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**Beach Concession Commercial Lease**

City of Long Beach,

Landlord

and

Skudin Surf, Inc.

Tenant

Premises: 1 Riverside Boulevard

Date: January 25, 2019

## Commercial Lease

Lease dated January 25, 2019, between the City of Long Beach, a New York State Municipal Corporation ("Landlord"), and Skudin Surf, Inc., a New York State Domestic Business Corporation ("Tenant").

### **Article 1. Basic Terms and Definitions**

**Section 1.1** Additional Rent. All sums, other than the Fixed Rent, payable by Tenant to Landlord under this lease, including the payment of deficiencies and increases in the Security, if any.

**Section 1.2** Building. The building and improvements located at 1 Riverside Boulevard, Long Beach, New York.

**Section 1.3** Commencement Date. January 1, 2019, subject to the provisions of Section 2.6.

**Section 1.4** Expiration Date. The date that is six years following the last day of the calendar month in which the Commencement Date occurs.

**Section 1.5** Fixed Rent. The Fixed Rent is shown on Exhibit A to this lease.

**Section 1.6** Fixed Rent Commencement Date. The date that is the Commencement Date.

**Section 1.7** Guarantor. Cliff Skudin and Will Skudin. If there is more than one person or entity comprising Guarantor, the liability of all persons and entities comprising Guarantor shall be joint and several.

**Section 1.8** Notice Address.

(a) Landlord. Corporation Counsel, 1 West Chester Street, Long Beach, New York 11561.

(b) Tenant. Skudin Surf, Inc., Attn: Cliff Skudin, 218 East Park Avenue, #552, Long Beach, New York

**Section 1.9** Permitted Use. For the operation of a Beach Concession that provides a surf center use and any other uses attendant to same or any uses consented to by the Landlord in writing, and for no other purpose.

**Section 1.10** Premises. The property, including improvements thereon, located at 1 Riverside Boulevard, Long Beach, New York 11561.

**Section 1.11** Real Property. The Building and the land on which it is located.

**Section 1.12** Rent. The Fixed Rent and all Additional Rent.

**Section 1.13 Security.** \$3,666.66, subject to increase as provided in this Section. The amount of the Security shall be increased each time the monthly payments of Fixed Rent increase so that Landlord shall at all times have and maintain no less than two (2) full months Fixed Rent as security, subject to further increase as provided in Article 20.

**Section 1.14 Term.** The period commencing on the Commencement Date and ending on the Expiration Date, subject to earlier termination or extension of this lease pursuant to the terms hereof.

**Section 1.15 Certain Definitions.** Any reference in this lease to (a) “legal action”, includes any suit, proceeding or other legal, arbitration or administrative process, and any appellate proceedings in connection therewith, (b) “person” includes any individual or entity, (c) “this lease” includes the Rules and the other Exhibits to this lease, and (d) “including” means “including without limitation”.

## **Article 2. Demise; Rent**

**Section 2.1** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises, for the Term, at the Rent and on the other terms of this lease.

**Section 2.2** Tenant shall pay Landlord the Rent, without notice, abatement, deduction or offset (except as expressly provided in this lease), in lawful money of the United States of America, by Tenant’s check or another method approved by Landlord, at Landlord’s Notice Address or another address Landlord designates, and as provided in this lease. The Fixed Rent shall be paid in equal monthly installments, in advance, on the first day of each calendar month during the Term, except that on the signing and delivery of this lease by Tenant, Tenant shall pay Landlord one full monthly installment of the Fixed Rent, to be applied to the first full monthly installment of the Fixed Rent due under this lease. Rent shall be pro-rated for any partial month according to the number of days in the month occurring during the Term. Landlord’s delay in rendering, or failure to render, any statement required to be rendered by Landlord for any Rent for any period shall not waive Landlord’s right to render a statement or to collect that Rent for that or any subsequent period. The rendering of an incorrect statement shall not waive Landlord’s right to render a corrected statement for the period covered by the incorrect statement and collect the correct amount of the Rent, which Tenant shall pay within thirty (30) days after its receipt of the corrected statement.

**Section 2.3** If a Fixed Rent Commencement Date is specified in Article 1 of this lease: (a) Tenant is not required to pay Fixed Rent until the Fixed Rent Commencement Date provided Tenant does not default in performing its obligations under this lease beyond any applicable cure period; and (b) if the Fixed Rent Commencement Date is not the first day of a month, the Fixed Rent for the month in which the Fixed Rent Commencement Date occurs shall be apportioned according to the number of days in that month and shall be due and payable when invoiced.

**Section 2.4** Unless otherwise specified in this lease, all Additional Rent shall be paid by Tenant within thirty (30) days after Tenant is billed therefor.

**Section 2.5** Except as otherwise specifically provided in this lease, Landlord’s calculation, determination, or estimate of any Fixed Rent adjustment, any Additional Rent, any Additional Rent adjustment, or any refund (if this lease provides for one) (a “Determination”)

shall bind Tenant unless: (a) Tenant gives Landlord Notice of Tenant's objection (with all reasonable grounds for such objection) within thirty (30) calendar days after receiving Landlord's first invoice based on such Determination, and (b) Tenant timely pays the invoiced amount (without prejudice to Tenant's right to object as provided in this Section).

**Section 2.6** If for any reason Landlord is unable to deliver vacant possession of the Premises with Landlord's Work, if any, substantially complete on or before January 1, 2019, this lease shall not be void or voidable nor shall Landlord be liable to Tenant therefor, monetarily or otherwise, but the Commencement Date shall be delayed until the date on which Landlord delivers vacant possession of the Premises to Tenant with Landlord's Work, if any, substantially completed. This Section constitutes an express provision to the contrary pursuant to Section 223-a of the New York Real Property Law (or any similar Laws, hereinafter defined), which Landlord and Tenant agree is inapplicable to this lease (and Tenant hereby waives any right to damages or to rescind this lease which Tenant might otherwise have thereunder).

**Section 2.7** Landlord and Tenant shall execute an agreement setting forth the Commencement Date, the Fixed Rent Commencement Date and the Expiration Date in the form attached hereto as Exhibit D.

**Section 2.8** Notwithstanding anything to the contrary in this lease or in any exhibit or diagram attached to it, no vault or vault space or other area outside the boundary of the Real Property is included in the Premises. If Tenant is permitted to use or occupy any such vault, space or other area, it is under a revocable license, and if such license is revoked or the size of such vault, space or area is reduced, such revocation or reduction shall not be deemed to be an actual or constructive eviction, and shall not entitle Tenant to any abatement or reduction of Rent, or relieve Tenant from any of its obligations under this lease, or impose any liability on Landlord. Tenant shall pay, as Additional Rent, all fees, taxes and charges imposed by any Authority (hereinafter defined) for any such vault, space or area used or occupied by Tenant.

### **Article 3. Use; Rules and Regulations; Tenant Operations; Signs**

**Section 3.1** Tenant shall use the Premises only for the Permitted Use, subject, however, to the provisions of this lease. Tenant, at its sole cost and expense, shall acquire any and all permits, licenses, certificates and approvals required by Laws for the Permitted Use and the conduct of Tenant's operations in the Premises. Tenant shall store in the Premises only the equipment necessary to operate a Beach Concession and merchandise that Tenant sells on a retail basis, subject to approval in writing from the Landlord, for the Permitted Use of the Premises, and shall use commercially reasonable efforts to minimize the areas used for storage and to maximize the area used for food and beverage sales associated therewith.

**Section 3.2** Tenant shall not use the Premises, or any part thereof, in violation of the certificate of occupancy, if any, for the Premises or the Building.

**Section 3.3** Tenant shall, and shall cause its employees, contractors, and invitees to, comply with the rules and regulations annexed hereto as Exhibit C 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.

**Section 3.4** The continuous operation of Tenant's business in the Premises is of material importance to Landlord because of the adverse impact on the Building of vacant and/or unutilized beach concession space. Tenant shall cause its business to be fully stocked and staffed, and open continuously for business at the Premises at least eight hours a day and at least seven days a week excluding days observed as holidays by the Federal government, during the Ocean Beach Park season. In no event shall Tenant operate its business between the hours of 10:00pm and 5:00am. Notwithstanding the foregoing, Tenant may be temporarily closed for not more than thirty (30) consecutive days no more frequently than as necessary in order to refurbish Tenant's Work (hereinafter defined), and in connection with a transfer of the Premises to a permitted subtenant or assignee. Tenant shall not be deemed to have abandoned or vacated the Premises as a result of any closure contemplated by the preceding sentence.

**Section 3.5** Tenant shall, at its expense: (a) keep the inside and outside of all glass in the doors and windows of the Premises clean and keep all exterior store surfaces of the Premises clean; (b) replace promptly any cracked or broken glass of the Premises with glass of like color, grade, and quality; (c) maintain the Premises in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests and shall arrange for extermination at regular intervals, not less frequently than monthly and more often as necessary; (d) keep any garbage, trash, rubbish or other refuse in vermin-proof containers within the interior of the Premises that are kept closed until removed; (e) deposit such garbage, trash, rubbish and refuse, on a daily basis, in receptacles provided or required by the carter engaged by Tenant pursuant to the terms of this lease; (f) remove from the Premises all rubbish resulting from and/or remaining after any fire or other similar casualty in the Premises; (g) keep all mechanical apparatus and equipment free of vibration and noise which may be transmitted beyond the Premises; (h) keep in the Premises and maintain in good working order one or more dry chemical fire extinguishers; (i) conduct its business at the Premises in a dignified manner in accordance with high standards of tennis center operation; and, (j) prevent any odors or any noise from transmitting beyond the Premises.

**Section 3.6** Tenant shall not (a) place or maintain any merchandise, show cases, tables for service, trash, refuse or other items in any vestibule or entry of the Premises, or on the walkways, sidewalks or elsewhere outside the Premises; (b) obstruct, or permit its employees, contractors, customers or invitees to obstruct, any driveway, walkway, sidewalk, parking area, or other Common Areas (hereinafter defined); (c) use or permit the use of any advertising medium objectionable to Landlord (such as, without limitation, loudspeakers, phonographs, public address systems, sound amplifiers, reception of radio or television broadcasts within the Building) which is in any manner audible or visible outside of the Premises; (d) permit undue accumulations of or burn garbage, trash, rubbish or other refuse within or without the Premises; (e) cause or permit odors or fumes to emanate from the Premises; (f) solicit business in any Common Areas, including without limitation through distribution of handbills or other advertising matter in any Common Areas or the display of any merchandise in the Common Areas; (g) receive or ship articles of any kind outside the designated loading areas, if any, for the Premises; (h) conduct or permit to be conducted any auction, fire sale (except to liquidate inventory in response to an actual fire and only if such sale is not conducted for more than forty-five (45) days), going out of business sale (except, one time only, to liquidate inventory at the end of the term of this lease and only if such sale is not conducted for more than

forty-five (45) days), bankruptcy sale (unless directed by court order), or other similar type sale in or connected with the Premises (but this provision is not intended to limit Tenant's freedom in setting its own selling prices); (i) use the Premises for any activity that is not generally considered appropriate for retail and/or surf center business conducted in accordance with good and generally accepted standards of operation; (j) use the Premises for any hazardous activity or in such manner as to constitute a nuisance of any kind (public or private); (k) cause waste; (l) do anything which, in Landlord's reasonable judgment, disturbs other occupants of the Building; or (m) permit its employees, invitees or deliverymen to loiter immediately outside the Premises or the Building or within the Common Areas or to park cars in the Common Areas with "For Sale" signs (or signs of similar import) on them.

**Section 3.7** Tenant acknowledges that Landlord intends the Beach Concession at the Premises to be operated in a manner that does not offend the community that it serves. Accordingly, Tenant shall not use the Premises for any immoral or disreputable use or activity or for any use that is objectionable to the community in which the Premises are located; and Tenant shall not sell, distribute, display, advertise or offer for sale at the Premises any item or service which, in Landlord's good faith judgment, may tend to injure or detract from the image of the Building within such community or that results in any picketing or protests. Without limiting the generality of the foregoing, Tenant shall not sell, distribute, display or offer for sale (a) any drug paraphernalia, (b) any pornographic, lewd, suggestive, or "adult" newspaper, book, magazine, film, picture, recording, representation or merchandise of any kind, (c) any counterfeit goods or (d) any gun(s).

