

EXTENSION AND MODIFICATION OF SUBLEASE DATED JULY 15, 1999

BETWEEN CLAUDE SIMON AS LESSOR AND THOMAS BOUREGY & CO., INC. AS LESSEE

PARTIES: CLAUDE SIMON (LESSOR) AND THOMAS BOUREGY & CO., INC. LESSEE

DATE OF AGREEMENT: NOVEMBER 18, 2002

SUBJECT: Extension and modification of sublease dated July 15, 1999 for the Fifth Floor at 160 Madison Avenue, New York, New York

1. The parties agree that the sublease dated July 15, 1999 between Claude Simon, as lessor and Thomas Bouregy & Co., Inc., as lessee (a copy of which is attached and incorporated ) is extended and modified pursuant to this agreement.

2. The term of the lease as set forth on page 1 of the preprinted lease is modified to extend from June 1, 2004, to May 31, 2009.

3. Rider paragraph 1. Subdivision 2 is modified as follows:

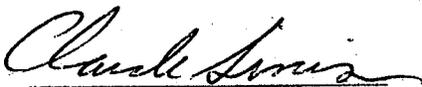
Lease Year	Fixed Annual Rent	Monthly Installments
6/1/2004 through 5/31/2005	\$ 50,647.90	\$ 4,220.66
6/1/2005 through 5/31/2006	\$ 50,647.90	\$ 4,220.66
6/1/2006 through 5/31/2007	\$ 50,647.90	\$ 4,220.66
6/1/2007 through 5/31/2008	\$ 50,647.90	\$ 4,220.66
6/1/2008 through 5/31/2009	\$ 50,647.90	\$ 4,220.66

4. All other terms of the lease remain in full force and effect. The tenant represents that the lease is in full force and effect and that the lessor is not in default or breach of the lease in any manner.

5. If this extension requires the consent of the overlandlord, 160 Madison Avenue Owners Corporation, then this extension shall not be effective until such consent is obtained and the parties agree to use reasonable efforts to obtain such consent.

CLAUDE SIMON, AS LESSOR

THOMAS BOUREGY & CO., INC. AS LESSEE

  
By: Claude Simon

  
By:

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

Agreement of Lease, made as of this  
Claude Simon

day of JULY 19 99, between

party of the first part, hereinafter referred to as OWNER, and

Thomas Bouregy & Co., Inc.  
401 Lafayette Street, New York, NY 10003

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

Witnesseth: Owner hereby leases to Tenant and Tenant hereby hires from Owner Entire Fifth (5th) Floor in the Cooperative Known as 160 Madison Avenue Owners Corporation *SUBSTANTIAL AS SHOWN ON THE FLOOR PLAN ATTACHED HERETO AS EXHIBIT A* in the building known as 160 Madison Avenue in the Borough of New York, City of New York, for the term of three (3) years

(or until such term shall sooner cease and expire as hereinafter provided) to commence on the 1st day of June nineteen hundred and ninety-nine, and to end on the 31st day of May, two thousand and two both dates inclusive, at an annual rental rate of *OR SUCH LATER DATE THAT POSSESSION AND OF THE DEMISED PREMISES IS DELIVERED TO TENANT*

See 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 *General Office use for publishing AND USES ANCILLARY OR INCIDENTAL THERETO*

provided such use is in accordance with the certificate of occupancy for the building, if any, and for no other purpose.

*REASONABLY*

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 nonstructural and which do not affect utility services or plumbing and electrical lines, in or to the interior of the demised premises using contractors or mechanics first approved in each instance by Owner. Tenant shall, at its expense, before making any alterations, additions, installations or improvements obtain all permits, approval 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. Tenant agrees to carry and will cause Tenant's contractors and sub-contractors to carry such workman'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 thirty days thereafter, at Tenant's expense, by payment or filing the bond required by law or otherwise. All fixtures and all paneling, partitions, railings and like installations, installed in the premises at any time, either by Tenant or by Owner on 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, elects to relinquish Owner's right thereto and to have them removed by Tenant, in which event the same shall be removed from the demised premises 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 to prevent Tenant's removal of trade fixtures, moveable 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 may, at the election of Owner, either be retained as Owner's property or removed from the premises by Owner, at Tenant's expense.

and the demised premises caused by the moving of Tenant's fixtures, furniture or equipment. All the aforesaid repairs shall be of quality or class equal to the original work or construction. If Tenant fails, after ten days notice, to proceed with due diligence to make repairs required to be made by Tenant, the same may be made by the Owner at the expense of Tenant, and the expenses thereof incurred by Owner shall be collectible, as additional rent, after rendition of a bill or statement therefor. If the demised premises be or become infested with vermin, Tenant shall, at its expense, cause the same to be exterminated. Tenant shall give Owner prompt notice of any defective condition in any plumbing, heating system or electrical lines located in the demised premises and following such notice, Owner shall remedy the condition with due diligence, but at the expense of Tenant, if repairs are necessitated by damage or injury attributable to Tenant, Tenant's servants, agents, employees, invitees or licensees as aforesaid. Except as specifically provided in Article 9 or elsewhere in this lease, there shall be no allowance to the Tenant for a 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 or the demised premises or in and to the fixtures, appurtenances or equipment thereof. It is specifically agreed that Tenant shall not be 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 any 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 with regard to which Article 9 hereof shall apply.

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 shall, at Tenant's sole cost and expense, 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 direction 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, whether or not arising out of Tenant's use or manner of use thereof, or, with respect to the building, arising out of Tenant's use or manner of use of the demised premises of the building (including the use permitted under the lease). Except as provided in Article 30 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 or

Repairs: 4. Owner shall maintain and repair the exterior of and the public portions of the building. Tenant shall, throughout the term of this lease, take good care of the demised premises including the bathrooms and lavatory facilities (if the demised premises encompass the entire floor of the building) and the windows and window frames and, the fixtures and appurtenances therein and at Tenant's sole cost and expense promptly make all repairs thereto and to the building, whether structural or non-structural in nature, caused by or resulting from the carelessness, omission, neglect or improper conduct of Tenant, Tenant's servants, employees, invitees, or licensees, and whether or not arising from such Tenant conduct or omission, when required by other provisions of this lease, including Article 6. Tenant shall also repair all damage to the building

*\*OWNER AGREES TO NOTIFY TENANT OF APPROVAL OR DISAPPROVAL OF ANY WRITTEN ALTERATION REQUEST (SPECIFYING IN REASONABLE DETAIL THE REASONS FOR ANY DISAPPROVAL) WITHIN 10 BUSINESS DAYS OF TENANT'S REQUEST. IF OWNER FAILS TO SO ADVISE TENANT WITHIN SUCH 10 BUSINESS DAY PERIOD TENANT MAY SEND OWNER A WRITTEN NOTICE THAT OWNER FAILED TO RESPOND TO TENANT'S ALTERATION REQUEST, AND IF OWNER DOES NOT THEREAFTER RESPOND WITHIN 10 BUSINESS DAYS AFTER TENANT'S NOTICE, THE ALTERATIONS ARE DEEMED APPROVED.*

*BUSINESS*

*ADD TO THE EXTENT*

permit any act or thing to be done in or to the demised premises which is contrary to law, or which will invalidate or be in conflict with public liability, fire or other policies of insurance at any time carried by or for the benefit of Owner. Tenant shall not keep anything in the demised premises except as now or hereafter permitted by the Fire Department, Board of Fire Underwriters, Fire Insurance Rating Organization and other authority having jurisdiction, and then only in such manner and such quantity so as not to increase the rate for fire insurance applicable to the building, nor use the premises in a manner which will increase the insurance rate for the building or any property located therein over that in effect prior to the commencement of Tenant's occupancy. If by reason of failure to comply with the foregoing the fire insurance rate shall, at the beginning of this lease or at any time thereafter, be higher than it otherwise would be, then Tenant shall reimburse Owner, as additional rent hereunder, for that portion of all fire insurance premiums thereafter paid by Owner which shall have been charged because of such failure by Tenant. In any action or proceeding wherein Owner and Tenant are parties, a schedule or "make-up" rate for the building or demised premises issued by a body making fire insurance rates applicable to said premises shall be conclusive evidence of the facts therein stated and of the several items and charges in the fire insurance rates then applicable to said premises. Tenant shall not place a load upon 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. 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 settings sufficient, in Owner's judgement, to absorb and prevent vibration, noise and annoyance.

**Subordination:** 7. This lease is subject and subordinate to all ground or underlying leases and to all mortgages which may now or hereafter affect such leases or the real property of which demised premises are a part and to all renewals, modifications, consolidations, replacements and extensions of any such underlying leases and mortgages. This clause shall be self-operative and no further instrument or subordination shall be required by any ground or underlying lessor or by any mortgagee, affecting any lease or the real property of which the demised premises are a part. In confirmation of such subordination, Tenant shall from time to time execute promptly any certificate that Owner may request.

