



At the Heart of Community

VILLAGE MANAGER'S OFFICE

70 E Main Street
Lake Zurich, Illinois 60047

(847) 438-5141
LakeZurich.org

AGENDA ITEM

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MEMORANDUM

Date: July 28, 2020
To: Ray Keller, Village Manager *PK*
From: Kyle Kordell, Assistant to the Village Manager
Subject: **Craving Gyros – Village Lease**

Issue: The current owners of Craving Gyros have been operating the restaurant at the village-owned property at 2 East Main Street since mid-2015. The owners have initiated a sale of their business to associates of theirs effective September 1, 2020. The proposed Ordinance updates the lease with the new owners of Craving Gyros.

Analysis: The revised lease as presented is nearly identical to the existing lease that has been in place for years. Staff agreed to assist the new owners by freezing rent at its existing rate of \$1,000 per month for their first year of operation, with incremental automatic increases every 12 months starting September 1, 2021. This is a five year lease that includes a security deposit of \$1,500 to be retained by the Village.

The new owners will retain the name Craving Gyros. The hours of operation are expected to remain unchanged, 11:00 am – 8 pm . The new owners anticipate retaining four or five employees. There is a possibility of the new owners requesting a liquor license in the future for the sale and service of alcoholic beverages at this location.

Recommendation: Approval of the attached Ordinance and lease.

w/Attachments: Ordinance
Lease

VILLAGE OF LAKE ZURICH
ORDINANCE NO. 2020-08-___



**AN ORDINANCE APPROVING THE LEASE BY THE VILLAGE OF LAKE ZURICH OF
PROPERTY AT 2 AND 6 EAST MAIN STREET TO CRAVING GYROS, INC.**

WHEREAS, pursuant to Section 4 of the Illinois TIF Act, 65 ILCS 5/11-74.4-4, and other applicable authority, the Village of Lake Zurich is authorized to lease the property it owns within the Village commonly known as 2 and 6 East Main Street (the "Subject Property"); and

WHEREAS, the President and Board of Trustees of the Village have determined that it is in the best interests of the Village and its residents to lease the Subject Property to Craving Gyros, Inc. (the "Tenet") and the Tenet desires to lease the Subject Property, on the terms of the lease attached to and by this reference incorporated into this Ordinance as Exhibit A (the "Lease").

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Lake Zurich, Lake County, Illinois, as follows:

Section 1. Recitals. The foregoing recitals are hereby incorporated into this Ordinance by this reference as findings of the President and Board of Trustees.

Section 2. Approval of Lease. The President and Board of Trustees hereby approve the Lease and authorize and direct the Village Manager to execute the Lease on behalf of the Village.

Section 3. Effective Date. This Ordinance will be in full force and effect from and after its passage and approval and publication in pamphlet form in the manner provided by law.

PASSED this ____ day of August, 2020, pursuant to a roll call vote as follows:

AYES:

NAYS:

ABSENT:

ABSTAIN:

APPROVED this ____ day of August, 2020.

By: _____
Thomas Poynton, Village President

Kathleen Johnson, Village Clerk

COMMERCIAL LEASE

1. **BASIC TERMS.** This Section 1 contains the Basic Terms of this Lease between Landlord and Tenant, named below. Other Sections of the Lease referred to in this Section 1 explain and define the Basic Terms and are to be read in conjunction with the Basic Terms.

- A. **Date of Lease:** September 1, 2020
- B. **Landlord:** Village of Lake Zurich
- C. **Tenant:** Juan Antonio Acuna Hernandez & Gerardo Montes de Oca
- D. **Premises:** 2 East Main Street, Lake Zurich, Illinois (the "Building").
- E. **Permitted Uses:** The Premises will be used to operate a Greek styled restaurant named Craving Gyros, Inc.
- F. **Pets:** No pets shall be brought on the Premises without the prior written consent of Landlord.
- G. **Lease Term:** One (1) year ("Term"), commencing September 1, 2020 ("Commencement Date") and ending one year after Commencement Date ("Expiration Date"), with four (4) separate one-year extensions at option of tenant with no advance written notice required from Tenant to continue with lease extensions. If Tenant desires to terminate Lease, then thirty (30) days advance written notice shall be served upon Landlord. If Landlord desires to terminate Lease, then thirty (30) days advance written notice shall be served upon Tenant.
- H. **Base Rent Payable by Tenant:** Base rent shall start to accrue on September 1, 2020 in advance and due on the 1st of every successive month and is deemed late if not received by the 5th of said month.
 - \$1,000 per month for Year 1
 - \$1,050 per month for Year 2
 - \$1,100 per month for Year 3
 - \$1,125 per month for Year 4
 - \$1,150 per month for Year 5After these five (5) years have commenced, an additional five (5) year lease agreement with similar annual increases in rent shall be offered to the Tenant at the Landlord's discretion.
- I. **Security Deposit:** Security Deposit of \$1,500 shall be retained by Landlord for this Term. Tenant and Landlord agree that (a) the Security Deposit or any portion thereof may be applied to the curing of any default that may exist, without prejudice to any other remedy or remedies which the Tenant may have on account thereof, and upon such application Tenant shall pay Landlord on demand the amount so applied which shall be added to the Security Deposit so the same will be restored to its original amount; (b) should the Premises be conveyed by Landlord, the Security Deposit or any balance thereof may be turned over to the Landlord's grantee, and if the same be turned over, Tenant agrees to look solely to such grantee for such application or return; (c) Landlord may commingle the Security Deposit with other funds and not be obligated to pay Tenant any interest; and (d) the Security Deposit shall not be considered as advance payment of Rent or a measure of damages for any default by Tenant, not shall it be a bar or defense to any actions by Tenant against Landlord.

