



BABYLON INDUSTRIAL DEVELOPMENT AGENCY

Thomas E. Dolan
Chief Executive Officer

APPLICATION FOR FINANCIAL ASSISTANCE

DATE: June , 2021

APPLICATION OF: Farmingdale Hospitality Partners, LLC
Company Name of Beneficial User of Proposed Project
(Not Realty or Special Purpose Entity (SPE) created for liability)

CURRENT ADDRESS: c/o Blumenfeld Development Group Ltd.
300 Robbins Lane
Syosset, New York

ADDRESS OF PROPERTY
TO RECEIVE BENEFITS: 1024 Broadhollow Road, Farmingdale, NY

Tax Map# District 0100 Section 48 Block 2 Lot(s) 14.001

47 WEST MAIN STREET, SUITE 3 BABYLON, NY 11702 – TEL: (631) 587-3679 FAX: (631) 587-3675
WEBSITE: WWW.BABYLONIDA.ORG
E-MAIL: NFO@BABYLONIDA.ORG

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Part I: User (Applicant) & Owner Data (if different)

1. User Data (Applicant):

A. User: Farmingdale Hospitality Partners, LLCAddress: c/o Blumenfeld Development Group, Ltd.300 Robbins Lane, Syosset, NY 11791Federal Employer ID #: [REDACTED] Website: N/ANAICS Code: 721110

(The North American Industry Classification System, (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. www.census.gov/eog/www/naics/)

Name of User Officer Certifying Application: [REDACTED]

Title of Officer: [REDACTED]

Phone Number: [REDACTED] E-Mail: [REDACTED]

B. Business Type:

Sole Proprietorship ☐ Partnership ☒ Privately Held ☒Public Corporation ☐ Listed on _____State of Incorporation/Formation: New York

C. Nature of Business:

(e.g., "manufacturer of _____ for _____ industry"; "distributor of _____")

Real estate development entity formed to develop, construct and operate – through a third party management company or affiliate management company – a 101-room hotel property.

D. User Counsel:

Firm Name: Farrell Fritz, P.C.

Address: 400 RXR Plaza
Uniondale, NY 11554

Individual Attorney: Peter L. Curry, Esq.Phone Number: 516-227-0700E-Mail: pcurry@farrellfritz.com

E. Principal Stockholders, Members or Partners, if any, of the User (5% or more equity):

Farmingdale Hospitality Partners LLC

| Name | Percent Owned |
|---------------------|---------------|
| <u>BC Farm, LLC</u> | <u>50%</u> |

| | |
|--|------------|
| <u>Farmingdale Hampton Associates, LLC</u> | <u>50%</u> |
|--|------------|

BC Farm, LLC

| Name | Percent Owned |
|------------------------------|---------------|
| <u>Edward Blumenfeld (1)</u> | <u>29%</u> |
| <u>David Blumenfeld (1)</u> | <u>29%</u> |
| <u>Brad Blumenfeld (1)</u> | <u>29%</u> |
| <u>Jonathan E. Cohen (1)</u> | <u>10%</u> |

Fn (1): Ownership interest may be as individual member and/or in trust for the benefit of Blumenfeld family members

Farmingdale Hampton Associates LLC

| Name | Percent Owned |
|---------------------|---------------|
| <u>Paul Amoruso</u> | <u>100%</u> |

F. Has the User, or any subsidiary or affiliate of the User, or any stockholder, partner, member, officer, director or other entity with which any of these individuals is or has been associated with:

- i. ever filed for bankruptcy, been adjudicated bankrupt or placed in receivership or otherwise been or presently is the subject of any bankruptcy or similar proceeding? (if yes, please explain)

No.

- ii. been convicted of a felony, or misdemeanor, or criminal offense (other than a motor vehicle violation)? (if yes, please explain)

No.

G. If any of the above persons (see "E", above) or a group of them, owns more than 50% interest in the User, list all other organizations which are related to the User by virtue of such persons having more than a 50% interest in such organizations.

The principals of each of the above members own numerous properties either directly or through corporate or LLC entities for the purpose of developing such properties.

- H. Is the User related to any other organization by reason of more than a 50% ownership? If so, indicate name of related organization and relationship:

See G.

- I. List parent corporation, sister corporations and subsidiaries:

Blumenfeld Development Group, Ltd. is an affiliate of the Applicant.

- J. Has the User (or any related corporation or person) been involved in or benefited by any prior industrial development financing in the municipality in which this project is located, whether by this agency or another issuer? (Municipality herein means city, town or village, or if the project is not in an incorporated city, town or village, the unincorporated areas of the county in which it is located.) If so, explain in full: _____

- K. List major bank references of the User:

BDG Major Bank References

| <u>Name</u> | <u>Lending Institution</u> | <u>Lending Institution Address</u> | <u>E-Mail Address</u> |
|----------------|------------------------------|---|-------------------------------------|
| Paul Kesicki | TD Bank | 324 South Service Road Melville, NY 11747 | p.kesicki@tdbank.com |
| Thomas Iadanza | Valley National Bank | One Penn Plaza, 29 th FL New York, NY 10119 | tiadanza@valley nationalbank.com |
| William Newham | Bridgethampton National Bank | 898 Veterans Memorial Highway Hauppauge, NY 11788 | wnewham@bridgenb.com |

2. Owner Data **NOTE: THIS SECTION IS NOT APPLICABLE TO THE APPLICANT**
 (for co-applicants for assistance or where a landlord/tenant relationship will exist between the owner and the user)

- A. Owner (together with the User, the "Applicant"): John Joseph Gazza

Address: _____

Federal Employer ID #: _____ Website: _____

NAICS Code: _____

Name of Owner Officer Certifying Application: _____

Title of Officer: _____

Phone Number: _____ E-Mail: _____

B. Business Type:

Sole Proprietorship ☒ Partnership ☐ Privately Held ☐Public Corporation ☐ Listed on _____

State of Incorporation/Formation: _____

C. Nature of Business: **Real Estate Property Owner**

(e.g. "manufacturer of _____ for _____ industry", "distributor of _____", or "real estate holding company")

D. Are the User and the Owner Related Entities? Yes ☐ No ☒

i. If yes, the remainder of the questions in this Part 1, Section 2 (with the exception of "F" below need not be answered if answered for the Owner.

ii. If no, please complete all questions below.

E. Owner's Counsel: N/A

Firm Name: _____

Address: _____

Individual Attorney: _____

Phone Number: _____ E-Mail: _____

F. Principal Stockholders or Partners, if any (5% or more equity):

| Name | Percent Owned |
|-------|---------------|
| _____ | _____ % |
| _____ | _____ % |

G. Has the Owner, or any subsidiary or affiliate of the Owner, or any stockholder, partner, officer, director or other entity with which any of these individuals is or has been associated with:

- i. Ever filed for bankruptcy, been adjudicated bankrupt or placed in receivership or otherwise been or presently is the subject of any bankruptcy or similar proceeding? (if yes, please explain)

Not to User's knowledge

- ii. been convicted of a felony or criminal offense (other than a motor vehicle violation)? (if yes, please explain)

Not to User's knowledge

- 3. If any of the above persons (see "F", above) or a group of them, owns more than 50% interest in the Owner, list all other organizations which are related to the Owner by virtue of such persons having more than a 50% interest in such organizations.

To User's knowledge, Owner owns numerous parcels of real estate, either by himself or in various partnerships

- 4. Is the Owner related to any other organization by reason of more than a 50% ownership? If so, indicate name of related organization and relationship:

- J. List parent corporation, sister corporations and subsidiaries:

- K. Has the Owner (or any related corporation or person) been involved in or benefited by any prior industrial development financing in the municipality in which this project is located, whether by this agency or another issuer? (Municipality herein means city, town or village, or if the project is not in an incorporated city, town or village, the unincorporated areas of the county in which it is located.) If so, explain in full:

- L. List major bank references of the Owner:

Part II - Operation at Current Location

1. Current Location Address: N/A

2. Owned or Leased: N/A

3. Describe your present location (acreage, square footage, number of buildings, number of floors, etc.): N/A

4. Type of operation (manufacturing, wholesale, distribution, retail, etc.) and products and/or services: N/A

5. Are other facilities or related companies of the Applicant located within the State?

Yes ☐ No ☒

 - A. If yes, list the Address: _____

6. If yes to above ("5"), will the completion of the project result in the removal of such facility or facilities from one area of the state to another OR in the abandonment of such facility or facilities located within the State? Yes ☐ No ☐
 - A. If no, explain how current facilities will be utilized: _____

 - B. If yes, please indicate whether the project is reasonably necessary for the Applicant to maintain its competitive position in its industry or remain in the State and explain in full:
N/A

7. Has the Applicant actively considered sites in another state? Yes No ☒
 - A. If yes, please list states considered and explain: N/A

8. Is the requested financial assistance reasonably necessary to prevent the Applicant from moving out of New York? Yes ☐ No ☒
 - A. Please explain _____

9. Number of full-time employees at current location and average salary: N/A

Part III – Project Data1. Project Type:

- A. What type of transaction are you seeking?: (Check one)
 Straight Lease ☒ Taxable Bonds ☐ Tax-Exempt Bonds ☐
 Equipment Only Straight Lease ☐
- B. Type of benefit(s) the Applicant is seeking: (Check all that apply)
 Sales Tax Exemption ☒ Mortgage Recording Tax Exemption ☒
 Real Property Tax Abatement: ☒

2. Location of project:

- A. Street Address: 1024 Broadhollow Road
Farmingdale, NY 11735
- B. Tax Map: District 0100 Section 48 Block 2 Lot(s) 14.001
- C. Municipal Jurisdiction:
- i. Village: N/A
 - ii. School District: Farmingdale Union School District
 - iii. Library: Farmingdale Public Central Library
- D. Acreage: 6.5

3. Project Components (check all appropriate categories):

- A. Construction of a new building: Yes ☒ No ☐
 i. Square footage: 65,000 +/-
- B. Renovations of an existing building: Yes ☐ No ☒
 i. Square footage: _____
- C. Demolition of an existing building: Yes ☐ No ☒
 i. Square footage: _____
- D. Land to be cleared or disturbed: Yes ☐ No ☒
 i. Square footage/acreage: _____
- E. Construction of addition to an existing building: Yes ☐ No ☒
 i. Square footage/acreage: _____

ii. Total square footage upon completion: _____

F. Acquisition of an existing building Yes ☐ No ☒
 i. Square footage of existing building: _____

G. Installation of machinery and/or Equipment Yes ☒ No ☐

i. List principal items or categories of equipment to be acquired: Installation and equipping a full-service hotel facility including, HVAC, furniture, fixtures and wall coverings, office equipment, fitness/gym equipment, pool equipment, laundry and cleaning equipment as well as equipment for kitchen/food service, HSIA equipment, security/safety equipment, guestroom equipment and PBX/PMS equipment. In addition, point-of-service computer equipment and/or other proprietary equipment will be purchased to support the operation of the franchise.

4. Current Use at Proposed Location:

A. Does the Applicant currently hold fee title to the proposed location? No

i. If no, please list the present owner of the site: John Joseph Gazza

B. Present use of the proposed location: Vacant Land

C. Is the proposed location currently subject to an IDA transaction (whether through this Agency or another?) Yes ☐ No ☒

i. If yes, explain: _____

D. Is there a purchase contract for the site? (if yes, attach): Yes ☐ No ☒

E. Is there an existing or proposed lease for the site? (if yes, attach): Yes ☒ No ☐

5. Proposed Use:

A. Describe the specific operations of the Applicant or other users to be conducted at the project site: The Applicant seeks to develop a 101-room Hampton Inn and Suites 6.0 prototype brand facility that will feature suites to accommodate guests stays and include a conference center, sundry shop, complimentary breakfast, indoor pool, business center, and a guest self-laundry.

- B. Proposed product lines and market demands: The proposed project is located across from Republic Airport, which according to the Federal Aviation Administration, received 8,032 enplanements in 2017, and for which an expansion is proposed. The proposed project will serve not only customers of the airport, but it is designed to accommodate flight crews and other personnel that serve the airport/aviation-related users. Recent expansion at Republic Airport brings a 55-acre Executive Hangar Complex totaling 120,000 sf of new hangar space with accessory office space. In addition, three 30,000 sf facilities and a new 20,000 sf Fixed Base Operator will commence construction in late 2019. These new facilities will represent an investment of over \$60 million in improvements to this vital transportation complex.