**Tenant's Liability Insurance Property Loss, Damage, Indemnity:**

8. Owner or its agents shall not be liable for any damage to property of Tenant or of others entrusted to employees of the building, nor for loss of or damage to any property of Tenant by theft or otherwise, nor for any injury or damage to persons or property resulting from any cause of whatsoever nature, unless caused by or due to the negligence of Owner, its agents, servants or employees; Owner or its agents shall not be liable for any damage caused by other tenants or persons in, upon or about said building or caused by operations in connection of any private, public or quasi public work. If at any time any windows of the demised premises are temporarily closed, darkened or bricked up (or permanently closed, darkened or bricked up, if required by law) for any reason whatsoever including, but not limited to Owner's own acts, Owner shall not be liable for any damage Tenant may sustain thereby and Tenant shall not be entitled to any compensation therefor nor abatement or diminution of rent nor shall the same release Tenant from its obligations hereunder nor constitute an eviction. Tenant shall indemnify and save harmless Owner against and from all liabilities, obligations, damages, penalties, claims, costs and expenses for which Owner shall not be reimbursed by insurance, including reasonable attorney's fees, paid, suffered or incurred as a result of any breach by Tenant, Tenant's agents, contractors, employees, invitees, or licensees, of any covenant or condition of this lease, or the carelessness, negligence or improper conduct of the Tenant, Tenant's agents, contractors, employees, invitees or licensees. Tenant's liability under this lease extends to the acts and omissions of any sub-tenant, and any agent, contractor, employee, invitee or licensee of any sub-tenant. In case any action or proceeding is brought against Owner by reason of any such claim, Tenant, upon written notice from Owner, will, at Tenant's expense, resist or defend such action or proceeding by counsel approved by Owner in writing, such approval not to be unreasonably withheld.

**Destruction, Fire and Other Casualty:**

9. (a) If the demised premises or any part thereof shall be damaged by fire or other casualty, Tenant shall give immediate notice thereof to Owner and this lease shall continue in full force and effect except as hereinafter set forth. (b) If the demised premises are partially damaged or rendered partially unusable by fire or other casualty, the damages thereto shall be repaired by and at the expense of Owner and the rent and other items of additional rent, until such repair shall be substantially completed, shall be apportioned from the day following the casualty according to the part of the premises which is usable. (c) If the demised premises are totally damaged or rendered wholly unusable by fire or other casualty, then the rent and other items of additional rent as hereinafter expressly provided shall be proportionately paid up to the time of the casualty and thenceforth shall cease until the date when the premises shall have been repaired and restored by Owner (or sooner reoccupied in part by Tenant then rent shall be apportioned as provided in subsection (b) above), subject to Owner's right to elect not to restore the same as hereinafter provided. (d) If the demised premises are rendered wholly unusable or (whether or not the demised premises are damaged in whole or in part) if the building shall be so damaged that Owner shall decide to demolish it or to rebuild it, then, in any of such events, Owner may elect to terminate this lease by written notice to Tenant, given within 90 days after such fire or casualty, or 30 days after adjustment of the insurance claim for such fire or casualty, whichever is sooner, specifying a date for the expiration of the lease, which date shall not be more than 60 days after the giving of such notice, and upon the date specified in such notice the term of this lease shall expire as fully and completely as if such date were the date set forth above for the termination of this lease and Tenant shall forthwith quit, surrender and vacate the premises without prejudice however, to Owner's rights and remedies against Tenant under the lease provisions in effect prior to such termination, and any rent owing shall be paid up to such date and any payments of rent

made by Tenant which were on account of any period subsequent to such date shall be returned to Tenant. Unless Owner shall serve a termination notice as provided for herein, Owner shall make the repairs and restorations under the conditions of (b) and (c) hereof, with all reasonable expedition, subject to delays due to adjustment of insurance claims, labor troubles and causes beyond Owner's control. After any such casualty, Tenant shall cooperate with Owner's restoration by removing from the premises as promptly as reasonably possible, all of Tenant's salvageable inventory and movable equipment, furniture, and other property. Tenant's liability for rent shall resume five (5) days after written notice from Owner that the premises are substantially ready for Tenant's occupancy. (e) Nothing contained hereinabove shall relieve Tenant from liability that may exist as a result of damage from fire or other casualty. Notwithstanding the foregoing, including Owner's obligation to restore under subparagraph (b) above, each party shall look first to any insurance in its favor before making any claim against the other party for recovery for loss or damage resulting from fire or other casualty, and to the extent that such insurance is in force and collectible and to the extent permitted by law, Owner and Tenant each hereby releases and waives all right of recovery with respect to subparagraphs (b), (d) and (e) above, against the other or any one claiming through or under each of them by way of subrogation or otherwise. The release and waiver herein referred to shall be deemed to include any loss or damage to the demised premises and/or to any personal property, equipment, trade fixtures, goods and merchandise located therein. The foregoing release and waiver shall be in force only if both releasors' insurance policies contain a clause providing that such a release or waiver shall not invalidate the insurance. If, and to the extent, that such waiver can be obtained only by the payment of additional premiums, then the party benefitting from the waiver shall pay such premium within ten days after written demand or shall be deemed to have agreed that the party obtaining insurance coverage shall be free of any further obligation under the provisions hereof with respect to waiver of subrogation. Tenant acknowledges that Owner will not carry insurance on Tenant's furniture and or furnishings or any fixtures or equipment, improvements, or appurtenances removable by Tenant and agrees that Owner will not be obligated to repair any damage thereto or replace the same. (f) Tenant hereby waives the provisions of Section 227 of the Real Property Law and agrees that the provisions of this article shall govern and control in lieu thereof.

**Eminent Domain:**

10. If the whole or any part of the demised premises shall be acquired or condemned by Eminent Domain for any public or quasi public use or purpose, then and in that event, the term of this lease shall cease and terminate from the date of title vesting in such proceeding and Tenant shall have no claim for the value of any unexpired term of said lease. Tenant shall have the right to make an independent claim to the condemning authority for the value of Tenant's moving expenses and personal property, trade fixtures and equipment, provided Tenant is entitled pursuant to the terms of the lease to remove such property, trade fixtures and equipment at the end of the term and provided further such claim does not reduce Owner's award.

**Assignment, Mortgage, Etc.:**

11. Tenant, for itself, its heirs, distributees, executors, administrators, legal representatives, successors and assigns, expressly covenants that it shall not assign, mortgage or encumber this agreement, nor underlet, or suffer or permit the demised premises or any part thereof to be used by others, without the prior written consent of Owner in each instance. Transfer of the majority of the stock of a corporate Tenant or the majority partnership interest of a partnership Tenant shall be deemed an assignment. If this lease be assigned, or if the demised premises or any part thereof be underlet or occupied by anybody other than Tenant, Owner may, after default by Tenant, collect rent from the assignee, under-tenant or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, underletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, under-tenant or occupant as tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained. The consent by Owner to an assignment or underletting shall not in any wise be construed to relieve Tenant from obtaining the express consent in writing of Owner to any further assignment or underletting.

**Electric Current:**

12. Rates and conditions in respect to submetering or rent inclusion, as the case may be, to be added in RIDER attached hereto. Tenant covenants and agrees that at all times its use of electric current shall not exceed the capacity of existing feeders to the building or the risers or wiring installation and Tenant may not use any electrical equipment which, in Owner's opinion, reasonably exercised, will overload such installations or interfere with the use thereof by other tenants of the building. The change at any time of the character of electric service shall in no wise make Owner liable or responsible to Tenant, for any loss, damages or expenses which Tenant may sustain.

**Access to Premises:**

13. Owner or Owner's agents shall have the right (but shall not be obligated) to enter the demised premises in any emergency at any time, and, at other reasonable times, to examine the same and to make such repairs, replacements and improvements as Owner may deem necessary and reasonably desirable to any portion of the building or which Owner may elect to perform in the premises after Tenant's failure to make repairs or perform any work which Tenant is obligated to perform under this lease, or for the purpose of complying with laws, regulations and other directions of governmental authorities. Tenant shall permit Owner to use and maintain and replace pipes and conduits in and through the demised premises and to erect new pipes and conduits therein provided, wherever possible, they are within walls or otherwise concealed. Owner may, during the progress of any work in the demised premises, take all necessary materials and equipment into said premises without the same constituting an eviction nor shall the Tenant be entitled to any abatement of rent while such work is in progress nor to any damages by reason of loss or interruption of business or otherwise. Throughout the term hereof Owner shall have the right to enter the demised premises at reasonable hours for the purpose of showing the same to prospective purchasers or mortgagees of the building, and during the last six months of the term for the purpose of showing the same to prospective tenants and may, during said six months period, place upon

