

## **EXHIBIT 3**

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LEASE

August 11, 2023

between

CHETRIT 1412 LLC, 1412 BH DE LLC, and 1412-1416 RSVP DE LLC,

as Landlord

and

QUBE USA LLC

as Tenant

Affecting a portion of premises commonly known as:

1412 Broadway  
New York, New York

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## LEASE

AGREEMENT OF LEASE ("Lease"), dated August 11, 2023, between CHETRIT 1412 LLC, a Delaware limited liability company having an address at c/o AB & Sons Group, LLC 25 West 36th St, 2nd Floor, New York, NY 10018, 1412 BH DE LLC, a Delaware limited liability company having an address 1178 Broadway 5th Fl, New York, NY 10001, and 1412-1416 RSVP DE LLC, a Delaware limited liability company having an address 22 West 32nd St, 15th Fl, New York, NY 10001, as tenants in common ("Landlord"), and QUBE USA LLC, a New York limited liability company, having an address at 199 Hawleys Corner Road, Highland, NY 12528 ("Tenant").

### 1. THE DEMISED PREMISES AND TERM

In consideration of the Rent hereinafter reserved and the terms, covenants and conditions set forth in this Lease to be observed and performed by Tenant, Landlord hereby demises and leases to Tenant, and Tenant hereby rents and hires from Landlord a portion of the ground floor and lower level currently occupied by Last Minute Transactions Inc. ("Demised Premises" or "Premises") of the building known by the street address 1412 Broadway, New York, New York ("Building"), as shown on Exhibit A annexed hereto.

TO HAVE AND TO HOLD the Demised Premises unto Tenant, and the permitted successors and assigns of Tenant, upon and subject to all of the terms, covenants and conditions herein contained.

A. The term of this Lease (the "Term") shall commence upon the "Commencement Date" (as hereinafter defined) and expire on the last day of the calendar month in which the fifteenth (15<sup>th</sup>) anniversary of the day prior to the Commencement Date occurs (the "Expiration Date"), or on such earlier date on which the Term may expire or otherwise terminate pursuant to any of the conditions or covenants of this lease or pursuant to law.

B. The "Commencement Date" shall mean the date Landlord delivers vacant possession of any portion of the Premises to Tenant, which is anticipated to take place on or before August 1, 2023.

C. Promptly following the Commencement Date, the parties hereto shall enter into a supplemental certificate fixing the actual Commencement Date, in the form which is annexed hereto as Exhibit B, but the failure of the parties to sign such certificate shall not affect the Commencement Date or Rent Commencement Date.

D. Terms not otherwise defined in the text of this Lease shall have the definitions contained in Article 43 hereof.

### 2. RENT

A. During the Term, Tenant promises to pay to Landlord the rent reserved under this Lease, which shall consist of:

- (i) an annual fixed rent (hereinafter, the "Fixed Rent") as follows:

Lease Years	Annual	Monthly
1	\$840,000.00	\$70,000.00
2	\$840,000.00	\$70,000.00
3	\$1,020,000.00	\$85,000.00
4	\$1,050,600.00	\$87,550.00
5	\$1,082,118.00	\$90,176.50
6	\$1,114,581.54	\$92,881.80
7	\$1,148,018.99	\$95,668.25
8	\$1,182,459.56	\$98,538.30
9	\$1,217,933.34	\$101,494.45
10	\$1,254,471.34	\$104,539.28
11	\$1,292,105.48	\$107,675.46
12	\$1,330,868.65	\$110,905.72
13	\$1,370,794.71	\$114,232.89
14	\$1,411,918.55	\$117,659.88
15	\$1,454,276.10	\$121,189.68

Provided Tenant is not in default under the terms, covenants and conditions of this Lease, no Fixed Rent shall be payable for the first sixty (60) days following the delivery of the Premises to Tenant, however, from and following the Commencement Date, and delivery of each portion of the Premises to Tenant, Tenant shall be liable for all other charges payable by Tenant under this Lease, including, without limitation, all water and sewer charges, all fuel, electricity and other utility charges which may be incurred at portions of the Premises theretofore delivered to Tenant. If the commencement of any portion of the Fixed Rent pursuant to the foregoing is not the first day of the month, all adjustments for said month shall be based upon a thirty (30) day month and the number of days remaining on the month.

(ii) all other sums of money as shall become due and payable by Tenant under this Lease (hereinafter, "Additional Rent"), all of which sums shall be payable as hereinafter provided. In the event any installment of Fixed Rent or Additional Rent required pursuant to the provisions of this Lease to be paid by Tenant is not paid within five (5) days after the date due, Tenant shall pay to Landlord as Additional Rent a late charge of five (5%) percent of the amount past due to cover Landlord's administrative expenses incurred in connection with such late payment. In addition, Tenant shall pay, upon demand, as Additional Rent, interest on such late payment, at the Interest Rate, from the date due, until paid, and upon demand by Landlord any reasonable attorneys' fees and disbursements incurred by Landlord in connection with the collection or payment of any Fixed Rent, Additional Rent and/or said administrative charge, due to Tenant's failure to pay said amounts, as herein provided, after expiration of applicable notice and cure periods, said attorneys' fees and disbursements to be deemed Additional Rent. However, in the rare event of a banking services failure or ACH clearing failure preventing timely rent

payment, Tenant shall be granted a one-time grace period of five (5) business days provided that the rent payment is submitted within said period, and this grace period shall only be applicable on one occasion during the term of the Lease, without incurring any late charge, Interest Rate, or penalties as contemplated by this subsection (ii).

B. (i) Provided Tenant has not been in default of the Lease, Tenant shall have the option of extending the Term for one (1) additional term ("Renewal Term") of five (5) years on the same terms and conditions as provided herein except for Fixed Rent which shall be, subject to the provisions of Section 2.B(ii)(a) below, the fair market rental value of the Premises ("Fair Market Rent") determined in the manner set forth in this Section 2.B.

Notice of the exercise of such option ("Extension Notice") shall be delivered by Tenant to Landlord, in writing, no later than the first day of the twelfth (12<sup>th</sup>) month prior to the expiration date of the initial Term or the Renewal Term. Time shall be of the essence as to the aforesaid for giving the Extension Notice. Tenant's right to extend the Term pursuant to this Section 2.B shall be conditioned upon there being no default by Tenant which remains uncured after applicable notice and cure periods in the observance or performance of any of the terms, covenants and conditions of this Lease either at the time of the exercise of the option or on the expiration of the initial Term.

(ii) (a) If Tenant has elected to renew the term of this Lease, as provided in subparagraph (i) above for the Renewal Term, then at least nine (9) months prior to the commencement of the Renewal Term, Landlord shall give to Tenant a notice ("Landlord's Notice") setting forth Landlord's statement of the Fair Market Rent during the Renewal Term, which shall be conclusive and binding as the basis for determining the annual Fixed Rent to be paid during the Renewal Term unless (a) within 15 days after the giving of Landlord's Notice, Tenant shall notify Landlord that Tenant disputes Landlord's statement of the Fair Market Rent, specifying Tenant's statement ("Tenant's Statement") of the Fair Market Rent during the Renewal Term and (b) if such dispute shall not be resolved by fifteen (15) days after the delivery of Tenant's Statements, Landlord and Tenant shall promptly submit the dispute to arbitration pursuant to the provisions of subparagraph (iv) below. In the event such dispute is submitted to arbitration, the arbitrators shall determine the annual Fair Market Rent during the Renewal Term in accordance with the instructions set forth in subparagraph (iv), and a sum equal to said amount, subject to the provisions of this Lease, shall be the annual Fixed Rent payable by Tenant during the Renewal Term; *provided, however*, that in no event shall the annual Fixed Rent payable by Tenant during each year of the Renewal Term be less than \$1,497,904.39 per annum, increasing 3% annually on a compounded basis after the first anniversary of the renewal term ("Initial Term Escalated Rent").

(b) If upon the commencement of the Renewal Term the annual Fixed Rent to be paid during the Renewal Term shall not have been determined (by arbitration or by agreement of Landlord and Tenant), Tenant, effective as of the commencement of the Renewal Term, shall pay on account of annual Fixed Rent, one half of the sum of (i) the annual Fixed Rent set forth Landlord's Notice for the first year of the Renewal Term and (ii) the annual Fixed Rent set forth Tenant's Statement for the first year of the Renewal Term, increasing 3% per year, subject to adjustment upon determination of such annual Fixed Rent. Under such circumstances, upon the determination of the annual Fixed Rent for the Renewal Term, Tenant shall pay to Landlord within thirty (30) days after demand, any underpayment of annual Fixed Rent by Tenant since the



beginning of the Renewal Term and, in the event of any overpayment of such annual Fixed Rent by Tenant since the beginning of the Renewal Term, Landlord shall credit the amount of such overpayment against the payments of annual Fixed Rent next coming due hereunder until such time as the overpayment has been fully credited to Tenant.

(c) Nothing in this Section 2 shall affect Tenant's obligations to pay Additional Rent under this Lease. During the Renewal Term, Tenant shall pay (a) Additional Rent in accordance with the provisions of Article 8, without change in any other provision of Article 8, and (b) all other Additional Rent payable under this Lease in accordance with the terms hereof, all of which shall be taken into account in determining fair market rental value for the Premises for the Renewal Term.

(iii) In the event that, pursuant to the provisions of subparagraph (ii), the determination of the Fair Market Rent to be paid during the Renewal Term is submitted to arbitration, then within twenty (20) days after commencement of the Renewal Term, Landlord and Tenant shall each appoint a person as arbitrator on its behalf and shall notify the other party of such appointment. The arbitrators thus appointed shall appoint a third person who shall be impartial to act as an arbitrator hereunder, and such three arbitrators shall as promptly as possible determine the annual fair market rental value for the Premises during the Renewal Term in accordance with the provisions of subparagraph (iv); *provided, however*, that if the two arbitrators appointed by the parties shall be unable to agree within ten (10) days after the appointment of the second arbitrator, they shall give written notice to the parties of such failure to agree, and the parties shall attempt to agree on the appointment of an impartial third arbitrator. If the parties fail to agree upon the selection of such impartial third arbitrator within ten (10) days after the arbitrators appointed by the parties have given notice as aforesaid, then within fifteen (15) days thereafter, either of the parties upon notice to the other party may request such appointment by the American Arbitration Association (or any organization successor thereto) ("AAA"), or in its absence, refusal, failure or inability to act, may apply for a court appointment of such third arbitrator.

(iv) The arbitration shall be conducted, to the extent consistent with this Lease, in accordance with the then prevailing rules of the AAA and the arbitrators shall be bound by the instructions set forth in this subparagraph (iv). The first and second arbitrators appointed pursuant to subparagraph (iii) shall submit their respective determinations in writing to the third arbitrator within twenty (20) days after the appointment of the third arbitrator and such third arbitrator shall, within ten (10) days after submission of the first and second arbitrator's respective determinations, select the annual fair market rental value in the opinion of the impartial third arbitrator (taking into account all relevant factors, including, without limitation, those set forth in this Section 2.B(a)). The impartial third arbitrator may not select any other rental amount. The arbitrator appointed by Landlord may not submit an amount in excess of the sum set forth in Landlord's Statement and the arbitrator appointed by Tenant may not submit an amount less than the sum set forth in Tenant's Statement. The decision by the third impartial arbitrator shall be in writing and shall be conclusive and binding on both Landlord and Tenant. In rendering such decision and award, the arbitrators shall not add to, subtract from or otherwise modify the provisions of this Lease. Judgment may be had on the decision and award of the arbitrator(s) so rendered in any court of competent jurisdiction. The arbitrators shall make their respective determinations based on the following, and the arbitrators shall be so instructed:

(a) The Fair Market Rent during the Renewal Term shall be the then annual fair market rental value for comparable corner spaces in comparable buildings on Broadway between 32<sup>nd</sup> Street and 46<sup>th</sup> Street in Manhattan, (i) without any reduction to reflect that Tenant saves moving expenses by exercising the renewal option, (ii) without any reduction to reflect any discount for the length of the Renewal Term, (iii) taking into consideration any increases or possible increases in rental during the Renewal Term then being included in leases for space in such comparable buildings based on changes in price indices, including the Consumer Price Index, cost of living or other similar increases, or periodic rental adjustments, (iv) taking into account that the Premises is leased in its then “as is” condition, (v) assuming that the Premises are leased vacant and unencumbered by this Lease, (vi) shall not be reduced to reflect the economic effect of savings which will inure to Landlord by reason of the renewal of this Lease in contrast to new and original tenancies such as savings in brokerage commissions, rent concessions, construction credits or allowances and the like; (vii) taking into account the size and condition of the Premises and the condition of the Building, the credit-worthiness of Tenant and Guarantor, and services provided by Landlord and Tenant under this Lease; (viii) taking into account that the Base Year does not change during the Renewal Term and (ix) taking into account the increase in the Fixed Rent that occurs during the Renewal Term as provided in Section 2.B(v) below; and (x) taking into account all other relevant factors as may be material and relevant to a proper determination of the annual fair market rental value for the Premises during the Renewal Term.

(b) The Additional Rent payable by Tenant under this Lease shall continue to be payable during the Renewal Term without any change in any provisions of Article 8 or any other provisions of this Lease relating to Additional Rent.

(v) The annual Fixed Rent determined by such arbitration, or pursuant to Section 2.B(ix) below, shall increase no less than three percent (3%) annually on a compounded basis.

(vi) Each party shall pay the fees and expenses of the one of the two original arbitrators selected by such party. The fees and expenses of the third arbitrator and all other expenses of the arbitration (other than the fees and disbursements of attorneys or witnesses for each party) shall be borne by the parties equally.

(vii) Each arbitrator appointed pursuant to this Section 2.B shall have at least 10 years’ experience in the City of New York as a licensed retail appraiser or retail real estate broker in the City of New York.

(viii) Upon final determination of the Fair Market Rent for the Renewal Term pursuant to this Section 2.B, Landlord and Tenant, upon the demand of either of them, shall enter into a supplementary agreement to set forth the annual Fixed Rent for such Renewal Term; provided, however, that failure of either party to execute such supplementary agreement shall not affect the Fixed Rent due for the Renewal Term pursuant to the foregoing provisions of this Section 2.B.

(ix) The provisions of this Article 2.B, (iii) - (viii) shall be inapplicable and have no force or effect in the event that Landlord notifies Tenant in Landlord’s Notice that the annual Fixed Rent for the Renewal Term shall be the Initial Term Escalated Rent.

(x) Except as provided in this Section 2.B, Tenant's occupancy of the Premises during the Renewal Term shall be on the same terms and conditions as were in effect immediately prior to the expiration of the initial Term of this Lease.

(xi) If Tenant exercises its right to extend the term of this Lease for the Renewal Term pursuant to this Section 2.B, the phrases "Term," "the term of this Lease" or "the term hereof" as used in this Lease, shall be construed to include the Renewal Term, and the Expiration Date shall be construed to be the Extension Expiration Date.

(xii) If Tenant does not timely send the Extension Notice pursuant to provisions of Section 2.B(i) hereof, this Section 2.B shall have no force or effect and shall be deemed deleted from this Lease. The termination of this Lease during the initial Term hereof shall also terminate and render void any option or right on Tenant's part to extend the Term of this Lease pursuant to this Section 2.B whether or not such option or right shall have theretofore been exercised.

C. If Tenant elects to renew or extend the term of this Lease, whether pursuant to an option contained herein, or with direct negotiation with Landlord not in furtherance of any option, and retains a broker, Tenant agrees to pay any and all brokerage commissions incurred in connection with such renewal or extension and agrees to indemnify, defend and hold Landlord harmless from any claims of any broker claiming to have dealt with Tenant, including, without limitation, reasonable attorneys' fees incurred by Landlord.

D. Tenant shall pay all Fixed Rent and Additional Rent due hereunder at the office of Landlord or such other place as Landlord may designate, payable in United States legal tender, by, at Landlord's election, (i) wire transfer of immediately available funds pursuant to wiring instructions provided by Landlord therefor or (ii) good and sufficient check drawn on a New York City bank which is a member of the New York Clearing House or a successor thereto, and shall be payable, in advance, in equal monthly installments on the first day of every month, without any prior notice, demand, off-set, deduction or abatement whatsoever, at the office of Landlord as set forth above, or at such place and to such person as Landlord from time to time may designate, except that the first month's Fixed Rent payable hereunder shall be paid simultaneously with the execution of this Lease. If this Lease were to terminate (as distinguished from expire and for a reason other than a Tenant default) on a day other than the last day of a calendar month, the Fixed Rent shall be pro-rated on a per diem basis.

### 3. NO COUNTERCLAIM OR ABATEMENT

The obligations and liabilities of Tenant hereunder in no way shall be released, discharged or otherwise affected (except as expressly provided in this Lease to the contrary) by reason of: any damage to or destruction of or any Taking of the Demised Premises or any part thereof; any restriction or prevention of or interference with any use of the Demised Premises or any part thereof; any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Landlord, or any action taken with respect to this Lease by any trustee or receiver of Landlord, or by any court, in any such proceeding; any claim which Tenant has or might have against Landlord; any failure on the part of Landlord to comply with or perform any of the terms hereof or of any other agreement with Tenant; or any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Tenant shall

have notice or knowledge of any of the foregoing. Except as expressly provided herein, Tenant waives all rights now or hereafter conferred by statute or otherwise to quit, terminate or surrender this Lease or the Demised Premises or any part thereof, or to receive any abatement, suspension, deferment, diminution or reduction of any Rent payable by Tenant hereunder.

#### 4. USE OF DEMISED PREMISES

A. Tenant shall use the Demised Premises throughout the Term of this lease for a legally licensed cannabis dispensary and/or legally licensed on-site consumption lounge in the lower level area only in accordance with Exhibit H and the laws and regulations in the state of New York and for no other use or purpose; provided, however, in no event shall Tenant use the Demised Premises for the prohibited uses described in Exhibit C attached hereto and made a part hereof.

B. Tenant shall not do or permit to be done any act or thing in the Premises which is contrary to any Legal Requirements or Insurance Requirements (hereinafter defined), or which might impair the value or usefulness of the Demised Premises or any part thereof. Tenant shall not use, or allow the Demised Premises or any part thereof or any improvements now or hereafter erected therein or any appurtenances thereto, to be used or occupied for any unlawful purpose, and shall not suffer any act to be done or any condition to exist within the Demised Premises or any part thereof, or in any improvements now or hereafter erected therein or on any appurtenance to the Demised Premises, or permit any article to be brought therein, which may constitute a nuisance, public or private, or which may make void or voidable any insurance in force with respect thereto.

C. Tenant covenants and agrees, at its expense, to complete "Tenant's Work" (as hereinafter defined) and to open for business (fully fixtured) in the Premises within six months after the Commencement Date; to continuously and uninterruptedly use, occupy and operate the Premises under the trade name "QUBE" for the uses permitted by subparagraph A above; to furnish and install all necessary trade fixtures and permitted signs; to open for business and remain open from at least 10:00 A.M. to 6:00 P.M. Monday through Friday and such other hours as Tenant may, in its sole discretion, elect. Notwithstanding the foregoing, Tenant shall be permitted to close (i) for inventory and vacations, (ii) due to fire or other casualty, (iii) interruptions of business due to actions taken by the Office of Cannabis Management; and (iv) due to condemnation.

D. Tenant shall use, occupy, operate and maintain the Premises throughout the Term in a high grade and reputable manner which shall not detract from the character, appearance or dignity of the Building. The statement as to the nature of the business to be conducted by Tenant in the Premises or use and occupancy permitted therein shall not constitute a representation or guaranty by Landlord that such business may be conducted in the Premises or is lawful or permissible under any certificate(s) of occupancy issued for the Premises or the Buildings, or is otherwise permitted by law or regulations.

E. Tenant shall in all events comply with all Legal Requirements governing the disposal of wastes and waste products of Tenant at the Premises, including, without limitation, so-called environmental laws, rules and regulations.

F. Tenant shall not (i) conduct or permit any fire, auction, going out of business or bankruptcy sale in the Premises, or (ii) distribute or permit to be distributed handbills or other matter to customers outside the Premises if in violation of Legal Requirements; provided, however, Tenant shall reasonably cooperate with Landlord with respect thereto, to minimize the complaints of tenants of the Building with respect to such distribution.

G. (i) Tenant shall (1) engage, at its expense, a rubbish removal contractor of Tenant's selection, for the removal of all rubbish, debris and waste from Tenant's operation; (2) place such refuse outside for collection (in areas designated by Landlord in accordance with Landlord's rules and regulations) and (3) cause all waste to be placed in securely sealed plastic bags or similar containers.

(ii) A default under this Section 4.G shall be a material default of Tenant under this Lease.

H. Tenant acknowledges and understands that the value of the Premises and the reputation of Landlord will be seriously injured if the Premises are used for any obscene or pornographic use or as any sort of commercial sex establishment. Accordingly, Tenant shall not permit or conduct any use of the Premises for nude modeling, or as a so-called rubber goods shop, or as a sex club of any sort, or as a "massage parlor."

I. Tenant acknowledges that Landlord's damages resulting from any breach of the provisions of this Article 4 are difficult, if not impossible, to ascertain and concedes that, among other remedies for such breach permitted by law or the provisions of this Lease, Landlord shall be entitled to enjoin Tenant from any violation of said provisions.

J. (i) Except as otherwise expressly permitted in this Article, Tenant shall not permit any fumes, odors, noise or vibrations to emanate from the Demised Premises. Tenant, at Tenant's expense, shall install sound proofing materials to prevent sounds, noises and vibrations from emanating from the Demised Premises so that Tenant's use of the Premises shall not disturb other tenants in the Building. Notwithstanding the foregoing, if any fumes, odors, noises or vibrations emanate from the Demised Premises during the Term beyond what is provided for in the last sentence of this **Section 4.J(i)**, then Tenant will, immediately after written notice from Landlord, install at its own cost and expense, additional reasonable control devices or procedures to eliminate such fumes, odors, noise and vibrations, if any. In the event such condition is not immediately remedied, Landlord may, at its discretion, either (a) cure such condition and thereafter add the cost and expense incurred by Landlord therefor to the next monthly rental to become due and Tenant shall pay said amount as additional rent; or (b) treat such failure on the part of Tenant to eliminate such fumes, odors, noise or vibrations as a material default hereunder entitling Landlord to any of its remedies pursuant to the terms of this Lease. Landlord shall have the right to enter the Demised Premises at any time to inspect the same and ascertain whether they are clean and free of fumes and odors. In the event Landlord requires Tenant to install control devices or procedures to eliminate such fumes, odors, noise or vibrations the material, size, specifications and location of such installations shall be subject to Landlord's prior written approval, which shall not be unreasonably withheld, conditioned, or delayed. Such work shall not be commenced until plans and specifications therefor have been submitted to and approved by Landlord, which shall not be unreasonably withheld, conditioned, or delayed. Subject to compliance by Tenant with Landlord's



reasonable control devices and procedures, Landlord acknowledges that (a) minimal odors may emanate outside of the Building at the exhaust area designated for venting by Tenant utilized in accordance with its design specifications, and (b) a de minimis amount of noise may be heard through the entrance to the Demised Premises when the entrance doors are opened to allow ingress or egress of customers or employees, provided such doors are not permitted to remain in an open position.

(ii) (a) Notwithstanding anything to the contrary contained herein, in connection with the Demised Premises and/or Tenant's use or occupancy thereof, Tenant shall not make or permit to be made or cause any music or electronically reinforced speech or sounds to emanate from the Demised Premises when the level of sound attributable thereto exceeds the sound levels set forth on **Exhibit D** annexed hereto and made a part hereof, as measured inside any other tenant spaces in the Building (the "**Sound Levels**"). Any failure to so comply with such Sound Levels shall be a material default hereunder.

(b) As part of Tenant's Work, Tenant, at Tenant's expense, is installing a sound system for the Demised Premises. Within the ten (10) day period after the Completion of Tenant's Work, Tenant's sound engineer will test the sound system installed by Tenant with the sound meter designated on **Exhibit D** and will establish the maximum decibel level (the "**Maximum Sound System Level**") that the sound system can achieve so as not to exceed the Sound Levels. Tenant shall, at its sole cost and expense, prior to having music or electronically reinforced speech or sounds coming from the Demised Premises, install volume limiters on the sound system, including, without limitation any subwoofer (or similar portion of the sound system) and shall set all volume limiters such that the decibel level produced by the sound system does not exceed the Maximum Sound System Level. Tenant shall take all measures to ensure that there is no tampering with any limiters and that Tenant and/or Tenant's Parties do not bring audio equipment into the Premises which exceed the Maximum Sound System Level and/or the Sound Levels. Landlord may from time to time, but without an obligation do so, enter the Demised Premises, upon reasonable notice to Tenant, to inspect the limiters and to determine whether there has been any tampering. If at any time during the term, Tenant wants to replace its sound system in the Demised Premises then Tenant will confer with Landlord and its engineer to ensure that the new sound system in the Demised Premises does not exceed the Sound Levels and after the determination of the Maximum Sound System Level by Landlord, which such determination shall be made at Tenant's sole cost and expense, Tenant shall install volume limiters on such new sound system and set such limiters to the Maximum Sound System Level. Any failure to so comply with such Maximum Sound System Level shall be a material default hereunder.

(iii) If there shall be a dispute as to whether fumes or odors are emanating from the Demised Premises then either party may submit such dispute to Expedited Arbitration (as hereinafter defined), provided, that if Tenant does not submit such dispute to Expedited Arbitration within thirty (30) days following a notice from Landlord to Tenant requesting that Tenant cure the emanation of fumes or odors from the Demised Premises, time being of the essence (or if Tenant submits such dispute to Expedited Arbitration, upon Landlord's request), then as directed by Landlord, Tenant shall install the control devices and materials that Landlord believes are reasonably necessary to eliminate such fumes and odors emanating from the Demised Premises. If Tenant submits such dispute to Expedited Arbitration and prevails then Landlord shall reimburse Tenant for the cost of such aforementioned work to eliminate such fumes or odors.

Notwithstanding anything to the contrary set forth in Section, if a dispute is submitted to Expedited Arbitration, the losing party shall pay the costs thereof.

K. Notwithstanding anything contained in this Lease to the contrary, in no event shall Tenant, its agents, contractors, employees and invitees have access to, or use, the Building elevators and as part of Tenant's Alterations, at Landlord's request, Tenant shall seal off any access to said elevators from any portion of the Premises.

## 5. CONDITION OF DEMISED PREMISES

The parties acknowledge that the Demised Premises shall consist of an unfinished and unimproved space in which Tenant will, promptly after delivery of possession of the Demised Premises to Tenant, at its sole cost and expense, construct a retail store within the Demised Premises, including all HVAC servicing the Demised Premises, and the procuring of all relevant permits and approvals therefor, in accordance with the provisions of Article 6 hereof. Tenant specifically acknowledges and agrees that this Lease and the commencement of Rent hereunder shall not be delayed or affected by Tenant's completion or failure to complete Tenant's improvements to the Demised Premises, by the Rent Commencement Date. Landlord makes no representation or warranty, express or implied in fact or by law, as to the nature or condition of the Demised Premises, or its fitness or availability for any particular use, or the income from or expenses of operation of the Demised Premises. Landlord shall not be liable for any latent or patent defects therein.

Tenant represents that Tenant has examined and is fully familiar with the physical condition of the Demised Premises, the improvements thereon, the sidewalks, the uses thereof, and all zoning and other rules and requirements applicable to the Demised Premises, and subject to the provisions of this Lease, Tenant shall accept the Demised Premises without recourse to Landlord, "as is", in the condition and state in which they now are, reasonable wear and tear and damage by fire or other casualty excepted, and agrees that the Demised Premises complies in all respects with all requirements of this Lease.

Except as expressly set forth in this Lease, Landlord shall have no obligation to alter, improve, decorate or otherwise prepare the Demised Premises for Tenant's occupancy. Tenant acknowledges and agrees that Landlord has not made, and does not make, any representation or warranty, and Landlord shall have no liability or obligation with respect to any matter relating to the Demised Premises or this transaction, including, without limitation (i) income, expenses, operation, income-producing potential, zoning, physical condition, gross and rentable square footage of the Building, access, fitness for any specific use, merchantability, habitability, soil or the lie and topography, of any portion of the Demised Premises; (ii) violations, if any, (iii) any patent or latent defect in or about the Demised Premises, or in any portion thereof; (iv) the compliance of the Demised Premises with any Legal Requirements; (v) the presence or absence of asbestos, asbestos-containing materials, lead paint or any hazardous substances or wastes in, under or upon the Demised Premises; (vi) the existence, location or availability of utility lines for water, sewer, drainage, electricity or any other utility; (vii) any licenses, permits, approvals or commitments from governmental authority in connection with the Demised Premises; (viii) parking availability and/or (ix) any other matter affecting or relating to the Demised Premises, including the legal state thereof, which is not expressly set forth in this Lease. Tenant is relying

upon Tenant's independent investigations with respect to the foregoing and with respect to all other matters relating to the Demised Premises, other than as expressly set forth in this Lease.

## 6. ALTERATION AND ADDITIONS

A. Tenant, at Tenant's sole cost and expense, shall perform Alterations as shall be necessary to fully equip and complete the Premises for the operations of Tenant's business in accordance with the provisions of Article 4 hereof ("Tenant's Work"). Subject to the following provisions, Tenant agrees to promptly commence and diligently prosecute the preparation of "Tenant's Plans" to perform Tenant's Work and submit the same to Landlord within ninety (90) days of the date hereof for Landlord's approval.

B. (i) Except as otherwise set forth in Section 6F below, Tenant shall make no Alterations to the Premises, without Landlord's consent in each instance. Tenant shall not be required to remove any Alterations at the end of the Lease, except as hereinafter provided. Notwithstanding the foregoing, Tenant shall, at its sole cost and expense, remove, all Tenant's Property and all Specialty Alterations at the end of the Term of the Lease and deliver possession of the Premises to Landlord, "broom clean". "Specialty Alterations" shall mean Alterations which are structural in nature or penetrate or otherwise affects any floor slab (other than the portion of Tenant's Work described in Section 4.C above), all voice and data wiring, raised computer room floors, vaults, generator, structurally reinforced filing systems, internal staircases, pneumatic tubes, vertical and horizontal transportation systems, any Alterations which penetrate or expand an existing penetration of any floor slab, and other Alterations which are not typical of a retail or office tenant located in a mixed use building in midtown Manhattan (i.e. cannot reasonably be reused by a succeeding retail tenant or office and/or would be unusually costly to remove), including but not limited to: water fountain or water features, mezzanine, vaults, safes, kitchens, computer room installations, supplemental heating, ventilation and air conditioning, ventilation and air conditioning equipment, conveyors, dumbwaiters, staircases and other alterations of a similar character. Tenant shall, at Tenant's cost and expense, repair any damage to the Premises or the Building due to all such restorations, cap all electrical, plumbing and waste disposal lines in accordance with sound construction practice, and restore the Premises to the condition existing prior to the making of such Specialty Alterations or removal. All such work shall be performed in accordance with plans and specifications first approved by Landlord and all applicable terms, covenants, and conditions of this Lease. No core or other drilling or loud noise construction work shall be permitted, except during hours reasonably designated by Landlord, whether or not permitted by the DOB.