2. LEASE OF PREMISES; RENT.

- A. **Lease of Premises for Lease Term.** Landlord hereby leases the Premises to Tenant, and Tenant hereby rents the Premises from Landlord, for the Term and subject to the conditions of this Lease.
- B. **Types of Rental Payments.** Tenant shall pay rents of (a) net base rent payable in monthly installments as set forth in Section 1., H. hereof, in advance, on the first (1ST) day of each and every calendar month during the Term of this Lease (the "Base Rent"); (b) interest on late payments of Rent at the rates set forth hereinbelow and (c) in the event any monthly installment of Base Rent or Additional Rent, or both, is not paid within ten (10) days of the date when due, a late charge in an amount equal to 5% of the then delinquent installment of Base Rent (the "Late Charge"; the Late Charge, Base Rent, and interest thereon shall collectively be referred to as "Rent"), to the Landlord or pursuant to such other directions as Landlord shall designate in this Lease or otherwise in writing. In addition to the rental

payments, Tenant shall be responsible for payment of its own phone and internet use, services and utilities to the Premises which are separately metered and scavenger service.

- C. **Covenants Concerning Rental Payments.** Tenant shall pay the Rent promptly when due, without notice or demand, and without any abatement, deduction or setoff, except as may otherwise be expressly and specifically provided in this Lease. No payment by Tenant, or receipt or acceptance by Landlord, of a lesser amount than the correct Rent shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or letter accompanying any payment be deemed an accord or satisfaction, and Landlord may accept such payment without prejudice to its right to recover the balance due or to pursue any other remedy available to Landlord. If the Commencement Date occurs on a day other than the first (1st) day of a calendar month, the Rent due for the first calendar month of the Term shall be prorated on a per diem basis and paid to Landlord on the Commencement Date, and the Term will be extended to terminate on the last day of the calendar month in which the Expiration Date stated in **Section 1., G.** occurs. Except as may otherwise be expressly and specifically provided in this Lease, Tenant's obligation to pay Rent is independent of each and every covenant contained in this Lease.
- D. **Assignment and Subletting.** Tenet shall not assign this Lease or sublet any portion of the Premises without prior written consent of Landlord.

3. USE OF PREMISES AND COMMON AREAS.

- A. **Use of Premises and Property.** The Premises shall be used by the Tenant only for the business purpose(s) set forth in **Section 1.E.** above. Tenant shall not, at any time, use or occupy, or suffer or permit anyone to use or occupy, the Premises, or do or permit anything to be done in the Premises or the Property, in any manner that may (a) violate any Certificate of Occupancy or Business License for the Premises or the Property; (b) cause, or be liable to cause, injury to, or in any way impair the proper utilization of, all or any portion of the Property (including, but not limited to, the structural elements of the Property) or any equipment, facilities or systems therein; (c) constitute a violation of the laws and requirements of any public authority or the requirements of insurance bodies or the rules and regulations of the Property, including any covenant, condition or restriction affecting the Property; (d) exceed the load bearing capacity of the floor of the Premises; (e) impair or tend to impair the character, reputation or appearance of the Premises or Property; or (e) unreasonably annoy, inconvenience or disrupt the operations or tenancies of other tenants or users of the Property.
- B. **Signage.** Tenant shall not affix any sign of any size or character to any portion of the Property, without prior written approval of Landlord, which approval shall not be unreasonably withheld or delayed. Tenant shall remove all signs of Tenant upon the expiration or earlier termination of this Lease and immediately repair any damage to either or both of the Property and the Premises caused by, or resulting from, such removal.
- C. **Parking.** During the term of this Lease, Tenant has the non-exclusive right to use the non-reserved common automobile parking areas and driveways, and the pedestrian access areas. Parking is to be used for business related purposes only. No overnight long-term storage of vehicles or other personal property shall be permitted.

4. CONDITION AND DELIVERY OF PREMISES.

Tenant agrees that Tenant is familiar with the condition of both the Premises and the Property, and Tenant hereby accepts the foregoing on an "AS-IS," "WHERE-IS" basis, provided however the Landlord agrees the Premises shall be suitable for use as a restaurant building, with all mechanicals, plumbing and HVAC system (including all ductwork diffusers, return air vents and thermostats) to be in good working order. Tenant acknowledges that neither Landlord nor any representative of Landlord, has made any representation as to the condition of the foregoing or the suitability of the foregoing for Tenant's intended use.