**Section 3.8** The term "Sign" includes all signs, designs, monuments, logos, banners, projected images, awnings, canopies, pennants, decals, advertisements, pictures, notices, lettering, numerals, graphics, and decorations. No Sign shall be exhibited, installed, inscribed, painted or affixed, without the prior consent of Landlord, on any part of the outside of the Building or on the windows or doors of the Premises; except that Landlord's consent shall not be required for any Sign placed inside the windows or doors of the Premises if such Signs are attractive and professionally produced and do not violate any other provisions of this lease. Notwithstanding the foregoing, no neon Signs or blinking or flashing Signs are permitted. Unless otherwise expressly permitted, Tenant may not install Signs advertising a fire sale, liquidation sale, distress sale, foreclosure sale, receiver's or sheriff's sale, going out of business sale, lost lease sale, or Signs of similar import. Tenant shall, at its own expense, obtain all required licenses and permits for any Signs installed by Tenant, and renew them as required by applicable Laws. All Sign(s) shall be installed and removed in a good and workerlike manner, without damaging the Real Property, and in compliance with all applicable Laws and the applicable provisions of this lease. Prior to installing any permitted Sign, Tenant shall deliver to Landlord any permits or approvals required by applicable Laws in connection with such installation. Tenant shall maintain any permitted Signs in good, clean, neat and safe condition, and at the expiration or sooner termination of this lease, Tenant shall cause such Signs to be removed and cause the cancellation of any issued licenses or permits. Tenant shall not change or alter any Sign approved by Landlord in any respect whatsoever, without first obtaining Landlord's prior consent to such change or alteration. Landlord may remove any Sign(s) installed or maintained in violation of this Article, and Tenant shall reimburse Landlord for all costs incurred by Landlord in so removing any such Sign promptly after being billed therefor. In addition, Landlord may, from time to time, temporarily remove any Sign in connection with any repairs, improvements, alterations, additions or replacements being made to the Real Property.

#### **Article 4. Condition of the Premises; Landlord's Work**

**Section 4.1** Tenant has examined the Premises and, subject to Landlord performing Landlord's Work, if any, (a) Tenant accepts possession of the Premises in its "AS IS" condition on the date of this lease, subject to normal wear and tear and the removal of substantially all of the existing occupant's personal property, if any, and (b) Landlord has no obligation to perform any work, supply any materials, incur any expenses or make any installations to prepare the Premises for Tenant's occupancy.

**Section 4.2** If any Landlord's Work is specified in Article 1 and the Exhibit referred to therein, Landlord shall, at its expense, perform Landlord's Work, in accordance with, and subject to, the applicable provisions of this lease. Tenant shall not impede, delay, obstruct or interfere with, Landlord's performance of any and all of Landlord's Work.

#### **Article 5. Tenant's Work**

**Section 5.1** Except as may be expressly provided in this lease, Tenant shall not replace any fixtures in the Premises or make any changes, improvements, alterations or additions (collectively, "Tenant's Work"), to the Premises, the Real Property, the Building systems, or any part thereof, without Landlord's prior consent at the Landlord's sole discretion provided that Landlord's consent shall not be unreasonably withheld or delayed if Tenant's Work (a) is nonstructural, and (b) does not (i) affect any part of the Real Property outside the Premises (including the Building roof) or the exterior of the Premises, (ii) affect any structural element of the Building, (iii) adversely affect any Building system, or (iv) require an amendment of the certificate of occupancy for the Premises or the Building, (c) is not visible outside the Premises and (d) is performed only by contractors and subcontractors first approved by Landlord (which approval shall not be unreasonably withheld or delayed). Landlord's consent shall not be required with respect to such of Tenant's Work as are cosmetic alterations (such as painting the interior of the Premises, carpeting, and installation of shelving and display cases) inside the Premises ("Cosmetic Alterations"), provided Tenant complies with the other applicable provisions of this lease. Tenant's Work shall be performed, at Tenant's expense, with diligence when started so as to promptly complete it in a good and worker-like manner using new materials of first class quality and in compliance with this lease, all Laws and Tenant's Plans (as defined in Section 5.2) as approved by Landlord. As part of Tenant's Work, Tenant shall soundproof the Premises and install appropriate ventilation if required so that Tenant's use of the Premises shall not result in noise and/or odors being transmitted outside the Premises. Tenant's Work shall be fully paid for by Tenant when payment is due and shall not be financed with any conditional sales or title retention agreements or by the granting of any security interests, liens, encumbrances or financing statements. Tenant's Work shall be deemed, upon installation, to be improvements and betterments that become the property of Landlord at installation, and shall remain upon and be surrendered with the Premises, at the expiration of the Term (or the sooner termination of this lease in accordance with its provisions) unless Landlord notifies Tenant in accordance with the provisions of this Article that Landlord relinquishes its rights thereto, in which case Tenant shall be obligated to remove such Tenant's Work.

**Section 5.2** Prior to commencing any Tenant's Work other than purely Cosmetic Alterations, Tenant shall, at Tenant's expense, deliver to Landlord detailed plans and specifications, for Tenant's Work, in form reasonably satisfactory to Landlord, prepared, certified, signed and sealed by an architect or engineer licensed to practice in the State of New

York, and suitable for filing with the applicable Authority, if filing is required by applicable Laws (such plans and specifications together with revisions thereto, collectively, "Tenant's Plans"), and obtain Landlord's approval of Tenant's Plans. Landlord's approval of Tenant's Plans shall not be unreasonably withheld or delayed to the extent Landlord's consent to Tenant's Work shown on Tenant's Plans is not to be unreasonably withheld or delayed pursuant to this Article. Before commencing Tenant's Work, Tenant shall (a) obtain (and deliver to Landlord copies of) all required permits and authorizations of any Authority for such work, and (b) deliver to Landlord such security as shall be reasonably satisfactory to Landlord, and (c) deliver to Landlord certificates (in form reasonably acceptable to Landlord) evidencing the following insurance coverages from each contractor and subcontractor: (i) worker's compensation insurance covering all persons to be employed in the performance of any Tenant's Work, and (ii) commercial general liability insurance on a primary and non-contributory basis with a limit of liability approved by Landlord, and with contractual liability coverage, naming Landlord, Landlord's managing agent, if any, any Superior Landlord (hereinafter defined) and any Mortgagee (hereinafter defined) as additional insureds, and (iii) comprehensive automobile liability insurance (covering all owned, non-owned and/or hired motor vehicles to be used in connection with Tenant's Work) with a limit of liability approved by Landlord and (iv) builders risk insurance for the full value of the Tenant's Work performed by such contractor and subcontractor.

**Section 5.3** Tenant shall reimburse Landlord, within fifteen (15) days of being billed therefore, for any reasonable out-of-pocket expenses incurred by Landlord in connection with Landlord's review of Tenant's Plans and inspection of Tenant's Work, including outside experts retained by Landlord for that purpose. Landlord's consent to Tenant's Work and Landlord's approval of Tenant's Plans shall be without liability to or recourse against Landlord, shall not release Tenant from its obligations to comply strictly with the provisions of this lease, and shall not constitute any representation or warranty by Landlord regarding the adequacy for any purpose of Tenant's Work or Tenant's Plans or their compliance with Laws, and shall not relieve Tenant from obtaining Landlord's express written approval to revisions thereto. Promptly after substantial completion of Tenant's Work, but in no event later than six (6) months after the commencement of such work, Tenant shall, at Tenant's expense, obtain and deliver to Landlord copies of all sign-offs, letters of completion, approvals and certificates of any Authority required upon the completion of Tenant's Work (including any required amendments to the certificate of occupancy for the Premises and/or Building) and "as-built" plans and specifications for Tenant's Work prepared as reasonably required by Landlord.

**Section 5.4** If, in connection with Tenant's Work or any other act or omission of Tenant or Tenant's employees, agents or contractors, a mechanic's lien, financing statement or other lien or violation of any Laws, is filed against Landlord or all or any part of the Real Property, Tenant shall, at Tenant's expense, have such lien removed by bonding or otherwise within thirty (30) days after Tenant receives notice of the filing.

**Section 5.5** All construction managers, contractors and subcontractors performing work for which a license is required by applicable Laws, shall be licensed by the appropriate Authorities and approved by Landlord, which approval shall not be unreasonably withheld or delayed. Landlord's approval of such construction managers, contractors and subcontractors shall be without liability to or recourse against Landlord, shall not release Tenant from its obligations to comply strictly with the provisions of this lease, shall not constitute any warranty by Landlord regarding the adequacy, professionalism, competence or experience of the



approved construction manager, contractor, or subcontractor, and shall not relieve Tenant from obtaining Landlord's express prior written approval if Tenant seeks to employ any other or additional construction manager, contractor or subcontractor. Promptly following substantial completion of Tenant's Work, but in no event later than six (6) months after the commencement of such work, Tenant shall furnish to Landlord lien waivers and releases, in form reasonably satisfactory to Landlord, from all construction managers, contractors, subcontractors, and materialmen furnishing work, services or materials in connection with Tenant's Work.

**Section 5.6** Tenant shall require all its contractors and their subcontractors to work in harmony with other laborers working or providing services at the Real Property, and will prohibit the employment of people whose employment causes other laborers at the Real Property to picket or strike. Immediately after notice from Landlord that Tenant's contractors, mechanics or laborers are interfering or causing conflict with other contractors, mechanics, laborers or Landlord's personnel or that the performance of Tenant's Work is causing a violation of any union contract affecting the Real Property, Tenant shall cause all its contractors, mechanics or laborers who are causing the interference or conflict to leave the Real Property and shall take such other action as may be reasonably necessary to resolve such interference or conflict.

**Section 5.7** At Tenant's request, Landlord shall join in any applications for any authorizations required from any Authority in connection with Tenant's Work to which Landlord has consented, and otherwise cooperate with Tenant in connection with Tenant's Work, but Landlord shall not be obligated to incur any expense or obligation in connection with any such applications or cooperation.

**Section 5.8** Tenant shall not place a load on any floor of the Premises exceeding the floor load per square foot which the floor was designed to carry and which is allowed by any Laws.

**Section 5.9** Tenant shall be liable for any damage caused to any part of the Building, including its fixtures and equipment, arising from, or as a result of, Tenant's Work and/or its installation and/or removal of its Signs. If Tenant performs with Landlord's approval any work on the roof of the Building (for example, in connection with repair, maintenance, or installation of any air conditioning system), Tenant shall use only a contractor approved by Landlord for such work and shall not do or cause anything to be done which would invalidate Landlord's then effective roof guaranty for the Building. Tenant shall also be responsible for promptly repairing (including any necessary replacement) any damage to the roof or Building caused by such work; provided that Landlord may, at its option, effect any such repair or replacement, in which event Tenant shall reimburse Landlord for all costs incurred by Landlord in connection therewith within fifteen (15) days after Tenant is billed therefor.

**Section 5.10** On or before the Expiration Date or sooner termination of this lease, if applicable, Tenant shall, at Tenant's expense, remove from the Building (a) all Tenant's Work which Landlord designates for removal in a notice given by Landlord to Tenant on or before the date which is thirty (30) days prior to the Expiration Date (or prior to the sooner termination of this lease, if applicable) and (b) Tenant's trade fixtures, equipment and personal property which are removable without material damage to the Premises or the Building ("Tenant's Property"). Tenant shall repair any damage to the Premises, and/or the Real Property, caused by the installation or removal of Tenant's Property, Signs or Tenant's Work. Except as expressly provided in this Section, Tenant's Work shall not be removed. Any Tenant's Property

or Tenant's Work that Tenant was required to remove and which is not removed by Tenant by the Expiration Date or sooner termination of this lease shall be deemed abandoned and may, at Landlord's option, be retained as Landlord's property or disposed of by Landlord at Tenant's expense.