The immediate area also includes multiple retail and service establishments, office parks, and corporate headquarters, including Canon's US headquarters, Henry Schein, Arrow Electronics, Symbol Technologies, D'Addario, Telephonics, Vox International and Nature's Bounty as well as pharmaceutical companies, including Allergan. These examples characterize the cluster of businesses who have inbound travel to the Farmingdale/Melville area. These companies have incoming clients, vendors, auditors, employees, sales representatives and related professionals who represent demand for hotel and conference facilities.

In addition to corporate users, the Project is anticipated to serve healthcare and educational institutional users in proximity to the corridor, such as, Northwell, St. Joseph's, NYU Winthrop and South Oaks Hospitals, Molloy College, and SUNY Farmingdale. In particular, SUNY Farmingdale, which originally offered only 2-year programs, is a 4-year educational institution with a student population of over 10,000 and a network of 96,000 alumni worldwide. Located within the targeted catchment area for the proposed project, SUNY Farmingdale offers 41 degree programs and employs over 700 full- and part-time faculty. The institution's intercollegiate Division III athletic programs add to the potential demand for the proposed project. The college also hosts the Broad Hollow Bioscience Park, a not-for-profit that supports early-stage companies, consisting of over 100,000 sf in two facilities on its 380-acre campus.

Finally, Bethpage State Park/Bethpage Black, long considered one of America's best public golf courses, has become a frequent host of various national and international sporting events, including the US Opens in 2002 and 2009, the Barclays Tournament in 2012 and the 2019 PGA Championship. In 2024, Bethpage Black will be hosting Ryder Cup, which is anticipated to attract golf fans from all over the globe.

The applicant intends to target these demand generators and negotiate rate agreements to cultivate a network of local corporate and institutional clients who will utilize the Project as their preferred hotel for inbound travelers. The Project is intended to serve the needs of existing clients and accommodate current increasing demand as well as future demand that is anticipated as the corridor continues to grow.

- C. If any space is to be leased to third parties, indicate the tenant(s), total square footage of the project to be leased to each tenant, and the proposed use by each tenant: N/A

- D. Need/purpose for project (e.g., why is it necessary, effect on Applicant's business):

The Applicant seeks to develop this project to address the current high demand as well as the anticipated increase in demand for hotel rooms in the area.

- E. Will any portion of the project be used for the making of retail sales to customers who personally visit the project location? Yes ☒ No ☐

- i. If yes, what percentage of the project location will be utilized in connection with the sale of retail goods and/or services to customers who personally visit the project location?

The vast majority of the Project's business will entail providing goods and services to customers personally visiting the location. The Applicant commissioned LW Hospitality Advisors ("LWHA"), a nationally recognized hotel consultant, to perform a hotel market study. Based on the analysis conducted by LWHA, which included comparing the Project to other hotels on Long Island, analyzing hotel customer reviews, and proprietary hotel guest information, the majority of guests are anticipated to come from outside of Nassau/Suffolk counties to generate a majority of the room nights.

6. Project Work:

- A. Has construction work on this project begun? If yes, complete the following:

| | | | | |
|--------------------|------------------------------|--|---------|-----------|
| i. Site Clearance: | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | _____ % | Completed |
| ii. Foundation: | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | _____ % | Completed |
| iii. Footings: | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | _____ % | Completed |
| iv. Steel: | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | _____ % | Completed |
| v. Masonry: | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | _____ % | Completed |
| vi. Other: | _____ | | | |

- B. What is the current zoning? G Industrial

- C. Will the project meet zoning requirements at the proposed location?

Yes

No ☒

- D. If a variance or change of zoning is required, please provide the details/status of the variance or change of zone request: An application has been submitted to and approved by the Town of Babylon to change the zone M-H Planned Motel-Hotel District to accommodate the proposed hotel use.

E. Have site plans been submitted to the appropriate planning department?

Yes **X**

No

7. Project Completion Schedule:

A. What is the proposed commencement date for the acquisition and the construction/renovation/equipping of the project?

i. Acquisition: The Applicant currently leases the premises.

ii. Construction/Renovation/Equipping: Construction will begin within 6 months of closing.

B. Provide an accurate estimate of the time schedule to complete the project and when the first use of the project is expected to occur: Construction period will be 12-14 months. We expect the facility to open in the latter part of 2022.

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Part IV – Project Costs and Financing

1. Project Costs:

- A. Give an accurate estimate of cost necessary for the acquisition, construction, renovation, improvement and/or equipping of the project location:

| <u>Description</u> | <u>Amount</u> |
|---|-----------------|
| Land and/or building acquisition (Rent Payments) | \$732,500.00 |
| Building(s) demolition/construction | \$11,323,550.00 |
| Building renovation | \$0.00 |
| Site Work | \$300,000.00 |
| Machinery and Equipment | \$0.00 |
| Furniture, Fixtures & Equipment | \$1,400,000.00 |
| Legal Fees | \$175,900.00 |
| Architectural/Engineering Fees | \$325,000.00 |
| Financial Charges | \$401,310.00 |
| Other (Development costs/closing costs/ Contingency/Pre-Opening Costs/ Operating Loss & Interest Revenue/ Development Fee) | \$3,511,212.00 |
| Total | \$18,169,472.00 |

| 2. | <u>Method of Financing:</u> | <u>Amount</u> | <u>Term</u> |
|----|--|---------------|-------------|
| A. | Tax-exempt bond financing: | N/A | N/A |
| B. | Taxable bond financing: | N/A | N/A |
| C. | Conventional Mortgage: | N/A | N/A |
| D. | SBA (504) or other governmental financing: | N/A | N/A |
| E. | Public Sources (include sum of all State and federal grants and tax credits): | N/A | N/A |
| F. | Other loans: | \$11,810,000 | TBD |
| G. | Owner/User equity contribution: | \$ 6,359,472 | TBD |

Total Project Costs \$18,169,472.00

- i. What percentage of the project costs will be financed from public sector sources?

0

3. Project Financing: (**Complete only if Bond Financing is being utilized**)

- A. Have any of the above costs been paid or incurred (including contracts of sale or purchase orders) as of the date of this application? Yes ☐ No ☐

i. If yes, provide detail on a separate sheet.

- B. Are costs of working capital, moving expenses, work in progress, or stock in trade included in the proposed uses of bond proceeds? Give details:

N/A

- C. Will any of the funds borrowed through Agency Bonds be used to repay or refinance an existing mortgage or outstanding loan? Give details:

N/A

- D. Has the Applicant made any arrangements for the marketing or the purchase of the bond or bonds? If so, indicate with whom:

N/A

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Part V – Project Benefits

1. **Mortgage Recording Tax Benefit:**

- A. Mortgage Amount for exemption (include sum total of construction/permanent/bridge financing):

\$14,535,500

- B. Estimated Mortgage Recording Tax Exemption (product of Mortgage Amount and current Mortgage Recording Tax Rate):

\$109,016

2. **Sales and Use Tax Benefit:**

- A. Gross amount of costs for goods and services that are subject to State and local Sales and Use Tax (such amount to benefit from the Agency's exemption):

\$9,390,000

- B. Estimated State and local Sales and Use Tax exemption (product of current State and Local Sales and Use Tax Rate and figure above):

\$809,888

- C. If your project has a landlord/tenant (owner/user) arrangement, please provide a breakdown of the number in "B" above:

i. Owner: N/A

ii. User: N/A

3. **Real Property Tax Benefit:**

- A. Identify and describe if the project will utilize a real property tax exemption benefit other than the Agency's PILOT benefit:

No

- B. Agency PILOT Benefit:

Term of PILOT requested: **Twenty year PILOT term to run coterminous with hotel franchise agreement.**

- i. Upon acceptance of this application, the Agency staff will create a PILOT schedule and indicate the estimated amount of PILOT Benefit based on anticipated tax rates and assessed valuation and attach such information to Exhibit A hereto. At such time, the Applicant will certify that it accepts the proposed PILOT schedule and requests such benefit to be granted by the Agency.

*** This application will not be deemed complete and final until Exhibit A hereto has been completed and executed. ***

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Part VI - Employment Data

1. List the Applicant's and each users present employment, and estimates of (i) employment at the proposed project location at the end of year one and year two following project completion and (ii) the number of residents of the Labor Market Area* ("LMA") that would fill the full-time and part-time jobs at the end of year second year following completion:

| | <u>Present</u> | <u>First Year</u> | <u>Second Year</u> | <u>Residents of LMA</u> |
|-------------|-------------------|-----------------------|--------------------|-------------------------|
| Full-Time | <u>0</u> | <u>16²</u> | <u>0</u> | <u>16</u> |
| Part-Time** | <u> </u> | <u> </u> | <u> </u> | <u> </u> |

Fn2: Employment anticipated to stabilize after initial hiring); In addition, Applicant will be hiring a management company to operate the Project. The management company will be responsible for hiring and employing all staff.

*The Labor Market Area includes the Town of Babylon, Nassau and Suffolk Counties.

Full-Time Employee shall mean, with respect to an Annual Period, an individual on the payroll of, receiving customary benefits from, and directly employed during such Annual Period by, any Company Group Entity (and excluding any individuals employed by temporary employment or similar agencies) and each of whom works within the Town for any Company Group Entity during such Annual Period on a "full-time basis" (i.e., working at least a 35-hour week, subject to customary vacation, holiday and sick leave).

****Agency converts Part-time staff to Full-Time Equivalent Employee** as follows, with respect to an Annual Period, two (2) individuals on the payroll of, receiving customary benefits from, and directly employed during such Annual Period by, any Company Group Entity (and excluding any individuals employed by temporary employment or similar agencies) and each of whom works within the Town for any Company Group Entity during such Annual Period on a "part-time basis" (i.e., working at least a 20-hour week, subject to customary vacation, holiday and sick leave).

2. Salary and Fringe Benefits:

| Category of Jobs to be Retained and Created | Number of Employees | Average Salary or Range of Salary | Average Fringe Benefits or Range of Fringe Benefits |
|---|---------------------|-----------------------------------|---|
| Management | <u>4</u> | <u>\$60,000.00</u> | <u>\$18,000.00</u> |
| Professional | | <u>000,000.00</u> | <u>0,000.00</u> |
| Administrative | <u>2</u> | <u>\$45,000.00</u> | <u>\$13,500.00</u> |
| Production | | <u>00,000.00</u> | <u>0,000.00</u> |
| Supervisor | | <u>00,000.00</u> | <u>0,000.00</u> |
| Laborer | | <u>00,000.00</u> | <u>0,000.00</u> |
| Other | | <u>00,000.00</u> | <u>0,000.00</u> |
| Housekeeping, Maintenance/Facility, Front Desk, Food Service (FT) | <u>10</u> | <u>\$37,500.00</u> | <u>\$11,250.00</u> |

Note: The Agency reserves the right to visit the facility to confirm that job creation numbers are being met.

3. Annualized salary range of jobs to be created in the first two years (see question #1).

FROM: \$35,000TO: \$75,000

4. List the number of *Construction jobs (if applicable) to be created by the Applicants Project.

| | <u>First Year</u> | <u>Second Year</u> | <u>Third Year</u> |
|-------------|-------------------------|--------------------|-------------------|
| *Full-Time | <u>45⁽³⁾</u> | <u>---</u> | <u>---</u> |
| **Part-Time | | | |

Fn 3: The project construction schedule is anticipated to be 12-14 months. Therefore, the majority of the construction jobs are anticipated to be generated within the initial year of construction.