**Rider to be added if necessary.**

THE OTHER

OR TENDANT

NO LINGUA

OTHER THAN TO ANY PARTY OR PERSON OWNING A MAJORITY OF THE STOCK OR OTHER EQUITY INTEREST AS OF THE DATE OF THIS LEASE

UPON PRIOR NOTICE

the demised premises the usual notices "To Let" and "For Sale" which notices Tenant shall permit to remain thereon without molestation. If Tenant is not present to open and permit an entry into the demised premises, Owner or Owner's agents may enter the same whenever such entry may be necessary or permissible by master key or forcibly and provided reasonable care is exercised to safeguard Tenant's property, such entry shall not render Owner or its agents liable therefor, nor in any event shall the obligations of Tenant hereunder be affected. ~~If during the last month of the term Tenant shall have removed all or substantially all of Tenant's property therefrom. Owner may immediately enter, alter, renovate or redecorate the demised premises without limitation or abatement of rent, or incurring liability to Tenant for any compensation and such act shall have no effect on this lease or Tenant's obligation hereunder.~~

**Vault,  
Vault Space,  
Area:**

14. No Vaults, 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 building. All vaults and vault space and all such areas not within the property line of the building, which Tenant may be permitted to use and/or occupy, is to be used and/or occupied under a revocable license, and if any such license be revoked, or if the amount of such space or area be diminished or required by any federal, state or municipal authority or public utility, Owner shall not be subject to any liability nor shall Tenant be entitled to any compensation or diminution or abatement of rent, nor shall such revocation, diminution or requisition be deemed constructive or actual eviction. Any tax, fee or charge of municipal authorities for such vault or area shall be paid by Tenant, if used by Tenant, whether or not specifically leased hereunder.

**Occupancy:**

15. Tenant will not at any time use or occupy the demised premises in violation 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 riders annexed hereto 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. If any governmental license or permit shall be required for the proper and lawful conduct of Tenant's business, Tenant shall be responsible for and shall procure and maintain such license or permit.

**Bankruptcy:**

16. (a) Anything elsewhere in this lease to the contrary notwithstanding, this lease may be cancelled by Owner by sending of a written notice to Tenant within a reasonable time after the happening of any one or more of the following events: (1) the commencement of a case in bankruptcy or under the laws of any state naming Tenant as the debtor; or (2) the making by Tenant of an assignment or any other arrangement for the benefit of creditors under any state statute. Neither Tenant nor any person claiming through or under Tenant, or by reason of any statute or order of court, shall thereafter be entitled to possession of the premises demised but shall forthwith quit and surrender the premises. If this lease shall be assigned in accordance with its terms, the provisions of this Article 16 shall be applicable only to the party then owning Tenant's interest in this lease.

(b) It is stipulated and agreed that in the event of the termination of this lease pursuant to (a) hereof, Owner shall forthwith, notwithstanding any other provisions of this lease to the contrary, be entitled to recover from Tenant as and for liquidated damages an amount equal to the difference between the rental reserved hereunder for the unexpired portion of the term demised and the fair and reasonable rental value of the demised premises for the same period. In the computation of such damages the difference between any installment of rent becoming due hereunder after the date of termination and the fair and reasonable rental value of the demised premises for the period for which such installment was payable shall be discounted to the date of termination at the rate of four percent (4%) per annum. If such premises or any part thereof be relet by the Owner for the unexpired term of said lease, or any part thereof, before presentation of proof of such liquidated damages to any court, commission or tribunal, the amount of rent reserved upon such reletting shall be deemed to be the fair and reasonable rental value for the part or the whole of the premises so relet during the term of the re-letting. Nothing herein contained shall limit or prejudice the right of the Owner to prove for and obtain as liquidated damages by reason of such termination, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater, equal to, or less than the amount of the difference referred to above.

**Default:**

17. (1) If Tenant defaults in fulfilling any of the covenants of this lease ~~other than the covenants for the payment of rent or additional rent;~~ or if the demised premises becomes vacant or deserted "or if this lease be rejected under §235 of Title 11 of the U.S. Code (bankruptcy code);" or if any execution or attachment shall be issued against Tenant or any of Tenant's property whereupon the demised premises shall be taken or occupied by someone other than Tenant; or if Tenant shall make default with respect to any other lease between Owner and Tenant; or if Tenant shall have failed, after five (5) days written notice, to re-deposit with Owner any portion of the security deposited hereunder which Owner has applied to the payment of any rent and additional rent due and payable hereunder or failed to move into or take possession of the premises within thirty (30) days after the commencement of the term of this lease, of which fact Owner shall be the sole judge; then in any one or more of such events, upon Owner serving a written fifteen (15) days notice upon Tenant specifying the nature of said default and upon the expiration of said fifteen (15) days, if Tenant shall have failed to comply with or remedy such default, or if the said default or omission complained of shall be of a nature that the same cannot be completely cured or remedied within said fifteen (15) day period, and if Tenant shall not have diligently commenced during such default within such fifteen (15) day period, and shall not thereafter with reasonable diligence and in good faith, proceed to remedy or cure such default, then Owner may serve a written five (5) days' notice of cancellation of this lease upon Tenant, and upon the expiration of said five

(5) days this lease and the term thereunder shall end and expire as fully and completely as if the expiration of such five (5) day period were the day herein definitely fixed for the end and expiration of this lease and the term thereof and Tenant shall then quit and surrender the demised premises to Owner but Tenant shall remain liable as hereinafter provided.

(2) If the notice provided for in (1) hereof shall have been given, and the term shall expire as aforesaid; or if Tenant shall make default in the payment of the rent reserved herein or any item of additional rent herein mentioned or any part of either or in making any other payment herein required; then and in any of such events Owner may without notice, re-enter the demised premises either by force or otherwise, and dispossess Tenant by summary proceedings or otherwise, and the legal representative of Tenant or other occupant of demised premises and remove their effects and hold the premises as if this lease had not been made, and Tenant hereby waives the service of notice of intention to re-enter or to institute legal proceedings to that end. If Tenant shall make default hereunder prior to the date fixed as the commencement of any renewal or extension of this lease, Owner may cancel and terminate such renewal or extension agreement by written notice.

**Remedies of  
Owner and  
Waiver of  
Redemption:**

18. In case of any such default, re-entry, expiration and/or dispossession by summary proceedings or otherwise, (a) the rent, and additional rent, shall become due thereupon and be paid up to the time of such re-entry, dispossession and/or expiration, (b) Owner may re-let the premises or any part or parts thereof, either in the name of Owner or otherwise, for a term or terms, which may at Owner's option be less than or exceed the period which would otherwise have constituted the balance of the term of this lease and may grant concessions or free rent or charge a higher rental than that in this lease, (c) Tenant or the legal representatives of Tenant shall also pay Owner as liquidated damages for the failure of Tenant to observe and perform said Tenant's covenants herein contained, any deficiency between the rent hereby reserved and or covenanted to be paid and the net amount, if any, of the rents collected on account of the subsequent lease or leases of the demised premises for each month of the period which would otherwise have constituted the balance of the term of this lease. The failure of Owner to re-let the premises or any part or parts thereof shall not release or affect Tenant's liability for damages. In computing such liquidated damages there shall be added to the said deficiency such expenses as Owner may incur in connection with re-letting, such as legal expenses, reasonable attorneys' fees, brokerage, advertising and for keeping the demised premises in good order or for preparing the same for re-letting. Any such liquidated damages shall be paid in monthly installments by Tenant on the rent day specified in this lease and any suit brought to collect the amount of the deficiency for any month shall not prejudice in any way the rights of Owner to collect the deficiency for any subsequent month by a similar proceeding. Owner, in putting the demised premises in good order or preparing the same for re-rental may, at Owner's option, make such alterations, repairs, replacements, and/or decorations in the demised premises as Owner, in Owner's sole judgment, considers advisable and necessary for the purpose of re-letting the demised premises, and the making of such alterations, repairs, replacements, and/or decorations shall not operate or be construed to release Tenant from liability hereunder as aforesaid. Owner shall in no event be liable in any way whatsoever for failure to re-let the demised premises, or in the event that the demised premises are re-let, for failure to collect the rent thereof under such re-letting, and in no event shall Tenant be entitled to receive any excess, if any, of such net rents collected over the sums payable by Tenant to Owner hereunder. In the event of a breach or threatened breach by Tenant of any of the covenants or provisions hereof, Owner shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings and other remedies were not herein provided for. Mention in this lease of any particular remedy, shall not preclude Owner from any other remedy, in law or in equity. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws.

**Fees and  
Expenses:**

19. If Tenant shall default in the observance or performance of any term or covenant on Tenant's part to be observed or performed under or by virtue of any of the terms or provisions in any article of this lease, after notice if required and upon expiration of any applicable grace period if any, (except in an emergency), then, unless otherwise provided elsewhere in this lease, Owner may immediately or at any time thereafter and without notice perform the obligation of Tenant thereunder. If Owner, in connection with the foregoing or in connection with any default by Tenant in the covenant to pay rent hereunder, makes any expenditures or incurs any obligations for the payment of money, including but not limited to reasonable attorney's fees, in instituting, prosecuting or defending any action or proceedings, and prevails in any such action or proceeding, then Tenant will reimburse Owner for such sums so paid or obligations incurred with interest and costs. The foregoing expenses incurred by reason of Tenant's default shall be deemed to be additional rent hereunder and shall be paid by Tenant to Owner within ten (10) days of rendition of any bill or statement to Tenant therefor. If Tenant's lease term shall have expired at the time of making of such expenditures or incurring of such obligations, such sums shall be recoverable by Owner as damages.