5. COMPLIANCE WITH LAWS.

- A. **Compliance with Laws.** Tenant shall, at its sole expense (regardless of the cost thereof), comply with all local, state and federal laws, rules, regulations and requirements now or hereafter in force and all judicial and administrative decisions pertaining thereto (collectively, "Laws"), pertaining to either or both of the Premises and Tenant's use and occupancy thereof. With the exception of any Occupancy Inspection Fee, which is hereby waived by the Village of Lake Zurich/Landlord, if any other license or permit is required

for the conduct of Tenant's business in the Premises, Tenant, at its expense, shall procure such license prior to the Commencement Date, and shall maintain such license or permit in good standing throughout the Term. Tenant shall give prompt notice to Landlord of any written notice it receives of the alleged violation of any law or requirement of any governmental or administrative authority with respect to either or both of the Premises and the use or occupation thereof. The judgment of any court of competent jurisdiction, or the admission of Tenant in any action or proceeding against Tenant, whether Landlord is a party thereto or not, that any such Law pertaining to the Premises has been violated, shall be conclusive of that fact as between Landlord and Tenant.

6. INSURANCE.

- A. **Insurance to be Maintained by Landlord.** Landlord shall maintain (a) "all-risk" property insurance covering the Property (at its full replacement cost), but excluding Tenant's Property.
- B. **Insurance to be Maintained by Tenant.** Tenant shall purchase at its own expense and keep in force during this Lease, a policy or policies of commercial general liability insurance, including personal injury and property damage, and business auto liability, in the following amounts:

Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, and property damage, and \$1,000,000 per occurrence for personal injury. The Minimum General Aggregate shall be no less than \$2,000,000.

Business Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.

Insurance shall cover Tenant against any losses arising out of liability for personal injuries or deaths of persons and property damage occurring in or about the Premises and Property (including as a result of any) and include "all-risk" property insurance covering Tenant's Property (and damage to other property resulting from any acts or operations of Tenant) and Alterations, as defined in **Section 9.A**. Said policies shall (a) name Landlord and any party holding an interest to which this Lease may be subordinated as additional insureds, (b) be issued by an insurance company with a Best rating of A-X or better and otherwise reasonably acceptable to Landlord and licensed to do business in the state in which the Property is located, (c) provide that said insurance shall not be canceled or materially modified unless thirty (30) days' prior written notice shall have been given to Landlord, (d) provide coverage on an occurrence basis; (e) provide coverage for the indemnity obligations of Tenant under this Lease; (f) contain a severability of insured parties provision and a cross liability endorsement; (g) be primary, not contributing with, and not in excess of, coverage that Landlord may carry; (h) include a hostile fire endorsement; and (i) otherwise be in such form and include such coverages as Landlord may reasonably require. Said policy or policies or, at Landlord's option, Certificate of Insurance, in a form reasonably acceptable to Landlord, evidencing said policies, shall be delivered to Landlord by Tenant upon commencement of the Lease and renewals thereof shall be delivered at least thirty (30) days prior to the expiration of said insurance.

- C. **Waiver of Subrogation.** To the extent permitted by law, and without affecting the coverage provided by insurance required to be maintained hereunder, Landlord and Tenant each waive any right to recover against the other for (a) damages to property, (b) damages to all or any portion of either or both of the Premises and the Property, or (c) claims arising by reason of the foregoing, to the extent such damages and claims are insured against or required to be insured against by Landlord or Tenant under this Lease, and Tenant waives any loss due to business interruption. This provision is intended to waive, fully and for the benefit of each party, any rights and/or claims which might give rise to a right of subrogation by any insurance carrier. The coverage obtained by each party pursuant to this Lease shall include, without limitation, a waiver of subrogation by the carrier which conforms to the provisions of this section.

