

**STATE OF NEW YORK
EXECUTIVE DEPARTMENT
OFFICE OF GENERAL SERVICES
REAL ESTATE PLANNING
MAYOR ERASTUS CORNING 2ND TOWER - 26TH FLOOR
THE GOVERNOR NELSON A. ROCKEFELLER
EMPIRE STATE PLAZA
ALBANY, NEW YORK 12242**

**RETAIL LEASE AGREEMENT
EMPIRE STATE PLAZA
ALBANY, NEW YORK**

Project No

OGS Bureau of Food Services

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**STATE OF NEW YORK
EXECUTIVE DEPARTMENT
OFFICE OF GENERAL SERVICES
MAYOR ERASTUS CORNING 2ND TOWER
The Governor Nelson A. Rockefeller
Empire State Plaza
Albany, New York 12242**

LEASE AGREEMENT

THIS AGREEMENT, made as of the 8th day of February in the year 2013 by and between THE PEOPLE OF THE STATE OF NEW YORK, acting by the Commissioner of General Services, whose office is at the Mayor Erastus Corning II Tower, 41st Floor, The Governor Nelson A. Rockefeller (GNAR) Empire State Plaza (ESP), Albany, New York, 12242 (hereinafter called the "State" or "Landlord") and

(left Blank)

hereinafter called the "Tenant"), whose representative is currently _____ Tenant's address for purposes of notices hereunder shall be the address set forth above, Attention.

WITNESS, that:

THE Landlord and the Tenant for and in consideration of rents, covenants and agreements hereinafter contained, mutually covenant and agree as follows:

SECTION 1. DEFINITIONS

The following terms, when used in this Lease Agreement, shall have the respective meanings given below:

- (a) "Causes or Conditions Beyond the Control of the Landlord or Tenant", shall mean and include acts of God, the elements, weather conditions, tides, earthquakes, settlements, fire, acts of governmental authority, war, shortage of labor or materials, acts of third parties for which the Landlord is not responsible, injunctions, strikes, boycotts, picketing, slowdowns, work stoppages, labor troubles or disputes of every kind (including all those affecting the Landlord or Tenant, its contractors, suppliers or subcontractors) or any other conditions or circumstance, whether similar to or different from the foregoing (it being agreed that the foregoing enumeration shall not limit or be characteristic of such conditions or circumstance) which is beyond the control of the Landlord or Tenant, or which could not be prevented or remedied by reasonable effort and at reasonable expense.
- (b) "Fixed State Equipment/Fixture Inventory" shall mean the list on fixtures and equipment as set forth in Schedule "B1".
- (c) "Food Service Operations" shall mean daily business operations in the Pavilion on the Plaza when open to the general public, excluding Catered Events.
- (d) "Leasehold Improvements" shall mean alterations made to the Demised Premises in order to customize it for the specific needs of the Tenant, including painting, installation of partitions, flooring, light fixtures, plumbing fixtures, fire prevention equipment, exhaust systems and walk-in coolers including condensing units, fans, motors, and evaporators, and shall include the Fixed State Equipment/Fixture Inventory.

- (e) "Letting" shall mean the Letting under this Lease Agreement for the original Term stated herein, and shall include any extensions thereof which may be made pursuant to the provisions of this Lease Agreement, or otherwise.
- (f) "Minority or Women-Owned Business Enterprise" (MWBE): At least 51% owned and controlled by the minority members and or women; The minority and or women ownership interest, is real, substantial and continuing; The minority and or women ownership has and exercises the authority to independently control the day-to-day business decisions; Independently owned, operated and authorized to do business in New York State. NOTE: Businesses eligible to participate in the program must be owned and operated by women and or minority group members who are citizens of the United States or permanent resident aliens. Generally they must be in operation for at least one year.
- (g) "Non-Fixed State Equipment/Fixture Inventory" shall mean the list of fixtures and equipment as set forth in Schedule "B2".
- (h) "Plaza" shall mean the GNAR Empire State Plaza located in the City and County of Albany, State of New York.
- (i) "Utility, Mechanical, Electrical, Communication and Other Systems" shall mean and include (without limitation thereto) the following: machinery, engines, dynamos, boilers, elevators, escalators, incinerators and incinerator flues, systems for the supply of fuel, electricity, water, gas and steam, plumbing, heating, sewerage, drainage, ventilating, air conditioning, communications, fire-alarm, fire-protection, sprinkler, telephone, telegraph and other similar systems, fire hydrants, fire hoses, and their respective wires, mains, conduits, lines, tubes, pipes, equipment, motors, cables, fixtures and other equipment.

SECTION 2. HEADINGS

The section headings and the paragraph headings, if any, are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provision hereof.

SECTION 3. LETTING

The Landlord hereby lets to the Tenant and the Tenant hereby hires and takes from the Landlord approximately 1,792 square feet of rentable area located along the Plaza Level of the Empire State Plaza between Agency Buildings #3 and #4 as shown in the plans annexed hereto and marked as Exhibit 1 (Hereinafter the "Pavilion"); together with the fixtures, improvements and other property of the Landlord located or to be located therein and thereon described in more detail in the list of Fixed State Equipment/Fixture Inventory.

The said spaces, fixtures and improvements being hereinafter collectively referred to as the "Demised Premises".

SECTION 4. RIGHTS OF USE BY TENANT

The Tenant shall have the right to use and occupy the Demised Premises (the "Use") for the purpose of operating a food service operation serving breakfast, lunch, hot entrees and other food and beverage items in a sit-down or take out restaurant setting. Tenant shall be permitted to provide Wi-Fi at the Demised Premises, and to install a security camera or cameras.

SECTION 5. EXCLUSIVITY

Tenant shall be the exclusive food service provider in the Pavilion. Notwithstanding the foregoing, the Landlord reserves the right to schedule, from time to time, special events and exhibitions in locations at the Plaza which may have, as an incident to such events or exhibitions, the display and sale of foods and beverages by persons other than the Tenant. The scheduling of such events or exhibitions shall not be deemed to be in conflict with the management and operation privileges granted in this Lease.

SECTION 6. TERM

(a) The term of the Letting under this Agreement shall commence at 12:01 o'clock a.m. on the date of the full execution and delivery of this Lease, unless such execution occurs on the first day of the month in which case the Lease Term and obligation to pay Rent shall commence on that day. (Hereinafter the "Commencement Date.").

Tenant's obligations under this Lease are conditioned on Tenant's obtaining any permits and/or licenses (including but not limited to conditional use permits, building permits, variances and other governmental approvals) (collectively, the "Government Approvals") that are required by applicable laws to enable Tenant legally to: (a) construct Tenant's improvements to the Demised Premises in accordance with the Plans; (b) install Tenant's signage on the Premises; and (c) conduct its business from the Demised Premises.

(b) The term of the Letting under this Agreement shall expire, unless sooner terminated, at 11:59 o'clock p.m. on the day preceding the fifth (5th) anniversary of the Rent Commencement Date. (Hereinafter the "Termination Date").

(c) Within ten (10) days after the Tenant takes possession or beneficial use is conferred under this Lease the Parties shall execute a memorandum prepared by the Landlord (hereinafter the "Commencement Letter",) confirming the Commencement and Termination Dates, but any failure to execute such a memorandum shall not affect such dates as determined in accordance with the terms of this Lease.

SECTION 7. RENTAL

Tenant shall pay Landlord in equal monthly installments for the Demised Premises rent (hereinafter "Rent") consisting of Base Rent and Percentage Rent from the Food Services Operation as follows:

(1) Base rent for the Premises as set forth in the schedule below (hereinafter "Base Rent"):

Year	Annual Rent	Monthly Rent
1		
2		
3		
4		
5		

which is a gross rent inclusive of real estate taxes, common area charges and utility charges except as such items are the responsibility of the Tenant pursuant to the terms of this Lease.

(2) Percentage rent from Gross Receipts, as defined in Section 9, from the Food Service Operation as set forth in the schedule below (hereinafter the "Percentage Rent").

Gross Receipts Range

Percentage Rent

Base Rent payments required hereunder shall be made monthly in accordance with Section 10 "Payment and Statements" herein. Percentage Rent shall be payable annually in accordance with Section 10 hereof.

SECTION 8. INTENTIONALLY DELETED

SECTION 9. GROSS RECEIPTS

For purposes of this Lease, "Gross Receipts" shall include the amounts generated from the sale of all foods, beverages, commodities, articles, room rental and services, and the amounts generated from sales of any nature whatsoever at the Demised Premises, whether sold for consumption or use in or out of the Demised Premises, without deduction for cost of merchandise or Rent of any kind whatsoever. Notwithstanding the foregoing, Gross Receipts shall not include refunds to customers, the cost of meals sold to employees of the Tenant, revenue from the sale of such other items as the Landlord may specifically designate, and sales taxes, excise taxes or other taxes that are collected from patrons and paid directly to the appropriate governmental agency by the Tenant and the amount of any discount from the regular price of all items sold within the Demised Premises as a result of redemption or honoring of coupons or other similar promotions. However, no franchise or capital stock tax or income or similar tax, measured or based on income or profits to the Tenant, or any tax which forms a part of the cost of Tenant, shall be deducted from Gross Receipts. Gross Receipts shall also not include: taxes or assessments on rent or other charges, if any paid by Tenant (gross receipts taxes levied on Tenant in connection with the operation of its business in the Premises); sales of Tenant's own fixtures and equipment; deposits from its customers; receipts from public telephones or stamp machines installed for the benefit of Tenant's employees; bad debts; delivery charges or any service rendered at cost or approximately at cost for the convenience of customers; promotional offerings and charitable collections; sums and credits received in the settlement of claims for loss of or damage to the merchandise; charges on credit card sales (not in excess of Gross Receipts in any one rental year); gift cards (except if and to the extent redeemed at the Demised Premises); insurance proceeds received from the settlement of claims for loss of or damage to goods, fixtures and other personal property of Tenant; services charges payable to Tenant on accounts receivable; and transfers or exchanges of merchandise for the convenience of customers or between stores or warehouses of Tenant.

Separate books and records of account shall be maintained in an electronic format for the Pavilion provided through use of the Demised Premises on a uniform basis in accordance with Generally Accepted Accounting Principles ("GAAP"). The Tenant's books and records of account shall be open to inspection and audit by the Landlord, its designated representatives and consultants, at all reasonable times during business hours upon reasonable advance notice. Notwithstanding anything to the contrary contained in this Lease, Tenant shall not be required to alter its record-keeping practices or accounting system to conform to Landlord's requirements for reporting its sales. In particular, Tenant shall not be required to keep or produce serially numbered cash register tapes or other voluminous records. Tenant agrees that it shall keep, at its national headquarters (or such other place as Tenant may designate), accurate records in the computer medium then used by Tenant showing Tenant's sales, and Tenant shall produce computer-generated reports based on such records in accordance with the reporting requirements of this Lease. Landlord shall keep all such reports confidential.

The Tenant shall make available for inspection and audit by the Landlord or its designee, during regular business hours, separate and uniform books and complete records, in an electronic format, pertaining to its operations at the Demised Premises. The Tenant shall promptly offer and make available to the Landlord, in an electronic format, any internal (company) audits relating to its operations at the Demised Premises and shall additionally on an annual basis, within one hundred twenty (120) days after the conclusion of each annual period of the Term of this Lease Agreement, provide the Landlord with a composite fiscal analysis of its operations at the Demised Premises.

SECTION 10. PAYMENTS AND STATEMENTS

All Base Rent payments required of the Tenant by this Lease Agreement shall be made by the twentieth (20th) day of each month, to the Office of General Services, Business Services Center, PO Box 2117, Empire State Plaza Station, Albany, NY 120117. Percentage Rent shall be payable within sixty (60) days after the end of each lease year, as defined herein, together with a statement of Tenant's Gross Receipts for retail sales, and a statement of Gross Receipts for catering sales for the year. For purpose hereof, the first Lease Year shall mean the period from the Rent Commencement Date to the last day of the month following the twelve (12) month anniversary of the Rent Commencement Date. Each successive twelve (12) month period hereunder shall be a Lease Year, except the last Lease Year shall end on the Termination Date set forth herein. Payment of Percentage Rent shall be made to the address set forth above. The Tenant shall provide copies of all Gross Receipts statements and payments to the OGS Bureau of Food Services (BFS).

SECTION 11. PERSONAL PROPERTY OF LANDLORD AND TENANT

All Non-Fixed State Equipment/Fixture Inventory and any items of business or personal property, equipment, furnishings and trade fixtures replaced or added by the Tenant to the Demised Premises shall remain the personal property of the Tenant and upon notification to the BFS may be removed by the Tenant during the Lease Term, renewal, extension or holdover period, at Tenant's own cost, except that equipment, furnishings and trade fixtures installed by the Tenant that are classified as Leasehold Improvements, as defined in Section 1(e), shall not be required to be removed by Tenant. The Tenant agrees to repair any areas damaged by any removal, whether such damage is caused by Tenant or any of its contractors. All personal property, furnishings, machinery, fixtures, equipment and improvements (trade or otherwise) which Tenant installs in the Premises shall remain the property of Tenant and upon termination or expiration of the Term, Tenant has the right to remove the same from the Premises no later than the termination or expiration date hereof. Tenant may also, at its expense, remove from the Demised Premises all items and structural characteristics that are indicative of Tenant's business, and otherwise "de-identify" the Demised Premises, as Tenant reasonably believes necessary or appropriate for the protection of Tenant's interest in Tenant's trademarks, trade names, or copyrights, provided Tenant shall repair any damage to the Premises caused by the removal of Tenant's trade fixtures, furnishings and equipment, which repair shall include the patching and filling of holes. In no event shall Tenant remove, or be required to remove, any restrooms, flooring, ceilings, electrical, or HVAC systems. All other utility systems will be capped and returned to a condition compatible with code requirements. Any removal of furnishings, machinery, fixtures, equipment, improvements, or personal property by Tenant shall be conducted in a good and workmanlike manner, and Tenant shall diligently and promptly repair or restore any injury or damage done to the Demised Premises or the building in connection with such removal.

SECTION 12. GOVERNMENTAL REQUIREMENTS

The Tenant shall pay all taxes, import duties, examination fees, excise and other charges which may be assessed, levied, exacted or imposed on its property, operations or occupancy hereunder, or any property whatsoever which may be received at the Demised Premises or on the gross revenues or income therefrom and shall make all applications, reports and returns required in connection therewith. If any bond or other undertaking shall be required by any governmental authority in connection with any of the operations of the Tenant or any property received or exhibited by the Tenant at the Demised Premises, the Tenant shall furnish the same and pay all other expenses in connection therewith.

SECTION 13. CONSTRUCTION AND APPLICATION OF TERMS

- (a) Wherever in this Lease Agreement a third person singular, neuter pronoun or adjective is used referring to the Tenant, the same shall be taken and understood to refer to the Tenant, regardless of the actual gender or number thereof.