## **Article 6. Tax Payments**

**Section 6.1** The term "Real Estate Taxes" (each, individually, a "Real Estate Tax") shall mean all taxes, assessments and special assessments, general or special, ordinary or extraordinary, foreseen or unforeseen, of any kind or nature whatsoever, including without limitation, municipal, school, county, open space taxes and business improvement and special improvement district assessments, levied, assessed or imposed at any time by any Authority upon or against the Real Property and/or any part thereof, and any rights or interests appurtenant thereto (hereinafter collectively referred to as the "taxable property"), including any taxes imposed on leasehold improvements. If, due to a future change in the method of taxation or in the taxing authority, a franchise, license, income, transit, profit or other tax, fee, or governmental imposition, however designated, shall be levied, assessed or imposed against Landlord, the taxable property (or any part thereof) or the rent or profit therefrom in lieu of, in addition to, or as a substitute for, all or any part of the Real Estate Taxes, then such franchise, license, income, transit, profit, or other tax, fee, or governmental imposition shall be deemed to be included within the definition of Real Estate Taxes for the purposes hereof. Real Estate Taxes shall be determined without reference to any abatement or exemption from or credit against Real Estate Taxes applicable to all or part of the taxable property. Notwithstanding the foregoing, Real Estate Taxes shall not include any general income tax, franchise tax, estate or gift tax that is of general application rather than imposed solely on owners of real property, or any mortgage, recording, stamp or transfer taxes payable in connection with the mortgaging, encumbrancing, transfer, sale or lease of all or part of the taxable property or of any beneficial interest in Landlord, or any portion thereof or interest therein.

**Section 6.2** The term "Tax Year" means each twelve (12) month period, whether fiscal or calendar, established by the applicable taxing Authority(ies) for the Real Estate Taxes imposed by such Authority.

**Section 6.3** In addition to the Tax Payments, Tenant shall pay any and all:  
(a) other taxes, charges or impositions assessed on this lease or the Rent (to the extent such tax, charge or imposition is imposed on owners, landlords or tenants of real estate as such, rather than on taxpayers generally) by any Authority; (b) taxes assessed against any leasehold interest or personal property of any kind that is owned by or placed in, on, or about the Premises by Tenant; and (c) taxes and charges assessed by any Authority for Tenant's connection to or use of utilities.

**Section 6.4** The Additional Rent payable by Tenant pursuant to this Article shall be paid by Tenant notwithstanding the fact that Tenant may be exempt, in whole or in part, from the payment of any Real Estate Taxes by reason of Tenant's diplomatic, charitable, or otherwise tax exempt status, or for any other reason whatsoever.

**Section 6.5** Only Landlord shall be eligible to institute tax reduction or other proceedings to reduce the assessed valuation of the taxable property. Landlord is under no obligation to institute such proceedings. If, after Tenant has paid a Tax Payment, Landlord shall receive a refund of any portion of the Real Estate Taxes paid with respect to the Tax Year for

which Tenant made such Tax Payment, Landlord shall promptly after receiving such refund pay Tenant its Proportionate Share of the net amount of such refund after deducting from such refund all expenses incurred by Landlord in obtaining such refund (including but not limited to reasonable attorneys' fees, expert's fees and disbursements incurred in connection with any application or proceeding). Alternatively, Landlord may, at Landlord's option, credit Tenant's Proportionate Share of such net refund against the next succeeding installment(s) of Rent coming due.

**Section 6.6** The expiration of this lease shall not relieve Tenant of the obligation to make Tax Payments on a pro rata basis for the portion(s) of the applicable Tax Years preceding such expiration.

#### **Article 7. Utilities; Services**

**Section 7.1** Landlord shall not be responsible for providing any utility service to the Premises nor for providing meters, submeters or other devices for the measurement of utilities supplied to the Premises, and Tenant shall arrange for the furnishing to the Premises of such utility services as it may require, as well as for the installation of all such meters, submeters or other devices. Tenant shall be solely responsible for and shall promptly pay, to Landlord or the utility company, as applicable, as and when the same become due and payable, all charges for water, sewer, electricity, gas, telephone, cable service, internet service, steam, and any other utility or other communication device used or consumed in the Premises and supplied by a public utility or public authority or any other person, firm, or entity supplying same. If Landlord has designated any person or persons to provide one or more utility services to the Real Property, Tenant shall use the designated person(s) to obtain the applicable utility services.

**Section 7.2** Tenant shall not overload the electrical system serving the Premises, and shall not at any time overburden or exceed the capacity of the mains, feeders, ducts, conduits, pipes, valves, or other facilities by which electric and other utilities are supplied to, distributed in or serve the Premises. If Tenant desires to install any equipment that shall require additional utility facilities, such installation shall be subject to Landlord's prior approval of Tenant's plans and specifications therefor. If such installation is approved by Landlord and if Landlord provides such additional facilities to accommodate Tenant's installation, Tenant agrees to pay Landlord, on demand, as Additional Rent, the cost for providing such additional utility facilities.

**Section 7.3** Landlord has no obligation to provide to Tenant or the Premises any services except as expressly set forth in this lease. Without limiting the foregoing, Landlord is not responsible for providing heat, electric, water, gas, air conditioning, steam, sewer service, cleaning service, trash collection, extermination, cable or internet service or ventilation to the Premises. Landlord does not represent or warrant that any utility or other service provided by Landlord, or any utility or other service used or to be used by Tenant at the Premises, (a) shall be adequate for Tenant's particular purposes or (b) shall be free from interruption or reduction.

**Section 7.4** If any utility or other service (a) becomes unavailable from any public utility company, public authority or any other person or entity supplying or distributing same (including Landlord), or (b) is interrupted by reason of Laws, the making of any repairs or improvements, or measures taken to secure the safety of the Real Property, or the safety and welfare of its tenants or occupants, or the public, or by reason of any cause beyond Landlord's

reasonable control, (i) Landlord shall not be liable to Tenant in damages or otherwise, (ii) Tenant may not abate Rent or be relieved of any of its obligations under this lease, and (iii) such lack of availability or interruption shall not constitute an actual or constructive eviction, or a disturbance of Tenant's use of the Premises.

**Section 7.5** Tenant shall enter into, and maintain at all times during the Term, a contract for the daily removal of Tenant's trash from the Building, with the carter selected by Tenant and approved by Landlord, to provide trash removal services to the Building, subject to any applicable Rules.

## **Article 8. Common Areas**

**Section 8.1** The "Common Areas" are those areas and facilities which may be furnished by Landlord (or others on behalf of Landlord) in or near the Building for the non-exclusive common use of tenants and other occupants of the Building, their employees, customers, and invitees, including parking areas, access areas (other than public streets), driveways, loading docks and loading areas, sidewalks, lighting facilities, and other similar common areas, facilities or improvements.

**Section 8.2** Landlord will operate and maintain, or shall cause to be operated and maintained, the Common Areas in a manner deemed by Landlord to be reasonable and appropriate. Landlord shall have the right (i) to establish, modify and enforce reasonable rules and regulations with respect to the Common Areas; (ii) to enter into, modify and terminate any easement and other agreements pertaining to the use and maintenance of the Common Areas; (iii) to close all or any portion of the Common Areas to such extent as may, in the opinion of Landlord, be necessary to prevent a dedication thereof or the accrual of any rights to any person or to the public therein; (iv) to close temporarily any or all portions of the Common Areas; (v) to discourage non-customer parking; and (vi) to do and perform such other acts in and to said areas and improvements as Landlord shall determine to be advisable.

## **Article 9. Repairs and Maintenance**

**Section 9.1** Tenant shall, at Tenant's expense, make all structural repairs needed to the exterior walls, structural columns, structural roof, and structural floors that enclose the Premises (excluding all doors, door frames, storefronts, windows and glass); provided that Tenant gives Landlord notice of the necessity for such repairs.

**Section 9.2** If the Premises are sprinklered, Tenant shall be responsible, at Tenant's sole cost and expense, for maintaining, in good order and repair and in compliance with all Laws, those elements of the sprinkler system within the Premises, including the repair and replacement of the sprinkler heads and pipes. If the Premises are not sprinklered and a sprinkler system in the Premises is required under applicable Laws for Tenant's Permitted Use or manner of use of the Premises, or Tenant's Work requires the installation of a sprinkler system in the Premises, Tenant shall install such system as part of Tenant's Work, at Tenant's expense. Landlord shall not be responsible for maintenance, repairs or replacement of any element of the sprinkler system within the Premises.

**Section 9.3** Subject to Articles 12 13 and 14 and Section 10.1: Tenant shall make, at Tenant's sole expense, all repairs and replacements needed to maintain in good condition and order the Premises and all installations, equipment and facilities therein, and all

repairs and replacements needed to any plumbing, water, waste, heating, ventilating and air conditioning units (“HVAC Units”), and electric conduits, lines and equipment located outside the Premises that serve only the Premises. Without limiting the foregoing, but subject to Articles 12 13 and 14 and Section 10.1, Tenant shall make all repairs and replacements required with respect to the HVAC Units, electrical and plumbing systems within the Premises and any rooftop or exterior air conditioning equipment or HVAC Units serving only the Premises, any plumbing fixtures within the Premises (including sinks and toilets), and the plumbing lines, valves, and pipes connected to or running from such fixtures to the point at which such lines, valves and pipes connect with the Building’s common plumbing lines, including such plumbing lines or ducts connecting any roof-top or exterior equipment or HVAC Units or other utility or service to the Premises. Tenant shall also make, at Tenant’s expense, such repairs and replacements as are needed to keep the sidewalks and walkways abutting the Premises in good condition and order, and shall keep such sidewalks and walkways [and areas behind the Building to which Tenant has access] free of rubbish, snow, ice and other obstructions, and otherwise in a safe and clean condition. All such repairs and replacements shall be made in compliance with the provisions of this lease (including Article 5).

**Section 9.4** Tenant shall enter into and maintain, at Tenant’s expense, a service, maintenance and repair contract, in scope reasonably satisfactory to Landlord, with a reputable service company, reasonably satisfactory to Landlord, for the HVAC Units serving the Premises. Tenant shall, from time to time, furnish Landlord with a copy of such service contract, within ten (10) days after request. If Tenant fails to obtain or maintain such service contract or to deliver to Landlord a copy of such contract upon request, Landlord may, at its option, enter into a service contract providing for the maintenance, repair, and servicing of the HVAC Units and bill Tenant for the charges due under such contract. Any such charges shall be paid by Tenant within fifteen (15) days after Landlord delivers a bill therefor to Tenant, and such charges shall be deemed additional rent.

**Section 9.5** Tenant shall reimburse Landlord, as Additional Rent, within thirty (30) days of being billed therefor, for all damage to the Building resulting from any act or omission of Tenant, Tenant’s subtenants, or any of Tenant’s or subtenants’ employees, agents, employees, invitees or contractors.

**Section 9.6** Landlord shall have no liability to Tenant, the Rent shall not be abated, and Tenant shall not be deemed actually or constructively evicted by reason of Landlord performing any repairs or other work to all or any portion of the Premises and/or the Real Property. Landlord shall endeavor to perform such repairs or other work in a manner that reasonably minimizes interference with the conduct of Tenant’s business in the Premises and damage to the Premises, Tenant’s Work and Tenant’s Property, but Landlord is not required to employ overtime labor or incur additional expenses.

#### **Article 10. Laws; Hazardous Substances**

**Section 10.1** Tenant shall, at Tenant’s expense, comply with all present and future laws, rules, regulations, orders, ordinances, judgments, requirements and (if Landlord adopts same) recommendations (collectively, “Laws”) of the United States of America, the State of New York, the city, town, village, municipality and/or county in which the Premises are located, or any present or future subdivision or instrumentality thereof, any court, agency, department, commission, board, bureau, and any fire insurance rating body (collectively,

“Authority” or “Authorities”) applicable to Tenant’s occupancy of the Premises, Tenant’s Work, Tenant’s Property or the Premises. If, however, compliance requires structural work to the Premises, Tenant shall be required to effect such compliance, at Tenant’s expense, only if the obligation to comply arises from Tenant’s Work, Tenant’s Property, Tenant’s manner of using the Premises, or any acts or negligence of Tenant, its employees, contractors, agents, or invitees. Tenant shall promptly deliver to Landlord a copy of any notice, communication or other materials relating to the Premises, the Real Property (including the Building systems), Tenant’s Property, Tenant’s Work and/or Hazardous Substances (hereinafter defined) received by Tenant from, or sent by Tenant to, any Authority. Tenant shall have an obligation to remediate any Hazardous Substances pursuant to this Section if the need for such remediation arises from Tenant’s Work, Tenant’s specific manner of use of the Premises, or the actions or omissions to act of Tenant, subtenants, and/or any of their employees, contractors, agents or invitees.