(ii) Prior to commencing any Tenant's Work, or any other Alterations (other than Cosmetic Changes), Tenant shall submit to Landlord for its approval (in accordance with the criteria set forth in Section 6.B and (6.F) two (2) sets of complete working plans, drawings and specifications (collectively, "Tenant's Plans"), including, but not limited to, all plumbing and electrical systems and facilities for Tenant's Work, prepared by an architect or engineer licensed as such in the State of New York ("Tenant's Architect"). All of Tenant's Plans shall comply with all Legal Requirements. Within ten (10) Business Days following Landlord's receipt of Tenant's Plans, Landlord shall review or cause the same to be reviewed and shall thereupon return to Tenant one (1) set of Tenant's Plans with Landlord's approval or disapproval noted thereon, and if same shall be disapproved in any respect Landlord shall state with specificity, the reasons for such



disapproval. In the event Tenant's Plans are referred to an outside architect or engineer, the aforesaid ten (10) business day period shall be extended by the time reasonably necessary for such outside architect or engineer to review said Tenant's Plans. In case Landlord disapproves Tenant's Plans in any respect Tenant shall promptly cause Tenant's Architect to make such changes to Tenant's Plans as Landlord shall reasonably require and shall thereupon resubmit the same to Landlord for its approval. Following the approval of Tenant's Plans, as aforesaid, the same shall be final and shall not be changed without the prior approval of Landlord (in accordance with the criteria set forth in Section 6B above). Within ten (10) days after approval of Tenant's Plans, Tenant shall submit Tenant's Plans to the DOB for approval and shall diligently prosecute the approval of same. Within sixty (60) days after approval Tenant's Plans by the DOB, Tenant shall commence and diligently prosecute the completion of Tenant's Work.

(iii) Landlord reserves the right to disapprove any plans and specifications in part, to reserve approval of items shown thereon pending its review and approval of other plans and specifications, and to condition its approval upon Tenant making revisions to the plans and specifications or supplying additional information. Any review or approval by Landlord of any plans and/or specifications or preparation of any plans by an architect or engineer designated by Landlord with respect to any Alteration is solely for Landlord's benefit, and without any representation or warranty whatsoever to Tenant or any other Person with respect to the compliance thereof with any Requirements, the adequacy, correctness or efficiency thereof or otherwise.

(iv) Tenant shall advise Landlord of the name of its contractor and all subcontractors at least ten (10) days prior to the commencement of any work in the Premises.

(v) All Alterations shall be done in compliance with all other applicable provisions of this Lease and with all applicable laws, ordinances, directions, rules and regulations of governmental authorities having jurisdiction, including, without limitation, the Americans with Disabilities Act of 1990 and New York City Local Law No. 57/87 and similar present or future laws, and regulations issued pursuant thereto, and also New York City Local Law No. 76 and similar present or future laws, and regulations issued pursuant thereto.

(vi) Tenant shall keep the Building and the Premises free and clear of all liens for any work or materials claimed to have been furnished to Tenant or to the Premises.

(vii) Prior to the commencement of any Alterations by or for the benefit of Tenant, Tenant shall furnish to Landlord certificates evidencing the existence of the following insurance:

(a) Workers' compensation insurance covering all persons employed for such work and with respect to whom death or bodily injury claims could be asserted against Landlord, Tenant or the Premises.

(b) Broad form commercial general liability insurance written on an occurrence basis naming Tenant as an insured and naming Landlord and its designees as additional insureds, with limits of not less than \$5,000,000 combined single limit for personal injury in any one occurrence, and with limits of not less than \$500,000 for property damage (the foregoing limits

may be revised from time to time by Landlord to such higher limits as Landlord from time to time reasonably requires). Tenant, at its sole cost and expense, shall cause all such insurance to be maintained at all times when the work to be performed for or by Tenant is in progress. All such insurance shall be obtained from a company authorized to do business in New York and shall provide that it cannot be canceled without thirty (30) days prior written notice to Landlord. All policies, or certificates therefor, issued by the insurer and bearing notations evidencing the payment of premiums, shall be delivered to Landlord. Blanket coverage shall be acceptable, provided that coverage meeting the requirements of this paragraph is assigned to Tenant's location at the Premises.

(c) During the period of Alterations, builder's risk insurance policy, terrorism, covering all physical loss written (a) on a completed value form, (b) on an "All Risk" form (c) with Flood and Earthquake, (d) limits equal to the 100% replacement value, subject to an annual review and increase, at Landlord's option, (e) with an agreed amount endorsement or a no-co-insurance clause, (f) with deductibles of up to \$10,000, higher deductibles require the approval of Landlord, (g) to allow permission to occupy, (h) full terrorism coverage is to be provided covering both certified and non-certified acts provided the same is available at commercially reasonable rates and (i) with soft cost coverage and other risks covered by the usual extended coverage;

(viii) Tenant shall use all commercially reasonable efforts to minimize interference with or the disturbance of other tenants and occupants of the Building.

(ix) The review and/or approval by Landlord, its agents, consultants and/or contractors, of any Alteration or of plans and specifications therefor and the coordination of such Alterations with the Building, as described in part above, are solely for the benefit of Landlord, and neither Landlord nor any of its agents, consultants or contractors shall have any duty toward Tenant with respect to such review and/or approval; nor shall Landlord or any of its agents, consultants and/or contractors be deemed to have made any representation or warranty to Tenant, or have any liability, with respect to the safety, adequacy, correctness, efficiency or compliance with Legal Requirements of any plans and specifications, Alterations or any other matter relating thereto.

(x) All Alterations shall be made and performed in accordance with the Building rules and regulations and in accordance with the approved Tenant's Plans (and no amendments or additions thereto shall be without the prior consent of Landlord to the extent such approval is required under this Lease). All materials to be incorporated in the Premises as a result of Alterations shall be of good quality. No fixtures, equipment or articles which comprise the Alterations which cannot be removed without material damage to the Premises and no portion of the Real Property shall be subject to any liens, encumbrances, chattel mortgages or security interests (as such terms are defined in the Uniform Commercial Code as in effect in New York on the date hereof) or any other title retention or security agreement. Within 120 days following completion of any work performed by Tenant at the Premises, subject to Unavoidable Delays, Tenant shall obtain all letters of completion from the DOB, together with any and all other required DOB approvals and approvals from all other governmental agencies having jurisdiction over the Alterations, together with the "as-built" plans and specifications (including CAD drawings) for such Alterations, and copies of all asbestos surveys and reports, if any, prepared by Tenant's

asbestos consultants or contractors in connection with, or arising out of, the performance of such Alterations. For purposes of this Article 6, all final “as is” plans and specifications with respect to any Alterations shall be delivered to Landlord in CAD format.

(xi) Tenant agrees to provide in all construction contracts entered into by Tenant:

To the fullest extent permitted by law, Contractor agrees to indemnify, defend and hold harmless Landlord, Landlord's Affiliates, Managing Agent and/or Landlord's Mortgagee from any and all claims, suits, damages, liabilities, professional fees, including reasonable attorneys' fees, costs, court costs, expenses and disbursements related to death, personal injuries or property damage (including loss of use thereof) arising out of or in connection with the performance of the work of the Contractor, its agents, servants, subcontractors or employees, or the use by Contractor, its agents, servants, subcontractors or employees, of facilities owned by Landlord. This agreement to indemnify specifically contemplates full indemnity in the event of liability imposed against Landlord, Landlord's Affiliates, Managing Agent and/or Landlord's Mortgagee without negligence and solely by reason of statute, operation of law or otherwise, and partial indemnity in the event of any actual negligence on the part of Landlord, Landlord's Affiliates, Managing Agent and/or Landlord's Mortgagee either causing or contributing to the underlying claim and Landlord is hereby made a third party beneficiary of this indemnity. In that event, indemnification will be limited to any liability imposed over and above that percentage attributable to actual fault, whether by statute, by operation of law or otherwise.

Contractor shall obtain and maintain at all times during the term of this agreement, at its sole cost and expense, the following insurance (a) workers compensation insurance with statutory limits and employer's liability coverage of not less than \$500,000; (b) commercial general liability insurance with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 in the aggregate, which insurance shall cover the following: premises and operations liability, products/completed operations, broad form property damage, broad form contractual liability, personal injury and independent contractor's liability; (c) automobile liability insurance coverage owned, hired and non-owned vehicles, with a minimum limit of liability of \$1,000,000; and (d) umbrella liability insurance with a limited of \$5,000,000 per occurrence and a general aggregate of \$5,000,000. Contractor shall, by specific endorsements to its primary and umbrella/excess liability policy, cause Landlord, Landlord's Affiliates, Managing Agent and Landlord's Mortgagee to be named as Additional Insureds. Contractor shall, by specific

endorsement to its primary liability policy, cause the coverage afforded to the additional insureds thereunder to be primary to and not concurrent with other valid and collectible insurance available to owner and managing Agent. Contractor shall, by specific endorsement to its umbrella/excess liability policy, cause the coverage afforded to Landlord, Landlord's Affiliates, Managing Agent and Landlord's Mortgagee thereunder to be first tier umbrella/excess coverage above the primary coverage afforded to Landlord, Landlord's Affiliates, Managing Agent and Landlord's Mortgagee and to concurrent with or excess to other valid and collectible insurance available to Landlord, Landlord's Affiliates, Managing Agent and Landlord's Mortgagee.

C. Omitted.

D. Landlord shall reasonably cooperate with Tenant in connection with obtaining necessary permits for the Alterations, which may include, without limitation, executing applications reasonably required by Tenant for such permits prior to commencement or completion of Landlord's review of Tenant's Plans for such Alterations; provided, that execution of any such application by Landlord shall not constitute Landlord's consent to the proposed Alteration in question or Tenant's Plans. Further, if, and to the extent, Tenant requests Landlord to execute any applications reasonably required by Tenant for such permits prior to commencement or completion of Landlord's review of Tenant's Plans for such Alterations, then any such execution shall be solely as a courtesy to and at the specific request of Tenant, based upon Tenant's express acknowledgment and agreement of the foregoing and further that: (a) no such Alterations to the Building or Premises shall be performed until such time as (x) consent to Tenant's Plans with respect to such Alterations has been given by Landlord and (y) Tenant has complied fully with all other applicable provisions of this Section 6, and (b) Tenant shall not in any manner rely upon Landlord's execution of such applications in designing or performing any Alterations and shall not assert any claim for costs, expenses, damages or delay in connection therewith arising therefrom. Tenant shall indemnify, defend and hold harmless Landlord from and against any and all costs, expenses or liability, including reasonable attorneys' fees, for any Alterations performed in or to the Building and/or the Premises by or on behalf of Tenant, its agents, servants, contractors and/or employees, in violation of this Article 6, including, without limitation, all costs, and expenses incurred by Landlord in connection with or arising out of (1) the enforcement of this Article 6, and (2) restoration of any portion of the Building and/or the Premises. The obligation of Tenant contained in this Section 6.D, shall survive the expiration or earlier termination of the Lease.

E. Intentionally Deleted.

F. Landlord agrees not to unreasonably withhold its consent to any Alterations which do not affect the exterior of the Building or which do not adversely affect the structure or adversely affect the plumbing or electrical and mechanical systems of the Building. Additionally, Landlord further agrees that no consent shall be required for non-structural cosmetic alterations to the Premises (such as millwork, painting and carpeting) which (i) cost less than \$100,000 in the aggregate calculated on a rolling 12 months period, (ii) require no plans and specifications to be filed with the building department and (iii) do not affect Building systems ("Cosmetic Changes").

G. All contractors with respect to the construction of the Alterations (and not the exhibits to be displayed in the Premises) Tenant proposes to employ shall be approved by Landlord, which approval Landlord agrees not to unreasonably withhold, shall be reputable, fully licensed and shall maintain all insurance required hereunder.

H. Tenant shall secure or cause to be secured, at Tenant's sole cost and expense, all necessary approvals, including, but not limited to, conditional use permits, building permits, historic landmark reviews, and approvals of Tenant's Plans from all government authorities having jurisdiction thereover and Tenant shall also secure or cause to be secured all permits and licenses necessary to perform Tenant's Work or other Alterations proposed to be performed by Tenant, as the case may be, and shall furnish Landlord with copies of Tenant's Plans as approved by such governmental authorities and copies of such permits and licenses.. Landlord agrees to cooperate with Tenant at no cost, risk or expense to Landlord to facilitate Tenant obtaining the requisite governmental approvals of Tenant's Plans. Tenant agrees to pay all of reasonable actual Landlord's out of pocket costs and expenses in connection with the review of the plans and specification of Tenant Alterations to the Premises limited to \$5,000, as increased by the Increase in CPI.

I. Tenant shall not, at any time prior to or during the Term, directly or indirectly employ, or permit the employment of, any contractor, subcontractor, mechanic or laborer or permit any materials in the Premises, whether in connection with any Alteration or otherwise, if such employment or such materials creates any strike in connection with the construction, maintenance or operation of the Building by Landlord, Tenant or others. In the event of any such interference or conflict, Tenant, upon demand of Landlord, shall cause all contractors, mechanics or laborers causing such interference, conflict, difficulty, strike or jurisdictional dispute to leave the Building immediately. Landlord agrees that in connection with Tenant's initial Alterations to open the Premises for business, the display of a rat outside the Building shall not be deemed to violate this Section 6.I.

J. Tenant hereby indemnifies, defends and saves harmless Landlord against liability for any and all mechanic's and other liens filed in connection with any Alteration or repairs undertaken by Tenant hereunder, including, without limitation, the liens of any conditional sales of, or chattel mortgages, title retention agreements, security agreements or financing statements, upon any materials, fixtures, furniture or equipment installed by Tenant in and constituting a part of the Premises. Tenant shall pay promptly the cost of all Alterations and repairs except to the extent Tenant disputes such costs. The obligations under this paragraph to survive the expiration or earlier termination of this Lease.

K. All Tenant's Property not removed by Tenant on or prior to the Expiration Date or earlier termination of the Term, shall be deemed abandoned and either (1) may be retained by Landlord as its property, or (2) may be disposed of by Landlord, without accountability to Tenant, at Tenant's expense, in such manner as Landlord may see fit. Whether Landlord retains such abandoned property as its property, or disposes of it as aforesaid, all costs of removal and repair to the Premises and the Building incurred by Landlord as a result of said abandoned property shall be paid by Tenant to Landlord on demand, which payment obligation shall survive the Expiration Date or earlier termination of the Term.



L. The Tenant is granted the privilege to establish, set up, and manage a pickup window within the leased premises, exclusively intended to facilitate the collection of retail cannabis orders. The precise location of the pickup window shall be at the reasonable discretion of the Landlord; however, it must not be situated on Broadway. It is imperative that the pickup window be positioned no less than 15 feet away from Broadway, ensuring compliance with this distance requirement. In addition, the queue for the pickup window shall be organized on 39th street, with careful consideration given to its length so as not to cause any disruption to other Tenants within the Building. It is of utmost importance that the queue's length is managed appropriately to prevent any disturbance to fellow Tenants. The pickup window shall comply with all applicable laws, regulations, and zoning requirements, and the Tenant shall be responsible for obtaining any necessary permits or approvals related to its installation and operation. Tenant acknowledges that the installation of a pickup window shall be classified as a Special Alteration. Consequently, the Tenant agrees to undertake the removal of said pickup window and to reinstate the storefront to its original condition, or even an improved state if possible. This restoration process must be completed no later than the Lease Expiration date.

## 7. REPAIRS - FLOOR LOAD

A. (i) Landlord shall keep and maintain in good order and state of repair the roof, structural elements and the common elements and facilities of the Building, and all Building systems and the machinery and equipment comprising same (other than the distribution portions of the Building's systems located beyond the point of entry, or connection point for such system, in the Premises). Notwithstanding anything to the contrary contained herein, Landlord's aforesaid obligation shall be performed at the expense of Tenant to the extent that the need for same arises out of a Tenant Omission and Tenant shall reimburse Landlord, as Additional Rent, for the reasonable cost thereof within thirty (30) days after receipt of a bill therefor. A "Tenant Omission" shall mean (1) any installation, alteration or improvement which is performed by Tenant, but which is not performed in a good workmanlike manner; (2) Tenant's failure to perform its obligations hereunder or (3) the negligence, wrongful act or willful misconduct of Tenant, its agents, servants, employees or invitees.

(ii) Tenant shall, at Tenant's sole cost and expense, throughout the Term, (1) maintain, repair and otherwise take good care of the Premises, its fixtures and appurtenances and Tenant's storefront and entrance doors thereto; (2) maintain and, repair and replace the HVAC system servicing the Premises; (3) perform routine housekeeping in the Premises to keep the same clean and neat; (4) replace all light bulbs and lighting fixtures in the Premises as and when necessary as well as the electric lines within the Premises supplying electricity thereto; (5) maintain the plumbing supply lines within the Premises serving the bathrooms in the Premises and the plumbing fixtures in such bathrooms; (6) paint the areas of the Premises visible to the public when necessary in Landlord's reasonable discretion to keep such areas neat looking; (7) repair or replace all plate and other glass in the Premises, and (8) clean the sidewalks and curbs directly in front of the Premises, remove snow and ice therefrom and make all non-structural repairs thereto and to the Premises (including, without limitation, the Storefront and entrance doors) as and when needed to preserve the same in good working order and condition. All maintenance and repairs performed by Tenant shall be of a quality and class equal to the original work or installations in the Building or the Premises, as the case may be, and shall be done in a good and workmanlike manner using new or like new materials.

B. Notwithstanding the foregoing, in addition to Tenant's obligations to maintain and repair the Premises provided in this Lease, all damage or injury to the Building, or to its fixtures, equipment or appurtenances, whether requiring structural or nonstructural repairs, to the extent caused by or resulting from the negligence, wrongful act, or willful misconduct of Tenant or Tenant's servants, contractors, employees, invitees or licensees, shall be repaired at Tenant's sole cost and expense. If such damage is non-structural, then such repairs shall be promptly made by Tenant at Tenant's sole cost and expense. If such damage is structural, then Landlord may, at Landlord's option, make such repairs and Tenant shall reimburse Landlord, as Additional Rent, for the reasonable cost of such repairs, together with interest thereon calculated at the Interest Rate. Tenant also shall repair all damage to the Building and the 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 and shall be made in accordance with the provisions of Article 6 hereof. If Tenant fails after fifteen (15) days' notice to commence or thereafter to proceed with due diligence to make the repairs required to be made by Tenant hereunder, the same may be made by Landlord, at the expense of Tenant, and the reasonable expenses thereof incurred by Landlord, with interest at the Interest Rate, shall be collectible by Landlord as Additional Rent.

C. The water and wash closets and other 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 in the plumbing lines.

D. Tenant acknowledges that Landlord may install scaffolding or a sidewalk bridge adjacent to the Building in connection with work Landlord may be performing to the Building or portions thereof. Tenant agrees that the installation of such sidewalk bridge or scaffolding shall not subject Landlord to any liability to Tenant or give Tenant any right of offset, reduction or claim against Landlord. Landlord agrees, however, such sidewalk bridge or scaffolding shall not block Tenant's entrances to the Premises, nor shall there be any plywood or enclosures erected in front of the Premises. Landlord agrees that it shall promptly commence and diligently perform the work requiring scaffolding or the bridge so as to minimize the time same needs to be in place and Landlord shall use all commercially reasonable efforts to minimize interference with the business operation of Tenant, the visibility of the operations from the street. The construction and maintenance of any sidewalk bridges, scaffolding or similar structures at the Building shall be subject to the following conditions: (i) the same must be "double height"; and (ii) Tenant shall be entitled to temporary signage on the portion of the scaffolding immediately adjacent to the Premises.

E. Tenant, at Tenant's expense, shall do or cause others to do every act necessary or appropriate for the preservation and safety of the Premises by reason of or in connection with any excavation or other building operation initiated by Tenant, its agents, employees, or contractors upon the Premises or any adjoining property, including without limitation all shoring of foundations and walls of the Improvements or of the ground adjacent thereto, whether or not Landlord of the Premises shall be required by any Legal Requirement to take such action or shall be liable for failure to do so.

F. There shall be no allowance to Tenant for a diminution of rental value and no liability on the part of Landlord by reason of inconvenience, annoyance, interruption of, or injury to business arising from Landlord, Tenant or others making, or failing of others to make, any

repairs, alterations, additions or improvements in or to any portion of the Building or the Premises, or in or to fixtures, appurtenances, or equipment thereof provided that (i) to the extent Landlord is performing such work, Landlord shall use all commercially reasonable efforts to minimize interference with Tenant's operations when Landlord performing same and Landlord diligently perform such work and (ii) to the extent such others are performing such work, Landlord shall reasonably enforce all of its rights and remedies against the other parties to make such repairs, alterations, additions or improvements.

G. Tenant shall maintain, in full force and effect throughout the term hereof, a service contract for the HVAC system servicing the Premises, in form and substance, and from a contractor, reasonably approved by Landlord, and within ten (10) days after demand, deliver a copy to Landlord.

H. (i) Except to the extent arising from Landlord's negligence or willful misconduct, Landlord shall not be liable to Tenant for any damages done or occasioned by or from the electrical system, the heating or cooling system, sprinkler or plumbing systems, nor for damage occasioned by water, snow or ice being upon or coming through the walls, roof, windows, doors, sprinkler pipes, water pipes, sewer pipes or otherwise, in, upon or about the Premises, nor for any damage arising from acts of negligence of other tenants or occupants of the Building, if any; and furthermore, Landlord shall not be liable to Tenant for any damage occasioned by reason of the construction of the Premises or for failure to keep the Premises in repair, unless Landlord is obligated to make such repairs under the terms of this Lease, and unless notice of the need for such repairs has been given to Landlord or Landlord had knowledge of such required repair and failed to perform same, in a manner as provided for in this Lease, and a reasonable period has elapsed and Landlord has failed to make such repairs. Landlord shall not be liable for any damage to Tenant's inventory, trade fixtures, furniture, furnishings, floor and wall coverings, special equipment and all other items of personal property of Tenant resulting from water, fire or other hazards, and Tenant hereby releases Landlord from all liability for such damage.

(ii) Tenant agrees, at its own cost and expense and for its own protection, to obtain sprinkler leakage insurance and water damage insurance. The rent payable by Tenant hereunder has been fixed taking into consideration the provisions of this Article, and there shall be no abatement as the result of conditions described herein.

## 8. TAXES

A. For the purposes of this Lease, the following terms shall have the following meanings:

(i) The term "Impositions" or "Taxes" shall mean all real property taxes, governmental levies, municipal taxes, taxes, fees and assessments that are levied based on the use of water or energy by Landlord and/or the Building, county taxes, business improvement district and special improvement district taxes, payments in lieu of taxes pursuant to any agreement entered into by Landlord, or any other governmental charge, general or special, ordinary or extraordinary, unforeseen as well as foreseen, of any kind or nature whatsoever, which are or may be assessed, levied or imposed upon all or any part of the Real Property and the sidewalks, plazas or streets in front of or adjacent to the Building, including the tax, excise or fee measured or



payable with respect to any rent, levied against Landlord and/or the Real Property, under the laws of the United States, the State of New York, City of New York or any political subdivision thereof (but excluding any income, franchise, inheritance, estate, transfer, succession, corporate, gains, inheritance, excise, excess profit or gift taxes). If any assessments may be payable in installments, the term “Impositions” or “Taxes” for any period shall only include the installments payable during such period and interest charged by the taxing authority. Further, the term “Imposition” or “Taxes” shall not include late payment charges of the taxing authority, unless Tenant has not timely paid “Tax Rent” (as hereinafter defined) hereunder. If because of any change in the taxation of real estate, any other tax or assessment (including, without limitation, any occupancy, gross receipts or rental tax) is imposed upon Landlord or the owner of the Real Property or the occupancy, rents or income therefrom, in substitution for or in addition to, any of the foregoing Taxes, (such as, for example, the Florida sales tax on rents, the Michigan single business tax, the City of Los Angeles gross receipts tax on rents, or the Philadelphia City or School District gross receipts tax, as such taxes are presently computed), such other tax or assessment shall be deemed part of the Taxes, provided the same shall be calculated as if the Real Property were the only property of Landlord. Further, all reasonable expenses, including, without limitation, attorneys’ fees and disbursements, and experts’ and other witnesses’ fees, incurred in contesting the validity or amount of any Taxes or in obtaining a refund of Taxes shall be considered as part of the Taxes for such year. The Taxes shall be initially computed on the basis of the Assessed Valuation in effect at the time Landlord’s Statement (hereinafter defined) is rendered (as Taxes may have been settled or finally adjudicated prior to such time) regardless of any then pending application, proceeding or appeal respecting the reduction of any such Assessed Valuation, but shall be subject to subsequent adjustment as hereinafter provided.

(ii) “Landlord’s Statement” shall mean a statement of Taxes for a Comparison Year and Base Tax Year.

(iii) “Tenant’s Proportionate Share” shall mean 5.79%.

(iv) “Year” shall mean a calendar year.

(v) “Base Year” shall mean the Tax Year July 1, 2023 – June 30, 2024, as finally determined.

(vi) “Tax Year” shall mean the period from July 1 through June 30 or such other period as may be adopted by the City of New York or other taxing authority for the fiscal year for assessing taxes.

(vii) “Comparison Year” shall mean any Tax Year subsequent to the Base Year, for any part or all of which there is an increase in Taxes payable pursuant to subparagraph B below.

(viii) “Assessed Valuation” shall mean the transitional amount for which the Real Property is assessed pursuant to applicable provisions of the New York City Charter and of the Administrative Code of the City of New York for the purpose of imposition of Taxes.

B. Tenant shall pay to Landlord, at the time or times set forth in Section C below, during each Tax Year occurring during the Term of this Lease, Tenant’s Proportionate Share of the amount by which (i) Taxes assessed, levied or imposed during, or with respect to, such Tax

Year or any part thereof exceeds (ii) the Taxes for the Base Year ("Tax Rent"). Taxes for the Tax Year in which the Commencement Date or Expiration Date occurs shall be appropriately adjusted. The obligations of the parties hereunder shall survive the expiration or termination of the Term.

C. (i) At any time prior to, during or after any Tax Year or calendar year, Landlord may render to Tenant, a Landlord's Statement or Statements showing the amount of Tax Rent. Landlord's failure to render a Landlord's Statement during or with respect to any Tax Year or year shall not prejudice Landlord's right to render a Landlord's Statement during or with respect to any subsequent Tax Year or calendar year.

(ii) Within thirty (30) days after delivery of Landlord's Statement, Tenant shall pay to Landlord the amount due Landlord as shown on such Landlord's Statement.

(iii) If the Expiration Date is not the last day of a Tax Year, then the Tax Rent for the Tax Year during which the Expiration Date occurs shall be an amount equal to the product obtained by multiplying (X) the Tax Rent that would have been due hereunder if the Expiration Date was the last day of such Tax Year, by (Y) a fraction, the numerator of which is the number of days in the period beginning on the first (1<sup>st</sup>) day of such Tax Year and ending on the Expiration Date, and the denominator of which is three hundred sixty-five (365) (or three hundred sixty-six (366), if such Tax Year includes the month of February in a leap year).

(iv) At the option of Landlord, which may be exercised by written notice to Tenant, Tenant shall pay to Landlord, on the first day of each and every month of the Term, an amount equal to one twelfth (1/12th) of the Tax Rent becoming due within the ensuing twelve months, as reasonably estimated by Landlord. Such estimate, and consequently the monthly installments, may be adjusted at any time by Landlord. An official certificate or statement issued or given by any sovereign or governmental authority or agency, or any public utility, showing the existence of any Imposition, or interest or penalties thereof, the payment of which is the obligation of Tenant as provided herein, shall be prima facie evidence for all purposes of this Lease of the existence, amount and validity of such Imposition. The obligation of Tenant with respect to such Additional Rent applicable for the last year of the Term of this Lease or part thereof shall survive the expiration of the Term.

D. (i) Only Landlord shall have the right to contest Taxes. In the event that, after a Landlord's Statement with respect to Taxes has been sent to Tenant, the Assessed Valuation which had been utilized in computing Taxes for a Year is reduced (as a result of settlement, final determination of legal proceedings or otherwise), and as a result thereof a refund of Taxes is actually received by or on behalf of Landlord, then, promptly after receipt of such refund, Landlord shall send Tenant a statement adjusting Taxes for such Year (taking into account the expenses mentioned in the penultimate sentence of Section A of this Article 8) and setting forth Tenant's Proportionate Share of such refund and Tenant shall be entitled to receive such Share by way of a credit against the Rent next becoming due after the sending of such Statement (or paid to Tenant at the end of the Term, provided Tenant is not in default hereunder at such time); provided, however, that Tenant's share of such refund shall be limited to the amount, if any, which Tenant had theretofore paid to Landlord as increased Rent for such Year on the basis of the Assessed Valuation before it had been reduced.

(ii) Any Landlord's Statement sent to Tenant shall be conclusively binding upon Tenant unless, within one hundred twenty (120) days after such Landlord's Statement is sent, Tenant shall send a written notice to Landlord objecting to such Landlord's Statement and specifying the respects in which such Landlord's Statement is claimed to be incorrect.

(iii) If the Assessed Valuation for the Base Year is reduced at any time after the date that Landlord gives a Landlord's Statement to Tenant for a Tax Year, then Landlord shall have the right to give to Tenant a revised Tax Statement that recalculates the Tax Rent for a Tax Year (using the Taxes that reflect such reduction in such Assessed Valuation). Tenant shall pay to Landlord, as Additional Rent, an amount equal to the excess of (i) the Tax Rent as reflected on such revised Landlord's Statement, over (ii) the Tax Rent as reflected on the prior Landlord's Statement, within thirty (30) days after Landlord gives such revised Landlord's Statement to Tenant.

