

STANDARD FORM OF STORE LEASE  
The Real Estate Board of New York, Inc.

2/94-A

Agreement of Lease, made as of this **MAY 1st** day of **2009**, between CORTLAND REALTY, INC., AS AGENT FOR GINEZRA ASSOCIATES, LLC, having an address of 140 Fulton Street, New York, New York 10038

party of the first part, hereinafter referred to as OWNER or LANDLORD, and **DUANE STREET DESIGN STUDIO, LLC**, having an address at 188-190 Duane Street, New York, New York.

party of the second part, hereinafter referred to as  
TENANT,

**WITNESSETH** Owner hereby leases to Tenant and Tenant hereby hires from Owner the ground floor store premises and commercial basement space thereunder (hereinafter referred to as "Demised Premises", "demised premises", "Premises" or "premises") in the building known as 188-190 Duane Street (hereinafter referred to as "Building" or "building") in the Borough of Manhattan, City of New York, for the term of approximately **three** Lease Years (as hereinafter defined) (or until such term shall sooner cease and expire as hereinafter provided), to commence and to end on the dates set forth in Article 84 of the rider annexed hereto and made a part hereof ("Rider"), both dates inclusive, at an annual base rental rate as set forth in Article 41 of the Rider

which Tenant agrees to pay in lawful money of the United States which shall be legal tender in payment of all debts and dues, public and private, at the time of payment, in equal monthly installments in advance on the first day of each month during said term, at the office of Owner or such other place as Owner may designate, without any set off or deduction whatsoever, except that Tenant shall pay the first monthly installment(s) on the execution hereof (unless this lease be a renewal).

In the event that, at the commencement of the term of this lease, or thereafter, Tenant shall be in default in the payment of rent to Owner pursuant to the terms of another lease with Owner or with Owner's predecessor in interest, Owner may at Owner's option and without notice to Tenant add the amount of such arrears to any monthly installment of rent payable hereunder and the same shall be payable to Owner as additional rent.

The parties hereto, for themselves, their heirs, distributees, executors, administrators, legal representatives, successors and assigns, hereby covenant as follows:

**Rent:** 1. Tenant shall pay the rent as above and as hereinafter provided.  
**Occupancy:** 2. Tenant shall use and occupy demised premises for a first class retail clothing store and the incidental sale of related accessories to the foregoing, including but not limited to, footwear and handbags, on the ground floor portion of the Demised Premises basement space to be used solely for storage purposes (and as a sample room if and for no other purpose. Tenant shall at all times conduct its business in a high grade and reputable manner, shall not violate Article 37 hereof, and shall keep show windows and signs in a neat and clean condition.

**Alterations:** 3. Tenant shall make no changes in or to the demised premises of any nature without Owner's prior written consent. Subject to the prior written consent of Owner, and to the provisions of this article, Tenant, at Tenant's expense, may make alterations, installations, additions or improvements which are non-structural and which do not affect utility services or plumbing and electrical lines, in or to the interior of the demised premises, including but not limited to, alterations, additions, installations or improvements, at its expense, obtain all permits, approvals and certificates required by any governmental or quasi-governmental bodies and (upon completion) certificates of final approval thereof and shall deliver promptly duplicates of all such permits, approvals and certificates to Owner and Tenant agrees to carry and will cause Tenant's contractors and sub-contractors to carry such workmen's compensation, general liability, personal and property damage insurance as Owner may require. If any mechanic's lien is filed against the demised premises, or the building of which the same forms a part, for work claimed to have been done for, or materials furnished to, Tenant, whether or not done pursuant to this article, the same shall be discharged by Tenant within 30 days thereafter, at Tenant's expense, by payment or filing the bond required by law. All fixtures and all pending, pending, rulings and like installations, installed in the premises at any time, either by Tenant or by Owner or Tenant's behalf, shall, upon installation, become the property of Owner and shall remain upon and be surrendered with the demised premises, unless Owner, by notice to Tenant no later than twenty days prior to the date fixed as the termination of this lease, directs to relinquish Owner's right thereto and to have them removed by Tenant prior to the expiration of the lease, at Tenant's expense. Nothing in this article shall be construed to give Owner title to or prevent Tenant's removal of trade fixtures, movable office furniture and equipment, but upon removal of any such from the premises or upon removal of other installations as may be required by Owner, Tenant shall immediately and at its expense, repair and restore the premises to the condition existing prior to installation and repair any damage to the demised premises or the building due to such removal. All property permitted or required to be removed by Tenant at the end of the term remaining in the premises after Tenant's removal shall be deemed abandoned and any, at the election of Owner, either be retained as Owner's property or may be removed from the premises by Owner at Tenant's expense.

**Repairs:** 4. Owner shall maintain and repair the public portions of the building, both exterior and interior, except that if Owner allows Tenant to erect on the outside of the building a sign or signs, or a hoist, lift or sidewalk elevator for the exclusive use of Tenant, Tenant shall maintain such water for installation in good appearance and shall cause the same to be operated in a good and workmanlike manner and shall make all repairs thereto necessary to keep same in good order and condition, at Tenant's own cost and expense, and shall cause the same to be covered by the insurance provided for hereafter in Article 8. Tenant

shall, throughout the term of this lease, take good care of the demised premises and the fixtures and appurtenances thereto, and the sidewalk adjacent thereto, and at its sole cost and expense, make all non-structural repairs thereto as and when needed to preserve them in good working order and condition, reasonably maintained, except for damage from the elements, fire or other casualty, excepted. If the demised premises be or become infested with vermin, Tenant shall at Tenant's expense, cause the same to be exterminated from time to time to the satisfaction of Owner. Except as specifically provided in Article 9 or elsewhere in this lease, there shall be no allowance to the Tenant for the diminution of rental value and no liability on the part of Owner by reason of inconvenience, annoyance or injury to business arising from Owner, Tenant or others making or failing to make any repairs, alterations, additions or improvements in or to any portion of the building including the erection or operation of any crane, derrick or sidewalk shed, or in or to the demised premises or the fixtures, appurtenances or equipment thereof. It is specifically agreed that Tenant shall be not entitled to any set off or reduction of rent by reason of any failure of Owner to comply with the covenants of this or any other article of this lease. Tenant agrees that Tenant's sole remedy at law in such instance will be by way of an action for damages for breach of contract. The provisions of this Article 4 with respect to the making of repairs shall not apply in the case of fire or other Casualty which are dealt with in Article 9 hereof.

**Window Cleaning:**

5. Tenant will not clean nor require, permit, suffer or allow any window in the demised premises to be cleaned from the outside in violation of Section 202 of the New York State Labor Law or any other applicable law or of the Rules of the Board of Standards and Appeals, or of any other Board or body having or asserting jurisdiction.

**Requirements of Law, Fire Insurance:**

6. Prior to the commencement of the lease term, if Tenant is then in possession, and at all times thereafter, Tenant, at Tenant's sole cost and expense, shall promptly comply with all present and future laws, orders and regulations of all state, federal, municipal and local governments, departments, commissions and boards and any division of any public officer pursuant to law, and all orders, rules and regulations of the New York Board of Fire Underwriters or the Insurance Services Office, or any similar body which shall impose any violation, order or duty upon Owner or Tenant with respect to the demised premises, and with respect to the portion of the sidewalk adjacent to the premises, if the premises are on the same level, whether or not arising out of Tenant's use or manner of use of the premises or the building (including the use permitted under the lease). Except as provided in Article 29 hereof, nothing herein shall require Tenant to make structural repairs or alterations unless Tenant has by its manner of use of the demised premises, or method of operation therein, violated any such laws, ordinances, orders, rules, regulations or requirements with respect thereto. Tenant shall not do

 Rider to be added if necessary.

14. No vault, vault space or area, whether or not enclosed or covered, not within the property line of the building is leased hereunder, anything contained in or indicated on any sketch, blue print or plan or anything contained elsewhere in this lease to the contrary notwithstanding. Owner makes no representation as to the location of the property line of the

Occupancy: 15. Tenant will not at any time use or occupy the demised premises in violation of Articles 2 or 37 hereof, or of the certificate of occupancy issued for the building of which the demised premises are a part. Tenant has inspected the premises and accepts them as is, subject to the risks assumed herein with respect to Owner's work, if any. In any event, Owner makes no representation as to the condition of the premises and Tenant agrees to accept the same subject to violations whether or not of record.

(b) It is stipulated and agreed that in the event of the termination of this lease pursuant to (a) herein, Owner shall, forthwith, and during any other provisions of this lease to the contrary, be entitled to recover from Tenant the sum of liquidated damages an amount equal to the difference between the rental value of the premises for the term of the term defined and the fair and reasonable rental value of the defined premises for that same period. In lieu of compensation of such damages the difference between any liquidated sum of noncompensation does not constitute the sum of liquidation and the fair and reasonable rental value of the premises and premises for the period for which such liquidated sum was payable shall be null and void and the sum of the rental value of the premises for the period for which such liquidated sum was payable shall be null and void. For the purpose of this paragraph, the rental value of the premises shall be determined by the fair and reasonable rental value of the premises for the period for which such liquidated sum was payable, and the fair and reasonable rental value of the premises for the period for which such liquidated sum was payable shall be determined by the fair and reasonable rental value of the premises for the period for which such liquidated sum was payable. Nothing herein shall limit or preclude the right of the Owner to prove for and obtain as liquidated damages by way of such compensation, an amount equal to or less than the difference between the rental value of the premises for the period for which such liquidated sum was payable and the fair and reasonable rental value of the premises for the period for which such liquidated sum was payable. The provisions herein governing the proceedings in which the difference between the rental value of the premises for the period for which such liquidated sum was payable and the fair and reasonable rental value of the premises for the period for which such liquidated sum was payable shall be determined shall be null and void and the sum of the rental value of the premises for the period for which such liquidated sum was payable shall be null and void.

1. If Tenant shall fail to pay the monthly rental payments to Landlord within the time specified in the above schedule, then Landlord shall have the right to terminate this lease and to re-rent the premises at the discretion of Landlord. If Tenant shall fail to pay the monthly rental payments to Landlord within the time specified in the above schedule, then Landlord shall have the right to terminate this lease and to re-rent the premises at the discretion of Landlord.

[illegible][illegible]

25. Neither Owner nor Owner's agent have made any representations or promises with respect to the physical condition of the building, the land, or the contents of the building.

End of Term: 21. Upon the expiration or other termination of the term of this lease, Tenant shall quit and surrender to Owner the enclosed premises, broom clean, in good order and condition, ordinary wear excepted, and Tenant shall remove all its property. Tenant's obligation to observe or perform has covenant shall survive the expiration or other termination of this lease. If the last day of the term of this lease or any renewal thereof, falls on Sunday, this term shall expire 1 noon on the preceding Saturday unless there is a legal holiday in which case it shall expire at noon on the preceding business day.

23. If Owner is unable to give possession of the demised premises on the date of the commencement of the term hereof, because of the holding-over or

[illegible]

one of this lease. The provisions of this article are intended to constitute an express provision to the contrary within the meaning of Section 223-a of the New York Real Property Law.

#### No Waiver

24. The failure of Owner to seek redress for violation of, or non-compliance with, the Rules or Regulations set forth or hereinafter adopted by and for the Board of Fire Protection and Prevention, shall not prevent a subsequent action which would have originally constituted a violation from having all the force and effect of an original violation. The receipt by Owner of rent and/or additional rent with knowledge of the breach of any covenant of this lease shall not be deemed a waiver of such breach and no provision of this lease shall be deemed to have been waived by Owner unless such waiver be in writing signed by Owner. No payment by Tenant or receipt by Owner of a later receipt than the monthly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement of any check or any letter accompanying any check or payment at rent be deemed an account and satisfaction, and Owner may accept such check or payment without prejudice to Owner's right to recover the balance of such rent or pursue any other remedy in this lease provided. No action shall be taken by Owner or Owner's agents against the Tenant hereby deemed shall be deemed in acceptance of a surrender of said premises and an agreement to accept such surrender shall be void unless a written agreement signed by Owner. No employee of Owner or Owner's agent shall have any power to accept the keys of said premises prior to the termination of the lease and the delivery of keys to any such agent or employee shall not operate as a termination of the lease or a surrender of the premises.

#### Waiver of Trial by Jury

25. It is mutually agreed by and between Owner and Tenant that the respective parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other (except for personal injury or property damage) on any matters whatsoever arising out of or in any way connected with this lease, the relationship of Owner and Tenant, Tenant's use of or occupancy of said premises, and any emergency statutory or any other statutory remedy. It is further mutually agreed that in the event Owner commences any proceeding or action for possession including a summary proceeding for possession of the premises, Tenant will not litigate any counterclaim of whatever nature or description in any such proceeding, including a counterclaim under Article 51 of the New York Real Property Law.

#### Indemnity to Tenant

26. This lease and the obligation of Tenant to pay rent hereunder and perform all of the other covenants and agreements hereunder on part of Tenant shall be performed shall in no wise be affected, impaired or excused because Owner is unable to fulfill any of the obligations under this lease or to supply or is delayed in supplying any service expressly or impliedly to be supplied or is unable to make, or is delayed in making any repair, addition, alterations or decorations or is unable to supply or is delayed in supplying any equipment, fixtures or materials if Owner is prevented or delayed from so doing by reason of action of any governmental agency or restriction or by reason of any rule, order or regulation of any department or subdivision thereof of any governmental agency or by reason of the conditions of which have been or are affected, either directly or indirectly, by war or other emergency, or when, in the judgment of Owner, it is necessary to take such actions as necessary by reason of epidemic, mechanical breakdown, or to make repairs, alterations or improvements.

#### Bill and Notice

27. Except as otherwise in this lease provided, a bill, statement, notice or communication which Owner may desire or be required to give to Tenant, shall be deemed sufficiently given or rendered if, in writing, delivered to Tenant personally or sent by registered or certified mail addressed to Tenant at the building of which the premises form a part or at the last known residence address or business address of Tenant or left at any of the following addresses addressed to Tenant, and the time of the sending of such bill or statement or of the giving of such notice or communication shall be deemed to be the date when the same is delivered to Tenant, mailed, or left at the premises as herein provided. Any notice by Tenant to Owner must be served by registered or certified mail addressed to Owner at the address first hereinabove given or at such other address as Owner shall designate by written notice.

#### Water Charges

28. If Tenant requires, uses or consumes water for any purpose in addition to ordinary lavatory purposes (of which fact Tenant certifies Owner to be the sole judge) Owner may install a water meter and thereby measure Tenant's water consumption for all purposes. Tenant shall pay Owner for the cost of the water and the cost of the installation thereof and throughout the duration of Tenant's occupancy Tenant shall keep said meter and installation equipment in good working order and repair all Tenant's own cost and expense. Tenant agrees to pay for water consumed, as shown on said meter and when bills are rendered. Tenant covenants and agrees to pay the sewer rent, charge or any other tax, rate, levy or charge which now or hereafter is assessed, imposed or levied upon the premises or the rental of which they are part pursuant to law, order or regulation made or issued in connection with the use, consumption, maintenance or supply of water, water system or sewage or sewage connection or system. The bill rendered by Owner shall be payable by Tenant as additional rent. If the building or the premises or any part thereof be supplied with water through a meter through which water is also supplied to other premises Tenant shall pay to Owner as additional rent, on the first day of each month, the total meter charge, as Tenant's portion. Independently of and in addition to any of the remedies reserved to Owner hereabove or elsewhere in this lease, Owner may sue for and collect any amount to be paid by Tenant or paid by Owner for any of the reasons or purposes hereabove set forth.