**Building  
Alterations  
and  
Management:**

20. Owner shall have the right at any time without the same constituting an eviction and without incurring liability to Tenant therefor to change the arrangement and or location of public entrances, passageways, doors, doorways, corridors, elevators, stairs, toilets or other public parts of the building and to change the name, number or designation by which the building may be known. There shall be no allowance to Tenant for diminution of rental value and no liability on the part of Owner by reason of inconvenience, annoyance or injury to business arising from Owner or other Tenant making any repairs in the building or any such alterations, additions and improvements. Furthermore, Tenant shall not have any claim against Owner by reason of Owner's imposition of any controls of the manner of access to the building by Tenant's social or business visitors as the Owner may deem necessary for the security of the building and its occupants.

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**No Representations by Owner:**

21. Neither Owner nor Owner's agents have made any representations or promises with respect to the physical condition of the building, the land upon which it is erected or the demised premises, the rents, leases, expenses of operation or any other matter or thing affecting or related to the demised premises of the building except as herein expressly set forth and no rights, easements or licenses are acquired by Tenant by implication or otherwise except as expressly set forth in the provisions of this lease. Tenant has inspected the building and the demised premises and is thoroughly acquainted with their condition and agrees to take the same "as is" on the date possession is tendered and acknowledges that the taking of possession of the demised premises by Tenant shall be conclusive evidence that the said premises and the building of which the same form a part were in good and satisfactory condition at the time such possession was so taken, except as to latent defects. All understandings and agreements heretofore made between the parties hereto are merged in this contract, which alone fully and completely expresses the agreement between Owner and Tenant and any executory agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of it in whole or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought.

**End of Term:**

22. Upon the expiration or other termination of the term of this lease, Tenant shall quit and surrender to Owner the demised premises, broom clean, in good order and condition, ordinary wear and damages which Tenant is not required to repair as provided elsewhere in this lease excepted, and Tenant shall remove all its property from the demised premises. Tenant's obligation to observe or perform this 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 lease shall expire at noon on the preceding Saturday unless it be a legal holiday in which case it shall expire at noon on the preceding business day.

**Quiet Enjoyment:**

23. Owner covenants and agrees with Tenant that upon Tenant paying the rent and additional rent and observing and performing all the terms, covenants and conditions, on Tenant's part to be observed and performed, Tenant may peaceably and quietly enjoy the premises hereby demised, subject, nevertheless, to the terms and conditions of this lease including, but not limited to, Article 34 hereof and to the ground leases, underlying leases and mortgages hereinbefore mentioned.

**Failure to Give Possession:**

24. 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 retention of possession of any tenant, undertenant or occupants or if the demised premises are located in a building being constructed, because such building has not been sufficiently completed to make the premises ready for occupancy or because of the fact that a certificate of occupancy has not been procured or if Owner has not completed any work required to be performed by Owner, or for any other reason, Owner shall not be subject to any liability for failure to give possession on said date and the validity of the lease shall not be impaired under such circumstances, nor shall the same be construed in any wise to extend the term of this lease, but the rent payable hereunder shall be abated (provided Tenant is not responsible for Owner's inability to obtain possession or complete any work required) until after Owner shall have given Tenant notice that Owner is able to deliver possession in the condition required by this lease. If permission is given to Tenant to enter into the possession of the demised premises or to occupy premises other than the demised premises prior to the date specified as the commencement of the term of this lease, Tenant covenants and agrees that such possession and/or occupancy shall be deemed to be under all the terms, covenants, conditions and provisions of this lease, except the obligation to pay the fixed annual rent set forth in page 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:**

25. The failure of Owner to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this lease or of any of the Rules or Regulations, set forth or hereafter adopted by Owner, shall not prevent a subsequent act which would have originally constituted a violation from having all the force and effect of an original violation. The receipt by Owner of 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 lesser amount 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 as rent be deemed an accord 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. All checks tendered to Owner as and for the rent of the demised premises shall be deemed payments for the account of Tenant. Acceptance by Owner of rent from anyone other than Tenant shall not be deemed to operate as an attornment to Owner by the payor of such rent or as a consent by Owner to an assignment or subletting by Tenant of the demised premises to such payor, or as a modification of the provisions of this lease. No act or thing done by Owner or Owner's agents during the term hereby demised shall be deemed an acceptance of a surrender of said premises and no agreement to accept such surrender shall be valid unless in writing 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:**

26. 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,

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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 interpose any counterclaim of whatever nature or description in any such proceeding including a counterclaim under Article 4 except for statutory mandatory counterclaims.

**Inability to Perform:**

27. 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 to be performed shall in no wise be affected, impaired or excused because Owner is unable to fulfill any of its 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, additions, alterations or decorations or is unable to supply or is delayed in supplying any equipment, fixtures or other materials if Owner is prevented or delayed from doing so by reason of strike or labor troubles or any cause whatsoever beyond Owner's sole control including, but not limited to, government preemption or restrictions or by reason of any rule, order or regulation of any department or subdivision thereof of any government agency or by reason of the conditions which have been or are affected, either directly or indirectly, by war or other emergency.

**Bills and Notices:**

28. 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 demised premises form a part or at the last known residence address or business address of Tenant or left at any of the aforesaid premises addressed to Tenant, and the time of the rendition of such bill or statement and of the giving of such notice or communication shall be deemed to be the time 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. *or delivered personally*

**Water Charges:**

29. If Tenant requires, uses or consumes water for any purpose in addition to ordinary lavatory purposes (of which fact Tenant constitutes 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 meter 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 at Tenant's own cost and expense in default of which Owner may cause such meter and equipment to be replaced or repaired and collect the cost thereof from Tenant, as additional rent. Tenant agrees to pay for water consumed, as shown on said meter as and when bills are rendered, and on default in making such payment Owner may pay such charges and collect the same from Tenant, as additional rent. Tenant covenants and agrees to pay, as additional rent, the sewer rent, charge or any other tax, rent, levy or charge which now or hereafter is assessed, imposed or a lien upon the demised premises or the realty 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. If the building or the demised premises or any part thereof is 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, \$ \_\_\_\_\_ % of the total meter charges as Tenant's portion. Independently of and in addition to any of the remedies reserved to Owner hereinabove or elsewhere in this lease, Owner may sue for and collect any monies to be paid by Tenant or paid by Owner for any of the reasons or purposes hereinabove set forth.

**Sprinklers:**

30. Anything elsewhere in this lease to the contrary notwithstanding, if the New York Board of Fire Underwriters or the New York Fire Insurance Exchange or any bureau, department or official of the federal, state or city government recommend or require the installation of a sprinkler system or that any changes, modifications, 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 demised premises, or for any other reason, or if any such sprinkler system installations, modifications, alterations, additional sprinkler heads or other such equipment, become necessary to prevent the imposition of a penalty or charge against the full allowance for a sprinkler system in the fire insurance rate set by any said Exchange 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 \$ \_\_\_\_\_ on the first day of each month during the term of this lease, as Tenant's portion of the contract price for sprinkler supervisory service.

**Elevators, Heat, Cleaning:**

31. As long as Tenant is not in default under any of the covenants of this lease beyond the applicable grace period provided in this lease for the curing of such defaults, Owner shall: (a) provide necessary passenger elevator facilities on business days from 8 a.m. to 6 p.m. and on Saturdays from 8 a.m. to 1 p.m.; (b) if freight elevator service is provided, same shall be provided only on regular business days Monday through Friday inclusive, and on those days only between the hours of 9 a.m. and 12 noon and between 1 p.m. and 5 p.m.; (c) furnish heat, water and other services supplied by Owner to the demised premises, when and as required by law, on business days from 8 a.m. to 6 p.m. and on Saturdays from 8

*with at least one (1) elevator available at all other hours*

*by nationally recognized overnight courier, or*

*Landlord's*

TENANT TO RECEIVE FREE FREIGHT  
ELEVATOR SERVICE DURING MOVE-IN.

a.m. to 1 p.m.; (d) clean the public halls and public portions of the building which are used in common by all tenants. Tenant shall, at Tenant's expense, keep the demised premises, including the windows, clean and in order, to the reasonable satisfaction of Owner, and for that purpose shall employ the person or persons, or corporation approved by Owner. 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 time as Owner may elect and shall be due and payable hereunder, and the amount of such bills shall be deemed to be, and be paid as, additional rent. Tenant shall, however, have the option of independently contracting 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. Owner reserves the right to stop service of the heating, elevator, plumbing and electric systems, when necessary, by reason of accident, or emergency, or for repairs, alterations, replacements or improvements, in the judgment of Owner desirable or necessary to be made, until said repairs, alterations, replacements or improvements shall have been completed. If the building of which the demised premises are a part supplies manually operated elevator service, Owner may proceed diligently with alterations necessary to substitute automatic control elevator service without in any way affecting the obligations of Tenant hereunder.