## 9. REQUIREMENTS OF LAW

A. Tenant at its sole cost and expense shall comply with all Legal Requirements and Insurance Requirements in respect of, or relating to, the Premises or the use and occupation thereof, abate any nuisance in, on or about the Premises, comply with any order or duty on Landlord or Tenant, and discharge any violations of any Legal Requirements or Insurance Requirements, provided, however, that Tenant shall not be required to make any structural Alterations to the Premises to so comply with Legal Requirements and Insurance Requirements unless caused by (i) any acts, failure to act or negligence of Tenant, its agents, contractors, subcontractors, invitees or employees, (ii) Tenant's specific use of the Premises or manner of use, (iii) any Alterations made by Tenant, or (iv) a breach of Tenant's obligations under this Lease. Tenant shall not do or permit to be done any act or thing upon the Premises which will invalidate or be in conflict with any insurance policies covering the Building and fixtures and property therein; and shall not do, or permit anything to be done in or upon the Premises, or bring or keep anything therein, except as now or hereafter permitted by the Fire Department having jurisdiction over the Premises, New York Board of Fire Underwriters, New York Fire Insurance Rating Organization or other authority having jurisdiction and then only in such quantity and manner of storage as not to increase the rate for fire insurance applicable to the Building, or use the Premises in a manner which shall increase the rate of fire insurance on the Building or on property located therein, over that in similar type buildings or in effect prior to this Lease. Any work or installation made or performed by or on behalf of Tenant or any person claiming through or under Tenant pursuant to this Article shall be made in conformity with, and subject to the provisions of, Article 3 hereof. If by reason of the failure of Tenant to comply with the provisions of this Article, 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 Landlord, as Additional Rent hereunder, for that part of all fire insurance premiums thereafter paid by Landlord which shall have been charged because of such failure or use by Tenant, and shall make such reimbursement within thirty (30) days after notice from Landlord. In any action or proceeding wherein Landlord and Tenant are parties, a schedule of "make up" rates for the Building or the Premises issued by the New York Fire Insurance Rating Organization, or other body fixing such fire insurance rates, shall be conclusive evidence of the facts therein stated and of the several items and charges in the fire insurance rates then applicable to the Premises.

B. In furtherance of the provisions of Section 9.A above, Tenant shall at all times comply with the provisions of Americans with Disabilities Act, Title III ("ADA") and make all changes and modifications to the Premises required thereby, whether structural or non-structural, in accordance with the provisions of Article 6 hereof, and Tenant shall indemnify, defend and hold Landlord harmless from and against any losses, costs, damages or claims of whatever nature, arising out of or in connection with the compliance requirements set forth in the ADA, relating to design, renovation, alteration and/or construction of the Premises. Tenant agrees to notify Landlord, within ten (10) days after receipt, if Tenant receives any notifications of violations of ADA.

## **10. LIENS**

A. Tenant shall not directly or indirectly create or permit to be created or to remain, and shall discharge, any mortgage, lien, security interest, encumbrance or charge created, caused, suffered or permitted by Tenant with respect to the Demised Premises or any part thereof, Tenant's interest therein, or any Fixed Rent or other Rent payable under this Lease, other than liens for Impositions not yet payable, or payable without the addition of any fine, penalty, interest or cost for nonpayment, or being contested as permitted in Section 10.B below or Article 11 hereof.

B. If, in connection with any Alterations being performed by or for the benefit of Tenant or any subtenant or in connection with any materials being furnished to Tenant or any subtenant, any mechanic's lien or other lien or charge shall be filed against the Demised Premises or any part thereof, or if any such lien or charge shall be filed or made against Landlord, then Tenant, at Tenant's expense, within thirty (30) days after notice of such lien from Landlord, shall cause the same to be canceled and discharged of record by payment thereof or filing a bond or otherwise. Tenant promptly and diligently shall defend any suit, action or proceeding which may be brought for the enforcement of such lien or charge; shall satisfy and discharge any judgment entered therein within thirty (30) days after the entering of such judgment by payment thereof or filing a bond or otherwise; and within thirty (30) days after demand shall pay all damages, costs and expenses, including reasonable attorneys' fees, suffered or incurred by Landlord in connection therewith.

## **11. PERMITTED CONTESTS**

Tenant, at its sole cost and expense and after notice to Landlord, may contest by appropriate proceedings prosecuted diligently and in good faith, the legality or applicability of any Legal Requirement with which Tenant is required to comply under the terms of this Lease provided that (a) Landlord (or any Indemnitees) shall not be subject to imprisonment or to prosecution for a crime, nor shall the Real Property or any part thereof be subject to being condemned or vacated, nor shall the certificate of occupancy for the Premises or the Building be suspended or threatened to be suspended by reason of non-compliance or by reason of such contest; (b) before the commencement of such contest, if Landlord or any Indemnitees may be subject to any civil fines or penalties or other criminal penalties or if Landlord may be liable to any independent third party as a result of such noncompliance then Tenant shall furnish to Landlord either (i) a bond of a surety company satisfactory to Landlord, in form and substance reasonably satisfactory to Landlord, and in an amount at least equal to one hundred twenty percent (120%) of the sum of (A) the cost of such compliance, (B) the criminal or civil penalties or fines that may accrue by reason of such non-

compliance (as reasonably estimated by Landlord) and (C) the amount of such liability to independent third parties (as reasonably estimated by Landlord), and shall indemnify Landlord (and any Indemnitees) against the cost of such compliance and liability resulting from or incurred in connection with such contest or non-compliance or (ii) other security reasonably satisfactory in all respects to Landlord; (c) such non-compliance or contest shall not constitute or result in a violation (either with the giving of notice or the passage of time or both) of the terms of any Mortgage or Superior Lease, or if such Superior Lease or Mortgage shall condition such non-compliance or contest upon the taking of action or furnishing of security by Landlord, such action shall be taken or such security shall be furnished at the expense of Tenant; and (d) Tenant shall keep Landlord regularly advised as to the status of such proceedings. Without limiting the applicability of the foregoing, Landlord (or any Indemnitees) shall be deemed subject to prosecution for a crime if Landlord (or any Indemnitees), a Lessor, a Mortgagee or any of their officers, directors, partners, shareholders, agents or employees is charged with a crime of any kind whatsoever unless such charges are withdrawn twenty (20) days before Landlord (or any Indemnitees), such Lessor or such Mortgagee or such officer, director, partner, shareholder, agent or employee, as the case may be, is required to plead or answer thereto.

## 12. UTILITY SERVICES

A. Tenant, at its sole cost and expense, shall make all arrangement and pay all charges for all public or private utility services including, without limitation, cleaning, air conditioning, water, electric, sewage, steam, gas, refuse disposal and all sprinkler systems and protection services at any time rendered to or in connection with the Demised Premises or any part thereof; shall comply with all contracts relating to any such services; and shall do all other things required for the maintenance and continuance of all such services. Except as otherwise specifically provided in this lease, Landlord shall have no responsibility or obligation therefor nor shall Landlord have any liability for any interruption or failure of any service that is not due to the willful misconduct of Landlord. Landlord makes no representation as to the existence or sufficiency of any conduits or equipment in the Building to be utilized by Tenant for obtaining any utility or service and Tenant shall be responsible for installing all meters and/or submeters, to the extent they do not exist, to measure Tenant's utilities at Tenant's sole cost and expense. Tenant shall be responsible, at its expense, for the cleaning, maintenance, repair and stocking of the restrooms in the Demised Premises so that same are maintained in good operation, repair and appearance at all times.

B. Anything elsewhere in this Lease to the contrary notwithstanding, if the New York Board of Fire Underwriters or the Insurance Services Office, or any bureau, department or official of the federal, state or city government, require or recommend the installation of a sprinkler system or that any 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, of if any such sprinkler system installations, changes, 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.



### 13. INSURANCE

A. Tenant, at all times during the Term and at Tenant's expense, shall provide and maintain, and shall cause all subtenants, to provide and maintain, in full force and by separate policies:

(i) insurance upon all property owned by Tenant or for which Tenant is legally liable, or which is installed by or on behalf of Tenant, and which is located within the Premises, including, without limitation, on all leasehold improvements, including, without limitation, sign structures, made by or on behalf of Tenant, for full replacement value against damage by fire and extended coverage peril;

(ii) workers' compensation insurance as required by any applicable law or regulation and in accordance with the laws of the state, territory or province having jurisdiction over Tenant's employees; and employer's liability insurance with limits of not less than \$1,000,000;

(iii) commercial general liability insurance written on an occurrence basis and in an amount not less than \$5,000,000 per occurrence per location or such higher limits as Tenant may carry. Such insurance shall provide premises/operation coverage for (a) bodily injury, property damage, personal injury and advertising injury and (b) all contractual liability for bodily injury, property damage and personal and advertising injury covering indemnification obligations under this Lease. Such insurance may be provided by a combination of a commercial general liability policy and an umbrella policies;

(iv) during the period of Alterations, builder's risk insurance as required by Article 6 hereof;

(v) "All Risk" or "Special Form" property insurance, including the perils of flood earthquake and terrorism for the full insurable value, covering Tenant's leasehold improvements to the Demised Premises, in an amount equivalent to the insurable value of said property, defined as the cost to replace or reconstruct new without deduction for physical depreciation. The policy is to: (a) contain no coinsurance provisions or in the event of such provision, the coinsurance is to be waived by attachment of an "agreed amount" clause; (b) include joint loss agreement; (c) be written with a deductible, not to exceed \$10,000; and (d) include business income insurance, including rental value and extra expense, including all of the coverage extensions required above. The amount of insurance purchased shall not be less than the annual rents. Such amount shall be adjusted annually. The policy is to have no time limitation as respects the period of Indemnity (from time of loss until repair or reconstruction of the damaged property, with due diligence and dispatch) and 12 months of Extended Period of Indemnity. The deductible is to be included within and part of the deductible stated in above;

(vi) comprehensive boiler and machinery insurance covering all mechanical and electrical equipment against physical damage, rent losses, improvement losses and covering, without limitation, all tenant improvements and betterments that Tenant is required to insure pursuant to the Lease as long as Tenant owns or controls the "Boiler & Machinery" (a) on a

replacement cost new basis, (b) in an amount reasonably approved by Landlord, (c) to mirror all of the appropriate terms of the "All Risk" Property coverage, and (d) joint loss agreement;

(vii) business interruption insurance which shall cover, among other things, the Rent which shall be due and payable hereunder during "Tenant's Restoration Work" (as hereinafter defined); and

(viii) such other or additional insurance as Landlord deems reasonably necessary.

B. Upon the execution of this Lease and thereafter not less than thirty (30) days prior to the expiration date of any policy required to be delivered pursuant to this Article 13, Tenant shall deliver to Landlord certificates of insurance with Accord 25 (liability and workers compensation) and Accord 28 (2003) (builders risk, property, business income and boiler and machinery) and the originals of all policies or renewal policies, as the case may be, required by this Lease, bearing notations evidencing the payment of the premiums therefor. At any time, within ten (10) days after request, Tenant shall deliver to Landlord copies of insurance policies described in any certificate delivered to Landlord pursuant to this Lease.

C. If at any time Tenant shall neglect or fail to provide or maintain insurance or to deliver insurance policies in accordance with this Article 13, Landlord may upon ten (10) Business Days prior notice to Tenant, effect such insurance as agent for Tenant, by taking out policies in companies selected by Landlord, and the amount of the premiums paid for such insurance shall be paid by Tenant to Landlord on demand, as Additional Rent. Landlord, in addition to Landlord's other rights and remedies, shall be entitled to recover as damages for any breach of this Article 13 the uninsured amount of any loss, liability, damage, claim, costs and expenses suffered or incurred by Landlord.

D. All policies of insurance required in this Lease shall be maintained with insurance companies licensed in the State of New York and have an A.M. Best's Insurance Rating of A-:X or better. The policy or policies shall include a loss adjustment clause in favor of Landlord or its assigns, with loss payable to Landlord as its interest may appear.

E. All insurance maintained pursuant to the terms of this Lease shall provide that it is primary to and noncontributory with any and all insurance maintained by or afforded to an additional insured under such insurance.

F. All insurance maintained by Tenant pursuant to this Article 13: (a) shall, except for workers' compensation insurance, name Landlord, Landlord's affiliates, Landlord's managing agent, if any, Landlord's mortgagee and ground lessor, if any, of which Tenant has notice, the Real Property manager and such other parties as required by Landlord, as additional insureds, as their respective interests may appear, and shall include an effective waiver by the issuer of all rights of subrogation against any named insured or such insured's interest in the Demised Premises or any income derived therefrom; (b) shall provide, to the extent available, that any losses shall be payable notwithstanding any act or failure to act or negligence of Landlord or Tenant or any other person; and (c) shall provide that the insurance carrier shall provide at least thirty (30) days written notice to Landlord of any cancellation or reduction in amount. Any such insurance, at Tenant's option, may be provided through a blanket policy or policies, provided such policies shall provide for

specific allocation to the Demised Premises of the coverage afforded by such blanket policy or policies, and provided further that such blanket policy or policies give to Landlord no less protection than that which would be afforded Landlord under the above described policies.

G. Prior to the Commencement Date and thereafter at least fifteen (15) days prior to the expiration of any policy, Tenant shall deliver to Landlord a binding certificate or certificates evidencing the insurance required by this Article in form and content reasonably satisfactory to Landlord, together with evidence of payment of the annual premium for each policy. In addition, Tenant shall at any time and from time to time during the Term, promptly upon Landlord's request, furnish Landlord with a copy of the then current paid-up policy, appropriately authenticated by the insurer or, at Landlord's option, the Declarations page of such policy evidencing the required insurance.

H. The parties hereto shall procure an appropriate clause in, or endorsement on, any fire or extended coverage insurance covering the Premises and the Building and personal property, fixtures and equipment located thereon or therein, pursuant to which the insurance companies waive subrogation, consent to a waiver of right of recovery or permit any other form of release, and having obtained such clauses and/or endorsements of waiver of subrogation or consent to a waiver of right of recovery, each party shall not make any claim against or seek to recover from the other for any loss or damage to its property or the property of others resulting from fire or other hazards covered or required by this Lease to be covered, by such fire and extended coverage insurance to the extent coverage is or would be afforded thereby, provided, however, that the release, discharge, exoneration and covenant not to sue herein contained shall be limited by, and coextensive with, the terms and provisions of the waiver of subrogation clause and/or endorsements consenting to a waiver of right of recovery or other form of release. If such waiver of subrogation, consent to a waiver of right of recovery or other form of release is unobtainable each party shall advise the other of such fact and the other party, subject to the provisions of this Section 13.H, shall be named as an additional insured in the policy. If the payment of an additional premium is required for the inclusion of such waiver of subrogation, consent to a waiver of right of recovery or other release provision, or if same are not obtainable and the other party is proposed to be named as an additional insured, each party shall advise the other of the amount of any such additional premiums and the other party at its own election may but shall not be obligated to pay the same. If such other party elects not to pay the same, such other party shall notify the party obtaining the insurance of such fact, in which event the party obtaining the insurance shall have no further obligation to obtain such clauses and/or endorsements or to name such other party as an additional insured under the policy. If the other party is named as an additional insured, the policy shall contain a provision that same shall be non-cancellable with respect to such other party unless thirty (30) days' prior written notice shall be given to such other party, by certified mail, return receipt requested, which notice shall contain the policy number and the names of the insureds.

#### 14. INDEMNIFICATION BY TENANT

A. Tenant shall not do or permit any act or thing to be done upon the Premises which may subject Landlord, its members, managers, partners, shareholders, officers, directors, employees, agents and mortgagees (including, without limitation, leasing and managing agents) and contractors (collectively, "Indemnitees") to any liability or responsibility for injury, damages to persons or property or to any liability by reason of any violation of law or of any Legal



Requirement (except if the same is the responsibility of Landlord), but shall exercise such control over the Premises as to fully protect Indemnitees against any such liability. Tenant shall indemnify, defend and save harmless Indemnitees from and against (i) all claims of whatever nature against Indemnitees arising from any act, omission or negligence of Tenant, its contractors, licensees, agents, servants, employees, invitees, (ii) all claims against Indemnitees arising from any accident, injury or damage whatsoever caused to any person or to the property of any person and occurring during the Term in the Premises, (iii) all claims against Indemnitees arising from any accident, injury or damage occurring outside of the Premises but anywhere within or about the Real Property, where such accident, injury or damage results or is claimed to have resulted from an act or omission of Tenant or Tenant's agents, employees, or visitors, including, without limitation, any claims arising from any act, omission or negligence of Tenant and its invitees, and (iv) any breach, violation or non-performance of any covenant, condition or agreement in this Lease or any Superior Lease set forth and contained on the part of Tenant to be fulfilled, kept, observed and performed. This indemnity and hold harmless agreement shall include indemnity from and against any and all liability, fines, suits, demands, costs and expenses of any kind or nature incurred in or in connection with any such claim or proceeding brought thereon, and the defense thereof including, without limitation, reasonable attorneys' fees and disbursements. Indemnitees, from time to time, may submit to Tenant copies of Indemnitees' bills in connection with the foregoing. Tenant upon receipt of such bills shall promptly pay to Indemnitees, as Additional Rent, the amount shown on such bills.

B. If any claim, action or proceeding is made or brought against Indemnitees, which claim, action or proceeding Tenant shall be obligated to indemnify against, pursuant to the terms of this Lease, then, upon demand by Indemnitees, Tenant, at its sole cost and expense, shall resist or defend such claim, action or proceeding in the Indemnitee's name, if necessary, by such attorneys as Indemnitees shall reasonably approve; it being understood and agreed that attorneys retained by Tenant's insurance carrier shall be deemed approved. Notwithstanding the foregoing, the Indemnitee may retain its own attorneys to defend or assist in defending any claim, action or proceeding involving potential liability in excess of the coverage carried by Tenant in which Landlord is named as an additional insured, and Tenant shall pay the reasonable fees and disbursements of such attorneys.

C. Except to the extent any of the following arises from the negligence or willful misconduct of Tenant or any of its members, managers, partners, shareholders, officers, directors, employees, agents, mortgagees or contractors, Landlord shall indemnify, defend and save harmless Tenant from and against all claims of whatever nature against Tenant arising out of the gross negligence or willful misconduct of Landlord, its agents, servants or employees.

D. If any claim, action or proceeding is made or brought against Tenant, which claim, action or proceeding Landlord shall be obligated to indemnify against, pursuant to the terms of this Lease, then, upon demand by Tenant, Landlord, at its sole cost and expense, shall resist or defend such claim, action or proceeding in name of Tenant, if necessary, by such attorneys as Tenant shall reasonably approve, it being understood and agreed that attorneys retained by Landlord's insurance carrier shall be deemed approved.

E. The provisions of this Article 14 shall survive the expiration or earlier termination of this Lease.

## 15. DAMAGE TO OR DESTRUCTION OF THE DEMISED PREMISES

A. Tenant shall give immediate notice to Landlord in case of fire or accident in or about the Premises. Subject to the provisions of Sections 15.E, F and G hereof, if the Premises shall be damaged by fire or other insurable casualty, provided Tenant is not in monetary default under this Lease beyond the expiration of applicable notice and cure periods, the damages, other than to Tenant's personal property and leasehold improvements, made by Tenant to the Premises, shall be repaired by and at the expense of Landlord, promptly after the collection of the insurance proceeds attributable to such damage. So long as Tenant is unable to use the Premises and is not open for business as a result of the casualty, no Rent shall be due and payable, and if Tenant is able to use a portion of the Premises only, and is unable to use the balance of the Premises as a result of the casualty, the Rent shall be reduced in the proportion which the area of the part of the Premises which is not usable by Tenant bears to the total area of the Premises until the earlier of (i) completion of Landlord's repairs or (ii) the date Tenant opens for business in the applicable portion of the Premises. Landlord will not carry insurance of any kind on, and shall have no obligation to repair any damage to, or to replace, any of Tenant's leasehold improvements or any fixtures, furniture, furnishings, equipment or other property or effects of Tenant; the obtaining of insurance coverage for loss of such leasehold improvements, property or effects of Tenant shall be at the sole cost and expense of Tenant.

B. Intentionally Deleted.

C. Omitted

D. No penalty, abatement or other credit shall accrue to Tenant's benefit for reasonable delay which may arise by reason of adjustment of fire insurance proceeds on the part of Landlord and/or Tenant, and for reasonable delay on account of "labor troubles" or any other cause beyond Landlord's control, but without limiting Tenant's rent abatement and termination rights specifically provided for herein.

E. At any time, or within sixty (60) days following request from Tenant, Landlord shall notify Tenant of Landlord's good faith estimate of the time required to repair such damage after receipt of insurance proceeds ("Landlord's Repair Notice"). If, pursuant to Landlord's Repair Notice, the repair of any damage which affects the Premises will take in excess of eighteen (18) months following the date of receipt of insurance proceeds, Landlord or Tenant shall have the right, by written notice to the other delivered within 30 days following the delivery of Landlord's Repair Notice to terminate this Lease, effective as of the date of such damage. Additionally, if neither Landlord nor Tenant have terminated this Lease pursuant to the provisions set forth above and the repairs are not actually completed on or before the later of (i) eighteen (18) months following the date of receipt of insurance proceeds or (ii) the date set forth in Landlord's Repair Notice, Landlord or Tenant shall have the additional right, upon thirty (30) days' notice, to terminate this Lease by notice given to Landlord during the first ten (10) Business days following the end of such eighteen (18) months, unless Landlord substantially completes such repairs within such thirty (30) day period. Upon termination as aforesaid, this Lease and the Term hereof shall cease and come to an end, any unearned rent or other charges paid in advance by Tenant shall be refunded to Tenant, any and all insurance proceeds payable with respect to the leasehold improvements constructed by Tenant in the Premises from time to time (including any additional,

replacements or renovations thereto) shall be paid to Landlord, and any insurance proceeds payable with respect to Tenant's personal property, and Tenant's fixtures and equipment shall be paid to Tenant.

F. Notwithstanding the foregoing, if any damage or destruction to the Premises shall occur during the last two (2) years of the Term, or shall amount to fifty percent (50%) or more of the replacement cost of the improvements constructed by Tenant within the Premises from time to time (including any additions, replacements or renovations thereto), this Lease may be terminated at Landlord's election. Upon termination as aforesaid, this Lease and the Term hereof shall cease and come to an end, any unearned rent or other charges paid in advance by Tenant shall be refunded to Tenant, any and all insurance proceeds paid with respect to the leasehold improvements constructed by Tenant in the Premises from time to time (including any additions, replacements or renovations thereto) shall be paid to Landlord, and any insurance proceeds payable with respect to Tenant's personal property, and Tenant's fixtures and equipment shall be paid to Tenant.

G. The parties agree that this Article 15 constitutes an express agreement governing any case of damage or destruction of the Premises or the Building by fire or other casualty, and that any law which provides for such contingency in the absence of an express agreement, now or hereafter in force shall have no application in any such case.

## 16. TAKING OF THE DEMISED PREMISES

A. Landlord and Tenant shall each notify the other if it becomes aware that any portion of the Building will be taken in condemnation proceedings or by exercise of any right of eminent domain or by private purchase in lieu thereof (any such action being hereinafter referred to as a "Taking"), or if it becomes aware of the commencement of any proceedings which might result in a Taking.

B. In the case of a Taking of (i) the entire Premises or (ii) twenty-five (25%) percent or more of the Premises, if in Tenant's reasonable opinion, the remaining portion of the Premises is not adequate and suitable for use by Tenant, this Lease shall terminate as of the date of such Taking. The Taking described in the preceding sentences is herein referred to as a "Total Taking".

C. In the case of a Taking other than a Total Taking (a "Partial Taking"), this Lease shall remain in full force and effect; provided, however, that Tenant's Proportionate Share shall be appropriately adjusted; and Landlord, to the extent of the condemnation award, shall proceed with due diligence (i) to perform the repairs and other work necessary to restore the Premises, and the public and common areas of the Building to the condition that they were in immediately prior to the Partial Taking to the extent such restoration is practical, (ii) to restore reasonable means of access to the Premises and (iii) to erect suitable demising walls.

D. If the temporary use or occupancy of all or any part of the Premises shall be condemned or taken for any public or quasi-public use during the Term of this Lease, this Lease shall be and remain unaffected by such condemnation or taking and Tenant shall continue to pay in full the Fixed Rent, Additional Rent and other sums payable hereunder by Tenant and Tenant shall have the right to appear, claim, prove and receive so much of the award for such taking as represents compensation for use and occupancy of the Premises and, if so awarded, for the taking

of Tenant's office machinery or office equipment and moving expenses, up to and including the date of the expiration of the Term of this Lease or the date of termination of the temporary taking whichever is earlier, and Landlord shall be entitled to appear, claim, prove and receive the entire balance of the award.

In the event of a Total Taking or Partial Taking, Tenant shall have no claim against Landlord for the value of any unexpired portion of the term of this Lease, nor shall Tenant be entitled to any part of the condemnation award or private purchase price. Nothing herein provided shall preclude Tenant from appearing, claiming, proving and receiving in the condemnation proceeding, Tenant's moving and relocation expenses and the value of Tenant's inventory.

#### **17. QUIET ENJOYMENT**

Landlord covenants that so long as this Lease is in full force and effect and Tenant is not in default hereunder in the payment of any Rent or compliance with or the performance of any of the terms, covenants or conditions of this Lease on Tenant's part to be complied with or performed, beyond applicable notice and/or cure periods, Tenant shall have use of the Demised Premises and Tenant shall not be hindered or molested by Landlord or any party claiming through or under Landlord or any party claiming through or under Landlord in Tenant's enjoyment of the Demised Premises, subject to the provisions of this Lease.

#### **18. DELAY IN DELIVERY; EARLY POSSESSION.**

If Landlord is unable to deliver possession of the Demised Premises on any specified date, because of the holding-over or retention of possession of any tenant or other occupant thereof, Landlord shall have no liability to Tenant for failure to give possession on said date and the validity of this lease shall not be impaired under such circumstances, but the Commencement Date shall be delayed (provided that the inability of Landlord to so deliver possession is not as a result of any act or omission of or on behalf of any Tenant Party) until Landlord shall tender delivery of possession of the Demised Premises in the condition required by this lease. If permission is given to Tenant to enter into the Demised Premises for construction purposes prior to the Commencement Date, Tenant covenants and agrees that such entry shall be deemed to be under all the terms, covenants, conditions and provisions of this lease unless such entry was solely for the purpose of measuring or making preparation for construction of Tenant's Work, in which event it shall not be deemed that possession has been given to Tenant. The provisions of this Section are intended to constitute "an express provision to the contrary" within the meaning of Section 223-a of the New York Real Property Law or any successor Legal Requirement. The term of the Lease shall be extended day for day due to such delayed delivery of possession. Notwithstanding the language to the contrary in this Section 18, if Landlord is unable to deliver possession of the Demised Premises for more than 7 days after the signed execution of this Lease, Tenant shall have the sole right to terminate this Lease with written notice to Landlord.

#### **19. EVENTS OF DEFAULT AND TERMINATION**

If any one or more of the following events ("Events of Default") shall occur:

A. if Tenant shall fail to pay any Fixed Rent when the same becomes due and payable, unless Tenant cures said failure within five (5) days after notice of such failure is given to Tenant; or

B. if Tenant shall fail to pay any Rent, other than Fixed Rent, when and as the same becomes due and payable and such failure shall continue for more than five (5) days after notice of such failure is given to Tenant; or

C. if Tenant shall fail to comply with or perform any term, covenant or condition of (i) Article 13 or (ii) Article 10 which continues for ten (10) days after written notice to Tenant; or

D. if Tenant shall fail to comply with or perform any term, covenant or condition of Article 29, and such failure shall continue for more than ten (10) days after Tenant receives notice of such failure; or

E. if Tenant shall fail to comply with or perform any other term, covenant or condition hereof, and such failure shall continue for more than twenty (20) days after notice thereof from Landlord, or if such default cannot, with due diligence, be cured within such twenty (20) days day period, Tenant within said period, shall not commence with due diligence and dispatch the curing of such default, or, having so commenced, thereafter shall fail or neglect to prosecute or complete with due diligence and dispatch the curing of such default; or

F. if Tenant shall admit, in writing, that it is unable to pay its debts as such debts become due; or

G. if Tenant shall make a general assignment for the benefit of creditors; or

H. if Tenant shall file a voluntary petition under Title 11 of the United States Code or if such petition is filed against Tenant and an order for relief is entered, or if Tenant shall file any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under present or any future federal bankruptcy code or any other present or future applicable federal, state or other statute or law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator or liquidator or other similar official of Tenant or of all or any substantial part of its properties or of the premises or any interest of Tenant therein or if Tenant shall take any corporate action in furtherance of any action described in Sections F, G or H of this Article 19; or

I. if within sixty (60) days after the commencement of any proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other statute or law, such proceeding shall not have been dismissed, or if, within sixty (60) days after the appointment, without the consent or acquiescence of Tenant, of any trustee, receiver, custodian, assignee, sequestrator or liquidator or other similar official of Tenant or of all or any substantial part of its properties or of the Premises or any interest of Tenant therein, such appointment shall not have been vacated or stayed on appeal or otherwise, or if, within thirty (30) days after the expiration of any such stay, such appointment shall not have been vacated; or



J. if a levy under execution or attachment shall be made against Tenant relating to its interest in the Premises, and such execution or attachment shall not be vacated or removed by court order, bonding or otherwise within sixty (60) days; or

K. If Tenant rejects this Lease after filing a petition in bankruptcy or insolvency or for reorganization or arrangement under Federal bankruptcy laws or under any State insolvency act.

## **20. REMEDIES AND DAMAGES**

A. (i) If an Event of Default shall occur, Landlord, at any time thereafter, at its option, may terminate this Lease and the Term by giving Tenant five (5) days' notice of Landlord's intention to do so, and upon the giving of such notice, this Lease and the Term and all rights of Tenant under this Lease shall expire and terminate as if the date on which the Event of Default occurred were the date herein definitely fixed for the expiration of the Term and Tenant immediately shall quit and surrender the Premises, but Tenant shall remain liable for damages as hereinafter provided. Anything contained herein to the contrary notwithstanding, if such termination shall be stayed by order of any court having jurisdiction over any proceeding described in subsections H or I of Article 19 hereof, or by federal or state statute then, following the expiration of any such stay, or if the trustee appointed in any such proceeding, Tenant or Tenant as debtor-in-possession shall fail to assume Tenant's obligations under this Lease within the period prescribed therefor by law or within 120 days after entry of the order for relief or as may be allowed by the court, or if said trustee, Tenant or Tenant as debtor-in-possession shall fail to provide adequate protection of Landlord's right, title and interest in and to the Premises or adequate assurance of the completion and continuous future performance of Tenant's obligations under this Lease as provided in Section M of this Article 20, Landlord, to the extent permitted by law or by leave of the court having jurisdiction over such proceeding, shall have the right, at its election, to terminate this Lease on five days' notice to Tenant, Tenant as debtor-in-possession or said trustee, and upon the expiration of said five day period this Lease shall cease and expire as aforesaid and Tenant, Tenant as debtor-in-possession and/or said trustee shall immediately quit and surrender the Premises as aforesaid.