#### Sprinklers

29. Anytime elsewhere in this lease to the contrary notwithstanding, if the New York Board of Fire Underwriters or the Insurance Services Office or any bureau, department or official of the Federal, State or city government require or recommend the installation of a sprinkler system or that any change, modification, alterations, or additional sprinkler heads or other equipment be made or supplied in an existing sprinkler system by reason of Tenant's business, or the location of partitions, trade fixtures, or other contents of the premises, or for any other reason, or if any such sprinkler system or shall be filled in or deleted.

installations, changes, modifications, alterations, additional sprinkler heads or other such equipment, as may be necessary to prevent the imposition of a penalty or charge against the Tenant for a sprinkler system in the first instance by or by any said Insurance or by any fire insurance company. Tenant shall, at Tenant's expense, promptly make such sprinkler system installations, changes, modifications, alterations, and supply additional sprinkler heads or other equipment as required whether the work involved shall be structural or non-structural in nature. Tenant shall pay to Owner as additional rent the sum of \$100.00 per month during the term of this lease, at Tenant's option of the contract price for sprinkler supervisory service.

#### Evacuation

30. As long as Tenant is not in default under any of the covenants of this lease beyond the applicable grace period provided hereinabove for the curing of such default, Owner shall, if and insofar as is required by law, on business days from 8:00 a.m. to 6:00 p.m., and on Saturdays from 8:00 a.m. to 1:00 p.m. Tenant shall at Tenant's expense, keep the premises clean and in order, to the satisfaction of Owner, and if deemed premises are situated on the second floor, Tenant shall, at Tenant's own expense, make all repairs and replacements to the sidewalks and curbs adjacent thereto, and keep said sidewalk and curbs free from snow, ice, dirt and rubbish. Tenant shall pay to Owner the cost of removal of any of Tenant's refuse and rubbish from the building. Bills for the same shall be rendered by Owner to Tenant at such times as Owner may elect and shall be the net payable when rendered; and the amount of such bills shall be deemed only a portion of the total amount of such bills. Tenant shall, however, have the right to independently contract for the removal of such rubbish and refuse in the event that Tenant does not wish to have same done by employees of Owner. Under such circumstances, however, the removal of such refuse and rubbish by others shall be subject to such rules and regulations as, in the judgment of Owner, are necessary for the proper operation of the building.

#### Security

31. Tenant has deposited with Owner the sum of \$100.00 as security for the faithful performance and observance by Tenant of the terms, provisions and conditions of this lease. It is agreed that in the event Tenant defaults in payment of any of the terms, provisions and conditions of this lease, including, but not limited to, the payment of rent and additional rent, Owner may use, apply or retain the whole or any part of the security so deposited to the extent required for the payment of any rent and additional rent or any other sum to which Tenant is indebted for any sum which Owner may expect or may be required to refund by reason of Tenant's default in payment of any of the terms, provisions and conditions of this lease, including but not limited to, any damages or deficiency in the rental of the premises, whether such damages or deficiency accrued before or after summary proceedings or otherwise by Owner. In the event that Tenant shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this lease, the security shall be returned to Tenant after the date fixed by the end of the Lease and after delivery of entire possession of the premises to Owner. In the event of a sale of the land and building or leasing of the building, of which the premises form a part, Owner shall have the right to transfer the security to the purchaser or lessee of the building and Tenant's promise to look to the new Owner solely for the return of said security and it is agreed that the provisions hereof shall apply to every transfer or assignment made of the security to a new Owner. Tenant further covenants that it will not assign or sublet or attempt to assign or sublet the premises deposited herein as security and that neither Owner nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

#### Captions

32. The Captions are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this lease nor the intent of any provision hereof.

#### Definitions

33. The term "Owner" as used in this lease means only the Owner, or the mortgagee in possession, for the time being of the land and building for the Owner or a lease of the building or of the land and building of which the premises form a part, or in the event of any sale or sales of said land and building or of said lease, or in the event of a lease of said building, or of the land and building, the said Owner shall be and hereby is expressly freed and relieved of all covenants and obligations of Owner hereunder, and it shall be deemed and construed without further agreement between the parties of their successors in interest, or between the parties and the purchaser, at any such sale, or the mortgagee of the building, or of the land and building, that the purchaser or the lessee of the building has assumed and agreed to carry out any and all covenants and obligations of Owner hereunder. The words "myself" and "myself" as used in this lease are restricted to their intended legal meaning. The term "business days" as used in this lease shall exclude Saturdays, Sundays and all days designated as holidays by the applicable building service union employees service contract or by the applicable Operating Engineers contract with respect to HVAC service. Whenever it is expressly provided in this lease that some act shall not be unreasonably withheld, such contract shall not be unreasonably delayed.

#### Adjacent Excavation

34. If an excavation shall be made upon land adjacent to the premises, or shall be authorized to be made, Tenant shall afford to the person causing or authorized to cause such excavation, license to enter upon the premises for the purpose of doing such work and shall person shall deem necessary to preserve the well or the building of which the premises form a part from injury or damage and to support the same by proper foundations without any claim for damages or indemnity against Owner, or distribution or abatement of rent.

#### Rules and Regulations

35. Tenant and Tenant's servants, employees, agents, visitors, and licensees shall observe fully, and comply strictly with the Rules and Regulations and such other and further reasonable Rules and Regulations as Owner or Owner's agent may from time to time adopt. Notice of any additional rules or regulations shall be given in such manner as Owner may elect. In case Tenant disputes the reasonableness of any additional Rule or Regulation hereafter made or adopted by Owner or Owner's agent, the

Tenant's  
Responsibility  
After Share

parties hereby agree to submit the question of the construction of each Rule or Regulation for decision to the New York State of the American Arbitration Association, whose determination shall be final and conclusive upon the parties hereto. The right to dispute the reasonableness of any additional Rule or Regulation upon Tenant's part shall be deemed waived unless the same shall be asserted by service of a notice, in writing upon Owner within fifteen (15) days after the giving of notice thereof. Nothing in this lease shall be construed to impose upon Owner any duty or obligation to enforce the Rules and Regulations or terms, covenants or conditions in any other lease, or against any other tenant and Owner shall not be liable to Tenant for violation of the same by any other tenant, its servants, employees, agents, visitors or licensees.

**Glass** 36. Owner shall replace, at the expense of Tenant, any and all plate and other glass damaged or broken from any cause whatsoever and about the demised premises. Tenant shall, however, and keep Tenant, at Tenant's expense, all plate and other glass in the demised premises for and in the purpose of the work. Bills for the premiums therefor shall be rendered by Owner to Tenant at such times as Owner may elect, and shall be due from, and payable by, Tenant when rendered, and the amount thereof shall be deemed to have been paid by Tenant.

**Photographs** 37. Tenant agrees that the value of the demised premises and the reputation of the Owner will be seriously injured if the premises are used for any obscene or pornographic purposes or any sort of commercial use. Tenant agrees that Tenant will not bring or permit any obscene or pornographic material on the premises, and shall not permit or permit any obscene, indecent, or lewd acts or performances on the premises, nor permit use of the premises for such purposes, nor as a place for such acts or performances, nor as a place for such acts or performances. Tenant agrees further that Tenant will not permit any of these uses by any witnesses or agents of the premises. This Article

shall directly bind any successor in interest to the Tenant. Tenant agrees that if at any time Tenant is in any of the provisions of this Article, such violation shall be deemed a breach of a substantial obligation of the terms of this lease and subject to the contract. Photographic material is defined for purposes of this Article as any written or pictorial matter with printed appeal of any objects of instrument that are primarily concerned with lewd or pornographic sexual activity. Obscene material is defined here as it is in Penal Law § 235.00.

**Notepaper** 38. Tenant, at any time, and from time to time, upon at least 10 days prior notice by Owner, shall execute, acknowledge and deliver to Owner, and/or to any other person, firm or corporation specified by Owner, a statement certifying that this lease is unmodified and in full force and effect for, if there have been modifications, that the same is in full force and effect as modified and stating the modifications, stating the dates when the rent and additional rent have been paid, and stating whether or not there exists any default by Owner under this lease, and, also, specifying each such default.

**Successors and Assigns** 39. The covenants, conditions and agreements contained in this lease shall bind and have the benefit of Owner and Tenant and their respective heirs, distributees, executors, administrators, successors, and assigns, and shall be enforceable by Owner's estate and interest in the land and building for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) against Owner in the event of any default by Owner hereunder, and no other property or assets of such Owner (or any partner, member, officer, or director thereof, disclosed or undisclosed), shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this lease, the relationship of Owner and Tenant hereunder, or Tenant's use and occupancy of the demised premises.

#### SEE RIDER ATTACHED HERETO AND MADE A PART HEREOF

In Witness Whereof, Owner and Tenant have respectively signed and sealed this lease as of the day and year first above written.

Witness for Owner:

CORTLAND REALTY CO., as agent for  
Ginzburg Associates, LLC

BY:

Witness for Tenant:

NILI LOTAN ON BEHALF OF  
DURNE STREET DESIGN STUDIO, LLC

#### ACKNOWLEDGEMENTS

**CORPORATE OWNER**  
STATE OF NEW YORK, ss. 1  
County of

On this day of 19 before me personally came to me known, who being by me duly sworn, did depose and say that he is the of the corporation described in and which executed the foregoing instrument, as OWNER, that he knows the seal of said corporation, the seal affixed to said instrument is such corporate seal, that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

**CORPORATE TENANT**  
STATE OF NEW YORK, ss. 2  
County of

On this day of 19 before me personally came to me known, who being by me duly sworn, did depose and say that he is the of the corporation described in and which executed the foregoing instrument, as TENANT, that he knows the seal of said corporation, the seal affixed to said instrument is such corporate seal, that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

**INDIVIDUAL OWNER**  
STATE OF NEW YORK, ss. 3  
County of

On this day of 19 before me personally came to be known and known to me to be the individual described in and who, as OWNER, executed the foregoing instrument and acknowledged to me that he executed the same.

**INDIVIDUAL TENANT**  
STATE OF NEW YORK, ss. 4  
County of

On this day of 19 before me personally came to be known and known to me to be the individual described in and who, as TENANT, executed the foregoing instrument and acknowledged to me that he executed the same.

The undersigned Guarantor guarantees to Owner, Owner's successors and assigns, the full performance and observance of all the agreements to be performed and observed by Tenant in the attached Lease, including the Rules and Regulations, as herein provided, without requiring any action by Guarantor of nonpayment, or nonperformance, or default, or notice of default, to hold the undersigned responsible under this guaranty, all of which the undersigned hereby expressly waives and expressly agrees that the liability of this agreement and the agreements of the Guarantor under this agreement shall not be ended, or changed by reason of the claims to Owner against Tenant of any of the rights or remedies given to Owner as agreed in the attached Lease. The Guarantor further agrees that this guaranty shall remain and continue in full force and effect as to any renewal, change or extension of the Lease. As a further inducement to Owner to make the Lease Owner and Guarantor agree that in any action or proceeding brought by either Owner or the Guarantor against the other on any matters concerning the Lease or of this guaranty that Owner and the undersigned shall not do waive trial by jury.

Dated: 19

Guarantor

Witness

Guarantor's Residence

Business Address

Firm Name

STATE OF NEW YORK )

COUNTY OF )

On this day of 19

before me personally came to me known and known to me to be the individual described in, and who executed the foregoing Guaranty and acknowledged to me that he executed the same.

Notary

### IMPORTANT - PLEASE READ

#### RULES AND REGULATIONS ATTACHED TO AND MADE A PART OF THIS LEASE IN ACCORDANCE WITH ARTICLE 31.

1. The sidewalks, entrances, driveways, passages, courts, elevators, vestibules, stairways, corridors or halls shall not be obstructed or encumbered by any Tenant or persons for any purpose other than for ingress to and egress from the premises and for delivery of merchandise and equipment in a prompt and efficient manner using elevators and passageways designated for such delivery by Owner. There shall not be used in any space, or in the public hall of the building, either by any tenant or by others, merchandise in the delivery or receipt of merchandise, any hand trucks except those equipped with rubber tires and safeguards.
2. If the premises are situated on the ground floor of the building, Tenant shall, at Tenant's expense, keep the sidewalk and curbside front of said premises clean and free from ice, snow, etc.
3. The water and wash closets and plumbing fixtures shall not be used for any purpose other than those for which they were designed or constructed.
4. Tenant shall not use, keep or permit to be used or kept any food or cooking gas or substances in the premises, or permit or suffer the premises to be occupied or used in a manner offensive or objectionable to Owner or other occupants of the building by reason of noise, odors and/or vibrations or nuisances in any way with other tenants or those having business there.
5. No sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed by any Tenant on any part of the outside of the premises or the building or on the inside of the premises if the same is visible from the outside of the premises without the prior written consent of Owner, except that the name of Tenant may appear on the entrance door of the premises. In the event of the violation of the foregoing by any Tenant, Owner may remove same without any liability and may always the amounts incurred by such removal as Tenant or Tenant's violating this rule. Signs on interior doors and directory tablet shall be inscribed, painted or affixed for each Tenant by Owner at the expense of such Tenant, and shall be of a size, color and style acceptable to Owner.
6. No Tenant shall mark, paint, drill hole, or in any way deface any part of the premises or the building of which they form a part. No boring, cutting or stripping of wires shall be permitted, except with the prior written consent of Owner, and as Owner may direct. No Tenant shall lay, install, or other similar floor covering, so that the same shall come in direct contact with the floor of the premises, and, if broken or other similar floor covering is desired to be used an interior of building's designing felt shall

be first affixed to the floor, by a paste or other material, soluble in water, the use of cement or other similar adhesive material being expressly prohibited.

7. Freight, furniture, business equipment, merchandise and bulky matter of any description shall be delivered to and removed from the premises only on the freight elevator and through the service entrance and corridor, and only during hours and in a manner approved by Owner. Owner reserves the right to inspect all freight to be brought into the building and to exclude from the building all freight which violates any of these Rules and Regulations or the lease of which these Rules and Regulations are a part.

8. Owner reserves the right to remove from the premises any person who does not present a pass to the building signed by Owner. Owner will furnish passes to persons for whom they request same in writing. Each Tenant shall be responsible for all persons for whom he requests such pass and shall be liable to Owner for all costs of such passes.

9. Owner shall have the right to prohibit any person or persons from whom, in Owner's opinion, tends to impair the reputation of Owner or its buildings as a building for stores or offices, and upon written notice from Owner Tenant shall refrain from or discontinue such advertising.

10. Tenant shall not bring or permit to be brought or kept in or on the premises, any inflammable, combustible, or explosive, or hazardous liquid, material, chemical or substance, or cause or permit any colors of cooking or other processes, or any unusual or other objectionable odors to permeate in or emanate from the premises.

11. Tenant shall not place a load on any floor of the premises exceeding the floor load per square foot area which it was designed to carry and which is allowed by law. Owner reserves the right to prescribe the weight and position of all safes, business machines and mechanical equipment. Such installations shall be placed and maintained by Tenant at Tenant's expense in setting sufficient to Owner's judgment to shield and prevent vibration, noise and annoyance.