**Security:**

32. Tenant has deposited with Owner the sum of \$2970.00 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 respect 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 as to which Tenant is in default or for any sum which Owner may expend or may be required to expend by reason of Tenant's default in respect of any of the terms, covenants and conditions of this lease, including but not limited to, any damages or deficiency in the reletting of the premises, whether such damages or deficiency accrued before or after summary proceedings or other re-entry 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 as the end of the Lease and after delivery of entire possession of the demised premises to Owner. In the event of a sale of the land and building or leasing of the building, of which the demised premises form a part, Owner shall have the right to transfer the security to the vendee or lessee and Owner shall thereupon be released by Tenant from all liability for the return of such security; and Tenant agrees 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 encumber or attempt to assign or encumber the monies 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:**

33. 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.

**Definitions:**

34. The term "Owner" as used in this lease means only the owner of the fee or of the leasehold of the building, or the mortgagee in possession, for the time being of the land and building (or the owner of a lease of the building or of the land and building) of which the demised premises form a part, so that 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 entirely freed and relieved of all covenants and obligations of Owner hereunder, and it shall be deemed and construed without further agreement between the parties or their successors in interest, or between the parties and the purchaser, at any such sale, or the said lessee 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 "re-enter" and "re-entry" as used in this lease are not restricted to their technical legal meaning. The term "rent" includes the annual rental rate whether so expressed or expressed in monthly installments, and "additional rent" means all sums which shall be due to Owner from Tenant under this lease, in addition to the annual

rental rate. The term "business days" as used in this lease, shall exclude Saturdays, Sundays and all days observed by the State or Federal Government as legal holidays and those designated as holidays by the applicable building service union employees service contract or by the applicable Operating Engineers contract with respect to HVAC service. Wherever it is expressly provided in this lease that consent shall not be unreasonably withheld, such consent shall not be unreasonably delayed.

**Adjacent Excavation-Shoring:**

35. If an excavation shall be made upon land adjacent to the demised 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 demised premises for the purpose of doing such work as said person shall deem necessary to preserve the wall or the building of which demised 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 diminution or abatement of rent.

**Rules and Regulations:**

36. Tenant and Tenant's servants, employees, agents, visitors, and licensees shall observe faithfully, and comply strictly with, the Rules and Regulations annexed hereto and such other and further reasonable Rules and Regulations as Owner or Owner's agents 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 agents, the parties hereto agree to submit the question of the reasonableness of such Rule or Regulation for decision to the New York office 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 contained 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, as 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:**

37. Owner shall replace, at the expense of the Tenant, any and all plate and other glass damaged or broken from any cause whatsoever and about the demised premises. Owner may insure, and keep insured, at Tenant's expense, all plate and other glass in the demised premises for and in the name of Owner. 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 be, and be paid, as additional rent.

**Estoppel Certificate:**

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 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 modifications), stating the dates to which the rent and additional rent have been paid, and stating whether or not there exists any default by Owner under this Lease, and, if so, specifying each such default.

**Directory Board Listing:**

39. If, at the request of and as accommodation to Tenant, Owner shall place upon the directory board in the lobby of the building, one or more names of persons other than Tenant, such directory board listing shall not be construed as the consent by Owner to an assignment or subletting by Tenant to such person or persons.

**Successors and Assigns:**

40. The covenants, conditions and agreements contained in this lease shall bind and inure to the benefit of Owner and Tenant and their respective heirs, distributees, executors, administrators, successors, and except as otherwise provided in this lease, their assigns. Tenant shall look only to Owner's estate and interest in the land and building for the satisfaction of Tenant's remedies for the collection of a judgement (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.

UNLESS CAUSED BY OWNER BY TENANT.

OWNER AND THE OTHER

OR TENANT

Space to be filled in or deleted.

See Rider Annexed Herein and Made a Part Thereof.

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:

*Claude Simon*



Claude Simon

[L.S]

Witness for Tenant

*Thomas Rouregy*

Tenant: Thomas Rouregy & Co., Inc.



*Thomas Rouregy*

[L.S]

By:

ACKNOWLEDGEMENTS

CORPORATE TENANT  
STATE OF NEW YORK, ss.:  
County of

INDIVIDUAL TENANT  
STATE OF NEW YORK, ss.:  
County of

On this 15th day of July, 1999, before me personally came Wilhelm H. Mickelson to me known, who being by me duly sworn, did depose and say that he resides in 76 Heartfoot Road, Newton, New Jersey that he is the President of the corporation described in and which executed the foregoing instrument, as TENANT; that he knows the seal of said corporation; that 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.

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.

REGINA M. CUGINI  
State of New York  
County of Richmond  
Certificate #4707939  
Regina M. Cugini

Term Expires - June 30, 2001

IMPORTANT - PLEASE READ

RULES AND REGULATIONS ATTACHED TO AND MADE A PART OF THIS LEASE IN ACCORDANCE WITH ARTICLE 36.

1. The sidewalks, entrances, driveways, passages, courts, elevators, vestibules, stairways, corridors or halls shall not be obstructed or encumbered by any Tenant or used for any purpose other than for ingress or egress from the demised 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 jobbers or others in the delivery or receipt of merchandise, any hand trucks, except those equipped with rubber tires and sideguards. If said premises are situated on the ground floor of the building, Tenant thereof shall further, at Tenant's expense, keep the sidewalk and curb in front of said premises clean and free from ice, snow, dirt and rubbish.

2. 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 and no sweepings, rubbish, rags, acids or other substances shall be deposited therein, and the expense of any breakage, stoppage, or damage resulting from the violation of this rule shall be borne by the Tenant who, or whose clerks, agents, employees or visitors, shall have caused it.

3. No carpet, rug or other article shall be hung or shaken out of any window of the building; and no Tenant shall sweep or throw or permit to be swept or thrown from the demised premises any dirt or other substances into any of the corridors of halls, elevators, or out of the doors or windows or stairways of the building and Tenant shall not use, keep or permit to be used or kept any foul or noxious gas or substance in the demised premises, or permit or suffer the demised premises to be occupied or used in a manner offensive or objectionable to Owner or other occupants of the buildings by reason of noise, odors, and or vibrations, or interfere in any way, with other Tenants or those having business therein, nor shall any bicycles, vehicles, animals, fish, or birds be kept in or about the building. Smoking or carrying lighted cigars or cigarettes in the elevators of the building is prohibited.

4. No awnings or other projections shall be attached to the outside walls of the building without the prior written consent of Owner.

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 demised premises or the building or on the inside of the demised 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 charge the expense incurred by such removal to Tenant or Tenants violating this rule. Interior signs on 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 into, or in any way deface any part of the demised premises or the building of which they form a part. No boring,

cutting or stringing of wires shall be permitted, except with the prior written consent of Owner, and as Owner may direct. No Tenant shall lay linoleum, or other similar floor covering, so that the same shall come in direct contact with the floor of the demised premises, and, if linoleum or other similar floor covering is desired to be used an interlining of builder's deadening 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. No additional locks or bolts of any kind shall be placed upon any of the doors or windows by any Tenant, nor shall any changes be made in existing locks or mechanism thereof. Each Tenant must, upon the termination of his Tenancy, restore to Owner all keys of stores, offices and toilet rooms, either furnished to, or otherwise procured by, such Tenant, and in the event of the loss of any keys, so furnished, such Tenant shall pay to Owner the cost thereof.

8. Freight, furniture, business equipment, merchandise and bulky matter of any description shall be delivered to and removed from the premises only on the freight elevators and through the service entrances and corridors, 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 of the lease of which these Rules and Regulations are a part.

9. No Tenant shall obtain for use upon the demised premises ice, drinking water, towel and other similar services, or accept barbering or bootblacking services in the demised premises, except from persons authorized by Owner, and at hours and under regulations fixed by Owner. Canvassing, soliciting and peddling in the building is prohibited and each Tenant shall cooperate to prevent the same.

10. Owner reserves the right to exclude from the building all persons who do not present a pass to the building signed by Owner. Owner will furnish passes to persons for whom any Tenant requests 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 acts of such persons. Notwithstanding the foregoing, Owner shall not be required to allow Tenant or any person to enter or remain in the building, except 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 not have a claim against Owner by reason of Owner excluding from the building any person who does not present such pass.

11. Owner shall have the right to prohibit any advertising by any Tenant which in Owner's reasonable opinion, tends to impair the reputation of the building or its desirability as a loft building, and upon written notice from Owner, Tenant shall refrain from or discontinue such advertising.

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

13. Tenant shall not use the demised premises in a manner which disturbs or interferes with other Tenants in the beneficial use of their premises.