- (b) Whenever in this Lease Agreement the Tenant is placed under an obligation or covenants to do or to refrain from or is prohibited from doing, or is entitled or privileged to do, any act or thing, the following shall apply:
- (1) If the Tenant is a corporation, its obligations shall be performed or its rights or privileges shall be exercised only by its officers and employees; or
 - (2) If the Tenant is an unincorporated association or a business or "Massachusetts" trust, the obligation shall be that of its member or trustees, as well as of itself, and shall be performed only by its members or trustees, and officers and employees, and the right or privilege shall be exercised only by its members or trustees, and its officers and employees; or
 - (3) If the Tenant is a partnership, the obligation shall be that of its partners and shall be performed only by its partners and employees and the rights or privileges shall be exercised only by its partners and employees; or
 - (4) If the Tenant is an individual, the obligations shall be that of himself (or herself) and shall be performed only by himself (or herself) and his (or her) employees and the right or privilege shall be exercised only by himself (or herself) and his (or her) employees.
 - (5) None of the provisions of this paragraph (b) shall be taken to alter, amend or diminish any obligation of the Tenant assumed in relation to its invitees, customers, agents, representatives, contractors or other persons, firms or corporations doing business with it.
- (c) If more than one individual or other legal entity is the Tenant under this Lease Agreement, each and every obligation hereof shall be the joint and several obligation of each individual or other legal entity.
- (d) Unless otherwise stated in Section 4 of this Agreement entitled "Rights of Use by Tenant", the rights of use herein granted to the Tenant with respect to the Demised Premises shall be exercised by the Tenant only for its own account and, without limiting the generality of the foregoing, shall not be exercised as agent, representative, factor, broker, forwarder, bailee, or consignee without legal title to the subject matter of the consignment.
- (e) The Tenant's representative, hereinbefore specified in this Lease Agreement (or such substitute as the Tenant may hereafter designate in writing), shall have full authority to act for the Tenant in connection with this Lease Agreement and any things done or to be done hereunder, and to execute on the Tenant's behalf any amendments or supplements to this Lease Agreement or any extension thereof.
- (f) This Lease Agreement does not constitute the Tenant the agent or representative of the Landlord for any purpose whatsoever. Neither a partnership nor any joint venture is hereby created, notwithstanding the fact that all or portion of the Rent to be paid hereunder may be determined by Gross Receipts from the operations of the Tenant hereunder.
- (g) All designations of time herein contained shall refer to the time system then officially in effect in the municipality wherein the Demised Premises are located.
- (h) No greater rights or privileges with respect to the use of the Demised Premises or any part thereof or with respect to the Plaza are granted or intended to be granted to the Tenant by this Lease Agreement, or by any provision thereof, than the rights and privileges expressly granted hereby.

SECTION 14. OPERATIONS

The Tenant shall conduct a "first class" operation and will furnish, install and maintain all necessary or proper equipment, fixtures, improvements (subject to the Section 28 of this Lease Agreement entitled "Construction by the Tenant"), personnel, supplies, materials and replacements to conduct and maintain a "first class" operation.

The Tenant shall maintain the Demised Premises and equipment included under this Lease in an attractive, clean, safe, operable, sanitary, orderly and inviting condition at all times, including, but not limited to, all portions of the Demised Premises and the Plaza used for handling, preparation, storage and service of food, disposal of waste and refuse, public lobbies, restrooms, entrances and exits. It is the intention of the Landlord that all standards shall be diligently adhered to and carried out so as to reflect positively on the reputation of the Landlord and the Tenant.

All food, beverages or other items sold or kept for sale under this Lease shall be of high quality and standards similar to Tenant's other locations; and must conform in all respects to federal, state and municipal laws, ordinances, rules and regulations. The Tenant shall obtain and maintain all necessary licenses, certificates, permits or other authorizations from all governmental authorities having jurisdiction over the Tenant's operations at the Demised Premises or at the Plaza and shall provide for the inspection and review of such licenses, certificates, permits and authorizations by the Landlord and any other persons authorized by law. The Tenant shall promptly observe, comply with and execute the provisions of any and all present and future governmental laws, rules and regulations, orders and directions which may pertain or apply to the specific operations of the Tenant at the Demised Premises or at the Plaza or its specific occupancy of the Demised Premises (as opposed to mere retail use), including any Tenant alterations at the Demised Premises, and the Tenant shall, in accordance with and subject to the provisions of the Section 28 of this Agreement entitled "Construction by the Tenant", make any and all improvements, alterations or repairs of the Demised Premises that may be required at any time hereafter by any such present or future law, rule, regulation, requirement, order or direction. The provisions of this Section are not to be construed as a submission by the Landlord to the application to itself of such laws, rules and regulations, requirements, orders or directions, or any of them. Notwithstanding the foregoing, Landlord shall be responsible at its sole cost and expense to comply with any current legal requirements and handicapped accessibility requirements, including but not limited to ADA requirements, relating to the physical condition of all parts of the Plaza outside the Demised Premises, as well as any change in applicable legal requirements pertaining to real estate generally and not to the Demised Premises specifically. Tenant shall, in no event, be responsible for making any structural repairs, improvements or alterations to the Demised Premises or in the building in order to comply with the requirements of this Lease.

The service provided by the Tenant shall at all times be prompt, clean, courteous and efficient. Service shall be provided to all patrons without discrimination.

All goods and services offered for sale must be in good taste and considered appropriate, proper and consistent with the Landlord's obligations and responsibilities to the patrons of the Plaza.

The prices and portion sizes of all food and beverages to be served in the Demised Premises, as well as any changes with relation to the same, and the menus (and cycles thereof) shall be determined by the Tenant. The Tenant shall provide the Landlord with advance notice of the initial menu and price list and any changes thereto. Prices and portion sizes shall be competitive to those of similar concept restaurants in areas adjacent to the Plaza.

The Tenant shall not, without the prior express written permission of the Landlord, operate vending machines (including coin activated game and music machines) on the Demised Premises. Furthermore, the sale of Lottery chances, newspapers, periodicals, tobacco and

books is prohibited without the prior express written permission of the Landlord.

SECTION 15. QUIET ENJOYMENT

The Landlord covenants and agrees that, the Tenant, upon paying all Rents hereunder and performing all the covenants, conditions and provisions of this Lease Agreement on its part to be performed, shall and may peaceably and quietly have, hold and enjoy the Demised Premises free of any act or acts of the Landlord except as expressly permitted in this Lease Agreement.

SECTION 16. DEMISED PREMISES

The Tenant acknowledges that, except as may expressly be set forth herein, it has not relied upon any representation or statement of the Landlord or its officers, employees or agents as to the suitability of the Demised Premises for the operations permitted on the Demised Premises by this Lease Agreement. Without limiting any obligation of the Tenant to commence operations hereunder at the time and in the manner stated elsewhere in this Lease Agreement, the Tenant agrees that no portion of the Demised Premises will be used initially or at any time during the Letting which is in a condition unsafe or improper for the conduct of the Tenant's operations hereunder so that there is likelihood of injury or damage to life or property. For all purposes of this Agreement the Demised Premises hereunder (notwithstanding any statement elsewhere in this Lease Agreement of any rule for the measurement of the area thereof) shall be deemed to include all of the enclosing partitions, and glass to and including the exterior surface thereof.

SECTION 17. SUBORDINATION

This Lease Agreement and the Letting hereunder shall be subject and subordinate to all mortgages which may hereafter affect the Demised Premises or the Plaza, and to all renewals, modifications, consolidations, replacements and extensions thereof, and although the provisions of this Section shall be deemed to be self-operating and effective for all purposes without any further instrument on the part of the Tenant, the Tenant shall execute on demand and without expense to the Landlord such further commercially reasonable instruments confirmatory of the provisions of this Section as the Landlord may request. As a condition of any subordination, the mortgagee, transferee, purchaser, lessor or beneficiary ("Landlord's Successor") shall agree that Tenant's use or possession of the Demised Premises shall not be disturbed nor shall its obligations be enlarged or its rights be abridged hereunder by reason of any such mortgage or deed of trust. Notwithstanding any foreclosure or sale under any such mortgage or deed of trust (or transfer by deed in lieu thereof), this Lease shall remain in full force and effect, and Tenant agrees to execute such documents as are reasonably required by Landlord's Successor to accomplish the purpose of this Section.

SECTION 18. HOURS OF OPERATION

The Tenant shall operate the Demised Premises as follows:

(a) Pavilion Cafeteria shall be open at a minimum from 7:00 am – 2:00 pm Monday – Friday, April through September and 11:00 am – 8:00 pm Saturday and Sunday during the period the Plaza Ice Rink is open excluding State Legal Holidays, (hereinafter "Normal Business Hours"), or such longer hours as Tenant may desire (provided that Tenant shall give Landlord advance written notice of such change in hours), and shall remain open as agreed upon by the Parties for events, programs or activities at the Plaza (hereinafter the "Business Days").

Tenant shall not be required to operate such hours if Tenant is unable to operate as a result of force majeure, casualty, condemnation, periodic inventory (not more than three days per calendar year), or for permitted alterations. In addition, de minimis late openings and early closings shall not be deemed a violation of the hours' provision. Notwithstanding the

foregoing, however, Landlord may need to close the Plaza for fire alarms, emergencies, etc. In such cases, Tenant shall close the Premises and Landlord shall have no liability to Tenant for such closures.

As used herein, the term "State Legal Holidays" shall mean the calendar of legal holidays as established and maintained by the New York State Department of Civil Service. Annual updates of legal holidays are available at http://www.cs.state.ny.us/attendance_leave/ once you are on the website, scroll down to Calendar of Legal Holidays and click on the current year.

In compliance with all applicable provisions of this Lease, the Tenant may remain open to conduct its business, on any Saturday, Sunday, during the months of April through October, or on any State Legal Holiday, during any additional periods for events, programs or activities at the Plaza.

SECTION 19. RESPONSIBILITIES OF LESSEE

- (a) Prior to the Commencement Date of this Lease, , the Tenant shall invest in the Demised Premises an amount not less than ___ and \$___ dollars for initial renovations, upgrades and work", inclusive of furniture, fixtures, equipment and costs of architecture, design and permitting fees not to exceed ___ and \$___ (hereinafter the "Required Investment). All renovations and upgrades shall be done in accordance with the terms of this Lease, including, but not limited to, Sections 11, 27 and 28. Tenant shall make available for inspection by the Landlord, or its designee, during regular business hours, the work and documentation evidencing that Tenant has made the Required Investment. Tenant shall pay to the Landlord, as additional rent, any remaining amount of the Required Investment within twelve (12) months of the Commencement Date.

- (b) The Tenant shall be required to provide and maintain the highest standard of quality of service. The Tenant shall provide supervisors and employees in sufficient numbers at all times to deliver all services properly and efficiently and to meet all of the standards for operation of a food service facility required by this Lease Agreement. The Parties shall work together in good faith to address any Landlord concerns regarding such service. The Tenant's personnel shall have the experience and background generally acceptable in the food service field for the positions which they hold. The Tenant shall conduct its operation in an orderly manner and so as not to annoy, disturb or be offensive to others at the Plaza. The Tenant shall use all reasonable efforts to control the conduct, demeanor and appearance on the Demised Premises of its officers, members, employees, agents, representatives, contractors, customers, guests, invitees and those doing business with it off the Demised Premises but elsewhere at the Plaza of its officers, members, employees, representatives and contractors. The Tenant shall require employees to be clean, courteous, helpful, and efficient and neat in appearance at all times. The Tenant shall not employ any persons in or about the Demised Premises who use improper language or act in a loud, boisterous or otherwise improper manner. The Tenant agrees to take prompt and appropriate action with regard to complaints about the conduct of employees and that upon objection from the Landlord concerning the conduct, demeanor or appearance of its officers, members, employees, agents, representatives, contractors, customers, guests, invitees and those doing business with it, the Tenant shall immediately take all reasonable steps necessary to remove the cause of the objection.

The Tenant shall provide management, supervisors and employees in sufficient numbers at all times to deliver all services properly and efficiently and to meet all of the standards for operation of a food service facility required by this Lease Agreement. The Tenant shall retain active, qualified, competent and experienced managers and supervisors to oversee and administer the operations. At least one person employed specifically in the role of Manager, Assistant Manager or Shift Supervisor must be on duty during all shifts of operation. Management and supervisory personnel shall have

food service management experience and maintain an active Food Handlers' or ServSafe Certification.

- (c) The Tenant shall provide its employees at the Demised Premises with distinctive, clean and similar uniforms that will create at all times a neat and tidy public image. All employees engaged in the preparation or handling of food shall be trained and shall be required to meet all health regulations regarding food handling and preparation.
- (d) The Tenant is strongly encouraged, to the maximum extent practical consistent with legal requirements, to utilize MWBE suppliers and consider the support of New York State businesses in the fulfillment of the terms of this Lease.
- (e) Tenant will implement all reasonable programs, to the extent that Tenant is reasonably able to do so, designed to reduce the public health and environmental impacts of its activities and operations, including but not limited to: reducing or eliminating the use and generation of toxic substances, pollution and waste; to the maximum extent practical consistent with legal requirements reducing, reusing, recycling and composting solid waste; increasing energy efficiency; increasing the use of renewable energy sources; conserving water and other natural resources; and maximizing the use of environmentally preferable "green" commodities, services, and technology. The Tenant will maintain complete compliance with state laws, regulations, OGS requirements and all Executive Orders (to the same extent as an entity legally bound by such orders) mandating energy conservation, green procurement and agency sustainability. In no case, shall polystyrene products be used in the Food Service Operation or at any Catering Event.
- (f) The Tenant shall not commit any nuisance in the Demised Premises, or do or permit to be done anything which may result in the creation or commission of a nuisance in the Demised Premises, and the Tenant shall not cause or permit to be caused or produced upon the Demised Premises, or to permeate or emanate therefrom, any unusual, noxious or objectionable smokes, gases, vapors, odors, or objectionable noises. Notwithstanding the foregoing, Landlord acknowledges and agrees that typical odors associated with Tenant's permitted use shall not be deemed objectionable.
- (g) The Tenant shall not keep, maintain, place or install in the Demised Premises any fixtures or equipment the use of which is not consistent with and required for the purposes of the Letting as set forth in Section 4 of this Agreement entitled "Rights of Use by the Tenant" and the Tenant shall not use or connect any equipment or engage in any activity or operation in the Demised Premises which will cause or tend to cause an overloading of the capacity of any existing or future Utility, Mechanical, Electrical, Communication or Other Systems or portions thereof, as defined in Section 1(j) of this Lease, in the Demised Premises or elsewhere at the Plaza, nor shall the Tenant do or permit to be done anything which may interfere with the effectiveness or accessibility thereof. Landlord agrees that Tenant's proposed operation shall not violate the provision of this paragraph. Landlord's agreement however shall neither be deemed to be nor construed as constituting a waiver of any of its rights or remedies herein contained.
- (h) The Tenant shall not overload any floor, roadway, passageway, pavement or other surface or any wall, partition, column or other supporting member, or any elevator or other conveyance, in the Demised Premises or at the Plaza and without limiting any other provision of this Lease, the Tenant shall repair, replace or rebuild any such damage caused by overloading.
- (i) The Tenant shall not do or permit to be done any act or thing upon the Demised Premises or at the Plaza which will invalidate or conflict with any insurance policies covering the Demised Premises or any part thereof, or the Plaza, or any part thereof, or which, in the commercially reasonable opinion of the Landlord, may constitute an extra

hazardous condition, so as to increase the risks normally attendant upon the operations contemplated by Section 4 of this Lease Agreement entitled "Rights of Use by the Tenant", and the Tenant shall promptly observe, comply with and execute the provisions of any and all present and future rules and regulations, requirements, orders and directions of the National Fire Protection Association and the New York Fire Insurance Rating Organization, and of any other board or organization exercising or which may exercise similar functions, which may pertain or apply to the operations of the Tenant in the Demised Premises, and the Tenant shall, subject to and in accordance with the provisions of Section 28 of this Lease Agreement entitled "Construction by the Tenant", make any and all improvements, alterations or repairs of the Demised Premises that may be required at any time hereafter by any such present or future rules, regulations, requirement, order or direction, and if by reason of any failure on the part of the Tenant to comply with the provisions of this Lease Agreement any insurance rate on the Demised Premises or any part thereof or on the Plaza or any part thereof shall at any time be higher than it otherwise would be, then the Tenant shall pay to the Landlord, as an item of additional rent, that part of all insurance premiums paid by the Landlord which shall have been charged because of such violation or failure by the Tenant, but no such payment shall relieve the Tenant of its other obligations under this paragraph. Notwithstanding the foregoing, Landlord represents to Tenant that, to Landlord's knowledge, Tenant's permitted use hereunder shall not cause such an increase or invalidation of any insurance on the Plaza.