12. Refuse and Trash - Tenant covenants and agrees, at its sole cost and expense, to comply with all present and future laws, orders and regulations of all state, federal, municipal and local governments, departments, commissions and boards regarding the collection, sorting, separation and recycling of waste products, garbage, refuse and trash. Tenant shall pay all costs, expenses, fines, penalties or damages that may be imposed on Owner or Tenant by reason of Tenant's failure to comply with the provisions of this Building Rule 12, and, at Tenant's sole cost and expense, shall indemnify, defend and hold Owner harmless (including reasonable legal fees and expenses) from and against any actions, claims and suits arising from such non-compliance, including criminal responsibility satisfactory to Owner.

Address

Premises

TO

STANDARD FORM OF

Share Purchase

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19

Dated

Rent Per Year

Rent Per Month

Term

From

To

Drawn by

Checked by

Entered by

Approved by



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# RIDER TO LEASE

LANDLORD: CORTLAND REALTY CO., AS AGENT FOR GINEZRA ASSOCIATES, LLC

TENANT:

PREMISES: GROUND FLOOR STORE AND PORTION OF COMMERCIAL BASEMENT IN THE BUILDING KNOWN AS 188-190 DUANE STREET, NEW YORK, NEW YORK

40. RIDER CONTROLS. This rider is annexed to and made a part of the printed portion of this lease to which it is attached and in each instance in which the provisions of this rider shall contradict or be inconsistent with the provisions of the printed portion of this lease, as constituted without this rider, the provisions of this rider shall prevail and govern and the contradicted or inconsistent provisions of the printed portion of this lease shall be deemed amended accordingly.

## 41. BASE ANNUAL RENT.

(A) Tenant shall pay to Landlord, without notice or demand and without any abatement, deduction or setoff whatsoever, except as expressly set forth herein, monthly in advance on the first day of each month (with the first installment of base annual rent to be paid upon execution of this lease), in lawful money of the United States of America, by check drawn on a bank or trust company which is a member of the New York Clearing House Association (or successor therein) at Landlord's office or such other place as Landlord may designate, base annual rent for each Lease Year (as hereinafter defined), as follows: (3) Three years with two year option

<u>DATES</u>	<u>BASE RENT PER MONTH</u>	<u>LEASE YEAR</u>
A1. 5/1/2009 - 4/30/2010	\$10,500	\$126,000
5/1/2010 - 4/30/2011	\$12,500	\$150,000
5/1/2011 - 4/30/2012	\$12,875	\$154,500
*A2. 5/1/2012 - 4/30/2013	\$13,260	\$159,120 *
5/1/2013 - 4/30/2014	\$13,660	\$163,920 *

(B) The term "Lease Year" as used in this lease shall mean for the first Lease Year the period commencing on the Commencement Date and ending on the last day of the month of the following year which immediately precedes the month in which the Commencement Date occurs; and for any subsequent Lease Year, each successive twelve (12) month period occurring thereafter. If the Commencement Date occurs on a day other than the first day of a calendar month, the base annual rent and additional rent payable for such month shall be prorated on a per diem basis based upon the actual number of days in such month.

(C) If the Commencement Date occurs on a day other than the first day of a calendar month, the balance of the first month's base annual rent theretofore paid shall be credited against the next month's installment of base annual rent.

(D) Provided tenant shall not be in default of any of the terms, provisions, covenant or conditions to be performed or observed by Tenant under this lease, Tenant's obligation to pay base annual rent shall commence on the date; in addition, Tenant shall have the option in renewing this lease as per paragraph 41 A2.

(E) Notwithstanding anything to the contrary contained herein, from and after the Commencement Date, Tenant shall be responsible for payment of all additional rent payable under this lease.

42. "AS-IS" CONDITION. Tenant acknowledges that Tenant has inspected and examined the Demised Premises and is thoroughly familiar and satisfied with the condition and value thereof; that no representations or warranties have been made to Tenant and that Landlord is unwilling to make any representations and has held out no inducements to Tenant, except as specifically set forth herein. Tenant is thoroughly acquainted with the condition of the Demised Premises, including, without limitation, to the extent presently located at the Demised Premises, the foundation, sidewalks, vault, structural beams and supports, retaining walls, building walls, roof, cornices, ornamental projections, windows, fire escapes, heating equipment, air-conditioning equipment, pipes, conduits, electrical equipment and wiring and other equipment used in the operation and maintenance of the Demised Premises or appurtenant thereto and the subsurface conditions beneath the Demised Premises. Tenant further acknowledges that Tenant shall accept the Demised Premises in its "as-is" condition as of the Commencement Date, and that Landlord shall not be required to perform any work at the Demised Premises in order to effectuate delivery of possession of the Demised Premises to Tenant.

43. MAINTENANCE OBLIGATIONS OF TENANT.

(A) Tenant shall, at Tenant's sole cost and expense, and subject to receipt of Landlord's consent and approval for any alterations requiring consent or approval in accordance with the provisions of this lease, take good care of the Demised Premises and maintain same in a safe condition. Tenant shall neither commit nor permit any waste or injury to the Demised Premises or the Building, and shall, at Tenant's sole cost and expense, promptly make all needed non-structural (and structural if caused by the manner of use, acts or negligence of Tenant, its agents, employees or contractors, licensees or invitees) repairs, restorations and replacements, interior and exterior, ordinary and extraordinary, foreseen and unforeseen, in and to the Demised Premises, equipment and fixtures now or hereafter erected or installed in or on the Demised Premises, including, but not limited to, walls and finishes, foundations, mechanical, plumbing, electrical, sanitary, drainage, sprinkler, life safety and alarm systems, water, sewer and gas connections, meters, pipes and mains, and all other fixtures and equipment, now or hereafter belonging to, adjoining or connected with the Demised Premises or used in its operation. All repairs, restorations and replacements shall be of first-class quality sufficient for the proper maintenance and operation of the Demised Premises, and at least equivalent in quality to the original work of the property replaced and shall be constructed and installed in compliance with all Laws (as hereinafter defined). Landlord shall not be required to make any repairs or improvements of any kind upon the Demised Premises except for necessary structural repairs, not caused by the acts or negligence of Tenant, its agents, employees, contractors, licensees or invitees. For purposes of this Article, structural repairs shall be limited to repairs to the structural steel, roof, roof membrane, roof covering, concrete slab, footings, structural beams, and repairs to exterior and common utility lines. Repairs to equipment and systems are not considered structural within the contemplation of this Article.

(B) Tenant shall, at Tenant's sole cost and expense, maintain the Demised Premises in a clean and orderly fashion. In the event that Tenant does not conform to this provision, Landlord reserves the right, upon prior reasonable notice, at Tenant's sole cost and expense, to reenter the Demised Premises and rectify the condition and restore the Demised Premises to the condition, use and appearance as determined by Landlord, in Landlord's sole and absolute discretion. Any reasonable costs and expenses incurred by Landlord in connection therewith shall be paid by Tenant as additional rent within thirty (30) days after demand therefor.

(C) Tenant shall, at Tenant's sole cost and expense, promptly pay and discharge all liens, penalties, violations and fines (including, but not limited to, Environmental Control Board liens) against the Demised Premises, occurring during the Term of this lease. If Landlord shall incur any expense to pay or discharge any lien, penalty, violation or fine, Tenant shall pay same to Landlord as additional rent, within thirty (30) days after demand, which payment shall include reasonable attorneys' fees and disbursements incurred by Landlord in connection with the payment or discharge of such lien, penalty, violation or fine.

(D) Tenant shall not permit the accumulation (unless in sealed metal or plastic containers) of any rubbish or garbage in, on or about any part of the Demised Premises, except in those areas designated by Landlord for garbage pickup. Tenant shall not encumber or obstruct, or permit to be encumbered or obstructed, the street and sidewalk adjacent to or abutting upon the Demised Premises. Tenant shall comply with all applicable requirements, if any, of the Departments of Health and Sanitation of the City of New York relating to the treatment of such rubbish prior to its placement for disposal.

(E) Tenant shall independently contract, at Tenant's sole cost and expense, for the removal of all snow and ice from the sidewalk adjacent to the Demised Premises.

(F) Tenant shall, at Tenant's sole cost and expense, cause the Demised Premises to be free at all times of all vermin and insects and shall take whatever reasonable precautions that are reasonably necessary to prevent any such vermin or insects from existing in the Demised Premises, including the hiring by Tenant of an exterminator to provide service to the Demised Premises when reasonably necessary. Tenant, at Tenant's sole cost and expense, shall contract for pest extermination services covering the Demised Premises, to be rendered as reasonably required.

(G) Tenant agrees to pay on behalf of Landlord any fines or costs which are assessed against Landlord due to Tenant's failure to fulfill Tenant's obligations under this Article 43.

**44. TAXES.** Tenant covenants and agrees to pay to Landlord as additional rent, sums computed in accordance with the following provisions:

(A) The term "Taxes" shall mean the aggregate of the real estate taxes, general and special assessments, and other governmental charges and levies, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind or nature whatsoever (including, without limitation, assessments for public improvements or benefits and interest on unpaid installments thereof which become due and payable during the Term), which may be levied, assessed or imposed or become liens upon or arise out of the use, occupancy or possession of the Building from time to time, and on the land on which the Building is located. The term Taxes shall not, however, include any income, inheritance, estate, succession, transfer, gift, franchise or profit tax imposed upon Landlord provided, however, that if any time during the Term the methods of taxation prevailing at the commencement of the Term shall be altered so that in addition to, in lieu of, or as a substitute for the whole or any part of the Taxes now levied, assessed or imposed on real estate as such there shall be levied, assessed or imposed (i) a tax on the rents received from the Building; (ii) a license fee measured by the rents received by the Landlord from the Building; or (iii) a tax or license fee imposed on the Landlord which is otherwise measured by or based in whole or in part upon the Building or any portion thereof, then such tax or the fee shall be included in the computation of Taxes, computed as if the amount of such tax or fee so payable for that part due if the Building were the only property of Landlord subject thereto.

(B) The term "Tax Year" shall mean each period of twelve (12) consecutive months commencing July 1, of any calendar year, or such other period as may hereafter be duly adopted as the fiscal year for real estate tax purposes by the City of New York.

(C) "Tenant's Proportionate Share" shall be deemed to be sixty (60%) percent.

(D) "Basic Tax" shall mean the Taxes for the Tax Year commencing July 1, 2006, and ending June 30, 2007. If the Basic Tax shall subsequently be adjusted, corrected or reduced, whether as the result of protest, by means of agreement or as the result of legal proceedings, the Basic Tax for the purpose of computing any additional rent payable pursuant to this Article shall be the Basic Tax as so adjusted, corrected or reduced. Until the Basic Tax is so adjusted, corrected or reduced, if ever, Tenant shall pay additional rent hereunder based upon unadjusted, uncorrected or unreduced Basic Tax. Upon any such adjustment, correction or reduction occurring, any additional rent paid by Tenant prior to the date of such occurrence shall be recomputed and Tenant shall pay to Landlord any additional rent found due by such recomputation within ten (10) days after being billed thereof (which bill shall set forth in reasonable detail the

pertinent data causing and comprising such recomputation).

(E) If the Taxes for any Tax Year shall be greater than the Basic Tax, Tenant shall pay to Landlord, as additional rent, during each Tax Year of the term of this lease, an amount equal to Tenant's Proportionate Share of such increase over the Basic Tax. If the term of this lease shall expire or be terminated during any Tax Year, such amount shall be pro-rated. Landlord shall bill Tenant for any additional rent payable by Tenant pursuant to this Article, such bill to set forth in reasonable detail the computation of additional rent hereunder which shall be payable by Tenant to Landlord in installments in the same manner that such Taxes are payable by Landlord pursuant to law commencing on July 1, 2007. Said installments shall be paid by Tenant no later than thirty (30) days prior to the due date for the payment of said installments by Landlord. Notwithstanding the provisions of the previous sentence, if Landlord is escrowing Taxes with any mortgagee, Landlord shall then have the option to require Tenant to deposit with Landlord on the first day of each and every month of the Term one-twelfth (1/12) of the annual Taxes to be paid by Tenant pursuant to the provisions of this Article, to that end that on the dates when such Taxes become due and payable, without penalty, to the taxing authorities, Landlord shall have received an amount sufficient to pay Tenant's Proportionate Share of Taxes. In the event the deposits so made by Tenant are not sufficient to pay Tenant's Proportionate Share of Taxes as and when due, Tenant covenants and agrees upon demand by Landlord to pay such additional amounts as shall be required to pay Tenant's Proportionate Share of Taxes as and when due.

(F) If Landlord shall incur any expenses including, but not limited to, reasonable attorneys' fees and disbursements in connection with Landlord's endeavor to reduce or prevent any increase in the assessed valuation, or to reduce Taxes, Tenant shall be obligated to pay, as additional rent, Tenant's Proportionate Share of such reasonable expense within thirty (30) days after demand therefor by Landlord, but in no event in excess of the tax savings to be realized by Tenant.

(G) If the Taxes for any Tax Year for which Tenant shall have paid additional rent pursuant to this Article shall be adjusted, corrected or reduced whether as the result of protest of any tentative assessment, or by means of agreement, or as the result of legal proceedings, the additional rent becoming due in said Tax Year pursuant to this Article shall be determined on the basis of said corrected, adjusted or reduced Taxes. If Tenant shall have paid any additional rent pursuant to this Article for such Tax Year prior to any said adjustment, Landlord shall credit or refund to Tenant any excess amount thus paid as reflected by said adjusted Taxes, less Tenant's pro rata share of any cost, expense or fees (including experts' and attorneys' fees and disbursements) incurred by Landlord in obtaining said tax adjustment. Any payments, credits or refunds due hereunder for any period of less than a full Tax Year at the commencement or end of the Term, shall be equitably pro-rated to reflect such event.

(H) If the fiscal tax year or the method of tax payment shall hereafter be changed, appropriate adjustment of the foregoing provisions shall be made accordingly to reflect any such changes.

(I) Tenant shall pay to Landlord any occupancy tax, rent tax and any other tax of similar nature or intent now in effect or hereafter enacted, if the taxing authority shall enact law making same payable by Landlord in the first instance. Such tax shall be paid to Landlord as additional rent upon demand therefor.

45. **BID TAX.** During the Term, Tenant shall pay to Landlord an amount equal to Tenant's Proportionate Share of any so-called business improvement development tax or the like ("BID Tax"), if any, which is levied, assessed or imposed against the Building by the City of New York, or any other governmental authority. Upon demand of Landlord, Tenant shall pay such BID Tax not later than thirty (30) days prior to the date that said tax is due by Landlord to the taxing authorities, whether or not such payments are required on a monthly, quarterly or annual basis. Notwithstanding the foregoing provisions of this Article, Landlord shall have the option to require Tenant to deposit with Landlord on the first day of each and every month of the Term one-twelfth (1/12) of the annual BID Tax to be paid by Tenant pursuant to the provisions of this Article, so that on the dates when such BID Tax becomes due and payable, without penalty, to the

tax authorities, Landlord shall have received an amount sufficient to pay Tenant's Proportionate Share thereof. In the event the deposits so made by Tenant are not sufficient to pay such BID Tax as and when due, Tenant covenants and agrees upon written demand by Landlord to pay such additional amounts as shall be required to pay Tenant's Proportionate Share of such BID Tax. A copy of the tax bill shall be sufficient evidence of the amounts due under this Article 45. As of the date hereof, Landlord represents that there is no BID Tax imposed for the Building.