Address 160 Madison Avenue  
New York, New York 10017  
Premises Entire Fifth (5th) Floor

TO

Thomas Bourey & Co., Inc.  
401 Lafayette St., NY, NY 1000

STANDARD FORM OF



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Dated June 1999

Rent Per Year

Rent Per Month

Term Five (5) Years

From To

Drawn by .....

Checked by .....

Entered by .....

Approved by .....

Reasonably

**RIDER TO SUBLEASE  
DATED AS OF JULY 15, 1999  
BETWEEN  
CLAUDE SIMON  
AS OWNER AND PROPRIETARY LESSEE  
AND  
THOMAS BOUREGY & CO., INC.  
401 LAFAYETTE ST., NEW YORK, NY 10003  
AS TENANT**

1. For the purposes of this lease, unless the context otherwise requires, the following phrases shall have the following meanings:

(A) The term "lease year" shall mean the period commencing on September 1, 1999 and each period of twelve (12) consecutive calendar months thereafter during the term of this lease.

(B) The term "fixed annual rent" shall mean the guaranteed annual rent payable by tenant during the lease year of the term hereof, which fixed annual rent shall be payable in equal monthly installments as herein set forth:

<u>Lease Year</u>	<u>Fixed Annual Rent</u>	<u>Monthly Installments</u>
7/15/99* through 5/31/2000	\$45,000.00	\$3,750.00
6/1/2000 through 5/31/2001	\$46,350.00	\$3,862.50
6/1/2001 through 5/31/2002	\$47,740.50	\$3,978.37
6/1/2002 through 5/31/2003	\$49,172.72	\$4,097.73
6/1/2003 through 5/31/2004	\$50,647.90	\$4,220.66

\*Rent through August 31, 1999 is waived.

(C) The fixed annual rent shall be paid by tenant to owner without notice or demand, and without abatement, deduction or set-off in lawful money of the United States of America commencing on the commencement date, and on the first day of each and every month thereafter, in equal monthly installments in advance, at the office of owner or such other place as owner may designate.

2. Tenant acknowledges that: (i) its agreement to fully and timely pay all installments of rent is a material inducement for owner to enter into this lease; (ii) the aggregate amount of all rent installments are due and payable in full at the commencement of the term but owner, solely for tenant's convenience, has permitted said amount to be payable in equal monthly installments during the term; (iii) upon default in the full and timely payment of any rent installment, and upon owner's termination of this lease, the entire unpaid balance of the aggregate amount of all rent installments

for the then remainder of the term (as originally reserved) subject to credit for rents received upon owner's re-renting of the demised premises, if any, will immediately become due and payable with ten (10) days notice or demand; and tenant agrees that the provisions of this article: (a) will not constitute or be deemed to be liquidated damages or a penalty; (b) will apply notwithstanding any contrary provision of this lease; and (c) will be in addition to, and not limit, any other rights and remedies available to owner pursuant to this lease and otherwise (including, without limitation, those regarding additional rent reserved under this lease) upon a default in the full and timely payment of rent installment. The parties agree that this article fairly reflects their intent with respect to a default of the nature specified in clause "(ii)" of this paragraph.

2. A. Tenant hereby agrees that if the amount of real estate taxes assessed by the City of New York or any County or other governmental authority against the land and buildings of which the demised premises form a part exceed the amount of such real estate taxes for the fiscal year commencing July 1, 1999 and ending June 30, 2000 and in the further event that the Operating Expenses (as defined hereinbelow) are at any time after June 1, 2000 increased over and above the Operating Expenses costs for the calendar year 1999, the tenant hereunder shall pay owner an amount equal to 7.143% of the total of all such increases as additional rent. The additional real estate taxes and additional Operating Expenses, if any, payable by the tenant shall be apportioned to charge the tenant from June 1, 2000 and shall likewise be apportioned to charge the tenant to the end of the term. Any increase in real estate taxes shall be due and payable by the tenant to the owner, as additional rent, on the first day of the month in which any such increase in such taxes are payable by the owner. Any increase in Operating Expenses shall be payable as soon as owner shall bill tenant. Any such increase due after the termination of the within lease shall survive such termination or expiration and be due and payable as herein provided.

B. The owner agrees to submit to the tenant a comparative statement showing any such increases, although the failure on the owner's part to submit such statement shall not affect the tenant's obligation with reference to the payment of such additional rent.

C. For the purposes of this lease, Operating Expenses shall include management fees, office expenses, ordinary maintenance and repairs, including elevator, utilities, fuel, insurance, alarm system, professional and miscellaneous operating expenses, but shall not include capital expenses.

D. The payment of additional rent shall be a substantial obligation of this tenancy. The failure of tenant to make payment of additional rent, as defined herein, when the same is due hereunder, shall entitle owner to exercise all rights and remedies provided herein for the non-payment of rent, or, at owner's option, for a violation of a substantial obligation of this tenancy, and owner shall be entitled to commence any proceeding available to it in any subsequent month following the non-payment of additional rent. The acceptance of the rent reserved hereunder shall not constitute nor be deemed a waiver of owner's rights with respect to any additional rent due pursuant to the terms of this lease.

3. The listing of any names other than that of tenant, whether on the doors of the demised premises, on any building directory, or otherwise, shall not operate to vest any right or interest in this lease or in the demised premises, nor shall it be deemed to be the consent of owner to any assignment or transfer of this lease, to any sublease of the demised premises, or to the use or occupancy thereof by others.

4. Tenant shall indemnify and save harmless (i) owner; (ii) 160 Madison Avenue Owners Corporation; and (iii) 160 Madison Avenue Owners Company; from and against all damages, liabilities, claims, costs and expenses, including reasonable attorneys' fees, arising out of the use of the demised premises or any work or thing done, or any condition created by tenant or its employees, agents, invitees, licensees, customers or contractors, whether or not caused by negligence or breach of an obligation by the same.

B. Tenant shall, throughout the term of this lease, at its own cost and expense, for the benefit of (i) owner; (ii) 160 Madison Avenue Owners Corporation; and (iii) 160 Madison Avenue Owners Company; and such other parties as owner may designate, maintain insurance in such amounts as owner shall reasonably approve and general public liability insurance against claims for personal injury, death or property damage occurring upon, in or about the demised premises, whether or not caused by negligence or breach of an obligation by tenant or its employees, agents, invitees, licensees, customers or contractors, said insurance to afford protection to the limit in such amount as owner may reasonably require but in no event less than \$2,000,000.00 combined single limit for each occurrence in respect of personal injury or death and damage to property. The certificates of insurance for the same shall specifically have the indemnity clause referred to in subparagraph A of this article typed on the certificates evidencing that the "hold harmless" clause has been insured.

C. The insurance policies required by this article shall contain a waiver by the insurance carrier of any right of subrogation against owner or any other insured party, whether or not said carrier charges tenant an additional premium thereof, and shall provide that no cancellation of said policies shall be effective unless then (10) days prior written notice has been given to owner and all other insured parties. Said insurance may be carried under a blanket policy covering the demised premises and other locations of tenant, if any, provided that each such policy shall in all respects comply with this article and shall specify that the portion of the total coverage of such policy shall in all respects comply with this article and shall specify that the portion of the total coverage of such policy that is allocated to the demised premises is in the amounts required pursuant to this article. At the time said insurance is first required to be carried by tenant and, in any event, at least ten (10) days prior to the effective date of any such policy, tenant agrees to deliver to owner either a duplicate original of the aforesaid policies or a certificate evidencing such insurance. Owner may also require other insurance, from time to time, against other insurable hazards which at the time are commonly insured against in the case of premises similarly situated, due regard being given to the type of building, its construction, use and occupancy.

5. A. Tenant shall look solely to the equity of owner in and to the demised premises

(fifth floor only) in the event of a breach or default by owner of the provisions of this lease, and tenant agrees that the liability of owner under this lease shall not exceed the value of such equity of owner in and to the demised premises (fifth floor only). No properties or assets of owner (or of any persons or entities comprising owner) other than the demised premises shall be subject to levy, execution or other enforcement procedures for the satisfaction of any judgment (or other judicial process) arising out of this lease, and if tenant shall acquire a lien on any other properties or assets of owner, by judgment or otherwise, tenant shall promptly release such lien on such other properties and assets by executing, acknowledging and delivering to owner an instrument to that effect prepared by owner's attorneys.

B. The obligations of owner under this lease shall not be binding upon owner named herein after the sale, conveyance, assignment or transfer by such owner (or upon any subsequent owner after the sale, conveyance, assignment or transfer by such subsequent owner) of its interest in the building or the demised premises, as the case may be, and in the event of any such sale, conveyance, assignment or transfer, owner shall be, and hereby is, entirely freed and relieved of all covenants and obligations of owner hereunder, and it shall be deemed and construed, without further agreement between the parties or their successors in interest, or between the parties and the purchaser, grantee, assignee or other transferee, that such purchaser, grantee, assignee or other transferee has assumed and agreed to carry out any and all covenants and obligations of owner hereunder, and it shall be deemed and construed, without further agreement between the parties or their successors in interest, or transferee, that such purchaser, grantee, assignee or other transferee has assumed and agreed to carry out any and all covenants and obligations of owner hereunder.