(ii) If an Event of Default described in Section A of Article 19 hereof shall occur, or if this Lease shall be terminated as provided in Section A(i) of this Article 20, Landlord, in addition to any other rights or remedies it may have, shall, after five days written notice to Tenant, have the right of lawful reentry pursuant to legal proceedings and may remove all persons and property from the Premises and such property may be removed and stored in a public warehouse or elsewhere at the cost and for the account of Tenant, without being deemed guilty of trespass, or becoming liable for any loss or damage which may be occasioned hereby.

B. (i) If this Lease shall be terminated as provided in Section A(i) of this Article 20 and/or Tenant shall be dispossessed by summary proceedings as provided in Section A(ii) of this Article 20:

(a) Tenant shall immediately pay Rent due through the date of termination, and any other sums which may be due Landlord hereunder and surrender possession and vacate the Premises immediately, and deliver possession thereof to Landlord, and hereby grants to Landlord full and free license to enter into and upon the Premises in such event with

process of law and to expel or remove Tenant and any others who may be occupying or within the Premises, and to remove any and all property therefrom, without being deemed in any manner guilty of trespass, eviction or forcible entry or detainer, and without relinquishing Landlord's rights to Rent or any other right given to Landlord hereunder or by operation of law. Tenant expressly waives the service of any demand for the payment of Rent or for possession and the service of any notice of Landlord's election to terminate this Lease or reenter the Demised Premises, except as provided for in Section 20A(i) and agrees that the simple breach of any covenants or provisions of this Lease by Tenant shall, of itself, without the service of any notice or demand whatsoever, except as provided in Article 19, constitute an unlawful retainer by Tenant of the Premises within the meaning of the Statutes of the State of New York;

(b) If Tenant abandons the Premises and same continues after ten (10) days' notice or any other Event of Default occurs, and Landlord elects to terminate Tenant's right to possession only, without terminating the Lease, Landlord may, at Landlord's option, enter into the Premises, remove Tenant's signs and other evidence of tenancy, and take and hold possession thereof without such entry and possession terminating the Lease or releasing Tenant, in whole or in part from Tenant's obligation to pay the Rent hereunder for the full Term, and in any such case Tenant shall pay forthwith to Landlord, a sum equal to the Rent due through the date of termination, plus any other sums then due hereunder. Upon and after entry into possession of the Premises without termination of the Lease, Landlord may, but need not relet the Premises or any part thereof, with or without any furniture that may be therein, as the agent for Tenant, to any person, firm or corporation other than Tenant for such Rent, for such time and upon such terms as Landlord in Landlord's reasonable discretion shall determine; but Landlord shall not be required to accept any tenant offered by Tenant or to observe any instructions given by Tenant about such reletting. In any such case, Landlord may make repairs, alterations and additions in or to the Premises and redecorate the same to the extent deemed by Landlord necessary or desirable, and Tenant shall, upon demand, pay the cost thereof, together with Landlord's expenses of the reletting. If the consideration collected by Landlord upon any such reletting for Tenant's account is not sufficient to pay monthly, the amount of the Rent reserved in the Lease, together with the costs of repairs, alterations, additions, redecorating and Landlord's expenses, Tenant shall pay to Landlord the amount of each monthly deficiency upon demand; and if the consideration so collected from any such reletting is more than sufficient to pay the full amount of the Rent reserved herein, together with the costs and expenses of Landlord, such excess shall be retained by Landlord;

(c) Any and all property which may be removed from the Premises by Landlord pursuant to the authority of this Lease or of law (subject to the last sentence of this Section (c)), to which Tenant is or may be entitled, may be handled, removed or stored by Landlord at the risk, cost and expense of Tenant, and Landlord shall in no event be responsible for the value, preservation or safekeeping thereof. Tenant shall pay to Landlord, upon demand, all expenses incurred in such removal and all storage charges against such property so long as the same shall be in Landlord's possession or under Landlord's control. Landlord may place such property in storage for the account of, and at the expense of Tenant, and if Tenant fails to pay the cost of storing such property after it has been stored for a period of ninety (90) days or more, Landlord may sell any or all of such property in such manner and at such times and places as Landlord in its sole discretion may deem proper, without notice to or demand upon Tenant for the payment of any part of such charges or the removal of any of such property and shall apply the proceeds thereof,

first to such sale, including reasonable attorney's fees; second, to the payment of the costs and charges of storing any property; third, to the payment of any other sums of money which may then or thereafter be due to Landlord from Tenant under any of the terms hereof, and fourth, the balance, if any, to Tenant. The removal and storage of Tenant's Property as above provided shall not constitute a waiver of Landlord's lien thereon.

(d) Landlord may repair and alter the Premises in such manner as Landlord may deem necessary or advisable without relieving Tenant of any liability under this Lease or otherwise affecting any such liability, and/or let or relet the Premises or any parts thereof for the whole or any part of the remainder of the Term or for a longer period, in Landlord's name or as agent for Tenant, and out of any rent and other sums collected or received as a result of such reletting Landlord shall: (i) first, pay to itself the cost and expense of terminating this Lease, reentering, retaking, repossessing, repairing and/or altering the Premises, or any part thereof, and the cost and expense of removing all persons and property therefrom, including in such costs, brokerage commissions, legal expenses and attorneys' fees and disbursements, (ii) second, pay to itself the cost and expense sustained in securing any new tenants and other occupants, including in such costs brokerage commissions, legal expenses and attorney's fees and disbursements and other expenses of preparing the Premises for reletting, and, if Landlord shall maintain and operate the Premises, the cost and expense of operating and maintaining the Premises, and (iii) third, pay to itself any balance remaining on account of the liability of Tenant to Landlord. Landlord in no way shall be responsible or liable for any failure to relet the Premises or any part thereof, or for any failure to collect any rent due on any such reletting, and no such failure to relet or to collect rent shall operate to relieve Tenant of any liability under this Lease or to otherwise affect any such liability;

(ii) No termination of this Lease pursuant to Section 20A(i) or (ii) and no taking possession of and/or reletting the Premises, or any part thereof, pursuant to Section 20.A(ii) and Section 20.B(i)(2), shall relieve Tenant of its liabilities and obligations hereunder, all of which shall survive such expiration, termination, repossession or reletting.

(iii) At any time after such expiration, termination or repossession, whether or not Landlord shall have collected any current damages as aforesaid, Landlord, at Landlord's option, shall be entitled to recover from Tenant, and Tenant shall pay to Landlord on demand, as and for liquidated and agreed final damages for Tenant's default and in lieu of all current damages beyond the date of such demand, an amount equal to the excess, if any, of (a) all Rent which would be payable under this Lease from the date of such demand (or, if it be earlier, the date to which Tenant shall have satisfied in full Tenant's obligation under the preceding paragraph of this Article 20 to pay current damages) until what would be the then unexpired Term in the absence of such expiration, termination or repossession, over (b) the then fair net rental value of the Demised Premises for the same period, all as discounted to present value at the rate of eight (8%) percent per annum. In determining said fair net rental value, the rent realized by any reletting of the Demised Premises, if such reletting is upon terms (other than rental amounts) generally comparable to the terms of this Lease, shall be deemed to be said fair net rental value. Upon the payment of such final damages, this Lease, if not already terminated, shall be deemed terminated. If any statute or rule of law shall validly limit the amount of such liquidated final damages to less than the amount above agreed upon, Landlord shall be entitled to the maximum amount allowable under such statute or rule of law.



C. In the event of any termination of this Lease under the provisions hereof or under any summary dispossession or other proceeding or action or any provision of law, or in the event that Landlord shall re-enter the Demised Premises under the provisions of this Lease, Tenant shall pay to Landlord as damages, at the election of Landlord, either:

(i) a sum which at the time of such termination of this Lease or at the time of any such re-entry by Landlord, as the case may be, represents the then value of the excess, if any, of (a) the aggregate of the installments of Fixed Rent and the Additional Rent which would have been payable hereunder by Tenant, had this Lease not so terminated, for the period commencing with such earlier termination of this Lease or the date of any such re-entry, as the case may be, and ending with the date hereinbefore set for the expiration of the Term, over (b) the aggregate fair market rental value of the Demised Premises for the same period (the amounts of each of clauses (a) and (b) being first discounted to present value at an annual rate equal to the then prevailing discount rate announced by the Federal Reserve Bank; or

(ii) sums equal to the aggregate of the installments of Fixed Rent and Additional Rent which would have been payable by Tenant had this Lease not so terminated, or had Landlord not so re-entered the Demised Premises, payable upon the due dates therefor specified herein following such termination or such re-entry and until the date hereinbefore set for the expiration of the full Term hereby granted; provided, however, that if Landlord shall relet the Demised Premises during said period, Landlord shall credit Tenant with the net rents received by Landlord from such reletting, such net rents to be determined by first deducting from the gross rents as and when received by Landlord from such reletting the commercially reasonable, actual, out-of-pocket expenses incurred or paid by Landlord in terminating this Lease and of re-entering the Demised Premises and of securing possession thereof, including reasonable attorneys' fees and costs of removal and storage of Tenant's property, as well as the commercially reasonable, actual, out-of-pocket expenses of reletting, including repairing, restoring and improving the Demised Premises for new tenants, brokers' commissions, advertising costs, reasonable attorneys' fees and disbursements, and all other similar or dissimilar expenses chargeable against the Demised Premises and the rental therefrom in connection with such reletting, it being understood that such reletting may be for a period equal to or shorter or longer than the remaining term of this; and provided further, that (a) in no event shall Tenant be entitled to receive any excess of such net rents over the sums payable by Tenant to Landlord hereunder, (b) in no event shall Tenant be entitled in any suit for the collection of damages pursuant to this Section 20.C(ii) to a credit in respect of any net rents from a reletting, except to the extent that such net rents are actually received by Landlord prior to the commencement of such suit, and (c) if the Demised Premises or any part thereof should be relet in combination with other space, then proper apportionment on a square foot area basis shall be made of the rent received from such reletting and of the expenses of reletting, or if relet for a period longer than the remaining term of this Lease, the expenses of reletting shall be apportioned based on the respective periods.

D. Suit or suits for the recovery of such damages, or any installments thereof, may be brought by Landlord from time to time at Landlord's election, and nothing contained herein shall be deemed to require Landlord to postpone suit until the date when the term of this Lease would have expired if it had not been terminated under the provisions of Article 19, or under any provision of law, or had Landlord not re-entered the Demised Premises.

E. Nothing contained in this Article 20 shall be construed as limiting or precluding the recovery by Landlord against Tenant of any payments or damages to which, in addition to the damages particularly provided above, Landlord may lawfully be entitled by reason of any default hereunder on the part of Tenant. The failure or refusal of Landlord to relet the Demised Premises or any part or parts thereof, or the failure of Landlord to collect the rent therefor under such reletting, shall not release or affect Tenant's liability for damages.

F. To the extent not prohibited by law, Tenant hereby waives and releases all rights now or hereafter conferred by statute or otherwise which would have the effect of limiting or modifying any of the provisions of this Article 20. Tenant shall execute, acknowledge and deliver any instruments which Landlord may request, whether before or after the occurrence of an Event of Default, evidencing such waiver or release.

G. The rent payable by Tenant hereunder and each and every installment thereof, and all costs, attorneys' fees and disbursements and other expenses which may be incurred by Landlord in enforcing the provisions of this Lease or on account of any delinquency of Tenant in carrying out the provisions of this Lease shall be and they hereby are declared to constitute a valid lien upon the interest of Tenant in this Lease and in the Premises.

H. Tenant shall reimburse Landlord for all sums so paid by Landlord and all costs and expenses reasonably incurred by Landlord in connection with the making of any payments, the performance of any act or other steps taken by Landlord pursuant to this Article 20, within thirty (30) days after demand. All sums so advanced shall bear interest at the Interest Rate.

I. Nothing contained in this Article 20 shall limit or prejudice the right of Landlord to prove and obtain as liquidated damages in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding an amount equal to the maximum allowed by a statute or rule of law governing such proceeding and in effect at the time when such damages are to be proved, whether or not such amount shall be greater than, equal to or less than the amount of the damages referred to in any of the preceding sections of this Article 20.

J. No receipt of monies by Landlord from Tenant after the termination of this Lease, or after the giving of any notice of the termination of this Lease (unless such receipt cures the Event of Default which was the basis for the notice), shall reinstate, continue or extend the Term or affect any notice theretofore given to Tenant, or operate as a waiver of the right of Landlord to enforce the payment of Rent payable by Tenant hereunder or thereafter falling due, or operate as a waiver of the right of Landlord to recover possession of the Premises by proper remedy, except as herein otherwise expressly provided. After the service of notice to terminate this Lease or the commencement of any suit or summary proceedings, or after a final order or judgment for the possession of the Premises, Landlord may demand, receive and collect any monies due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the use and occupation of the Premises or, at the election of Landlord, on account of Tenant's liability hereunder.

K. Tenant, for and on behalf of itself and all persons claiming through or under Tenant, also waives any and all right of redemption provided by any law or statute now in force or hereafter enacted or otherwise, for re-entry or repossession or to restore the operation of this Lease in case

Tenant shall be dispossessed by a judgment or by warrant of any court or judge or in case of re-entry or repossession by Landlord or in case of any expiration or termination of this Lease. The terms "enter", "re-enter", "entry" or "re-entry" as used in this Lease are not restricted to their technical legal meaning.

L. The failure of Landlord to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Lease, or any of the Rules and Regulations set forth or hereafter adopted by Landlord, shall not prevent a subsequent act, which would have originally constituted a violation, from having all of the force and effect of an original violation. The receipt by Landlord or payment by Tenant of Fixed Rent, Escalation Rent or any other item of Rental with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach. The failure of Landlord to enforce any of the Rules and Regulations set forth, or hereafter adopted, against Tenant or any other tenant in the Building shall not be deemed a waiver of any such Rules and Regulations. No provision of this Lease shall be deemed to have been waived by Landlord or Tenant, unless such waiver be in writing signed by Landlord or Tenant, as the case may be. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly Fixed Rent or other item of Rental herein stipulated shall be deemed to be other than on account of the earliest stipulated Fixed Rent or other item of Rental, or as Landlord may elect to apply same, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Fixed Rent or other item of Rental be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Fixed Rent or other item of Rental or pursue any other remedy in this Lease provided.

M. If an order for relief is entered, or if any stay or other act becomes effective in favor of Tenant or Tenant's interest in this Lease in any proceeding which is commenced by or against Tenant under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other statute or law, Landlord shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy code, statute, law or this Lease, including, without limitation, such rights and remedies as may be necessary to adequately protect Landlord's right, title and interest in and to the Premises or any part thereof and adequately assure the complete and continuous future performance of Tenant's obligations under this Lease. Adequate protection of Landlord's right, title and interest in and to the Premises, and adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease shall include, without limitation, the following requirements:

(i) the payment of Landlord's legal fees in connection with any bankruptcy proceeding;

(ii) that Tenant comply with all of its obligations under this Lease;

(iii) that Tenant pay to Landlord, on the first day of each month occurring subsequent to the entry of such order, or the effective date of such stay, a sum equal to the amount by which the Premises diminished in value during the immediately preceding monthly period, but, in no event, an amount which is less than the aggregate Rent payable for such monthly period;

(iv) that Tenant continue to use the Premises in the manner required by this Lease;

(v) that Landlord be permitted to review the performance of Tenant's obligations under this Lease;

(vi) that Tenant pay to Landlord within thirty (30) days after entry of such order or the effective date of such stay, as partial adequate protection against future diminution in value of the Premises and adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease, a security deposit in an amount equal to twelve months Fixed Rent and Additional Rent then payable hereunder;

(vii) that Tenant has and will continue to have unencumbered assets after the payment of all secured obligations and administrative expenses to assure Landlord that sufficient funds will be available to fulfill the obligations of Tenant under this Lease; and

(viii) that if Tenant's trustee, Tenant or Tenant as debtor-in-possession assumes this Lease and proposes to assign the same (pursuant to Title 11 U.S.C. §365, or as the same may be amended) to any person who shall have made a bona fide offer to accept an assignment of this Lease on terms acceptable to the trustee, then notice of such proposed assignment, setting forth (1) the name and address of such person, (2) all of the terms and conditions of such offer, and (3) the adequate assurance to be provided Landlord to assume such person's future performance under this Lease, including, without limitation, the assurances referred to in Title 11 U.S.C. §365(b)(3), as it may be amended, shall be given to Landlord by the trustee, Tenant or tenant as debtor-in-possession no later than thirty (30) days after receipt by the trustee, Tenant or tenant as debtor-in-possession of such offer, but in any event no later than ten (10) days prior to the date that the trustee, Tenant or Tenant as debtor-in-possession shall make application to a court of competent jurisdiction for authority and approval to enter into such assignment and assumption, and Landlord shall thereupon have the prior right and option, to be exercised by notice to the trustee given at any time prior to the effective date of such proposed assignments, to accept, or to cause Landlord's designee to accept, an assignment of this Lease upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such person less any brokerage commissions which may be payable out of consideration to be paid by such person for the assignment of this Lease.

N. Tenant hereby waives trial by jury in any action, proceeding or counterclaim brought by Landlord on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, and/or any claim of injury or damage, or for the enforcement of any remedy under any statute, emergency or otherwise. If Landlord commences any summary proceeding for nonpayment of rent, Tenant will not interpose any non-mandatory counterclaim of whatever nature or description in any such proceeding.

## **21. FEES AND EXPENSES**

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 beyond the expiration of applicable notice and grace period, Landlord may, but shall be under no obligation to, at any time thereafter on ten (10) days' notice (or upon shorter notice, or without notice, if necessary to meet an emergency situation or time limitation of a Legal Requirement) make such payment or perform or cause to be performed such work, labor, services, acts or things, and take such other steps as Landlord may deem advisable, to comply with any such term, covenant or condition which is in default. Entry by Landlord upon the Demised Premises for such purpose shall not waive or release Tenant from any obligation or default hereunder. Tenant shall reimburse Landlord, as Additional Rent, for all reasonable sums so paid by Landlord and all reasonable costs and expenses incurred by Landlord in connection with the making of any payments, the performance of any act or other steps taken by Landlord pursuant to this Article 21 within thirty (30) days after demand. All sums so advanced shall bear interest at the Interest Rate from the date advanced.

## **22. ASSIGNMENT OF SUBRENTS**

Tenant hereby irrevocably assigns to Landlord all rents due or to become due from any assignee of Tenant's interest hereunder and any subtenant or any tenant or occupant of the Demised Premises or any part thereof, together with the right to collect and receive such rents, provided that, so long as Tenant is not in default under this Lease, beyond the expiration of any applicable notice, cure and/or grace periods, Tenant shall have the right to collect such rents for Tenant's own use and purposes. Upon any default by Tenant under this Lease beyond the expiration of any applicable notice, cure and/or grace periods, Landlord shall have absolute title to such rents and the absolute right to collect the same. Landlord shall apply to the Rent due under this Lease the net amount (after deducting all costs and expenses incident to the collection) thereof and the operation and maintenance, including repairs, of the Demised Premises of any rents so collected and received by Landlord. Tenant shall not demand or accept from any subtenant, tenant or occupant of the Demised Premises or any part thereof, any payment, prepayment or advance payment in respect of more than one rental period under the applicable sublease and in no event shall Tenant demand or accept any payment, prepayment or advance payment for a period exceeding one month, other than a security deposit.

## **23. LANDLORD'S FEES**

If Landlord is made or otherwise becomes a party to any litigation commenced by or against Tenant involving the enforcement of any of the rights and remedies of Landlord, or arising on account of the default of Tenant in the performance of Tenant's obligations hereunder, or otherwise, then Tenant shall pay to Landlord, as additional rent, the costs and reasonable attorneys' fees incurred by Landlord in connection with such litigation.



## **24. ACCESS TO PREMISES**

Tenant shall permit Landlord, Landlord's agents and public utilities servicing the Building to erect, construct, use and maintain, concealed ducts, pipes, conduits, supports, beams and wiring, in and through the Premises as Landlord may deem reasonably necessary or desirable for the Premises or for any portion of the Building. Upon reasonable prior written notice to Tenant, Landlord or Landlord's agents shall have the right to enter the Premises at all reasonable times (i) to examine the same, (ii) to show them to prospective purchasers, mortgagees or lessees (during the last 6 months of the term hereof) of the Building or space therein (but with respect to the lessees no earlier than twelve (12) months prior to the expiration of the Lease), (iii) to make such repairs, as Landlord may deem reasonably necessary, to the Premises or to any other portion of the Building as may be required by Landlord to make under the terms of this Lease, (iv) to make such repairs or perform such work therein, which Landlord may elect to perform following Tenant's failure to make repairs or perform any work which Tenant is obligated to perform under this Lease subject to the provisions of Section 21, or (v) to make such repairs, alterations, improvements or additions as may be required for the purpose of complying with laws, regulations or other requirements of government authorities or insurance bodies having jurisdiction over the Premises or the Building. In connection with the work to be performed pursuant to clauses (i), (ii), (iii) or (v) above, Landlord agrees (w) that such work shall not result in a reduction of the floor area of the Premises, other than to a de minimis extent (x) to use commercially reasonable efforts, without being required to use overtime labor, to minimize any interference with the conduct of Tenant's business on the Premises, (y) to promptly commence and diligently proceed to complete such work, and (z) shall be allowed to take (but in no event store) all material and equipment into and upon the Premises that may be reasonably required therefor without the same constituting an eviction or constructive eviction of Tenant in whole or in part and the Rent shall in no wise abate while said decorations, repairs, alterations, improvements, or additions are being made, by reason of loss or interruption of business of Tenant, or otherwise. Nothing contained in this Article 24, however, shall be deemed or constructed to impose upon Landlord any obligation, responsibility or liability whatsoever for the care, supervision or repair of the Building or any part thereof, other than as provided in this Lease.

## **25. SURVIVAL OF TENANT'S OBLIGATIONS AND DAMAGES**

No expiration of the Term (except as expressly provided herein) shall relieve Tenant of Tenant's obligations or liabilities which occurred hereunder prior thereto, all of which shall survive such expiration, termination or repossession.

## **26. INJUNCTION**

Landlord, in addition to all other rights, powers and remedies and notwithstanding the concurrent pendency of summary or other dispossession proceedings, at Landlord's option, shall have the right at all times during the Term, to restrain by injunction any violation by Tenant of any of the terms, covenants or conditions of this Lease.



## 27. TENANT IMPROVEMENT ALLOWANCE

27.01. (a) Tenant hereby covenants and agrees that Tenant will, at Tenant's own cost and expense, subject to and in accordance with the terms of this Article 27 and in a good and workmanlike manner, make and complete the work and installations in and to the Premises. Tenant's Work shall be deemed to be an Alteration for the purposes of Article 6 hereof, provided that in the event of any direct conflict between the provisions of this Article 27 and the provisions of Article 6 hereof, the provisions of this Article 27 shall govern with respect to the performance of Tenant's Work.

27.02. Tenant's preliminary architectural and mechanical working drawings and specifications for Tenant's Work (other than Cosmetic Changes) (collectively hereinafter called "Tenant's Preliminary Plans") shall be sent to Landlord for its approval, provided that Landlord reserves the right to further review and approve all finishes and designs proposed by Tenant (whether structural, non-structural or decorative) in connection with Tenant's submission and Landlord's review of Tenant's Final Plans.

27.03. Intentionally Omitted

27.04. Tenant, at Tenant's expense, shall undertake and diligently proceed to complete, in and to the Premises, the work and installations required or desired by Tenant to prepare the Premises for the Permitted Use, all in accordance with the Approved Tenant Plans (herein called "Tenant's Work"). As part of Tenant's Work, Tenant shall, at its sole cost and expense: (i) install all required sprinklers and sprinkler branch connections throughout the Premises, (ii) perform all programming and connection changes to tie in to the Building's Class E fire alarm system, (iii) distribute electric service and heat and air conditioning service throughout the Premises, and (iv) all such other work necessary to complete the Premises and open it to the public. Tenant agrees that Tenant's Work will be performed with the least possible disturbance to the occupants of other parts of the Building and to the structural and mechanical parts of the Building and Tenant will, at its own cost and expense, leave all structural and mechanical parts of the Building which shall or may be affected by Tenant's Work in the same good and operating condition and state of repair as existed prior to the performance of Tenant's Work. Tenant, in performing Tenant's Work will, at its own cost and expense, promptly comply with all Legal Requirements with reference to Tenant's Work, including, without limitation, the Americans with Disabilities Act. Tenant shall not do or fail to do any act which shall or may render the Building liable to any mechanic's lien or other lien, and if any such lien or liens be filed against the Building, or against Tenant's Work, or any part thereof, Tenant will, at Tenant's own cost and expense, promptly remove the same of record (by payment, bond, order of a court of competent jurisdiction or otherwise) within twenty (20) days after the filing of such lien or liens; or in default thereof, Landlord may cause any such lien or liens to be removed of record by payment, bond or otherwise, as Landlord may elect, and Tenant will reimburse Landlord for all costs and expenses incidental to the removal of any such lien or liens incurred by Landlord. Tenant shall indemnify and save harmless Landlord of and from all claims, reasonable counsel fees, loss, damage and expenses whatsoever by reason of any liens, charges or payments of any kind whatsoever that may be incurred or become chargeable against Landlord or the Building, or Tenant's Work or any part thereof, by reason of any work done or to be done or materials furnished or to be furnished to or upon the Premises in connection with Tenant's Work. Tenant hereby covenants and agrees to indemnify and save harmless Landlord of and from all claims, reasonable counsel fees, loss, damage and expenses whatsoever by reason of any injury or

damage, howsoever caused, to any person or property occurring prior to the completion of Tenant's Work or occurring after such completion, as a result of anything done or omitted in connection therewith or arising out of any fine, penalty or imposition or out of any other matter or thing connected with any work done or to be done or materials furnished or to be furnished in connection with Tenant's Work. At any and all times during the progress of Tenant's Work, Landlord shall be entitled to have a representative or representatives on the site to inspect Tenant's Work and such representative or representatives shall have free and unrestricted access to any and every part of the Premises. Tenant hereby agrees that neither Landlord's approval of any of Tenant's plans (or any revisions thereto), nor its inspection of such work, nor its right to inspect such work, shall impose upon Landlord any obligation or liability whatsoever with respect thereto, including, without limitation, any obligation or liability that might arise as a result of such work not being performed in accordance with applicable Legal Requirements or with the Approved Tenant Plans. The presence of any such representative shall be at Landlord's sole cost and expense unless Tenant shall fail to comply with one or more procedures and regulations (including, without limitation, the Rules and Regulations) prescribed by Landlord from time to time, in which event, Tenant shall pay to Landlord, upon Landlord's demand, Landlord's then-established charges for keeping such representative on the Premises during the performance of Tenant's Work.

27.05. Tenant shall, at Tenant's sole cost and expense, obtain all necessary approvals and permits in connection with Tenant's Work being performed by it pursuant to this Article 27. Tenant covenants and agrees to engage, at Tenant's option, Landlord's Code Consultant or Tenant's architect previously approved by Landlord in accordance with the provisions of this Lease, in either case, at its sole cost and expense: (i) to file, submit and obtain on Tenant's behalf at Tenant's sole expense, all permits, approvals and/or consents and/or other documentation required from any Governmental Authority; and (ii) to coordinate all communications with any Governmental Authority, in either case, regarding any work to be performed with respect to the Premises. If Landlord's Code Consultant is used in accordance with the foregoing sentence, Tenant shall submit to Landlord's Code Consultant, at Tenant's sole cost and expense, a copy of all drawings, plans and specifications submitted to Landlord simultaneously with any submission thereof to Landlord. As of the date of this Lease, Landlord designates as "Landlord's Code Consultant" subject to Landlord's right, exercisable at any time, from time to time, to designate a different party upon notice to Tenant: Allen Azarkian (all drawings, plans and specifications required to be sent to said consultant pursuant to this Lease shall be sent to the attention of Allen Azarkia in accordance with the requirements for sending notices pursuant to Article 44 of this Lease; without limiting the foregoing, for general inquiries Allen Azarkian may be contacted at [allen@azark.com](mailto:allen@azark.com) and/or 212-547-9000).

27.06. The following conditions shall also apply to Tenant's Work: (a) all Tenant's Work shall be of material, manufacture, design, capacity and color at least equal in Landlord's judgment to the standard adopted by Landlord for the Building; (b) all Tenant's Work shall be performed by Tenant in accordance with Article 6 hereof; (c) Tenant shall (i) commence the performance of Tenant's Work promptly following Landlord's approval of Tenant's Plans, without undue delay, (ii) perform and pursue such work with due diligence and in compliance with the terms of this Lease and applicable Legal Requirements, and (iii) complete Tenant's Work and commence business in the Premises for the Permitted Use, fully fixtured, stocked and staffed by not later than the 180 days from Commencement Date (hereinafter also called the "Required Opening Date"); and (d) No material or equipment shall be incorporated in the Building in connection with the performance

of Tenant's Work which is subject to any security interest, lien, charge, mortgage, or other encumbrance of any kind whatsoever other than a security interest or lien held by Landlord; and all of Tenant's Work shall be paid for promptly in cash or readily available funds by Landlord pursuant to the Work Allowance herein so that at all times the Premises and the Building shall remain free of any liens for labor or materials supplied to the Premises.

27.07. In performing Tenant's Work, Tenant agrees to comply and cause its architects, engineers, designers and contractors to comply promptly with all procedures and regulations (including, without limitation, the Rules and Regulations) prescribed by Landlord from time to time for coordinating, to the extent necessary, Tenant's Work with any other activity or work in the Building or the Real Property, including, without limitation, the use of compatible union labor, (iii) to perform or cause to be performed any work whatsoever to be performed at the Premises or elsewhere within the Real Property only during hours reasonably designated by Landlord, and (iv) not to interfere with or interrupt the occupancy or conduct of business of any other tenant in the Building or the Real Property. Tenant shall pay to Landlord upon demand all costs and charges for utilities (temporary and permanent), garbage collection, hoisting, security, standby overtime, labor, materials, and any and all other services supplied to the Premises by Landlord during the performance of Tenant's Work that exceeds the Work Allowance (defined hereinafter).

27.08. Whether or not consented to or approved by Landlord, Tenant shall be fully and solely responsible for all aspects of Tenant's Work, including the design and construction of Tenant's Work, the accuracy and sufficiency of its plans and their compliance with Legal Requirements and insurance requirements. No portion of Tenant's Preliminary Plans or Tenant's Final Plans shall be changed or modified by Tenant after approved by Landlord in accordance with Section 27.02. Tenant shall not commence construction of any of Tenant's Work which deviates from the Approved Tenant Plans, in either event unless Landlord shall approve the same in writing in accordance with Section 27.02.