*Construction jobs are defined as full-time equivalents (FTE), or 2,080 hour units of labor (one construction period job equates to one-full time job for 1 year)

****A part-time or temporary job may be considered one job by other models, but would constitute only a fraction of a job. For example, if a laborer or craftsman worked only 3 months on a construction or renovation project (assuming no overtime), that would be considered one-quarter of a job.**

(Remainder of Page Intentionally left Blank)

Part VII -Representations, Certifications and Indemnification

1. Is the Applicant in any litigation which would have a material adverse effect on the Applicant's financial condition? (if yes, furnish details on a separate sheet)

Farmingdale Hospitality: Yes ☐ No ☒

2. Has the Applicant or any of the management of the Applicant, the anticipated users or any of their affiliates, or any other concern with which such management has been connected, been cited for a violation of federal, state or local laws or regulations with respect to:

- a. Labor practices,
(with respect to workers and/or their working conditions and/or their wages, including but not limited to pending or threatened labor strikes, hand billing, consumer boycotts, mass demonstrations or other similar incidents; unfair labor practices complaints; incurred, or potentially incurred, liability including withdrawal liability with respect to an employee benefit plan, including a pension plan; any complaints, claims, proceedings or litigation arising from alleged discrimination in the hiring, firing, promoting, compensating or general treatment of employees. Please consider "discrimination" to include sexual harassment.)

Yes ☐ No ☒ (If yes, furnish details on a separate sheet)

- b. hazardous wastes, environmental pollution,

Yes ☐ No ☒ (If yes, furnish details on a separate sheet)

- c. other operating practices

Yes ☐ No ☒ (If yes, furnish details on a separate sheet)

3. Is there a likelihood that the Applicant would not proceed with this project without the Agency's assistance? (If yes, please explain why; if no, please explain why the Agency should grant the benefits requested)

Yes ☒ No ☐

The Project would not proceed without the assistance of the Babylon IDA. Given the rising cost of construction and unpredictable increases in property taxes, the Project is not feasible without assistance and would not proceed. The combination of the cost of new construction and ongoing operating costs would be prohibitive without IDA benefits. Further, the impact of Covid-19 has increased material costs and impacted various aspects of employee benefit costs.

4. If the Applicant is unable to obtain financial assistance from the Agency for the project, what would be the impact on the Applicant and on the municipality?

If the Agency does not provide assistance, the Applicant will not pursue this economic development project. If the Project does not occur, the Town of Babylon will not receive the benefits of the Project, which include fees associated with construction of the Project, an increased tax base, additional tax revenue, including hotel/motel taxes (a portion of which is shared with local municipalities), new job creation, servicing a recognized need for hotel accommodations, tourism spending, and the economic impacts of the construction and operation of the facility.

5. The Applicant understands and agrees that the provisions of Section 862(1) of the New York General Municipal Law, as provided below, will not be violated if financial assistance is provided for the proposed project:

§ 862. Restrictions on funds of the agency. (1) No funds of the agency shall be used in respect of any project if the completion thereof would result in the removal of an industrial or manufacturing plant of the project occupant from one area of the state to another area of the state or in the abandonment of one or more plants or facilities of the project occupant located within the state, provided, however, that neither restriction shall apply if the agency shall determine on the basis of the application before it that the project is reasonably necessary to discourage the project occupant from removing such other plant or facility to a location outside the state or is reasonably necessary to preserve the competitive position of the project occupant in its respective industry.

Initial JK

6. The Applicant understands and agrees that in accordance with Section 858-b(2) of the General Municipal Law, except as otherwise provided by collective bargaining agreements, new employment opportunities created as a result of the project will be listed with the New York State Department of Labor, Community Services Division and with the administrative entity of the service delivery area created pursuant to the Job Training Partnership Act (PL 97-300) in which the project is located (collectively, the "Referral Agencies"). The Applicant also agrees, that it will, except as otherwise provided by collective bargaining contracts or agreements to which they are parties, first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the Referral Agencies

Initial JK

7. The Applicant confirms and acknowledges that the owner, occupant, or operator receiving financial assistance for the proposed project is in substantial compliance with applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.

Initial JK

8. The Applicant confirms and acknowledges that the submission of any knowingly false or knowingly misleading information may lead to the immediate termination of any financial assistance and the reimbursement of an amount equal to all or part of any tax exemption claimed by reason of the Agency's involvement the Project.

Initial JK

9. The Applicant confirms and hereby acknowledges that as of the date of this Application, the Applicant is in substantial compliance with all provisions of Article 18-A of the New York General Municipal Law, including, but not limited to, the provision of Section 859-a and Section 862(1) of the New York General Municipal Law.

Initial JK

10. In accordance with Section 862(1) of the New York General Municipal Law the Applicant understands and agrees that projects which result in the removal of an industrial or manufacturing plant of the project occupant from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the project occupant within the State is ineligible for financial assistance from the Agency, unless otherwise approved by the Agency as reasonably necessary to preserve the competitive position of the project in its respective industry or to discourage the project occupant from removing such other plant or facility to a location outside the State.

Initial JK

11. The Applicant represents and warrants that to the Applicant's knowledge neither it nor any of its affiliates, nor any of their respective partners, members, shareholders or other equity owners, and none of their respective employees, officers, directors, representatives or agents is, nor will they become a person or entity with who United States persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control (OFAC) of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List or under any statute, executive order including the September 24, 2001, Executive Order Block Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, or other governmental action and is not and will not assign or otherwise transfer this Agreement to, contract with or otherwise engage in any dealings or transactions or be otherwise associated with such persons or entities.

Initial JK

Initial after receipt and acceptance of Schedule A and Schedule B

Initial after receipt and acceptance of Schedule A and Schedule B

12. The Applicant confirms and hereby acknowledges it has received the Agency's fee schedule attached hereto as Schedule A and agrees to pay such fees, together with any expenses incurred by the Agency, including those of Transaction Counsel, with respect to the Facility. The Applicant agrees to pay such expenses and further agrees to indemnify the Agency, its members, directors, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the project.

Initial JK

13. The Applicant hereby agrees to comply with Section 875 of the General Municipal Law. The Company further agrees that the financial assistance granted to the project by the Agency is subject to recapture pursuant to Section 875 of the Act and the Agency's Recapture Policy, attached hereto as Schedule B.

Initial JK

Part IX - Certification


Jonathan Cohen deposes and says that he is an Authorized Representative of Farmingdale Hospitality Partners, LLC, the limited liability company named in the attached application; that he or she has read the foregoing application and knows the contents thereof; and that the same is true to his or her knowledge.

Deponent further says that s/he is duly authorized to make this certification on behalf of the entity named in the attached Application (the "Applicant") and to bind the Applicant. The grounds of deponent's belief relative to all matters in said Application which are not stated upon his/her personal knowledge are investigations which deponent has caused to be made concerning the subject matter this Application, as well as information acquired by deponent in the course of his/her duties in connection with said Applicant and from the books and papers of the Applicant.

As representative of the Applicant, deponent acknowledges and agrees that Applicant shall be and is responsible for all costs incurred by the Town of Babylon Industrial Development Agency (hereinafter referred to as the "Agency") in connection with this Application, the attendant negotiations and all matters relating to the provision of financial assistance to which this Application relates, whether or not ever carried to successful conclusion. If, for any reason whatsoever, the Applicant fails to conclude or consummate necessary negotiations or fails to act within a reasonable or specified period of time to take reasonable, proper, or requested action or withdraws, abandons, cancels or neglects the application or if the Applicant is unable to find buyers willing to purchase the total bond issue required, then upon presentation of an invoice, Applicant shall pay to the Agency, its agents or assigns, all actual costs incurred with respect to the application, up to that date and time, including fees to bond or transaction counsel for the Agency and fees of general counsel for the Agency. Upon successful conclusion and sale of the transaction contemplated herein, the Applicant shall pay to the Agency an administrative fee set by the Agency in accordance with its fee schedule in effect on the date of the foregoing application, and all other appropriate fees, which amounts are payable at closing.


 Representative of Applicant

Sworn to me before this 6th
 day of August, 2021

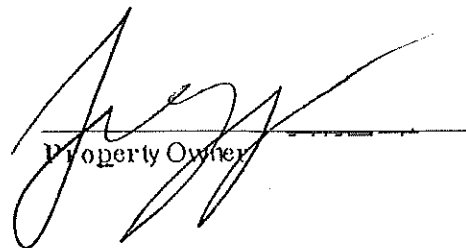

 (seal)

JAMES DECIUNIS
 Notary Public-State of New York
 NO. 02DE6183087
 Qualified in Nassau County
 My Commission Expires March 10, 2024

Part IX - Certification Property Owner (if different from Applicant)

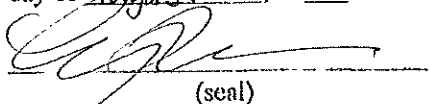
John Joseph GAZZA (name of owner) deposes and says that he or she is the PROPERTY OWNER (title) named in the attached application; that he or she has read the foregoing application and knows the contents thereof; and that the same is true to his or her knowledge.

As Property Owner, deponent acknowledges and agrees that Applicant shall be and is responsible for all costs incurred by the Town of Babylon Industrial Development Agency (hereinafter referred to as the "Agency") in connection with this Application, the attendant negotiations and all matters relating to the provision of financial assistance to which this Application relates, whether or not ever carried to successful conclusion. If, for any reason whatsoever, the Applicant fails to conclude or consummate necessary negotiations or fails to act within a reasonable or specified period of time to take reasonable, proper, or requested action or withdraws, abandons, cancels or neglects the application or if the Applicant is unable to find buyers willing to purchase the total bond issue required, then upon presentation of invoice, Applicant shall pay to the Agency, its agents or assigns, all actual costs incurred with respect to the application, up to that date and time, including fees to bond or transaction counsel for the Agency and fees of general counsel for the Agency. Upon successful conclusion and sale of the transaction contemplated herein, the Applicant shall pay to the Agency an administrative fee set by the Agency in accordance with its fee schedule in effect on the date of the foregoing application, and all other appropriate fees, which amounts are payable at closing.



Property Owner

Sworn to me before this 20
day of August, 2021



(seal)

NANCY WALTERS
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01WA5081368
Qualified in Suffolk County
Commission Expires June 30, 2023

EXHIBIT A

Proposed PILOT Schedule

Upon acceptance of the Application and completion of the Cost Benefit Analysis, the Agency will attach the proposed PILOT Schedule, together with the estimates of net exemptions based on estimated tax rates and assessment values to this Exhibit.

EXHIBIT A – Farmingdale Hospitality Partners, LLC

Payments in Lieu of Taxes on the Land and the Buildings:

The Project facility constituting the facility realty and improvements constructed thereon (the “Facility”) constitutes a hotel project under the Town of Babylon IDA’s (the “Agency”) Uniform Tax Exemption Policy and it will qualify for a partial abatement of real property taxes for a period not to exceed twenty (20) years.

For the period commencing on the Abatement Commencement Date (hereinafter defined) until the earlier of the date on which the straight lease transaction (i) expires, (ii) is terminated or (iii) the date on which the Agency no longer maintains a leasehold interest in the Facility, the Company shall make PILOT payments as follows:

Definitions

§

Abatement Commencement Date = the Taxable Status Date of the Town (i.e., March 1) immediately following the issuance of a certificate of occupancy (final or temporary), certificate of completion or any other document that attests to compliance with applicable building codes after substantial completion of construction of the Facility (“**Certificate of Occupancy**”).

- A = The “**Full Assessed Value**” of the Facility as determined by the Town Tax Assessor immediately after the issuance of the Certificate of Occupancy for the Facility and any modification of the assessed value as thereafter determined by the Town Tax Assessor.
- B = the “**Base PILOT**” which equals the Stabilized Assessed Value multiplied by the then current tax rate of the Town for such Tax Year.
- C = The current tax rate of the Town then in effect for such Tax Year.
- S = The “**Stabilized Base Assessed Value**” of \$9,560.

QC 8/6/21

Tax Year

| | | | | | | | |
|------------------------|---|---|--------|---|--------|---|---|
| 1 through 5, inclusive | B | + | 0 | | | | |
| 6 | B | + | ((A-S) | x | 6.25% | x | C |
| 7 | B | + | ((A-S) | x | 12.50% | x | C |
| 8 | B | + | ((A-S) | x | 18.75% | x | C |
| 9 | B | + | ((A-S) | x | 25.00% | x | C |
| 10 | B | + | ((A-S) | x | 31.25% | x | C |
| 11 | B | + | ((A-S) | x | 37.50% | x | C |
| 12 | B | + | ((A-S) | x | 43.75% | x | C |
| 13 | B | + | ((A-S) | x | 50.00% | x | C |
| 14 | B | + | ((A-S) | x | 56.25% | x | C |
| 15 | B | + | ((A-S) | x | 62.50% | x | C |
| 16 | B | + | ((A-S) | x | 68.75% | x | C |
| 17 | B | + | ((A-S) | x | 75.00% | x | C |
| 18 | B | + | ((A-S) | x | 81.25% | x | C |
| 19 | B | + | ((A-S) | x | 87.50% | x | C |
| 20 | B | + | ((A-S) | x | 93.75% | x | C |

21 and thereafter Full taxes due on the assessed value of the Facility Realty in accordance with the then current tax rate of the Town and then current assessed value of the Facility Realty.