**Section 10.2** Tenant shall not, and shall not permit any of its subtenants, employees, contractors, agents, or invitees, to introduce into the Premises or the Real Property, use in the Premises or the Real Property or cause to be released from the Premises or the Real Property any Hazardous Substances. Notwithstanding the preceding sentence, Tenant may use cleaning and office products in accordance with their customary use, provided that Tenant complies with all applicable Laws in connection therewith, and further provided that in no event may Tenant release or discharge such cleaning and/or office products into the plumbing, drainage or sewer system in excessive amounts. If Tenant breaches its obligations hereunder, Tenant, at Tenant’s expense, shall immediately take all remedial action necessary to clean up any release, spill or discharge of Hazardous Substances. “Hazardous Substances” mean any flammable or otherwise hazardous material, any explosive and/or radioactive material, hazardous waste, hazardous or toxic substance or related material, asbestos and any material containing asbestos, petroleum and any petroleum derivative, pollutants, contaminants and any other substance or material which is defined as, determined to be, or identified as, a hazardous or toxic material or substance pursuant to any applicable Laws.

**Section 10.3** If Tenant shall be obligated to remediate any Hazardous Substances, it shall remove and dispose of any such Hazardous Substances in compliance with all applicable Laws. Tenant’s remediation plan shall be subject to Landlord’s approval and Tenant shall keep Landlord fully apprised of the progress of Tenant’s remediation efforts.

**Section 10.4** Tenant shall indemnify, defend and hold harmless Landlord, its managing agent, its Superior Landlord, if any, its Mortgagee, if any, and their respective members, shareholders, partners, directors, managers, officers, employees, and agents, from and against all liabilities, damages, losses, fines, costs and expenses (including reasonable attorneys’ fees and disbursements) resulting or arising from, or incurred in connection with any violation by Tenant of its obligations with respect to Hazardous Substances under this lease or otherwise under any applicable Laws.

**Section 10.5** If Tenant conducts any auction, fire sale, going out of business sale, bankruptcy sale, or similar type of sale at the Premises in accordance with the provisions of this lease, Tenant shall obtain, and deliver to Landlord, prior to commencement of such auction or sale, any necessary permits, licenses and/or approvals required by any applicable Laws in connection therewith.

**Section 10.6** Tenant shall, at its own cost and expense, secure and maintain throughout the Term, all necessary licenses and permits from such Authorities as shall be necessary for, or incidental to, the conduct of its business in the Premises and shall comply with all Laws relating to the operation of its business. Landlord does not covenant, warrant or make any representation that any Authority license or permit that may be required in connection with the operation of Tenant's business will be granted, or if granted, will be continued in effect or renewed, and any failure to obtain, maintain, or renew such license or permit, or its revocation after issuance, shall not affect Tenant's obligations under this lease.

**Section 10.7** Subject to the provisions of this Section, provided that Tenant is not in Default, Tenant, at Tenant's expense, may contest by appropriate proceedings prosecuted diligently and in good faith the legality or applicability of any Laws affecting the Premises for which Tenant is responsible hereunder (any such proceedings instituted by Tenant, a "Compliance Challenge"), provided however, that Tenant's delay in compliance shall not cause (a) Landlord or Tenant to be subject to imprisonment or prosecution for a crime, (b) the Real Property or any part thereof to be condemned or vacated, (c) the certificate of occupancy for the Building or any part thereof to be suspended or cancelled, and/or (d) the use and enjoyment of its space by another lessee or licensee at the Real Property to be adversely affected. Tenant must give Landlord at least ten (10) business days notice before Tenant initiates a Compliance Challenge, and shall not initiate it if Landlord reasonably objects. At Landlord's request, prior to initiating a Compliance Challenge, Tenant shall furnish Landlord with either cash or a bond from a surety company reasonably satisfactory to Landlord in form and substance, in an amount equal to 120% of the sum, as reasonably estimated by Landlord, of (i) the cost of such compliance and (ii) the amount of any and all penalties and fines that may accrue by reason of non-compliance and (iii) the amount of any Landlord liability to third parties. Tenant shall keep Landlord informed regularly as to the status of any Compliance Challenge.

### **Article 11. Subordination; Estoppel Certificates**

**Section 11.1** This lease, and the rights of Tenant under this lease, are subject and subordinate in all respects to all present and future underlying leases of the Real Property, including all modifications, extensions and replacements thereof ("Superior Leases") and all present and future mortgages on any Superior Lease or on the Building and/or the Real Property including all increases, renewals, modifications, extensions, supplements, consolidations and replacements thereof ("Mortgages"), and all advances under any Mortgage. This Section is self-operative and no further instrument of subordination is required. Tenant shall, within fifteen (15) days following receipt of Landlord's request, sign, acknowledge and deliver any instrument that Landlord, any landlord under a Superior Lease ("Superior Landlord") or any mortgagee under a Mortgage ("Mortgagee") may request to evidence such subordination.

**Section 11.2** If any Mortgagee or any Superior Landlord or any successor or assignee thereof or any purchaser at a foreclosure sale or by deed in lieu of foreclosure succeeds to the rights of Landlord under this lease, then at the request of same, Tenant shall attorn to such Mortgagee, Superior Landlord, successor, assignee or purchaser as Tenant's landlord under this lease. Tenant shall, within fifteen (15) days following request by such Mortgagee, Superior Landlord, successor or assignee, sign, acknowledge and deliver any instrument that such Mortgagee, Superior Landlord, successor, assignee, or purchaser requests to evidence the attornment.

**Section 11.3** If any Mortgagee or Superior Landlord requires any modifications of this lease, Tenant shall, within fifteen (15) days following Tenant's receipt of a request, sign, acknowledge and deliver to Landlord instruments in form and substance reasonably requested by Landlord providing for those modifications (provided they do not materially adversely affect Tenant).

**Section 11.4** Landlord and Tenant shall, at any time and from time to time, within fifteen (15) days following its receipt of a request from the other party, sign, acknowledge and deliver to the requesting party or any other person designated by that party a certification (a) that this lease is in full force and effect and has not been modified (or, if modified, setting forth all modifications), (b) stating the date to which the Rent has been paid, (c) stating whether or not, to its actual knowledge, the other party is in default of its obligations under this lease and if so, describing the default, including any event that has occurred which, with the serving of notice or the passage of time, or both, would give rise to a default, and (d) stating to its actual knowledge, any other factual matters reasonably requested by the other party or any person designated by the other party. Any certification delivered pursuant to this Section may be relied upon by the third party for whom the certification is requested but shall not, as between Landlord and Tenant, affect their respective rights

## **Article 12. Insurance**

**Section 12.1** Tenant shall, at Tenant's expense, maintain at all times during the Term and at all times when Tenant is in possession of the Premises such insurance as shall be required by Landlord, including: (a) commercial general liability insurance (or successor form of insurance designated by Landlord) in respect of the Premises, on an occurrence basis, with a combined single limit (annually and per occurrence and location) of not less than three million (\$3,000,000) dollars naming as additional insureds Landlord and any other person designated by Landlord, (b) property insurance in an amount equal to one hundred (100%) percent of full replacement value (with a deductible not exceeding five thousand (\$5,000) dollars) covering Tenant's Work (including improvements and betterments, whether or not the improvements and betterments are restored), Tenant's Property and the property of third parties located in the Premises, against fire and other risks included in the standard New York form of property insurance, including business interruption insurance covering a period of twelve (12) months, (c) workers' compensation and employer's liability insurance providing statutory benefits for Tenant's employees at the Premises (d) such other insurance as Landlord may reasonably require. Such liability insurance policy shall include contractual liability, fire and legal liability coverage. Landlord shall have the right at any time and from time to time, but not more frequently than once every two (2) years, to require Tenant to increase the amount of the commercial general liability insurance required to be maintained by Tenant under this lease provided the amount shall not exceed the amount then generally required of tenants entering into leases for similar Permitted Uses in similar buildings in the general vicinity of the Real Property.

**Section 12.2** Tenant shall deliver to Landlord and each additional insured (a) certificates in form reasonably acceptable to Landlord evidencing the insurance required by this lease to be maintained by Tenant before the Commencement Date (and with respect to any insurance required pursuant to Article 5, before the commencement of any Tenant's Work), and at least fifteen (15) days before the expiration of any such insurance, and (b) upon request, a copy of each insurance policy. All required insurance (including insurance required pursuant to Article 5) shall be primary and non-contributory (as shown on endorsement), issued by



companies satisfactory to Landlord and contain a provision whereby it cannot be canceled unless Landlord and any additional insureds are given at least thirty (30) days' prior written notice of the cancellation. Tenant may carry any required insurance under a blanket policy if that policy complies with the requirements of this lease and provides that Tenant's insurance for the Premises is on a "per location basis".

**Section 12.3** Tenant shall not do or permit to be done any act which shall invalidate or be in conflict with Landlord's insurance policies, or increase the rates of insurance applicable to the Real Property. If, as the result of a Default, Tenant's occupancy of the Premises (whether or not such occupancy is a Permitted Use), and/or specific hazards attributable to Tenant's occupancy, the insurance rates for the Real Property or Building increase, Tenant shall reimburse Landlord for one hundred (100%) percent of such increase in premium(s), within fifteen (15) days after Tenant is billed therefor.

**Section 12.4** Compliance with this section is of material importance and any non-compliance with this Section 12 and/or any interruption in insurance coverage shall be construed as a non-curable default pursuant to Article 17 of this lease and shall require no type of notice from the Landlord to the Tenant and be sufficient cause for immediate eviction.

### **Article 13. Casualty**

**Section 13.1** If (a) the Premises are damaged by fire or other casualty, or (b) the Building (including any Building system) is damaged by fire or other casualty so that Tenant is deprived of reasonable access to the Premises or so that the Premises or any part of the Premises is unusable by Tenant for the reasonable conduct of Tenant's normal business in the Premises, Tenant shall give prompt notice to Landlord. Subject to the provisions of this Article (i) Landlord shall, at Tenant's expense, repair the damage to the Premises, excluding the damage to Tenant's Work or Tenant's Property and (ii) Tenant shall, at Tenant's expense, promptly remove Tenant's Property from the Premises to the extent required by Landlord in connection with Landlord's repair of the damage and shall promptly after Landlord's substantial completion of the repair to the Premises, commence to diligently repair Tenant's Work and Tenant's Property in order to resume its normal business in the Premises. Until the repairs to be performed by Landlord are substantially completed, the Rent shall be reduced in proportion to the area of the Premises to which Tenant shall not have reasonable access or which is unusable by Tenant for the reasonable conduct of Tenant's normal business in the Premises and which Tenant does not actually use.

**Section 13.2** If (a) the Premises are rendered wholly untenable, or (b) the Premises are damaged by any cause which is not covered by Landlord's insurance, or (c) the Premises are damaged in whole or in part during the last two (2) years of the Term, or (d) the cost of repairing any damage to the Building by fire or other casualty exceeds twenty-five percent (25%) of the replacement cost thereof, as reasonably estimated by a reputable contractor, architect or engineer selected by Landlord, Landlord shall have the right, by notice given to Tenant within sixty (60) days following the date of the damage, to terminate this lease. If this lease is terminated pursuant to this Section, the Term shall expire on the fifteenth (15th) day after the notice is given as fully and completely as if such date were the stated Expiration Date.

**Section 13.3** This Article constitutes an express agreement governing any damage to or destruction of the Premises or the Building by fire or other casualty, and Section

227 of the Real Property Law of the State of New York, and any other similar Laws shall have no application to a fire or other casualty.

#### **Article 14. Condemnation**

**Section 14.1** If as the result of a taking by condemnation or similar legal action of an Authority or a taking by an Authority effected in any other manner (a) all of the Premises, or so much thereof as renders the Premises wholly unusable by Tenant, is taken, (b) Tenant no longer has reasonable access to or use of the Premises, (c) all or substantially all of the Building is taken or (d) a portion of the Building is taken resulting in Landlord's determination to demolish the Building, or (e) the number of parking spaces in or serving the Real Property are reduced by such taking below the number of spaces required by any Laws and such reduction adversely impacts the use of the Premises, the Term shall expire on the date of the vesting of title as fully and completely as if such date were the stated Expiration Date. In the event of any such taking of all or any part of the Premises or the Real Property, Landlord shall be entitled to receive the entire award. Tenant shall have no claim against Landlord or any Authority for the value of the unexpired portion of the Term or Tenant's Work, and Tenant hereby assigns to Landlord all of its right in and to any such award. Tenant may, however, at Tenant's expense, make a separate claim to the appropriate Authority for the value of Tenant's Property and for moving expenses, provided such claim and award, if any, do not result in a reduction of the award which would otherwise be paid to Landlord. If a taking does not result in the termination of this lease (i) Landlord shall, at Landlord's expense, as soon as practicable, restore that part of the Premises or the Real Property not taken to the extent reasonably practicable, so that the Premises are usable, and (ii) from and after the date of the vesting of title, the Rent shall be reduced in the same proportion as the area of the Premises, if any, which was taken.