27.09. Notwithstanding anything to the contrary contained herein, if Tenant shall fail to open for business in the Premises fully fixtured, stocked and staffed for the Permitted Use by the Required Opening Date in accordance with the terms and conditions of this Lease, including, without limitation, this Section 27.07 (except if such failure is due solely to Force Majeure Causes or Landlord's willful misconduct or gross negligence), then, if such failure shall continue for an additional sixty (60) days following the Required Opening Date, upon Landlord's demand and in addition to any and all sums due from Tenant to Landlord pursuant to the terms of this Lease, including, without limitation, Fixed Rent payable by Tenant pursuant to Article 2 hereof and any other Additional Charges, Tenant shall pay to Landlord for each day following the Required Opening Date that Tenant shall fail to open for business in the Premises fully fixtured, stocked and staffed for the Permitted Use a sum equal to one-thirtieth (1/30th) of the then monthly installment of Fixed Rent, as Additional Charges, in addition to the payment of Fixed Rent and any other Additional Charges that may be due. In addition to the foregoing, if Tenant shall fail to open for business in the Premises fully fixtured, stocked and staffed for the Permitted Use on or prior to the Required Opening Date in accordance with the terms and conditions of this Lease and such failure shall continue for an additional sixty (60) days following the Required Opening Date, time being of the essence, at Landlord's option (in Landlord's sole discretion) such failure shall be and shall be deemed a default under this Lease with respect to which Tenant shall have no further notice or

cure rights and with respect to which Landlord shall have the right to send Tenant notice terminating this Lease in accordance with Section 19 hereof.

27.10. The violation by Tenant of any of the covenants, agreements, terms, provisions and conditions contained in this Article shall be deemed a material and substantial default by Tenant under the terms of this Lease.

27.11. Tenant shall be responsible for removal of Tenant's refuse and rubbish during the period that Tenant's Work is in progress in the Premises. Tenant shall not be permitted to use any space in the Building lobby or any space exterior to the Building for staging or storage of materials in connection with the performance of Tenant's Work.

27.12. Landlord shall, at Tenant's written request, cooperate in all reasonable respects with Tenant in the performance by Tenant of Tenant's Work in preparing the Premises for Tenant's occupancy for the Permitted Use and Landlord shall instruct its employees and contractors to render such assistance and to cooperate with Tenant's employees, representatives and contractors provided that to the extent that Landlord shall incur any expense in so cooperating or in rendering such assistance in excess of the Work Allowance, Tenant shall reimburse Landlord for such expense as Additional Charges hereunder. Landlord shall further cooperate with Tenant, in all commercially reasonable respects, in order to obtain the applicable governmental approvals of the Approved Tenant Plans and the issuance of the required permits for Tenant's Work, so long as Landlord does not incur any unreimbursed material out-of-pocket costs in connection with such cooperation.

27.13. Landlord shall pay Tenant's Alteration related invoices for up to \$650,000.00 (the "Work Allowance"). However, Tenant may submit invoices for only up to \$100,000.00 of the Work Allowance in the aggregate for the design consultant's, space planner's, architect's and engineer's fees, building permit fees and inspection charges of any applicable governmental authority or agency having jurisdiction and all other so called soft costs (herein called, collectively, "Soft Costs"). During the Tenant's Work period, Tenant shall submit Alteration related invoices to Landlord or Landlord's representative for direct payment of the invoice by Landlord. Landlord agrees not to unreasonably deny payment of such invoices and shall make payment on received invoices within five (5) business days of receipt, except in cases where the invoice is reasonably denied as an expense not related to the construction of a luxury retail establishment. Within two (2) days of executing this Lease, both Landlord and Tenant shall conduct a walkthrough of the premises to agree upon the plan for improvements, and upon mutual agreement, Tenant shall be authorized to commence the work. As long as Tenant has not failed to pay rent under this Lease, any amount of the Work Allowance not spent by the Tenant (the "Surplus Amount") shall be paid to Tenant to reimburse Tenant's operating expenses and capital expenditures unrelated to Tenant's Work but directly associated to the Premises (the "Operating Allowance"). The release and disbursement of the Operating Allowance to Tenant's vendors shall be contingent upon Tenant furnishing valid invoices substantiating operating expenses and capital expenditures concerning the Premises that have been incurred during the course of this Lease. It is explicitly understood that Tenant shall not be entitled to any Operating Allowance exceeding the surplus remaining from the Work Allowance, under any circumstances.

27.14 Notwithstanding anything to the contrary contained in this Lease, during the continuance of any default by Tenant, Tenant shall not be entitled to (i) receive any portion of any



refunds, credits, allowances, proceeds or other sums otherwise payable to Tenant pursuant to the terms of this Lease, or (ii) the release of any letter of credit, deposit or other security or sums then being held by Landlord (collectively, the items described in the immediately preceding clause (i) and (ii) above, are herein called, the "Funds"), and Landlord may deduct from or draw up such Funds and otherwise retain for itself forever, the amount required to cure such outstanding default plus all other amounts Landlord is entitled to pursuant this Lease (including, without limitation, Article 27) at law or in equity; provided however, upon Tenant's cure of all outstanding defaults and the satisfaction of any other conditions set forth in this Lease for the release of the applicable Funds, Landlord shall release to Tenant with reasonable dispatch the amount of the Funds less the amount Landlord is entitled to retain for itself pursuant this Section 27.15. Tenant acknowledges that this Section 27.15 shall apply to all to the release of all Funds whether or not the applicable provision of this Lease pertaining thereto expressly refers to this Section 27.15.

## **28. LANDLORD'S REMEDIES CUMULATIVE**

All of the rights, powers and remedies of Landlord provided for in this Lease or now or hereafter existing at law or in equity, or by statute or otherwise, shall be deemed to be separate, distinct, cumulative and concurrent. No one or more of such rights, powers or remedies, nor any mention of reference to any one or more of them in this Lease, shall be deemed to be in the exclusion of, or a waiver of, any other rights, powers or remedies provided for in this Lease, or now or hereafter existing at law or in equity, or by statute or otherwise. The exercise or enforcement by Landlord of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise or enforcement by Landlord of any or all of such other rights, powers or remedies.

## **29. ESTOPPEL CERTIFICATES**

Tenant, within fifteen (15) days after request of Landlord, shall execute, acknowledge and deliver to Landlord, promptly upon request, a certificate certifying: (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect, as modified, and identifying the modifications); (b) the dates to which Rent has been paid; (c) whether or not there is any existing default by Landlord or, to the best of its knowledge, Tenant with respect to which a notice of default has been delivered, and if there is any such default, specifying the nature and extent thereof; (d) whether or not there are any setoffs, defenses or counterclaims against the enforcement of any term, covenant or condition of this Lease, and (e) any other items requested by Landlord. Any such certificate may be relied upon by any prospective purchaser or mortgagee of the Demised Premises or any part thereof.

## **30. ASSIGNMENT AND SUBLETTING**

A. Tenant expressly covenants that, except as otherwise expressly provided herein, Tenant shall not voluntarily or involuntarily assign, encumber, mortgage or otherwise transfer this Lease, license or sublet the Demised Premises or any part thereof, or suffer or permit the Demised Premises or any part thereof to be used or occupied by others, by operation of law or otherwise, without the prior written consent of Landlord in each instance. Absent such consent, any act or instrument purporting to do any of the foregoing shall be null and void.

B. As long as Tenant is not in default, beyond applicable notice and cure periods, under any terms, covenants, or conditions of this Lease on Tenant's part to be observed or performed, Landlord shall not unreasonably withhold, condition or delay its consent to an assignment of this Lease or subletting by Tenant of all of the Premises. At least thirty (30) days prior to the effective date of any proposed assignment or subletting for which Landlord's consent is required, Tenant shall submit to Landlord a statement (the "Sublease Notice") containing the name and address of the proposed assignee or subtenant and all of the principal terms and conditions of the proposed assignment or subletting including, but not limited to, the proposed commencement and expiration dates of the term of the sublease, the nature of the proposed assignee's or subtenant's business, and such financial and other information with respect to the proposed assignee or subtenant as Landlord may reasonably request. Landlord shall not be deemed unreasonable in withholding its consent to any sublease or assignment if:

- (i) Tenant intends to subdivide the Premises;
- (ii) a purpose for which the proposed subtenant or assignee intends to use the Premises is a use not permitted and contemplated by this Lease or is a Prohibited Use set forth in Exhibit C to this Lease or by any other lease in the Building or conflicts with any other use in the Building;
- (iii) the proposed occupancy shall impose an extra burden upon the Building's mechanical, electric, sanitary, plumbing, utility or other service systems or the Building services;
- (iv) the proposed sublease shall not prohibit any further assignment or subletting without consent of Landlord which consent shall not be unreasonably withheld as provided herein;
- (v) Tenant shall be in default in the performance of any of its obligations under this Lease beyond applicable notice and grace periods either at the time Landlord's consent to such subletting or assignment is requested or at the commencement of the term of any proposed sublease or upon the effective date of any such assignment;
- (vi) Tenant shall not reimburse Landlord for any reasonable costs that may be incurred by Landlord in connection with said sublease or assignment, including reasonable attorneys' fees and disbursements, the costs of making investigations as to the acceptability of a proposed subtenant or assignee and the preparation and review of any documents relating to such transaction;
- (vii) the proposed subtenant or assignee shall be entitled, directly or indirectly, to diplomatic or sovereign immunity or shall not be subject to the service of process in, and the jurisdiction of the courts of the State of New York; or
- (viii) the proposed subtenant or assignee (or any principal or officer thereof) has been convicted of any felony.

C. (i) The Sublease Notice shall be deemed an offer from Tenant to Landlord whereby Landlord (or Landlord's designee) may, at its option (x) terminate this Lease (if the proposed transaction is an assignment or a sublease of all of the Premises), or (y) terminate this Lease with respect to the space covered by the proposed sublease (if the proposed transaction is a



sublease of part of the Premises other than a sublease referred to in clause (x) hereof). Said option may be exercised by Landlord by notice to Tenant at any time within 30 days after such notice has been given by Tenant to Landlord; and during such 30 day period Tenant shall not assign this Lease or sublet such space to any person. Landlord's failure to notify Tenant that it is exercising any of the options set forth in this Section 30.C within such 30 day period shall be deemed a waiver of Landlord's rights to exercise such options.

(ii) If Landlord exercises its option to terminate this Lease in the case where Tenant desires either to assign this Lease or sublet all of the Premises, then, this Lease shall end and expire on the date that such assignment or sublet was to be effective or commence, as the case may be, and the Fixed Rent and Additional Rent shall be paid and apportioned to such date.

(iii) If Landlord exercises its option to terminate this Lease in part, in any case where Tenant desires to sublet part of the Premises, then, (a) this Lease shall end and expire with respect to such part of the Premises on the date that the proposed sublease was to commence; and (b) from and after such date the Fixed Rent and Additional Rent shall be adjusted, based upon the proportion that the rentable area of the Premises remaining bears to the total rentable area of the Premises.

(iv) In addition, in the event Landlord exercises its option to terminate this Lease as provided above, Landlord shall have the right to lease the Premises to Tenant's proposed assignee or sublessee without any liability or obligation to Tenant.

D. If Tenant shall enter into any sublease or assignment permitted hereunder and consented to by Landlord, Tenant shall, within sixty (60) days after the effective date of such assignment or sublease, deliver to Landlord, a complete list of Tenant's direct, actual, third party expenses to be paid in connection therewith (together, "Property Costs"). In consideration of such assignment or subletting, Tenant shall pay to Landlord, as Additional Rent hereunder:

(i) In the case of a sublease, on the first day of each month of the remaining Term, 50% of any consideration paid under the sublease, or otherwise, to Tenant or any affiliate of Tenant by the subtenant which exceeds, on a per square foot basis, Fixed Rent hereunder and Additional Rent pursuant to Article 8 hereof paid by Tenant to Landlord during the preceding month for which the said consideration was paid (together with any sums paid for the sale or rental of Tenant's Property less, in the case of Tenant's Property, Tenant's unamortized costs thereof, as set forth on a certified statement from Tenant, after first deducting Property Costs);

(ii) In the case of an assignment, as and when sums are received by Tenant, an amount equal to 50% of all sums and other consideration paid to Tenant or any affiliate of Tenant by the assignee for or by reason of such assignment, (including sums paid for the sale or rental of Tenant's Property, less, in the case of Tenant's Property, Tenant's unamortized costs thereof, as set forth on a certified statement from Tenant, after first deducting Tenant's Property Costs).

E. If this Lease is assigned, whether or not in violation of the terms of this Article 30, Landlord may collect Rent from the assignee after default by Tenant hereunder beyond the expiration of applicable notice, grace and/or cure periods. If the Demised Premises or any part thereof are sublet or occupied by anybody other than Tenant, Landlord, after any default by Tenant

beyond the expiration of applicable notice, grace and/or cure periods, may collect rent from the subtenant or occupant, and apply the net amount collected to the Rent due hereunder. Such collection of rent by Landlord shall not be deemed a waiver of the provisions hereof, the acceptance of the assignee, subtenant or occupant as a tenant, or a release of Tenant from the further observance and performance by Tenant of the terms, covenants and conditions of this Lease.

F. The consent by Landlord to an assignment, encumbrance, transfer or subletting shall not in any way be deemed consent to any further assignment, encumbrance, transfer or subletting. In no event shall any permitted subtenant assign or encumber its sublease or further sublet all or any portion of its sublet space, or otherwise suffer or permit the sublet space or any part thereof to be used or occupied by others, without the prior written consent of Landlord in each instance, which shall not be unreasonably withheld, conditioned or delayed as provided in this Article 30, and each permitted sublease shall so provide in its terms. If Landlord consents to any assignment or sublease and the terms set forth in the Sublease Notice are changed, Landlord's consent shall be deemed null and void and Tenant shall again obtain Landlord's consent to the revised terms.

G. Upon receiving Landlord's written consent, a duly executed copy of the sublease or assignment shall be delivered to Landlord within thirty (30) days after execution thereof. Any such sublease shall provide that the subtenant shall comply with all applicable terms, covenants and conditions of this Lease to be observed or performed by Tenant hereunder. Any such assignment shall contain an assumption by the assignee of all of the terms, covenants and conditions of this Lease to be observed or performed by Tenant.

H. The joint and several liability of Tenant and any immediate or remote successor in interest to Tenant, any guarantor of Tenant's obligations hereunder, and the due performance of the obligations of this Lease on Tenant's part to be performed or observed, shall not be discharged, released, or impaired in any respect by any agreement or stipulation made by Landlord extending the time of, or modifying any of the obligations of, this Lease, provided Tenant shall have no liability with respect to any modification to this Lease to which it has not consented. Further, the joint and several liability of Tenant and any immediate or remote successor in interest to Tenant, any Guarantor of Tenant's obligations hereunder, and the due performance of the obligations of this Lease on Tenant's part to be performed or observed, shall not be discharged, released, or impaired in any respect by any assignment, subletting or other transfer.

I. The transfer of a majority of the issued and outstanding capital stock of any corporate tenant or subtenant of this Lease or of a majority of the total interest in any partnership or limited liability company tenant or subtenant, however accomplished, and whether in a single transaction or in a series of related or unrelated transactions, shall be deemed an assignment of this Lease or of such sublease. The transfer of outstanding capital stock of any corporate tenant or subtenant, for purposes of this Article 30, shall not include a sale of such stock by persons effected through any "over the counter" market or recognized stock exchange.

J. If this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, if permitted by applicable law, any and all monies or other consideration payable or otherwise to be delivered in connection with such assignment shall be paid or delivered

to Landlord, shall be and remain the exclusive property of Landlord and shall not constitute property of Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. If permitted by applicable law, any and all monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and shall be promptly paid to or turned over to Landlord.

K. Notwithstanding anything contained in this Article 30 to the contrary, Landlord's consent shall not be required for subleases or assignments to an entity (a) into or with which Tenant is merged or consolidated, (b) that is acquiring all or substantially all of Tenant's assets and/or a majority or more of the capital stock or the legal or beneficial interest of Tenant, or (c) that Controls, is Controlled by, or is under common Control with Tenant (collectively "Permitted Transfers"), provided that, in any of such events, in each instance, the following has been satisfied:

1. Any such Permitted Transfer shall be subject to all of the terms and provisions of this Lease (including, without limitation, the Permitted Use), and such transferee entity shall assume, in a written document and delivered to Landlord within 30 days following the effective date of such Permitted Transfer, all the obligations of Tenant under this Lease.

2. Tenant shall notify Landlord in writing no later than 30 days following the effective date of such transaction by providing Landlord with the name of such resulting entity and such other details as Landlord may reasonably request.

3. Such Permitted Transfer is not a subterfuge by Tenant to avoid its obligations under this Lease.

4. The transferee shall use the Premises for the Permitted Use and no other use or purpose under the trade name "Qube Powered by Statist".

5. The transferee has a tangible net worth of more than ten (10) times the annual Fixed Rent then payable hereunder, as evidenced by a financial statement prepared and certified by an independent certified public accountant, in accordance with generally accepted accounting principles consistently applied.

### **31. SUBORDINATION AND ATTORNMENT**

A. This Lease, and all rights of Tenant hereunder, are and shall be subject and subordinate in all respects to all ground leases, overriding leases and underlying leases and/or grants or term of the Demised Premises in whole or in part now or hereafter existing and to all mortgages and building loan agreements and any condominium declaration and by-laws which may hereafter affect the Real Property and/or any of such leases, whether or not such mortgages and declaration shall also cover other lands and/or buildings, to each and every advance made or hereafter to be made under such mortgages, and to all renewals, modifications, replacements and extensions of such leases and such mortgages and spreaders, consolidations and correlations of such mortgages and any and all amendments to any such declaration. The provisions of this paragraph shall be self-operative and no further instrument of subordination shall be required.

The leases to which this Lease is, at the time referred to, subject and subordinate pursuant to this Section 31.A, are sometimes-hereinafter called “superior leases” and the mortgages to which this Lease is, at the time referred to, subject and subordinate are sometimes hereinafter called “superior mortgages” and the lessor or its successor in interest at the time referred to is sometimes hereafter called a “lessor.”

B. If a lessor or mortgagee or any person or entity shall succeed to the rights of Landlord under this Lease, whether through possession or foreclosure action, or the delivery of a new lease or deed, then at the request of the successor landlord and upon such successor landlord’s written agreement to accept Tenant’s attornment and to recognize Tenant’s interest under this Lease, Tenant shall be deemed to have attorned to and recognized such successor landlord as landlord under this Lease. The provisions of this paragraph B are self-operative and require no further instruments to give effect thereto; provided, however, that Tenant shall promptly execute and deliver any instrument that such successor landlord may reasonably request (1) evidencing such attornment, (2) setting forth the terms and conditions of Tenant’s tenancy, and (3) containing such other terms and conditions as may be required by such mortgagee or lessor, provided such other terms and conditions do not materially increase Tenant’s obligations or materially and adversely affect Tenant’s rights under this Lease. Upon such attornment, this Lease shall continue in full force and effect as a direct lease between such successor landlord and Tenant upon all of the terms, conditions and covenants set forth in this Lease.

C. Tenant agrees without further instruments of attornment in such case, to attorn to such lessor, to waive the provisions of any statute or rule of law now or hereafter in effect which may give or purport to give Tenant any right of election to terminate this Lease or to surrender possession of the Demised Premises in the event such superior lease is terminated, and this Lease shall not be affected in any way whatsoever by any such proceeding or termination. Tenant shall take no steps to terminate this Lease, whether or not the superior lease be terminated, without giving written notice to such lessor or mortgagee, and a reasonable opportunity to cure (without such lessor or mortgage being obligated to cure), any default on the part of Landlord under this Lease. Notwithstanding anything to the contrary herein, Tenant shall attorn to the holder of any superior mortgage and Tenant shall have no right of offset or counterclaim to payment of any rent against the holder of any superior mortgage, except as expressly set forth in this Lease. Any reference to the holder of a superior mortgage hereinabove shall also include any of their respective successors in interest.

D. Tenant shall send to each mortgagee of any mortgage covering the Building or land or any part thereof (after notification of the identity of such mortgagee and the mailing address thereof) copies of all notices that Tenant sends to Landlord; such notices to said mortgagee shall be sent concurrently with the sending of the notices to Landlord and in the same manner as notices are required to be sent pursuant to Article 44 hereof. Tenant will accept performance of any provision of this Lease by such mortgagee as performance by, and with the same force and effect as though performed by, Landlord. If any act or omission of Landlord would give Tenant the right, immediately or after lapse of a period of time, to cancel or terminate this Lease, or to claim a partial or total eviction, Tenant shall not exercise such right until (a) Tenant gives notice of such act or omission to Landlord and to each such mortgagee, and (b) a reasonable period of time for remedying such act or omission elapses following the time when such mortgagee becomes entitled under such mortgage to remedy same (which reasonable period shall in no event be less than the

period to which Landlord is entitled under this Lease or otherwise, after similar notice, to effect such remedy and which reasonable period shall take into account such time as shall be required to institute and complete any foreclosure proceedings).

E. Tenant agrees that this Lease may not be amended without the consent of the holder of any mortgage encumbering the Demised Premises of which Tenant has been notified in writing. Further, Tenant hereby agrees not to look to the mortgagee of the fee interest in the premises demised by this Lease, in such mortgagee's capacity as mortgagee, mortgagee in possession, successor in title to such interest, or otherwise, for accountability for any security deposit required by Landlord hereunder, unless said sums have actually been received by said mortgagee as security for Tenant's performance of this Lease.

(i) For the purposes of this Lease, "a subordination and non-disturbance agreement" or "SNDA" or "recognition agreement" shall be deemed to mean an agreement in a commercially reasonable and recordable form which provides, in substance that so long as Tenant complies with all the terms, provisions and conditions of this Lease (i.e., is not in default thereunder beyond any applicable notice and cure periods) (A) any mortgagee or lessor, in the exercise of its rights or remedies, shall not deprive Tenant of possession or the right of possession of the Premises or any of its rights under this Lease during the term of this Lease, (B) in the event of any foreclosure or sale under a power of sale, in lieu of any of the foregoing or the exercise of any other remedy, as the case may be, this Lease shall automatically be preserved and become a direct lease between any fee Landlord or successor to Landlord's interest, as Landlord, and Tenant, as if such fee Landlord or successor were the Landlord originally named hereunder, (C) not to name Tenant in any action to recover the Premises, unless required by law, and (D) may contain such other terms and provisions as may be reasonably requested by Tenant and/or reasonably required by, or acceptable to, such holder of any underlying mortgage or lessor.

F. Tenant acknowledges that Landlord shall not be required to bring any action or proceeding in order to obtain such a non-disturbance agreement or recognition agreement for the benefit of Tenant, unless requested to do so by Tenant. Further, notwithstanding the foregoing, Landlord shall have no obligation to deliver a non-disturbance or recognition agreement for the benefit of Tenant if Tenant shall be in default hereunder beyond the expiration of any applicable notice and/or grace period, until such default is cured. Tenant shall promptly execute and deliver at its own expense, any commercially reasonable instrument, in recordable form if requested, that Landlord, the lessor or the mortgagee may reasonably request to evidence such subordination and non-disturbance. The mortgagee may elect that this Lease shall have priority over its mortgage and upon notification by the mortgagee to Tenant, this Lease shall be deemed to have priority over such mortgage and Landlord shall not be required to deliver an SNDA to Tenant in such event.

### **32. INTENTIONALLY DELETED**

### **33. CONVEYANCE BY LANDLORD; LIMITATION ON LIABILITY**

A. If the original or any successor Landlord shall convey or otherwise dispose of the Real Property, such transferring Landlord shall thereupon be released from all obligations and liabilities of Landlord under this Lease (except those accruing prior to such conveyance or other



disposition), and such obligations and liabilities shall be binding solely on the then Landlord under this Lease.

B. Notwithstanding anything contained in this Lease, at law or in equity to the contrary, it is expressly understood, acknowledged and agreed by Tenant that there shall at no time be or be construed as being any personal liability by or on the part of Landlord under or in respect of this Lease or in any wise related hereto or the Demised Premises; it being further understood, acknowledged and agreed that Tenant is accepting this Lease and the estate created hereby upon and subject to the understanding that it shall not enforce or seek to enforce any claim or judgment or any other matter, for money or otherwise, personally against any officer, director, stockholder, partner, principal (disclosed or undisclosed), representative or agent of Landlord, but shall look solely to the equity of Landlord in the Real Property, and the proceeds of casualty insurance, condemnation awards and the net proceeds of sale of the Real Property, and not to any other assets of Landlord, for the satisfaction of any and all remedies or claims of Tenant in the event of any breach by Landlord of any of the terms, covenants or agreements to be performed by Landlord under this Lease or otherwise; such exculpation of any officer, director, stockholder, partner, principal (disclosed or undisclosed), representative or agent of Landlord from personal liability as set forth in this Section to be absolute, unconditional and without exception of any kind.

#### **34. NO MERGER OF TITLE**

There shall be no merger of the leasehold estate created by this Lease with the fee estate in the Demised Premises by reason of the fact that the same person may own or hold (a) the leasehold estate created by this Lease or any interest therein, and (b) the fee estate in the Demised Premises or any interest in such fee estate. No such merger shall occur unless and until all persons having any interest in the leasehold estate created by this Lease, and in the fee estate in the Demised Premises, including, without limitation, the holder of any mortgage encumbering the Demised Premises, shall consent and join in a written instrument effecting such merger and shall duly record the same.

#### **35. ACCEPTANCE OF SURRENDER**

No modification, termination or surrender of this Lease or surrender of the Demised Premises or any part thereof or of any interest therein by Tenant shall be valid or effective unless agreed to and accepted in writing by Landlord, and no act by any representative or agent of Landlord, other than such a written agreement and acceptance, shall constitute an acceptance thereof.

#### **36. END OF TERM**

Upon the Expiration Date, or earlier termination of the term of this Lease, Tenant shall quit, surrender and deliver to Landlord the Demised Premises in good order and condition, and otherwise in accordance with the provisions of Section 6.C above, "broom clean", ordinary wear and tear, damage by acts of God, and damage due to a casualty or condemnation, excepted, and shall remove all Tenant's Property therefrom.

Tenant acknowledges that possession of the Demised Premises must be surrendered to Landlord at the expiration or sooner termination of the term of this Lease. The parties recognize



and agree that the damage to Landlord resulting from any failure by Tenant to timely surrender possession of the Demised Premises as aforesaid will be extremely substantial, may exceed the installments of monthly annual Fixed Rent and Additional Rent theretofore payable hereunder, and will be impossible to accurately measure. Tenant therefore agrees that if possession of the Demised Premises is not surrendered to Landlord on or before the expiration or sooner termination of the term of this Lease, then Tenant shall pay to Landlord for each month and for each portion of any month during which Tenant holds over in the Demised Premises after the expiration or sooner termination of the term of this Lease, a sum equal to 150% of the monthly Fixed Rent which was payable under this Lease during the last month of the term hereof, for the first four months Tenant so holds over and 200% of the monthly Fixed Rent which was payable under this Lease during the last month of the term hereof thereafter, together with, in all instances, all Additional Rent which would otherwise have been payable hereunder had this Lease been extended. In addition, Tenant shall indemnify Landlord against all claims made by any succeeding tenant against Landlord founded upon delay by Landlord in delivering possession of the Premises to such succeeding tenant by more than 60 days. Nothing herein contained shall be deemed to permit Tenant to retain possession of the Demised Premises after the expiration or sooner termination of the term of this Lease. The aforesaid provisions of this paragraph shall survive the expiration or sooner termination of the term of this Lease.

In addition to the foregoing, should Landlord incur any expense in removing Tenant, any subtenant, or any other person holding by, through, or under Tenant or any subtenant, who has failed to so surrender the Demised Premises or any part thereof, Tenant shall reimburse Landlord for the reasonable cost and expense (including, without limitation, reasonable attorneys' fees, disbursements and court costs) of removing such subtenant or such person.

### **37. LANDLORD TERMINATION OPTION**

Notwithstanding any other provision of this Lease, it is acknowledged and agreed that the Landlord's mortgage on the Building matures on December 1, 2029. As this Lease permits the sale of cannabis and such act is legally permissible to certain license holders per New York state, as of the execution of this Lease, such sale of cannabis is not permissible on a federal level, thus it is understood that such activity may potentially limit the Landlord's ability to refinance the mortgage with certain lenders. In consideration of the foregoing, the Landlord shall have the right to terminate this Lease by providing the Tenant with a ninety (90) day written notice in the event that the sale of cannabis does not become federally legally permissible by July 31, 2028. In such event of termination, the Tenant shall promptly vacate the premises, and the Tenant shall indemnify the Landlord for all damages, losses, liabilities, costs, and expenses arising from Tenant failure to vacate pursuant to this Article 37. Additionally, the Tenant shall remain responsible for fulfilling all obligations and making all payments due under this Lease up to the effective date of termination. Notwithstanding the termination of the Lease, the Tenant's responsibilities, including the obligation to indemnify the Landlord, shall survive and continue beyond the termination date.

### **38. BROKERAGE**

Landlord and Tenant each represents and warrants to the other that such party has not dealt with any broker or finder in connection with the Demised Premises or this Lease other than NONE (the "Broker"). Landlord and Tenant each agree to indemnify, defend and hold the other harmless

from and against any and all commission, liability, claim, loss, damage or expense, including reasonable attorneys' fees, arising from any claims for brokerage or any other fee or commission by any person, other than the Broker with whom such party has dealt.

### 39. HAZARDOUS MATERIALS

A. Tenant shall not use or suffer the Demised Premises to be used in any manner so as to create an environmental violation or hazard, nor shall Tenant cause or suffer to be caused any chemical contamination or discharge of a substance of any nature which is noxious, offensive or harmful or which under any law, rule or regulation of any governmental authority having jurisdiction constitutes a hazardous substance or hazardous waste.

B. Tenant shall also immediately notify Landlord in writing of any environmental concerns of which Tenant is or becomes aware and which are raised by any private party or government agency with regard to Tenant's business or the Demised Premises. Tenant shall also notify Landlord immediately of any hazardous waste spills at the Demised Premises and of any other hazardous waste or substances of which Tenant becomes aware.

C. Not in limitation of the generality of the foregoing, but as additional covenants, Tenant specifically agrees that (i) Tenant shall not generate, manufacture, refine, transport, treat, store, handle, dispose or otherwise deal with any Hazardous Materials as now or hereafter defined by applicable Legal Requirements, other than customary office and cleaning supplies, and then only in accordance with all Legal Requirements; and (ii) Tenant shall defend, indemnify and hold Landlord harmless against any liability, loss, cost or expense, including reasonable attorneys' fees and costs (whether or not legal action has been instituted) incurred by reason of the existence of any Hazardous Materials or any failure by Tenant to comply with any environmental law now or hereafter in effect.

D. As used herein, the term "Hazardous Materials" means and includes all potentially hazardous materials, including without limitation radon, harmful radiation, asbestos, and asbestos containing materials. "Hazardous Materials" shall not include chemicals customarily used in ordinary cleaning and for extermination and stored and used in accordance with Legal Requirements.