7. ALTERATIONS.

- A. **Procedural Requirements.** Tenant may, from time to time, at its expense, make alterations or improvements in and to the Premises (hereinafter collectively referred to as "**Alterations**"), provided that Tenant first obtains the written consent of Landlord in each instance. Landlord's consent to Alterations shall not be unreasonably withheld, provided that: (a) the Alterations are non-structural and the structural integrity of the Property shall not be affected; (b) the Alterations are to the interior of the Premises; (c) the proper functioning of the mechanical, electrical, heating, ventilating, air-conditioning ("**HVAC**"), sanitary and other service systems of the Property shall not be affected and the usage of such systems by Tenant shall not be increased; (d) the Alterations have no adverse effect on other leased premises in the Property; (e) Tenant shall have appropriate insurance coverage, reasonably satisfactory to Landlord, regarding the performance and installation of the Alterations; (f) the Alterations shall conform with all other requirements of this Lease; and (g) Tenant shall have provided Landlord with reasonably detailed plans (the "**Plans**") for such Alterations in advance of requesting Landlord's consent. Additionally, before proceeding with any Alterations, Tenant shall (i) at Tenant's expense, obtain all necessary governmental permits and certificates for the commencement and prosecution of Alterations; (ii) submit for Landlord's written approval, working drawings, plans and specifications and all permits for the work to be done and Tenant shall not proceed with such Alterations until it has received said approval; and (iii) cause those contractors, materialmen and suppliers engaged to perform the Alterations to deliver to Landlord certificates of insurance (in a form reasonably acceptable to Landlord) evidencing policies of commercial general liability insurance. After obtaining Landlord's approval to the Alterations, Tenant shall give Landlord at least five days' prior written notice of the commencement of any Alterations at the Premises, and Landlord may elect to record and post notices of non-responsibility at the Premises.
- B. **Performance of Alterations.** Tenant shall cause the Alterations to be performed in compliance with all applicable permits, laws and requirements of public authorities, and with Landlord's reasonable rules and regulations or any other restrictions that Landlord or Agent may impose on the Alterations. Tenant shall cause the Alterations to be diligently performed in a good and workmanlike manner, using new materials and equipment at least equal in quality and class to the standards for the Property established by Landlord. Tenant shall obtain all necessary permits and certificates for final governmental approval of the Alterations and shall provide Landlord with "as built" plans, copies of all construction contracts, governmental permits and certificates and proof of payment for all labor and materials, including, without limitation, copies of paid invoices and final lien waivers.
- C. **Lien Prohibition.** Tenant shall pay when due all claims for labor and material furnished to the Premises in connection with the Alterations. Tenant shall not permit any mechanics or materialmen's liens to attach to the Premises or the Property. Tenant, at its expense, shall procure the satisfaction or discharge of record of all such liens and encumbrances within thirty (30) days after the filing thereof; or, if acceptable to Landlord, in its reasonable determination, Tenant may procure (for Landlord's benefit) a bond or other protection against any such lien or encumbrance. In the event Tenant has not so performed, Landlord may, at its option, pay and discharge such liens and Tenant shall be responsible to reimburse Landlord, on demand and as Additional Rent under this Lease, for all costs and expenses incurred in connection therewith, together with interest thereon at the rate of five (5%) percent per annum, which expenses shall include reasonable fees of attorneys of Landlord's choosing, and any costs in posting bond to effect discharge or release of the lien as an encumbrance against the Premises or the Property.

8. LANDLORD'S AND TENANT'S PROPERTY.

- A. **Landlord's Property.** Subject to **Section 8.B**, all fixtures, machinery, equipment, Alterations, improvements and appurtenances attached to, or built into, the Premises at the commencement of, or during the Term, whether or not placed there by or at the expense of Tenant, shall become and remain a part of the Premises; shall be deemed the property of Landlord (the "**Landlord's Property**"), without compensation or credit to Tenant; and shall not be removed by Tenant at the Expiration Date unless Landlord requests their removal. Further, any personal property in the Premises on the Commencement Date,

movable or otherwise, unless installed and paid for by Tenant, shall be and shall remain the property of Landlord and shall not be removed by Tenant. In no event shall Tenant remove any of the following materials or equipment without Landlord's prior written consent: any power wiring or power panels, lighting or lighting fixtures, wall or window coverings, carpets or other floor coverings, heaters, air conditioners or any other HVAC equipment, fencing or security gates, or other similar building operating equipment and decorations.

- B. Tenant's Property.** All movable non-structural partitions, business and trade fixtures, machinery and equipment, communications equipment and office equipment that are installed in the Premises by, or for the account of, Tenant and without expense to Landlord and that can be removed without structural damage to the Property, and all furniture, furnishings and other articles of movable personal property owned by Tenant and located in the Premises (collectively, the "**Tenant's Property**") shall be and shall remain the property of Tenant and may be removed by Tenant at any time during the Term, provided Tenant repairs or pays the cost of repairing any damage to the Premises or to the Property resulting from the installation and/or removal thereof. At or before the Expiration Date, or the date of any earlier termination, Tenant, at its expense, shall remove from the Premises all of Tenant's Property and any Alterations (except such items thereof as constitute Landlord's Property and which Landlord does not request be removed; or as Landlord shall have expressly permitted, in writing, to remain, which property shall become the property of Landlord), and Tenant shall repair any damage to the Premises or the Property resulting from any installation and/or removal of Tenant's Property. Any other items of Tenant's Property that shall remain in the Premises after the Expiration Date, or following an earlier termination date, may, at the option of Landlord, be deemed to have been abandoned, and in such case, such items may be retained by Landlord as its property or be disposed of by Landlord, in Landlord's sole and absolute discretion and without accountability, at Tenant's expense. Notwithstanding the foregoing, if Tenant is in default under the terms of this Lease, it may remove Tenant's Property from the Premises only upon the express written direction of Landlord.