- (j) The Tenant shall not sell merchandise depicting or referencing the State of New York, any agency or property thereof or the Great Seal without the express prior consent of the Landlord.
- (k) The Tenant shall perform and pay all costs for the thorough cleaning of those areas of the Demised Premises devoted to and available for use and circulation by patrons and guests, all kitchen and food preparation areas, counters, spaces behind counters and areas reserved for the use of the Tenant and its employees, inclusive of floors, walls and ceilings. In addition, the said areas, furnishings and appurtenances are to be spot cleaned as needed but not less than daily. All eating areas shall be neat and clean, and, to that end, continually cleaned by the Tenant's employees. Such eating areas shall include, but not be limited to, tables, counters, seats, floors, ceilings, walls, equipment and furnishings. The Tenant must submit to OGS BFS a schedule for cleaning each area of the Demised Premises.

The Tenant shall clean and degrease all kitchen exhaust filters, hood systems, kitchen food preparation areas and equipment as part of its regular scheduled maintenance with solutions containing disinfectants and germicides that are not hazardous substances and that reduce or eliminate the health and environmental risks from the use or release of toxic substances and minimize the risks of the discharge of pollutants into the environment. Said cleaning and degreasing shall include the proper disposal of all dirt, grease and other wastes.

The Tenant shall be solely responsible for supplying all cleaning equipment, materials and supplies needed to properly maintain and clean the Demised Premises as required. Should the Tenant fail or refuse to clean the Demised Premises to the reasonable satisfaction of the Landlord, the Parties hereto agree that the Landlord shall be authorized and empowered, after two (2) business days notice and Tenant failure to cure (except in the event of an emergency, where no notice and cure period shall be provided), to cause the Demised Premises to be properly cleaned, charging the Tenant, who shall be solely liable therefore, one hundred and fifty percent (150%) of his expenses incurred for such service, as liquidated damages and not a penalty.

Governor Paterson's Executive Order 4 ("EO-4"), which was continued by Governor Cuomo's Executive Order 2, directs all state agencies and authorities to purchase green products and promote sustainability. EO-4, a copy of which is annexed hereto as Exhibit

3, directs state agencies and authorities to develop and implement specific projects, programs and policies designed to reduce the public health and environmental impacts of the activities and operations of the agency or authority, including: the reduction or elimination of the use and generation of toxic substances, pollution and waste; the reduction, reuse, recycling and composting of solid waste; and maximizing the use of environmentally preferable or “green” commodities, services and technology.

In an effort to assist state agencies and authorities in complying with these directives, the Interagency Committee on Sustainability and Green Procurement (the “Interagency Committee”) has approved specifications for Industrial/Institutional Cleaning Products and Hand Soap/Cleaner. These specifications, along with other approved specifications, can be found at: <http://www.ogs.state.ny.us/EO/4/ApprovedSpecs.asp>.

In order to comply with these directives, the Landlord and the Tenant have agreed to make careful selection of effective janitorial cleaning products and equipment that reduce or eliminate the health and environmental risks from the use or release of toxic substances and minimize the risks of the discharge of pollutants into the environment.

In addition, EO-4 requires State agencies and authorities, to the maximum extent practicable, to purchase janitorial paper and other paper supplies, including but not limited to bathroom tissue and paper towels, that are processed chlorine-free and composed of 100% post-consumer recycled content. EO-4 also requires State agencies and authorities, to the extent practicable, to implement effective programs to source separate recyclable materials, including paper, metal, glass and plastic, that will maximize materials recovery and reduce waste. The Landlord and Tenant agree to work to meet these requirements by, to the maximum extent practicable making careful selection of janitorial paper and other paper supplies including but not limited to bathroom tissue and paper towels, in order to use products that are composed of 100% post-consumer recycled content and shall be processed chlorine-free.

Additional information on these requirements and EO-4 are available through the Office of General Services (OGS) upon request.

Tenant acknowledges an understanding of these State policies and pledges to cooperate with the State in their implementation.

During all shifts, the Tenant shall regularly monitor, and promptly pick up trash in the Food Service Operations. The Tenant shall furnish trash collection equipment adequate for the Food Service Operations and shall promptly, as needed, but no less than at the end of the business day, remove all garbage, debris, and trash from the interior of each Food Service Operation at its own expense and deliver the same to a designated area within the Plaza (hereinafter the “Food Service Dumpster Area”).

The Tenant shall be solely responsible for the proper disposal of grease in the Food Service Dumpster Area as per State/City codes requirements.

Landlord shall provide and be responsible for the placement and disposal of dumpsters located in the Food Service Dumpster Area. Said dumpster shall be available to the Tenant, in common with other food service operators at the Plaza. Landlord shall contract with a private vendor for dumpster services at Landlord’s expense.

Landlord and Tenant shall also comply with local recycling laws enacted under General Municipal Law § 120-aa, requiring that solid waste be separated into recyclable, reusable or other components as well as OGS source-separation guidelines. The Landlord and Tenant acknowledge the value of composting and shall, whenever practicable, work to encourage composting in the Demised Premises and at the Plaza.

SECTION 20. NOTICES

- (a) Notices, requests, permissions, consents and approvals given or required to be given to or by either Party under this Lease Agreement, shall not be effective unless they are given in writing, and all such notices and requests shall be delivered to the Party or a duly designated officer or representative of such Party, via certified mail return receipt requested; via hand delivery; or via reputable overnight carrier such as Federal Express. Until further notice, the Landlord hereby designates the Commissioner and Tenant designates its vice president-real estate and its general counsel, as its respective officers or representative upon whom notices and requests may be served and the Landlord designates its office at the Bureau of Food Services, Concourse, Room 130, GNAR ESP , Albany, New York 12242, and the Tenant designates its office as stated on the first page hereof, as their respective offices where notices and requests may be served.
- (b) If any notice is mailed or delivered, the giving of such notice shall be complete upon receipt, or, in the event of a refusal by the addressee, upon the first tender of the notice to the addressee or at the permitted address. If any notice is sent by telegraph, the giving of such notice shall be complete upon receipt or, in the event of a refusal by the addressee, upon the first tender of the notice by the telegraph company to the addressee or at the address thereof.

SECTION 21. RULES AND REGULATIONS

The Tenant shall observe and obey (and compel its officers, members, employees, agents, representatives, contractors, guests, invitees and those doing business with it to observe and obey) all reasonable Rules and Regulations to be promulgated by the Landlord to govern the conduct of the private retail and business leases at the Plaza and all reasonable amendments and supplements to said Rules and Regulations, as may from time to time and throughout the Letting be promulgated by the Landlord for reasons of safety, health or preservation of property, or for the maintenance of the good and orderly appearance of the Demised Premises and the Plaza for the safe and efficient operation of the Plaza. The Landlord agrees that such original Rules and Regulations governing the conduct of retail and business tenancies shall not be applicable or effective with relation to the Tenant until fifteen (15) calendar days after the same have been furnished to the Tenant, and that, except in cases of emergency, it will give notice to the Tenant of every such further rule or regulation adopted by it at least fifteen (15) calendar days before the Tenant shall be required to comply therewith. In the event of a conflict between any such rules and regulations and the provisions of this Lease, the provisions of this Lease shall prevail. No changes or amendments to the rules and regulations shall materially increase Tenant's obligations hereunder or materially decrease Tenant's rights hereunder.

SECTION 22. EQUIPMENT, FURNITURE, FIXTURES

- (a) The Landlord shall make available to the Tenant Fixed and Non-Fixed State Equipment/Fixture Inventories. The Tenant shall verify the accuracy of the inventories and execute receipts for all listed food services equipment, furniture, fixtures, utensils, tables and chairs, and for such additional equipment as may be provided in the Commissioner's discretion.
- (b) The Tenant shall reimburse the Landlord for the full cost for maintenance, repairs or replacement as the Parties deems necessary and all costs pertaining thereto, of all such Fixed and Non-Fixed State Equipment/Fixtures. All replacements, that are not deemed to be Leasehold Improvements, as defined in Section 1(e) of this Lease, shall remain property of the Tenant. Tenant shall advise OGS BFS prior to replacing or disposing of any Fixed or Non-Fixed State Equipment or Fixtures.

- (c) When Tenant is replacing or adding equipment, Tenant shall advise Landlord of any such changes. All equipment used in the Demised Premises must be of commercial grade and installed in a workmanlike manner. Any electrical appliance must be connected directly to an electrical outlet or fused power strip. Extension cords with multi plug adapters, splices or repairs are prohibited.

SECTION 23. MAINTENANCE AND REPAIR

(a) The Landlord's Responsibilities:

During the Term of this Lease, and any renewal, extension or holdover, the Landlord shall furnish and/or contract for services for rubbish removal, kitchen exhaust cleaning, grease trap and drain cleaning, pest maintenance and fire suppression system inspection as required by code. Landlord shall also be responsible for repairs, replacements and maintenance related to: (a) the upkeep of the roof, roof membrane and roof systems (gutters, downspouts and the like), foundation, exterior walls, interior structural walls, and all structural components of the Premises and the Plaza, and (b) the maintenance and repair of all parking areas, sidewalks, landscaping and drainage systems on the property and all utility systems (including mechanical, electrical, and HVAC systems) and plumbing systems which serve the Plaza as a whole and not a particular tenant's premises.

(b) The Tenant's Responsibilities:

- (1) During the Term of this Lease, and any renewal, extension or holdover, the Tenant shall reimburse the landlord for the cost of services for kitchen exhaust cleaning, grease trap and drain cleaning, pest maintenance and fire suppression system inspection as required by code.

- (2) During the Term of this Lease, and any renewal, extension or holdover, the Tenant shall, at its own cost and expense, maintain, repair and replace as needed in the Demised Premises interior walls and partitions, floors, ceilings, columns, interior and exterior surfaces of windows, doors, glass of every kind, and storefronts; and all equipment and fixtures. The Tenant shall make all necessary non-structural repairs, replacements, rebuilding and painting (through the use of paint that meets the specifications of the Landlord) necessary to keep the Demised Premises in the condition existing at the Commencement Date, reasonable wear and tear excepted, and to keep any improvements, additions and fixtures made or installed during the Term in the condition they were in when made or installed except for reasonable wear and tear which does not adversely affect the watertight condition or structural integrity of the Plaza or adversely affect the efficient or proper utilization or the appearance of any part of the Demised Premises. In the event the Tenant fails to commence so to make or do any repair, replacement, rebuilding or painting required by this Lease within a period of ten (10) calendar days after notice from the Landlord to do, or fails diligently to continue to completion the repair, replacement, rebuilding or painting of all the Demised Premises required to be repaired, replaced, rebuilt or painted by the Tenant under the terms of this Lease, the Landlord may, at its option, and in addition to any other remedies which may be available to it, repair, replace, rebuild all or any part of the Demised Premises included in the said notice, the Landlord's cost thereof to be paid by the Tenant within twenty (20) days of demand. This option or the exercise thereof shall not be deemed to create or imply any obligation or duty to the Tenant or others.

- (2) If the Plaza is damaged or destroyed by the acts or omissions of Tenant, its officers, members, employees, agents, representatives or contractors, the Landlord shall repair, replace, rebuild and paint the same at Tenant's expense.

SECTION 24. SERVICES AND UTILITIES

(a) Subject to all the terms and conditions of this Lease Agreement, the Landlord will furnish to the Tenant the following:

- (1) Conditioned airflow to provide suitable and comfortable levels of heating, air conditioning and ventilation pursuant to the standards adopted by the Landlord for the Plaza. No additional costs or charge shall be owed from and paid by the Tenant for the heating, air conditioning and ventilation described in this paragraph, the same being included in the Rent.
- (2) Hot and cold water, of the character furnished by municipality or utility company supplying the same to and generally available to and used by the Landlord at the Plaza in reasonable quantities for use by the Tenant solely for sanitary purposes associated with the ordinary needs of such retail sales operation. No additional costs or charge shall be owed from and paid by the Tenant for the water supply described in this paragraph, the same being included in the Rent.
- (3) From 6:00 am to 9:00 pm, Monday through Sunday, electric service distribution equipment, lighting fixtures, and electric service of sufficient amount and quality for proper lighting said Demised Premises and for the operation of Tenant's occupancy including, in addition to normal Building requirements, electrical services for office equipment, POS systems, electrical food services equipment and appurtenances. Landlord shall have no obligation to increase or change the amount or type of service or equipment and fixtures. No additional costs or charge shall be owed from and paid by the Tenant for the electric service described in this paragraph, the same being included in the Rent.

Notwithstanding the foregoing, if Tenant shall require electric, heating, ventilating or air conditioning service from any Plaza systems at times other than its From 6:00 am to 9:00 pm, Monday through Sunday, (hereafter, "After Hours Service"), Landlord shall furnish such After Hours Service upon reasonable advance notice from Tenant (no less than 24 hours notice) and Tenant may be required to pay, as Additional Rent, Landlord's then standard charges therefore except when "after hour service" is provided at the request of OGS. Such after-hours rate may increase from time to time in relation to increases in Landlord's costs to furnish such After Hours Services.