E. Tenant covenants and agrees that at any and all times during the Term it shall be responsible for compliance with any federal, state, county, local, or municipal law (including without limitation Local Law 76, as same now exists or may hereafter be amended, if the Building is located in New York City), statute, ordinance, code, regulation or administrative recommendation pertaining to Hazardous Materials introduced to the Demised Premises by Tenant, its agents, employees, contractors, licensees and invitees. Tenant shall, at its sole cost and expense, undertake any and all steps which may be required for compliance as aforesaid. In addition, Tenant shall be solely responsible for restoring and repairing any damage to the Demised Premises caused by or resulting from such compliance.

F. Tenant shall indemnify, defend and save harmless Landlord, Landlord's agents, servants and employees, from and against all claims and demands whether for injuries to persons or loss of life, or damage to property, related to or arising in any manner whatsoever out of the

clean-up, removal and/or encapsulation of Hazardous Materials to the extent the release of which is or occasioned by any act, failure to act, negligence, or omission of (or failure to comply with Legal Requirements by) Tenant, its agents, contractors, employees, servants, invitees and licensees. In the event Landlord shall, as a result of Tenant's failure to comply with any Legal Requirement for which it is responsible hereunder, be made a party to any litigation or administrative proceedings commenced by or against Tenant, then Tenant shall protect and hold Landlord harmless and shall pay all costs, expenses and the reasonable attorneys' fees incurred or paid by Landlord in connection with such litigation.

G. Notwithstanding anything herein to the contrary, Tenant shall file no documents or take any other action under this Article without Landlord's prior written approval thereof, not to be unreasonably withheld, conditioned or delayed in accordance with the provisions of this Lease and Landlord shall also have the right to file such documents or take such action instead or on behalf of Tenant (but still at Tenant's sole cost and expense), and Tenant shall cooperate with Landlord in so doing. Tenant shall also (i) furnish Landlord with copies of any documents filed by Tenant pursuant to any environmental law; (ii) permit Landlord to be present at any inspection, on or off site, and at any meetings of government environmental officials; and (iii) provide Landlord with an inventory of materials and substances dealt with by Tenant at the Demised Premises, as well as any additional information available to Tenant for government filings or determinations as to whether there has been compliance with an environmental law.

H. Landlord shall also have the right to enter the Demised Premises at any time to conduct tests to discover the facts of any alleged or potential environmental problem, provided the conducting of such tests does not unreasonably interfere with Tenant's business.

I. In the event Tenant fails to comply as aforesaid with the clean-up, removal, and/or encapsulation of Hazardous Materials when so required within the period of time permitted or promulgated, then in such event Landlord may, but shall not be obligated to, undertake said work. Should Landlord undertake said work required by Tenant as aforesaid, then in such event, Landlord shall render a statement to Tenant for the cost and expense of undertaking said work plus a charge of ten (10%) percent for administrative costs and expenses, which statement shall be paid by Tenant as Additional Rent within ten (10) days of receipt thereof. Failure of Tenant to undertake compliance as aforesaid shall constitute a material default under this Lease for which Landlord shall have all rights and remedies, including without limitation the right to terminate this Lease and the right to hold Tenant responsible for the entire cost of compliance as aforesaid and for all of Landlord's damages resulting from Tenant's failure to so comply.

J. The provisions of this Article shall survive the expiration or earlier termination of this Lease, and Tenant shall require any permitted assignee or sub-lessee of the Demised Premises to agree expressly in writing to comply with all the provisions of this paragraph.

#### 40. CHEMICAL WASTE

Tenant agrees that Tenant shall not pour or otherwise dispose of any chemical, chemical waste, chemical by-products, or other such material, through the drainage (plumbing) system of the Demised Premises other than customary cleaning fluids. This covenant by Tenant is a material inducement to Landlord to enter into this Lease, and without such inducement, Tenant

acknowledges that Landlord would not have entered into this Lease agreement. Accordingly, Tenant's breach of this agreement shall be deemed a material default under this Lease, entitling Landlord to exercise any and all of its rights for Tenant's default.

#### 41. SERVICES

A. If there now is or shall be installed in the Building a "sprinkler system," and such system or any of its appliances shall be damaged or injured or not in proper working order by reason of any act or omission of Tenant, Tenant's agents, servants, employees, licensees or visitors (while in the Premises), Tenant shall forthwith restore the same to good working condition at its own expense; and if the New York Board of Fire Underwriters or the New York Fire Insurance Rating Organization or any bureau, department or official of the state or city government, shall require that any changes, modifications, alterations or additional sprinkler heads or other equipment be made or supplied by reason of Tenant's business, or the locations of the partitions, trade fixtures, or other contents of the Premises, Tenant shall, at Tenant's expense, promptly make and supply such changes, repairs, modifications, alterations, additional sprinkler heads or other equipment, whether the work involved shall be structural or non-structural in nature.

B. Landlord shall not be obligated to furnish electric energy to Tenant and Tenant shall not be obligated to pay Landlord therefor. Tenant shall arrange to obtain electric energy directly from such public utility servicing the Building. All conductors and equipment which may be required to obtain electric energy which are not currently servicing the Demised Premises shall be installed by Tenant, at Tenant's sole cost and expense, and the installation thereof shall be subject to Landlord's approval, and shall be performed, in accordance with the provisions of Article 6 hereof.

C. (i) As part of Tenant's Work hereunder, Tenant shall install water and sewer meters or submeters, to thereby measure Tenant's hot and cold water consumption for all purposes, but Tenant shall make all deposits for water servicing the Premises.

(ii) Throughout the duration of Tenant's occupancy (a) Tenant shall keep the meters, submeters and installation equipment to which reference is made in subsections B and C of this Article 41 in good working order and repair, at Tenant's own cost and expense (unless caused by the negligence or willful misconduct of Landlord or its agents), in default of which Landlord may, on fifteen (15) days' notice to Tenant, cause such meters and equipment to be replaced or repaired and collect the cost thereof from Tenant; and (b) Tenant shall pay to Landlord, as Additional Rent, the cost of water consumed (and attendant sewer charges), as shown on said meters and submeters, together with, if a submeter, the cost of reading the submeter and a ten percent administrative charge, within fifteen (15) days after bills are rendered. All charges to Tenant based upon consumption as shown on a submeter shall be charged to Tenant at the same rate Landlord purchases water from the water company servicing the Building. Any such costs or expenses incurred or payments made by Landlord for any of the reasons or purposes hereinabove stated shall be deemed to be Additional Rent payable by Tenant and collectible by Landlord as such. Independently of and in addition to any of the remedies reserved to Landlord hereinabove or elsewhere in this Lease, Landlord may sue for and collect any monies to be paid by Tenant or paid by Landlord for any of the reasons or purposes hereinabove set forth. Tenant's obligations to

pay such electric, water and sewer charges, and/or to reimburse Landlord for the payment of same, shall survive the Expiration Date or sooner termination of this Lease.

(iii) Landlord shall not be liable to Tenant in any way for any claims, damages, costs or expenses, directly or indirectly incurred, resulting from any use, interruption, curtailment or failure, or defect in the supply of any service provided under this Article 41 furnished to the Premises by reason of any requirement, act or omission of Landlord or of others for any other reason except Landlord's negligence or willful misconduct or that of its agents.

D. Landlord reserves the right to stop service of the mechanical, electric, sanitary, plumbing, utility and other service systems, when necessary, by reason of accident or emergency, or for repairs, additions, alterations, replacements, decorations or improvements in the judgment of Landlord desirable or necessary to be made, until said repairs, alterations, replacements or improvements shall have been completed. Landlord shall use commercially reasonable efforts to minimize disruption to Tenant's business in exercising its rights under this Section. Landlord shall have no responsibility or liability for interruption or curtailment in the supply of electric energy and/or water or for interruption, curtailment or failure to supply heat, ventilating and air-conditioning when prevented by exercising its right to stop service or by strikes, labor troubles or accidents or by any cause whatsoever reasonably beyond Landlord's control, or by failure of any public utility or other company and the failure of independent contractors to perform or by laws, orders, rules or regulations of any Federal, state county or municipal authority, or failure of suitable fuel supply, or inability by exercise of reasonable diligence to obtain suitable fuel or by reason of governmental preemption in connection with a national emergency or by reasons of the conditions of supply and demand which have been or are affected by war or other emergency. The exercise of such right or such failure by Landlord shall not constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any compensation or to any abatement or diminution of rent, or relieve Tenant from any of its obligations under this Lease, or impose any liability upon Landlord or its agents by reason of inconvenience, lost business or annoyance to Tenant, or injury to or interruption of Tenant's business, or otherwise.

#### 42. VAULT SPACE

Any vaults, vault space or other space outside the boundaries of the Real Property (a "Vault"), notwithstanding anything contained in this Lease to the contrary, or indicated on any sketch, blueprint or plan are not included in the Premises except that any and all obligations of Tenant and restrictions applicable to the Premises shall apply to the Vault except as may be otherwise set forth herein. Landlord makes no representation as to the location of the boundaries of the Real Property. All Vaults which Tenant may be permitted to use or occupy are being used without consideration and are to be used or occupied under a revocable license, and if any such license shall be revoked by Landlord at any time, or if the amount of such space shall be diminished or required by any Federal, State or Municipal authority or by any public utility company, such revocation, diminution or requisition shall not constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution of rent, or relieve Tenant from any of its obligations under this Lease, or impose any liability upon Landlord. Any fee, tax or charge imposed by any governmental authority for any such Vaults, vault space or other space shall be paid by Tenant at least 30 days prior to its due date. Tenant's use of any Vault is at Tenant's sole risk and Landlord shall have no obligation for the condition or maintenance thereof



or otherwise, which maintenance and obligations, whether structural or non-structural shall be Tenant's sole responsibility. Landlord may, in its discretion, designate substitute Vault areas for Tenant's use at any time and for any or no reason, upon ten (10) days' notice to Tenant and in such event Tenant shall immediately vacate the Vault areas.

#### 43. DEFINITIONS

For purposes of this Lease, the following terms shall have the meanings indicated:

"Affiliate" – shall mean a Person that (1) Controls, (2) is under the Control of, or (3) is under common Control with, the Person in question.

"Alterations" — shall mean the making or performance of any alterations, installations, improvements, additions or other physical changes, including, but not limited to, a water-cooler, an air-conditioning unit or cooling system or part thereof or other apparatus of like or other nature, in or about the Premises.

"Building Equipment" — shall mean all machinery, equipment, fixtures and systems now or hereafter attached to or used in connection with the operation or maintenance of the Building, including, without limitation, all electrical, heating, mechanical, sanitary, sprinkler, utility, power, plumbing, cleaning, fire prevention, refrigeration, ventilating, air cooling, air conditioning and elevator equipment, and any and all renewals and replacements; Building Equipment does not include Tenant's Property or equipment/leasehold improvements installed by Tenant and property of other tenants, contractors servicing the Building or any public utility company or governmental agency or body.

"Business Days" – shall mean Monday through Friday, excluding holidays observed by the State of New York, the federal government of the United States, and/or the labor unions servicing the Building.

"Commencement Date" — as defined in Article 1.

"Control" — shall mean (i) the ownership, directly or indirectly, of more than fifty (50%) percent of the voting stock of a corporation, or (ii) in the case of any Person which is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction over the management and policies of such Person.

"CPI" — shall mean the "Consumer Price Index for all Urban Consumers" (1982-84 = 100) published by the Bureau of Labor Statistics of the United States Department of Labor, New York, Northeastern New Jersey - Long Island, NY - NJ - CT, all items. If the CPI shall hereafter be converted to a different standard reference base or otherwise revised, the determination of the increase in the CPI shall be made with the use of such conversion factor, formula or table for converting the CPI as may be published by the Bureau of Labor Statistics or, if the said Bureau shall not publish the same, then with the use of such conversion factor, formula or table as may be published by Prentice Hall, Inc., or, failing such publication, by any other nationally recognized publisher of similar statistical information reasonably selected by Landlord and reasonably acceptable to Tenant. If the CPI shall cease to be published, then there shall be substituted for the



CPI such other index as Landlord shall reasonably designate, which is reasonably acceptable to Tenant.

“default” — any condition or event which constitutes, or which after notice or lapse of time or both, would constitute an Event of Default.

“Demised Premises” or “Premises” — as defined in Article 1.

“DOB” — shall mean the City of New York Department of Buildings.

“Event of Default” — as defined in Article 19.

“Expedited Arbitration” - shall mean arbitration in the City of New York under the Expedited Procedures provisions of the Commercial Arbitration Rules of the American Arbitration Association (“AAA”) (presently Rules E 1 through E 10 and, to the extent applicable, Section R 19); provided, however, that with respect to any such arbitration, (i) the list of arbitrators referred to in Rule E 5 shall be returned within five (5) days from the date of mailing; (ii) the parties shall notify the AAA by telephone, within four (4) days of any objections to the arbitrator appointed and will have no right to object if the arbitrator so appointed was on the list submitted by the AAA and was not objected to in accordance with the second paragraph of Rule E 5; (iii) the Notice of Hearing referred to in Rule E 8 shall be four (4) days in advance of the hearing; (iv) the hearing shall be held within seven (7) days after the appointment of the arbitrator; (v) the arbitrator shall have no right to award damages (unless there has been a determination that Landlord has withheld its consent in bad faith); (vi) the decision and award of the arbitrator shall be final and conclusive on the parties; and (vii) the losing party shall pay the reasonable fees and expenses, if any, of both parties in connection with such arbitration, including the expenses and fees of the arbitrator selected.

“Fixed Rent” — as defined in Article 2.

“Improvements” — The term “Improvements” shall include all buildings, fixtures, equipment and machinery now situate on or appurtenant to the Real Property other than Tenant’s Property.

“Increase in CPI” — shall mean the percentage increase in the CPI for the month in which the calculation of any increase occurs over the CPI for the month in which the Commencement Date occurred.

“Insurance Requirements” — all terms of any insurance policy covering or applicable to the Demised Premises or any part thereof, all requirements of the issuer of any such policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters, or its successor or any other body exercising similar functions, applicable to or affecting the Demised Premises or any part thereof or any use or condition of the Demised Premises or any part thereof.

“interest” or “Interest” or “Interest Rate” shall mean a rate of interest equal to the lesser of (a) the rate as publicly announced from time to time by JPMorgan Chase Bank, N.A., as its “base”, “reference” or “prime” rate, plus five (5%) percent, or (b) the maximum rate of interest permitted to be paid under applicable law.

“Lease” — this Lease, as at the time amended, modified or supplemented.

“Lease Year” — shall mean a period of twelve (12) months, except that the first Lease Year shall commence on the Commencement Date and shall end twelve (12) months following the date Landlord delivers possession of all of the Premises to Tenant, provided, if the date Landlord delivers possession of all of the Premises to Tenant is not the first day of a month, the first Lease Year shall end on the last day of the month in which the first anniversary of the date Landlord delivers possession of all of the Premises to Tenant, occurs. Each Lease Year after the first Lease Year shall commence immediately subsequent to the prior Lease Year. The Lease Year commencing on the Commencement Date is referred to as the first Lease Year and each subsequent Lease Year shall be numbered consequently and referred to accordingly.

“Legal Requirements” — all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Demised Premises or any part thereof, or the Improvements now or hereafter located thereon, or the facilities or equipment therein, or any of the adjoining sidewalks, curbs, vaults or vault space, if any, streets or ways, or the appurtenances to the Demised Premises or the franchises and privileges connected therewith, or any use or condition of the Demised Premises or any part thereof. Legal Requirements shall include, without limitation, all requirements to be complied with pursuant to (i) any certificate of occupancy affecting the Demised Premises, and (ii) the New York City Landmark’s Preservation Commission and any similar or successor agency.

“Person” — an individual, a corporation, an association, a partnership, a joint venture, an organization, or other business entity, or a governmental or political unit or agency.

“Premises” — shall have the meaning set forth in Article 1, except that nothing contained therein shall be construed as a letting by Landlord to Tenant of (i) the exterior faces of exterior walls, except the storefront, (ii) the space below the underside of the cellar, if any, of the Premises, (iii) the land below the sub-base of the cellar, if any, or air rights above the Premises or the Building, (iv) the roof, or (v) the common areas and facilities of the Building. All parts (except surfaces facing the interior of the Premises) of all walls, windows and doors bounding the Premises, all stairs, landings and roofs adjacent to the Premises, all space in or adjacent to the Premises used for shafts, stacks, stairways, pipes, conduits, duct work, air conditioning rooms, telephone rooms, fan rooms, heating, ventilating, air conditioning, plumbing, electrical conduits and other utilities and other mechanical facilities, service closets and other Building Equipment, elevator, elevator equipment and shafts and the use thereof, as well as access thereto through the Premises pursuant to Article 24 for the purposes of operation, decoration, cleaning, maintenance, safety, security, alteration and repair, are hereby reserved to Landlord.

“Real Property” — shall mean the tax lot or lots of which the Building is a part, and Building.

“Rent” — shall mean and be deemed to include Fixed Rent, any increases in Fixed Rent, all Additional Rent, and any other sums payable hereunder.

“Tenant’s Property” — all moveable trade fixtures, stock-in-trade, furniture, fittings, signs, moveable partitions and other moveable personal property in the Premises (i) installed or purchased at the sole expense of Tenant, (ii) with respect to which Tenant has not been granted any credit or allowance by Landlord, (iii) which are removable without material damage to the Premises, the Units or any portion of the Building, (iv) which are not replacements of any property of Landlord, whether any such replacement is made at Tenant’s expense or otherwise and (v) which are not mechanical equipment which is attached to the Premises shall be and shall remain the property of Tenant and may be removed by Tenant at any time during the term of this Lease; provided, however, that if any of Tenant’s Property is removed, Tenant shall repair or pay the cost of repairing any damage to the Premises, the Units and the Building resulting from the installation and/or removal thereof. As used herein, “moveable” means not affixed or otherwise built into the Premises. Any equipment or other property for which Landlord shall have granted any allowance or credit to Tenant shall not be deemed to have been installed by or for the account of Tenant without expense to Landlord, shall not be considered Tenant’s Property and shall be deemed the property of Landlord. It is acknowledged and agreed that the light fixtures now or hereina

“Term” — as defined in Article 2.

“Total Taking” — as defined in Article 16.

“Unavoidable Delays” — delays due to strikes, acts of God, governmental restrictions, enemy action, riot, civil commotion, fire, unavoidable casualty or other causes beyond the control of Tenant, provided that no delay shall be deemed an Unavoidable Delay if the Demised Premises or any part thereof or interest therein or any Rent would be in any danger of being sold, forfeited, lost or interfered with, or if Landlord or Tenant would be in danger of incurring any civil or criminal liability for failure to perform the required act. Lack of funds shall not be deemed a cause beyond the control of Tenant.

#### 44. NOTICES

All notices, demands, elections and other communications desired or required to be delivered or given under this Lease shall be in writing, and shall be deemed to have been delivered and given when delivered by hand, or on the third business day after the same have been mailed by first class registered or certified mail, postage prepaid, or by nationally recognized overnight courier for next business day delivery such as Federal Express Company, enclosed in a securely sealed envelope addressed to the party to which the same is to be delivered or given at such party’s address as set forth in this Lease, or at such other address as said party shall have designated in writing in accordance with this Article 44. A copy of all notices sent to Landlord shall be sent to Charles Aini, Esq. 1178 Broadway 5<sup>th</sup> Floor, New York, NY 10001. A copy of all notices sent to Tenant shall be sent to \_\_\_\_\_.

#### 45. SIGNS

A. Tenant shall not install any storefront signs, awnings, canopies, flags, banners, laser lights, blade signs, marquees, exterior decorations and/or projections, or lettering on the storefront glass (including any changes thereto) (together, “Signage”) unless (i) Landlord shall have

approved Tenant's plans therefor prior to the making of such installation, including, without limitation, as to quality, type, dimension, content, color, material, location, manner of installation and design and (ii) Tenant shall have complied with all Legal Requirements including obtaining all necessary approvals from the Office of Cannabis Management. Tenant shall remove immediately, after demand by Landlord, and as often as such demand shall be made, any Signage which Landlord has not granted its approval (where such approval is required under this Lease) and to which Landlord shall object. Tenant agrees to maintain all signs for which approval has been obtained as above provided (or where approval is not required) in a first-class condition and to maintain, repair, replace and/or renovate the same and Tenant also agrees to pay for all registration, permit or license fees required by applicable governmental authorities and exhibit to Landlord the paid receipts therefor within thirty (30) days after Landlord's request. On default thereof, Landlord may pay the same and Tenant shall reimburse Landlord for the costs incurred by Landlord, as Additional Rent, together with interest thereon, within fifteen (15) days after demand. Tenant shall, unless otherwise directed by Landlord in writing, at the expiration or termination of this Lease, remove all signs, lights or other forms of inscription so affixed or displayed and shall repair any damage to the Premises or to the Building caused by such affixing, display or removal. All Tenant's Signage on the exterior of the Building shall be located on the exterior of the Premises, and only on or above Tenant's storefronts. The obligations of Tenant in this Section 45.A shall survive the expiration of this Lease.

B. Tenant shall not place in the windows or in any display or other area visible to public view from the outside of the Premises or otherwise in or about the Premises any paper or flashing, blinking, neon or animated sign or one which otherwise has variations in the intensity of illumination or any other types of signs or any displays in the windows, without consent of Landlord.

C. If Landlord shall deem it necessary to remove any sign in order to paint or to make repairs, alterations or improvements in or upon the Premises, Landlord shall have the right to do so; provided, however, that in any such event Landlord agrees to use commercially reasonable efforts to expedite the performance of such work, in order to minimize the time that Tenant's signs are removed from the sign bands of the Premises. On the expiration or sooner termination of the Term, Tenant shall (i) promptly remove all signs installed or displayed by Tenant, and (ii) promptly repair in a good and workmanlike manner in conformity with Legal Requirements and all applicable provisions of this Lease, all damage to the Building caused by such removal. In the event that Landlord damages any sign during a removal in order to paint or to make repairs, alterations or improvements in or upon the Premises or Building, Landlord shall be liable for repair or replacement costs of any damaged or destroyed signage.

#### 46. INABILITY TO PERFORM

This Lease and the obligation of Tenant to pay rent, and to perform all of the other covenants and agreements hereunder on the part of Tenant to be performed shall in no wise be affected, impaired or excused because Landlord is unable to fulfill any of its obligations under this Lease expressly or impliedly to be performed by Landlord or because Landlord is unable to make, or is delayed in making any repairs, additions, alterations, improvements or decorations or is unable to supply or is delayed in supplying any equipment or fixtures, if Landlord is prevented or delayed from so doing by reason of strikes or labor troubles or by accident or by any cause

whatsoever reasonably beyond Landlord's control, including but not limited to, laws, governmental preemption in connection with a national emergency or by reason of any rule, order or regulation of any federal, state, county or municipal authority or any department or subdivision thereof or any government agency or by reason of the conditions of supply and demand which have been or are affected by war or other emergency. Notwithstanding the foregoing, Landlord shall use commercially reasonable efforts to perform such obligations as soon as reasonably practicable.

#### **47. CERTIFICATE OF OCCUPANCY**

If any governmental license or permit, other than a Certificate of Occupancy, shall be required for the proper and lawful conduct of Tenant's business in the Demised Premises, or any part thereof, or if failure to obtain or maintain any license or permit by Tenant would in any way affect Landlord, Tenant, at its expense, shall duly procure and thereafter maintain such license or permit and submit the same for inspection by Landlord. Tenant shall at all times comply with the terms and conditions of each such license or permit. Tenant shall not at any time use or occupy the Premises in violation of the certificate of occupancy issued for the Premises or for the Building and, in the event that any department of the City of New York or State of New York shall hereafter at any time contend and/or declare by notice, violation, order or in any other manner whatsoever that the Premises are used for a purpose which is a violation of such certificate of occupancy, Tenant shall, upon seven (7) days' written notice from Landlord, immediately discontinue such use of the Premises. Failure by Tenant to discontinue such use after such notice shall be considered a default in the fulfillment of a covenant of this Lease and Landlord shall have the right to terminate this Lease immediately, and in addition thereto shall have the right to exercise any and all rights, privileges and remedies given to Landlord by and pursuant to the provisions of Article 20 hereof or otherwise.

#### **48. MISCELLANEOUS**

All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Lease invalid, unenforceable or not entitled to be recorded under any applicable law.

Notwithstanding anything to the contrary in this Lease, any Alteration to the Premises that is mandated by the Office of Cannabis Management as a requirement for licensure or operation shall be subject to Landlord's prior written approval, which shall not be unreasonably withheld, conditioned, or delayed. Landlord agrees to cooperate with Tenant at no cost, risk or expense to Landlord to facilitate Tenant obtaining the necessary approvals from the Office of Cannabis Management.

Notwithstanding anything to the contrary in this Lease, Tenant shall be fully entitled to use the Existing Public Corridor listed in the floor plan in Exhibit A to transport inventory deliveries into the Premises.



Notwithstanding anything to the contrary in this Lease, except for the Existing Public Corridor, the entire floor plan contemplated in Exhibit A shall be considered the Premises and not a public portion of the Building (as contemplated by Exhibit C).

This Lease (and all of the exhibits annexed hereto) shall be governed by the laws of the State of New York. Any action commenced in connection with this Lease shall be brought in the State or Federal Court sitting within the City, County and State of New York.

This Lease supersedes all prior agreements between Landlord and Tenant with respect to any of the space included within the Demised Premises.

This Lease is offered to Tenant for signature with the understanding that it shall not be binding unless and until the Lease is executed by Landlord and delivered to Tenant or its agent, attorney, or other authorized representative. By affixing his/her signature hereto, the signatory of any entity comprising Tenant and Landlord acknowledge that he/she has the full power and authority on behalf of Tenant and Landlord, respectfully, to execute, acknowledge and deliver this Lease and thereby doing so this Lease and all its covenants shall be valid, enforceable obligations of Tenant and Landlord, respectively.

Tenant shall not record this Lease or any memorandum of lease, without the prior written consent of Landlord.

The receipt by Landlord of Rent with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach. No provision of this Lease shall be deemed to have been waived by Landlord or Tenant, unless such waiver be in writing signed by the other party. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent shall be deemed to be other than on account of the earliest stipulated Rent, or as Landlord may elect to apply same, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy in this Lease provided.

Any executory agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of this Lease 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.

Notwithstanding anything contained in this Lease to the contrary, all amounts payable by Tenant to or on behalf of Landlord under this Lease, whether or not expressly denominated Fixed Rent, Escalation Rent, additional rent or Rental, shall constitute rent for the purposes of Section 502(b)(7) of the Bankruptcy Code.

(i) Tenant represents and warrants to Landlord that (a) Tenant and each person or entity directly or indirectly owning an interest in Tenant is (i) not currently identified on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control of the Department of the Treasury ("OFAC") and/or on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation (collectively, the "List"), and (ii) not a person or entity with whom a citizen of the United States

is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States, (b) none of the funds or other assets of Tenant constitute property of, or are beneficially owned, directly or indirectly, by, any Embargoed Person, (c) no Embargoed Person has any interest of any nature whatsoever in Tenant (whether directly or indirectly), (d) none of the funds of Tenant have been derived from any unlawful activity with the result that the investment in Tenant is prohibited by legal requirements or that this Lease is in violation of any legal requirement, and (e) Tenant has implemented procedures, and will consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times. The term “Embargoed Person” means any person, entity or government subject to trade restrictions under U.S. law, including but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App0. 1 . App. et seq., and any Executive Orders or regulations promulgated thereunder with the result that the investment in Tenant is prohibited by Requirements or Tenant is in violation of any Requirements.

(ii) Tenant covenants and agrees (a) to comply with all Legal Requirements relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect, (b) to immediately notify Landlord in writing if any of the representations, warranties or covenants set forth in this paragraph or the preceding paragraph are no longer true or have been breached or if Tenant has a reasonable basis to believe that they may no longer be true or have been breached, (c) not to use funds from any “Prohibited Person” (as such term is defined in the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism) to make any payment due to Landlord under this Lease and (d) at the request of Landlord, to provide such information as may be requested by Landlord to determine Tenant’s compliance with terms hereof.

(iii) Tenant hereby acknowledges and agrees that Tenant’s inclusion on the List any time during the Term shall be an Event of Default under this Lease. Notwithstanding anything herein to the contrary, Tenant shall not permit the Premises or any portion thereof to be used or occupied by any person or entity on the List or by any Embargoed Person (on a permanent, temporary or transient basis), and any such use or occupancy of the Premises by any such person or entity shall be an Event of Default under this Lease.

(iv) Tenant represents, warrants and covenants that neither Tenant nor any subtenant of Tenant is, nor will be, during the Term of this Lease, an “employee benefit plan” within the meaning of Section 3(3) of ERISA, a “plan” within the meaning of Section 4975 of the Code, or any entity deemed to hold the “plan assets” of the foregoing within the meaning of 29 C.F.R. 2510.3-101 unless, for the entire period that Tenant or such subtenant is deemed to hold “plan assets”, (i) one or more prohibited transaction exemptions apply and provide relief from any prohibited transactions that may arise with respect to or as a result of this Lease or a permitted sublease hereunder under Section 406 of ERISA or Section 4975 of the Code and (ii) Tenant has provided evidence satisfactory to Landlord that an exemption provides such relief or such subtenant.

If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is

held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Under no condition shall Landlord be responsible for consequential, indirect or special damages. The headings in this Lease are for purposes of reference only and shall not limit or define the meaning hereof. This Lease may be executed in any number of counterparts, each of which is an original, but all of which shall constitute one instrument.

This Lease may be changed or modified only by an instrument in writing signed by the party against which enforcement of such change or modification is sought.

Tenant acknowledges and agrees that the Demised Premises do not include, and Landlord hereby expressly reserves to itself, any and all floor area development rights, air rights, use, bulk, density or other development rights and any and all other rights or privileges, whether or not transferable, whether now existing or hereafter arising, whether under the Zoning Resolution of the City of New York or other laws, ordinances or regulations, to increase the size or volume of the Improvements or of any buildings or other structures located on other parcels of land (the foregoing rights and privileges being hereinafter collectively referred to as the "Development Rights"). Landlord, its successors, and assigns may, to the extent of its rights, if any, thereto, use, hold, encumber, sell, transfer, surrender, exchange, or otherwise dispose of or deal with the Development Rights as Landlord, its successors and assigns, in its and their sole and absolute discretion, may determine and Tenant agrees to execute any and all reasonable documents required to confirm the foregoing and subordinate the lease to any zoning lot declaration, agreement or zoning lot merger.