Tax Year = Each Tax Year of the Town currently commences December 1 and ends November 30. The first Tax Year below shall commence on the December 1 of the year immediately following the March 1 of such year immediately succeeding issuance of the Certificate of Occupancy.

For the first five (5) years, annual payments under the PILOT will be equal to the "Stabilized Base Assessed Value" of \$9,560 multiplied by the then current tax rate of the Town for such Tax Year (the "Base PILOT"). In years six (6) through twenty (20), inclusive, annual PILOT payments will equal the Base PILOT plus an incremental amount equal to the then full assessed value of the Facility less the Stabilized Base Assessed Value multiplied by an amount equal to 6.25% in year six (6), and such amount increasing by 6.25% each year thereafter through and including year twenty (20), which value shall then be multiplied by the current tax rate of the Town then in effect for such Tax Year. In year twenty-one (21) and thereafter, PILOT payments will equal 100% of full taxes due for the Facility.

QC
8/6/21

Payment

The tax benefits provided for in this schedule shall be deemed to commence on the Abatement Commencement Date. In no event shall the Company be entitled to receive real property tax benefits due to the Project under the Lease Agreement for a period longer than the period set forth in the formula immediately above. Notwithstanding the foregoing schedule, the Company further covenants and agrees that for any period that the Agency continues to hold a leasehold interest in the Facility after the Expiration Date the Company shall pay 100% of the taxes due on the assessed value of the Facility in accordance with the then current tax rate of the Town and then current assessed value of the Facility together with any special assessment and services charges relating to the Facility whichever may be imposed for special district improvements in accordance with the provisions of this Section 5.1.

9C
8/6/21

August 5, 2021

\$ 28,046

QC
8/6/21

SCHEDULE A

Agency's Fee Schedule

Farmingdale Hospitality Partners LLC
 1024 Broad Hollow Rd
 Farmingdale, NY 11735
 0100 048.00 02.00 014.001

8/5/2021

Schedule A

101 Unit Hotel

| | | | | | |
|--|----------------|-------------------|-------------|--------|----------------|
| Application Fee | | | | \$ | 1,500 |
| Estimated Public Hearing Notice | | | | | 1,000 |
| Estimated Feasibility Study | | | | | 20,000 |
| Estimated Project costs | | | | | |
| Land &/or Bldg Acquisition (pre-opening land rent) | 732,500 | 1.25% | 9,156 | | |
| Bldg demo / construction | 11,323,550 | 1.25% | 141,544 | | |
| Site Work | 300,000 | 1.25% | 3,750 | | |
| Furniture & Fixtures | 1,400,000 | 1.25% | 17,500 | | |
| Arch/Engineering fees | 325,000 | 1.25% | 4,063 | | |
| Soft Costs: | | | | | |
| Legal fees | 175,900 | | | | |
| Financial Charges | 401,310 | | | | |
| Other (Dev Fee, Contingency, Cap Reserve, Pre-Opening Costs) | 3,511,212 | | | | |
| | Part IV | | | | |
| Estimated Project costs | Page 14 | 18,169,472 | | | |
| 99 year Land Lease | | | | | |
| | <i>AV</i> | Uniform% of Value | | | |
| | | 0.0091 | | | |
| .75% of FMV of existing land | 9,560 | 1,050,549 | 0.75% | 7,890 | |
| Estimated Savings | | | | | |
| Est PILOT | | | \$5,671,662 | | |
| | Part V | | | | |
| 75% Est Mtg Rec | Page 16 | 14,535,500 | \$109,016 | | |
| | Part V | | | | |
| 8.625% Sales Tax - Reno & Equip | Page 16 | 9,390,000 | \$809,888 | | |
| Estimated Savings | | 1.00% | 6,590,566 | 65,906 | |
| Estimated Closing fee | | | | | 249,809 |
| Total Estimated Fees | | | | \$ | 272,309 |

* Plus an Annual Reporting / Compliance fee of \$1,000 per year for the duration of the PILOT

** Legal Fees: The Applicant/Owner is responsible for all legal fees at closing, which include both local and project counsel. Legal fees can generally range from \$90,000 to \$145,000 depending upon the size and complexity of the project. These fees can be rolled into your financing.

QC
8/6/21

SCHEDULE B

Recapture of Agency Benefits. It is understood and agreed by the parties hereto that the Agency is entering into this Lease Agreement in order to provide financial assistance to the Company for the Facility and to accomplish the public purposes of the Act. In consideration therefor, the Company hereby agrees as follows:

(a) If there shall occur a Recapture Event after the date hereof, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, the following amounts:

- (i) one hundred percent (100%) of the Recaptured Benefits (as defined below) if the Recapture Event occurs within the first twenty (20) years after the date hereof;
- (ii) eighty percent (80%) of the Recaptured Benefits (as defined below) if the Recapture Event occurs during the twenty-first (21st) years after the date hereof;
- (iii) sixty percent (60%) of the Recaptured Benefits (as defined below) if the Recapture Event occurs during the twenty-second (22nd) to twenty-third (23rd) year after the date hereof;
- (iv) forty percent (40%) of the Recaptured Benefits (as defined below) if the Recapture Event occurs during the twenty-fourth (24th) year after the date hereof; or
- (v) twenty percent (20%) of the Recaptured Benefits (as defined below) if the Recapture Event occurs during the twenty-fifth (25th) year after the date hereof.

(b) The term "**Recaptured Benefits**" shall mean all direct monetary benefits, tax exemptions and abatements and other financial assistance, if any, derived solely from the Agency's participation in the transaction contemplated by the Lease Agreement including, but not limited to, the amount equal to 100% of:

- (i) the Mortgage Recording Tax Exemption; and
- (ii) Sales Tax Exemption savings realized by or for the benefit of the Company, including any savings realized by any Agent pursuant to the Lease Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Facility (the "**Company Sales Tax Savings**"); and
- (iii) real property tax abatements granted pursuant to Section 5.1 hereof (the "**Real Property Tax Abatements**");

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8/6/21

which Recaptured Benefits from time to time shall upon the occurrence of a Recapture Event in accordance with the provisions of subsection (c) below and the declaration of a Recapture Event by notice from the Agency to the Company be payable directly to the Agency or the State of New York if so directed by the Agency within ten (10) days after such notice.

(c) The term “**Recapture Event**” shall mean any of the following events:

- (1) sale or closure of the Facility;
- (2) a material violation of the terms and conditions of the Transaction Documents, including failure to complete the Facility in accordance with Section 3.6 hereof;
- (3) a material misrepresentation made by the Company and contained in the application for Financial Assistance, any Transaction Documents or any other materials delivered pursuant to the Transaction Documents;
- (4) the Company shall have liquidated its operations and/or assets at the Facility (absent a showing of extreme hardship);
- (5) the Company shall have ceased all or substantially all of its operations at the Facility (whether by relocation to another facility or otherwise, or whether to another facility either within or outside of the Town) through no force majeure event;
- (6) (Reserved);
- (7) the Company shall have subleased all or any portion of the Facility in violation of the limitations imposed by the Transaction Documents, without the prior written consent of the Agency;
- (8) the Company shall have sold, leased, transferred or otherwise disposed of all or substantially all of its interest in the Facility without the prior written consent of the Agency;
- (9) the failure by the Company to complete the Project on or before the Completion Date substantially in accordance with the Plans and Specification and the Project Budget;
- (10) the Company receives Company Sales Tax Savings in connection with the Project Work in excess of the Maximum Company Sales Tax Savings Amount; provided, however, that the foregoing shall constitute a Recapture Event with respect to such excess Company Sales Tax Savings only. It is further provided that failure to repay the Company Sales Tax Savings within thirty (30) days shall constitute a Recapture Event with respect to all Recaptured Benefits; and

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8/6/21

(11) The Company fails to use and maintain the Facility as an Affordable Housing Project for the term of this Lease Agreement.

(d) Furthermore, notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a result of (i) a "force majeure" event (as more particularly defined in Section 10.1(b) hereof), (ii) a taking or condemnation by governmental authority of all or part of the Facility, or (iii) the inability or failure of the Company after the Facility shall have been destroyed or damaged in whole or in part (such occurrence a "**Loss Event**") to rebuild, repair, restore or replace the Facility to substantially its condition prior to such Loss Event, which inability or failure shall have arisen in good faith on the part of the Company or any of its affiliates so long as the Company or any of its affiliates have diligently and in good faith using commercially reasonable efforts pursued the rebuilding, repair, restoration or replacement of the Facility or part thereof.

(e) The Company covenants and agrees to furnish the Agency with written notification (i) within thirty (30) days of the end of each Tax Year the number of FTEs located at the Facility for such Tax Year, and (ii) within thirty (30) days of actual notice of any facts or circumstances which would likely lead to a Recapture Event or constitute a Recapture Event hereunder. The Agency shall notify the Company of the occurrence of a Recapture Event hereunder, which notification shall set forth the terms of such Recapture Event.

(f) In the event any payment owing by the Company under this Section shall not be paid on demand by the Agency, such payment shall bear interest from the date of such demand at a rate equal to one percent (1%) plus the Prime Rate, but in no event at a rate higher than the maximum lawful prevailing rate, until the Company shall have made such payment in full, together with such accrued interest to the date of payment, to the Agency (except as otherwise specified above).

(g) The Agency shall be entitled to deduct all reasonable out of pocket expenses of the Agency, including without limitation, reasonable legal fees, incurred with the recovery of all amounts due under this Section 5.4, from amounts received by the Agency pursuant to this Section 5.4.

The obligations of the Company under this Section 5.4 shall survive the termination or expiration of this Lease Agreement for any reason whatsoever. The Agency, in its sole discretion and in furtherance of the purposes of the Act, may waive, the payment of Recaptured Benefits in whole or in part, for good cause shown.

gc
8/16/21

APPLICATION

ATTACHMENTS



**Full Environmental Assessment Form
Part 1 - Project and Setting**

Instructions for Completing Part 1

Part 1 is to be completed by the applicant or project sponsor. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification.

Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information; indicate whether missing information does not exist, or is not reasonably available to the sponsor; and, when possible, generally describe work or studies which would be necessary to update or fully develop that information.

Applicants/sponsors must complete all items in Sections A & B. In Sections C, D & E, most items contain an initial question that must be answered either "Yes" or "No". If the answer to the initial question is "Yes", complete the sub-questions that follow. If the answer to the initial question is "No", proceed to the next question. Section F allows the project sponsor to identify and attach any additional information. Section G requires the name and signature of the project sponsor to verify that the information contained in Part 1 is accurate and complete.