#### **Article 15. No Assignment and No Subletting**

**Section 15.1** Except as provided in this Article, Tenant shall not, without Landlord's prior consent provided at the Landlord's sole discretion, assign, encumber or otherwise transfer this lease or any interest in this lease, by operation of law or otherwise, or sublet or permit others to occupy all or any part of the Premises, or license concessions or lease departments in the Premises, and any assignment, encumbrance, transfer, sublet, occupancy agreement, license or department lease shall be void ab initio if not in accordance with this Article. The transfer or issuance (by one or more related or unrelated transactions) of ownership interests of Tenant, or any Guarantor, or any direct or indirect owner of Tenant, which results in 50 percent or more of the ownership interests of that person being held by persons who did not hold 50 percent or more of those ownership interests on the date of this lease shall be considered an assignment of this lease which requires Landlord's consent. Tenant shall not permit any advertising or circulars regarding availability of the Premises for sublease or assignment.

**Section 15.2** Landlord's consent shall be required with respect to the following transactions: (a) a merger, or consolidation of Tenant with another entity; and (b) an assignment of this lease to an entity in connection with such entity's purchase of all or substantially all of Tenant's assets; and (c) an assignment of this lease or a sublease of all or part of the Premises, to an entity that is controlled by, in control of, or under common control with, Tenant, and remains under such control for the remainder of the Term; and (d) any type of change of ownership the Tenant's corporation.

**Section 15.3** If Tenant assigns this lease or sublets the Premises after Landlord shall have consented, in writing and at Landlord's sole discretion, to such sublease or assignment, Tenant shall pay Landlord, within fifteen (15) days following payment to Tenant, fifty (50%) percent of: (a) all sums and other consideration paid in connection with an assignment (including key money, bonus money, and any payments for assets, inventory, fixtures, furniture and equipment transferred by Tenant to the assignee), after Tenant recovers therefrom all reasonable costs incurred by Tenant in connection with that assignment which have been paid or are then due and payable; and (b) the excess, if any, of the rents, additional charges and/or other consideration paid in connection with a sublease over the Rent allocable to the subleased premises (which Rent shall be allocated equally throughout the Premises) accruing during the term of that sublease.

**Section 15.4** If this lease is assigned or the Premises are sublet, in whole or in part, Tenant shall remain liable for the performance of all of the terms, covenants and conditions of this lease on the part of Tenant to be performed or observed and any Guarantor shall continue to remain liable under the terms of its guaranty of this lease. Tenant's liability hereunder shall not be affected by any modification of this lease or agreement made between Landlord and any assignee or subtenant, or by reason of any delay or failure on Landlord's part to enforce any of its rights under this lease; provided that if any such modification or agreement increases the obligation of the assignee under this lease, the liability of the assignor-Tenant under this lease shall continue to be no greater than if such modification or agreement had not been made unless such assignee is a person or entity that directly or indirectly controls, is controlled by or is under common control with Tenant.

**Section 15.5** The consent by Landlord to any assignment, transfer, sublet, occupancy, encumbrance or other transaction described in this Section 15, shall not in any way be deemed to relieve Tenant from obtaining the express consent of Landlord prior to any further such transaction or any proposed assignment of sublease or sub-sublease, which consent may be granted or denied at Landlord's sole discretion.

**Section 15.6** The acceptance by Landlord of Rent following any assignment, sublease, encumbrance, license, occupancy, or other transaction in violation of this Article, shall not be deemed a consent by Landlord to such transaction, nor a waiver of any right or remedy of Landlord hereunder.

## **Article 16. Access; Changes in Building and Real Property**

**Section 16.1** Landlord reserves the right to (a) place (and have access to) concealed ducts, pipes and conduits through the Premises (without a material reduction or reconfiguration of the useable area of the Premises); (b) have exclusive access to the utility room and be permitted to enter the Premises at any time to do so; and (c) enter the Premises at reasonable times on reasonable prior notice, which may be oral (but prior notice shall not be required in an emergency), to inspect the Premises, to show the Premises to others or to perform any work or make any improvement Landlord deems necessary or desirable to the Premises or the Building or for the purpose of complying with Laws. If Tenant is not present when Landlord desires to enter the Premises, Landlord or Landlord's contractors may enter the Premises (by force, in the event of an emergency) without liability to Tenant.

**Section 16.2** Landlord reserves the right at any time and from time to time to (a) make changes or revisions in the Real Property, including but not limited to the Building areas, walkways, driveways, parking areas, or other Common Areas, (b) construct improvements in the Real Property, (c) construct additions to, or additional stories on, the Building (which right includes the right to make use of structural elements of the Premises, including without limitation columns and footings, for such construction, provided such use does not materially encroach on the interior of the Premises), and (d) change the name, number or designation by which the Real Property and/or Building is known. Landlord's exercise of its rights pursuant to this Section shall not reduce the number of parking spaces serving the Real Property below that required by any Laws.

**Section 16.3** If there is to be any excavation or construction adjacent to the Building, Tenant shall permit Landlord and/or any other person to enter the Premises to perform such work as Landlord or that person deems necessary to protect the Building, without any abatement of the Rent or liability to Tenant.

**Section 16.4** Landlord shall have the exclusive right to use all or any part of the roof of the Building for any purpose, and to erect temporary scaffolds and other aids to construction on the exterior of the Premises in connection with alterations, repairs, improvements, and/or additions Landlord may make to the Building, provided that access to the Premises shall not be denied. Landlord may make any use it desires of the side exterior walls or rear walls of the Building.

**Section 16.5** Landlord shall exercise Landlord's rights under this Article in a manner which reasonably minimizes interference with the conduct of Tenant's business in the Premises and damage to the Premises, Tenant's Work and Tenant's Property (all of which shall promptly be repaired by Landlord, at its expense), but Landlord is not required to employ overtime labor or incur additional expenses.

#### **Article 17. Default**

**Section 17.1** Each of the following (a "Default") is a material default by Tenant under this lease:

(a) Tenant fails to pay when due any Rent and the failure continues for three (3) days following Landlord's notice (which notice shall also be considered any demand required by any Laws). If, however, Landlord gives such a notice of failure to pay Rent twice in any twelve (12) month period, any additional failure to pay any Rent when due within that twelve (12) month period shall be considered a Default, without the requirement of any notice by Landlord.

(b) Tenant fails to comply with Article 12 or Article 15 or makes any misrepresentation under Section 25.2.

(c) Tenant fails to comply with Section 18.4 of this Agreement

(d) Tenant fails to comply with any other term of this lease and the failure continues for ten (10) days following Landlord's notice. If, however, compliance cannot, with diligence, reasonably be fully accomplished within that thirty (10) day period, Tenant shall have an additional period not to exceed thirty (30) days to fully comply, provided Tenant notifies

Landlord of its intention to comply (with reasonably detailed steps to be taken) and commences compliance within that ten (10) day period and thereafter pursues compliance to completion with diligence and provides Landlord with status updates on the progress at least every fifteen (15) days.

(e) A third party institutes against Tenant or Guarantor, if any, any legal action seeking any relief from its debts under any applicable bankruptcy or insolvency Laws which is not dismissed within ninety (90) days, or Tenant or Guarantor, if any, institutes any legal action seeking such relief, and/or a receiver, trustee, custodian or other similar official is appointed for Tenant or Guarantor, if any, or for all or a substantial portion of its assets, or Tenant or Guarantor, if any, commits any other act indicating insolvency such as making an assignment for the benefit of its creditors.

(f) Except as otherwise expressly permitted under this lease, Tenant vacates or abandons the Premises prior to the Expiration Date.

(g) Guarantor, if any, shall be in breach of its obligations under its guaranty of Tenant's obligations under this lease.

(h) Tenant fails to stay open seven days a week when the Ocean Beach Park is operational, with the exception days where a local or state government agency declares a weather emergency and/or the Ocean Beach Park is not operational.

**Section 17.2** If a Default occurs, this lease is subject to the conditional limitation that Landlord may, at any time during the continuance of the Default, give notice to Tenant that this lease shall terminate on the date specified in that notice, which date shall not be less than five (5) days after Landlord gives such notice to Tenant. If Landlord gives that notice, this lease and the Term shall expire and come to an end on the date set forth in that notice as if said date were the date originally fixed in this lease as the Expiration Date and Tenant shall quit and surrender the Premises to Landlord (but Tenant shall remain liable as provided in this lease).

**Section 17.3** If Tenant is in arrears in the payment of Rent, Tenant waives Tenant's right, if any, to designate the items against which any payments made by Tenant are to be credited, and Landlord may apply any payments made by Tenant to any items Landlord sees fit.

## **Article 18. Remedies**

**Section 18.1** If this lease is terminated pursuant to Article 17 or Landlord reenters or obtains possession of the Premises by summary proceedings or any other legal action or by force or otherwise (which Landlord may do without further notice and without liability or obligation to Tenant or any occupant of the Premises), all of the provisions of this Section shall apply (in addition to any other applicable provisions of this lease).

(a) Tenant, and all other occupants, shall vacate and surrender to Landlord the Premises in accordance with this lease.

(b) Landlord, at Landlord's option, may (i) relet the Premises, or any portion of the Premises, from time to time, in the name of Landlord, Tenant or otherwise, as determined by Landlord, to any person and on any terms, but Landlord shall have no obligation to relet the

Premises, or any portion of the Premises, or to collect any rent (and the failure to relet the Premises, or any portion of the Premises, or to collect any rent shall not impose any liability or obligation on Landlord or relieve Tenant of any obligation or liability under this lease), and (ii) make any changes to the Premises as Landlord, in Landlord's judgment, considers advisable or necessary in connection with a reletting, without imposing any liability or obligation on Landlord or relieving Tenant of any obligation or liability under this lease.

(c) Tenant shall pay Landlord all Rent payable to the date on which this lease is terminated or Landlord re-enters or obtains possession of the Premises.

(d) Tenant shall also pay to Landlord, as damages, any deficiency between (i) the aggregate Rent for the period which otherwise would have constituted the unexpired portion of the Term (conclusively presuming the monthly Additional Rent for each year thereof to be 1/12<sup>th</sup> of Additional Rent that was payable for the year immediately preceding the termination, re-entry or obtaining of possession) and (ii) the rents, if any, applicable to that period collected under any reletting of all or any portion of the Premises. Tenant shall pay any deficiency in monthly installments on the days specified in this lease for payment of installments of the Fixed Rent, and Landlord shall be entitled to recover from Tenant each monthly deficiency as the same arises. No suit to collect the deficiency for any month shall prejudice Landlord's right to collect the deficiency for any subsequent month. Tenant shall not be entitled to any rents payable (whether or not collected) under any reletting, whether or not those rents exceed the Rent. If Landlord relets the Premises, or any portion of the Premises, together with other space in the Building, the rents collected under the reletting and the expenses of the reletting shall be equitably apportioned for the purposes of this Article.

(e) Landlord may recover from Tenant, and Tenant shall pay Landlord, on request, in lieu of any further deficiency pursuant to the preceding paragraph of this Section (as liquidated damages for such deficiency) the amount by which (i) the unpaid Rent for the period which otherwise would have constituted the unexpired portion of the Term (conclusively presuming the Additional Rent for each year thereof to be the same as was payable for the year immediately preceding the termination, re-entry or obtaining of possession) exceeds (ii) the then fair market rental value of the Premises, including the Additional Rent for the same period, both discounted to present value at an annual rate of interest equal to five (5%) percent. If, before presentation of proof of liquidated damages, Landlord relets the Premises or any portion of the Premises for any period pursuant to a bona fide lease with an unrelated third party, the net rents (after deducting reletting costs) payable in connection with the reletting shall be considered to be the fair market rental value for the Premises or the portion of the Premises relet during the term of the reletting.