At the request of Landlord, Tenant shall allow an adjoining owner desiring to excavate on its premises, or a municipality desiring to excavate a nearby street, to enter onto the Demised Premises and the Improvements and shore up a perimeter wall during such excavation provided (i) Tenant reasonably determines that such excavation will not unreasonably interfere with Tenant's operation of its business and (ii) Tenant is to receive security (in amounts and form reasonably satisfactory to Tenant from the party initiating the excavation) with respect to any damage which may result thereby. Tenant shall, at Tenant's own expense, repair, or cause to be repaired, any damage caused to any part of the Demised Premises and/or the improvements thereon because of any excavation, construction work, or other work of a similar nature that may be done on any property adjoining or adjacent to the Demised Premises, and Landlord hereby assigns to Tenant any and all rights to sue for and/or recover against such adjoining owners, or the parties causing such damages, the amounts expended or injuries sustained by Tenant because of the provisions of this Article 48 requiring Tenant to repair any damages sustained by such excavations, construction work, or other work.

Tenant hereby waives any claim for damages against Landlord which it may have based upon any assertion that Landlord has unreasonably withheld or unreasonably delayed any such consent. Tenant agrees that its sole remedy shall be an action or proceeding to enforce any such provision by specific performance, injunction or declaratory judgment.

Subject to Articles 30 and 33, this Lease shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto.

Tenant shall, and shall cause its employees, contractors, and invitees to, comply with the rules and regulations annexed hereto as Exhibit G and such reasonable changes therein (whether by modification, restatement, elimination or addition) as Landlord may make at any time or times hereafter and communicate to Tenant (the "Rules"). Landlord is not required to enforce the Rules against Tenant or any other tenant or occupant, their employees, contractors or invitees, and Landlord shall not be liable to Tenant for any violation of the Rules by another tenant or occupant or any of their employees, contractors or invitees. Landlord's failure to enforce the Rules against Tenant or any other occupant of the Building shall not be considered a waiver of the Rules.

#### 49. SECURITY

A. Tenant shall deposit with Landlord on the signing of this Lease the sum of \$1,250,000.00, which sum shall be held as security for the faithful performance and observance by Tenant of the terms, conditions and provisions of this Lease, including without limitation the surrender of possession of the Premises to Landlord as herein provided.

B. If Tenant defaults in respect to any of the terms, provisions and conditions of this Lease, including, but not limited to, the payment of Fixed Rent or Additional Rent, Landlord may apply or retain the whole or any part of the security so deposited to the extent required for the payment of any Fixed Rent and Additional Rent or any other sum as to which Tenant is in default or for any sum which Landlord 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 accrues before or after summary proceedings or other reentry by Landlord. If Landlord applies or retains any part of the security so deposited, Tenant, upon demand, shall deposit with Landlord the amount so applied or retained so that Landlord shall have the full deposit on hand at all times during the Term. If Tenant shall refuse or fail to replenish the security deposit, then Landlord shall have the same rights in law and equity and under this Lease as it has with respect to a default by Tenant in the payment of Fixed Rent and Additional Rent pursuant to Article 20 hereof. If 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 Expiration Date and after surrender of possession of the Premises to Landlord.

C. In the event of a sale or transfer of the Real Property or leasing of the Building, Landlord shall have the right to transfer the security to the vendee or lessee and Landlord shall thereupon be released by Tenant from all liability for the return of such security upon notice to Tenant of such transfer and the assumption of this Lease by the assignee; and Tenant shall look solely to the new landlord for the return of said security; the provisions hereof shall apply to every transfer or assignment made of the security to a new landlord. Tenant shall not assign or encumber or attempt to assign or encumber the monies deposited herein as security and that neither Landlord nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance. No interest shall be paid on the security deposited herein.

D. (i) At Landlord's option, in substitution for and in lieu of the cash security deposit provided for in Article 49, Tenant shall deliver to Landlord and maintain in effect at all times during the term hereof and for at least ninety (90) days after the expiration of the term, an irrevocable letter of credit, in form and substance substantially in the form annexed hereto as Exhibit E in the amount of the security required pursuant to this Article 49 issued by a banking corporation satisfactory to Landlord issued by and drawable upon any commercial bank, trust company, national banking association or savings and loan association with offices for banking purposes in the City of New York (the "Issuing Bank") that is then rated, without regard to qualification of such rating by symbols such as "+" or "-" or numerical notation, "Aa" or better by Moody's Investors Service and "AA" or better by Standard & Poor's Rating Service, and has combined capital, surplus and undivided profits of not less than \$2,000,000,000. Such letter of credit shall have an expiration date no earlier than the first anniversary of the date of issuance thereof and shall be automatically renewed from year to year unless terminated by the issuer thereof by notice to Landlord given not less than 30 days prior to the expiration thereof. Such Letter of Credit shall further provide that partial drawings shall be permitted. Except as otherwise provided in this Article 49, Tenant shall, throughout the term of this Lease deliver to Landlord, in the event of the termination of any such letter of credit, replacement letters of credit in lieu thereof (each such letter of credit and such extensions or replacements thereof, as the case may be, is hereinafter referred to as a "Security Letter") no later than 30 days prior to the expiration date of the preceding Security Letter. The term of such Security Letter shall be not less than one year and shall be automatically renewable from year to year as aforesaid. If Tenant shall fail to obtain any replacement of a Security Letter within the time limits set forth in this subparagraph (i), Landlord may draw down the full amount of the existing Security Letter and retain the same as security hereunder. If such a letter of credit is posted, any cash security deposit posted with Landlord shall be returned to Tenant.

(ii) In the event that Landlord utilizes all or any part of the security represented by the Security Letter but does not terminate this Lease as provided in Article 20 hereof, Landlord may, in addition to exercising its rights as provided in Articles 19 and 20 retain the unapplied and unused balance of the principal amount of the Security Letter as security as provided in this Article 49. In the event Landlord applies or retains any portion or all of the security delivered hereunder, Tenant shall forthwith restore the amount so applied or retained so that at all times the amount deposited shall be not less than the security required by this Article 49.

(iii) In the event that Tenant shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this Lease, the Security Letter shall be returned to Tenant after the date fixed at the end of the Lease and after delivery of entire possession of the Premises to Landlord as required by this Lease. In the event of a sale of the Land and building or leasing of the Premises, Landlord shall have the right to transfer any interest it may have in the Security Letter to the vendee or lessee and Landlord shall thereupon be released by Tenant from all liability for the return of such Security Letter, and Tenant agrees to look solely to the new owner for the return of said Security Letter; and it is agreed that the provisions hereof shall apply to every transfer or assignment made of the Security Letter 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 Landlord nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance. In the event of a sale of the Land and building or leasing of the Premises, Landlord shall have the right to require Tenant



to deliver a replacement Security Letter naming the new owner as beneficiary and, if Tenant shall fail to timely deliver the same, Landlord shall have the right to draw down the existing Security Letter and transfer the proceeds thereof to the new owner who shall retain such proceeds as security hereunder until a replacement Security Letter is delivered.

E. In the event that at any time during the Term of this Lease, Landlord in good faith believes (a) that the net worth of the Issuing Bank shall be less than the minimum amount specified in Section 49.E(i) hereof, or (b) that circumstances have occurred indicating that the Issuing Bank may be incapable of, unable to, or prohibited from honoring the then existing Letter of Credit (the "Existing L/C") in accordance with the terms thereof, then, upon the happening of either of the foregoing, Landlord may send written notice to Tenant (the "Replacement Notice") requiring Tenant within five (5) Business Days to replace the Existing L/C with a new letter of credit (the "Replacement L/C") from an Issuing Bank meeting the qualifications described in Section 49.E(i) hereof. Upon receipt of a Replacement L/C meeting the qualifications of Section 49.E(i) hereof, Landlord shall forthwith return the Existing L/C to Tenant. In the event that (i) a Replacement L/C meeting the qualifications hereof is not received by Landlord within the time specified, or (ii) Landlord reasonably believes an emergency exists, then in either event, the Existing L/C may be presented for payment by Landlord and the proceeds thereof shall be held by Landlord in accordance with this Lease, subject, however, to Tenant's obligation pursuant to this Article 49 to replace such cash security with a new letter of credit meeting the qualifications of Section 49.E hereof.

F. Any payment tendered to Landlord by Tenant shall, unless Landlord and Tenant shall otherwise agree, be applied to sums due pursuant to this Article 49 and thereafter on account of all other sums due and payable under this Lease, notwithstanding any statement or direction by Tenant to the contrary.

G. As a material inducement to Landlord entering into this Lease with Tenant, Quine Liddell and George Vlamis ("Guarantor") represents to own 100% or at least a controlling majority of the interest in Tenant and has executed and delivered a guaranty in the form of Exhibit F of this Lease to Landlord. Except as expressly provided in the Lease, Tenant represents, warrants and covenants that Tenant is and shall remain during the Term of this lease owned by majority and controlled by Guarantor.

## 50. FUTURE CONDOMINIUM CONVERSION

Tenant acknowledges that the Real Property may be subjected to the condominium form of ownership prior to the end of the Term of this Lease. Tenant agrees that if, at any time during the Term, the Real Property shall be subjected to the condominium form of ownership, then, this Lease and all rights of Tenant hereunder are and shall be subject and subordinate in all respects to any condominium declaration and any other documents (collectively, the "Declaration") which shall be recorded in order to convert the Real Property to a condominium form of ownership in accordance with the provisions of Article 8 of the Real Property Law of the State of New York or any successor thereto. If any such Declaration is to be recorded, Tenant, upon request of Landlord, shall enter into an amendment of this Lease in such respects as shall be necessary to conform to such condominiumization, including, without limitation, appropriate adjustments to Real Estate Taxes payable for the Base Tax Year and Tenant's Proportionate Share, as such terms are defined

in Article 8 hereof, provided that Tenant's obligations under this Lease shall not be materially increased (and there shall be no increase in Tenant's monetary obligations) and Tenant's rights are not diminished as a result thereof. The condominium board shall provide to Tenant a recognition and attornment agreement in form reasonably satisfactory to Tenant and such board as a condition to the subordination of this Lease.

## 51. TENANT'S SELF-HELP RIGHTS

A. Subject to the provisions of this Article 51, except in the event of a fire, casualty or condemnation (for which the provisions of Articles 15 and/or Article 16 of this Lease shall apply), if Landlord fails to make any repair or provide any service which Landlord is obligated to perform or provide under this Lease, and such failure by Landlord is not the result of a Tenant Omission or Unavoidable Delay, Tenant shall have the right (but not the obligation) to perform and fulfill Landlord's obligation with respect thereto in accordance with the provisions of this Article 51. The extent of the work performed by Tenant in curing any such Landlord default shall not exceed the work that is reasonably necessary, in Tenant's reasonable judgment, to effectuate such remedy and the cost of such work shall be reasonable under the circumstances. Notwithstanding anything to the contrary contained herein, Tenant shall not be entitled to cure any default of Landlord if (i) such cure requires access to the premises of other tenants or occupants of the Building, or (ii) the performance of such cure would require access to Building Equipment that services tenants other than Tenant or in addition to Tenant or would impair or disrupt services to the tenants of the Building. The defaults of Landlord that Tenant is permitted to cure in accordance with the provisions of this Section 51.A are hereinafter referred to as "Self-Help Items."

B. If Tenant believes that Landlord has failed to perform any Self-Help Item as required by this Lease and the first sentence of Section 51.A hereof, then Tenant may give Landlord a notice (herein called a "Self-Help Notice") of Tenant's intention to perform such Self-Help Item on Landlord's behalf, which Self-Help Notice shall contain a statement in bold type and capital letters at the top of such Self-Help Notice and on the envelope containing such Self-Help Notice stating **"THIS IS A TIME SENSITIVE SELF-HELP NOTICE AND LANDLORD SHALL BE DEEMED TO WAIVE ITS RIGHTS IF IT FAILS TO RESPOND IN THE TIME PERIOD PROVIDED"** as a condition to the effectiveness thereof. If, within five (5) Business Days after its receipt of such Self-Help Notice, Landlord fails to either (i) commence (and thereafter continue to diligently perform) the cure of such Self-Help Item or (ii) give a notice to Tenant, which in good faith disputes Tenant's right to perform the cure of such Self-Help Item pursuant to the terms of this Article 51 and submits such dispute to an Expedited Arbitration Proceeding, Tenant shall have the right, but not the obligation, to commence and thereafter diligently prosecute the cure of such Self-Help Item in accordance with the provisions of this Article 51 at any time thereafter, but prior to the date on which Landlord commences to cure such Self-Help Item. Upon completion of the cure of such Self-Help Item, as provided herein, by Tenant, Tenant shall give notice thereof (the "Self-Help Item Completion Notice") to Landlord, together with a copy of paid invoices setting forth the reasonable out-of-pocket costs and expenses incurred by Tenant to complete such Self-Help Item (herein called the "Self-Help Amount"). Landlord shall reimburse Tenant the Self-Help Amount within thirty (30) days after receipt of the Self-Help Item Completion Notice. In the event that Landlord fails to provide reimbursement for the Self-Help Amount, Tenant is hereby granted the right to offset, against the forthcoming

installments of Rent due under this agreement, up to 25% of the monthly Fixed Rent until the aforementioned amount is offset in full.

C. Tenant shall diligently prosecute any Self-Help Item to completion in accordance with all applicable Legal Requirements.

BALANCE OF PAGE INTENTIONALLY DELETED

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

LANDLORD:

Chetrit 1412 LLC

By: 

1412 BH DE LLC,

By: 

1412-1416 RSVP DE LLC

By: 

TENANT:

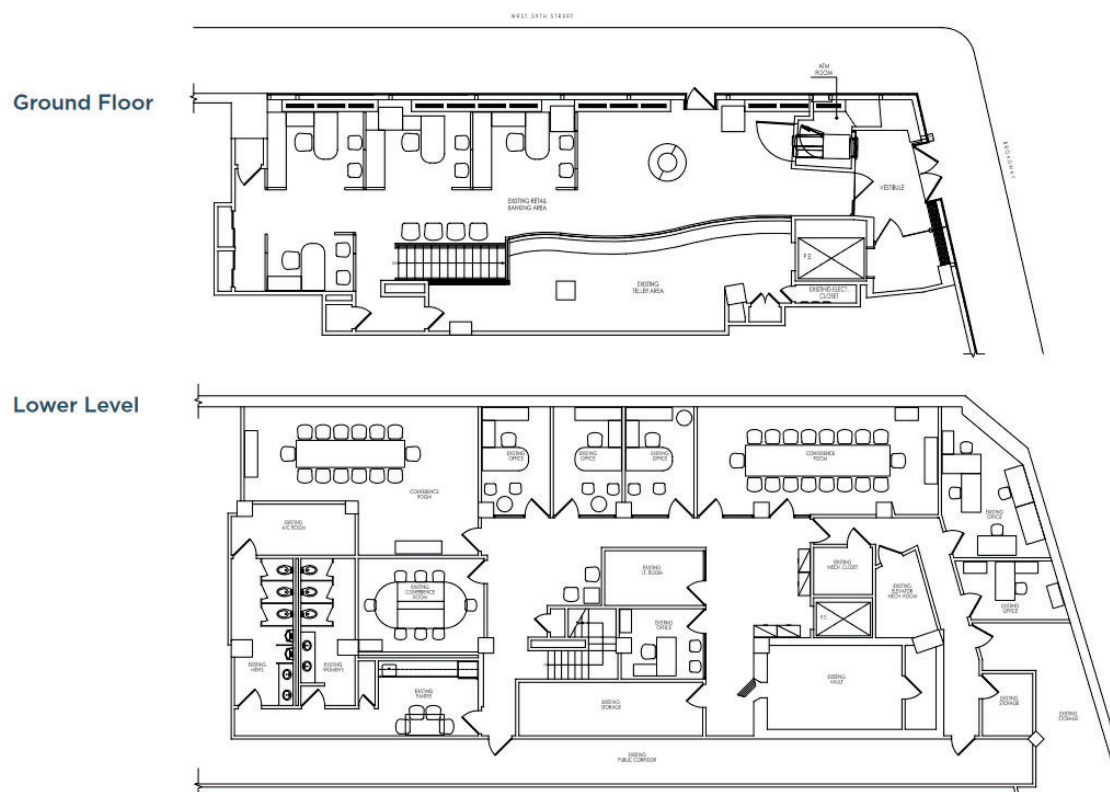
QUBE USA LLC

By: 

## EXHIBIT A

## FLOOR PLAN

This floor plan is intended to identify the location of the Premises, and indicates that both the Ground Floor and Lower Level (both defined in this Floor Plan) are included in their entirety as the Premises contemplated by this Lease, except for the Existing Public Corridor. However, the floorplan should not be used for any other purpose. All areas, dimensions and locations are approximate, and any physical conditions indicated may not exist as shown.





## EXHIBIT B

## COMMENCEMENT DATE AGREEMENT

THIS COMMENCEMENT DATE AGREEMENT (this "Agreement"), made this 11<sup>th</sup> day of August, 23, by and between Chetrit 1412 LLC, 1412 BH DE LLC, 1412-1416 RSVP DE LLC, as tenants in common ("Landlord") and QUBE USA LLC ("Tenant").

**WITNESSETH:**

WHEREAS, Landlord and Tenant have entered into that certain Lease dated 8/11/23 (the "Lease") for certain premises located at 1412 Broadway, New York, New York; and

WHEREAS, Landlord and Tenant wish to set forth their agreement as to the commencement date of the Term of the Lease.

NOW, THEREFORE, in consideration of the Demised Premises as described in the Lease and the covenants set forth therein, Landlord and Tenant agree as follows:

1. The Initial Term of the lease commenced on August 23.
2. The Initial Term of the lease shall expire on July, 2038.
3. Tenant has one (1) option of five (5) ~~years~~ which is to be exercised by the presentation of notice to Landlord by no later than July 2037.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

LANDLORD:

Chetrit 1412 LLC

By: 

1412 BH DE LLC,

By: 

1412-1416 RSVP DE LLC

By: 

TENANT:

QUBE USA LLC

By: 

**EXHIBIT C****Prohibited Uses**

As used in this Lease, the term “Prohibited Uses” shall mean any of the following uses:

1. Any use which emits or results in strong, unusual or offensive odors, fumes, dust or vapors, is a public or private nuisance, emits noise or sounds which are reasonably objectionable due to intermittence, beat, frequency, shrillness or loudness, creates a hazardous condition, or is used, in whole or in part, as or for warehousing or the dumping or disposing of garbage or refuse;
2. Any operation primarily used as a storage facility and any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operation or any business primarily engaged in industrial manufacturing, but excluding businesses in which manufacturing is an incidental component (e.g., jewelry repair);
3. Any “second hand” store, “surplus” store;
4. Any central laundry, dry cleaning store, or laundromat;
5. Any bowling alley or skating rink;
6. Except to the extent incidental to the Permitted Use, any live performance theater, auditorium, meeting hall, sporting event, or other entertainment use;
7. Any living quarters, sleeping apartments, or lodging rooms;
8. Any veterinary hospital or animal raising or boarding facilities;
9. Any mortuary or funeral home, parlor or chapel;
10. Any “Pornographic Use”, which shall include, without limitation: (x) a store displaying for sale or exhibition books, magazines or other publications containing any combination of photographs, drawings or sketches of a sexual nature, which are not primarily scientific or educational [provided, however, that the sale of books, magazines and other publications by a national bookstore of the type normally located in first-class Buildings in the State in which the Building is located (such as, for example, Borders and Barnes & Noble, as said stores currently operate) shall not be deemed a “pornographic use” hereunder]; or (y) a store offering for exhibition, sale or rental video cassettes or other medium capable of projecting, transmitting or reproducing, independently or in conjunction with another device, machine or equipment, an image or series of images, the content of which has been rated or advertised generally as NC-17 or “X” or unrated by the Motion Picture Rating Association, or any successor thereto [provided, however, that the sale or rental of such videos by (i) a national video store of the type normally located in first-class Buildings in the State in which the Building is located (such as, for example, Blockbuster or West Coast Video, as said stores currently operate), or (ii) the aforementioned and described national bookstore (it being acknowledged that the Permitted Use encompasses the sale or rental of such video cassettes and other mediums) shall not be deemed a “pornographic use” hereunder; or (z) a business, the primary purpose of which is the sale, distribution, display,

use, preparation or printing of any pornographic, obscene (as defined in Section 235.00 of the New York Penal Law) or “adult” books, films, videos, recordings, telephone services or similar material;

11. Any bar, tavern, or other establishment selling alcoholic beverages for on- or off-premises consumption;
12. Any catering or banquet hall;
13. Any check cashing service which is not an incidental use to a bank;
14. Any restaurant or business selling food for on-premises or off-premises consumption, excluding packaged cannabis edible products;
15. Any flea market, amusement or video arcade, pool or billiard hall, night club, dance club, discotheque, dance hall or other club;
16. Except to the extent incidental to the Permitted Use, any training or education facility, including, but not limited to: beauty schools, barber colleges, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition shall not be applicable to on-site employee training by an occupant incidental to the conduct of its business at the Building;
17. Any gambling facility or casino or gambling-type establishment or betting parlor or operation, including, but not limited to: off-track or sports betting parlor; table games such as black-jack or poker; slot machines; video poker/black-jack/keno machines or similar devices; or bingo hall;
18. Any pawn shop, gun shop, or tattoo parlor;
19. Any church or other place of religious worship;
20. Any car wash, automobile repair shop, or any business servicing motor vehicles in any respect, including, without limitation, any quick lube oil change service, tire center or gasoline or service station or facility;
21. Any carnival, amusement park or circus;
22. Any medical clinics or medical offices;
23. Any office use, other than office space used in connection with and ancillary to a permitted retail use hereunder in the New York metropolitan area (for example, financial services, real estate brokerage, insurance agency, banking, travel agency);
24. Daycare center;
25. Veterinary office;
26. Karate center;

27. Movie theater;
28. Agency, Department or Bureau of any governmental authority;
29. The conduct of any auction sales (except in connection with a professional auction house such as Sotheby's), fire sales, and businesses, the purpose of which is to run "going-out-of-business sales" (excluding bona fide liquidation of actual on-hand inventories);
30. Auditorium or any other like place of public assembly, such as a bingo parlor;
31. Bank or financial institution;
32. Beauty Salon, Barber Shop or Haircutting Salon;
33. Body waxing salon;
34. Ping Pong Parlor, Amusement Arcade or other arcade-type use including amusement devices, games or machines or pool hall, in each case, for public use, or other business deriving income from coin operated games, a shooting gallery or the use of any type of video game, slot machine, pinball machines or related equipment;
35. Cabaret or any other place providing primarily a place of recreation to customers;
36. Dating or Escort Service;
37. Employment Agency;
38. Fruit or vegetable store;
39. Fund raising or solicitation for other purposes by means of telephone "bank" calls to the public from the Premises;
40. Gymnasium or athletic facility of any kind;
41. Gypsy, Fortune Teller, Palm Reader, Tarot Card Reader, Card Reader or similar establishment;
42. Laboratory;
43. Lingerie sales similar to Frederick's of Hollywood (Victoria's Secret and similar being an acceptable use);
44. Massage Parlor;
45. Messenger Service;
46. Municipal or other Government Office;



47. A night club or discotheque at which there is dancing or live or recorded music or entertainment.
48. Office, Store, Reading room, Headquarters, Center or other facility devoted or opposed to the promotion, advancement, representation, purpose or benefit of: (a) any political party, political movement or political candidate, (b) any religion, religious group or religious denomination, (c) any foreign government;
49. The offices or business of a welfare, drug or alcohol dependency treatment center, mental health facility or similar agency, whether public or private, which provides services to clients on the Premises;
50. Pet Shop;
51. Except to the extent incidental to the Permitted Use, print shop, reproduction or blueprinting establishment;
52. Public stenographic/public typist;
53. Recreational Center;
54. Roller or Ice Skating Rink;
55. Sale of pharmaceuticals, 1 hour photo and health and beauty aids;
56. Sale of Beer, Wine or liquor for off premises consumption;
57. Except to the extent incidental to the Permitted Use, school or Conference Facilities or as a place of instruction or any operation catering primarily to students or trainees rather than to customers;
58. Shoe repair;
59. Community or Social Services Center;
60. Spiritualist services;
61. A store, the primary business of which is to buy or sell donated "second-hand" goods (e.g., Salvation Army, Goodwill, etc.);
62. Telephone or Telegraph Agency;
63. Thrift Shop;
64. Nail Salon
65. A store that sells salad bowls
66. Medical practice or Urgent Care

**EXHIBIT D****SOUND LEVELS**

Tenant shall not make or permit to be made or cause any music or electronically reinforced speech or sounds coming from the Demised Premises when the level of sound attributable thereto, as measured inside any other tenant space in the Building:

(1) is in excess of NC-30 curves as defined by the American Society of Heating, Refrigerating and Air Conditioning Engineers, with unweighted sound pressure levels at individual octave bands are no more than 48 dB at 125 Hz, 41 dB at 250 Hz, 35 dB at 500 Hz, 31 dB at 1000 Hz, 29 dB at 2000 Hz, and 28 dB at 4000 Hz; and

(2) is in excess of 45 dB in any one-third octave band having a center frequency between 63 Hz and 125 Hz; and

All sound pressure level measurements shall be taken with a Class I sound level meter as established by the American National Standards Institute specifications for sound level meters S1.4-1983(r2006), and all measurements shall be taken in Lmax with the sound level meter set to slow response.

**EXHIBIT E****LETTER OF CREDIT**LEASE DATE:TENANT:

[DATE]

[NAME OF BENEFICIARY]

[ADDRESS]

GENTLEMEN/LADIES:

WE HEREBY ISSUE OUR IRREVOCABLE STANDBY LETTER OF CREDIT IN YOUR FAVOR, EFFECTIVE IMMEDIATELY.

ACCOUNT OF: [NAME AND ADDRESS OF TENANT]

AVAILABLE WITH: [NAME OF BANK]

DRAFTS AT SIGHT AS INDICATED BELOW DRAWN ON [NAME OF BANK], NEW YORK, NEW YORK, UP TO AN AGGREGATE AMOUNT OF \_\_\_\_\_ U. S. DOLLARS AND \_\_ CENTS (\$ \_\_\_\_\_ )

EXPIRY DATE: [DATE AT LEAST ONE YEAR FROM DATE OF L/C]

THIS LETTER OF CREDIT SHALL BE DEEMED AUTOMATICALLY EXTENDED, WITHOUT AMENDMENT, FOR ADDITIONAL PERIODS OF ONE (1) YEAR FROM THE CURRENT OR ANY FUTURE EXPIRATION DATE, UNLESS AT LEAST SIXTY (60) DAYS PRIOR TO THE THEN CURRENT EXPIRATION DATE WE NOTIFY YOU IN WRITING, BY REGISTERED MAIL, AT YOUR ADDRESS STATED ABOVE OR SUCH OTHER ADDRESS OF WHICH YOU NOTIFY US IN WRITING FROM TIME TO TIME, OF OUR INTENTION NOT TO RENEW THIS LETTER OF CREDIT FOR ANY SUCH ADDITIONAL PERIOD.

FUNDS UNDER THIS LETTER OF CREDIT ARE AVAILABLE TO YOU AGAINST YOUR SIGHT DRAFTS, ACCOMPANIED BY A WRITTEN STATEMENT, PURPORTEDLY SIGNED BY ONE OF YOUR AUTHORIZED REPRESENTATIVES, TO THE EFFECT THAT YOU ARE ENTITLED TO DRAW UPON THIS LETTER OF CREDIT PURSUANT TO A LEASE DATED \_\_\_\_\_, BETWEEN \_\_\_\_\_ AS OWNER, AND \_\_\_\_\_ AS TENANT, AS AMENDED, OR PURSUANT TO ANY OTHER AGREEMENT BETWEEN OWNER AND TENANT.”

IN ANY EVENT THIS LETTER OF CREDIT WILL NOT BE EXTENDED BEYOND  
[DATE MUST BE NO EARLIER THAN 90 DAYS AFTER THE LEASE EXPIRATION  
DATE PLUS ANY RENEWAL TERMS, IF ANY].

DRAFTS MUST BE DRAWN AND PRESENTED TO US ALONG WITH THE  
REQUIRED DOCUMENTATION AT OUR OFFICE LOCATED AT \_\_\_\_\_  
NOT LATER THAN \_\_\_\_\_ OR ANY AUTOMATICALLY  
EXTENDED DATE AS HEREINBEFORE SET FORTH.

DRAFTS DRAWN HEREUNDER MUST BEAR ON THEIR FACE THE CLAUSE:  
“DRAWN UNDER THE [NAME OF BANK] LETTER OF CREDIT NUMBER “.

PARTIAL DRAWINGS ARE PERMITTED.

THIS LETTER OF CREDIT IS TRANSFERRABLE ONE OR MORE TIMES.

WE HEREBY AGREE WITH THE DRAWERS, ENDORSERS AND BONA FIDE  
HOLDERS OF ALL DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS  
OF THIS CREDIT, THAT SUCH DRAFTS WILL BE DULY HONORED UPON  
PRESENTATION OF SUCH DRAFTS TO THE DRAWEE WITHOUT INQUIRY AS TO THE  
ACCURACY OF ANY STATEMENT, WITHOUT THE NECESSITY TO PRESENT THIS  
LETTER OF CREDIT AND REGARDLESS OF WHETHER APPLICANT OR ANYONE ELSE  
DISPUTES THE CONTENTS OF SUCH STATEMENT WHICH ACCOMPANIES SUCH  
DRAFTS.

THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY  
PRACTICES 1998 PROMULGATED BY THE INSTITUTE FOR INTERNATIONAL  
BANKING LAW AND PRACTICE AND THE INTERNATIONAL CHAMBER OF  
COMMERCE (INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590).

Very truly yours,

AUTHORIZED SIGNATURE

**EXHIBIT F****GUARANTY**

<b>OWNER:</b>	<b>CHETRIT 1412 LLC, 1412 BH DE LLC, and 1412-1416 RSVP DE LLC,</b>
<b>DATE:</b>	<b>August __, 2023</b>
<b>TENANT:</b>	<b>Qube USA LLC</b>
<b>PREMISES:</b>	<b>Certain premises at 1412 Broadway, New York, New York as described in the Lease dated August __, 2023</b>
<b>GUARANTOR'S INTEREST IN TENANT:</b>	<b>Guarantor is 100% owner of the Tenant</b>

THIS GUARANTY, dated as of the date set forth above made by the undersigned, whose principal residence is set forth below ("Guarantor") for the benefit of the Owner set forth above and, having an office as set forth above.

WHEREAS, Guarantor's interest in the tenant named above ("Tenant") is as indicated above;

WHEREAS, Guarantor has requested that Owner grant Tenant a lease (the "Lease") of a certain premises as described in the Lease (the "Premises") in the building located at the street address referred to above (the "Building");

WHEREAS, Guarantor will receive economic benefits by virtue of the Lease from the business Tenant will be conducting at the Premises; and

WHEREAS, Owner is unwilling to enter into the Lease unless the Guarantor enters into this Guaranty.