A. Project and Sponsor Information.

| | | |
|--|-----------|---|
| Name of Action or Project: Hampton Inn & Suites | | |
| Project Location (describe, and attach a general location map): North Side of Broad Hollow Road, 134 feet east of Michael Drive | | |
| Brief Description of Proposed Action (include purpose or need): Proposed zone change to planned Motel (M-11) district in connection with a 4 story hotel, 64, 384 GFA with 101 rooms to be constructed on existing vacant lot, improvements to include new utility infrastructure, water, sewer, electric, gas and telephone, new drainage in conformance with current NYS standards, new landscaping and LED lighting. | | |
| Name of Applicant/Sponsor: R&M Engineering, Christopher W. Robinson, PE | | Telephone: (631) 271-0576 E-Mail: cwr@mengineering.com |
| Address: 50 Elm Street | | |
| City/PO: Huntington | State: NY | Zip Code: 11743 |
| Project Contact (if not same as sponsor, give name and title/role): | | Telephone: E-Mail: |
| Address: | | |
| City/PO: | State: | Zip Code: |
| Property Owner (if not same as sponsor): John Joseph Guzza | | Telephone: (516) 624-1910 E-Mail: N/A |
| Address: 388 Broad Hollow Road | | |
| City/PO: Farmingdale | State: NY | Zip Code: 11735 |

B. Government Approvals

| B. Government Approvals Funding, or Sponsorship. ("Funding" includes grants, loans, tax relief, and any other forms of financial assistance.) | | |
|---|--|---|
| Government Entity | If Yes: Identify Agency and Approval(s) Required | Application Date (Actual or projected) |
| a. City Council, Town Board, <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No or Village Board of Trustees | Town Board Change of Zone | 9/2019 |
| b. City, Town or Village Planning Board or Commission <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Planning Board - Site Plan Approval | 9/2019 |
| c. City Council, Town or Village Zoning Board of Appeals <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Town ZBA - Setback/Density Variances | 9/2019 |
| d. Other local agencies <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | |
| e. County agencies <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | SCDPW/SCDHS/SCWA | 9/2019 |
| f. Regional agencies <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | |
| g. State agencies <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | NYSDOT Highway Work Permit | Permit |
| h. Federal agencies <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | |
| i. Coastal Resources. | | |
| i. Is the project site within a Coastal Area, or the waterfront area of a Designated Inland Waterway? | | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| If Yes, | | |
| ii. Is the project site located in a community with an approved Local Waterfront Revitalization Program? | | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| iii. Is the project site within a Coastal Erosion Hazard Area? | | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |

C. Planning and Zoning

| | |
|---|--|
| C.1. Planning and zoning actions. | |
| Will administrative or legislative adoption, or amendment of a plan, local law, ordinance, rule or regulation be the only approval(s) which must be granted to enable the proposed action to proceed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |
| <ul style="list-style-type: none"> If Yes, complete sections C, F and G. If No, proceed to question C.2 and complete all remaining sections and questions in Part 1 | |
| C.2. Adopted land use plans. | |
| a. Do any municipally-adopted (city, town, village or county) comprehensive land use plan(s) include the site where the proposed action would be located? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | |
| If Yes, does the comprehensive plan include specific recommendations for the site where the proposed action would be located? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | |
| b. Is the site of the proposed action within any local or regional special planning district (for example: Greenway Brownfield Opportunity Area (BOA); designated State or Federal heritage area; watershed management plan; or other)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |
| If Yes, identify the plan(s): | |
| <hr/> <hr/> <hr/> | |
| c. Is the proposed action located wholly or partially within an area listed in an adopted municipal open space plan, or an adopted municipal farmland protection plan? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |
| If Yes, identify the plan(s): | |
| <hr/> <hr/> <hr/> | |

C.3. Zoning

a. Is the site of the proposed action located in a municipality with an adopted zoning law or ordinance?
If Yes, what is the zoning classification(s) including any applicable overlay district? ☒ Yes ☐ No
G- Industrial

b. Is the use permitted or allowed by a special or conditional use permit? ☐ Yes ☒ No

c. Is a zoning change requested as part of the proposed action? ☒ Yes ☐ No
If Yes,
i. What is the proposed new zoning for the site? M-11 Planned Hotel - Hotel District

C.4. Existing community services.

a. In what school district is the project site located? Farmingdale

b. What police or other public protection forces serve the project site?
Suffolk County

c. Which fire protection and emergency medical services serve the project site?
East Farmingdale

d. What parks serve the project site?
Michael Park

D. Project Details

D.1. Proposed and Potential Development

a. What is the general nature of the proposed action (e.g., residential, industrial, commercial, recreational; if mixed, include all components)?
Commercial

b. a. Total acreage of the site of the proposed action? 2.145 acres
b. Total acreage to be physically disturbed? 2.145 acres
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? 2.145 acres

c. Is the proposed action an expansion of an existing project or use? ☐ Yes ☒ No
i. If Yes, what is the approximate percentage of the proposed expansion and identify the units (e.g., acres, miles, housing units, square feet)? % Units:

d. Is the proposed action a subdivision, or does it include a subdivision? ☐ Yes ☒ No
If Yes,
i. Purpose or type of subdivision? (e.g., residential, industrial, commercial; if mixed, specify types)

ii. Is a cluster/conservation layout proposed? ☐ Yes ☒ No

iii. Number of lots proposed?

iv. Minimum and maximum proposed lot sizes? Minimum Maximum

e. Will proposed action be constructed in multiple phases?
i. If No, anticipated period of construction: 10 months ☐ Yes ☒ No
ii. If Yes:
• Total number of phases anticipated
• Anticipated commencement date of phase 1 (including demolition) month year
• Anticipated completion date of final phase month year
• Generally describe connections or relationships among phases, including any contingencies where progress of one phase may determine timing or duration of future phases:

f. Does the project include new residential uses?
If Yes, show numbers of units proposed. ☐ Yes ☒ No

| | One Family | Two Family | Three Family | Multiple Family (four or more) |
|-----------------------------|------------|------------|--------------|--------------------------------|
| Initial Phase | _____ | _____ | _____ | _____ |
| At completion of all phases | _____ | _____ | _____ | _____ |

g. Does the proposed action include new non-residential construction (including expansions)? ☒ Yes ☐ No

If Yes,

i. Total number of structures: 1

ii. Dimensions (in feet) of largest proposed structure: 43' height; 116.3' width; and 278.8' length

iii. Approximate extent of building space to be heated or cooled: 64,384 square feet

h. Does the proposed action include construction or other activities that will result in the impoundment of any liquids, such as creation of a water supply, reservoir, pond, lake, waste lagoon or other storage? ☐ Yes ☒ No

If Yes,

i. Purpose of the impoundment: _____

ii. If a water impoundment, the principal source of the water: ☐ Ground water ☐ Surface water streams ☐ Other specify: _____

iii. If other than water, identify the type of impounded/contained liquids and their source. _____

iv. Approximate size of the proposed impoundment. Volume: _____ million gallons; surface area: _____ acres

v. Dimensions of the proposed dam or impounding structure: _____ height; _____ length

vi. Construction method/materials for the proposed dam or impounding structure (e.g., earth fill, rock, wood, concrete): _____

D.2. Project Operations

a. Does the proposed action include any excavation, mining, or dredging, during construction, operations, or both? (Not including general site preparation, grading or installation of utilities or foundations where all excavated materials will remain onsite) ☐ Yes ☒ No

If Yes:

i. What is the purpose of the excavation or dredging? _____

ii. How much material (including rock, earth, sediments, etc.) is proposed to be removed from the site?

- Volume (specify tons or cubic yards): _____
- Over what duration of time? _____

iii. Describe nature and characteristics of materials to be excavated or dredged, and plans to use, manage or dispose of them. _____

iv. Will there be onsite dewatering or processing of excavated materials? ☐ Yes ☐ No

If yes, describe. _____

v. What is the total area to be dredged or excavated? _____ acres

vi. What is the maximum area to be worked at any one time? _____ acres

vii. What would be the maximum depth of excavation or dredging? _____ feet

viii. Will the excavation require blasting? ☐ Yes ☐ No

ix. Summarize site reclamation goals and plan: _____

b. Would the proposed action cause or result in alteration of, increase or decrease in size of, or encroachment into any existing wetland, waterbody, shoreline, beach or adjacent area? ☐ Yes ☒ No

If Yes:

i. Identify the wetland or waterbody which would be affected (by name, water index number, wetland map number or geographic description): _____

ii. Describe how the proposed action would affect that waterbody or wetland, e.g. excavation, fill, placement of structures, or alteration of channels, banks and shorelines. Indicate extent of activities, alterations and additions in square feet or acres:

iii. Will proposed action cause or result in disturbance to bottom sediments? ☐ Yes ☐ No
If Yes, describe: _____

iv. Will proposed action cause or result in the destruction or removal of aquatic vegetation? ☐ Yes ☐ No
If Yes:

- acres of aquatic vegetation proposed to be removed _____
- expected acreage of aquatic vegetation proposed to be removed _____
- purpose of proposed removal (e.g. beach clearing, invasive species control, boat access): _____
- proposed method of plant removal: _____
- if chemical/herbicide treatment will be used, specify product(s): _____

v. Describe any proposed reclamation/mitigation following disturbance: _____

v. Will the proposed action use, or create a new demand for water? ☒ Yes ☐ No
If Yes:

i. Total anticipated water usage/demand per day: 10,100 gallons/day

ii. Will the proposed action obtain water from an existing public water supply? ☒ Yes ☐ No
If Yes:

- Name of district or service area: Suffolk County Water Authority
- Does the existing public water supply have capacity to serve the proposal? ☒ Yes ☐ No
- Is the project site in the existing district? ☒ Yes ☐ No
- Is expansion of the district needed? ☐ Yes ☒ No
- Do existing lines serve the project site? ☐ Yes ☒ No

iii. Will line extension within an existing district be necessary to supply the project? ☐ Yes ☒ No
If Yes:

- Describe extensions or capacity expansions proposed to serve this project: _____
- Source(s) of supply for the district: _____

iv. Is a new water supply district or service area proposed to be formed to serve the project site? ☐ Yes ☒ No
If Yes:

- Applicant/sponsor for new district: _____
- Date application submitted or anticipated: _____
- Proposed source(s) of supply for new district: _____

v. If a public water supply will not be used, describe plans to provide water supply for the project: _____

vi. If water supply will be from wells (public or private), maximum pumping capacity: _____ gallons/minute.

d. Will the proposed action generate liquid wastes? ☒ Yes ☐ No
If Yes:

i. Total anticipated liquid waste generation per day: 10,100 gallons/day

ii. Nature of liquid wastes to be generated (e.g., sanitary wastewater, industrial; if combination, describe all components and approximate volumes or proportions of each): Sanitary waste water

iii. Will the proposed action use any existing public wastewater treatment facilities? ☒ Yes ☐ No
If Yes:

- Name of wastewater treatment plant to be used: Bergen Point
- Name of district: Suffolk County Southwest Sewer District #3
- Does the existing wastewater treatment plant have capacity to serve the project? ☐ Yes ☒ No
- Is the project site in the existing district? ☒ Yes ☐ No
- Is expansion of the district needed? ☐ Yes ☒ No

• Do existing sewer lines serve the project site? ☒ Yes ☐ No
 • Will line extension within an existing district be necessary to serve the project? ☐ Yes ☒ No
 If Yes:
 • Describe extensions or capacity expansions proposed to serve this project: _____

iv. Will a new wastewater (sewage) treatment district be formed to serve the project site? ☐ Yes ☒ No
 If Yes:
 • Applicant/sponsor for new district: _____
 • Date application submitted or anticipated: _____
 • What is the receiving water for the wastewater discharge? _____

v. If public facilities will not be used, describe plans to provide wastewater treatment for the project, including specifying proposed receiving water (name and classification if surface discharge, or describe subsurface disposal plans):
 n/a

vi. Describe any plans or designs to capture, recycle or reuse liquid waste: n/a

e. Will the proposed action disturb more than one acre and create stormwater runoff, either from new point sources (i.e. ditches, pipes, swales, curbs, gutters or other concentrated flows of stormwater) or non-point source (i.e. sheet flow) during construction or post construction? ☒ Yes ☐ No
 If Yes:
 i. How much impervious surface will the project create in relation to total size of project parcel?
 _____ Square feet or 1.62 acres (impervious surface)
 _____ Square feet or 21.15 acres (parcel size)
 ii. Describe types of new point sources, roof, asphalt pavement and curbing

iii. Where will the stormwater runoff be directed (i.e. on-site stormwater management facility/structures, adjacent properties, groundwater, on-site surface water or off-site surface waters)?
 on-site subsurface drainage structures with design capacity for 3 inch rainfall
 • If to surface waters, identify receiving water bodies or wetlands: N/A