#### 46. INDEMNIFICATION.

(A) Tenant shall defend, pay, indemnify and hold Landlord harmless from and against any and all claims, demands, liabilities, fines, suits, actions, proceedings, orders, decrees and judgments of any kind or nature by or in favor of anyone whomsoever and from and against any and all costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, resulting from or in connection with loss of life, bodily or personal injury or damage to property arising, directly or indirectly, out of or from or on account of any occurrence in, at, upon, or from the Demised Premises or occasioned wholly or in part through the use and occupancy of the Demised Premises or any improvements therein or appurtenances thereto, or by any act or omission or negligence of Tenant or any subtenant, concessionaire or licensee of Tenant, or their respective employees, agents, invitees, customers or contractors in, upon, at or from the Demised Premises or its appurtenances or by any default by Tenant under this lease, including any failure by Tenant to comply with any Laws or to bond or discharge any lien.

(B) Tenant and all those claiming by, through or under Tenant hereby release Landlord, Landlord's agents, employees and contractors, to the full extent permitted by law, from all claims of every kind, including loss of life, bodily or personal injury, damage to merchandise, equipment, fixtures or other property, or damage to business or for business interruption, arising directly or indirectly out of or from or on account of such occupancy and use or resulting from any present or future condition or state of repair thereof.

(C) Unless caused by the willful acts or gross negligence of Landlord, Landlord shall not be responsible or liable for damages at any time for any defects, latent or otherwise, to any portion of the Demised Premises or any of the equipment, machinery, utilities, appliances or apparatus therein, nor shall Landlord or any of Landlord's agents, employees or contractors be responsible or liable for damages at any time for loss of life, or bodily or personal injury or damage to property, or for business interruption, to any person or to any property or business of Tenant; or those claiming by, through or under Tenant caused by or resulting from the bursting, breaking, leaking, running, seeping, overflowing or backing up of water, steam, gas or sewage in any part of the Demised Premises or caused by or resulting from acts of God or the elements or resulting from any defect or negligence in the occupancy, construction, operation or use of the Demised Premises, or any of the equipment, fixtures, machinery, appliances or apparatus therein.

(D) Tenant shall reimburse and compensate Landlord as additional rent within thirty (30) days after rendition of a statement for all reasonable expenditures, costs, fees, expenses, judgments, penalties, damages and fines sustained or incurred by Landlord (including, without limitation, reasonable counsel and other professional fees and disbursements incurred in connection with any action or proceeding) in connection with the enforcement of this Article by Landlord.

(E) The provisions of this Article shall survive the expiration or earlier termination of this lease.

#### 47. INSURANCE.

(A) Tenant shall obtain and provide, on or before the Commencement Date, and keep in force at all times thereafter, the following insurance coverages (or if any of such coverages is not being offered by the insurance industry at any time, such other similar coverage as is then being offered by the insurance industry) with respect to the Demised Premises:

(1) Commercial general liability and broad form property damage insurance, written on an occurrence basis, including machinery and contractual liability insurance, protecting and indemnifying Landlord, Tenant and others having an insurable interest against any

and all claims (including all costs and expenses of defending against same) for personal injury, disease or death and for damage or injury to or destruction of property (including loss of use) occurring on, in or about the Demised Premises, sidewalks, gutters, signs, curbs, vaults or vault spaces appurtenant to the Demised Premises, which insurance shall have a combined single limit of not less than Two Million (\$2,000,000.00) Dollars. The insurance carried pursuant to this paragraph (1) shall include coverage for contractual liability, independent contractors' liability and completed product/operations liability with a personal injury endorsement covering claims arising out of arrest, false imprisonment, libel, slander, wrongful eviction and invasion of privacy.

(2) All Risk Perils insurance in an amount adequate to cover the replacement value of all personal property, decorations, trade fixtures, and inventory, and all contents therein.

(3) At any time prior to undertaking and during the duration of any construction or alteration of any work on the Demised Premises, Tenant shall provide Builder's Risk All Risk Non-Reporting Property insurance for the full replacement value of such alterations, work and construction, with Replacement Cost and Agreed Amount endorsements.

(4) Workmen's Compensation Insurance covering all persons employed, directly or indirectly, in connection with any finished work performed by Tenant or any repair or alteration authorized by this lease or consented to by Landlord, and all employees and agents of Tenant with respect to whom death or bodily injury claims could be asserted against Landlord or Tenant, as required by the law of the State where the Demised Premises are located.

(5) Such other insurance for the Demised Premises and in such amounts as may from time to time be reasonably required by Landlord against other insurable hazards which at the time are commonly insured against in the case of premises similarly situated and used.

(B) Before undertaking any alterations, additions, improvements or construction, Tenant shall obtain, at Tenant's sole cost and expense, or require the contractor performing such alterations, additions, improvements or construction to obtain, a public liability insurance policy insuring Tenant and Landlord, as additional insured, and any designee of Landlord having an insurable interest in the Demised Premises as an additional insured, against any liability which may arise on account of such proposed alterations, additions, improvements or construction on an occurrence basis with minimum limit of at least Two Million (\$2,000,000.00) Dollars.

(C) Tenant acknowledges and agrees that Landlord shall not be responsible or liable to Tenant, or to those claiming by, through or under Tenant, for any loss or damage that may be occasioned by or through the acts or omissions of persons occupying adjoining premises or any part of the premises adjacent to or connecting with the Demised Premises, or otherwise, or for any loss or damage resulting to Tenant or those claiming by, through or under Tenant, or its or their property, from the breaking, bursting, stopping or leaking of electric cables and wires, and water, gas, sewer or steam pipes.

(D) Tenant covenants and agrees that Tenant shall not do or permit anything to be done in, at or upon the Premises, or bring in anything or keep anything therein, which shall increase the rate of insurance on the Demised Premises above the current rate on said Demised Premises; and Tenant further agrees that, in the event that Tenant shall do any of the foregoing, Tenant shall promptly pay to Landlord, on demand, any such increase resulting therefrom, which shall be due and payable as additional rent hereunder.

(E) All insurance provided for in this Article by Tenant shall be (i) effected under valid and enforceable policies issued by insurers of recognized responsibility which are licensed to do business in the state in which the Demised Premises are located; (ii) issued by insurers that at all times during the Term are in a financial category of not less than VII with a general policy holder's rating of not less than A, as rated in the most current rated Best's Insurance Reports, or if Best's Insurance Reports shall cease to be published, an equivalent rating with such other publication of a similar nature as shall be in current use and which shall be acceptable to Landlord; (iii) issued by insurers which shall have been approved in writing by Landlord and any mortgagees and ground lessors; and (iv) in such forms as may from time to time be satisfactory to Landlord.

Any policies of insurance of the character described in this Article shall expressly provide that the adjustment of any losses thereunder shall be approved by Landlord. All such insurance except the Workers' Compensation Insurance shall name Landlord and all master and ground lessors and mortgages and such other interested parties as Landlord shall designate as additional insureds. Each policy evidencing the insurance to be carried by Tenant under this lease shall contain a clause that such policy and the coverage evidenced thereby shall be primary with respect to any policies carried by Landlord, and that any coverage carried by Landlord, if any, shall be excess insurance. No insurance maintained by Tenant shall have a deductible in excess of Five Thousand (\$5,000.00) Dollars.

(F) Each party shall include in each of its insurance policies covering loss, damage or destruction by fire or other casualty (insuring the Building and Landlord's property therein and the rental value thereof, in the case of Landlord, and insuring Tenant's personal property and fixtures and business interruption insurance, in the case of Tenant) a waiver of the insurer's right of subrogation against the other party or, if such waiver should be unobtainable or unenforceable, (i) an express agreement that such policy shall not be invalidated if the insured waives before the casualty the right of recovery against any party responsible for a casualty covered by such policies, or (ii) any other form of permission for the release of the other party. If such waiver, agreement or permission shall cease to be obtainable without additional charge, then if the other party shall so elect and shall pay the insurer's additional charge therefor, such waiver, agreement or permission shall be included in the policy; provided, however, that Tenant shall at no time be named a loss payee or additional insured under any of Landlord's insurance policies.

(G) In the event that Tenant fails to procure, maintain or pay for as specified in this Article, any insurance required by this Article or fails to carry insurance required by Law, Landlord may (but without obligation to do so) from time to time and with ten (10) days' prior written notice to Tenant, procure such insurance and pay the premiums therefor, in which event Tenant shall repay Landlord, as additional rent, all sums so paid by Landlord together with interest at the Default Rate (as hereinafter defined), and any costs or expenses incurred by Landlord in connection therewith. Such payment shall be made within ten (10) days following Landlord's written demand therefor without prejudice to any other rights and remedies of Landlord under this lease.

(H) Tenant agrees to deliver to Landlord, prior to the Commencement Date, and thereafter at least thirty (30) days prior to the expiration of any such policy, certificates of insurance of all policies provided by Tenant in compliance with its obligations hereunder, together with evidence of payment thereof for at least one (1) year's premiums. Said certificates shall include an endorsement which states that such insurance may not be canceled or change in any material way the nature or extent of the coverage provided by such policy except upon thirty (30) days' prior written notice to Landlord and any designees of Landlord.

#### 48. ELECTRICITY, HVAC AND OTHER UTILITIES AND SERVICES.

(A) Notwithstanding anything to the contrary contained herein, Landlord shall not be obligated to supply, and nothing contained herein shall ever be deemed to place any responsibility on Landlord for the rendition of, any heat, ventilation, air conditioning, electricity, water or any other utilities or services (cleaning, garbage removal etc.) to Tenant or to the Demised Premises, nor to make any installations, repairs or perform any maintenance in connection with the Demised Premises including, but not limited to, the utility systems. Except as otherwise set forth to the contrary herein, Tenant shall arrange for the installation of utility meters at the Demised Premises to measure Tenant's consumption of electricity, water and all other utilities consumed in the Demised Premises, to the extent such meters are not existing, or in need of repair. All such work shall be performed pursuant to plans first approved by Landlord and otherwise in accordance with the provisions of this lease. Tenant, at Tenant's sole cost and expense, shall operate, maintain, supply, repair and keep in working order in accordance with all Laws, a heating, ventilation and air conditioning system in, at and for the Demised Premises. Landlord shall have no obligation or responsibility whatsoever with respect to the supply, repair or maintenance of the heating, ventilation and air conditioning systems. Tenant shall be responsible for and shall pay and discharge all bills rendered for any electricity, gas, water, heat, ventilation or air conditioning which Tenant may require, and Tenant shall make Tenant's own arrangement with the public utility company servicing the Demised Premises for the furnishing,



installation, upgrades and payment of all charges for electricity, water and other utilities consumed by Tenant at the Demised Premises. Tenant further acknowledges that Landlord has made no representation concerning the existence or functioning ability of any plumbing, heating, ventilation, air conditioning, mechanical and electrical equipment or systems, if any, existing in or around the Demised Premises, and Tenant accepts same in "as is" condition.

(B) Landlord shall not in any way be liable or responsible to Tenant for any loss, damage or expense which Tenant may sustain or incur if either the quality or character of electrical service is changed by the public utility company supplying electrical service to the Demised Premises or is no longer available or suitable for Tenant's requirements. Interruption or curtailment of any such services shall not constitute a constructive or partial eviction, nor entitle Tenant to any compensation or abatement of base annual rent and/or additional rent.

(C) Tenant covenants and agrees that at no time shall Tenant's use of electrical current exceed the capacity of existing feeders or wiring installations serving the Demised Premises. Tenant shall make no alterations or additions to the electrical equipment, conduits, feeders or risers without the prior written consent of Landlord in each instance, which consent shall not be unreasonably withheld or delayed. If Tenant shall request in writing that additional feeders or risers be installed to supply Tenant's electric requirements and if, in Landlord's reasonable judgment, Landlord determines that such additional feeders or risers shall not cause permanent damage or injury to the Demised Premises or cause or create a dangerous or hazardous condition, and if Tenant complies with the conditions set forth in this lease, Tenant shall, at Tenant's sole cost and expense, install such additional feeders or risers and all other equipment required in connection therewith.

(D) Landlord makes no warranty as to fitness for use or other warranties concerning the physical condition of the lines, feeders, cables, end boxes, distribution boxes, or other electrical, plumbing or heating equipment servicing the Demised Premises. If any repairs are required to be made to said electrical, plumbing or heating equipment in order that electrical current, plumbing or heating be supplied to the Demised Premises, then said repair shall be made by Tenant at Tenant's sole cost and expense. If any work, replacement or repair is required to be made, then said work shall be performed at Tenant's sole cost and expense (which work, at Landlord's election, may be undertaken by Landlord, at Landlord's convenience, but at Tenant's sole cost and expense) and Tenant shall not be entitled to any set-off, allowance or claim for diminution of rental value and Landlord shall have no liability to Tenant for any inconvenience, annoyance, or injury to Tenant if said work is not performed timely.

(E) Any units or system installed by the Tenant as an addition or replacement to the present air conditioning system or units, shall, at the expiration or sooner termination of this lease, become Landlord's property and shall not be removed by Tenant, but shall remain with the Demised Premises, unless Landlord directs Tenant otherwise. However, Tenant, not Landlord, shall maintain, repair and keep in working order said units or systems throughout the Term.

49. **BROKER.** Tenant and Landlord represent and warrant to each that has had no dealings, negotiations or consultations with respect to the Demised Premises or this transaction with any broker or finder other than Brown Harris Stevens (the "Broker"), and that no broker or finder other than the Broker called the Demised Premises to Tenant's attention for lease or took any part in any dealings, negotiations or consultations with respect to the Demised Premises or this lease. In the event that any broker or finder other than the Broker claims to have submitted the Demised Premises to Tenant, to have induced Tenant to lease the Demised Premises or to have taken part with or on behalf of Tenant in any dealings, negotiations or consultations with respect to the Demised Premises or this lease, the misrepresenting party shall be responsible for and shall indemnify and hold the other harmless from and against any and all costs, fees (including, without limitation, reasonable attorneys' fees and disbursements), expenses, liabilities and claims incurred or suffered as a result thereof. Landlord shall pay the commissions to Broker pursuant to the provisions of a separate agreement.

50. **ATTORNEY.** In the event foreclosure proceedings are brought by the holder of any fee mortgage, Tenant shall attorn to such mortgagee or purchaser in foreclosure proceedings, as the case may be, and Tenant shall recognize such fee mortgagee or purchaser as the Tenant's

landlord under this lease. The foregoing provisions shall inure to the benefit of any such owner or fee mortgagee and shall, in the event of any such election and demand, be self-operative without the necessity of the execution of any further instruments; but Tenant agrees that Tenant shall execute and deliver, at any time and from time to time, upon the request of the fee owner or of the holder of any such fee mortgage any instrument which may be necessary or appropriate to evidence such attornment. Tenant's failure to execute any such instrument shall be a material default under this lease.