(b) If the Tenant, in accordance with Sections 27 and 28 of this Agreement entitled "Construction by the Tenant" or "Finishes to be Provided by the Tenant", or otherwise, erects any partitions or makes any improvements which stop, hinder, obstruct or interfere with the cooling of the air or the heating of the Demised Premises, then no such action by the Tenant shall impose any obligations on the Landlord to increase or augment the existing or presently contemplated supply of conditioned airflow for air cooling or for heating and the Tenant shall not in any such event be relieved of any of its obligations hereunder because a comfortable temperature is not maintained. No consent or approvals given by the Landlord in connection with the erection of partitions, the making of any improvements or the installation of any heating or air conditioning distribution systems shall be or be deemed to be a representation that the work consented to or approved will not stop, hinder, obstruct or interfere with either the cooling of the air or heating of the Demised Premises or any portion thereof or that any system is sufficient or adequate for the distribution of heating or air cooling of the Demised Premises. It is hereby understood further that the installation by the Tenant of any equipment which itself requires air cooling or which requires additional quantities of air cooling at the portion of the Demised Premises which such equipment is installed, or the concentration in any portion of the Demised Premises of such a number of people so as to require additional quantities of air cooling, shall not impose any

obligation on the Landlord to increase the capacity or output of initially existing facilities, equipment or fixtures for the supply of air cooling and the Tenant shall not in any such event be relieved of any of its obligations hereunder. If Tenant erects any partitions or makes any improvements subject to the Section without the prior consent of the Landlord, then, upon reasonable notice so to do, the Tenant will remove the same, or, at the option of the Landlord, cause the same to be changed to the satisfaction of the Landlord, or the Landlord may affect the removal or change, and the Tenant shall pay the cost thereof to the Landlord on demand.

- (c) The Tenant shall not waste or dissipate air cooling or heating nor draw any of the same into the Demised Premises from public areas contiguous thereto.
- (d) The Landlord, upon twenty-four (24) hours notice to Tenant (which may be given in person or by telephone), except in the event of an emergency, in which no notice shall be required, shall have the right to discontinue temporarily the supply of any of the above services when necessary or desirable in the opinion of the Landlord in order to make any repairs, alterations, changes or improvements in the Demised Premises or elsewhere in the Plaza or in order to conserve energy including but not limited to all systems for the supply of services. Landlord shall use commercially reasonable efforts to avoid such interference.
- (e) No failure, delay, interruption or reduction in any service or services shall be or shall be construed to be an eviction of the Tenant, shall be grounds for any diminution or abatement of the Rent payable hereunder, or shall constitute grounds, for any claim by the Tenant for damages, consequential or otherwise, unless due to the negligent acts of the Landlord, its employees or agents. If Tenant shall be in default under any provisions of this Lease beyond any applicable notice and cure periods, Landlord shall be permitted to cease providing any service or services required to be provided by Landlord hereunder to Tenant, if Tenant fails to cure such default after an additional seven (7) days written notice and cure period. Landlord may cease providing such services only during the period in which Tenant remains in default hereunder.
- (f) The Landlord shall be under no obligation to supply any service or services if and to the extent and during any period that the supplying of any such service or services or the use of any component necessary therefore shall be prohibited or rationed by any federal, state or municipal law, rule, regulation, requirement, order or direction and if the Landlord deems it in the public interest to comply therewith, even though such law, rule, regulation, requirement, order or direction may not be mandatory on the Landlord as a public agency.
- (g) Anything to the contrary notwithstanding for the purposes of this Lease Agreement, Tenant has reviewed the utilities installations and agrees that the currently installed utility systems, i.e. heat and air conditioning, electric and plumbing are adequate for its intended use of the Demised Premises provided that Landlord provides all required utilities pursuant to the Landlord Work attached hereto.
- (h) Notwithstanding anything contained herein to the contrary, If any utility or service to the Premises which is provided by Landlord or under Landlord's control, is interrupted for more than twenty-four (24) hours, or is interrupted for more than twenty four (24) hours due to the negligence of Landlord or its agents or contractors, then Tenant's rent and all other charges hereunder shall abate during the period such utility or service is interrupted.

SECTION 25. FORCE MAJEURE

- (a) The Parties shall not be liable for any failure, delay or interruption in performing its obligations hereunder due to Causes or Conditions Beyond the Control of the Landlord or Tenant, as defined herein. Further, the Landlord or Tenant, as the case may be, shall

not be liable unless the failure, delay or interruption shall result from failure on the part of the Landlord to use reasonable care to prevent, or reasonable efforts to cure such failure, delay or interruption.

- (b) No abatement, diminution or reduction of the Rent or other charges payable by the Tenant, shall be claimed by or allowed to the Tenant for any inconvenience, interruption, cessation or loss of business or other loss caused, directly or indirectly, by any present or future laws, rules, requirements, orders, directions, ordinances or regulations of the United States of America, or of the state, county or city governments, or of any other municipal, governmental or lawful authority whatsoever, or by priorities, rationing or curtailment of labor or materials, or by war or any matter or thing resulting therefrom, or by any other Causes or Conditions Beyond the Control of the Landlord nor shall this Lease Agreement be affected by any such causes or conditions.

SECTION 26. CHANGES IN THE PLAZA

Subject to the provisions of this Lease, the Landlord shall have the right at any time and from time to time prior to and during the Letting, in the interest of the efficient operation of the Plaza of which the Demised Premises may be a part, to close, move or alter any common way in the said Plaza, including but not limited to entrances, exits, passages, halls, corridors, aisles, stairways, elevators, or escalators, or to restrict or change the traffic on or through any such common way; and no such action by the Landlord shall release the Tenant from any of its obligations under this Lease Agreement. In exercising its rights hereunder, Landlord shall use all commercially reasonable efforts to avoid interference with Tenant's use of the Demised Premises, access thereto and visibility thereof.

SECTION 27. FINISHES AND DECORATION BY THE TENANT

- (a) OGS' delivery obligation hereunder shall mean delivery of the Demised Premises in its "as is" condition as of the Commencement Date.

Without limiting the generality of the foregoing, the Tenant further recognizes that a common design and finish plan will be adopted for the construction, development and finishing of corridor and open areas on the level or floor in which the Demised Premises are located and for certain interior portions of the Tenant's Demised Premises and other Tenant areas located on the said level or floor. The Tenant will be required to adopt and incorporate in its plans and specifications the criteria for construction and for design, color, material and other finishing requirements which will be specified by the Landlord prior to the full execution of this Lease Agreement. The Tenant agrees that the plans, drawings and specifications referred to above shall reflect all the requirements to be specified with respect to the precise color, type and other necessary aspects of the performance of the finishing work. In connection with carrying out the foregoing common design controls the Tenant shall adopt such procedures and shall use appropriate labor and suppliers to perform the work so as to integrate and coordinate the Tenant's work with similar work being performed on behalf of other similar tenancies and the Tenant shall avoid any interference or obstruction of such other work.

Landlord shall either approve or disapprove, with reasonable explanation for such disapproval, any such plans submitted to Landlord, within twenty (20) days of submission. If Landlord fails to approve or disapprove within such time frame, Tenant shall again submit such plans to Landlord and Landlord shall have an additional period of seven (7) days to either approve or disapprove, with reasonable explanation for such disapproval, or such plans shall be deemed approved.

- (b) No improvements, finishing or installation work shall be commenced by the Tenant until the building permit has been issued and plans and specifications referred to in paragraph (a) above have been finally approved by the Landlord and until the Landlord has served written notification on the Tenant that the Demised Premises are available

for prior entry by the Tenant for performance of the work. The Tenant's occupancy of the Demised Premises for performance of such work shall be subject to and in accordance with all the terms, covenants and provisions of this Lease Agreement except that Rent shall not commence nor shall public operations commence until the Rent Commencement Date of the Letting referred to in Section 6 of this Agreement entitled "Term", and those in the construction application or responses and communications relating thereto. In the event of a conflict between said documents, the provisions of this Lease Agreement shall control.

- (c) The Tenant shall be solely responsible for the plans and specifications used by it, and for the adequacy or sufficiency of such plans, specifications and all the improvements depicted thereon or covered thereby, regardless of the consent thereto or approval thereof by the Landlord or the incorporation therein of any Landlord requirements, or recommendations. The Landlord shall have no obligations or liabilities in connection with the performance of finishing, decorating or installation work performed by the Tenant, or on its behalf or the contracts for the performance thereof entered into by the Tenant. Any warranties extended or available to the Tenant in connection with aforesaid work shall be the benefit of the Landlord as well as the Tenant.
- (d) Without limiting or affecting any other term or provision of this Lease Agreement, the Tenant shall be solely responsible for the design, adequacy and operation of all Utility, Mechanical, Electrical, Communications and Other Systems installed in the Demised Premises by Tenant, and shall do all preventive maintenance and make all repairs, replacements, rebuilding and painting necessary to keep such systems and all other improvements, additions and fixtures, finishes and decorations made or installed by the Tenant (whether the same involves structural or non-structural) in the condition they were in when made or installed except for reasonable wear and tear which does not adversely affect the watertight condition or structural integrity of the Plaza or adversely affect the efficient or proper utilization or the appearance of any part of the Demised Premises.
- (e) Tenant shall be permitted to make delivery of product to the Premises according to the Delivery Rules set forth by OGS (current deliveries are scheduled Monday – Friday 7:00 am to 3:00 pm) , at no additional cost to Tenant.

SECTION 28. CONSTRUCTION BY THE TENANT

- (a) Except as herein expressly provided, the Tenant shall not without prior written approval of the Landlord, erect any structures, make any improvements or do any other construction work in the Demised Premises or elsewhere at the Plaza, or alter, modify, or make additions, improvements or repairs to or replacements of any structure now existing or built at any time, during the Letting, or install any fixtures (other than trade fixtures removable without irreparable injury to the Demised Premises) without the prior written consent of the Landlord, not to be unreasonably withheld, and in the event any construction, improvement, alteration, modification, addition, repair or replacement is made without such consent, then, upon reasonable notice so to do, the Tenant will remove the same, or, at the option of the Landlord, cause the same to be changed to the reasonable satisfaction of the Landlord, or the Landlord may affect the removal or change, and the Tenant shall pay the cost thereof to the Landlord on demand. Landlord shall either approve or disapprove, with reasonable explanation for such disapproval, any such plans submitted to Landlord, within twenty (20) days of submission. If Landlord fails to approve or disapprove within such time frame, Tenant shall again submit such plans to Landlord and Landlord shall have an additional period of seven (7) days to either approve or disapprove, with reasonable explanation for such disapproval, or such plans shall be deemed approved. Notwithstanding anything contained herein to the contrary, Landlord shall have no approval rights over interior, non-structural alterations that do not affect any building systems and which cost less

than \$50,000 in the aggregate, except for signage which will be approved in accordance with Section 29 of the Lease.

- (b) In the event that pursuant to Section 27 of this Agreement entitled "Finishes and Decorating by the Tenant" or otherwise the Tenant is required or permitted to perform construction, finishing, decorating, alteration or improvement work to the Demised Premises, or to make repairs thereto, all of the same shall be made or performed strictly in accordance with the following terms and conditions.
- (1) The Tenant shall, to the extent allowed under the law, indemnify and hold harmless the Landlord, its officers, agents and employees, against the following distinct and several risks, whether they arise from acts or omissions of the Tenant, of the Landlord, its officers, agents and employees or of third persons, or from acts of God or of the public enemy, or otherwise excepting only risks to the extent resulting from the negligence or willful misconduct of Landlord, its agents, contractors or employees:
 - (i) The risk of loss or damage to all such construction, finishing, decorating, alteration, improvement or repair work prior to the completion thereof. In the event of such loss or damage, the Tenant shall forthwith repair, replace and make good the work without cost to the Landlord.
 - (ii) The risk of death, injury or damage, direct or consequential to the Landlord, its officers, agents and employees, and to its or their property, arising out of or in connection with the performance of the work. The Tenant shall indemnify the Landlord, its officers, agents and employees, for all such deaths, injuries and damages, and for all loss suffered by reason thereof.
 - (iii) The risk of claims and demands, just or unjust, by third persons against the Landlord, its officers, agents and employees arising or alleged to arise out of the performance of the work. The Tenant shall indemnify the Landlord, its officers, agents and employees, against and from (and shall reimburse to the Landlord for the Landlord's costs or expenses including reasonable legal expenses incurred in connection with the defense of) all such claims and demands.
 - (2) All work done pursuant to this Section shall be done in accordance with drawings and specifications to be submitted to and approved by the Landlord prior to the commencement of the work, except as otherwise set forth herein, shall be done to its reasonable satisfaction and shall be subject to its inspection during the progress of such work and after completion thereof; and the Tenant shall redo or replace at its own expense any work not reasonably approved by the Landlord. Unless otherwise expressly provided herein, all workmanship and materials are required to be first class.
 - (3) The Tenant shall pay all claims lawfully made against it by its contractors, subcontractors, material men and workmen and all claims lawfully made against it by other third persons arising out of or in connection with or because of the performance of the work and shall cause its contractors and subcontractors to pay all such claims lawfully made against them.
 - (4) The Tenant shall procure and maintain comprehensive public liability insurance, or, if the work is to be done by an independent contractor, the Tenant shall require such contractor to procure and maintain such insurance in the name of the contractor, in either case, in limits not lower than those set forth for such categories of insurance in Section 30, naming the Landlord as an additional

insured, and if not so set forth, then as may be reasonably specified in advance by the Landlord.

- (5) As soon as such construction, finishing, decorating, alteration or improvement or repair shall have been completed to the reasonable satisfaction of the Landlord, then subject to the provisions of the following subdivision (6) title thereto and property therein shall immediately and without execution of any further instrument vest in the Landlord (excluding personal property, trade fixtures and equipment), and all such construction, finishes, decorations, alteration, improvement or repair shall thereupon become and thereafter be part of the Demised Premises and on request the Tenant shall execute such documents confirming the same as the Landlord may require. The Tenant remains liable for any liens filed against the Demised Premises for the construction activities permitted herein.
- (6) Any and all articles of personal property including, without limitation, business and trade fixtures, machinery, equipment, cabinet work, furniture, movable partitions, carpeting and water coolers, owned or installed by the Tenant are and shall remain the property of the Tenant and may be removed by it at any time during the Lease Term, extension or holdover period, but Tenant shall not be required to remove its business and trade fixtures, machinery, equipment and cabinet work at the end of the Lease Term, extension or holdover period unless it so elects, providing that the cost of repairing any damage to the Building arising from such removal shall be paid by Tenant.

SECTION 29. SIGNS

Except with the prior written consent of the Landlord, which consent shall not be unreasonably withheld or delayed and so long as such consent is not inconsistent with Plaza standards and regulations, the Tenant shall not erect, maintain or display any signs, advertising, posters or similar devices at or on the exterior parts of the Demised Premises, or in the Demised Premises so as to be visible through the windows, glass walls or exterior doors thereof. Notwithstanding the foregoing, Landlord shall have no approval rights over Tenant's interior menu board or other similar interior signage which is professionally prepared and in keeping with the interior signage at Tenant's other locations. Upon the expiration or termination of the Lease, the Tenant shall remove, obliterate or paint out, as the Landlord may direct, any signs, advertising, posters or similar devices, and in connection therewith shall restore the area affected to the same condition as of the Commencement Date. Notwithstanding anything contained herein to the contrary, Landlord hereby approves Tenant's exterior signage attached hereto as Exhibit 4. Landlord hereby approves current and future trademarked logo, letters, colors and font in Tenant's signage, provided that the Tenant is Corporation or a related entity, and provided that Landlord shall have reasonable approval rights over the location, size and method of attachment of such signage.