• Will stormwater runoff flow to adjacent properties? ☐ Yes ☒ No

iv. Does proposed plan minimize impervious surfaces, use pervious materials or collect and re-use stormwater? ☐ Yes ☒ No

f. Does this proposed action include, or will it use on-site, one or more sources of air emissions, including fuel combustion, waste incineration, or other processes or operations? ☐ Yes ☒ No
 If Yes, identify:
 i. Mobile sources during project operations (e.g., heavy equipment, fleet or delivery vehicles)
 ii. Stationary sources during construction (e.g., power generation, structural heating, batch plant, crushers)
 iii. Stationary sources during operations (e.g., process emissions, large boilers, electric generation)

g. Will any air emission sources named in D.2.f (above), require a NY State Air Registration, Air Facility Permit, or Federal Clean Air Act Title IV or Title V Permit? ☐ Yes ☒ No
 If Yes:
 i. Is the project site located in an Air quality non-attainment area? (Area routinely or periodically fails to meet ambient air quality standards for all or some parts of the year) ☐ Yes ☒ No
 ii. In addition to emissions as calculated in the application, the project will generate:
 • _____ Tons/year (short tons) of Carbon Dioxide (CO₂)
 • _____ Tons/year (short tons) of Nitrous Oxide (N₂O)
 • _____ Tons/year (short tons) of Perfluorocarbons (PFCs)
 • _____ Tons/year (short tons) of Sulfur Hexafluoride (SF₆)
 • _____ Tons/year (short tons) of Carbon Dioxide equivalent of Hydrofluorocarbons (HFCs)
 • _____ Tons/year (short tons) of Hazardous Air Pollutants (HAPs)

h. Will the proposed action generate or emit methane (including, but not limited to, sewage treatment plants, landfills, composting facilities)? ☐ Yes ☒ No

If Yes:

i. Estimate methane generation in tons/year (metric): _____

ii. Describe any methane capture, control or elimination measures included in project design (e.g., combustion to generate heat or electricity, flaring): _____

i. Will the proposed action result in the release of air pollutants from open-air operations or processes, such as quarry or landfill operations? ☐ Yes ☒ No

If Yes: Describe operations and nature of emissions (e.g., diesel exhaust, rock particulates/dust): _____

j. Will the proposed action result in a substantial increase in traffic above present levels or generate substantial new demand for transportation facilities or services? ☐ Yes ☒ No

If Yes:

i. When is the peak traffic expected (Check all that apply): ☐ Morning ☐ Evening ☐ Weekend
☐ Randomly between hours of _____ to _____

ii. For commercial activities only, projected number of semi-trailer truck trips/day: _____

iii. Parking spaces: Existing _____ Proposed _____ Net increase/decrease _____

iv. Does the proposed action include any shared use parking? ☐ Yes ☒ No

v. If the proposed action includes any modification of existing roads, creation of new roads or change in existing access, describe: _____

vi. Are public/private transportation service(s) or facilities available within 1/2 mile of the proposed site? ☐ Yes ☒ No

vii. Will the proposed action include access to public transportation or accommodations for use of hybrid, electric or other alternative fueled vehicles? ☐ Yes ☒ No

viii. Will the proposed action include plans for pedestrian or bicycle accommodations for connections to existing pedestrian or bicycle routes? ☐ Yes ☒ No

k. Will the proposed action (for commercial or industrial projects only) generate new or additional demand for energy? ☒ Yes ☐ No

If Yes:

i. Estimate annual electricity demand during operation of the proposed action: 7,000 vaw/day

ii. Anticipated sources/suppliers of electricity for the project (e.g., on-site combustion, on-site renewable, via grid/local utility, or other): _____

iii. Will the proposed action require a new, or an upgrade to, an existing substation? ☐ Yes ☒ No

l. Hours of operation. Answer all items which apply.

| | |
|--------------------------------|-----------------------------|
| i. During Construction: | ii. During Operations: |
| • Monday - Friday: 7 am - 4 pm | • Monday - Friday: 24 hours |
| • Saturday: 7 am - 3 pm | • Saturday: " |
| • Sunday: - | • Sunday: " |
| • Holidays: - | • Holidays: " |

m. Will the proposed action produce noise that will exceed existing ambient noise levels during construction, operation, or both? ☒ Yes ☐ No

If yes:

i. Provide details including sources, time of day and duration:
During construction noise levels may exceed ambient levels. During operation noise levels are expected to be below ambient levels.

ii. Will proposed action remove existing natural barriers that could act as a noise barrier or screen?
Describe: Proposed LED lighting to 90 degrees to surface meeting dark sky compliance mounted a 20' high. ☐ Yes ☒ No

n. Will the proposed action have outdoor lighting? ☐ Yes ☒ No

If yes:

i. Describe source(s), location(s), height of fixture(s), direction/aim, and proximity to nearest occupied structures:

ii. Will proposed action remove existing natural barriers that could act as a light barrier or screen? ☐ Yes ☒ No

Describe:

o. Does the proposed action have the potential to produce odors for more than one hour per day? ☐ Yes ☒ No

If Yes, describe possible sources, potential frequency and duration of odor emissions, and proximity to nearest occupied structures:

p. Will the proposed action include any bulk storage of petroleum (combined capacity of over 1,100 gallons) or chemical products (185 gallons in above ground storage or an amount in underground storage)? ☐ Yes ☒ No

If Yes:

i. Product(s) to be stored:

ii. Volume(s) per unit time (e.g., month, year)

iii. Generally describe proposed storage facilities:

q. Will the proposed action (commercial, industrial and recreational projects only) use pesticides (i.e., herbicides, insecticides) during construction or operation? ☐ Yes ☒ No

If Yes:

i. Describe proposed treatment(s):

ii. Will the proposed action use Integrated Pest Management Practices? ☐ Yes ☒ No

r. Will the proposed action (commercial or industrial projects only) involve or require the management or disposal of solid waste (excluding hazardous materials)? ☒ Yes ☐ No

If Yes:

i. Describe any solid waste(s) to be generated during construction or operation of the facility:

- Construction: 60 tons per month (unit of time)
- Operation: 5 tons per month (unit of time)

ii. Describe any proposals for on-site minimization, recycling or reuse of materials to avoid disposal as solid waste:

- Construction: Metals will be separated and sent by licensed scrap metal contractor; concrete to be separated for recycling.
- Operation: Card board, paper and plastics to be recycled with Power of Babylon approved center.

iii. Proposed disposal methods/facilities for solid waste generated on-site:

- Construction: Contractor to provide roll-off containers for construction waste.
- Operation: refuse enclosure provided on site will house containers for containers for refuse.

s. Does the proposed action include construction or modification of a solid waste management facility? ☐ Yes ☒ No

If Yes:

i. Type of management or handling of waste proposed for the site (e.g., recycling or transfer station, composting, landfill, or other disposal activities): _____

ii. Anticipated rate of disposal/processing:

- _____ Tons/month, if transfer or other non-combustion/thermal treatment, or
- _____ Tons/hour, if combustion or thermal treatment

iii. If landfill, anticipated site life: _____ years

t. Will proposed action at the site involve the commercial generation, treatment, storage, or disposal of hazardous waste? ☐ Yes ☒ No

If Yes:

i. Name(s) of all hazardous wastes or constituents to be generated, handled or managed at facility: _____

ii. Generally describe processes or activities involving hazardous wastes or constituents: _____

iii. Specify amount to be handled or generated _____ tons/month

iv. Describe any proposals for on-site minimization, recycling or reuse of hazardous constituents: _____

u. Will any hazardous wastes be disposed at an existing offsite hazardous waste facility? ☐ Yes ☒ No

If Yes: provide name and location of facility: _____

If No: describe proposed management of any hazardous wastes which will not be sent to a hazardous waste facility: _____

B. Site and Setting of Proposed Action

E.1. Land uses on and surrounding the project site

a. Existing land uses.

i. Check all uses that occur on, adjoining and near the project site.

☐ Urban ☒ Industrial ☒ Commercial ☐ Residential (suburban) ☐ Rural (non-farm)

☐ Forest ☐ Agriculture ☐ Aquatic ☐ Other (specify): _____

ii. If mix of uses, generally describe: _____
Industrial to north and west, commercial to south and east.

b. Land uses and covertypes on the project site.

| Land use or Covertype | Current Acreage | Acreage After Project Completion | Change (Acres +/-) |
|--|-----------------|----------------------------------|--------------------|
| • Roads, buildings, and other paved or impervious surfaces | 0 | 1.624 | 1.624 |
| • Forested | | | |
| • Meadows, grasslands or brushlands (non-agricultural, including abandoned agricultural) | | | |
| • Agricultural (includes active orchards, field, greenhouse etc.) | | | |
| • Surface water features (lakes, ponds, streams, rivers, etc.) | | | |
| • Wetlands (freshwater or tidal) | | | |
| • Non-vegetated (bare rock, earth or fill) | 2.145 acres | 0 | 2.145 |
| • Other Describe: Landscaping | 0 | 0.521 | 0.521 |

c. Is the project site presently used by members of the community for public recreation? ☐ Yes ☒ No
 i. If Yes, explain: _____

d. Are there any facilities serving children, the elderly, people with disabilities (e.g., schools, hospitals, licensed day care centers, or group homes) within 1500 feet of the project site? ☒ Yes ☐ No
 If Yes,
 i. Identify Facilities:
 Farmingdale - Polytech University
 Kiddie Academy

e. Does the project site contain an existing dam? ☐ Yes ☒ No
 If Yes:
 i. Dimensions of the dam and impoundment:
 • Dam height: _____ feet
 • Dam length: _____ feet
 • Surface area: _____ acres
 • Volume impounded: _____ gallons OR acre-feet
 ii. Dam's existing hazard classification: _____
 iii. Provide date and summarize results of last inspection: _____

f. Has the project site ever been used as a municipal, commercial or industrial solid waste management facility, or does the project site adjoin property which is now, or was at one time, used as a solid waste management facility? ☐ Yes ☒ No
 If Yes:
 i. Has the facility been formally closed?
 • If yes, cite sources/documentation: _____ ☐ Yes ☒ No
 ii. Describe the location of the project site relative to the boundaries of the solid waste management facility: _____
 iii. Describe any development constraints due to the prior solid waste activities: _____

g. Have hazardous wastes been generated, treated and/or disposed of at the site, or does the project site adjoin property which is now or was at one time used to commercially treat, store and/or dispose of hazardous waste? ☐ Yes ☒ No
 If Yes:
 i. Describe waste(s) handled and waste management activities, including approximate time when activities occurred: _____

h. Potential contamination history. Has there been a reported spill at the proposed project site, or have any remedial actions been conducted at or adjacent to the proposed site? ☐ Yes ☒ No
 If Yes:
 i. Is any portion of the site listed on the NYSDEC Spills Incidents database or Environmental Site Remediation database? Check all that apply: ☐ Yes ☒ No
 ☐ Yes - Spills Incidents database Provide DEC ID number(s): _____
 ☐ Yes - Environmental Site Remediation database Provide DEC ID number(s): _____
 ☐ Neither database
 ii. If site has been subject of RCRA corrective activities, describe control measures: _____

iii. Is the project within 2000 feet of any site in the NYSDEC Environmental Site Remediation database? ☒ Yes ☐ No
 If yes, provide DEC ID number(s): 152004

iv. If yes to (i), (ii) or (iii) above, describe current status of site(s):
 Site in vacant parcel of land restricted to public access, according to NYDEC database soils remain contaminated but pose no hazard to groundwater; site is monitored through wells; latest testing in 2014.

v. Is the project site subject to an institutional control limiting property uses? ☐ Yes ☒ No
 • If yes, DEC site ID number: _____
 • Describe the type of institutional control (e.g., deed restriction or easement): _____
 • Describe any use limitations: _____
 • Describe any engineering controls: _____
 • Will the project affect the institutional or engineering controls in place? ☐ Yes ☒ No
 • Explain: _____