NOW, THEREFORE, to induce Owner to enter into the Lease with Tenant, and for other good and valuable consideration, each to the other in hand paid, the receipt and sufficiency of which being hereby acknowledged, and in consideration of the premises, Guarantor for itself and Guarantor's successors and assigns, covenants and agrees as follows:

1. All terms not otherwise defined in this Guaranty shall have the same meaning that they have in the Lease.

2. (a) Guarantor, for itself and Guarantor's successors and assigns, absolutely, irrevocably and unconditionally, guarantees to Owner, its successors and assigns, (i) the full and faithful payment and performance and observance of all obligations to be performed and observed by Tenant under the Lease, including, without limitation, the prompt and punctual payment of all Fixed Rent, additional rent and other sums payable under the Lease, including, without limitation, reasonable costs of collection and enforcement (including reasonable legal fees



and disbursements) and the compliance and observance by Tenant of all obligations set forth in the Lease with the same force and effect as if Guarantor had been signatory to the Lease, jointly and severally liable thereunder with Tenant and (ii) the payment to Owner of any and all damages arising from the rejection of the Lease in a bankruptcy or insolvency proceeding.

(b) The guaranteed obligations shall include, without limitation, Fixed Rent and additional rent, claims in any bankruptcy or insolvency proceeding, late charges, interest, reasonable costs of collection and enforcement (including reasonable legal fees and disbursements) and damages for any failure by Tenant to pay or perform any of its obligations under the Lease or otherwise.

(c) The term "Tenant" means all persons or entities at any time holding the tenant's interest in the Lease, including, without limitation, the Tenant named in the Lease, its successors and assigns, a trustee of a Tenant's estate in any bankruptcy or insolvency proceeding, an assignee of Tenant's interest in the Lease by assignment pursuant to any bankruptcy or insolvency laws, and their respective successors and permitted assigns, notwithstanding that the Tenant named in the Lease may no longer be in possession and that the Owner may not have consented to such assignment.

3. Notwithstanding anything contained herein, on or after 60 months from Commencement Date, provided Tenant is not in default of the Lease and gives Owner not less than 120 days prior written notice of its intention on a date certain ("Possession Date") (accompanied by (1) a certified or bank check equal to the sum of the unamortized total dollar amount of any unamortized real estate broker commissions, unamortized cost of Landlord's Work, and unamortized amount of concession paid or incurred by Landlord in connection with the parties entering into this Lease, and (2) a duly executed and acknowledged Surrender Declaration in the form annexed hereto as exhibit acceptable to Landlord) to (a) deliver possession of the Premises to Owner in the condition required at the termination of the Lease and (b) otherwise to comply with the provisions of subparagraphs (i), (ii) and (iii) below, upon (i) delivery of possession of the Premises and all keys to Owner on or before the Possession Date, in the condition required at the termination of the Lease, (ii) the receipt by Owner of all unpaid Rent which shall have accrued under the terms of the Lease at any time up to and including such delivery of possession (in immediately available funds which shall be lawful money of the United States of America), and (iii) the full performance of all other obligations of Tenant which shall have accrued under the lease at any time up to and including such delivery of possession, in each case without being subject to cancellation, rescission or avoidance under any bankruptcy, insolvency or other statutes or decisions of any court, all of the obligations of Guarantor thereafter accruing under this Guaranty, except the liabilities of Guarantor hereunder with respect to their guarantee of the obligations of Tenant under Articles 39 of the Lease and their obligations under Paragraphs 4 and 5 below, shall thereupon terminate and expire. Nothing contained in this Paragraph 3 or elsewhere herein shall release Tenant from any liability under the Lease or Guarantor from their obligations under Paragraph 4 and 5 below. If any payment by Tenant or Guarantor shall be cancelled, set aside, rescinded or avoided in any bankruptcy, insolvency or other action or proceeding, this Guaranty shall be automatically reinstated. Notwithstanding anything contained herein to the contrary, in the event Tenant fails to comply with the provisions of (i), (ii) and (iii) above on or before the Possession Date, Guarantor shall not be released from liability hereunder until compliance with the provisions of (i), (ii) and (iii) above.

4. In furtherance of the foregoing, Guarantor unconditionally guarantees to the Owner (a) that the Tenant shall fully and punctually pay and discharge any and all costs, expenses and liabilities for and/or in connection with the construction, equipping and completion of any and all improvements, additions or alterations to the Premises made at any time during the term of the Lease (the "Improvements") as the same may become due and payable, and also pay and discharge all proper claims and demands for labor, materials, services and equipment used for and/or in the construction, equipping and completion of the Improvements which are, or, if unpaid, may become due and payable, (b) that the Premises and the Improvements shall be and remain free and clear of all liens from any and all persons, firms, corporations or other entities furnishing materials, labor or services for or in the construction, equipment and/or completion of the Improvements, (c) that Tenant shall obtain all letters of completion ("Completion Letters") from the New York City Department of Buildings ("DOB"), together with any and all other required DOB approvals, and approvals from all other governmental agencies having jurisdiction over the Improvements in accordance with the provisions of Section 6.B(x) of the Lease. Without limiting the generality of the foregoing Guarantor guarantees to the Owner the prompt and complete observance, fulfillment and performance of all other conditions, covenants and agreements of Tenant contained in Article 6 of the Lease.

5. In furtherance of the foregoing, Guarantor unconditionally guarantees to the Owner that (i) in the event the Improvements described in Section 4.C of the Lease are not completed and any and all Alterations in the Premises, including, without limitation, the foregoing Improvements, are not paid for as aforesaid, or are not free of all such liens, claims and demands, or other costs associated therewith are not paid, the Guarantor will fully indemnify and save harmless Owner from all costs and damages that the Owner may suffer by reason thereof; (ii) in the event that Owner shall (a) cause any construction and/or equipping of the Improvements to be done, (b) pay any costs in connection with the construction and/or equipping of the Improvements, (c) pay other costs payable by Tenant under the Lease for the Improvements, and/or (d) cause any such lien, claim or demand to be released or paid, then the Guarantor shall immediately reimburse the Owner for all sums paid and all costs and expenses incurred thereby in connection therewith; and (iii) the Guarantor shall, if requested by Owner, complete or cause the completion of the construction and equipping of the Improvements in accordance with the plans and specifications therefor, and any addenda, modifications or changes thereto, all as approved by Owner.

6. (a) The validity and enforceability of this Guaranty and the obligations of Guarantor hereunder shall not terminate and not be affected or impaired by reason of the invalidity or unenforceability of the Lease or any provision thereof, any offsets or defenses of Tenant, the commencement or continuation of any bankruptcy or insolvency action or proceeding or the granting of relief thereunder, including, without limitation, the granting of any stay or limitation on the collection of rent or other rights and remedies of Owner, the rejection of the Lease by a trustee in a bankruptcy or insolvency proceeding, the assertion by Owner against Tenant (or Owner's failure, waiver or delay in asserting) of any of the rights or remedies reserved to Owner pursuant to the provisions of the Lease, or allowed at law or in equity.

(b) Without limiting the generality of the foregoing, the obligations of Guarantor under this Guaranty shall not be affected or impaired by (i) the release or discharge of Tenant in bankruptcy or other insolvency proceeding, (ii) the impairment, limitation or modification of Tenant's liability or estate, or of any remedy for the enforcement of Tenant's

obligations under the Lease, in any bankruptcy or other insolvency proceeding or by the operation of any present or future provisions of bankruptcy laws or other statutes or decisions of any court, (iii) the rejection of the Lease, or the assignment, transfer or assumption of the Lease, by Tenant or any trustee in bankruptcy or other insolvency proceeding, (iv) any disability or other defense of Tenant, or (v) the cessation from any cause whatsoever of the liability of Tenant under the Lease.

(c) Guarantor hereby agrees its liability hereunder shall be unaffected by (i) any amendment or modification of the provisions of the Lease or any other instrument made to or with Owner by Tenant, (ii) any extension of time for performance required thereby, (iii) any sale or other disposition of the Real Property or any part thereof, (iv) exculpatory provisions, if any, in the Lease or any other instrument made to or with Owner by Tenant limiting Owner's recourse to any particular property or to any other security, (v) the release of Tenant or any other person from performance or observance of any of the agreements, terms or conditions contained in any of said instruments by operation of law, whether made with or without notice to Guarantor, (vi) the release of any other guarantor from any obligation or liability hereunder, or (vii) Owner's failure to perfect, protect, secure or insure any security interest or lien given as security for Tenant's obligations under the Lease.

(d) It is understood and agreed that Guarantor shall not be released by any act or thing which might, but for this provision of this instrument, be deemed a legal or equitable discharge of a surety or a guarantor, or by reason of any waiver, extension, modification, forbearance or delay or other act or omission of Owner or its failure to proceed promptly or otherwise, or by reason of any action taken or omitted or circumstance which may or might vary the risk or affect the rights or remedies of Guarantor or by reason of any further dealings between Tenant and Owner, whether relating to the Lease or otherwise, and Guarantor hereby expressly waives and surrenders any defense of its liability hereunder based upon any of the foregoing acts, omissions, things, agreements, waivers or any of them and hereby expressly waives and relinquishes all other rights and remedies accorded by applicable law to guarantors and sureties; it being the purpose and intent of the parties hereto that the obligations of Guarantor hereunder are absolute and unconditional under any and all circumstances.

7. This Guaranty shall extend and apply to, and shall remain in force and effect as to the obligations described above as well as all obligations of Tenant under any and all leases of other space in the Building and any and all modifications, extensions and renewals of the Lease or any such lease of other space, any assignment, subletting or holding over by Tenant, without any notice to or the consent of Guarantor, which right to notice and to consent Guarantor hereby waives.

8. Owner may, at its option proceed against Guarantor without having commenced any action against or having exhausted any remedy or claim or having obtained any judgment against Tenant.

9. Guarantor shall pay all of Owner's costs and expenses (including, without limitation, attorneys' and investigators' fees and disbursements) in enforcing this Guaranty.

10. GUARANTOR WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY EITHER OWNER OR GUARANTOR RELATING TO THE

LEASE OR THIS GUARANTY AND WAIVE THE BENEFIT OF ANY STATUTE OF LIMITATIONS AFFECTING GUARANTOR'S LIABILITY UNDER THIS GUARANTY. Guarantor will be conclusively bound by any judgment rendered in any action or proceeding by Owner against Tenant (wherever brought) as if Guarantor was a party thereto, even if not joined as a party in such action or proceeding.

11. This Guaranty shall be deemed to have been made in the City and State of New York and the rights and liabilities of Owner and Guarantor shall be determined in accordance with the internal laws of the State of New York; and no defense shall be interposed in any action or proceeding unless such defense is also given or allowed by the laws of the State of New York. No delay on the part of Owner in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any waiver of any rights or powers of Owner or consent by Owner be valid unless in writing duly executed by Owner. This Guaranty shall be binding upon the Guarantor and its respective successors and assigns and shall inure to the benefit of Owner and Owner's successors and assigns, may not be terminated or modified, and no provision may be waived, except in a writing signed by the person sought to be charged.

12. Guarantor represents and warrants that neither Guarantor nor, if Guarantor is other than an individual, any person owning, directly or indirectly, 25% or more of an interest in Guarantor, it is an "SDN". For purposes of this Guaranty, an "SDN" is someone [1] who is on the list of "Specially designated Nationals and Blocked Persons" promulgated by the Office of Foreign Assets Control of the U.S. Department of the Treasury pursuant to 31 C.F.R. Part 500 or [2] with whom Owner is prohibited or restricted from doing business with pursuant to the United States Patriot Act or any other law, rule, regulation, order or governmental action (an "Anti-Terrorism Law"). Guarantor shall, upon request of Owner, provide (and cause each Principal to provide) such information (including without limitation certification) as may be required to enable Owner to comply with any Anti-Terrorism Law.

13. Guarantor represents and warrants that it is solvent and will not be rendered insolvent by this Guaranty or the enforcement of Owner's rights and remedies under this Guaranty.

14. Owner shall not be required to provide Guarantor with notice of Tenant's nonpayment, nonperformance or nonobservance of any of its obligations guaranteed hereunder and the Guarantor waives the right to receive such notice. Guarantor further waives any right to require that resort be had to any security or other credit in favor of Tenant prior to enforcing Owner's rights against Guarantor.

15. Guarantor represents and warrants that this Guaranty has been duly executed and delivered and constitutes such Guarantor's valid and binding agreement in accordance with its terms.

16. Guarantor submits and shall submit to the personal jurisdiction of the courts of the State of New York whose jurisdiction shall be exclusive in any action or proceeding arising out of this Guaranty.

17. Unless and until all the covenants and conditions in the Lease on Tenant's part to be performed and observed are fully performed and observed, Guarantor:

(a) shall have no right of subrogation against Tenant by reason of any payments or acts of performance by Guarantor;

(b) waive any right to enforce any remedy which Guarantor now or hereafter shall have against Tenant by reason of any payments or acts of performance by Guarantor in compliance with the obligations of Guarantor hereunder; and

(c) subordinate any liability or indebtedness of Tenant now or hereafter held by Guarantor to the obligations of Tenant to Owner under the Lease.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Guaranty on the day and year first above written.



x

Print: Quine Liddell

EIN#: 883519255Address: 12 Hampton St  
Albany, NY 12209

x

Print: George Vlamis

EIN#: 883519255Address: 199 Hawleys Corners rd  
Highland, NY 12528

**EXHIBIT G****RULES AND REGULATIONS**

The following are the Rules adopted by Landlord, as of the date of the lease to which these Rules are attached, with respect to the Building. A violation of any of the following Rules shall be deemed a material breach of the lease.

1. Tenant shall not engage in any conduct which will unreasonably interfere with the business, use and occupancy of any other tenant at the Building. Tenant shall not make or permit to be made any unseemly or disturbing noises or disturb or interfere with the occupants of the Building or neighboring buildings or premises or those having business with them, whether by the use of any musical instrument, radio, television, talking machine, bullhorn or other amplifying device, noise, or in any other way.
2. Tenant shall not store any materials or objects outside of the Premises, however this will not prohibit Tenant from storing materials or objects in a separate building.
3. Tenant shall not drill holes into the exterior walls or roof of the Building, nor will Tenant attach wires or other devices to the exterior walls or roof without the prior written consent of Landlord. No curtains, blinds, shades, or screens shall be attached to or hung upon, or used in connection with, any windows or doors of the Premises without the prior written consent of Landlord.
4. Tenant shall not use the bathrooms or other Building systems or any plumbing fixtures for any purpose or in any manner other than for the purposes and in the manner they were intended to be used, and no rubbish, rags, paper towels or other inappropriate materials shall be thrown therein. Tenant shall keep the interior heat in the Premises at such a level that pipes will not freeze in the winter months. Any and all damage resulting from any failure to comply with the foregoing requirements shall be borne by Tenant who, or whose agents, employees, contractors, visitors, or licensees have, caused such damage.
5. Landlord shall have the right to prohibit any advertising by any Tenant which in Landlord's sole judgment, tends to impair the reputation of the Building or the desirability of the Building for retail tenants. Upon notice from Landlord, any such advertising shall immediately cease.
6. Tenant shall not bring into, or permit in, the Premises any animals (except service animals for the disabled).
7. No hand trucks or similar devices may be used for moving articles in or out of the Premises, except those equipped with rubber tires, side guards and such other safeguards as Landlord requires.
8. Tenant shall, at all times, keep a copy of all keys for the Premises with Landlord together with instructions for disarming any security systems. No additional locks or bolts of any kind shall be placed upon any of the doors or windows by Tenant, nor shall changes be made to any existing locks or the mechanisms thereof without the prior written consent of Landlord. Upon the termination of the tenancy, Tenant shall restore all keys to Landlord including keys to stores, bathrooms, and/or offices.



9. The rights of tenants in the entrances, corridors and elevators of the Building are limited to ingress to and egress from the tenants' premises for the tenants and their employees, licensees and invitees, and no tenant shall use, or permit the use of, the entrances, corridors, or elevators for any other purpose. No tenant shall invite to the tenant's premises, or permit the visit of, persons in such numbers or under such conditions as to interfere with the use and enjoyment of any of the entrances, corridors, elevators and other facilities of the Building by other tenants. Fire exits and emergency stairways are for emergency use only, and they shall not be used for any other purpose by the tenants, their employees, licensees or invitees. No tenant shall encumber or obstruct, or permit the encumbrance or obstruction of any of the sidewalks, entrances, corridors, elevators, fire exits or stairways of the Building. The Landlord reserves the right to control and operate the public portions of the Building and the public facilities, as well as facilities furnished for the common use of the tenants, in such manner as it deems best for the benefit of the tenants generally. Subject to Landlord's consent, Tenant shall not be permitted access to the loading dock or freight elevators of the Building.

10. All access of persons to the common area of the Building and all deliveries to the common area of the Building shall be in all respects subject to such security provisions and procedures as may be adopted by Landlord from time to time. Without limiting the generality of the foregoing, Landlord shall have the right to deny access to the common area of the Building at any time to anyone who does not have a valid access pass issued by Landlord, or who Landlord believes in good faith may pose a threat to the Building or its occupants even if such person shall have a pass. Landlord may require all persons entering the common area of the Building to register. Any person whose presence in the common area of the Building at any time shall, in the judgment of Landlord, be prejudicial to the safety, character, reputation and interests of the Building or of its tenants may be denied access to the Building or may be ejected therefrom. Landlord reserves the right to exclude from all portions of the common area of the Building (other than specified areas of the ground floor) all messengers, couriers and delivery people other than those who are employees of a tenant in the Building. Tenant shall comply with Landlord's rules relating to such area and services. Landlord may require any person leaving the Building with any package or other object to exhibit a pass from the tenant from whose premises the package or object is being removed, but the establishment and enforcement of such requirement shall not impose any responsibility on Landlord for the protection of any tenant against the removal of property from the premises of the tenant. In case of invasion, riot, public excitement or other commotion, Landlord may prevent all access to the common area of the Building during the continuance of the same, by closing the doors or otherwise, for the safety of the tenants and protection of property in the Building. Canvassing, soliciting or peddling in the Building is prohibited and every tenant shall co-operate to prevent the same. Neither Landlord nor its agents or security personnel shall be liable to Tenant or its agents, employees, contractors, customers, clients, invitees or licensees or to any other Person for, and Tenant hereby indemnifies Landlord and Landlord's agents and security personnel, against liability in connection with or arising out of damage to mail or packages, or the performance or non performance by Landlord or any person acting by, through or under the direction of Landlord of the services set forth in this Rule (including any liability in respect of the property of such persons), unless due to the intentionally wrongful misconduct of Landlord, or Landlord's agents or security personnel. Without limiting the generality of the foregoing, it is agreed that Landlord shall, in no way, be liable to any tenant for damages or loss arising from the admission, exclusion or ejection of any person to or from the tenant's premises or the Building under the provisions of this Rule. No representation, guaranty or warranty is made or assurance

given that the communications or security systems, devices or procedures of the Building will be effective to prevent injury to Tenant or any other Person or damage to, or loss (by theft or otherwise) of, any property of Tenant (including Tenant's Property) or of any other Person, and Landlord reserves the right to discontinue or modify at any time such communications or security systems or procedures without liability to Tenant.

11. If the demised premises are situated on the ground floor of the building, Tenant thereof shall further, at Tenant's expense, keep the sidewalks and curb in front of said premises clean and free from ice, snow, etc.

12. The cost of repairing any damage to the public portions of the Building or the public facilities or to any facilities used in common with other tenants, caused by a Tenant Party, shall be paid by such tenant.

13. Landlord shall have the right to reasonably prescribe the weight and position of safes and other objects of excessive weight, and no safe or other object whose weight exceeds the lawful load for the area upon which it would stand shall be brought into or kept upon a tenant's premises. If, in the reasonable judgment of Landlord, it is necessary to distribute the concentrated weight of any heavy object, the work involved in such distribution shall be done at the expense of the tenant and in such manner as Landlord shall reasonably determine. The moving of safes and other heavy objects shall take place only outside of ordinary business hours upon previous notice to Landlord, and the persons employed to move the same in and out of the Building shall be reasonably acceptable to Landlord and, if required by law, shall hold a Master Rigger's license. Freight, furniture, business equipment, merchandise and bulky matter of any description shall be delivered to and removed from the premises only in the freight elevators and through the service entrances and corridors, and only during hours and in a manner approved by Landlord. Arrangements will be made by Landlord with any tenant for moving large quantities of furniture and equipment into or out of the Building.

14. In no case shall any machines or mechanical equipment be so placed or operated as to disturb other tenants or occupants but machines and mechanical equipment which may be permitted to be installed and used in a tenant's premises shall be so equipped, installed and maintained by such tenant as to prevent any disturbing noise, vibration or electrical or other interference from being transmitted from such premises to any other area of the Building.

15. No acids, vapors or other materials shall be discharged or permitted to be discharged into the waste lines, vents or flues of the Building which may damage them. The water and wash closets and other plumbing fixtures in or serving any tenant's premises shall not be used for any purpose other than the purposes for which they were designed or constructed, and no sweepings, rubbish, rags, acids or other foreign substances shall be deposited therein.

16. The water and wash closets and other 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 thrown or deposited therein. All damages resulting from any misuse of the fixtures shall be repaired at the expense of the tenant who, or whose servants, employees, agents, visitors or licensees shall have caused the same. Tenant, at its cost and expense, covenants and agrees to keep the drains, waste and sewer pipes and connections with mains which

are used by Tenant free from obstruction to the satisfaction of Landlord, its agents and all authorities having jurisdiction. Tenant will be responsible for expenses, losses and damages, incurred by Landlord by reason of the obstruction of drains, waste and sewer pipes and mains in or servicing the Building, or any part thereof.

17. No vehicles of any kind shall be brought into or kept in or about tenants' premises or the building, except for bicycles.

18. Tenants shall not occupy or permit any portion of their premises to be occupied as an office for a public stenographer or public typist, or for the possession, storage, manufacture, or sale of tobacco in any form, or as a barber, beauty or manicure shop, or as an employment bureau. Tenants shall not engage or pay any employees on tenant's premises, except those actually working for tenants on tenants' premises, nor advertise for laborers giving an address at the tenants' premises. Tenants shall not use their premises or any part thereof, or permit their premises or any part thereof to be used, for manufacturing, or for the sale at auction of merchandise, goods or property of any kind or for the sale of lottery tickets, subway or bus tokens or tickets or similar items.

19. Tenants' premises shall not be used for lodging or sleeping or for any immoral or illegal purposes.

20. The requirements of tenants will be attended to only upon application at the office of the Building. Employees of Landlord shall not perform any work or do anything outside of their regular duties, unless under special instructions from Landlord.

21. Canvassing, soliciting and peddling in the Building are prohibited and each tenant shall cooperate to prevent the same.

22. Tenants will not clean nor require, permit, suffer or allow any window in tenants' premises to be cleaned from the outside in violation of Section 202 of the 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.

23. Tenant shall not 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.

24. Refuse and Trash – Tenant covenants and agrees, at its sole cost and expense, to comply with all present and future laws, orders and regulations of all state, federal, municipal and local governments, departments, commissions and boards regarding the collection, sorting, separation and recycling of waste products, garbage, refuse and trash. Tenant shall pay all costs, expenses, fines, penalties or damages that may be imposed on Landlord or Tenant by reason of Tenant's failure to comply with the provisions of this Building Rule 25, and, at Tenant's sole cost and expense, shall indemnify, defend and hold Landlord harmless (including reasonable legal fees and expenses) from and against any actions, claims and suits arising from such non-compliance, utilizing counsel reasonably satisfactory to Landlord.

**EXHIBIT H****Ventilation and Odor Control Requirements for Cannabis Consumption Smoking Lounge:**

- **Compliance:** The exhaust system shall fully comply with all applicable local, state, and federal regulations pertaining to cannabis consumption lounges and indoor air quality.
- **Air Filtration:** The exhaust system must incorporate high-quality air filtration mechanisms to efficiently remove smoke, odors, and potentially harmful particles from the air. This may necessitate the use of HEPA filters and activated carbon filters to ensure thorough and effective filtration.
- **Ventilation Rate:** The exhaust system shall be engineered to provide a sufficient number of air changes per hour (ACH) within the smoking lounge. The designated ACH shall be tailored to the lounge's dimensions and anticipated occupancy to maintain a safe and comfortable environment for both patrons and staff.
- **Separation from Non-Smoking Areas:** The exhaust system's design and functionality must ensure the complete containment of smoke and odors exclusively within the designated cannabis consumption area. It shall be engineered to prevent any migration of these elements into adjacent non-smoking areas.
- **Noise Levels:** The exhaust system shall be designed and calibrated to operate at noise levels that do not disrupt the ambiance of the cannabis consumption lounge. Noise generated by the system shall remain within acceptable limits to ensure a pleasant environment for all occupants.
- **Maintenance:** The exhaust system's design shall prioritize ease of maintenance and cleaning. This ensures its ongoing effectiveness and performance throughout the duration of the lease. Regular maintenance procedures should be established and followed to sustain optimal functionality.
- **Fire Safety:** The exhaust system's installation and configuration shall adhere to fire safety standards. Fire-resistant materials may be required to minimize the risk of fire hazards associated with the system's operation.
- **Professional Installation:** The installation of the exhaust system shall be carried out by qualified professionals experienced in cannabis lounge requirements and ventilation systems. Installation technicians should possess the expertise necessary to ensure compliance and safety.
- **Monitoring and Testing:** Regular monitoring and testing of the exhaust system's operational performance shall be conducted. This is to verify the system's consistent ability to effectively extract smoke and odors from the air within the cannabis consumption lounge.
- **Retrofits and Upgrades:** In the event that advancements in ventilation and odor control technologies become available during the lease term, the Tenant may be required to implement reasonable retrofits or upgrades to the exhaust system to maintain optimal performance and compliance.
- **Landlord Access:** The Landlord reserves the right to access and inspect the exhaust system periodically to ensure its compliance with these requirements and local regulations.
- **Negative Air Pressure:** Design the ventilation system to create negative air pressure within the smoking lounge, ensuring that air is drawn into the lounge rather than escaping from it.
- **Sealed Doors and Windows:** Ensure that all doors and windows leading to common areas or neighboring spaces are tightly sealed to prevent odors from escaping.

- No Smoking Outside Designated Area: Smoking is exclusively permitted within the designated cannabis consumption area; all other areas are strictly non-smoking.
- Prohibition of Cannabis Sales: The lounge is intended solely for personal cannabis consumption, and the sale of cannabis or related products is strictly prohibited.
- Guest Limit: A maximum occupancy limit is established to prevent overcrowding and disturbances.
- Noise Control: Rules governing noise levels within the lounge are enforced to prevent disruptions to neighboring tenants.
- Hours of Operation: Specific operating hours are defined to minimize disturbances during off-peak periods.
- Security Measures: Robust security measures are implemented to ensure authorized access only.

### Rider Agreement to Lease

This Rider Agreement to Lease ("Rider") is entered into between **QUBE USA LLC** ("**Tenant**") and **CHETRIT 1412 LLC, 1412 BH DE LLC, and 1412-1416 RSVP DE LLC** collectively as tenants in common (the "**Landlord**") (together and separately known as "**Party**" and "**Parties**").

Whereas, the Parties have entered into a Lease Agreement (the "**Lease**") dated August 10, 2023, governing certain premises located at 1412 Broadway, New York, NY as more particularly defined in the Lease (the "**Premises**").

Whereas, the Parties wish to establish certain conditions precedent to the effectiveness and binding nature of the Lease.

Whereas, the Parties wish to specify the requirements for the Lease's effectiveness and the relationship between the Lease and any potential termination of the lease agreement with Last Minute Transactions, Inc. ("**LMT**") executed on December 22, 2015, for the same Premises.

1. Conditions Precedent to Lease Effectiveness: The parties agrees that irrespective of the Lease being signed by the parties, it shall not be effective or binding on either Party until the following both conditions are met:

a. Landlord's Security Satisfaction: The Landlord's receipt of security from the Tenant in an amount determined by the Lease or agreed to otherwise in writing by the Landlord that is satisfactory to the Landlord in its sole and absolute discretion. The failure of Tenant to deliver security to Landlord as contemplated by this subsection 1(a) shall not be considered a breach of the Lease and no penalties or fees shall be imposed onto Tenant by Landlord. Landlord cannot waive the security condition under this subsection 1(a) without written consent from Tenant; and

b. Termination Agreement with LMT: The Lease shall become effective and binding upon the Landlord reaching an agreement with Last Minute Transactions, Inc. ("**LMT**") to fully terminate the lease agreement executed between the Landlord and LMT on December 22, 2015, for the same Premises (the "**Termination Agreement**"). The execution of such Termination Agreement shall be determined by the Landlord is at its sole and absolute discretion, and the Tenant acknowledges that no obligation is owed by the Landlord to the Tenant to terminate the lease agreement with LMT. The Parties agree and acknowledge the Lease, as supplemented by this Rider, shall not be considered a promise or commitment by the Landlord, and Landlord owes no duty to the Tenant, to terminate the lease agreement with LMT. The Tenant acknowledges and agrees that the Lease's effectiveness and binding nature are contingent upon the Landlord's independent and discretionary decisions regarding the Termination Agreement with LMT.

2. Confidentiality: The Tenant agrees to maintain strict confidentiality regarding the terms and existence of the Lease and this Rider. The Tenant shall only share information about the



Lease with New York States's Office of Cannabis Management and no other parties without the Landlord's prior written consent. In the event of any breach of this confidentiality section by the Tenant, resulting in damage to the Landlord, the Tenant shall indemnify the Landlord for all incurred damages. The Tenant's indemnification obligation encompasses all losses, costs, expenses, and liabilities suffered by the Landlord as a direct consequence of such breach.

3. Conflict Resolution: In the event of a conflict between the terms of the Lease and the terms of this Rider, the provisions of this Rider shall control and prevail.

4. Entire Agreement: This Rider, along with the Lease Agreement, constitutes the entire agreement between the Parties with respect to the subject matter herein and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written.

5. Governing Law: This Rider shall be governed by and construed in accordance with the laws of the state of New York.

IN WITNESS WHEREOF, the Parties hereto have executed this Rider as of the date first above written.

**[SIGNATURE PAGE TO FOLLOW]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first hereinabove written.

**LANDLORD:**

**CHETRIT 1412 LLC, 1412 BH DE LLC,  
and 1412-1416 RSVP DE LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**TENANT:**

**QUBE USA LLC**

A handwritten signature in black ink, appearing to be 'GTV' or similar, written over a horizontal line.

By: \_\_\_\_\_

Name: George Vlamis

Title: COO