(f) Tenant shall also pay Landlord, as additional damages, any expenses incurred by Landlord in connection with the termination, reentry or obtaining of possession, and the reletting of the Premises, including all repossession costs, brokerage commissions, reasonable attorneys' fees and disbursements, alteration costs and other expenses of preparing the Premises for reletting.

(g) Nothing contained in this lease shall be considered to limit or preclude the recovery by Landlord from Tenant of the maximum amount allowed to be obtained as damages or otherwise by any Laws.

**Section 18.2** Tenant hereby waives (a) the service of any notice of intention to re-enter or obtain possession of the Premises or to institute any legal action in connection therewith, except as provided in this lease and (b) on its own behalf and on behalf of all persons claiming under Tenant, including all creditors, any rights Tenant and all such persons might otherwise have under any Laws to redeem the Premises, to re-enter or repossess the Premises, or to restore this lease, after (i) Tenant is dispossessed pursuant to any Laws or by any Authority, (ii) Landlord reenters or obtains possession of the Premises, or (iii) the Expiration Date, whether by operation of law or pursuant to this lease. The words “re-enter,” “re-entry” and “re-entered” as used in this lease shall not be considered to be restricted to their technical legal meanings. Landlord shall have the right to enjoin any Default and the right to invoke any remedy allowed by any Laws in addition to any remedies provided in this lease. All remedies provided in this lease are cumulative and Landlord’s right to invoke, or the invocation of, any remedy shall not preclude Landlord from invoking any other remedy under this lease or under any and all Laws.

**Section 18.3** Landlord and Tenant each hereby waive trial by jury in any legal action brought by either party against the other in connection with this lease. If Landlord commences any summary proceeding against Tenant, Tenant shall not interpose any counterclaim in that proceeding, and shall not seek to consolidate the proceeding with any other legal action.

**Section 18.4** Tenant expressly waives its right to bring any declaratory judgment action with respect to any provision of this Lease or with respect to any notice sent pursuant to the provisions of this Lease. Tenant expressly waives its right to obtain any type of injunctive relief in connection to any provision of this Lease or with respect to any notice sent pursuant to the provisions of this Lease. Tenant expressly waives its right to make any application for relief pursuant to *First Nat. Stores, Inc. v. Yellowstone Shopping Center, Inc.*, 21 N.Y.2d 630 (1968), commonly referred to as a *Yellowstone* injunction. Tenant’s breach of this paragraph, in any way, shall constitute a breach of substantial obligations of the tenancy, and shall be grounds for the immediate termination of this Lease, without any notice. It is the express intention of the parties hereto that their disputes be adjudicated exclusively via summary proceedings in the City Court of the City of Long Beach.

**Section 18.5** If Tenant fails to comply with any of its obligations under this lease, Landlord may, at its option, cure such breach of this lease. All costs and expenses, including reasonable attorneys’ fees and disbursements, incurred by Landlord in that connection shall be paid by Tenant to Landlord as Additional Rent within fifteen (15) days after Tenant is billed therefor. Reasonable attorneys’ fees shall be calculated by usage of the lodestar method.

**Section 18.6** Tenant shall also reimburse Landlord for all costs and expenses (including reasonable attorneys’ fees and disbursements), incurred by Landlord in connection with a default by Tenant, including instituting, prosecuting and/or defending any legal action by or against Tenant whether a non-payment or holdover proceeding, or other proceeding, if Landlord prevails in such legal action, together with interest thereon at the Default Rate (hereinafter defined).

**Section 18.7** The failure of Landlord to seek redress for a Default, or of Landlord or Tenant to insist upon the strict performance of any term of this lease, shall not prevent Landlord from redressing a subsequent Default or Landlord or Tenant from thereafter insisting on strict performance. The receipt by Landlord of the Rent with knowledge of a

Default or Tenant's failure to strictly perform under this lease shall not be deemed a waiver of the Default or failure. No term of this lease shall be considered waived by Landlord or Tenant unless the waiver is in a writing signed by the waiving party. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent shall be considered other than on account of the next installment of the Rent, or as Landlord may elect to apply same. No endorsement or statement on any check or letter accompanying any check or payment shall prevent Landlord from cashing the check or otherwise accepting the payment, without prejudice to Landlord's right to recover the balance of the Rent or pursue any other remedy.

**Section 18.8** If Tenant fails to pay any installment of the Fixed Rent or any Additional Rent within five (5) days after the due date thereof, in addition to any other right or remedy of Landlord, Tenant shall pay to Landlord within fifteen (15) days following Landlord's invoice (a) a late charge equal to the greater of one hundred (\$100.00) dollars and four (4%) percent of the amount unpaid and (b) interest at the rate (the "Default Rate") of twelve (12%) percent per annum on the amount unpaid, from the date the payment was first due to and including the date paid and, (c) and Landlord's bank charges for the return of any Tenant's check.

**Section 18.9** All legal actions relating to this lease shall be adjudicated in the courts of the State of New York having jurisdiction in the county in which the Building is located. Tenant irrevocably consents to the personal and subject matter jurisdiction of those courts in any legal action relating to this lease or any guaranty of Tenant's obligations under this lease, and Tenant shall not assert, by way of motion, as a defense or otherwise, any objection to any such court being the venue of such legal action or claim that such venue is an inconvenient forum for Tenant or any principal of Tenant.

### **Article 19. Security**

**Section 19.1** Tenant has deposited with Landlord, as security for Tenant's compliance with this lease, the Security, in cash. If Tenant defaults in performing any of its obligations under this lease, Landlord may use all or any portion of the Security to cure such breach or for the payment of any other amount due and payable from Tenant to Landlord in accordance with this lease. If Tenant shall, during any twelve (12) month period, twice be in breach of its obligation to pay Rent on the first of the month, Tenant shall promptly after Landlord's request, remit to Landlord an amount equal to six months of the then current amount of the monthly installment of Fixed Rent so that the amount of Security required under this lease shall then be equal to eight months' of then current Fixed Rent. If Landlord uses all or any part of the Security, Tenant shall, within fifteen (15) days following Landlord's notice, deposit with Landlord an amount sufficient to restore the full amount of the Security. Landlord shall not, unless required by any Laws, pay interest to Tenant on the Security, and if Landlord is required to maintain the Security in an interest bearing account or pay any interest to Tenant, Landlord shall retain the maximum amount of interest permitted under any Laws (which Landlord may withdraw and retain annually or at any other times). Tenant shall not assign or encumber the Security, and no prohibited assignment or encumbrance by Tenant of the Security shall bind Landlord. Landlord shall not be required to exhaust its remedies against Tenant or the Security before having recourse to Tenant, any Guarantor, the Security or any other security held by Landlord, or before exercising any right or remedy, and recourse by Landlord to any one of them, or the exercise of any right or remedy, shall not affect Landlord's right to pursue any other right or remedy or Landlord's right to proceed against the others. If there is then no uncured



breach, the Security and any accrued and unpaid interest thereon, or any balance, shall be paid or delivered to Tenant promptly after the Expiration Date and Tenant's vacating of the Premises in accordance with this lease. If Landlord's interest in the Real Property is sold or leased, Landlord shall transfer the Security and any accrued and unpaid interest thereon, or any balance, to the new Landlord and, upon such transfer, the assignor shall thereupon be automatically released by Tenant from all liability for the return of the Security or any interest (and Tenant agrees to look solely to the assignee for the return of the Security or any interest).

**Section 19.2** Notwithstanding any other provision of this lease to the contrary, Tenant may, at any time except if a Default has occurred, substitute the cash Security with an irrevocable, unconditional, "clean", "evergreen" (i.e. automatic renewal) letter of credit in form and substance acceptable to Landlord, issued by a federally insured bank with a Standard & Poor's credit rating of at least AA, whose office for the presentation of a letter of credit to be drawn upon is in Nassau County or New York City and is reasonably acceptable to Landlord. Tenant shall keep any such letter of credit, including without limitation such amendments or replacements as are necessary to increase the amount of the letter of credit as the amount of the required Security increases and after Landlord has drawn on the letter of credit, in full force and effect for not less than sixty (60) days after the Expiration Date of the Term. Landlord may draw upon the letter of credit in whole or in part and apply the proceeds for the same reasons, and in the same manner, as the cash Security. In addition, Landlord may draw upon the letter of credit if (a) Tenant has not supplied an amendment or replacement at least ninety (90) days prior to (i) the expiry date, if any, or (ii) the date on which the amount of the letter of credit is required to be increased; (b) Landlord asks the letter of credit issuer to confirm the current expiry date and the issuer does not do so within ten (10) days after Landlord's request; (c) Tenant fails to pay any bank charges with respect to any Landlord transfer of the letter of credit; (d) the issuer ceases, or announces that it will cease, to maintain an office in New York City where Landlord may present draw requests; or (e) the letter of credit issuer has a credit rating by Standard & Poor's of less than AA and, within thirty (30) days following Landlord's notification to Tenant that the letter of credit issuer's Standard & Poor's credit rating is less than AA, Tenant has not provided Landlord with a replacement letter of credit from an issuer with a Standard & Poor's credit rating of at least AA. Tenant shall not seek to enjoin, prevent or otherwise interfere with Landlord's draw against the letter of credit. Tenant acknowledges that the only effect of an erroneous draw would be to substitute cash Security for the letter of credit, which would not cause Tenant any legally recognizable damage. The letter of credit shall provide that the letter of credit is freely transferable by Landlord, its successors and assigns, as its beneficiary without payment by Landlord (or any subsequent transferee) of any fee or other consideration for such transfer. If Landlord transfers its interest in the Premises, Tenant shall, at Tenant's expense, within ten (10) days after receipt of Landlord's request, deliver to Landlord or its transferee, an amendment to the letter of credit naming Landlord's transferee as substitute beneficiary of the letter of credit.

## **Article 20. Broker**

**Section 20.1** Tenant represents to Landlord that it has dealt with no broker in connection with this lease. Tenant shall indemnify, defend and hold harmless Landlord from and against any claims for any brokerage commissions or other compensation which are made by any broker alleging to have dealt with Tenant in connection with this lease, and all costs, expenses, liabilities and damages in connection therewith, including reasonable attorneys' fees and expenses. Landlord shall pay any commission due the Broker pursuant to a separate agreement between Landlord and the Broker. Landlord shall indemnify, defend and hold harmless Tenant

from and against all claims, costs, expenses, liabilities and damages including reasonable attorneys' fees and expenses (a) arising from Landlord's failure to comply with its obligation in the preceding sentence and (b) any claims for any brokerage commissions or other compensation by any broker (other than the Broker) with whom Landlord, but not Tenant, has had dealings in connection with this lease.

#### **Article 21. Notices; Consents and Approvals**

**Section 21.1** Except as may be provided in this lease, all notices and other communications under this lease must be in writing and sent by nationally recognized overnight courier service or registered or certified mail (return receipt requested), addressed to Landlord or Tenant at its Notice Address. Either party may, by notice given in accordance with this Article, designate a different Notice Address, which address change shall become effective upon receipt, the date rejected or the date of attempted delivery (if the receiving party is not present).

**Section 21.2** Any notice or other communication sent as provided in this Article shall be effective (a) on the date received, the date rejected, or the date of attempted delivery (if the receiving party is not present) if sent by overnight courier service, or (b) three (3) business days after mailing by registered or certified mail.

**Section 21.3** If any provision of this lease requires Landlord's consent or approval, such consent or approval shall be effective only if given in writing. Notwithstanding any provision of this lease to the contrary, any type of Landlord's consent shall be provided at the sole discretion of the Landlord.

**Section 21.4** Any notice or other communication given by Landlord to Tenant in accordance with this Article may be signed and given by Landlord's attorney or managing agent, if any, with the same force and effect as if signed and given by Landlord.

#### **Article 22. No Representations; Liability; Tenant Indemnity**

**Section 22.1** Neither Landlord nor Landlord's managing agent, if any, has made any warranties, representations, statements or promises with respect to the Premises, the Real Property, the Building systems, any Additional Rent, any Laws or any other matter, unless expressly set forth in this lease. This lease contains the entire agreement between Landlord and Tenant with respect to the subject matter of this lease, and any previous agreements between Landlord and Tenant are merged in this lease, which alone expresses their agreement. Tenant is entering into this lease after full investigation, and is not relying on any warranties, representations, statements or promises made by Landlord or any other person not expressly set forth in this lease, and is not acquiring any rights of any nature, by implication or otherwise, except as expressly set forth in this lease.