E.2. Natural Resources On or Near Project Site
 a. What is the average depth to bedrock on the project site? 1500 feet
 b. Are there bedrock outcroppings on the project site? ☐ Yes ☒ No
 If Yes, what proportion of the site is comprised of bedrock outcroppings? _____ %
 c. Predominant soil type(s) present on project site:
 cub _____ 62.8 %
 han _____ 17.9 %
 ur _____ 22.3 %
 d. What is the average depth to the water table on the project site? Average: _____ feet
 e. Drainage status of project site soils: ☐ Well Drained: _____ % of site
 ☒ Moderately Well Drained: 100 % of site
 ☐ Poorly Drained: _____ % of site
 f. Approximate proportion of proposed action site with slopes: ☒ 0-10%: 100 % of site
 ☐ 10-15%: _____ % of site
 ☐ 15% or greater: _____ % of site
 g. Are there any unique geologic features on the project site? ☐ Yes ☒ No
 If Yes, describe: _____

h. Surface water features.
 i. Does any portion of the project site contain wetlands or other waterbodies (including streams, rivers, ponds or lakes)? ☐ Yes ☒ No
 ii. Do any wetlands or other waterbodies adjoin the project site? ☐ Yes ☒ No
 If Yes to either i or ii, continue. If No, skip to E.2.i.
 iii. Are any of the wetlands or waterbodies within or adjoining the project site regulated by any federal, state or local agency? ☐ Yes ☒ No
 iv. For each identified regulated wetland and waterbody on the project site, provide the following information:
 • Streams: Name _____ Classification _____
 • Lakes or Ponds: Name _____ Classification _____
 • Wetlands: Name _____ Approximate Size _____
 • Wetland No. (if regulated by DEC) _____
 v. Are any of the above water bodies listed in the most recent compilation of NYS water quality-impaired waterbodies? ☐ Yes ☒ No
 If yes, name of impaired water body/bodies and basis for listing as impaired: _____

i. Is the project site in a designated Floodway? ☐ Yes ☒ No
 j. Is the project site in the 100 year Floodplain? ☐ Yes ☒ No
 k. Is the project site in the 500 year Floodplain? ☐ Yes ☒ No
 l. Is the project site located over, or immediately adjoining, a primary, principal or sole source aquifer? ☒ Yes ☐ No
 If Yes:
 i. Name of aquifer: Nassau - Suffolk CSA

| | |
|--|--|
| <p>m. Identify the predominant wildlife species that occupy or use the project site:</p> <p>_____</p> <p>_____</p> <p>_____</p> | |
| <p>n. Does the project site contain a designated significant natural community? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If Yes:</p> <p>i. Describe the habitat/community (composition, function, and basis for designation): _____</p> <p>ii. Source(s) of description or evaluation: _____</p> <p>iii. Extent of community/habitat:</p> <ul style="list-style-type: none"> • Currently: _____ acres • Following completion of project as proposed: _____ acres • Gain or loss (indicate - or +): _____ acres | |
| <p>o. Does project site contain any species of plant or animal that is listed by the federal government or NYS as endangered or threatened, or does it contain any areas identified as habitat for an endangered or threatened species? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> | |
| <p>p. Does the project site contain any species of plant or animal that is listed by NYS as rare, or as a species of special concern? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> | |
| <p>q. Is the project site or adjoining area currently used for hunting, trapping, fishing or shell fishing? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If yes, give a brief description of how the proposed action may affect that use: _____</p> | |
| <p>E.3. Designated Public Resources On or Near Project Site</p> | |
| <p>a. Is the project site, or any portion of it, located in a designated agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If Yes, provide county plus district name/number: _____</p> | |
| <p>b. Are agricultural lands consisting of highly productive soils present? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>i. If Yes: acreage(s) on project site: _____</p> <p>ii. Source(s) of soil rating(s): _____</p> | |
| <p>c. Does the project site contain all or part of, or is it substantially contiguous to, a registered National Natural Landmark? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If Yes:</p> <p>i. Nature of the natural landmark: <input type="checkbox"/> Biological Community <input type="checkbox"/> Geological Feature</p> <p>ii. Provide brief description of landmark, including values behind designation and approximate size/extent: _____</p> | |
| <p>d. Is the project site located in or does it adjoin a state listed Critical Environmental Area? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If Yes:</p> <p>i. CEA name: _____</p> <p>ii. Basis for designation: _____</p> <p>iii. Designating agency and date: _____</p> | |

| | |
|---|---|
| e. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on, or has been nominated by the NYS Board of Historic Preservation for inclusion on, the State or National Register of Historic Places? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| If Yes: i. Nature of historic/archaeological resource: <input type="checkbox"/> Archaeological Site <input type="checkbox"/> Historic Building or District ii. Name: _____ iii. Brief description of attributes on which listing is based: _____ | |
| f. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| g. Have additional archaeological or historic site(s) or resources been identified on the project site? If Yes: i. Describe possible resource(s): _____ ii. Basis for identification: _____ | |
| h. Is the project site within five miles of any officially designated and publicly accessible federal, state, or local scenic or aesthetic resource? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| If Yes: i. Identify resource: _____ ii. Nature of, or basis for, designation (e.g., established highway overlook, state or local park, state historic trail or scenic byway, etc.): _____ iii. Distance between project and resource: _____ miles. | |
| i. Is the project site located within a designated river corridor under the Wild, Scenic and Recreational Rivers Program 6 NYCRR 666? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| If Yes: i. Identify the name of the river and its designation: _____ ii. Is the activity consistent with development restrictions contained in 6 NYCRR Part 666? | |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |

F. Additional Information

Attach any additional information which may be needed to clarify your project.

If you have identified any adverse impacts which could be associated with your proposal, please describe those impacts plus any measures which you propose to avoid or minimize them.

G. Verification

I certify that the information provided is true to the best of my knowledge.

Applicant/Sponsor Name Christopher W. Robinson, PE Date 9/18/19

Signature  Title President

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("Assignment") is made and entered into as of the 1st day of August, 2019, by and between BC FARM, LLC, a New York limited liability company ("Assignor"), and FARMINGDALE HOSPITALITY PARTNERS, LLC, a Delaware limited liability company ("Assignee").

WITNESSETH:

WHEREAS, Assignor is a party to that certain Ground Lease Agreement between John Joseph Gazza, as lessor, and Assignor, as lessee, dated September 15, 2018 (the "Ground Lease") regarding that certain real property located in Farmingdale, New York, and more particularly described in the Ground Lease; and

WHEREAS, Assignor desires to transfer and assign to Assignee all of Assignor's right, title and interest in and to the Ground Lease, and, subject to the terms and conditions hereof, Assignee desires to assume Assignor's right, title, interest and obligations in the Ground Lease;

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) in hand paid to Assignor by Assignee, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged by Assignor and Assignee, Assignor and Assignee hereby covenant and agree as follows:

1. Assignor hereby unconditionally and absolutely assigns, transfers, sets over and conveys to Assignee, without warranty or representation of any kind, express or implied, all of Assignor's right, title and interest in, to the Ground Lease.
2. Assignee, by acceptance hereof, hereby assumes and agrees to perform all of Assignor's duties and obligations under the Ground Lease arising from and after the date hereof.
3. This Assignment shall inure to the benefit of and be binding upon Assignor and Assignee, their respective legal representatives, successors and assigns. This Assignment may be executed in counterparts, each of which shall be deemed an original and all of such counterparts together shall constitute one and the same Assignment. The transmission by facsimile or e-mail (portable document format attachment) of a copy of the signature page from this Assignment shall constitute execution and delivery of this Assignment by the transmitting party.

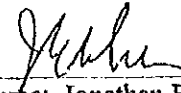
[THE NEXT PAGE IS THE SIGNATURE PAGE]

IN WITNESS WHEREOF, the duly authorized representatives of Assignor and Assignee have caused this Assignment to be properly executed as of the day and year first above written.

ASSIGNOR:

BC FARM, LLC

By: BDG Asset Management, Inc., its general manager

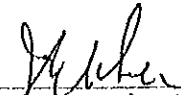
By: 
Name: Jonathan E. Cohen
Title: Vice President

ASSIGNEE:

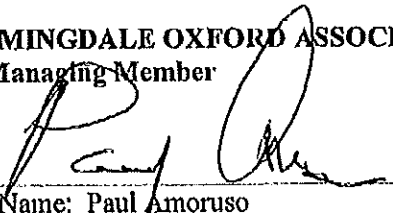
FARMINGDALE HOSPITALITY PARTNERS, LLC

BC FARM, LLC, Co-Managing Member

By: BDG Asset Management, Inc., its general manager

By: 
Name: Jonathan E. Cohen
Title: Vice President

**FARMINGDALE OXFORD ASSOCIATES LLC,
Co-Managing Member**

By: 
Name: Paul Amoroso
Title: Managing Member

FIRST AMENDMENT TO GROUND LEASE AGREEMENT

THIS FIRST AMENDMENT TO GROUND LEASE (this "Amendment") is made as of February 1, 2021 (the "Effective Date") by and between JOHN JOSEPH GAZZA, having an address at 388 Broadhollow Road, Farmingdale, New York 11735 (the "Landlord"), and FARMINGDALE HOSPITALITY PARTNERS, LLC, a Delaware limited liability company, having an address at c/o Blumenfeld Development Group, Ltd., 300 Robbins Lane, Syosset, New York 11791 (the "Tenant").

WITNESSETH:

WHEREAS, Landlord and BC Farm, LLC ("BC Farm") entered into that certain Ground Lease Agreement dated as of September 15, 2018 (the "Lease"), pursuant to which Landlord leased to BC Farm, and BC Farm leased from Landlord, certain premises located in Farmingdale, New York, as more particularly described in the Lease (the "Premises"); and

WHEREAS, the Lease was assigned by BC Farm to Tenant by assignment and assumption dated as of August 14, 2019;

WHEREAS, Landlord and Tenant desire to amend the Lease on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of ten (\$10.00) dollars and other good and valuable consideration, Landlord and Tenant hereby agree as follows:

1. The foregoing recitals are true and correct and are hereby incorporated by reference herein.

2. Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Lease.

3. Article 1 of the Lease is hereby amended by deleting the definition of the Land, and replacing such definition as follows:

"ALL those certain lots or parcels of land situate, lying and being at Farmingdale, Town of Babylon, County of Suffolk and State of New York, that are more particularly set forth in the annexed Schedule "A", including all rights and appurtenances pertaining thereto, specifically excluding any buildings and improvements that during the term of this Lease may at any time hereafter be situated, constructed or erected on such parcels (collectively, the "Land")"

4. Article 2(C) of the Lease is hereby deleted in its entirety, and replaced with the following:

"C. If Tenant does not terminate this Lease on or before the Pre-Construction Period Expiration Date, then the "Construction Period" shall commence. The Construction Period shall end on the earlier of (i) the date Tenant obtains a

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certificate of occupancy for the Proposed Development, or (ii) December 31, 2021 ("Construction Period Expiration Date")."

5. Article 5A(iii) of the Lease is hereby deleted in its entirety, and replaced with the following:

"(iii) Commencing as of January 1, 2020 and continuing until March 31, 2020, Tenant shall pay to Landlord a monthly fixed rent in the amount of Seventeen Thousand Five Hundred Dollars (\$17,500.00); commencing as of April 1, 2020 and continuing until December 31, 2020, Tenant shall not be required to pay Landlord any monthly fixed rent, the fixed rent for such period being completed abated; and, commencing as of January 1, 2021 and continuing until December 31, 2021, Tenant shall pay to Landlord a monthly fixed rent in the amount of Ten Thousand Dollars (\$10,000.00); (collectively, "Construction Period Rent").

(iv) Commencing on January 1, 2022, and thereafter throughout the Term of this Lease, Tenant shall pay to Landlord a fixed rent as set forth on the "Schedule of Rents" attached hereto, and made a part hereof as Schedule "B" (together with Pre-Construction Rent and Construction Period Rent, "Fixed Rent" or "fixed rent" or "rent")."

6. Article 5F of the Lease is hereby deleted in its entirety, and replaced with the following:

"F. Commencing with the first day of the of the twenty-sixth (26th) Lease Year of the Lease, and each twenty-five (25) years thereafter (each a "rent adjustment date), the annual fixed rent shall be adjusted to an amount equal to eight (8%) percent of the fair market value of the Land, as if vacant and unimproved (the "FMV"), as of such date. In determining said value the current use of the Land, as of the applicable rent adjustment date, shall be taken into consideration, and if Tenant changed the use of the Land to a higher and better use during the previous twenty-five (25) year period, the FMV shall take into account such higher and better use. Said FMV shall be based on separate appraisals prepared by MAI-certified appraisers for Landlord and Tenant. If the parties are unable to agree on such FMV based on said appraisals, a third independent MAI-certified appraiser selected by such appraisers for the Landlord and Tenant will determine the FMV with the cost for said third appraisal being shared by the parties. The resulting annual fixed rent shall be eight (8%) percent of said FMV and such rent shall increase by ten (10%) percent every five (5) years thereafter until the next twenty-five (25) year revaluation."

