this Lease (including any extension thereof) remain in compliance with the regulations of the Office of Foreign Asset Control of the Department of the Treasury and any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action relating thereto; (iii) have not used and will not use funds from illegal activities for any payment made under this Lease; and (iv) have not used and will not use any payment made under this Lease for illegal activities. The foregoing representation shall not apply with respect to the beneficiaries of any pension plan participating in Lessor.

(C) Lessee (which for this purpose includes the officers, directors, partners, members, principal stockholders of Lessee) represents, warrants, and covenants to the Lessor that Lessee or any Lessee Related Entity: (i) have not been designated as a "specifically designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <<http://www.treas.gov/ofac/t11sdn.pdf>> or at any replacement website or other replacement official publication of such list; (ii) are currently in compliance with and will at all times during the term of this Lease (including any extension thereof) remain in compliance with the regulations of the Office of Foreign Asset Control of the Department of the Treasury and any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action relating thereto; (iii) have not used and will not use funds from illegal activities for any payment made under this Lease; and (iv) have not used and will not use any payment made under this Lease for illegal activities.

IN WITNESS WHEREOF, Lessor and Lessee have signed and sealed this Lease as of the day and year first above written.

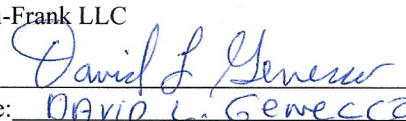
 4/17/18  
Witness  
Sarah Genecco

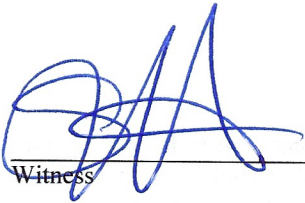
LESSOR:

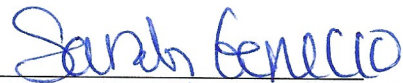
Sarah-Frank LLC

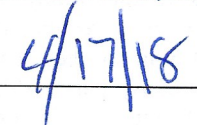
By:

Name:

 4/17/18  
DAVID L. GENECOCO Title: mm

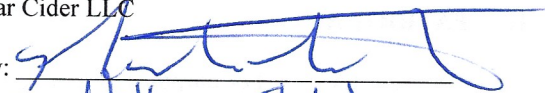
  
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Witness

  
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LESSEE:

Star Cider LLC

By:   
Name: Nathan Stahl  
Title: owner / member