6. A. Tenant shall not use, store, maintain or permit any hazardous material (as hereinafter defined) to be used, stored, maintained or located on, in or about the demised premises in a manner that violates any environmental requirement (as hereinafter defined).

B. The term "hazardous material" shall mean any material or substance that, whether by its nature or use, is now or shall at any time during the term of this lease be defined as hazardous waste, hazardous substance, pollutant or contaminant under any environmental requirement, or which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic or otherwise hazardous and which is now or shall at any time during the term of this lease be regulated under any environmental requirement, or which is or contains petroleum, gasoline, diesel fuel or another petroleum hydrocarbon product. The term "environmental requirement" shall collectively mean all present and future laws, statutes, ordinances, rules, regulations, orders, codes, licenses, permits, decrees, judgments, directives or the equivalent in effect at any time during the term of this lease, of or by any governmental authority having jurisdiction and relative to or addressing the protection of the environment or human health. The term "governmental authority" shall mean the federal government, or any state or other political subdivision thereof, or an agency, court or body of the federal government, any state or other political subdivision thereof, exercising executive, legislative, judicial, regulatory or administrative functions.

7. A. Any improvements and alterations to the demised premises by tenant shall be

owned by owner, unless tenant can remove without damage to the premises and restore to original condition.

B. Tenant shall, upon the expiration of the term for any reason whatsoever, surrender the demised premises to owner, broom-clean and in good order, condition and repair, except as otherwise specifically provided in this lease, reasonable wear and tear excepted.

C. Title to any personal property of tenant shall remain with tenant, and upon expiration of the term tenant may, and upon demand of owner shall, promptly remove such personal property, and tenant shall promptly repair any resultant damage to the demised premises. The provisions of this section shall survive the expiration of the term.

D. Any of the personal property of tenant which shall remain in the demised premises for a period of ten (10) days after the expiration of the term, or which shall interfere with any new tenant of the demised premises, whether or not such period of ten (10) days shall have expired, may, at the option of owner, be deemed to be abandoned property, and may be retained by owner as its sole property or disposed of by owner in such manner as owner may see fit, without accountability therefor.

8. A. The tenant and owner each agree that at any time and from time to time upon ten (10) days prior written request by the other, to execute, acknowledge and deliver to the other a statement in writing stating that this lease is unmodified and in full force and effect (or, if there have been modifications, stating the modifications and that the lease as so modified is in full force and effect), and the dates to which the rent and other charges have been paid, it being intended that any such statements delivered pursuant to this article may be relied upon by the recipient thereof, including any prospective purchaser of, or any prospective holder of a mortgage upon, any interest in the fee or the land and building or any leasehold interest therein, or by an existing owner of, or any existing holder of a mortgage upon, any interest in the fee of the land and building or any leasehold interest therein whether now or hereafter created.

B. It is hereby understood and agreed that if tenant or owner shall fail to furnish the statement required to be furnished herein within ten (10) days after request therefor by the owner or tenant, as the case may be, then such failure shall constitute an acknowledgment by tenant or owner, as the case may be, that the lease (as modified, if same has been modified) is in full force and effect and that there have been no prepayments of rent by tenant.

9. The failure of owner to insist in any one or more cases upon the strict performance or observance of any obligation of tenant hereunder, or to exercise any right or option contained herein, shall not be construed as a waiver or a relinquishment for the future of any such obligation of tenant, or any right or option to owner. Owner's receipt and acceptance of fixed annual rent, additional rent or other charge payable by tenant hereunder, or owner's acceptance or performance of any other obligation by tenant, with knowledge of tenant's breach of any provision of this lease, shall not be deemed a waiver of such breach. No waiver by owner of any term, covenant or

condition of this lease shall be deemed to have been made unless expressed in writing and signed by owner.

10. Owner shall have the right to rely upon any certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any imposition as sufficient evidence that such imposition shall have been due and unpaid at the time of the making or issuance of such certificate, advice or bill.

11. If an event of default shall be continuing, owner shall have the right, at its option, to apply any monies deposited by or for the account of tenant under any provision of this lease on account of curing such event of default. Unless expressly provided to the contrary, tenant shall not be entitled to interest on any monies deposited hereunder.

12. The provisions of this lease, except as herein otherwise specifically provided, shall extend to, bind and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and permitted assigns. In the event of any sale or transfer of the owner's entire interest in the demised premises, the grantor shall be, and hereby is, entirely relieved and freed of all future obligations under this lease except for prior acts of the landlord following same.

13. In the event that tenant shall seek the approval by or consent of owner and owner shall fail or refuse to give consent or approval, tenant shall not be entitled to any damages for any withholding or delay of such approval or consent by owner, it being intended that tenant's sole remedy shall be an action for injunction or specific performance, and that said remedy of an action for injunction or specific performance shall be available only in those cases, if any, where owner shall have expressly agreed in writing not to unreasonably withhold or delay its consent. The parties may request expedited arbitration.

14. Irrespective of the place of execution or performance, this lease shall be governed by and construed in accordance with the laws of the State of New York. 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 phrases 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. Each covenant, agreement, obligation or other provision of this lease shall be deemed and construed as a separate and independent covenant of the party bound by, undertaking or making same, not dependent on any other provision of this lease unless otherwise expressly provided. 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.

15. There are no representations, agreements, arrangements or understandings, oral or

written, between the parties relating to the subject matter of this lease which are not fully expressed in this lease. This lease cannot be changed or terminated orally or in any manner other than by a written agreement executed by both parties.

16. Owner is not required to furnish to tenant any utility, facility, equipment, labor, material or service of any kind whatsoever. Owner shall provide heat and cold water in reasonable quantities and at reasonable times.

17. No receipt of any amount by owner from tenant, after any re-entry or after the cancellation or termination of this lease in any lawful manner, shall reinstate the lease; and after the service of notice to terminate this lease, or after the commencement of any action, proceeding or other remedy, owner may demand, receive and collect any amount due, and apply the same on account of tenant's obligations under this lease but without in any respect affecting such notice, action, proceeding or other remedy, except that if a money judgment is being sought in any such action or proceeding, the amount of such judgment shall be reduced by such payment.

18. If tenant is in arrears in the payment of rent or additional rent, tenant waives its right, if any, to designate the items in arrears to which any payments made by tenant are to be credited, and owner may apply any of such payments to any such items in arrears as owner, in its sole discretion, shall determine, irrespective of any designation or request by tenant as to the items against which any such payments shall be credited.

19. No payment by tenant or receipt by owner of a lesser amount than may be required to be paid hereunder shall be deemed to be other than on account of any such payment, nor shall any endorsement or statement on any check or any letter accompanying any check tendered as payment be deemed an accord and satisfaction, and owner may accept such check or payment without prejudice to owner's right to recover the balance of such payment due or pursue any other remedy in this lease provided.

20. If in this lease it is provided that owner's consent or approval as to any matter will not be unreasonably withheld, and it is established by a court or body having final jurisdiction thereof that owner has been unreasonable, the only effect of such finding shall be that owner shall be deemed to have given its consent or approval; but owner shall not be liable to tenant in any respect for money damages by reason of withholding its consent.

21. In every case in which tenant is required by the terms of this lease to pay to owner a sum of money, and payment is not made within ten (10) days after the same shall become due, interest shall be payable on such sum or so much thereof as shall be unpaid from the date it becomes due until it is paid. Such interest shall accrue at any annual rate which shall be one and one half (1 ½) percentage points above the prime commercial lending rate of Chase Manhattan in effect from time to time, but in no event more than the highest rate of interest which at such time is permitted under the laws of the State of New York.

22. Owner or its agents shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or snow or leaks from any part of the building or from the pipes, appliances or plumbing works or from the roof, street or subsurface or from any other place or by dampness or by any other cause of whatsoever nature, unless any of the foregoing shall be caused by or due to the negligence of owner, its agents, servants or employees.

23. There shall be no allowance to tenant for a diminution of rental value and no liability on the part of owner by reason of inconvenience, annoyance or injury to business arising from the making of any repairs, alterations, additions or improvements in or to any portion of the building or the demised premises or in or to fixtures, appurtenances or equipment thereof. Owner shall exercise reasonable diligence so as to minimize any interference with tenant's business operations, but shall not be required to perform the same on an overtime or premium pay basis.

24. Tenant shall, at its own cost and expense, obtain in advance and thereafter maintain in good standing and in its own name, any and all licenses, permits and approvals that may be required for it to use the demised premises in accordance with the terms of this lease.

25. If and to the extent that any of the provisions of this rider conflict or are otherwise inconsistent with any of the preceding printed provisions of this lease, or of the rules and regulations attached to this lease, whether or not such inconsistency is expressly noted in this rider, the provisions of this rider shall prevail.