SECTION 30. LIABILITY INSURANCE

Prior to the Commencement Date, the Tenant shall file with the Landlord, Certificates of Insurance evidencing compliance with all requirements contained in this Lease. Such Certificates shall be of form and substance reasonably acceptable to the Landlord.

Acceptance and/or approval by the Landlord does not and shall not be construed to relieve Tenant of any obligations, responsibilities or liabilities under the Lease.

All insurance required by the Lease shall be obtained at the sole cost and expense of the Tenant; shall be maintained with insurance carriers licensed or authorized by the New York State Department of Financial Services to do business in New York State; shall be primary and non-contributing to any insurance or self insurance maintained by the Landlord; and shall be endorsed to provide written notice be given to the Landlord at least thirty (30) days prior to the

cancellation, non-renewal, or material alteration of such policies, which notice evidenced by return receipt of United States Certified Mail, shall be sent to NYS Real Estate Planning, 26th Floor, Corning Tower, Empire State Plaza, Albany, NY 12242.

The Tenant shall be solely responsible for the payment of all deductibles and self insured retentions to which such policies are subject. Deductibles and self insured retentions must be approved by the Landlord. Such approval shall not be unreasonably withheld.

The Tenant shall require any subcontractors hired, to carry insurance with the same limits and provisions provided herein.

Each insurance carrier must be rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

The Tenant shall cause all insurance to be in full force and effect as of the Commencement Date of this Lease and to remain in full force and effect throughout the Term of this Lease and as further required by this Lease. The Tenant shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.

Not less than thirty (30) calendar days prior to the expiration date or renewal date, the Tenant shall supply the Landlord updated replacement Certificates of Insurance, and amendatory endorsements.

All liability insurance required by the Lease shall name The People of the State of New York, its officers, agents, and employees as additional insured hereunder (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number **CG 20 26 11 85** or the equivalent). The additional insured requirement does not apply to Workers Compensation, Disability or Liquor Liability coverage.

The Tenant, throughout the Term of this Lease, or as otherwise required by this Lease, shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below and as required by the terms of this Lease, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

- (a) Commercial General Liability Insurance with a limit of not less than \$2,000,000.00 each occurrence. Such coverage shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverage with no modification to the contractual liability coverage provided therein. Further it shall cover liability arising from premises operations, independent contractors, products-completed operations, fire damage legal liability with a limit of not less than \$500,000 each occurrence, personal & advertising injury, cross liability coverage, and liability assumed in a contract (including the tort liability of another assumed in a contract).

If such insurance contains an aggregate limit, it shall apply separately to this location.

- (b) Comprehensive Business Automobile Liability Insurance with a limit of not less than \$2,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non owned automobiles.
- (c) If the Tenant sells, distributes, serves or furnishes alcoholic beverages, then Tenant shall maintain in full force and effect through the Term, Liquor Liability Insurance with limits of not less than \$1,000,000. Such coverage shall be written on ISO occurrence form CG 00 03, or a substitute form providing equivalent coverage.

Waiver of Subrogation. Tenant shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insured's right of subrogation against Landlord, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if Tenant waives or has waived before the casualty, the right of recovery against Landlord or (ii) any other form of permission for the release of Landlord.

The insurance exposures of the State of New York as well as those of the State agencies are self retained. Suits for bodily injury and property damage are brought in the NY State Court of Claims, which is supported by a multi-million dollar appropriation.

SECTION 31. WORKERS COMPENSATION INSURANCE AND DISABILITY BENEFITS COVERAGE

Prior to this Lease becoming effective, Tenant must submit proof that they have the workers' compensation and disability benefits coverage required by the New York State Workers' Compensation Law, or proof that they are legally exempt from obtaining such coverage. Proof of compliance must be demonstrated in accordance with the requirements set forth by the New York State Workers' Compensation Board (An instruction manual clarifying the Workers' Compensation Law requirements is available to download at the Workers' Compensation Board's website, www.wcb.state.ny.us. Once you are on the website, click on Employers/Businesses, then Business Permits/Licenses/Contracts; from there, click on Instruction Manual for Businesses Obtaining Permits/Licenses/Contracts.) The Tenant shall notify the Office of General Services, Division of Real Estate Planning, at least thirty (30) days prior to material change or cancellation of such coverage.

SECTION 32. INJURY AND DAMAGE TO PERSON OR PROPERTY

Subject to the availability of lawful appropriations and consistent with the provisions of Section 8 of the State Court of Claims Act and any other relevant provisions of such Act, the Landlord shall not be liable to the Tenant or others for any personal injury, death or property damage from falling material, water, rain, hail, snow, gas, steam, dampness, explosion, smoke, radiation, and/or electricity whether the same may leak into or fall, issue, or flow from any part of the Demised Premises of the Plaza, including without limitation thereto any Utility, Mechanical, Electrical, Communication or Other Systems therein, or from any other place or quarter unless said damage, injury or death shall be due to the negligent acts of the Landlord and its employees acting within their scope of employment.

SECTION 33. NON-LIABILITY OF INDIVIDUALS

Neither the Commissioner nor any officer, agent or employee of the Landlord shall be charged personally by the Tenant with any liability or held liable to it under any term or provision of this Lease Agreement or because of its execution or attempted execution or because of any breach or attempted or alleged breach thereof.

SECTION 34. CASUALTY

(a) In the event that, as a result of a casualty, whether (i) insured against by the Landlord under the New York standard form of fire insurance policy carried by it on the Demised Premises or (ii) intended and deemed by the Landlord to be the subject of its general plan to provide against and cover such casualty or loss by self-insurance, the Demised Premises are damaged without the fault of the Tenant, its officers, members, employees, customers, guests, invites or other persons who are doing business with the Tenant, or who are at the Demised Premises with the Tenant's consent, so as to render the Demised Premises untenable in whole or part, then:

(1) If the Landlord finds that the necessary repairs or rebuilding can be completed within ninety (90) days after the occurrence of the damage, the Landlord shall repair or rebuild with due diligence, and the Rent hereunder shall be abated only

for the period from the occurrence of the damage to the earlier of; (i) sixty (60) days after the completion of the repairs or rebuilding or (ii) Tenant's reopening for business at the Demised Premises, whether or not the work of repair or rebuilding is actually completed within the said ninety (90) days; or

- (2) If the Landlord finds that such repairs or rebuilding cannot be completed within ninety (90) days after the occurrence of the damage, or if the Landlord concludes that other than the Demised Premises also require rebuilding, then the Landlord shall have options; (i) to proceed with due diligence to repair or to rebuild the Demised Premises as necessary; or (ii) to terminate the Letting as to the entire Demised Premises; and in the case of (i), the Rent hereunder shall be abated either as the case may require for the period from the occurrence of the damage to the earlier of: (i) sixty (60) days after the completion of the repairs or rebuilding or (ii) Tenant's reopening for business at the Demised Premises, or for the period from the occurrence of the damage to the effective date of termination.
- (b) The Parties do hereby stipulate that neither the provisions of Section 227 of the Real Property Law of the State of New York nor those of any other similar statute shall be extended or apply to this Agreement.
- (c) The Tenant shall give the Landlord immediate notice in case of fire, accident or casualty to the Demised Premises or elsewhere in the Plaza if the occurrence elsewhere in the Plaza is known to and involves the Tenant, its officers, members, employees, agents, representatives, contractors, or is known to any of them and involves customers, guests or invitees of the Tenant.
- (d) In the event of a partial or total destruction of the Demised Premises, the Tenant shall immediately remove any and all of its property and debris from the Demised Premises or the portion thereof destroyed and if the Tenant does not promptly so remove, the Landlord may remove the Tenant's property to a public warehouse for deposit or retain the same in its own possession and sell the same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage and sale, second to any sums owed by the Tenant to the Landlord, with any balance remaining to be paid to the Tenant; if the expenses of such removal, storage and sale shall exceed the proceeds of sale, the Tenant shall pay such excess to the Landlord upon demand.
- (e) Tenant shall have the right to terminate this Lease if the damage is such that: (a) the Demised Premises cannot be (or are not) restored within one hundred eighty (180) days from the date of damage; (b) the damage or destruction is caused by a peril not required to be insured against hereunder; or (c) the damage or destruction occurs during the last two (2) years of the Term (or any Extension Term) and Tenant has not previously exercised any option rights it may for succeeding extension or renewal terms.
- (f) Regardless of fault, all structural repairs and repairs to the building systems of the Plaza and the Demised Premises shall be done by the Landlord, at its cost and expense.

SECTION 35. INDEMNITY

- (a) Excluding the gross negligence or willful misconduct of Landlord, its agents, contractors and employees, the Tenant shall indemnify and hold harmless the Landlord, its officers, agents and employees from (and shall reimburse the Landlord for the Landlord's costs or expenses including reasonable legal expenses incurred in connection with the defense of) all claims and demands of third persons including but not limited to those for death, for personal injuries, or for property damages, arising out of any default of the Tenant in performing or observing any term or provision of the Lease, or out of the use or occupancy of the Demised Premises by the Tenant or by others with its consent, or out of any of the acts or omissions of the Tenant, its officers, members, employees,

agents, representatives, contractors, customers, guests, invitees and other persons who are doing business with the Tenant's consent where such acts or omissions are on the Demised Premises, or arising out of any acts or omissions of the Tenant, its officers, members, employees, agents and representatives where such acts or omissions are elsewhere at the Plaza.

Subject to the availability of lawful appropriations and consistent with Section 8 of the New York State Court of Claims Act, Landlord shall hold Tenant harmless from and indemnify it for any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of Landlord or of its officers or employees when acting within the course and scope of their employment.

- (b) If so directed, the Tenant shall at its own expense defend any suit based upon any such claim or demand even if such suit, claim or demand is groundless, false or fraudulent.

SECTION 36. RENEWAL

Provided and on the condition that the Tenant is not then in default beyond applicable notice and cure period at the time of exercise of its renewal or the commencement of the renewal term, with respect to any requirement of the terms, covenants and conditions of this Lease by the Tenant to be observed or performed, the Tenant shall, subject to consent of the Landlord, have the option to renew this Lease for _____, at the rates set forth below (hereinafter "Base Renewal Rate"):-

Renewal Year	Annual Rent	Monthly Rent
1		
2		
3		
4		
5		

The ____Renewal Term shall commence the day immediately following the Termination Date and terminate on the _____ anniversary of the Termination Date. The Tenant shall give the Landlord written notice ("Tenant's Renewal Notice") of its intention to renew one hundred eighty (180) days prior to the Termination Date of the Lease and subsequently one hundred eighty (180) days prior to the termination date of the Initial Renewal Term, time being of the essence.

SECTION 37. NEW TENANT / NON ASSIGNMENT

Subject to the other provisions of this Section, in the event the Letting hereunder or the interest or estate of the Tenant under this Agreement shall be transferred to, pass to or devolve upon, by operation of law or otherwise, or if the Tenant shall sell, convey, transfer or assign this Lease or Rents due under this Lease, or if for any reason there shall be a change in the manner in which Rent reserved hereunder shall be paid to the Landlord, proper written notice of such change shall be given immediately by the Tenant to the Landlord. Any notice by the Tenant to the Landlord shall be deemed to be duly given if mailed by certified mail, addressed to the Landlord at the Office of General Services, Director, Real Estate Planning, Governor Nelson A. Rockefeller Empire State Plaza, Corning Tower Building, 26th Floor, Albany, New York 12242. No assignment of this Lease shall be made without the prior approval of OGS as required by Section 138 of the State Finance Law, provided such approval shall not be unreasonably withheld, conditioned or delayed.

SECTION 38. TERMINATION

- (a) If any one or more of the following events shall occur, that is to say:

- (1) The Tenant shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all its property; or
- (2) By order or decree of a court the Tenant shall be adjudged bankrupt or an order shall be made approving a petition filed by any of the creditors or, if the Tenant is a corporation by any of the stockholders of the Tenant, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any State thereof; or
- (3) A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Tenant and shall not be dismissed within thirty (30) days after the filing thereof; or
- (4) The Letting hereunder or the interest or estate of the Tenant under this Lease shall be transferred to, pass to or devolve upon, by operation of law or otherwise, any other person, firm or corporation without the consent of Landlord, to the extent required hereunder; or
- (5) The Tenant, if a corporation, shall, without the prior consent of the Landlord, make a change that results in a change in the Federal Identification Number of the Tenant by becoming (i) a possessor or merged corporation in a merger; or (2) a constituent corporation in a consolidation; or (3) a corporation in a dissolution; or
- (6) The Tenant is a partnership, and the said partnership shall be dissolved as the result of any act or omission of its partners or any of them, or by operation of law or by order or decree of any court having jurisdiction or for any other reason whatsoever; or
- (7) By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer, a receiver, trustee, or liquidator shall take possession or control of all or substantially all the property of the Tenant, or any execution or attachment shall be issued against the Tenant or any of its property, whereupon possession of the Demised Premises shall be taken by someone other than the Tenant, and any such possession or control shall continue in effect for a period of fifteen (15) calendar days; or
- (8) Any lien is filed against the Demised Premises because of any act or omission of the Tenant and is not removed or bonded against to stay the effect of the lien, within thirty (30) calendar days; or
- (9) The Tenant shall voluntarily abandon, desert, vacate or discontinue its operations (excluding permitted closures as set forth herein) in the Demised Premises, or, after exhausting or abandoning any right of further appeal, the Tenant shall be prevented for a period of thirty (30) calendar days by action of any governmental agency from conducting its operations on the Demised Premises, regardless of the fault of the Tenant; or the Tenant shall fail to take occupancy within thirty (30) calendar days after the Commencement Date, or open for business within thirty (30) days of the Rent Commencement Date, both subject to force majeure; or

- (10) The Tenant shall fail duly and punctually to pay the Rent or to make any other payment required hereunder within seven (7) days after written notice that same is due to the Landlord; or
- (11) The Tenant shall fail to keep, perform and observe each and every other promise, covenant and agreement set forth in this Lease on its part to be kept, performed, or observed, within thirty (30) calendar days after receipt of notice of default thereunder from the Landlord except where fulfillment of its obligation requires activity over a period of time, and the Tenant shall have commenced to perform whatever may be required for fulfillment within thirty (30) calendar days after receipt of notice and continues such performance without interruption except for causes beyond its control; or
- (12) If this Lease shall require a guarantor of one or more of the Tenant's obligations under this Lease and any of the events described in subparagraphs (1), (2), (3) or (7) above shall occur to or with respect to the guarantor (whether or not they shall also occur to or with respect to the Tenant);

Then, upon the occurrence of any such event or at any time thereafter during the continuance thereof, the Landlord may by five (5) calendar days notice terminate the Letting, such termination to be effective upon the date specified in such notice. Such right of termination and the exercise thereof shall be and operate as a conditional limitation.