9. REPAIRS AND MAINTENANCE.

- A. Tenant Repairs and Maintenance.** Tenant shall, at its expense, throughout the Term, (i) maintain and preserve, in proper reasonable condition (subject to normal and customary wear and tear), the Premises and the fixtures and appurtenances therein (excluding, however, those components of the Premises for which Landlord is expressly responsible under Section 9.B.). Tenant shall also be responsible for all cost and expenses incurred to perform any and all repairs and replacements (whether structural or non-structural; interior or exterior; and ordinary or extraordinary), in and to the Premises and the Property and the facilities and systems thereof, if and to the extent that the need for such repairs or replacements arises directly or indirectly from (a) the performance or existence of any Alterations, (b) the installation, use or operation of Tenant's Property in the Premises, (c) the moving of Tenant's Property in or out of the Property, or (d) any act, omission, misuse, or neglect of Tenant, any of its subtenants, or others entering into the Premises by act or omission of Tenant or any subtenant. Any repairs or replacements required to be made by Tenant to any or all of the structural components of the Property and the mechanical, electrical, sanitary, HVAC, or other systems of the Property or Premises shall be performed by appropriately licensed contractors approved by Landlord, which approval shall not be unreasonably withheld. All such repairs or replacements shall be subject to the supervision and control of Landlord, and all repairs and replacements shall be made with materials of equal or better quality than the items being repaired or replaced.
- B. Landlord Repairs.** Notwithstanding anything contrary herein, Landlord shall repair, replace and restore the foundation, exterior and interior load-bearing walls, roof structure and roof covering and tuck-pointing, plumbing and HVAC systems, all doors, overhead or otherwise, glass and levelers located on the Premises and Property; provided, however, that (i) all costs and expenses so incurred by Landlord to repair, replace and restore the above items shall constitute Operating Expenses; and (ii) notwithstanding (i) above, in the event that any such repair, replacement or restoration is necessitated by any or all of the matters

set forth in **Sections 9.B** within a reasonable period of time after receiving from Tenant written notice of the need for such repairs.

10. UTILITIES AND LANDSCAPING. Tenant shall be responsible for all utility payments, including electricity, heat, natural gas, water, refuse and recycling collection, phone and internet service. Landlord shall be solely responsible for the repair and maintenance of any meters necessary in connection with such services. Tenant's use of electrical energy in the Premises shall not, at any time, exceed the capacity of either or both of (i) any of the electrical conductors and equipment in or otherwise servicing the Premises; and (ii) the HVAC systems of either or both of the Premises and the Property.

11. INVOLUNTARY CESSATION OF SERVICES. Landlord reserves the right, without any liability to Tenant and without affecting Tenant's covenants and obligations hereunder, to stop service of the HVAC, electric, sanitary, or other systems serving the Premises, or to stop any other services required by Landlord under this Lease, whenever and for so long as may be necessary by reason of (i) accidents, emergencies, strikes, or the making of repairs or changes which Landlord or Agent in good faith deems necessary or (ii) any other cause beyond Landlord's reasonable control. Further, it is also understood and agreed that Landlord or Agent shall have no liability or responsibility for a cessation of services to the Premises or to the Property that occurs as a result of causes beyond Landlord's reasonable control. No such interruption of service shall be deemed an eviction or disturbance of Tenant's use and possession of the Premises or any part thereof, or render Landlord or Agent liable to Tenant for damages, or relieve Tenant from performance of Tenant's obligations under this Lease, including, but not limited to, the obligation to pay Rent, or impose any liability upon Landlord or Agent by reason of inconvenience to Tenant, or interruption of Tenant's business or otherwise.

12. LANDLORD'S RIGHTS. Landlord and its respective agents, employees and representatives shall have the right to enter and/or pass through the Premises at any time or times upon reasonable prior notice (at least 24 hours) except in the event of emergency: (a) to examine and inspect the Premises and to show them to actual and prospective lenders, prospective purchasers or mortgagees of the Property or providers of capital to Landlord and its affiliates; and (b) to make such repairs, alterations, additions and improvements in or to all or any portion of either or both of the Premises and the Property, or the Property's facilities and equipment as Landlord is required or desires to make. Landlord shall be allowed to take all materials into and upon the Premises that may be required in connection with any repairs, alterations, additions or improvements, without any liability to Tenant and without any reduction or modification of Tenant's covenants and obligations hereunder; provided, however, that Landlord shall use reasonable efforts to avoid interference with Tenant's business operations and Tenant's occupancy and use of the Premises. During the period of twelve months prior to the Expiration Date (or at any time, if Tenant has vacated or abandoned the Premises or is otherwise in default under this Lease), Landlord and its agents may exhibit the Premises to prospective tenants. Additionally, Landlord shall have the following rights with respect to the Premises, exercisable without notice to Tenant, without liability to Tenant, and without being deemed an eviction or disturbance of Tenant's use or possession of the Premises or giving rise to any claim for setoff or abatement of Rent: (i) to designate and approve, prior to installation, all types of signs; (ii) to have pass keys, access cards, or both, to the Premises; (iii) to decorate, remodel, repair, alter or otherwise prepare the Premises for reoccupancy at any time after Tenant vacates or abandons the Premises for more than thirty (30) consecutive days or with no intention of reoccupying the Premises, and (iv) to change the name or address of the Property.