**Section 22.2** Any employee of Landlord, Landlord's managing agent, if any, or the Real Property to whom any property is entrusted by or on behalf of Tenant shall be deemed to be acting as Tenant's agent with respect to that property and neither Landlord nor Landlord's managing agent, if any, shall be liable for any damages to or loss of property of Tenant or others entrusted to employees, agents or contractors of Landlord, Landlord's managing agent, if any, or the Real Property.

**Section 22.3** Neither Landlord nor Landlord's managing agent, if any, shall be liable for any injury, damage or loss to Tenant, Tenant's Property, Tenant's Work, Tenant's business or to any other person or property resulting from any cause, except to the extent caused by the negligence or willful misconduct of Landlord, Landlord's managing agent, if any, or their respective employees, agents or contractors, subject to Section 13.4.

**Section 22.4** In the event of a transfer or lease of the entire Building (a) the transferor or lessor shall be and hereby is relieved of all obligations and liabilities of Landlord under this lease accruing after the effective date of the transfer or lease, and (b) the transferee or lessee shall be deemed to have assumed all of Landlord's obligations and liabilities under this lease effective from and after the effective date of the transfer or lease.

**Section 22.5** In no event shall Landlord, its affiliates, agents, partners, members, managers, shareholders, officers, directors and principals, disclosed or undisclosed, be liable for incidental or consequential damages or have any personal liability under or in connection with this lease. Tenant shall look only to Landlord's interest in the Real Property for the satisfaction of Tenant's remedies or to collect any judgment requiring the payment of money by Landlord under or in connection with this lease, and no other assets of Landlord or such persons shall be subject to lien, levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies or the collection of any judgment under or in connection with this lease. If Tenant acquires a lien on such other property or assets by judgment or otherwise, Tenant shall promptly release that lien by signing, acknowledging and delivering to Landlord any instrument, prepared by Landlord, required for the lien to be released.

**Section 22.6** If Tenant requests Landlord's consent or approval and Landlord fails or refuses to give such consent or approval, Tenant shall not be entitled to any damages for any withholding by Landlord of its consent or approval.

**Section 22.7** This lease and the obligations of Tenant to pay the Rent and perform Tenant's other obligations under this lease are separate, distinct and independent of Landlord's obligations under this lease.

**Section 22.8** Tenant's obligations shall not be waived, delayed or otherwise affected in any manner, and Landlord shall have no liability, if Landlord is unable to comply with, or is delayed in complying with, any of Landlord's obligations under this lease by reason of any strike, labor trouble, accident, war, government action, Laws or other cause beyond Landlord's control.

**Section 22.9** Tenant shall not perform or permit to be performed any act which may subject Landlord, its partners, members, managers, shareholders, officers, directors and principals or Landlord's managing agent, if any, to any liability. Tenant shall, to the extent not caused by the negligence or willful misconduct of Landlord or its contractors or agents, indemnify, defend and hold harmless Landlord and Landlord's managing agent, if any, from and against all (a) claims arising from any act or omission of Tenant, its subtenants, contractors, agents, employees, invitees or visitors, (b) claims arising from any accident, injury or damage to any person or property in the Premises or any adjacent walkway during the Term or when Tenant is in possession of the Premises, and (c) Tenant's failure to comply with Tenant's obligations under this lease (whether or not a Default), and all liabilities, damages, losses, fines, violations,

costs and expenses (including reasonable attorneys' fees and disbursements) incurred in connection with any such claim or failure.

### **Article 23. End of Term**

**Section 23.1** On the Expiration Date (a) Tenant (and all other occupants) shall vacate and surrender the Premises, leaving the Premises vacant, broom clean and in good order and condition, except for ordinary wear and tear and damage for which Tenant is not responsible under this lease, and otherwise as may be required by this lease, and (b) Tenant shall remove all of Tenant's Property and any Tenant's Work required to be removed pursuant to this lease. If the last day of the Term is not a business day, this lease shall expire on the immediately preceding business day. Tenant waives, for itself and for any person claiming under Tenant, any right which Tenant or any such person may have under Section 2201 of the New York Civil Practice Law and Rules or under any similar Laws.

**Section 23.2** If the Premises are not vacated and surrendered in accordance with this lease (whether by Tenant or any occupant related to Tenant), on the date required by this lease, Tenant shall indemnify and hold harmless Landlord against all losses, costs, liabilities, claims, damages and expenses incurred by Landlord in connection therewith, including reasonable attorneys' fees and disbursements whether in an action by or against Tenant or a third party, and including claims and liabilities of Landlord made by any succeeding tenant(s) or other third party. In addition, Tenant shall be liable to Landlord for per diem use and occupancy in respect of the Premises at a rate equal to twice the Rent payable under this lease for the last year of the Term (which Landlord and Tenant agree is the Rent that is contemplated by them as being fair and reasonable under such circumstances and is not a penalty). In no event, however, shall this Section be construed as permitting Tenant (and all other occupants) to remain in possession of the Premises after the Expiration Date.

**Section 23.3** If during the last ninety (90) days of the Term, Tenant removes substantially all of Tenant's Property from the Premises, Landlord or any person designated by Landlord may immediately enter and alter the Premises, without releasing Tenant from any obligation or liability under this lease, including the payment of Rent, or incurring any liability or obligation to Tenant.

**Section 23.4** Unless otherwise specifically provided: (a) any obligation of Landlord or Tenant under this lease which by its nature or under the circumstances can only be, or by the terms of this lease may be, performed after the Expiration Date; (b) any liability for a payment with respect to any period ending on or before the Expiration Date; and, (c) all indemnity and hold harmless provisions in this lease, shall survive the Expiration Date.

### **Article 24. Miscellaneous**

**Section 24.1 Guaranty.** If a Guarantor of this lease is identified in Article 1 of this lease, the following shall apply: At the time this lease is executed and delivered, Tenant shall deliver to Landlord, concurrently with this lease, a guaranty executed by the Guarantor, and properly acknowledged, in the form annexed hereto as Exhibit H. Tenant represents and acknowledges that Guarantor is a principal of Tenant.

**Section 24.2 Patriot Act.** Tenant certifies and represents, both on the date of execution and delivery of this lease and during the entire Term, that neither Tenant nor any

subtenant of Tenant nor any person or entity that owns any direct or indirect beneficial interest in Tenant or such subtenant is, or is acting directly or indirectly for or on behalf of, any group, entity, or nation, named by any Executive Order of the President of the United States or the United States Treasury Department as a terrorist or other "Specially Designated National and Blocked Person," or other person, entity, nation or transaction banned or blocked pursuant to any law, order, rule or regulation that is enforced or administered by the United States Office of Foreign Assets Control or any successor entity, agency or department (an "SDN"). If Tenant is a privately owned entity, the persons listed on Exhibit I annexed hereto constitute all of the officers, directors, general partners, and persons and/or entities owning twenty-five (25%) percent or more of the shares, membership interests, or partnership interests (as the case may be) of Tenant (collectively, the "Principals") as of the date of execution and delivery of this lease. If Tenant is comprised of more than one person or entity, the foregoing certification is made as to each person and entity comprising Tenant. Any renewal right contained in this lease is void and of no force or effect if Tenant, or any of the persons and/or entities comprising Tenant (if Tenant is comprised of more than one person or entity), or any of the Principals of Tenant, are listed as an SDN at the date of renewal. If Tenant is a privately owned entity, Tenant shall, from time to time, furnish Landlord with a list of Principals of Tenant.

**Section 24.3 Financial Statements.** Within thirty (30) days after Landlord's request (which request may be made no more than twice for each fiscal year of Tenant), Tenant shall deliver to Landlord Tenant's and each Guarantor's financial statements, in form and scope reasonably satisfactory to Landlord, for Tenant's and each Guarantor's most recent fiscal year (or the preceding fiscal year, if the most recent fiscal year ended only within the last 90 days before Landlord's request). The financial statements Tenant delivers to Landlord shall be audited only if such financial statements are audited for any other purpose, and if not audited, shall be certified as true and complete by Tenant's chief operating officer or chief financial officer. Tenant shall promptly notify Landlord of any material event or occurrence that relates to Tenant's or any Guarantor's creditworthiness.

**Section 24.4 General.** (a) Subject to the provisions of this lease, this lease shall bind and inure to the benefit of Landlord and Tenant and their respective legal representatives, successors and assigns. No person is intended to be a third party beneficiary of this lease.

(b) This lease may not be changed or terminated, in whole or in part, except in a writing signed by Landlord and Tenant.

(c) Notwithstanding any provision of this lease, or any Laws, to the contrary, or the execution of this lease by Tenant, this lease shall not bind or benefit Landlord or Tenant, unless and until this lease is signed and delivered by both Landlord and Tenant.

(d) No act or omission of Landlord or Tenant, or their respective employees, agents or contractors, including the delivery or acceptance of keys, shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such surrender shall be valid unless it is in a writing signed by Landlord.

(e) The captions in this lease are for reference only and do not define the scope of this lease or the intent of any term. All Article and Section references in this lease

shall, unless the context otherwise specifically requires, be deemed references to the Articles and Sections of this lease.

(f) If any provision of this lease, or the application thereof to any person or circumstance, is invalid or unenforceable, then in each such event the remainder of this lease or the application of such provision to any other person or any other circumstance (other than those as to which it is invalid or unenforceable) shall not be affected, and each provision hereof shall remain valid and enforceable to the fullest extent permitted by all applicable Laws.

(g) There shall be no presumption against Landlord because Landlord drafted this lease or for any other reason.

(h) If there is then no Default, Tenant may peaceably and quietly enjoy the Premises without hindrance by Landlord or any person lawfully claiming under Landlord, subject however, to the terms of this lease.

(i) Tenant hereby waives any rights Tenant may have in connection with any zoning lot merger, zoning application, or subdivision or transfer of development rights with respect to the Real Property or any part thereof, including any rights Tenant may have to be a party to or to execute or contest any instrument providing for such merger, subdivision or transfer.

(j) If Tenant is comprised of two or more persons, the liability of those persons under this lease shall be joint and several. Wherever appropriate in this lease, personal pronouns shall be considered to include the other gender and the singular to include the plural.

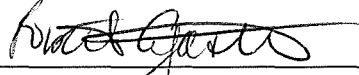
(k) Tenant shall not record this lease or any memorandum of this lease.

(l) This lease shall be governed by, and construed in accordance with, the Laws of the State of New York.

In Witness Whereof, Landlord and Tenant have executed this lease on the date of this lease.

Landlord

City of Long Beach

By:   
Name: Robert Agostisi  
Title: Acting City Manager

Tenant

Skudin Surf, Inc.

By:   
Name: Cliff Skudin  
Title: President

**Exhibit A**

**Fixed Rent**

**2019:** \$22,000 (\$1,833.33 payable on the 1<sup>st</sup> of each month)

**2020:** \$22,000 (\$1,833.33 payable on the 1<sup>st</sup> of each month)

**2021:** \$22,000 (\$1,833.33 payable on the 1<sup>st</sup> of each month)

**2022:** \$22,000 (\$1,833.33 payable on the 1<sup>st</sup> of each month)

**2023:** \$22,000 (\$1,833.33 payable on the 1<sup>st</sup> of each month)

**2024:** \$22,000 (\$1,833.33 payable on the 1<sup>st</sup> of each month)

**2025:** \$22,000 (\$1,833.33 payable on the 1<sup>st</sup> of each month)



**Exhibit B**

**COMMENCEMENT DATE AGREEMENT**

THIS COMMENCEMENT DATE AGREEMENT made as of the \_\_\_\_\_ day of January, 2019, between the City of Long Beach (“Landlord”) and Skudin Surf, Inc. (“Tenant”).

RECITALS

- A. Landlord and Tenant are landlord and tenant under that certain lease dated as of January, \_\_\_, 2019 (the “Lease”) pursuant to which Landlord has leased certain premises more particularly described therein to Tenant (the “Premises”). (Capitalized terms not described herein are described in the Lease.)
  
- B. The Commencement Date has occurred, the Fixed Rent Commencement Date and the Expiration Date are now known and Landlord and Tenant wish to confirm the dates.

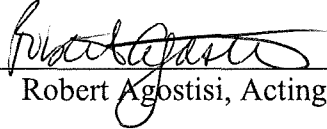
NOW, THEREFORE, Landlord and Tenant hereby agree as follows:

- 1. The Commencement Date is January 1, 2019.
  