26. Tenant and Landlord covenant, warrant and represent each other that, other than David Hopkins of The Lansco Corporation, there was no broker instrumental in consummating this lease, and no conversations, or negotiations were had with any broker concerning the renting of the demised premises. Tenant and Landlord shall indemnify, defend, hold and save harmless each other against any and all liability from any claims of any broker other than David Hopkins of The Lansco Corporation, in connection with the renting of the demised premises (including, without limitation, the cost of counsel fees in connection with the defense of any such brokerage fee claims).

27. If tenant holds over in possession after the expiration or sooner termination of the original term, or any extended term (if applicable), such holding over shall not be deemed to extend the term or renew the lease, but such holding over shall continue upon the covenants and conditions herein set forth except that the charge for use and occupancy of such holding over for each calendar month or part thereof shall be two (2) times the rent and additional rent then due under the lease.

28. This lease is presented to the tenant for signature by owner's designee solely in said designee's capacity as representative of owner and is hereby made expressly subject to the owner's acceptance and approval by execution by owner and delivery to tenant. This lease is not to be construed as an offer to lease and shall not in any way bind the owner or its designee until such time as the owner has executed and delivered the lease as aforementioned.

and paragraphs 1, 5, 6, 10, 14,  
29, 30 and 31 shall not apply

29. The parties acknowledge and agree that this agreement is a sub-lease of the demised premises, subject to the terms of the proprietary lease between 160 Madison Avenue Owners Corporation, as lessor and Claude Simon as lessee, the terms of which lease are incorporated herein by reference. The parties hereto further agree that the terms "owner" and "tenant" in this agreement shall be construed to mean overtenant and subtenant respectively. The tenant acknowledges receipt of a copy of the proprietary lease and undertakes to observe all of the conditions, restrictions and rules therein contained applicable to the premises. Each of the obligations of the lessee and lessees under the proprietary lease (except those relating to the payment of maintenance or rent) is deemed to be the obligation of the tenant hereunder and constitutes a substantial obligation of this tenancy.

30. Anything herein to the contrary notwithstanding, in the event the lessor under the proprietary lease brings a proceeding to evict or eject the lessee (the owner under the within sublease) on any grounds, then the tenant under the within sublease agrees that it shall be bound by all notices or legal papers served by the lessor (as if the tenant were the owner hereunder) and by any order of the court and owner agrees to immediately send any such notices or orders received to the tenant.

31. Tenant is leasing the premises "as is". In making and executing this lease, tenant has relied solely on such investigations, examinations and inspections as tenant has chosen to make or has made. Tenant acknowledges that owner has afforded tenant the opportunity for full and complete investigations, examinations and inspections.

32. Anything to the contrary notwithstanding, the tenant is completely responsible for all maintenance and repairs of all air conditioning and heating units throughout the premises and is responsible for payment of all electricity bills. Said items will be delivered to tenant in working order.

33. The tenant agrees to use, occupy, operate and maintain the premises throughout the term as provided under this lease and shall not violate any applicable rules, regulations or municipal, state or federal laws. Any matter or objects visible from the street or exterior of the demised premises, reasonably deemed objectionable by landlord, shall be corrected or removed, as required by landlord, and to landlord's reasonable satisfaction. Tenant further agrees not to: (i) conduct or permit any fire, auction, going out of business or bankruptcy sale in the demised premises; (ii) engage in any unethical method of business operation; (iii) use or permit to be used the sidewalks, corridors, elevators, or any other space outside the demised premises for any display, storage or any other use; (iv) create, cause or allow any excessive noises or vibrations to occur in the premises.

34. Tenant acknowledges that owners damages resulting from any breaches of this lease concerning the use, occupation and operation by the tenant at the demised premises, are difficult, if not impossible, to ascertain and concedes that, among any other remedies for such breach permitted by law or the provisions of this lease, owner shall be entitled to enjoin tenant from any violation of said provisions, and serve a notice of same as a material default hereunder entitling owner to terminate this lease. Owner may pursue either or both remedies, separately or simultaneously.

35. Tenant shall at all times keep the interior of the demised premises neat, tidy and orderly. Tenant shall promptly comply with any reasonable request for change in a particular method of operation and tenant shall endeavor courteously to consider any complaints of building tenants.

36. Tenant agrees that landlord shall have no obligation to tenant to perform any work within the demised premises in order to facilitate tenant's use and occupancy of the demised premises for the purposes set forth in this lease, or otherwise. Owner makes no representation whatsoever that the Certificate of Occupancy for the building shall authorize the use of the demised premises for the purpose permitted by landlord pursuant to this lease and tenant is hereby prohibited from using or occupying the demised premises in violation of the Certificate of Occupancy for the building, or any applicable laws.

37. Tenant agrees that it will handle and dispose of all rubbish, garbage and waste from tenant's operation at tenant's expense and in accordance with the regulations established by landlord. Tenant further agrees not to permit the accumulation of any rubbish or garbage in or about the premises.

38. Tenant shall provide owner with keys to the premises, along with the security codes to any alarm or security devices, so that owner may have access to the premises as allowed under this lease. If any keys or security codes are changed, tenant must immediately notify owner and replace the keys and advise of new security codes.

39. *Subject to Paragraph 11 of the printed provisions of this lease,*  
If tenant (or any assignee) is a corporation or partnership, the transfer (by one or more transfers), directly or indirectly, of a majority of either (a) the stock of the corporate tenant, or (b) the partnership interest of a tenant which is a partnership, shall be deemed an assignment prohibited under this lease.

40. Upon execution of this lease Tenant shall pay two (2) months security (\$3,750.00 and \$4,220.66 respectively), and payment of the first month's rent less tenant's \$1,000.00 security deposit already paid to Landlord.

41. Owner shall not surrender or terminate the proprietary lease or, if Tenant shall be substantially adversely affected thereby, modify or amend the proprietary lease or waive any rights under the proprietary lease for repairs or services. Owner shall not do or permit anything to be done which would cause Owner to be or become in default of any of its obligations under the proprietary lease. Owner shall defend, indemnify and save harmless Tenant from and against any and all losses, damages, interest, claims, suits, liabilities and costs, including, without limitation, reasonable attorney's fees and disbursements, arising out of or in connection with any breach of the foregoing. Promptly after Tenant's request, Owner, at its expense, shall take all actions necessary to enable Tenant to enforce Owner's rights as tenant under the proprietary lease with respect to the premises. If any provisions of this Lease shall conflict with the provisions of the proprietary lease, the provisions of this Lease shall control.

  
\_\_\_\_\_  
CLAUDE SIMON, Landlord

Dated: 7-17-99

\_\_\_\_\_  
THOMAS BOUREGY & CO., INC., Tenant

Dated: July 15, 1999

by:   
\_\_\_\_\_  
Wilhelm H. Mickelsen

C:\OFFICE\WPWIN\WPDOCS\RIDERS\VTXSRDR.TB



# ACORD. CERTIFICATE OF INSURANCE

ISSUE DATE (MM/DD/YY)  
07/14/1999

**PRODUCER**  
Kincel & Company, Ltd.  
1100 Dunham Dr  
Dunmore PA 18512-0280  
(570)961-8731 FAX(570)961-0520

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

**INSURED**  
THOMAS BOUREGY & CO INC  
401 LAFAYETTE STREET  
NEW YORK NY 10003-7014

COMPANIES AFFORDING COVERAGE	
COMPANY LETTER	A ASSURANCE CO OF AMERICA
COMPANY LETTER	B
COMPANY LETTER	C
COMPANY LETTER	D
COMPANY LETTER	E

## COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO- LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS MADE <input checked="" type="checkbox"/> OCCUR. OWNERS & CONTRACTORS PROT.	PPS 23639207	11/10/98	11/10/99	GENERAL AGGREGATE \$ 2,000,000 PRODUCTS-COMP/OP AGG. \$ 2,000,000 PERSONAL & ADV. INJURY \$ 1,000,000 EACH OCCURRENCE \$ 1,000,000 FIRE DAMAGE (Any one fire) \$ 1,000,000 MED. EXPENSE (Any one person) \$ 10,000
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> GARAGE LIABILITY				COMBINED SINGLE LIMIT \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
	<b>EXCESS LIABILITY</b> <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ AGGREGATE \$ STATUTORY LIMIT
	<b>WORKERS COMPENSATION AND EMPLOYERS LIABILITY</b>				EACH ACCIDENT \$ DISEASE - POLICY LIMIT \$ DISEASE - EACH EMPLOYEE \$
	OTHER				

**DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS**  
CERTIFICATE HOLDER IS INCLUDED AS ADDITIONAL INSURED WITH REGARD TO INSUREDS GENERAL LIABILITY COVERAGE.  
FOR LOCATION AT 158 MADISON AVE., 5TH FLOOR, NEW YORK, NY 10016  
Fax to Ellen @ 212-979-1862 Fax to Wei @ 212-889-5573

**ENDORSEMENT**  
Claude Simon/John Simon  
160 Madison Ave.  
7th Floor  
New York NY 10016

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 15 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE  
*John Braem*

4759