13. DAMAGE OR DESTRUCTION.

A. **Notification and Repair.** Tenant shall give prompt notice to Landlord and Agent of (a) any fire or other casualty to the Premises or the Property, and (b) any damage to or defect in any part or appurtenance of the Property's sanitary, electrical, HVAC, elevator or other systems located in or passing through the Premises or any part thereof. Subject to the provisions of **Section 13.C.** below, if either or both of the Property and the Premises is damaged by fire or other insured casualty, Landlord shall repair (or cause Agent to repair) the damage and restore and rebuild the Property and/or the Premises (except for Tenant's Property and Alterations) with reasonable dispatch after (x) notice to it of the damage or destruction and (y) the adjustment of the insurance proceeds attributable to such damage. Subject to the provisions of **Section 13.C.** below, Tenant shall not be entitled to terminate this Lease and no damages, compensation or claim shall be payable by Landlord for purported inconvenience, loss of business or annoyance arising from any repair or restoration of any portion of the Premises or of the Property pursuant to this Section. Landlord shall use its diligent, good faith efforts to make such repair or restoration promptly and in such manner as not to unreasonably interfere with Tenant's use and

occupancy of the Premises, but Landlord shall not be required to do such repair or restoration work except during normal business hours of business days.

- B. Rental Abatement.** If (a) the Property is damaged by fire or other casualty thereby causing the Premises to be inaccessible or (b) the Premises are partially damaged by fire or other casualty, the Rent shall be proportionally abated to the extent of any actual loss of use of the Premises by Tenant.
- C. Total Destruction.** If the Property or the Premises shall be totally destroyed by fire or other casualty, or if the Property shall be so damaged by fire or other casualty that (in the reasonable opinion of a reputable contractor or architect designated by Landlord): (i) its repair or restoration requires more than 180 days or (ii) such repair or restoration requires the expenditure of more than 50% of the full insurable value of the Property immediately prior to the casualty or (iii) the damage (x) is less than the amount stated in (ii) above, but more than 10% of the full insurable value of the Property; and (y) occurs during the last two years of Lease Term, Landlord and Tenant shall each have the option to terminate this Lease (by so advising the other, in writing) within 10 days after said contractor or architect delivers written notice of its opinion to Landlord and Tenant, but in all events prior to the commencement of any restoration of the Premises or the Property by Landlord. In such event, the termination shall be effective as of the date upon which either Landlord or Tenant, as the case may be, receives timely written notice from the other terminating this Lease pursuant to the preceding sentence. If neither Landlord nor Tenant timely delivers a termination notice, this Lease shall remain in full force and effect. If (A) any other party entitled to the insurance proceeds fails to make such proceeds available to Landlord in an amount sufficient for restoration of the Premises or the Property, or (B) the issuer of any casualty insurance policies on the Property fails to make available to Landlord sufficient proceeds for restoration of the Premises or the Property, then Landlord may, at Landlord's sole option, terminate this Lease by giving Tenant written notice to such effect within 30 days after Landlord receives notice from the insurance company that such proceeds shall not be made available, in which event the termination of this Lease shall be effective as of the date Tenant receives written notice from Landlord of Landlord's election to terminate this Lease. For purposes of this **Section 13.C.** only, "full insurable value" shall mean replacement cost, less the cost of footings, foundations and other structures below grade.

14. SURRENDER AND HOLDOVER. On the last day of the Term, or upon any earlier termination of this Lease, or upon any re-entry by Landlord upon the Premises, (a) Tenant shall quit and surrender the Premises to Landlord "broom-clean" and in good order, condition and repair, except for ordinary wear and tear and such damage or destruction as Landlord is required to repair or restore under this Lease, and (b) Tenant shall remove all of Tenant's Property therefrom, except as otherwise expressly provided in this Lease. The obligations imposed under the preceding sentence shall survive the termination or expiration of this Lease. If any repairs are required to be performed in, to or at the Premises (pursuant to the preceding sentence or any other applicable provision of this Lease) upon the expiration or termination of the Term, Tenant shall cause such repairs to be performed, to Landlord's reasonable satisfaction, within ten (10) business days after the date on which this Lease is terminated or expired. If Tenant fails to timely comply with the preceding sentence, then Landlord shall have the right to cause the repairs to be performed, at Tenant's expense, and all such expenses so incurred by Landlord shall bear interest (at the rate five percent (5%) per annum) from the date the expense is incurred until the date paid, in full, by Tenant (inclusive of interest). If Tenant remains in possession after the Expiration Date hereof or after any earlier termination date of this Lease or of Tenant's right to possession: (i) Tenant shall be deemed a tenant-at-will; (ii) Tenant shall pay 200% of the aggregate of the Base Rent last prevailing hereunder, and also shall pay all actual damages sustained by Landlord, directly by reason of Tenant's remaining in possession after the expiration or termination of this Lease; (iii) there shall be no renewal or extension of this Lease by operation of law; and (iv) the tenancy-at-will may be terminated upon thirty (30) days' written notice from Landlord. The provisions of this **Section 16** shall not constitute a waiver by Landlord of any re-entry rights of Landlord provided hereunder or by law.