- 2. The Fixed Rent Commencement Date is January 1, 2019.
  
- 3. The Expiration Date is December 31, 2025.
  
- 4. This Commencement Date Agreement is the document that Landlord and Tenant intended to execute pursuant to the Lease.

5. Landlord and Tenant hereby ratify and confirm the terms and provisions of the Lease.

IN WITNESS WHEREOF, Landlord and Tenant have executed this instrument as of the date above written.

City of Long Beach, Landlord

By:   
Robert Agostisi, Acting City Manager

Skudin Surf, Inc., Tenant

By:   
Cliff Skudin, President

**Exhibit C**  
**Rules**

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 or Real Property. Tenant shall not make or permit to be made any unseemly or disturbing noises or disturb or interfere with the occupants of the Building, Real Property, 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.
3. Tenant shall not drill holes into the exterior walls or roof of the Building or Premises, nor will Tenant attach wires or other devices to the exterior walls or roof without the prior written consent of the 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 the 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 Premises or the desirability of the Ocean Beach Park. 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. Under no circumstances shall Tenant allow or cause any type of vehicle to be used on the Ocean Beach Park without the prior written consent of the Commissioner of Public Works of the City of Long Beach, consent to be issued at the Commissioner's sole discretion.
9. Tenant shall, at all times, keep a copy of all keys for the Premises with the 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 the Landlord including keys to stores, bathrooms, and/or offices.
10. Tenant must adequately staff Concession stands to provide proper and appropriate service to be determined in the sole discretion of the Commissioner of Public Works.

11. Tenant shall file a list of items to be sold and the prices to be charged with the Landlord and shall post a price list reflecting same at the Premises.

**Exhibit D**  
**Full Guaranty**

Lease: Lease, dated December \_\_\_\_, 2018, between City of Long Beach, as Landlord, and Skudin Surf, Inc., as Tenant, for certain premises in the Building known as 1 Riverside Boulevard, in City of Long Beach, Nassau County, State of New York

Landlord: City of Long Beach, its successors and assigns

Tenant: Skudin Surf, Inc., its successors and assigns

Guarantor The signatories to this Guaranty

To induce Landlord to enter into the Lease and intending to be legally bound, Guarantor has executed and delivered this Guaranty to Landlord. Each person signing this Guaranty represents that he is a principal of Tenant.

Guarantor guarantees to Landlord the full and timely performance and observance of all the agreements to be performed and observed by Tenant under the Lease.

Landlord is not obligated to give Guarantor notice of any default by Tenant under the Lease or any termination notice, and Guarantor hereby waives such notices. Guarantor waives all other notices required or permitted to be given under the Lease or otherwise. Guarantor also waives acceptance and notice of acceptance of this Guaranty, and all demands for payment or performance.

Guarantor waives all defenses other than payment in full and complete performance.

Guarantor's liability under this Guaranty shall not be affected or impaired by any delay by or failure of Landlord in enforcing any of its rights or remedies under the Lease or at law, or by any deferral, waiver, settlement or release of Tenant's obligations under the Lease or any accord and satisfaction or any forbearance by Landlord in exercising any of its rights and remedies or by any other action, inaction, or omission by Landlord.

This Guaranty is independent of any security or remedies which Landlord has under the law. Landlord may proceed against Guarantor at any time, either independently or concurrently with or in lieu of Landlord's application of any security held by Landlord or Landlord's exercise of any remedies Landlord may have against Tenant. Landlord is not required to resort to any security deposit or other collateral it may hold and is not required to pursue any remedies it may have against the Tenant. Nothing contained in this Guaranty shall be deemed to affect or limit any of Landlord's remedies against Tenant under the Lease or the law.

Guarantor's obligations under this Guaranty shall be unaffected by any discharge or release of the Tenant, its successors or assigns, or any of their debts, in connection with any bankruptcy, reorganization, or other insolvency proceeding or assignment for the benefit of creditors, any rejection or disaffirmation of the Lease in any bankruptcy, reorganization, or other insolvency proceeding or assignment for the benefit of creditors, or any reduction, modification, impairment or limitation of the liability of the Tenant, its successors or assigns, or of Landlord's

remedies under the Lease, in connection with any bankruptcy, reorganization or other insolvency proceeding or any assignment for the benefit of creditors. In addition, if Landlord is required to disgorge or pay back to the Tenant's estate any payments made by the Tenant under the Lease in connection with any bankruptcy, reorganization or insolvency proceeding, Guarantor's obligations as to such payments shall be reinstated.

The liability of Guarantor shall continue during the entire term of the Lease and any renewals or extensions thereof, whether or not such renewals or extensions are entered into pursuant to any right or option contained in the Lease. Guarantor's liability shall continue even if the Lease is assigned or the premises leased under the Lease are sublet. Guarantor's liability shall not be affected or impaired by reason of any modification or amendment of the Lease, whether or not such modification or amendment is pursuant to any right or option contained in the Lease. Notwithstanding the foregoing, if Landlord and any assignee of the Lease (unless such assignee is controlled by, controls, or is under common control with Tenant or Guarantor) enter into a modification of the Lease and such modification increases the obligation of the tenant under the Lease, the liability of the Guarantor shall continue to be no greater than if such modification had not been made

Guarantor waives all right to trial by jury in any action or proceeding to which Landlord and Guarantor are parties, with respect to any claim, counterclaim, cross-claim, or defense raised with respect to this Guaranty or the Lease.

Until all obligations of Tenant that are guaranteed under this Guaranty are fully performed and the Lease has expired or terminated, all claims Guarantor may have against Tenant (including, but not limited, to any claim Guarantor has against Tenant for reimbursement of any payments made or costs incurred by Guarantor pursuant to this Guaranty) are subordinated to Landlord's claims against Tenant. Further, Guarantor shall not assert any claim Guarantor may have against Tenant (including, but not limited to, any claim Guarantor has against Tenant for reimbursement of any payments made or costs incurred by Guarantor pursuant to this Guaranty) until all obligations of Tenant that are guaranteed under this Guaranty are fully performed.

Guarantor shall reimburse Landlord for all costs and expenses incurred by Landlord in enforcing and/or attempting to enforce this Guaranty, including, but not limited to, reasonable attorneys' fees and disbursements. Guarantor shall so reimburse Landlord within ten (10) days after Landlord bills Guarantor for such costs and expenses.


If more than one person has signed this Guaranty, the term "Guarantor" shall be read as "Guarantors." The use of the singular shall be deemed to refer to the plural whenever the context so requires. The use of the masculine, feminine, or neuter genders shall be deemed to refer to another gender wherever the context so requires.

If more than one person or entity has signed this Guaranty, each of the undersigned shall be jointly and severally liable for all of the obligations hereunder. Any notice by the Landlord to any one of the undersigned Guarantors shall be deemed given to all of the Guarantors and shall have the same force and effect as though given to all persons constituting the Guarantor.

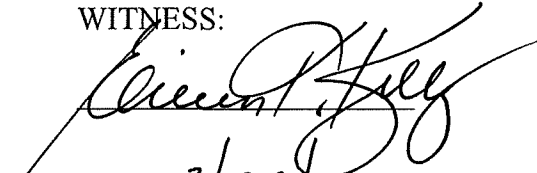
This Guaranty shall be binding upon Guarantor, his successors and legal representatives, and shall inure to the benefit of Landlord, its successors, grantees, legal representatives and assigns.


This Guaranty shall be governed by and construed in accordance with the laws of the State of New York. All legal actions or proceedings related to this Guaranty shall be adjudicated in the state courts of the State of New York in the county in which the premises demised under the Lease are located. Guarantor irrevocably consents to the personal and subject matter jurisdiction of those courts in any legal action or proceeding relating to the Lease. This consent to jurisdiction is self-operative and no further instrument or legal action, other than service of process in any manner permitted by law, is necessary in order to confer jurisdiction upon the person of Guarantor and the subject matter in question in any such court. All communications to Guarantor may be sent, and service in any legal action relating to this Guaranty may be made by delivery of the summons and complaint, to Guarantor at the address shown below.

Date: 3/27/19

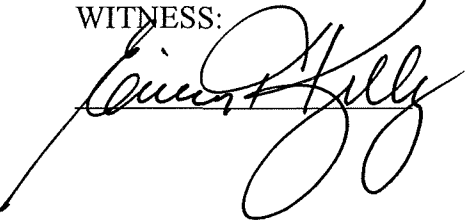
  
Name: Cliff Skudin  
Home Address:

WITNESS:

  
Date: 3/27/19

  
Name: Will Skudin  
Home Address:

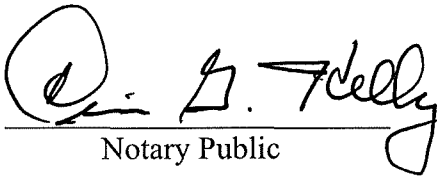
WITNESS:



ACKNOWLEDGEMENT

STATE OF NEW YORK )  
COUNTY OF NASSAU ) ss.:

On the 27<sup>TH</sup> day of MARCH in the year 2019 before me, the undersigned, a Notary Public in and for said State, personally appeared LUKE SKIDAMP personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

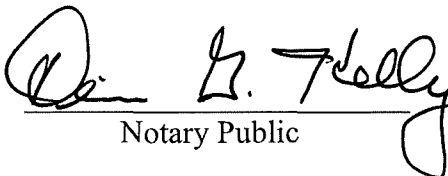
  
Notary Public

DENIS G. KELLY  
Notary Public, State of New York  
No. 02KE5021847  
Qualified in Nassau County  
Commission Expires Dec. 27, 2021

ACKNOWLEDGEMENT

STATE OF NEW YORK )  
COUNTY OF NASSAU ) ss.:

On the 27<sup>TH</sup> day of MARCH in the year 2019 before me, the undersigned, a Notary Public in and for said State, personally appeared WILL SCANN, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
Notary Public

DENIS G. KELLY  
Notary Public, State of New York  
No. 02KE5021847  
Qualified in Nassau County  
Commission Expires Dec. 27, 2021



**Exhibit E**

**Principals (owning a 25% or greater interest in Tenant)**

Cliff Skudin (50%)

Will Skudin (50%)

Form of Letter of Credit

**[ISSUING BANK]**

[Date]

[Landlord's Address]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: Irrevocable Letter of Credit No. \_\_\_\_\_  
Applicant: [Tenant]  
Beneficiary: [Landlord]

Gentlemen:

By order of our client, [Tenant], [address of Tenant], we hereby open in your favor our clean irrevocable Letter of Credit No. \_\_\_\_\_ for the aggregate sum of \_\_\_\_\_ effective immediately and expiring at our [address of Bank] New York Office on \_\_\_\_\_ or any automatically extended date.

Funds under this Letter of Credit are available to you against presentation of your sight draft(s) drawn on us marked "drawn under Irrevocable Letter of Credit No. \_\_\_\_\_ date [date of Letter of Credit]".

It is a condition of this Letter of Credit that it shall be deemed automatically extended without amendment for one year from the present or any future expiration date hereof, unless ninety (90) days prior to any such date we shall notify you by registered mail that we elect not to consider this Letter of Credit renewed for any such additional period. Upon receipt by you of such notice, you may draw hereunder by means of your draft on us at sight, accompanied by the original Letter of Credit.

We shall, immediately after each presentation of the Letter of Credit for a partial drawing, return this Letter of Credit to you, marking this Letter of Credit to show the amount paid by us and the date of such payment.

This Letter of Credit is transferable and may be transferred one or more times without cost to you upon presentation to us of a duly completed transfer instruction in the form annexed to this Letter of Credit and the original Letter of Credit. We shall look solely to applicant for payment of the transfer fee.

We shall, upon receipt of your request, amend this Letter of Credit to change your address. Such amendment shall not require applicant's consent. We shall look solely to applicant for payment of any fee in connection with such amendment.

If we receive your sight draft as mentioned above, in accordance with the terms and conditions of this credit, here at our [address], New York Office we will promptly honor the same.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Brochure No. 600, shall be deemed to be a contract made under, and as to matters not governed by the UCP, shall be governed by and construed in accordance with the laws of the State of New York and applicable U.S. Federal Law.

[Name of Bank]

By: \_\_\_\_\_  
Authorized Signature  
Title:

**[ANNEX A TO BE ADDED BY ISSUING BANK, IF REQUIRED]**