- (b) If any of the events enumerated in paragraph (a) of this Section shall occur prior to the Commencement Date of the Letting, the Tenant shall not be entitled to enter into possession of the Demised Premises and the Landlord upon the occurrence of any such event or at any time thereafter during the continuance thereof by twenty-four (24) hours notice may cancel the interest of the Tenant under this Lease Agreement, such cancellation to be effective upon the date specified in such notice.
- (c) No acceptance by the Landlord, of Rent, fees, charges or other payments in whole or in part for any period or periods after a default in any of the terms, covenants and conditions to be performed, kept or observed by the Tenant shall be deemed a waiver of any right on the part of the Landlord to terminate the Letting.
- (d) No waiver by the Landlord of any default on the part of the Tenant in performance of any of the terms, covenants or conditions hereof to be performed, kept or observed by the Tenant shall be or be construed to be a waiver by the Landlord of any other or subsequent default in performance of any of the said terms, covenants and conditions.
- (e) The rights of termination described above shall be in addition to any other rights of termination provided in this Lease Agreement and in addition to any rights and remedies that the Landlord would have at law or in equity consequent upon any breach of this Lease by the Tenant, and the exercise by the Landlord of any right of termination shall be without prejudice to any other such rights and remedies.
- (f) The Tenant shall not interpose any non-compulsory counterclaims in any summary proceeding or action for non-payment of Rent which may be brought by the Landlord.

Tenant shall not be subject to any consequential damages as a result of a Tenant default hereunder, other than with respect to a holdover by Tenant.

Notwithstanding any other provision hereof, Landlord shall reasonably mitigate any damages incurred as a result of Tenant's default hereunder. Landlord's duty to mitigate damages shall be deemed satisfied if Landlord reasonably markets the Demised Premises and Landlord subsequently deals with any tenant prospects in a reasonable manner.

Landlord's failure to do, observe, keep and perform any of the terms, covenants, conditions, agreements or provisions of this Lease required to be done, observed, kept or performed by Landlord, for a period greater than thirty (30) days after written notice by Tenant to Landlord of said failure (except if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, then Landlord shall not be deemed in default if it commences performance within the thirty (30) day period and thereafter diligently pursues the cure to completion), shall be deemed a default by Landlord and a material breach of the Lease. In such event, Tenant may, at its option, with or without notice or demand of any kind to Landlord or any other person, have all rights and remedies provided at law or in equity or elsewhere herein. Nothing contained in this Lease shall relieve Landlord of its duty to effect the repair, replacement, correction or maintenance required of Landlord pursuant to this Lease, nor shall Landlord be relieved of its obligation to restore the affected services or utilities, and this Section shall not be construed to obligate Tenant to undertake any such work.

SECTION 39. LABOR DISTURBANCE

- (a) If any type of strike, boycott, picketing, work stoppage, slow down or other labor activity is directed against the Tenant at the Plaza or against any of the Tenant's operations pursuant to this Lease Agreement which in the reasonable opinion of the Landlord adversely affects or is likely to adversely affect the operation of the Plaza or the operations of other tenants or permittees, whether or not the same is due to the fault of the Tenant or is caused by the employees of the Tenant or of others, the Tenant shall reasonably cooperate with Landlord to put an end to such actions as soon as possible.

SECTION 40. REMEDIES AND SUITS AGAINST THE TENANT

All remedies provided in this Lease Agreement shall be deemed cumulative and additional and not in lieu of or exclusive of each other or of any other remedy available to the Landlord at law or in equity. In the event of a breach or threatened breach by the Tenant of any term, covenant, condition or provision of this Lease Agreement, the Landlord shall have the right of injunction and the right to invoke any other remedy allowed by law or in equity as if termination, re-entry, summary proceedings and any other specific remedies including without limitation thereto, indemnity and reimbursement, were not mentioned herein, and neither the mention thereof nor the pursuance or exercise or failure to pursue or exercise any right or remedy shall preclude the pursuance or exercise of any other right or remedy.

SECTION 41. SURRENDER

- (a) The Tenant shall yield and deliver peaceably to the Landlord possession of the Demised Premises on the date of the cessation of the Letting, whether such cessation be by termination, expiration or otherwise, promptly and in the condition in which Tenant is required to maintain the Demised Premises hereunder, reasonable wear and tear excepted.
- (b) Unless the same are required for the performance by the Tenant of its obligations hereunder, and subject to the provisions of Sections 11, 22(b) and 22(c), the Tenant shall have the right at any time during the Letting to remove from the Demised Premises, and, on or before the expiration or earlier termination of the Letting, shall so remove its equipment, fixtures and other personal property and all property of third persons for which it is responsible, repairing all damages caused by such removal. If the Tenant shall fail to remove such property on or before the termination or expiration of the Letting, the Landlord shall have the same rights with respect to such property as it has in the event of casualty under paragraph (d) of Section 34 of this Agreement entitled "Casualty".

SECTION 42. ACCEPTANCE OF SURRENDER OF LEASE

No agreement of surrender or to accept a surrender shall be valid unless and until the same shall have been reduced to writing and signed by the duly authorized representatives of the Landlord and of the Tenant. Except as expressly provided in this Section, neither the doing of, nor any omission to do, any act or thing, by any of the officers, agents or employees of the Landlord, shall be deemed an acceptance of a surrender of the Letting or of this Lease Agreement. Without limiting the foregoing, no employee or officer of the Landlord shall be authorized to accept the keys of the Demised Premises prior to the Termination Date of the Lease as fixed in Section 6 of this Agreement entitled "Term" and no delivery of keys by the Tenant shall constitute a termination of this Lease Agreement or acceptance of surrender.

SECTION 43. WAIVER OF REDEMPTION

The Tenant hereby waives any and all rights of redemption, granted by or under any present or future law, arising in the event it is evicted or dispossessed for any cause, or in the event the Landlord obtains or regains possession of the Demised Premises in any lawful manner.

SECTION 44. CONTINUITY OF OPERATIONS

To assure continuity of the Food Service Operations covered hereunder, upon the effective date of the Termination Date, or any other termination hereunder, the Tenant shall be able to continue its occupancy as a month to month tenancy at the option of the Landlord upon the Tenant's consent. During the term of such temporary extension, the Tenant shall be bound by all of the terms and conditions of the Lease Agreement.

SECTION 45. HOLDING OVER

If Tenant remains in possession of all or any part of the Demised Premises after the Termination Date, without the express or implied consent of the Landlord: (a) such tenancy will be deemed to be a periodic tenancy from month to month only; (b) such tenancy will not constitute a renewal or extension of this Lease for any further term; and (c) such tenancy may be terminated by the Landlord upon the earlier of thirty (30) days prior written notice or the earliest date permitted by law. In such event, monthly Base Rent may be increased to an amount equal to 125% of the monthly Rent payable for the last month of the Term, and any other sums due under this Lease will be payable in the amount and at the times specified in this Lease Agreement. Such month-to-month tenancy will be subject to every other term, condition, and covenant contained in this Lease Agreement. Notwithstanding the above, upon written notice from the Landlord and subject to the approval of the Office of the State Comptroller, the increase in Rent shall be waived through the date of commencement of any lease with a successor tenant in order to assure continuity of service.

SECTION 46. LANDLORD REMEDIES FOR SERVICES NOT PERFORMED

- (a) If the Tenant shall fail or refuse to perform any of its obligations under this Lease after applicable notice and cure period, the Landlord in addition to all other remedies available to it, shall have the right to perform any of the same and the Tenant shall pay the Landlord's cost thereof, or if the Landlord is required or elects to pay any sum or sums or incurs any obligations, expense or cost which the Tenant has agreed to pay or reimburse the Landlord for, or if the Landlord is required or elects to pay any sum or sums or incurs any obligations, expense or cost by reason of the failure, neglect or refusal of the Tenant to perform or fulfill any one or more of the conditions, covenants or agreements contained in this Lease, or as a result of an act or omission of the Tenant contrary to the said conditions, covenants and agreements, including any legal expense or cost in connection with any actions or proceedings brought by the Landlord against

the Tenant or by third parties against the Landlord, the Tenant agrees to pay the sum or sums so paid or the expense and the Landlord's cost so incurred, including all interest costs, damages and penalties, and the same may be added to any installment of Rent thereafter due hereunder and each and every part of the same shall be and become additional rent, recoverable by the Landlord in the same manner and with like remedies as if it were originally a part of the Rent as set forth in Section 7 of this Agreement entitled "Rental".

- (b) "Cost" or "Costs" of the Landlord in this Lease shall mean and include (i) cost of the participation in other pension plans or systems, insurance costs, sick leave pay, holiday, vacation, authorized absence pay or other fringe benefits; (ii) cost of materials, supplied and equipment used (including rental thereof); (iii) payments to contractors; and (iv) any other direct costs.
- (c) Whenever any default, request, action, or inaction by the Tenant causes the Landlord to incur fees or any other expenses, Tenant agrees that it shall pay and/or reimburse the Landlord for such fees, costs or expenses within twenty (20) calendar days after being billed therefor.

If any monies owing by Tenant under this Lease Agreement are not paid in accordance with the payment provisions set forth herein, Tenant shall pay to the Landlord, as additional rent under this Lease, the greater of (i) interest thereon, at the rate of five (5) percent of the amount due; or (ii) a Fifty and 00/100 Dollar (\$50.00) late charge which shall be enforceable at any time after the payment of such monies shall become due without the necessity of any billing therefore and the same shall be in addition to such other remedies the Landlord may have for the nonpayment of Rent.

Notwithstanding the foregoing, for the first two (2) times in any calendar year that Tenant has failed to pay any such monthly installment of Base Rent or Additional Rent, such interest and late charge shall not apply unless Tenant has failed to make such payments within ten (10) days of receipt of Landlord's written notice of such delinquency. Landlord shall not be required to give Tenant such notice more than twice in any calendar year prior to assessing such interest and late charge.

SECTION 47. RIGHTS OF ENTRY RESERVED

- (a) The Landlord, by its officers, employees, agents, representatives and contractors shall have the right at all reasonable times upon reasonable advance notice (except in an emergency situation) to enter upon the Demised Premises for the purpose of inspecting the same, for observing the performance by the Tenant of its obligations under this Lease Agreement, and for the doing of any act or thing which the Landlord may be obligated or have the right to do under this Lease Agreement or otherwise. The Tenant upon request from the Landlord shall demonstrate or operate any equipment, appliances, fixtures or machinery used in connection with its operations hereunder.
- (b) Without limiting the generality of the foregoing, the Landlord, by its officers, employees, representatives and contractors, shall have the right, for the benefit of the Tenant or for the benefit of others at the Plaza, to maintain initially existing and future Utility, Mechanical, Electrical, Communication and Other Systems or portions thereof on the Demised Premises, and to enter upon the Demised Premises at all reasonable times upon reasonable advance notice, to make such repairs, alterations and replacements as may, in the reasonable opinion of the Landlord, be deemed necessary or advisable and, from time to time, to construct or install over, in, under or through the Demised Premises new lines, pipes, mains, wires, conduits, equipment and other such encroachments and to use the Demised Premises for access to other portions of the Plaza not otherwise conveniently accessible, provided, however, that such repair, alteration, replacement, construction or access shall not unreasonably interfere with the use of the Demised Premises by the Tenant.

- (c) In the event that any property of the Tenant shall obstruct the access of the Landlord, its employees, agents or contractors to any of the existing or future Utility, Mechanical, Electrical, Communication and Other Systems and thus shall interfere with the inspection, maintenance, repair or modification of any such systems, the Tenant shall use reasonable efforts to move such property as reasonably requested by the Landlord, in order that access may be had to the system or part thereof for its inspection, maintenance repair, or modification.
- (d) Nothing in this section shall or shall be construed to impose upon the Landlord any obligations to construct or maintain or to make repairs, replacements, alterations or additions, or shall create any liability for any failure so to do. The Tenant is and shall be in exclusive control and possession of the Demised Premises and the Landlord shall not in any event be liable for any injury or damage to any property or to any person happening on or about the Demised Premises or for any injury or damage to the Demised Premises or any property of the Tenant or of any other person located therein or thereon (other than those occasioned by the negligent or willful acts of the Landlord, its officers or employees acting within the scope of their employment as set forth above).
- (e) At any time and from time to time during Business Hours within the six (6) months next preceding the expiration of the Letting, the Landlord, by its agents and employees, whether or not accompanied by prospective lessees, occupiers or users of the Demised Premises, shall have the right to enter thereon for the purpose of exhibiting and viewing all parts of the same.
- (f) Tenant shall not make any unreasonable claim or demand for damages, based upon the exercise of any or all of the foregoing rights by the Landlord or others. Landlord shall not be subject to consequential damages.

SECTION 48. RIGHT OF RE-ENTRY

The Landlord shall, as an additional remedy upon the giving of a notice of termination as provided in Section 38 of this Lease Agreement entitled "Termination", have the right to re-enter the Demised Premises and every part thereof upon the effective date of termination without further notice of any kind, and may regain and resume possession either with or without the institution of summary or any other legal proceedings or otherwise. Such re-entry or regaining or resumption of possession, however, shall not in any manner affect, alter or diminish any of the obligations of the Tenant under this Lease Agreement, and shall in no event constitute an acceptance of surrender.

SECTION 49. SURVIVAL OF THE OBLIGATIONS OF THE TENANT

- (a) In the event that the Letting shall have been terminated in accordance with a notice of termination as provided in Section 38 of this Agreement entitled "Termination", or the interest of the Tenant canceled pursuant thereto, or in the event that the Landlord has re-entered, regained or resumed possession of the Demised Premises in accordance with the provisions of Section 48 of this Agreement entitled "Right of Re-entry", all the obligations of the Tenant under this Lease Agreement shall survive such termination or cancellation, re-entry, regaining or resumption of possession and shall remain in full force and effect for the full Term of this Lease Agreement, and the amount of damages or deficiency shall become due and payable, as more specifically stated in paragraph (b) below, to the Landlord to the same extent, at the same time or times and in the same manner as if no termination, cancellation, re-entry, regaining or possession had taken place.
- (b) Immediately upon any termination or cancellation pursuant to Section 38 of this Agreement entitled "Termination", or upon any reentry, regaining or resumption of

possession in accordance with Section 48 of this Agreement entitled "Right of Re-entry", there shall become due and payable by the Tenant to the Landlord, in addition to Rent accrued prior to the effective date of termination, without notice or demand and as damages, the sum of the following:

- (1) the amount of all unfulfilled monetary obligations of the Tenant under this Lease Agreement, including without limitation thereto, all sums constituting additional rent hereunder and the cost to and expenses of the Landlord for fulfilling all other obligations of the Tenant which would have accrued or matured during the balance of the Term or on the expiration date originally fixed or within a stated time after expiration or termination; and
- (3) an amount equal to the cost to and the expenses of the Landlord in connection with the termination, cancellation, regaining possession and restoring and reletting the Demised Premises, the Landlord's legal expenses and cost, and the Landlord's cost and expenses for the care and maintenance of the Demised Premises during any period of vacancy, and any brokerage fees and commissions in connection with any reletting; and
- (4) subject to the provisions of paragraph (c) below,
 - (i) on account of the Tenant's Rent obligation, an amount equal to the present value of all Rent provided for in this Lease Agreement for the entire Term, discounted to present value at 5%, following the effective date of termination, less the rent received by Landlord from any successor tenant for the balance of the Term, as originally fixed in Section 6 of this Agreement entitled "Term", less the amount thereof which may have been actually paid to the Landlord by the Tenant;

It is understood and agreed that the statement of damages under the preceding subparagraph (3) shall not affect or be construed to affect the Landlord's right to damages in the event of termination or cancellation (or re-entry, regaining or resumption of possession) where the Tenant has not received any actual Gross Receipts under this Lease.