15. EVENTS OF DEFAULT. Each of the following shall constitute a default by Tenant under this Lease: (a) if Tenant fails to pay Rent or any other payment when due hereunder within five days after written notice from Landlord of such failure to pay on the due date; provided, however, that if in any consecutive twelve (12) month period, Tenant shall, on three separate occasions, fail to pay any installment of Rent on the date such installment of Rent is due, then, on the third such occasion and on each occasion thereafter on which Tenant shall fail to pay an installment of Rent on the date such installment of Rent is due, Landlord shall be relieved from any obligation to

by Landlord's negligence) occurring in, at or upon either or both of the Property and the Premises and caused by any or all of Tenant and Tenant's Parties; (d) any breach by Tenant of any of its warranties and representations under this Lease; (e) any actions necessary to protect Landlord's interest under this Lease in a bankruptcy proceeding or other proceeding under the Bankruptcy Code; (f) any violation or alleged violation by any or all of Tenant and Tenant's Parties of any Law including, without limitation, any Environmental Law; (g) any breach of the provisions of Section 7 by any or all of Tenant and Tenant's Parties; (h) claims for work or labor performed or materials supplies furnished to or at the request of any or all of Tenant and Tenant's Parties; (i) claims arising from any breach or default on the part of Tenant in the performance of any covenant contained in this Lease; (j) any Hazardous Materials used, exposed, emitted, released, discharged, generated, manufactured, sold, transported, handled, stored, treated, reused, presented, disposed of or recycled in, at, near or under all or any portion of the Premises as a result of the acts or omissions of any or all of Tenant and Tenant's Parties; or (k) the violation of any Environmental Law or any permit, application or consent required in connection with any Environmental Law by any or all of Tenant and Tenant's Parties with respect to the Premises during the Term, excluding, however, any violation of any Environmental Law resulting from the acts or omissions of Landlord and Landlord's employees, agents and contractors (collectively, "Tenant's Indemnified Matters"). In case any action or proceeding is brought against any or all of Landlord and the Landlord Indemnified Parties by reason of any of Tenant's Indemnified Matters, Tenant, upon notice from Landlord, shall resist and defend such action or proceeding by counsel reasonably satisfactory to, or selected by, Landlord. The term "Losses" shall mean all claims, demands, expenses, actions, judgments, damages (whether direct or indirect, known or unknown, foreseen or unforeseen), penalties, fines, liabilities, losses of every kind and nature (including, without limitation, property damage, diminution in value of Landlord's interest in the Premises or the Property, damages for the loss or restriction on use of any space or amenity within the Premises or the Property, damages arising from any adverse impact on marketing space in the Property, sums paid in settlement of claims and any costs and expenses associated with injury, illness or death to or of any person), suits, administrative proceedings, costs and fees, including, without limitation, attorneys' and consultants' fees and expenses, and the costs of cleanup, remediation, removal and restoration, that are in any way related to any matter covered by the foregoing indemnity. The provisions of this subsection shall survive the expiration or termination of this Lease.

- B. Landlord Indemnification.** Landlord hereby indemnifies, defends and holds Tenant harmless from and against any and all claims, losses, costs, damages (actual, but not consequential or speculative), judgments, causes of action, administrative proceedings and third party expenses (including, but not limited to, court costs and attorneys' reasonable fees) actually suffered or incurred by Tenant as the sole and direct result of any negligent, willful or intentional acts or omissions of any or all of Landlord and any parties within the direct and sole control of Landlord. In the event that any action or proceeding is brought against Tenant, and the foregoing indemnity is applicable to such action or proceeding, then Landlord, upon notice from Tenant, shall resist and defend such action or proceeding by counsel reasonably satisfactory to Tenant. Notwithstanding anything to the contrary set forth in this Lease, however, in all events and under all circumstances, the liability of Landlord to Tenant shall be limited to the interest of Landlord in the Property, and Tenant agrees to look solely to Landlord's interest in the Property for the recovery of any judgment or award against Landlord, it being intended that Landlord shall not be personally liable for any judgment or deficiency. The provisions of this subsection shall survive the expiration or termination of this Lease.

18. MISCELLANEOUS.

- A. Entire Agreement.** No agreement shall be effective to modify this Lease, in whole or in part, unless such agreement is in writing, and is signed by the party against whom enforcement of said change or modification is sought.
- B. Notices.** Unless otherwise provided in this Agreement, any notice or other communication herein required or permitted to be given shall be in writing and shall be given by electronic communication, hand delivery, registered or certified mail, with proper postage prepaid,

return receipt requested, or courier service regularly providing proof of delivery, addressed to the parties as set forth below.