#### 51. MORTGAGES AND LEASEHOLDS.

(A) This lease is subject and subordinate in all respects to all ground leases and/or underlying leases and to all mortgages which may now or hereafter be placed on or affect such leases and/or the real property of which the Demised Premises form a part, or any part or parts of such real property, and/or Landlord's interest or estate therein, and to each advance made and/or hereafter to be made under any such mortgages, and to all renewals, modifications, consolidations, replacements and extensions thereof and all substitutions therefor. This Section (A) shall be self-operative and no further instrument of subordination shall be required. In confirmation of such subordination, Tenant shall, without charge, execute and deliver promptly any reasonable certificate that Landlord and/or any mortgagee and/or the lessor under any ground or underlying lease and/or their respective successors in interest may request.

(B) Tenant shall, without charge, at any time and from time to time, upon not less than ten (10) days' prior demand by Landlord, execute, acknowledge and deliver to Landlord a statement in writing certifying that this lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modification), and the dates to which the base annual rent, additional rent and other charges have been paid in advance, if any, and stating whether or not to the best knowledge of the signer of such certificate Landlord is in default in performance of any covenant, agreement, term, provision or condition contained in this lease and, if so, specifying each such default of which the signer may have knowledge, and containing such other information as may be reasonably requested, it being intended that any such statement delivered pursuant hereto may be relied upon by any prospective purchaser or lessee of said real property or any interest or estate therein, any mortgagee or prospective mortgagee thereof or any prospective assignee of any mortgagee thereof. If, in connection with obtaining financing for the Building, a lender shall request, as a condition to such financing, reasonable modifications in this lease, Tenant shall not unreasonably withhold, delay or defer Tenant's consent thereto, provided same do not materially adversely increase Tenant's obligations hereunder. It is hereby agreed by Tenant that the following modifications required by any lender, shall be deemed reasonable: (i) any change(s) to the notice provisions of this lease which require Tenant to give notice of any default by Landlord to the lender, or (ii) any changes to the default provisions of this lease which permit the lender to cure any defaults by Landlord together with the granting of such additional but reasonable time to cure as may be reasonably required by lender to obtain possession of the Building.

#### 52. ASSIGNMENT AND SUBLETTING. Notwithstanding the provisions of Article 11, and in modification and amplification thereof:

(A) If Tenant's interest in this lease is assigned, whether or not in violation of the provisions of this lease, Landlord may collect rent from the assignee; if the Demised Premises or any part thereof are sublet to, or occupied by, or used by, any person other than Tenant, whether or not in violation of this lease, Landlord, after default by Tenant under this lease may collect rent from the subtenant, user or occupant. In either case, Landlord shall apply the net amount collected to the rents reserved in this lease, but neither any such assignment, subletting, occupancy, nor use, nor any such collection or application shall be deemed a waiver of any terms, covenant or condition of this lease or the acceptance by Landlord of such assignee, subtenant, occupant or user as a tenant. The consent by Landlord to any assignment, subletting, occupancy or use shall not relieve Tenant from its obligation to obtain the express prior written consent of Landlord to any further assignment, subletting, occupancy or use. The listing of any name other than Tenant's on any door of the Demised Premises, or on any directory, or on any elevator in the Building, or otherwise, shall not operate to vest in the party so named, any right or interest in this lease or in the Demised Premises, or be deemed to constitute, or serve as a substitute for, any prior written consent of Landlord required under this Article. Neither any assignment of

Tenant's interest in this lease nor any subletting, occupancy or use of the Demised Premises or any part thereof by any person other than Tenant, nor any collection of rent by Landlord from any person other than Tenant as provided in this Subsection 52(A), nor any application of any such rent as aforementioned as provided in this Subsection 52(A), shall in any circumstances relieve Tenant of Tenant's obligations fully to observe and perform the terms, provisions, covenants and conditions of this lease on Tenant's part to be observed and performed.

(B) Tenant covenants and agrees that Tenant shall not assign this lease nor sublet (which term, without limitation, shall include the granting of concessions, licenses, and the like) the whole or any part of the Demised Premises without Landlord's consent; such consent not to be unreasonably withheld or delayed. Tenant further agrees that Tenant shall not transfer in any other manner or hypothecate Tenant's interest in this lease, whether by way of leasehold mortgage, collateral assignment or any other security arrangement or otherwise without in each instance having first obtained the prior written consent of Landlord, which consent may be granted or withheld in Landlord's sole and absolute discretion.

(C) At the time that Tenant makes Tenant's request for Landlord's consent to any assignment or sublease, Tenant shall provide Landlord with (1) a conformed or photostatic copy of the assignment or sublease, the effective or commencement date of which shall be at least thirty (30) days after the submission thereof, (2) a statement setting forth in reasonable detail the identity of the proposed assignee or subtenant, and (3) current financial information with respect to the proposed assignee, including, without limitation, its most recent financial report. In addition, any assignment or subletting (i) as to which Landlord has consented; or (ii) which is required by reason of final, nonappealable order of a court of competent jurisdiction; or (iii) which is made by reason of and in accordance with the provisions of any Law, including, without limitation, the laws governing bankruptcy, insolvency or receivership shall be subject to all terms, provisions, covenants and conditions of this lease, and shall not be effective or deemed valid unless, at the time of each such assignment or subletting:

(1) the proposed assignee's or subtenant's Demised Premises, or the relevant part thereof, will be limited to the use expressly permitted under this lease;

(2) in Landlord's reasonable judgment, the proposed assignee or subtenant is a reputable person of good character and with sufficient financial worth considering the responsibility involved, and is not a government or a government agency, or a charity or other organization dependent in whole or in part on charitable contributions;

(3) the proposed assignment or sublease, as applicable, shall be in form and substance reasonably satisfactory to Landlord;

(4) there shall not be more than one (1) occupant of the Demised Premises at any time;

(5) Tenant shall reimburse Landlord on demand for any and all reasonable costs that may be incurred by Landlord in connection with said assignment or sublease, including, without limitation, the reasonable costs of making investigations as to the acceptability of the proposed assignee or subtenant, and reasonable legal costs incurred in connection with the granting of any requested consent;

(6) each assignee or subtenant has deposited with Landlord, as additional security to be retained by Landlord in accordance with the provisions of Article 31 of this lease, an amount equal to the then monthly base rent payable under this lease, to be paid to Landlord concurrently with Tenant's request for Landlord's consent to such proposed assignment or subletting, as the case may be; and

(7) Tenant shall not be in default under any of the terms, provisions, covenants and conditions of this lease, either as of the date of Tenant's request for Landlord's consent, or as of the effective date of the proposed assignment or subletting.

(D) If Tenant is a corporation the stock of which is not traded on any national

securities exchange (as defined in the Securities Exchange Act of 1934, as amended), then the following shall constitute an assignment of this lease for all purposes of this Article: (i) the merger, consolidation or reorganization of Tenant; and/or (ii) the sale, issuance, or transfer, cumulatively or in one transaction, of any voting stock, by Tenant or the stockholders of record of Tenant as of the date of this lease, which results in a change in the voting control of Tenant, except any such transfer by inheritance or testamentary disposition. If Tenant is a joint venture, partnership or other association, then for all purposes of this Article, the sale, issuance or transfer, cumulatively or in one transaction, of either voting control or more than a forty-nine (49%) percent interest, or the termination of any joint venture, partnership or other association, shall constitute an assignment, except any transfers by inheritance or testamentary disposition.

(E) If Landlord shall decline to give Landlord's consent to any proposed assignment or sublease, Tenant shall indemnify, defend and hold Landlord harmless from and against any and all losses, liabilities, damages, costs and expenses (including, without limitation, reasonable counsel fees and disbursements) resulting from any claims that may be made against Landlord by the proposed assignee or subtenant or by any brokers or other persons claiming a commission or similar compensation in connection with the proposed assignment or sublease.

(F) Notwithstanding anything to the contrary contained herein, in the event Tenant shall give Landlord notice of: (i) a desire to assign this lease; or (ii) a desire to sublet any part or all of the Demised Premises, then within the thirty (30) day period following Landlord's receipt of Tenant's request to assign this lease or sublet any portion or all of the Demised Premises, Landlord shall be entitled to cancel this lease on one hundred twenty (120) days' prior written notice thereof (the "End Date"), and this lease shall come to an end on the End Date with the same force and effect as if such End Date were the date herein specified as the Expiration Date, and all base annual rent and additional rent shall be apportioned and adjusted as of the End Date.

(G) No consent to any assignment or subletting shall be effective or valid for any purpose whatsoever unless and until a counterpart of the assignment or a counterpart or reproduced copy of the sublease shall have been first delivered to the Landlord, and, in the event of an assignment, Tenant shall deliver to Landlord a written agreement executed and acknowledged by Tenant and such assignee in recordable form wherein such assignee shall assume jointly and severally with Tenant the due performance of this lease on Tenant's part to be performed for the remaining Term and shall remain fully liable hereunder, notwithstanding any other or further assignment.

(H) Neither any assignment of Tenant's interest in this lease nor any subletting, occupancy or use of the Demised Premises or any part thereof by any person other than Tenant, nor any collection of rent by Landlord from any person other than Tenant as provided in Article 11 hereof, nor any application of any such rent as provided in said Article 11, shall, in any circumstances, relieve Tenant of its obligations fully to observe and perform the terms, provisions, covenants and conditions of this lease on Tenant's part to be observed and performed.

(I) With respect to each and every sublease or subletting entered into by Tenant or any subtenant with respect to the Demised Premises, it is further agreed as follows:

(1) Each subletting shall be for a term ending not later than one (1) day prior to the expiration date of this lease.

(2) Each sublease shall expressly provide that it is subject and subordinate to all of the terms, provisions, covenants and conditions of this lease and to the matters to which this lease is or shall be subordinate, and that in the event of any termination of this lease, for any reason whatsoever, re-entry or dispossession by Landlord under this lease, Landlord may, at its option, take over all the right, title and interest of Tenant, as sublessor under such sublease, and such subtenant shall, at Landlord's option, attorn to Landlord pursuant to the then executory provisions of such sublease, except that Landlord shall not (a) be liable for any previous act or omission of Tenant under such sublease, (b) be subject to any offset, not expressly provided in such sublease, which theretofore accrued to such subtenant against Tenant, or (c) be bound by any previous prepayment of more than one month's rent, or (d) be subject to the return of any security deposited by such subtenant, unless delivered to Landlord.

(3) From time to time and upon request of Landlord, Tenant agrees to provide Landlord with true and correct copies of all subleases, and modifications and amendments to each sublease, in effect, with respect to the Demised Premises.

(4) Without the written consent of Landlord, Tenant shall not collect rent in advance for more than one (1) month from any subtenant, except with respect to security deposits made by subtenants (and each sublease agreement shall contain a provision that at all times during the term of the sublease, the subtenant must deposit with Tenant at least two (2) times the monthly base rent payable under such sublease).

(5) No sublease shall be made which in legal effect would constitute a total assignment of this lease.

(6) Upon the occurrence of any default by Tenant hereunder, Landlord, or Landlord's agents or representatives, may, at Landlord's option, without any action on Landlord's part being required, and without in any way waiving such default, and with or without taking possession of the Demised Premises, collect and receive all rents under each sublease in effect, notify the respective subtenant under the sublease or any other parties in possession of the Demised Premises, to pay all rents directly to Landlord, or Landlord's agent or representatives, and apply such rents to the payments due Landlord hereunder. Tenant agrees that all subleases hereafter entered into shall specifically provide for and make specific reference to the provisions set forth in this Subsection 52(1)(6).

(7) Each sublease shall contain a provision which provides that if for any reason this lease and the leasehold estate of the sublessor as Tenant hereunder is terminated for any reason whatsoever through foreclosure proceedings brought by the holder of any mortgage to which this lease is subject or subordinate, or otherwise, the subtenant shall attorn to Landlord hereunder or to such mortgagee or purchaser in foreclosure proceedings, as the case may be, and shall recognize such Landlord or such mortgagee or purchaser as the subtenant's landlord under the sublease. The subtenant shall execute and deliver, at any time and from time to time, upon the request of the sublessor or of Landlord hereunder or of the holder of any such mortgage any instrument which may be necessary or appropriate to evidence such attornment. Tenant's failure to execute such instrument shall be a material default under this lease.

(8) No right, estate or privilege of any subtenant shall exceed the rights, estate and privileges of Tenant hereunder. In the event of any termination of this lease, whether by expiration, forfeiture, cancellation, surrender or any other termination, any or all of the subleases shall, at the option of Landlord, terminate and any dispossession of Tenant shall, at the option of Landlord, automatically dispossess any or all subtenants. Landlord shall not be bound by any agreement, term, provision, covenant or condition contained in any sublease, irrespective of whether Landlord had notice thereof.

(9) Tenant shall perform each and every term, provision, covenant and condition to be performed or observed by Tenant, as sublessor, under all present and future subleases.

**53. LANDLORD'S EXCULPATION.** It is specifically understood and agreed that there shall be no personal liability on Landlord in respect of any of the covenants, conditions or provisions of this lease; and if Landlord or a successor in interest is an individual (which term as used herein includes aggregates of individuals, such as joint ventures, general or limited partnerships, limited liability companies or associations), such individual shall be under no personal liability with respect to any of the provisions of this lease, and if Landlord is in breach or default with respect to Landlord's obligations under this lease, Tenant shall look solely to the equity of Landlord in the Demised Premises and the proceeds thereof, for the satisfaction of Tenant's remedies and in no event shall Tenant attempt to secure any personal judgment against Landlord or against any partner, employee or agent of Landlord by reason of such default by Landlord.

**54. TENANT'S WORK.** Any work, installations, alterations, additions or improvements to be performed by Tenant in or to the Demised Premises shall be undertaken by Tenant, at Tenant's sole cost and expense, subject to the following terms and conditions:

(A) That all such Tenant's work shall comply with all applicable provisions of this lease, including, but not limited to, Articles 3 and 6 of the printed portion of this lease, and all Laws (including, without limitation, the rules and regulations of any Board of Fire Underwriters or similar agency having jurisdiction over the Demised Premises);

(B) That Tenant shall first submit to Landlord for Landlord's approval the plans and specifications covering Tenant's work, all such plans to be in detail reasonably satisfactory to Landlord, but Landlord's approval thereof shall not constitute an acknowledgment that such plans and specifications are in compliance with all Laws. No Tenant's work shall be undertaken, started, or begun by Tenant or by its agents, employees, contractors, or anyone else acting for or on behalf of Tenant until Landlord has approved such plans and specifications. No material amendments or additions to such plans and specifications as approved shall be made without the prior written consent of Landlord;

(C) That Tenant and Tenant's contractors shall use only new materials and shall employ only competent workmanlike contractors and labor in the performance of Tenant's work;

(D) That Tenant and any contractor or contractors employed by the Tenant to render services and furnish labor to the Demised Premises, shall be covered by Workmen's Compensation Insurance and a Certificate thereof shall be furnished to the Landlord before commencement of any work by any contractor, subcontractor, their agents, servants or employees;

(E) All of Tenant's work shall at all times comply with (a) all Laws and all insurance requirements, (b) the rules and regulations now or hereafter in existence for the Demised Premises, and (c) Tenant's plans and specifications approved by Landlord;

(F) That within a reasonable time following the completion of all of said Tenant's work, and as soon as reasonably feasible, Tenant shall, at Tenant's sole cost and expense, with due diligence obtain and furnish to Landlord all appropriate certifications from all authorities (including, but not limited to, the N.Y.C. Building Department and Fire Department) having jurisdiction to the effect that all such Tenant's work has been performed and completed in accordance with the filed plans, if any, and with all Laws, including, but not limited to, Tenant's furnishing to Landlord of any sign-offs with respect to such work performed at the Demised Premises;

(G) Prior to the commencement of such work, Tenant, at Tenant's sole cost and expense, shall procure and deliver to Landlord each and every permit, license, franchise, or other authorization required for the performance of such Tenant's work;

(H) No Tenant's work shall be undertaken, started, or begun by Tenant or by Tenant's agents, employees, contractors, or anyone else acting for or on behalf of Tenant until Landlord has approved such plans and specifications, if required hereunder;

(I) Notwithstanding anything to the contrary contained herein, in the event that any of Tenant's Work, requires any structural improvements and/or repairs to the Demised Premises of any kind whatsoever, including by way of example but not in limitation thereof, shoring up the foundation and perimeter walls of the Building and repairing and/or improving any existing electrical and water systems inside the walls of the Building, Tenant hereby agrees that Tenant shall, at Tenant's sole cost and expense, be solely responsible for making such structural improvements and/or repairs which in any event shall be subject to Landlord's approval; and

(J) Tenant acknowledges and agrees that Landlord shall not be required to perform any work, supply any materials or incur any expense of any kind whatsoever in connection with any of Tenant's work.