- (c) The Landlord may at any time bring an action to recover all damages as set forth above not previously recovered in separate actions, or it may bring separate actions to recover the items of damages set forth in subparagraphs (1) and (2) of paragraph (b) above, and separate actions periodically to recover from time to time only such portion of the damages set forth in paragraph (3) of paragraph (b) above as would have accrued as Rent up to the time of the action if there had been no termination or cancellation. In any such action the Tenant shall be allowed a credit against its survived damages obligations equal to the amounts which the Landlord shall have actually received from any tenant, licensee, permittee or other occupier of the Demised Premises or a part thereof during the period for which damages are sought, and if recovery is sought for a period subsequent to the date of suit a credit equal to the market rental value of the Demised Premises during such period (discounted to reflect the then present value thereof). If at the time of such action the Landlord has re-let the Demised Premises, the rental for the Demised Premises obtained through such re-letting shall be deemed to be the market rental value of the Demised Premises or be deemed to be the basis for computing such market rental value if less than the entire Demised Premises were re-let. In no event shall any credit allowed to the Tenant against its damages for any period exceed the then present value of the Rent which would have been payable under this Lease Agreement during such period if a termination or cancellation had not taken place. In determining present value of Rent an interest rate of 5% per annum shall be used.

SECTION 50. RE-LETTING BY THE LANDLORD

The Landlord, upon termination or cancellation pursuant to Section 38 of this Agreement entitled "Termination", or upon any re-entry, regaining or resumption of possession pursuant to Section 48 of this Agreement entitled "Right of Re-entry", may occupy the Demised Premises or may re-let the Demised Premises and shall have the right to permit any person, firm or corporation to enter upon the Demised Premises and use the same. The Landlord may grant free rental or other concessions and such re-letting may be of part only of the Demised Premises or of the Demised Premises or a part thereof together with other space, and for a period of time the same as or different from the balance of the Term hereunder remaining, and on terms and conditions and for purposes the same as or different from those set forth in this Lease Agreement. The Landlord shall also, upon termination or cancellation pursuant to Section 38 of this Lease Agreement entitled "Termination", or upon its re-entry, regaining or resumption of possession pursuant to Section 48 of this Lease Agreement entitled "Right of Re-entry", have the right to repair or to make structural or other changes in the Demised Premises, including changes which alter the character of the Demised Premises and the suitability thereof for the purposes of the Tenant under this Lease Agreement, without affecting, altering or diminishing the obligations of the Tenant hereunder. In the event either of any re-letting or of any actual use and occupancy by the Landlord, (the mere right to use and occupy not being sufficient however) there shall be credited to the account of the Tenant against its survived obligations hereunder any net amount remaining after deducting from the amount actually received from any lessee, licensee, permittee or other occupier as the rental or fee for the use of the said Demised Premises or portion thereof during the balance of the Letting as the same is originally stated in this Lease Agreement, or from the market value of the use and occupancy, all expenses, costs and disbursements incurred or paid by the Landlord in connection therewith. No such re-letting or such use and occupancy shall be or be construed to be an acceptance of a surrender.

SECTION 51. CONDEMNATION

- (a) In any action or proceeding instituted by any United States governmental or other authorized agency or agencies for the taking for a public use of any interest in all or any part of the Demised Premises, or in case of any deed, lease or other conveyance in lieu thereof (all of which are in this Section referred to as "taking or conveyance") the Tenant shall not be entitled to assert any claim to any compensation, award or part thereof made or to be made therein or therefor or any claim to any consideration or Rent or any part thereof paid therefor, or to institute any action or proceedings or to assert any claim against such agency or agencies or against the Landlord for or on account of any such taking or conveyance, except for the possible claim to an award for trade fixtures owned and installed by the Tenant, it being understood and agreed between the Landlord and the Tenant that the Landlord shall be entitled to all the compensation or awards made or to be made or paid and all such consideration or Rent, free of any claim or right of the Tenant. No taking by or delivery to any governmental authority under this paragraph (a) shall be or be construed to be an eviction of the Tenant or be the basis for any claim by the Tenant for damages, consequential or otherwise.
- (b) In the event of a taking or conveyance of the entire Demised Premises by any governmental or other authorized agency or agencies, then the Letting under this Lease shall, as of the date possession is taken from the Landlord by such agency or agencies, cease and terminate in the same manner and with the same effect as if the Term of the Lease had on that date expired.
- (c) In the event of a taking or conveyance by any governmental or other authorized agency or agencies of a part of the Demised Premises then the Letting as to such part only shall, as of the date possession thereof is taken from the Landlord by such agency or agencies, cease and terminate, and the Rent thereafter to be paid by the Tenant to the Landlord shall be abated from and after the date of such taking or conveyance.

- (d) In the event that the taking or conveyance or the delivery by the Tenant or taking by the Landlord pursuant to Section 52 of this Lease entitled "Governmental Compliance" covers twenty five percent (25%) or more of the total usable area of the Demised Premises, then the Tenant and the Landlord shall each have an option exercisable by notice given within ten (10) business days after such taking or conveyance, to terminate the Letting hereunder, as of the date of such taking, and such termination shall be effective as if the date of such taking were the original date of expiration hereof.

If this Lease is not terminated, then it shall remain in full force and effect as to the portion of the Demised Premises remaining, provided the rent shall be reduced in the same proportion that the area taken bears to the total area of the Demised Premises prior to taking. If this Lease is not terminated, then Landlord agrees, at Landlord's sole cost, to restore the Demised Premises as soon as reasonably possible to a complete unit of like quality, character and utility for Tenant's purposes as existed prior to the condemnation. Notwithstanding anything contained herein to the contrary, if the Demised Premises are not repaired and restored within one hundred eighty (180) days from the date of the condemnation, then Tenant may terminate this Lease at any time after the one hundred and eightieth (180th) day and before the two hundred and tenth (210th) day following the date of condemnation. If Landlord is aware the Demised Premises cannot be repaired and restored within one hundred eighty (180) days, Landlord shall notify Tenant within a reasonable time after it learns of such delay, and Tenant shall have the option to terminate this Lease within sixty (60) days of such notice. Landlord shall return any deposits, all prepaid rent and other prepaid additional rent to Tenant within thirty (30) days from the date of termination of the Lease.

SECTION 52. GOVERNMENTAL COMPLIANCE

In the event that all or any portion of the Demised Premises is required by the Landlord to comply with any present or future governmental law, rule, regulation, requirement, order or direction, the Landlord shall give the Tenant notice that all or any such portion of the Demised Premises is so required and the Tenant shall deliver all or any such portion of the Demised Premises so required on the date specified in such notice and, if the Tenant does not so deliver, the Landlord may take the same. No such taking or delivery shall be or be construed to be an exaction of the Tenant or a breach of this Lease Agreement. In the event that the Tenant has received a notice hereunder it shall deliver all or any such portion of the Demised Premises so required in the same condition as that required hereunder for the delivery of the Demised Premises on the cessation of the Letting. In the event of the taking or delivery of all the Demised Premises, this Lease Agreement and the Letting hereunder shall on the day of such taking or delivery cease and expire as if that day were the Termination Date, originally stated in this Lease Agreement; and, in the event of the taking or delivery of any portion of the Demised Premises, then, from and after such taking or delivery, such portion of the Demised Premises shall cease to be a part of the Demised Premises hereunder. There shall be an abatement of the Rent in the event of any such taking or delivery of a portion of the Demised Premises.

SECTION 53. NON-PUBLIC PERSONAL INFORMATION SECURITY BREACH

Tenant shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). Tenant shall be liable for the costs associated with such breach if caused by Tenant's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Tenant's agents, officers, employees or subtenants.

SECTION 54. BROKERAGE

Landlord represents to Tenant that it did not consult or negotiate with any broker or finder with regard to the Premises and that no other broker, finder or consultant participated with Landlord in procuring this Lease. As set forth above, Landlord hereby indemnifies and

holds Tenant, and its officers and employees harmless from any suit, action, proceeding, controversy, claim or demand whatsoever at law that may be instituted against Tenant by anyone with whom Landlord has dealt with for recovery of compensation or damages for procuring this Lease which is due to the conduct of Landlord or its officers and/or employees acting within the course and scope of their employment.

The Tenant represents and warrants that no broker has been concerned in the negotiation of this Lease Agreement and that there is no broker who is or may be entitled to be paid a commission in connection therewith. The Tenant shall indemnify and save harmless the Landlord from any claims for commission or brokerage made by any and all persons, firms or corporations whatsoever for services in connection with the negotiation and execution of this Lease Agreement.

SECTION 55. PARKING

As of the Commencement Date, the Landlord shall provide the Tenant with a total of 2 parking spaces. Such spots are transferrable among Tenant employees. The Landlord reserves the right to change the location of the Tenant's parking places as necessary, but in no event shall the total number of parking spaces allocated to the Tenant decrease below the number provided at the commencement of the Term. However, in the event that the Tenant no longer needs 2 parking spaces, it shall notify the Landlord so that the spaces may be reallocated. The Tenant shall comply with all applicable parking rules and procedures established by the OGS Bureau of Parking Services. The current fee for such parking spaces is: \$25.92 per month for surface parking and \$51.84 per month for covered parking. The reserved parking rate for surface parking is \$51.84 per month and \$103.68 per month for covered parking. Such rates may increase from time to time in relation to increases in Landlord's costs to furnish such services.

SECTION 56. IRAN DIVESTMENT ACT

By entering into this Lease, Tenant certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012" list ("Prohibited Entities List") posted on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such Lease any subcontractor that is identified on the Prohibited Entities List. Tenant agrees that should the Parties seek to renew or extend this Lease, it must provide the same certification at the time the Lease is renewed or extended. Tenant also agrees that any proposed Assignee of the Lease will be required to certify that it is not on the Prohibited Entities List before Landlord may approve a request for Assignment of Lease in compliance with Section 37 of this Lease.

During the Term of the Lease, should Landlord receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, Landlord will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then Landlord shall take such action as may be appropriate and provided for by law, rule, or this Lease, including, but not limited to, seeking compliance, recovering damages, or declaring the Tenant in default.

Landlord reserves the right to reject any request for assignment made by or to not agree to a renewal or extension of the Lease with an entity that appears on the Prohibited Entities List prior to the renewal, extension, or assignment of the Lease, and to pursue a responsibility review with Tenant should it appear on the Prohibited Entities List hereafter.

SECTION 57. ENCOURAGING USE OF NEW YORK STATE BUSINESSES

New York State businesses have a substantial presence in state leases and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, landlords are strongly encouraged and expected to consider New York State businesses, including small, minority and women-owned businesses, in the fulfillment of the requirements of leases. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Tenants and occupying agencies are also strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology.

Utilizing New York State businesses in state leases will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the Landlord and its New York State business partners. New York State businesses will promote the contractor's optimal performance under the Lease.

The State encourages landlords to provide maximum assistance to New York businesses in their use of state leases. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

SECTION 58. VENDOR RESPONSIBILITY

OGS conducts a review of prospective landlords to provide reasonable assurances that the landlord is responsive and responsible. The Lease Disclosure Sheet, attached hereto as Form 1, is designed to provide information to assess a landlord's responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. The Landlord agrees to fully and accurately complete the Lease Disclosure Sheet. The Landlord acknowledges that the State's execution of the Lease will be contingent upon the State's determination that the Landlord is responsible, and that the State will be relying upon the Landlord's responses to the Lease Disclosure Sheet when making its responsibility determination.

In order to assist the State in determining the responsibility of a landlord prior to the award of a lease, the Landlord must complete and certify (or recertify) the Lease Disclosure Sheet no more than six (6) months prior to the date of execution of the Lease. The Landlord should become familiar with all of the requirements of the Lease Disclosure Sheet in order to accurately complete the Lease Disclosure Sheet.

The Landlord agrees that if it enters into this Lease with OGS, it shall at all times during the Lease Term remain responsible. The Landlord agrees, if requested by the Commissioner or her designee, to present evidence of its continuing legal authority to do business in New York State and its integrity, experience, ability, prior performance, and organizational and financial capacity.

SECTION 59. ENTIRE AGREEMENT

The following appendices, exhibits, schedules and form are being attached and made part of the Lease:

Exhibit "1"	Leased area plan (Section 1)
Exhibit "2"	OGS Materials Specifications for Leased Facilities (MLSF)
Exhibit "3"	Executive Order No. 4
Exhibit "4"	Tenant's Exterior Signage Plan
Exhibit "5"	Operator Minimum Responsibility
Schedule A	Cleaning Services

Schedule B1	Fixed State Equipment/Fixture Inventory
Schedule B2	Non-Fixed State Equipment/Fixture Inventory
Appendix A	Standard Clauses for NYS Leases
Form 1	Tenant Disclosure Sheet

The above constitutes the entire Agreement of the Parties on the subject matter hereof and may not be changed, modified, discharged or extended except by written instrument duly executed by the Landlord and the Tenant. The Tenant agrees that no representations or warranties shall be binding upon the Landlord unless expressed in writing in this Agreement.

In the event of a conflict between the terms of this Lease and the Exhibits hereto, the terms of the Lease shall control.

SECTION 60. STANDARD CLAUSES FOR STATE CONTRACTS

The Tenant acknowledges and agrees that the terms and provisions of Appendix A, Standard Clauses for New York State Contracts, attached hereto and forming a part of this Lease Agreement, shall be incorporated herein and constitute fully effective and binding obligations upon the Tenant.

IN WITNESS WHEREOF, the Parties hereto have caused this Lease Agreement to be executed in duplicate originals the day and year first written above.

Tenant certifies that all information provided to the State of New York with respect to Tenant Disclosure Sheet and State Finance Law §139-k is complete, true and accurate. The State reserves the right to terminate this Lease in the event it is found that the certification filed by the Tenant in accordance with New York State Finance Law § 139-j or 139-k was intentionally false or intentionally incomplete. Upon such finding, the State may exercise its termination right by providing written notification to the Tenant in accordance with the written notification terms of the Lease.