Village of Lake Zurich
c/o Village Manager
70 E. Main Street
Lake Zurich, IL 60047

Craving Gyros, Inc
c/o _____
2 East Main Street
Lake Zurich, IL 60047

- C. **Non-Waiver.** The failure of either party to insist, in any one or more instances, upon the strict performance of any one or more of the obligations of this Lease, or to exercise any election herein contained, shall not be construed as a waiver or relinquishment for the future of the performance of such one or more obligations of this Lease or of the right to exercise such election, but the Lease shall continue and remain in full force and effect with respect to any subsequent breach, act or omission. The receipt and acceptance by Landlord of Base Rent with knowledge of breach by Tenant of any obligation of this Lease shall not be deemed a waiver of such breach.
- D. **Lead Paint Disclosure.** "Every purchaser or lessee of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller or lessor of any interest in residential real estate is required to provide the buyer or lessee with any information on lead-based paint hazards from risk assessments or inspection in the seller or lessor's possession and notify the buyer or lessee of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase."
- E. **Radon Gas Disclosure.** As required by law, Landlord makes the following disclosure: "Radon Gas" 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. Additional information regarding radon and radon testing may be obtained from your county public health unit.

19. Parties Bound. Except as otherwise expressly provided for in this Lease, this Lease shall be binding upon, and inure to the benefit of, the successors and assignees of the parties hereto. Tenant hereby releases Landlord named herein from any obligations of Landlord for any period subsequent to the conveyance and transfer of Landlord's ownership interest in the Property. No assignment can be made without Landlord's written consent. In the event of such conveyance and transfer, Landlord's obligations shall thereafter be binding upon each transferee (whether Successor Landlord or otherwise). No obligation of Landlord shall arise under this Lease until the instrument is signed by, and delivered to, both Landlord and Tenant.

20. Recordation of Lease. Tenant shall not record or file this Lease (or any memorandum hereof) in the public records of any county or state.

21. Survival of Obligations. Upon the expiration or other termination of this Lease, neither party shall have any further obligation nor liability to the other except as otherwise expressly provided in this Lease and except for such obligations as, by their nature or under the circumstances, can only be, or by the provisions of this Lease, may be performed after such expiration or other termination.

22. Governing Law; Construction. This Lease shall be governed by and construed in accordance with the laws of Illinois. Any proceeding initiated over any dispute arising out of or relating to this Lease shall be initiated in any federal or state court located within the County of Lake in the State of Illinois, and the parties further agree that venue for all such matters shall lie exclusively in those courts. If any provision of this Lease shall be invalid or unenforceable, the remainder of this Lease shall not be affected but shall be enforced to the extent permitted by law. The captions, headings and titles in this Lease are solely for convenience of reference and shall not affect its interpretation. Each covenant, agreement, obligation, or other provision of this Lease to be performed by Tenant, shall be construed as a separate and independent covenant of Tenant, not dependent on any other provision of this Lease.

This Lease may be executed in counterpart and, when all counterpart documents are executed, the counterparts shall constitute a single binding instrument.

23. **Authority of Tenant.** If Tenant is a corporation, partnership, limited liability company, association or any other entity, it shall deliver to Landlord, concurrently with the delivery to Landlord of an executed Lease, certified resolutions of Tenant's directors or other governing person or body (i) authorizing execution and delivery of this Lease and the performance by Tenant of its obligations hereunder and (ii) certifying the authority of the party executing the Lease as having been duly authorized to do so.

24. **Waiver Of Trial By Jury.** THE LANDLORD AND THE TENANT, TO THE FULLEST EXTENT THAT THEY MAY LAWFULLY DO SO, HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY ANY PARTY TO THIS LEASE WITH RESPECT TO THIS LEASE, THE PREMISES, OR ANY OTHER MATTER RELATED TO THIS LEASE OR THE PREMISES INCLUDING WITHOUT LIMITATION, AN ACTION FOR RECESSION OF THIS LEASE. If Landlord commences any summary proceeding against Tenant to obtain possession of the Premises, Tenant will not interpose any counterclaim of any nature or description in any such proceeding (unless failure to impose such counterclaim would preclude Tenant from asserting in a separate action the claim which is the subject of such counterclaim,) and will not seek to consolidate such proceeding with any other action which may have been or will be brought in any other court by Tenant, but the foregoing shall not preclude Tenant from asserting any defenses in such summary proceeding including a claim that no default exists.

WHEREFORE, the Village of Lake Zurich and _____ have caused this Lease to be executed and attested on this ____ day of _____, 2020.

VILLAGE OF LAKE ZURICH (Landlord)

Printed Name: _____
Signature: _____
Title: _____

ATTEST:

Printed Name: _____
Signature: _____
Title: _____

TENET

Printed Name: Gerardo Montes de Oca
Signature: *Gerardo Montes de Oca*
Title: Business owner

ATTEST:

Printed Name: JUANA AGUIA
Signature: *Juana AguiA*
Title: Business owner

FOR INFORMATION ONLY

Tenant Cell Phone Number(s): 6.M (773) 905-4302
Tenet E-Mail Address: giseats@gmail