#### 55. INTENTIONALLY DELETED.

56. CONSTRUCTION. It is understood and agreed that all contractors performing work on behalf of Tenant, and all contracts entered into by Tenant, shall provide that all contractors shall perform any Tenant improvements and furnish the required materials on the sole credit of

Tenant; that no lien for labor or materials shall be filed or claimed by any contractor or subcontractor against the Demised Premises, and following the completion of the performance of all work at the Demised Premises, Tenant shall furnish to Landlord lien waivers from all contractors, subcontractors and materialmen who have performed work or supplied materials to the Demised Premises. In the event that a lien is filed, Tenant shall immediately discharge any such lien filed or claimed by any suppliers, laborers or subcontractors, and Tenant and the contractor shall indemnify and hold Landlord harmless from and against any and all costs and expenses, including, within limitation, reasonable attorney's fees and disbursements, suffered or incurred as a result of any such lien that may be filed or claimed in connection with or arising out of work undertaken by said contractor.

#### 57. SIGNS.

(A) Tenant shall not place or install any sign on the roof or on any exterior wall or any other part of the Demised Premises nor install any sign on the exterior of the Demised Premises, until Tenant shall have: (i) received Landlord's prior written consent thereto, including, but not limited to, Landlord's designation as to the area where such sign may be installed as well as Landlord's approval of the design and size of such sign; and (ii) received all approvals and permits required by Law and delivered copies thereof to Landlord together with evidence of payment of any fees pertaining to Tenant's signs if such permit, approval or fees are required. All signs to be installed by Tenant shall be professionally made and neat in appearance.

(B) As used in this Article, the word "sign" shall be construed to include any light or other advertising symbol or object irrespective of whether same be temporary or permanent.

(C) In no event shall Tenant install any awning or canopy on the exterior of the Demised Premises or on any other portion of the Building.

58. SPECIFIC PERFORMANCE. With respect to any provision of this lease which provides, in effect, that Landlord shall not unreasonably withhold, or unreasonably delay any consent or any approval, Tenant, in no event, shall be entitled to make, nor shall Tenant make, any claim, and Tenant hereby knowingly, voluntarily, intentionally, unconditionally and irrevocably waives any claim, for money damages; nor shall Tenant claim any money damages by way of set-off, counterclaim or defense, based upon any claim or assertion by Tenant that Landlord has unreasonably withheld or unreasonably delayed any consent or approval; but Tenant's sole remedy shall be an action or proceeding to enforce any such provision, or for specific performance, injunction or declaratory judgment.

59. UNENFORCEABLE PROVISIONS. If any term, provision, covenant or condition of this lease or the application thereof to any person or circumstance shall, at any time, or to any extent, be invalid or unenforceable, the remainder of this lease or the application of such term, provision, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each other term, provision, covenant and condition of this lease shall be valid and enforceable to the fullest extent permitted by law.

60. NEW YORK LAW GOVERNS. This lease shall be governed by and construed in accordance with the laws of the State of New York without reference to principles of conflict of laws.

#### 61. LATE CHARGES: INTEREST.

(A) In addition to, and not instead of, any and all rights and remedies of Landlord under this lease or the laws of the State of New York, if any monthly installment of base annual rent or additional rent shall not be paid within ten (10) days after the date that payment is due, then Tenant agrees to pay Landlord as additional rent a late charge equivalent to four (4%) percent of the amount not paid within such ten (10) day period. Tenant further agrees that the late charge imposed is fair and reasonable, complies with all Laws, and constitutes an agreement between Landlord and Tenant as to the estimated compensation for costs and administrative expenses incurred by Landlord due to the late payment of rent to Landlord by Tenant. Tenant further agrees that the late charge assessed pursuant to this Article is not interest, and the late charge assessed does not constitute a lender or borrower/creditor relationship between Landlord and Tenant.



(B) In addition to the payment set forth in subparagraph 61(A) of this Article, any base annual rent, additional rent or other amounts to be paid by Tenant which are not paid within thirty (30) days after the date such payment is due, shall bear interest from and after the expiration of such thirty (30) day period at a rate (the "Default Rate") of eight (8%) percent per annum, but in no event greater than the maximum rate of interest permitted in the State of New York.

62. ADDITIONAL RENT. All costs, charges and expenses which Tenant assumes, agrees or is obligated to pay pursuant to this lease shall be deemed additional rent, and in the event of non-payment, Landlord shall have all of the rights and remedies with respect thereto as is herein provided for in the case of non-payment of rent.

### 63. PERMITS.

(A) Tenant shall, at Tenant's sole cost and expense, obtain any and all permits, licenses and/or certificates, of whatsoever kind or nature, from any and all authorities having jurisdiction over the Demised Premises, necessary or required for the occupation and use of the Demised Premises as provided for in this lease, and Landlord agrees to cooperate with Tenant (without cost or expense to Landlord) in order to help Tenant obtain such permits, licenses and/or certificates. Tenant covenants that Tenant shall not use or suffer or permit any person to use the Demised Premises for any unlawful purpose and to obtain and maintain, at Tenant's sole cost and expense, all permits, licenses and/or certificates from any and all governmental authorities having jurisdiction of the Demised Premises which may be necessary for the conduct of Tenant's business therein. Tenant further covenants to comply with all Laws, and Tenant acknowledges that Landlord has not made any representations with respect to any such Laws.

(B) Tenant shall indemnify and hold Landlord harmless from and against any and all costs, claims, penalties, losses, liability, damages or expenses (including, without limitation, reasonable attorneys' fees and disbursements) imposed by reason of a violation of any applicable Law related to Tenant's use and/or occupancy of the Demised Premises.

64. HOLD OVER

(A). Tenant acknowledges that possession of the Demised Premises must be surrendered to Landlord at the expiration or sooner termination of the Term. Tenant agrees to indemnify and hold Landlord harmless from and against any and all costs, claims, penalties, losses, liability, damages or expenses (including, without limitation, reasonable attorneys' fees and disbursements) resulting from delay by Tenant in so surrendering the Demised Premises, including, without limitation, any claims made by any succeeding tenant founded on such delay. The parties recognize and agree the damage to Landlord resulting from any failure by Tenant to timely surrender possession of the Demised Premises as aforesaid will be extremely substantial, will exceed the amount of the monthly base annual rent and additional rent theretofore payable hereunder, and will be impossible to accurately measure. Tenant therefore agrees that if possession of the Demised Premises is not surrendered to Landlord within twenty four (24) hours after the date of the expiration or sooner termination of the Term, then Tenant shall pay to Landlord for each month and for each portion of any month during which Tenant holds over in the Demised Premises after the expiration or sooner termination of the Term, a sum equal to two (2) times the aggregate of that portion of the base annual rent and additional rent which was payable under this lease during the last month of the Term. The provisions of this Article shall survive the expiration or said sooner termination of the Term.

(B) Tenant shall occupy the Demised Premises during the holdover period in its "as is" condition as of the expiration of the Term or prior termination of this lease and Landlord shall not be required to perform any work, furnish any materials or make any repairs within the Demised Premises during the holdover period. Nothing contained in this lease shall be construed as a consent by Landlord to the possession by Tenant of the Demised Premises beyond the expiration of the Term or prior termination of this lease, and Landlord, upon said expiration of the Term or prior termination of this lease, shall be entitled to the benefits of all legal remedies that may now be in force or may hereafter be enacted relating to speedy repossession of the Demised Premises by Landlord.

**65. UNCOLLECTIBLE CHECKS.** It is hereby understood and agreed by Tenant that in the event Landlord receives a check from Tenant for the payment of base annual rent, additional

rent and/or any other charge(s) due under this lease, and such check is uncollectible by Landlord due to insufficient funds in Tenant's account or for any other reason, Tenant shall pay to Landlord a service charge in the sum of \$100.00 for Landlord's expense in processing such uncollectible check, as additional rent under this lease, together with Tenant's next monthly rent installment due under this lease. The provisions of this Article shall not be deemed to limit Landlord from enforcing any other rights Landlord may have under this lease in the event of Landlord's receipt of any such uncollectible check and Landlord's right herein to collect a service charge, as provided above, shall be in addition to all other rights of Landlord contained in this lease.

**66. LEGAL RENT RESTRICTIONS.** If any of the rent payable under the terms of this lease shall be or become uncollectible, reduced or required to be refunded because of any applicable law, ordinance, order, rule, requirement or regulation, Tenant shall enter into such agreement(s) and take such other steps (without additional expense to Tenant) as Landlord may reasonably request and as may be legally permissible to permit Landlord to collect the maximum rents which from time to time during the continuance of such legal rent restriction may be legally permissible (and not in excess of the amounts reserved therefor under this lease). Upon the termination of such legal rent restriction during the Term, (a) the rents shall become and thereafter be payable in accordance with the amounts reserved herein for the periods following such termination and (b) Tenant shall pay to Landlord, to the maximum extent legally permissible, an amount equal to (i) the rents which would have been paid pursuant to this lease but for such legal rent restriction less (ii) the rents paid by Tenant during the period such legal rent restriction was in effect, which amount shall be payable in twelve (12) equal consecutive monthly installments.

**67. INTENTIONALLY DELETED**

**68. NO ACCORD.** No payment by Tenant or receipt by Landlord of a lesser amount than any installment or payment of rent due shall be deemed to be other than on account of the amount due, and no endorsement or statement on any check or any letter accompanying any check or payment of rent shall be considered an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or payment of rent or pursue any other remedies available to Landlord. No receipt of money by Landlord from Tenant after the termination of this lease or Tenant's right to possession of the Demised Premises shall reinstate, continue or extend the Term. Landlord may allocate payments received from Tenant to outstanding account balances of Tenant under this lease in the manner determined by Landlord and Landlord shall not be bound by any allocation such payments made by Tenant by notation or endorsement on checks or otherwise.

**69. EXHAUST TO STREET.** If Tenant's installation requires any exhaust to the street, the entire installation of such exhaust shall be paid for by Tenant and shall be subject to Landlord's prior written approval as to the location and aesthetics thereof which approval shall not be unreasonably withheld or delayed. Tenant shall properly ventilate and insulate the Demised Premises so that the doors, noises and/or any other residues from the operation of Tenant's business shall not materially or adversely affect the quiet and peaceful enjoyment of tenants or occupants in adjoining buildings.

**70. HAZARDOUS SUBSTANCES.**

(A) For purposes of this Article, "Hazardous Substance" means any pollutant, contaminant, toxic or hazardous waste, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, flammable, explosive, radioactive material, urea formaldehyde foam insulation, asbestos, PCBs, or any other substances the removal of which is required, or the manufacture, preparation, production, generation, use, maintenance, treatment, storage, transfer, handling or ownership of which is restricted, prohibited, regulated or penalized by any and all federal, state, county, or municipal statutes or laws now or at any time hereafter in effect (collectively hereinafter referred to as "Requirements"), including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§ 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.), the Clean Air Act (42 U.S.C. §§ 7401 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. §§ 2601 et seq.) and the Occupational Safety and Health Act (29 U.S.C. §§ 651 et seq.), as these laws have been amended or supplemented.

(B) Tenant agrees that no part of the Demised Premises will be used for, and Tenant shall not suffer or allow the treatment, generation, manufacture, use, refining, production, storage, disposal, burial, dispersal, release, or placement of any Hazardous Substance, and that Tenant shall not release, suffer or permit the release of any Hazardous Substance onto the Demised Premises or into the subsurface thereof or onto any property whatsoever, including without limitation, surface water and ground waters, unless in compliance with all applicable law(s) permit(s), order(s), or other valid governmental approval(s), whether now in effect or hereafter enacted. Furthermore, Tenant shall not cause or permit to occur any violation of any Law related to environmental conditions in, at, on, under or about the Demised Premises, or arising from Tenant's use or occupancy of the Demised Premises, including, but not limited to, soil and ground water conditions. Tenant shall, at Tenant's own expense, comply with all Laws regulating the use, generation, storage, transportation or disposal of Hazardous Substances. Furthermore, Tenant shall, at Tenant's sole cost and expense, make all submissions to, provide all information required by, and comply with all requirements of all governmental authorities under all Laws. Tenant shall provide all information regarding the use, generation, storage or disposal of Hazardous Substances that is requested by Landlord. The provisions of this subparagraph 70(B) shall survive the expiration or sooner termination of this lease.

(C) The failure of Tenant to abide by each and every of the foregoing obligations shall be a material default under this lease which if not cured within ten (10) days of Landlord's notice, or sooner if an emergency, dangerous, or hazardous condition exists in, at, on or upon, or about the Demised Premises, shall entitle Landlord to pursue all remedies available in law, at equity and/or under this lease. The provisions of this subparagraph 70(C) shall survive the expiration or sooner termination of this Lease.

(D) Tenant shall indemnify and hold Landlord and Landlord's successors and assigns and their respective officers, directors, shareholders, partners, agents and employees and the Demised Premises harmless from and against any and all claims, obligations, liabilities, violations, penalties, fines, suits, governmental orders, causes of actions, judgments, damages, whether civil or criminal or both, of any and all kind or nature which result from or are in any way connected with a breach or default by Tenant of the foregoing agreement and/or which Landlord may be subject in connection with any Hazardous Substances resulting from or in connection with the discharge, despoiler, release or escape of smoke, vapors, soot fumes, acids, alkalis, toxic chemicals, liquids or gases, volatile organics, waste materials or other irritants, contaminants or pollutants or otherwise at the Demised Premises, caused by or resulting from the use and operation of the Demised Premises by Tenant, Tenant's successors and assigns, or by the introduction of any Hazardous Substance into the Demised Premises by any third party other than Landlord's agents or employees, and/or by reason of Tenant's invitees, licensees, employees, officers, agents, servants, any third party, etc., in any case whether or not Tenant has complied with Tenant's obligations pursuant to this Article. This indemnification and hold harmless agreement shall also cover any and all liens for hazardous waste clean up expenses in favor of the United States, New York State, or any political subdivision thereof, and any governmental department, bureau, agency, board or commission of any of the foregoing. This indemnification shall include, but not be limited to, reasonable legal fees and disbursements and other charges to which Landlord may be put, including clean up costs, in defending against any proceeding in connection with the foregoing.