Corporate Seal

By _____
(Its President, Vice President,
Secretary or Treasurer)

TENANT

APPROVED AS TO FORM

THE PEOPLE OF THE STATE OF NEW YORK

Attorney General

Commissioner of General Services

By _____
Assistant Attorney General

By _____
RoAnn M. Destito
Commissioner

Approved: _____ 20__

By _____
Real Estate Planning

Approved:

Thomas P. DiNapoli
State Comptroller

By _____

Date _____

STATE OF NEW YORK }

: SS.:

COUNTY OF }

On the day of _____, in the year 20__ before me, the undersigned, personally appeared _____, 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, State of New York
Qualified in County of:
My Commission Expires

EXHIBIT “3”

EXECUTIVE ORDER No 4:

ESTABLISHING A STATE GREEN PROCUREMENT AND AGENCY SUSTAINABILITY PROGRAM

WHEREAS, the State of New York (“State”) is dedicated to the simultaneous pursuit of environmental quality, sound public health, economic prosperity and social well-being; and

WHEREAS, the production, use and disposal of materials, and the generation and use of energy, can have significant impacts on environmental quality and public health; and

WHEREAS, State government is a major consumer of materials and energy; and

WHEREAS, the State’s policies include conserving, improving and protecting natural resources and the environment; preventing water, air and land pollution; and enhancing the health, safety and welfare of State residents and their overall economic and social well-being; and

WHEREAS, it is the State’s policy to promote cost effective methods to reduce energy and resource consumption, and reduce or eliminate the use of hazardous substances and the generation of hazardous substances, pollution and waste at the source; and

WHEREAS, the State’s solid waste management priorities include reducing the generation of solid waste, reusing materials, and recycling materials that cannot be reused; and

WHEREAS, by making sound choices in the course of their daily activities, such as the commodities, services, and technology they consume, and the amount of waste they generate, State agencies and public authorities can minimize potential environmental and health impacts on workers and the public; and

WHEREAS, the State’s procurement of commodities, services and technology can be enhanced through State agency and public authority choices that minimize the potential environmental and health impacts of their activities; and

WHEREAS, State government can be a leader in environmental stewardship through the use of green procurement and sustainable management practices.

NOW, THEREFORE, I, , Governor of the State of New York, by virtue of the authority vested in me by the Constitution and laws of the State of New York, do hereby order as follows:

A. Definitions

1. “State agency” or “agency” shall mean any State agency, department, office, board, commission or other instrumentality of the State, other than a public authority.
2. “Public authority” or “authority” shall mean a public authority or public benefit corporation created by or existing under any State law, a majority of whose members is appointed by the Governor (including any subsidiaries of such public authority or public benefit corporation), other than an interstate or international authority or public benefit corporation.

B. Interagency Committee on Sustainability and Green Procurement

1. There is hereby established an Interagency Committee on Sustainability and Green Procurement (the “Committee”). The Committee shall be comprised of the Director of

the Budget, the Commissioner of General Services, the Commissioner of Environmental Conservation, the Commissioner of Health, the Commissioner of Economic Development, the President of the Urban Development Corporation, the Commissioner of Transportation, the President of the Environmental Facilities Corporation, the President of the New York State Energy, Research and Development Authority, the Chair of the Power Authority of the State of New York, and the Executive Director of the Dormitory Authority of the State of New York. The Commissioner of General Services and the Commissioner of Environmental Conservation shall serve as co-chairs of the Committee.

2. Members of the Committee may designate an executive staff member to represent them and participate on the Committee on their behalf. A majority of the members of the Committee shall constitute a quorum, and all actions and recommendations of the Committee shall require approval of a majority of the total members of the Committee.

C. Green Procurement Lists and Specifications

1. The Committee, no later than September 1, 2008, and annually thereafter, shall select a minimum of three “priority categories” of commodities, services or technology, and at least twelve “priority commodities, services and technology” within each of the priority categories, for which the Committee shall develop “green procurement lists” (“procurement lists”) and “green procurement specifications” (“procurement specifications”) for use by State agencies and public authorities in the procurement of commodities, services and technology. The Committee shall focus on commodities, services and technology that reasonably will: (a) reduce or eliminate the health and environmental risks from the use or release of toxic substances; (b) minimize risks of the discharge of pollutants into the environment; (c) minimize the volume and toxicity of packaging; (d) maximize the use of recycled content and sustainably managed renewable resources; and (e) provide other environmental and health benefits.

2. The Committee, no later than December 1, 2008, shall develop: (a) procurement specifications to be used for the development and issuance of new contracts and new solicitations for priority commodities, services and technology; and (b) procurement lists of priority commodities, services and technology that are available under existing procurement arrangements that satisfy the requirements of this order.

3. In developing the procurement lists and procurement specifications, the Committee shall consider the following factors: (a) protection of the public health and the environment, including the health of children and other vulnerable populations; (b) avoidance of risks from the use or release of toxic substances; (c) pollution reduction and prevention; (d) sustainable resource management and use, and sustainable manufacturing and production processes; (e) reduction of greenhouse gases; (f) the use of renewable resources, remanufactured components and recycled content; (g) waste reduction, recyclability and compostability; (h) quality, durability and utility; (i) minimizing adverse impacts throughout a commodity’s or technology’s life cycle; (j) cost; (k) extended producer liability; and (l) legal and regulatory requirements applicable to the use and procurement of commodities, services and technology.

4. The Committee may review the priority categories, priority commodities, services and technology, procurement lists and procurement specifications periodically and revise or supplement them as appropriate in a manner consistent with the requirements of this section.

5. The Committee shall establish specific goals to achieve reasonable reductions in the amount of solid waste generated and paper consumed annually by State agencies and authorities. The Committee shall also develop and implement strategies to assist State agencies and authorities to achieve such reduction goals.

D. Sustainability and Environmental Stewardship Programs

1. Each State agency and authority shall develop and implement a Sustainability and Environmental Stewardship Program, which shall include:

(a) specific projects, programs and policies designed to achieve compliance with the requirements of this Order; and

(b) specific projects, programs and policies designed to reduce the public health and environmental impacts of the activities and operations of the agency or authority, including: (i) the reduction or elimination of the use and generation of toxic substances, pollution and waste; (ii) the reduction, reuse, recycling and composting of solid waste; (iii) increasing energy efficiency; (iv) increasing the use of renewable energy sources; (v) conserving water and other natural resources; and (vi) maximizing the use of environmentally preferable or “green” commodities, services and technology.

2. Commencing no later than July 1, 2008, all copy paper, janitorial paper and other paper supplies purchased by each State agency or authority shall be composed of 100% post-consumer recycled content to the maximum extent practicable, and all copy and janitorial paper shall be process chlorine-free to the extent practicable, unless such products do not meet required form, function or utility, or the cost of the product is not competitive.

3. Commencing no later than July 1, 2008, all State agency and authority publications shall be printed on 100% post-consumer recycled content paper. Where paper with 100% post-consumer recycled content is not available, or does not meet required form, function and utility, paper procurements shall use post-consumer recycled content to the extent practicable. Non-recycled content shall be derived from a sustainably-managed renewable resource to the extent practicable, unless the cost of the product is not competitive.

4. State agencies and authorities shall rely on and use the procurement lists and specifications issued by the Committee when developing new solicitations and contracts for the procurement of commodities, services and technology, and for the procurement of commodities, services and technology under existing contracts, unless the head of the agency or authority determines: (a) that such commodities, services or technology will not meet required form, function or utility; (b) the cost of the commodities, services or technology is not competitive; or (c) there is an emergency or other compelling public health or safety reason not to purchase such commodities, services or technology. Such form, function, utility or other determination shall be presented in the procurement record, and notice of the determination shall be provided to the Committee Chairs.

5. All State agencies and authorities shall, to the extent practicable: (a) implement effective programs to source separate recyclable materials, including paper, metal, glass and plastic, that will maximize materials recovery; (b) implement effective programs to reduce waste; (c) use locally available compost, mulch and soil amendments produced from secondary materials; and (d) utilize secondary materials in construction.

E. Training and Staff

1. State agencies and authorities, no later than September 1, 2008, shall assign an employee to serve as a Sustainability and Green Procurement Coordinator (“Coordinator”). Coordinators shall be given full management support and provided with the necessary resources to enable the agency or authority to comply with this order.

2. The Committee shall design and implement training and outreach programs for Coordinators and assist them with the training of appropriate staff, vendors and contractors.

3. The Commissioner of General Services, no later than September 1, 2008, shall select an employee to serve as Director of Green Procurement, who shall assist the Commissioner of General Services in carrying out his or her duties under this order.

4. The Office of General Services, the Department of Environmental Conservation, the Environmental Facilities Corporation, and the New York State Energy Research and Development Authority are authorized to assist State agencies and authorities in complying with this order, including through the development and implementation of Sustainability and Environmental Stewardship Programs.

F. Reporting

1. The Committee, no later than December 1, 2008, shall develop a format for a progress report to be used by State agencies and authorities to inform the Committee of: (a) the progress each agency and authority has made toward achieving the goals described in or established pursuant to this order; (b) the effectiveness of the procurement lists and specifications; and (c) the specific sustainability projects that have been implemented and the effectiveness of such programs.

2. Each State agency and authority, no later than March 1, 2009, and on March first each year thereafter, shall submit a progress report to the Committee in the form and containing the information specified by the Committee. At a minimum, such report shall describe the agency or authority's efforts regarding waste reduction and recycling activities, recycled products procurement, quantities of waste generated and materials recycled, incentives and disincentives to waste reduction and recycling, and recommendations for additional measures to encourage efficient use of the State's resources.

3. The Committee, on or before June 1, 2009, and on June first each year thereafter, shall submit a report to the Governor, which shall compile the information submitted by State agencies and authorities pursuant to this section and report on progress made on the implementation of this order.

G. Sustainability and Green Procurement Advisory Council

There is hereby established a Sustainability and Green Procurement Advisory Council ("Council"), which shall consist of 11 members appointed by the Governor who have experience in the fields of green procurement, public health, waste prevention and recycling, energy efficiency, workplace safety, labor relations, environmental protection, environmental justice, or chemical manufacturing. The Governor shall select a Chair of the Council from among its members. The Council shall meet at the times requested by the Committee and provide such advice and assistance as the Committee may require.

H. Miscellaneous

1. Every agency and public authority of this State shall furnish such information and assistance as the Committee determines is reasonably necessary to accomplish its purposes.

2. Executive Order 142, issued on January 16, 1991, is hereby revoked and superseded by this Executive Order.

Given under my hand and the Privy Seal of the State in the City of Albany this twenty-fourth day of April in the year two thousand eight.

SCHEDULE A

CLEANING SERVICES

Floors: Resilient Tiles: Clean with good luster; scuffing and black marking to be minimal; without noticeable wear areas.

Floors-Carpeted: Carpeted areas are to be clean, free of surface dirt and dust.

Furniture and Counters: All surfaces must be clean and dust free, including desk accessories and equipment.

Light Fixtures: To be clean and free of dust.

Walls, Ceilings, Entrances, Metal Trim, Doors, etc.: High dusting, free of dust. Walls, metal trim and doors free of spots and metal to be polished. Entrance mats to be clean and presentable. Entrance glass to be clean.

Windows: To be cleaned on the following schedule:

Interior	Exterior	Entrance Door
Wash once a week	Minimum of 2 times per week	Daily, both sides

Windowsills and Window Trim: Will be clean and dry.

Woodwork: (Natural Wood Finish): Clean and lustrous unless finish is normally flat.

Rubbish: All wastepaper baskets, trash cans are to be emptied and all trash removed from the Facility daily. Wastepaper baskets are to be clean, odor free, and lined each day.

Cigarettes: The Tenant shall enforce a no smoking policy in the Facility and Demised Premises.

Exterminating Service: Landlord to contract for effective exterminator services, when and as necessary.

All of the above described services shall be adequate and effective to keep the Demised Premises and all equipment and materials used by the Tenant, at all times, clean, sanitary, and free from rubbish, refuse, dust, dirt, offensive or unclean material, insects, rodents, and vermin.

Schedule B1
Fixed State Equipment/Fixture Inventory

AssetNumber	Description	Minor_class	Fixed or Non Fixed	Temp Column	Amount	Manufacturer	Model_nbr	Serial_nbr
FD00033057	TABLE, PREP, PIZZA - 2-DR. UNDERNEATH	6083	fixed	Pavilion	1	RANDELL		
FD00085001	COUNTER, BEVERAGE	6088	fixed	Pavilion	1	BUILT IN HOUSE	28' LONG X 3'11" WIDE	
FD00085005	SINK, 3-BAY	6085	fixed	Pavilion	1	ADVANCE TABCO	94-3-54- 18RL	
FD00085011	TRAP, GREASE	6085	fixed	Pavilion	1	ZURN	Z-1170E	

Schedule B2
Non-Fixed State Equipment/Fixture Inventory

AssetNumber	Description	Minor_class	Fixed or Non Fixed	Temp Column	Amount	Manufacturer	Model_nbr	Serial_nbr
FD00014007	CASH REGISTER	6084	non fixed	Pavilion	1	SHARP	ER-A550S	49001291
FD00033110	REFRIGERATOR, SINGLE-DOOR, R/I, GLASS DR.	6083	non fixed	Pavilion	1	CONTIENTAL	1R-GD	A98E8663
FD00081003	GRILL, ELECTRIC - TABLE TOP	6081	non fixed	Pavilion	1	VULCAN HART	HEG36D	
FD00081004	FRYER, ELECTRIC - TABLE TOP - 2 BASKETS	6081	non fixed	Pavilion	1	GARLAND	E24-31SF	
FD00083001	MACHINE, ICE - CUBER	6083	non fixed	Pavilion	1	ICE-O-MATIC	ICE1006FA1 W/B100PSA BIN	C006- 00323-Z / BIN C000- 02488-Z
FD00085003	COUNTER, CONDIMENT	6085	non fixed	Pavilion	1	ON WHEELS	3-DOORS UNDERNEATH	
FD00085004	STAND, GRILL- STAINLESS STEEL	6088	non fixed	Pavilion	1			
FD00085006	TABLES, CAFETERIA	6085	non fixed	Pavilion	5	L & B	OAK BORDER W/INLAY	30" ROUND
FD00085007	CHAIRS, CAFETERIA	6085	non fixed	Pavilion	26	L & B	ROSE COLOR	
FD00085008	TABLE, PICNIC - HEAVY PLASTIC	6085	non fixed	Pavilion	8	AMER. ECOBOARD	OCTAGON W/BENCHES	
FD00085010	TABLE, PREP - STAINLESS STEEL	6088	non fixed	Pavilion	1	5'L X 2 1/2'W X 36"H		
FD00085012	STOOL, BAR	6085	non fixed	Pavilion	16	L & B	ROSE COLOR	
FD00085013	TABLE, COCKTAIL	6085	non fixed	Pavilion	3	L & B	30" ROUND	
D00085014	SHELVING, 4-TIER GREEN UNIT	6087	non fixed	Pavilion	2	12" X 36" X 69"H		
FD00085015	SHELVING, 4-TIER MOBILE - SOLID SHELVES	6087	non fixed	Pavilion	1	S/S	18" X 48" X 66"H	
FD00085016	SHELVING- 4-TIER MOBILE - SLOTTED SHELVES	6087	non fixed	Pavilion	1	GRAY COLOR	18" X 48" X 66"H	
FD00143027	FREEZER, DISPLAY CASE	6083	non fixed	Pavilion	1	TRUE	GDM-23F	1- 10375548