71. TENANT IMPROVEMENTS. Except as otherwise provided in this lease, all improvements upon the Demised Premises and any replacements therefor, including, but not limited to, all air-conditioning and heating systems, electrical and plumbing systems, drop ceiling, lighting systems, heating, ventilating and air conditioning system, alarm system, sprinklers, paneling, decorations, partitions, storefront, storefront gates, railings, affixed to the realty, except furniture or movable trade fixtures installed at the expense of Tenant, shall become the property of Landlord and shall remain upon, and be surrendered with, the Demised Premises as a part thereof at the termination of this lease, without compensation to Tenant.

72. COMPLIANCE WITH LAWS. Tenant shall comply with all zoning ordinances as well as all federal, state, county, town, village, municipal, or other governmental (including, without limitation, any bureaus, agencies, offices, departments, boards, authorities and commissions thereof) laws, ordinances, codes, licenses, permits, orders, approvals, rules and

regulations, whether the same are in force on the date hereof or may in the future be passed or issued, affecting and/or applicable to the Demised Premises including the elevators, if any, servicing the Demised Premises, the Building, Tenant's business, or any activity or condition on or about the Demised Premises, including, without limitation, The Americans With Disabilities Act, and all environmental laws and any other laws relating to the improvements on the Demised Premises or the air in and around the Demised Premises (collectively, "Laws"). Tenant warrants and represents that Tenant's business and all activities to be conducted or performed at, in, on, or about the Demised Premises shall comply with all Laws. Tenant agrees to change, reduce, or stop any such activity, or install necessary equipment, safety devices, pollution control systems, or other installations at any time during the lease to so comply. If, during the Term, Landlord or Tenant is required to alter, convert, or replace the HVAC system serving the Demised Premises in order to comply with any Laws concerning indoor air pollution or quality, or in order to meet any applicable limitation on, standard for, or guideline relating to indoor air quality or the emission of any indoor air pollutant, including, without limitation, those adopted by the Occupational Safety and Health Administration, the American Society of Heating, Refrigeration, and Air Conditioning Engineers, or the Environmental Protection Agency, Tenant shall be responsible for paying the entire cost of any such conversion or replacement, including, without limitation, the purchase and installation of new equipment, and the alteration of existing HVAC equipment in the Demised Premises to accommodate any new equipment.

73. **DIAGRAM.** Tenant acknowledges that Tenant has been informed by Landlord that any diagram or architectural plan, either attached to this lease or previously forwarded to Tenant or hereafter provided to Tenant by Landlord, or by Tenant to Landlord, is solely for the purpose of identifying the Demised Premises and Landlord has made no representation and is unwilling to make any representation and nothing in this lease shall be deemed or construed to be a representation or covenant as to the dimensions of and/or the square foot area contained in the Demised Premises.

74. **FREE OF LIENS.**

(A) Tenant shall not create or permit to be created any lien, encumbrance or charge (levied on account of any taxes of any mechanic's, laborer's or materialman's lien, conditional sale, title retention agreement or otherwise) upon the Demised Premises or any part of the income therefrom, and Tenant shall not suffer any other matter or thing whereby the estate, rights and interest of Landlord in the Demised Premises or any part thereof might be impaired. Tenant shall take all steps possible under local laws to prevent the imposition of such a lien, encumbrance or charge on the Demised Premises.

(B) If any lien, encumbrance or charge referred to in this Article shall at any time be filed against the Demised Premises or any part thereof, then Tenant, at Tenant's sole cost and expense, shall, within twenty (20) days after Tenant's receipt of notice of the filing thereof, commence to cure and diligently prosecute to completion the discharge of record of such lien by bonding or by full payment, so that such lien is thereafter removed of record not later than thirty (30) days after receipt of notice of the filing thereof. Tenant shall indemnify Landlord against and defend and hold Landlord harmless from and against any and all costs and expenses, including reasonable attorneys' fees and disbursements, resulting from Tenant's failure to so discharge said lien, encumbrance or charge. If Tenant shall fail to cause such lien to be discharged within the aforesaid period, then, in addition to any other right or remedy Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event Landlord shall be entitled, if Landlord so elects, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowances. Any amount so paid by Landlord and all reasonable costs and expenses incurred by Landlord in connection therewith together with interest thereon at the Default Rate shall constitute additional rent payable by Tenant under this lease.

(C) Nothing contained in this lease shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of labor or materials for the specific improvement, alteration to or repair of the Demised Premises or any part thereof. Notice is hereby given that Landlord shall not be liable

for any work performed or to be performed at the Demised Premises for Tenant or any subtenant, or for any materials furnished or to be furnished at the Demised Premises for Tenant or any subtenant upon credit, and that no mechanic's or other lien for such work or materials shall attached to or affect the estate or interest of Landlord in and to the Demised Premises.

(D) Tenant shall have no power to do any act or make any contract which may create or be the foundation for any lien, mortgage or other encumbrance upon the reversion or other estate of Landlord or of any interest of Landlord in the Demised Premises.

**75. NOTICES.** All notices required to be sent under the provisions of this lease to Landlord and Tenant by one another shall be in writing and sent by U.S. mail, certified, return receipt requested, or recognized overnight courier, if to Tenant, to the Demised Premises, with a copy to Ellen Walker, Esq., at Granoff Foreza & Walker, at 747 Third Avenue, 4th Floor, New York, New York 10017, and if to Landlord, to the address set forth on the first page of this lease or such other address designated by such party. Notices may be sent by the attorneys for the respective parties. All notices shall be deemed given when received, or if delivery is refused, when delivery is attempted.

**76. PAYMENT OF RENT.** All charges, costs and sums required to be paid by Tenant under this lease shall be payable without demand, notice, offset or deduction. All charges, costs and sums required to be paid by Tenant under this lease shall be paid by checks payable to the order of Landlord, which checks shall be mailed or delivered to Landlord at the address hereinbefore set forth, or in such other manner or at such other place as Landlord may from time to time designate to Tenant in writing. Tenant's payment of base annual rent and additional rent shall be prorated for partial months or years within the term. Tenant's covenant to pay all charges, including rent and additional rent, due under this lease shall be independent of every other covenant in this lease. Landlord's acceptance of base annual rent or additional rent from a party other than Tenant shall not be deemed to confer any rights on such other party with respect to this lease or otherwise and shall not be deemed a waiver of the covenant made by Tenant with respect to, or the release of Tenant from, the further performance by Tenant of all of Tenant's covenants and obligations contained in this lease.

**77. INTENTIONALLY DELETED.**

**78. AUTHORITY.** Landlord and Tenant each represent and warrant that (i) such party has full power to enter into this lease and to consummate the transaction provided for herein, and (ii) the person executing this lease on such party's behalf has the authority to do so and the power to bind such party thereby.

**79. CONSTRUCTION OF LEASE.** This lease shall be construed without regard to any presumption or other rule requiring construction against the party causing this lease to be drafted. If any words or phrases in this lease shall have been stricken out or otherwise eliminated, whether or not any other words or phrases have been added, this lease shall be construed as if the words or phrase so stricken out or otherwise eliminated were never included in this lease and no implication or inference shall be drawn from the fact that said words or phrases were so stricken out or otherwise eliminated. All terms and words used in this lease, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require.

**80. USE AND OCCUPANCY.**

(A) The use of the Demised Premises shall at all times be in compliance with Laws affecting the Demised Premises. Tenant shall not use or suffer or permit any person to use the Demised Premises for any unlawful purpose and shall obtain and maintain, at Tenant's sole cost and expense, all licenses and permits from any and all governmental authorities having jurisdiction over the Demised Premises which may be necessary for the conduct of Tenant's business therein. Failure by Tenant to obtain a new Certificate of Occupancy, if required, or receive necessary licenses and permits shall have no effect on Tenant's obligation to make all payments of base annual rent and additional rent required under this lease. Tenant shall indemnify and hold Landlord harmless from and against any and all claims, penalties, losses, liability, damages or expenses (including, without limitation, reasonable attorneys' fees and disbursements) imposed

by reason of a violation of the terms, provisions, covenants and conditions of this article.

(B) Tenant agrees to use, occupy, operate and maintain the Demised Premises throughout the Term in a dignified manner and only for the use specifically set forth in Article 2 of this lease and for no other purpose, unless approved by Landlord in writing.

(C) Tenant acknowledges that Landlord's damages resulting from any breach of the provisions of this Article are difficult, if not impossible to ascertain and concedes that, among other remedies for such breach permitted by law or the provisions of this lease, Landlord shall be entitled to enjoin Tenant from any violation of said provisions.

81. POSSESSION GUARANTY. In order to induce Landlord to enter into this lease, residing at \_\_\_\_\_, and whose Social Security Number is \_\_\_\_\_ ("Guarantor"), hereby makes the following guaranty and agreement with and in favor of Landlord and Landlord's respective legal representatives, successors and assigns:

(A) Guarantor knowingly, voluntarily, intentionally, unconditionally and irrevocably guarantees that Guarantor shall pay to Landlord all base annual rent (including, without limitation, any unearned portion of the Allowance) and additional rent payable hereunder, and satisfy all liens affecting the Demised Premises, that have accrued or may accrue under the terms of this lease (hereinafter referred to as "Accrued Rent"), to the latest date that Tenant and Tenant's assigns, licensees and sublessees, if any, shall have completely performed all of the following:

(i) Vacated and surrendered the Demised Premises to Landlord pursuant to the terms of this lease (except with respect to the stated expiration date in this lease);

(ii) Delivered the keys to the Demised Premises to Landlord;

(iii) Paid to Landlord all Accrued Rent to and including the date which is the later of (a) the actual receipt by Landlord of said Accrued Rent, (b) the surrender of the Premises, or (c) receipt by Landlord of the keys to the Demised Premises; and

(iv) The date which is (90) NINETY days after the date Tenant advises Landlord, in writing, that Tenant is vacating the Demised Premises. **Tenant agrees to deposit \$30,000.**

It is agreed that any security deposit pursuant to this lease shall not be computed as a deduction from any amount payable by Tenant or Guarantor under the terms of this guaranty or the lease.

(B) Guarantor knowingly, voluntarily, intentionally, unconditionally and irrevocably guarantees that all work performed by or on account of Tenant shall be fully completed, free and clear of all liens, violations and encumbrances, and fully paid for by Tenant. If Tenant does not timely and fully complete the work free and clear of all liens, violations and encumbrances; or Tenant shall default in any payment for same, Guarantor shall well and truly perform said payment and/or completion and/or discharge any lien, violation or encumbrance upon seven (7) days notice from Landlord. Guarantor hereby agrees to indemnify and hold Landlord harmless from and against any and all damages, including, but not limited to, legal fees and costs incurred by Landlord, arising from said failure to pay or complete the work or the occurrence of said lien, violation or encumbrance.

(C) This guaranty is absolute, unconditional and irrevocable and is a guaranty of payment and not of collection. Guarantor waives all notice of non-payment, non-performance, non-observance or proof, or notice, or demand, whereby to charge Guarantor and expressly agrees that the validity of this agreement, and the obligations of Guarantor hereunder shall in no wise be terminated, affected or impaired by reason of the assertion by Landlord against Tenant of any of the rights or remedies reserved by Landlord pursuant to the terms of this lease. Guarantor further covenants and agrees that this guaranty shall remain and continue in full force and effect, as to any renewal, modification or extension of this lease and during any period when Tenant is occupying the Demised Premises as a "statutory tenant". As a further inducement to

Landlord to enter into this lease and in consideration thereof, Landlord and Guarantor covenant and agree to and do hereby waive trial by jury in any action or proceeding brought by either Landlord or Guarantor against the other on any matters whatsoever arising out of, under, or by virtue of the terms of this lease or of this guaranty.

Provisions of This Article 81 Agreed To:

82. CHANGES AND MODIFICATIONS. This writing contains the entire agreement between the parties hereto. No agent, representative, employee or officer of either the Landlord or Tenant hereto has authority to make, or has made, any statement, agreement or representation, oral or written, in connection therewith, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter the terms and conditions herein set forth. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms hereof. No modifications, alterations, changes, waiver or estoppel to this lease or any of the terms hereof shall be valid or binding unless in writing and signed by a duly authorized officer of the party to be charged.

83. CASUALTY. Supplementing the provisions of Article 9 hereof, in the event Landlord elects to complete any repairs or restoration at the Demised Premises resulting from a casualty, Landlord shall not be obligated to commence any such repairs or restorations until and unless Landlord has received sufficient proceeds of all fire insurance policies to complete such repairs and/or restoration.

84. COMMENCEMENT DATE/TERM.

(A) The parties hereto acknowledge and agree that the commencement date of this lease (the "Commencement Date") shall be the date on which both Tenant and Landlord have executed this lease and Landlord has delivered a fully executed lease to Tenant's attorney, at which time Landlord shall be deemed to have tendered occupancy of the Demised Premises to Tenant.

(B) Landlord and Tenant acknowledge and agree that the term of this lease ("Term") shall commence on the Commencement Date and shall terminate at midnight on the last day of the ~~third~~ (3) Lease Year (the "Expiration Date"); unless sooner terminated in accordance with the provisions hereof.

85. MISCELLANEOUS.

(A) If any provisions of this lease shall to any extent be invalid, the remainder of this lease shall not be affected thereby.

(B) There are no oral or written agreements between Landlord and Tenant affecting this lease.

(C) This lease may be amended only by instruments in writing executed by Landlord and Tenant.

(D) Landlord shall not be deemed, in any way or for any purpose, to have become, by the execution of this lease or any action taken hereunder, a partner of Tenant in Tenant's business or otherwise a joint venturer or member of any enterprise with Tenant.

(E) This lease shall be binding upon and shall inure to (and the words "Owner," "Landlord," and "Tenant" appearing in this lease shall be construed to mean) those named above and their respective heirs, executors, administrators, successors and assigns, and those claiming through or under them respectively.

(F) The Captions are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this lease nor the intent of any provision thereof.



86. ACCESS. Tenant acknowledges that some of the Building's equipment and systems (e.g., oil burner, water heater, gas meters, sprinkler valves, water valves, water meters, pipes, etc.) may be located in a portion of the Demised Premises and that Landlord and Landlord's representatives shall at times require access to the Demised Premises in order to service the equipment, utility systems, obtain readings, and make necessary repairs. Tenant agrees to afford unobstructed access to Landlord, and Landlord's agents, employees, contractors and representatives, in order to undertake such work, and Landlord may, after prior reasonable notice (or no notice in the event of an emergency), enter the Demised Premises with force or using a master key, if necessary, if Tenant is not present when Landlord requires such access.

87. RIGHT TO CURE DEFAULTS. If Tenant shall fail to comply with any of Tenant's obligations under this lease, Landlord, without thereby waiving such default and without liability to Tenant, may, but shall not be obligated to, perform the same for the account and at the expense of Tenant without notice in case of emergency and upon thirty (30) days' prior notice in all other cases; provided, however, if the default is of a nature that it cannot with due diligence be cured within such thirty (30) day period, then such thirty (30) day period shall be extended for a reasonable period provided Tenant has commenced to cure during such thirty (30) day period and is diligently and in good faith continuing to cure such default as determined by Landlord. Landlord may enter the Demised Premises at any time to cure any default. Bills for all costs and expenses incurred by Landlord in connection with any such performance (including, without limitation, bills for any property, material, labor or services provided, furnished or rendered, and reasonable attorneys' fees and disbursements) shall be paid by Tenant as additional rent upon demand, and if Tenant's lease term shall have expired at the time of incurring such reasonable costs and expenses, such reasonable costs and expenses shall be recoverable by Landlord as damages.

88. CHANGE OF CONDITION. Landlord shall not be liable for any change of condition in the Demised Premises caused by the compliance with any Laws, including any change required by Law for off-street parking or similar legislation, or by revocation by any such authority or authorities of any permit or license heretofore granted, or by construction or operation of any public or quasi-public work, or by the erection of any building or buildings upon any adjacent property, or by change of environment. Landlord shall not be liable for interference with or loss of light or other incorporeal hereditaments caused by Landlord or caused by or for the City of New York, or any governmental or quasi-governmental agency or authority in connection with the construction of any public or quasi-public work.

89. SECURITY. Supplementing and modifying the provisions of Article 31 of this lease:

(A) If any portion of the security deposit deposited hereunder be appropriated and applied by Landlord for the payment of overdue base annual rent, additional rent or other sums due hereunder, then Tenant shall, on Landlord's written demand, remit to Landlord, within twenty (20) days of such demand, a sufficient sum in cash, or certified check, to restore said security to the amount so appropriated and applied by Landlord. The obligation of Tenant pursuant to this paragraph is a substantial and material obligation of this lease. In addition to Landlord's other legal remedies for Tenant's failure to restore the security deposit, Landlord may avail itself of the conditional limitation provisions of this lease and may serve a notice to cure upon Tenant to restore the security deposit. Upon failure of Tenant to comply with said notice to cure, Landlord may serve a notice of termination pursuant to the terms and conditions of this lease.

(B) As the base annual rent increases pursuant to the provisions of this lease, Tenant shall deposit with Landlord an amount sufficient to increase the security deposit under the lease so that at all times during the Term there shall be three (3) times the then current monthly base annual rent on deposit with Landlord. The additional security required in the event of an approved assignment or subletting, however, shall not be deemed part of the required five (5) months rent security.

90. LANDLORD'S OPTION TO CANCEL

(A) If Landlord shall at anytime during the Term elect either to (i) sell the Building, (ii) net lease the Building, (iii) substantially renovate the Building, (iv) combine the Demised Premises with any contiguous portion of the Building, or (v) demolish the Building,

Landlord shall have the option to cancel this lease and the Term by written notice (the "Termination Notice") given to Tenant during the Term, which Termination Notice shall specify a cancellation date (the "Cancellation Date") which shall be at least one hundred eighty (180) days after the date of the Termination Notice and shall fall on the last day of a calendar month.

(B) Tenant acknowledges and agrees that in the event Landlord delivers the Termination Notice, it is essential that Landlord have possession of the Demised Premises free of tenancies and all other rights of occupancy on or before the Cancellation Date. Therefore, Tenant covenants and agrees (i) that this lease shall terminate on the Cancellation Date with the same force and effect as though said date were initially set forth as the Expiration Date, (ii) to vacate the Demised Premises by no later than the close of business on the Cancellation Date, and (iii) that time shall be of the essence with respect to Tenant's obligations hereunder on the Cancellation Date.

(C) If Tenant fails for any reason to vacate the Demised Premises by the close of business on the Cancellation Date, then Tenant agrees that the measure of damages to be sustained by Landlord as a result thereof shall be substantial, but are unascertainable as of the date of execution of this lease. Therefore, Tenant agrees to pay for use and occupancy of the Demised Premises in the sum of \$500.00 for each and every day (or portion thereof) that Tenant shall remain in possession of the Demised Premises beyond the Cancellation Date; and if Landlord institutes a summary proceeding to evict Tenant, Tenant hereby consents to the issuance of a final judgment in said summary proceeding, waives any stay of the issuance or execution of the warrant, consents to an Order of the Court fixing use and occupancy in the sum of \$500.00 per day (or portion thereof), and agrees to pay Landlord's attorney's fees and disbursements. Nothing herein contained shall be deemed to constitute the consent by Landlord to Tenant remaining in possession of the Demised Premises beyond the Cancellation Date.

(D) In the event that (i) Landlord elects to terminate this lease pursuant to paragraph (A) hereof, and (ii) Tenant shall have vacated the Demised Premises in accordance with the provisions of paragraph (B) hereof, and shall not otherwise be in default of any of the terms and conditions of this lease at the time the Demised Premises are so vacated, then and in such event, Landlord, within thirty (30) days after the Cancellation Date, shall pay to Tenant a cancellation fee (the "Cancellation Fee") equal to the sum of (x) Tenant's actual moving expenses not to exceed \$5,000.00, plus (y) the product obtained by multiplying (i) Tenant's Costs (as hereinafter defined) by (ii) 1.5, with the resulting product divided by a fraction, the denominator of which is 2.5 and the numerator of which is the number of months remaining in the Term on the Cancellation Date. For the purposes hereof, "Tenant's Costs" shall mean all hard and soft costs (excluding legal fees) expended by Tenant in connection with Tenant's initial work at the Demised Premises, as evidenced by paid invoices and receipts ("Cost Evidence") furnished by Tenant to Landlord on or before the date occurring ninety (90) days after the Rent Commencement Date, time being of the essence (the "Evidence Period"). Tenant acknowledges and agrees that any Cost Evidence not furnished to Landlord prior to the expiration of the Evidence Period shall not be includable in the calculation of the Cancellation Fee.

91. ATTORNEY REVIEW. Tenant represents and warrants that Tenant has been afforded the opportunity to have this lease reviewed by counsel and Tenant has had same reviewed by counsel or voluntarily elected to waive such right.

92. SAFETY AND SECURITY DEVICES. Landlord shall have no obligation to provide any safety or security devices, services or programs for Tenant or the Building and Landlord shall have no liability for failure to provide the same or for inadequacy of any measures provided. The parties acknowledge that safety and security devices, services and programs provided by Landlord, if any, while intended to deter crime and enhance safety, may not in given instances prevent theft or other injurious acts or ensure safety of parties or property. The risk that any safety or security device, service or program may not be effective, or may malfunction, or be circumvented, is assumed by Tenant with respect to Tenant's property and interests, and Tenant shall obtain insurance coverage to the extent Tenant desires protection against such acts and other losses, beyond that described in Article 47 hereof. Tenant agrees to cooperate in any safety or security program developed by Landlord or required by Law.

93. **PATRIOT ACT.** Tenant certifies and represents, both on the date of execution and delivery of this lease and during the entire Term, that neither Tenant nor any subtenant of Tenant nor any person or entity that owns any direct or indirect beneficial interest in Tenant or such subtenant is, or will be acting directly or indirectly for or on behalf of any group, entity, or nation, named by any Executive Order of the President of the United States or the United States Treasury Department as a terrorist or other "Specifically Designated National and Blocked Person", or other person, entity, nation or transaction banned or blocked pursuant to any Law, that is enforced or administered by the United States Office of Foreign Assets Control or any successor entity, agency or department (an "SDN"). Tenant represents that the persons listed at the end of this Article constitute all of the officers, directors, general partners, and persons and/or entities owning 25% or more of the shares, membership interests, or partnership interests (as the case may be) of Tenant (collectively, the "Principals") as of the date of execution and delivery of this lease. If Tenant is comprised of more than one person or entity, the foregoing certification is made as to each person and entity comprising Tenant. Any renewal right contained in this lease is void and of no force or effect if Tenant, or any of the persons and/or entities comprising Tenant (if Tenant is comprised of more than one person or entity), or any of the Principals of Tenant, are listed as an SDN at the date of the exercise of or on the date of renewal. Tenant shall, from time to time, furnish Landlord, upon request, with a list of Principals of Tenant. Names of Principals: Nili Lotan.

94. **LETTER OF CREDIT OPTION.**

(A) Supplementing Article 31 of this lease, Tenant, at Tenant's election, may deliver to Landlord an irrevocable letter of credit running in favor of Landlord, issued by a bank under the supervision of the Superintendent of Banks of New York, or a National Banking Association. The letter of credit shall be irrevocable for the term thereof and shall provide that it is automatically renewable for a period ending not earlier than sixty (60) days after the expiration of the Term hereby demised without any action whatsoever on the part of Landlord; provided that the issuing bank shall have the right not to renew said letter of credit on written notice to Landlord not less than sixty (60) days prior to the expiration of the then current term thereof (it being understood, however, that the privilege of the issuing bank not to renew said letter of credit shall not, in any event, diminish the obligation of Tenant to maintain such irrevocable letter of credit with Landlord through the date which is sixty (60) days after the expiration of the term hereby demised).

(B) The form and terms of the letter of credit (and the bank issuing the same) shall be reasonably acceptable to Landlord and shall provide, among other things, in effect that:

(1) Upon notice to Tenant, Landlord, or its then managing agent, shall have the right to draw down an amount up to the face amount of the letter of credit (and to the extent such payment is actually due and payable to Landlord upon the presentation to the issuing bank of Landlord's (or Landlord's then managing agent's) statement that such amount is due to Landlord under the terms and conditions of this Lease, it being understood that if Landlord or its managing agent be a corporation, partnership or other entity, then such statement shall be signed by an officer (if a corporation), a general partner (if a partnership), or any authorized party (if another entity).

(2) The letter of credit will be honored by the issuing bank without inquiry as to the accuracy thereof and regardless of whether Tenant disputes the content of such statement.

(3) In the event of a transfer of Landlord's interest in the Building of which the Demised Premises are a part, Landlord shall have the right to transfer the letter of credit to the transferee and thereupon Landlord shall, without any further agreement between the parties, be released by Tenant from all liability therefor, provided the transferee agrees to assume such obligations, and it is agreed that the provisions hereof shall apply to every transfer or assignment of said letter of credit to a new Landlord.

(C) If, as a result of any such application of all or any part of such security, the amount secured by the letter of credit shall be less than the amount required to be deposited by Tenant hereunder, Tenant shall forthwith provide Landlord with additional letter(s) of credit in an amount equal to the deficiency.

(D) Tenant further covenants that it will not assign or encumber said letter of credit or any part thereof and that neither Landlord nor its successors or assigns will be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

(E) Without limiting the generality of the foregoing, if the letter of credit expires earlier than sixty (60) days after the expiration of the Term of this lease, or the issuing bank notifies Landlord that it shall not renew the letter of credit, Landlord will accept a renewal thereof or substitute letter of credit (such renewal or substitute letter of credit to be in effect not later than thirty (30) days prior to the expiration thereof), irrevocable and automatically renewable as above provided to sixty (60) days after the end of the term of this lease upon the same terms as the expiring letter of credit or such other terms as may be acceptable to Landlord. However, (i) if the letter of credit is not timely renewed or a substitute letter of credit is not timely received, (ii) or if Tenant fails to maintain the letter of credit in the amount and terms set forth in this Article, Tenant, at least thirty (30) days prior to the expiration of the letter of credit, or immediately upon its failure to comply with each and every term of this Article, must deposit with Landlord cash security in the amounts required by, and to be held subject to and in accordance with, all of the terms and conditions set forth in this lease, failing which Landlord may present such letter of credit to the bank, in accordance with the terms of this Article, and the entire sum secured thereby shall be paid to Landlord, to be held by Landlord as provided in this Article and as provided in this lease. Tenant shall have the right from time to time during the term of this lease to replace the letter of credit then in place with a new letter of credit of like substance and tenor.

### ADDITIONAL RULES AND REGULATIONS

Tenant expressly agrees as follows:

- (a) All deliveries to or from the Demised Premises shall be done only at such times, in the areas and through the entrances designated for such purposes by Landlord.
- (b) All garbage and refuse shall be kept inside the Demised Premises in the kind of container specified by Landlord, and shall be placed outside of the Demised Premises prepared for collection in the manner and at the places reasonably specified by Landlord. Tenant shall pay the cost of removal of any of Tenant's refuse and garbage. If any part of Tenant's business shall consist of the preparation and/or sale of food, including without limitation the operation of a restaurant, snack shop or food market, Tenant shall provide refrigerated garbage containers at Tenant's expense for the disposal of its food scraps and refuse.
- (c) No radio or television aerial or other device shall be erected on the roof or exterior walls of the Demised Premises or the building in which the Demised Premises are located without first obtaining in each instance the Landlord's consent in writing not to be unreasonably withheld or delayed. Any aerial or device installed without such written consent shall be subject to removal at Tenant's expense without notice at any time.
- (d) No loud speakers, televisions, phonographs, radios, tape players or other devices shall be used in a manner so as to be heard or seen outside of the Demised Premises without the prior written consent of Landlord.
- (e) Tenant shall keep the Demised Premises at a temperature sufficiently high to prevent freezing of water in pipes and fixtures during all hours of the day and whether or not Tenant is open for business.
- (f) The plumbing facilities shall not be used for any other purpose than that for which they are constructed; no foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage, or damage resulting from a violation of this provision shall be borne by Tenant.
- (g) Tenant shall keep and maintain the Demised Premises including, without limitation, exterior and interior portions, of all windows doors, and all other glass in a neat and clean condition.
- (h) Tenant shall pay before delinquency all license or permit fees and charges of a similar nature for the conduct of any business in the Demised Premises. Tenant shall not store, display, sell or distributed any alcoholic beverages or any dangerous materials unless specifically permitted in this lease.
- (i) Tenant shall store and/or stock in the Demised Premises only such merchandise as Tenant is permitted to offer for sale in the Demised Premises pursuant to this lease.
- (j) Tenant shall not conduct or permit any fire, bankruptcy, auction or "going out of business" sale (whether real or fictitious) in the Demised Premises, or utilize any unethical method of business operation.
- (k) Tenant shall not perform any act or carry on any practice which may damage, mar or deface the Demised Premises.
- (l) Tenant shall not suffer, allow or permit any vibration, noise, light, odor or other effect which may emanate from the Demised Premises, or from any machine or other installation therein, or otherwise suffer, allow or permit the same to constitute a nuisance or otherwise interfere with the safety, comfort and convenience of Landlord or any of the other occupants of the Building or their customers, agents or invitees or any others lawfully in or upon the Building. Upon notice

by Landlord to Tenant that any of the aforesaid is occurring, Tenant agrees forthwith remove or control the same.

(m) If the Demised Premises are situated on the ground floor of the building, Tenant thereof shall further, at Tenant's expense, keep the sidewalks and curb in front of the Demised Premises clean and free from ice, snow, etc.

(n) The water and wash closets and plumbing fixtures shall not be used for any purposes other than those for which they were designed or constructed.

(o) Tenant shall not bring or permit to be brought or kept in or on the Demised Premises, any inflammable, combustible or explosive fluid, material, chemical or substance except in compliance with the terms of this Lease, or cause or permit any unusual or objectionable odors to permeate in or emanate from the Demised Premises.

(p) Tenant shall not place a load on any floor of the Demised Premises exceeding the floor load per square foot area which it was designed to carry and which is allowed by law. Such installations shall be placed and maintained by Tenant at Tenant's expense in setting sufficient in Landlord's judgment to absorb and prevent vibration, noise and annoyance.

(q) Tenant shall not install in any portion of the Demised Premises an automated teller machine or the like.