7. Article 10 of the Lease is hereby amended by adding the following provisions at the end of Article 10;

"15. Notwithstanding anything to the contrary in this Lease, leasehold mortgagee may: (a) exercise its rights through an affiliate, assignee, designee, nominee, subsidiary, or other Person, acting in its own name or in leasehold mortgagee's name (and anyone acting under this clause "(a)" shall automatically have the same protections, rights, and

limitations of liability as leasehold mortgagee); (b) refrain from curing any default; (c) abandon such cure at any time; or (d) withhold consent or approval for any reason or no reason, except where this Lease states otherwise. Any such consent or approval must be written. To the extent any leasehold mortgagee's rights under this Lease apply after this Lease terminates, they shall survive such termination.

16. If leasehold mortgagee timely requests a new lease in conformity with this Lease, then from the date this Lease terminates until the parties execute and deliver a new lease, Landlord shall not: (a) operate the Premises in an unreasonable manner; (b) terminate sublease(s) except for the subtenant's default; or (c) lease any Premises except to new Tenant. When the parties sign a new Lease, Landlord shall transfer to new Tenant all subleases (including any security deposits Landlord held), service contracts, Premises operations, and credit to new Tenant net income Landlord collected from the Premises during the period described in the previous sentence. If leasehold mortgagee timely requests a new Lease in conformity with this Lease, then from the date this Lease terminates until the parties execute and deliver a new Lease, Landlord shall not: (a) operate the Premises in an unreasonable manner; (b) terminate sublease(s) except for the subtenant's default; or (c) lease any Premises except to new Tenant. When the parties sign a new Lease, Landlord shall transfer to new Tenant all subleases (including any security deposits Landlord held), service contracts, Premises operations, and credit to new Tenant net income Landlord collected from the Premises during the period described in the previous sentence.

17. Tenant hereby covenants and agrees that it shall not treat this Lease as terminated by any election made under Section 365(h) of the Bankruptcy Code or under any similar law or right of any nature, and hereby irrevocably assigns to each leasehold mortgagee any right to acquiesce in any such termination. To the maximum extent allowed by legal requirements, Tenant hereby assigns, transfers and sets over to each leasehold mortgagee all of Tenant's claims and rights to the payment of damages arising from any rejection by Landlord of this Lease under the Bankruptcy Code. Tenant shall promptly execute and deliver to each leasehold mortgagee any and all instruments reasonably required in connection with any such proceeding after request therefor by any leasehold mortgagee. To the maximum extent allowed by legal requirements, except as set forth above, Tenant shall not adjust, compromise, settle or enter into any agreement with respect to such proceedings without the prior written consent of each leasehold mortgagee, such consent not to be unreasonably withheld. If there shall be filed by or against Tenant a petition under the Bankruptcy Code, and Tenant, as the tenant under this Lease, shall determine to reject this Lease pursuant to Section 365(a) of the Bankruptcy Code, then Tenant shall give each leasehold mortgagee not less than ten (10) Business Days' prior notice of the date on which Tenant shall apply to the bankruptcy court for authority to reject such this Lease to the maximum extent allowed by Legal Requirements. Each leasehold mortgagee shall have the right, but not the obligation, to serve upon such Tenant within such ten (10)-Business Day period a notice stating that (i) such leasehold mortgagee demands that Tenant assume and assign the Lease to leasehold mortgagee pursuant to Section 365 of the Bankruptcy Code and (ii) such leasehold mortgagee covenants to cure or provide adequate assurance of prompt cure of all defaults and provide adequate assurance of future performance under this Lease. If any leasehold mortgagee serves



upon any Tenant the notice described in the preceding sentence, Tenant shall not seek to reject this Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by leasehold mortgagee of the covenant provided for in clause (ii) of the preceding sentence. To the maximum extent allowed by legal requirements, effective upon the entry of an order for relief in respect of Tenant under the Bankruptcy Code, Tenant hereby assigns and transfers to each leasehold mortgagee a non-exclusive right to apply to the Bankruptcy Court under Section 365(d)(4) of the Bankruptcy Code for an order extending the period during which this Lease may be rejected or assumed. Notwithstanding anything to the contrary in this Lease, no foreclosure of a leasehold mortgage, nor any exercise of rights or remedies under any leasehold mortgage, shall be deemed to violate this Lease or require the consent of Landlord. Any leasehold mortgagee (or its assignee or designee), or any Person (other than Leasehold Mortgagee (or an affiliate thereof)) acquiring the leasehold estate pursuant to a foreclosure event with respect to a leasehold mortgage may, upon acquiring the leasehold estate, sell and assign the leasehold estate, on such terms and conditions as it may determine and thereafter be relieved of all obligations under this Lease accruing from and after the date of such sale and assignment (provided that any such assignee or purchaser assumes any such obligations). If this Lease is acquired by the leasehold mortgagee (or an affiliate thereof), the initial transfer by such entity shall not be subject to consent of Landlord."

8. Article 11A of the Lease is hereby deleted in its entirety, and replaced with the following:

"A. It is hereby covenanted and agreed by and between the parties hereto that the Tenant may sell and convey or assign this Lease and/or a member of Tenant may, without the consent of Landlord, sell and convey or assign a controlling interest in the Tenant, in either case prior to Tenant's completion of the construction of the improvements shown on the final site plan approved by the Town of Babylon for which Tenant has obtained a building permit during the Construction Period, as evidenced by the issuance of a final certificate of occupancy for all such improvements ("C of O Date"), provided that (i) the transferee (and/or a principal or affiliate of transferee) has a net worth in excess of Fifteen Million Dollars (\$15,000,000.00) and the transferee (and/or such principal or affiliate) executes and delivers to the Landlord a replacement construction completion guaranty in the same form as the guaranty of the completion of the construction of the improvements required to be executed and delivered by BDG (hereinafter defined) pursuant to section 20P of this Lease ("BDG Guaranty"), and (ii) the transferee delivers to Landlord a completion bond and/or a payment and performance bond, and in connection with any such assignment and/or sale, BDG shall be released from its obligation to execute and deliver the BDG Guaranty, or if BDG has already executed and delivered the BDG Guaranty, from any and all obligations and liability under the BDG Guaranty. After the C of O Date, Tenant may, without the consent of Landlord, assign this lease or sell or convey said interests provided that Tenant shall remain liable for all of Tenant's obligations under this Lease."



9. Landlord and Tenant each represents and warrants that it has not dealt, directly or indirectly, with any broker or other person who may be entitled to claim a commission or leasing fee in connection with this Amendment. Landlord and Tenant shall indemnify and hold each other harmless from any loss, liability, damage or expense (including, without limitation, reasonable attorneys' fees and costs) arising from any claim for a commission or leasing fee arising out of this transaction made by any unidentified broker or other person with whom such party has dealt.

10. Each party hereby represents and warrants to the other that, as of the date hereof, (a) the Lease is in full force and effect and has not been modified except pursuant to this Amendment; (b) to the best of the representing party's knowledge, there are no defaults existing under the Lease; and (c) this Amendment has been duly authorized, executed and delivered by the representing party and constitutes the legal, valid and binding obligation of the representing party

11. Except as modified by this Amendment, the Lease, and all covenants, amendments, terms and conditions therein, shall remain in full force and effect and are hereby in all respects ratified and confirmed. To the extent there is a conflict or inconsistency between the terms of this Amendment and the terms of the Lease, this Amendment shall control.


12. The covenants, amendments, terms and conditions contained in this Amendment shall bind and inure to the benefit of the parties hereto and their respective successors and, except as otherwise provided in the Lease as hereby amended, their respective assigns.

13. This Amendment may not be changed or terminated orally but only by an amendment in writing signed by the party against whom enforcement of any waiver, change, termination, modification or discharge is sought.

14. Each party represents that the party executing this Amendment on its behalf has the authority to execute and deliver this Amendment on behalf of such party.

15. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument. Signatures hereto transmitted via email, facsimile or other electronic means shall be deemed to be original signatures.

[SIGNATURE PAGE FOLLOWS]



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

LANDLORD:



JOHN JOSEPH GAZZA

TENANT:

FARMINGDALE HOSPITALITY
PARTNERS, LLC
By: Bull BC Farm, LLC, its Manager
Bull BC Farm Management, Inc., its General Manager
By: [Signature]
Name: Nathan E. Cohen
Title: Vice President



GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (this "Lease" or "lease") made as of September 15, 2018, between **JOHN JOSEPH GAZZA**, having an address at 388 Broadhollow Road, Farmingdale, NY 11735 (hereinafter referred to as "Landlord" or "Lessor"), and **BC FARM, LLC**, a New York limited liability company, having an office at c/o Blumenfeld Development Group, Ltd., 300 Robbins Lane, Syosset, New York 11791 (hereinafter referred to as "Tenant" or "Lessee").

WITNESSETH :

WHEREAS, Landlord owns and desires to lease the demised land as hereinafter defined to the Tenant and Tenant desires to lease the demised land from the Landlord on the terms and subject to the conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the foregoing of the rents to be paid and all of the covenants herein contained, the parties hereto agree as follows:

ARTICLE 1

DEMISED PREMISES AND CONDITIONS OF TITLE

The Landlord for and in consideration of the rents, covenants and agreements hereinafter reserved, mentioned and contained on the part of the Tenant, its successors and assigns, to be paid, kept and performed, has leased, rented, let and demised and by these presents does hereby lease, rent, let and demise unto the Tenant, and the Tenant does hereby take and hire, and upon and subject to the conditions hereinafter expressed, the following:

ALL those certain lots or parcels of land situate, lying and being at Farmingdale, Town of Babylon, County of Suffolk and State of New York, that are more particularly set forth in the annexed Schedule "A", including all rights and appurtenances pertaining thereto (collectively, the "Land");

In "AS IS" condition as set forth in survey of H2M/John Schurr PLS dated 9/13/13, the Fidelity National Title Insurance Company Title Report No. F-13-7404-92426-SUFF dated 10/2/13 and the Phase I Environmental Report from Apex Companies, LLC dated September 20, 2013, copies of which have been furnished to Tenant and are collectively referred to the "Due Diligence Assistance Package".

subject only, however, to the following:

A. any state of facts a current survey of the Land might reveal, provided the same does not prevent, restrict or impede the improvement on the demised premises with a facility consistent with the Permitted Use (hereinafter defined), with attendant improvements and customary parking and accessory structures (the "Tenant's

Proposed Development");

B. zoning regulations and ordinances of the Town of Babylon except as hereinafter provided in Articles 2 and 4.

C. the condition of the demised premises as the same may be on the Effective Date of this Lease;

D. gas, electricity and telephone easements, if any, of record on the Effective Date, affecting said demised premises, provided that if any such easement adversely interferes with, restricts or prohibits the erection of Tenant's proposed structure this Lease shall be subject to the obtaining of utility company's consent to the relocation of its lines or other facilities at Tenant's cost. Tenant shall diligently pursue the obtaining of such consent.

E. the term "demised premises", "demised land" or "premises" as hereinafter used in this lease shall be deemed to include the Land, together with (i) the improvements now situated on the Land and all improvements that Tenant may hereafter erect thereon, (ii) all rights, privileges and easements now or hereafter pertaining to the Land, and (iii) all air rights and development rights now pertaining to or hereafter transferred to the Land.

F. Tenant being able to obtain leasehold title insurance from a New York licensed title company, without any exception, except as stated herein, and as are normally set forth as stated provisions of the New York standard title insurance policy; and

G. existing improvements at the premises.

H. A cross easement agreement reasonably acceptable to Tenant, Landlord, Joseph Frederick Gazza and The Koehler Family Limited Partnership and/or Tenant's affiliate, BDG Farmingdale, LLC shall be entered into among such parties, providing access to and from Broadhollow Road (NYS Rt 110), on and to and from the demised premises and the premises demised to Tenant's affiliate by said Joseph Frederick Gazza and The Koehler Family Limited Partnership.

Tenant may in its sole discretion, waive in writing any defects of title which Landlord is unable to cure, in which event the lease shall not cease and terminate.

Notwithstanding the foregoing, Landlord agrees to deliver the premises to Tenant vacant and free and clear of any and all leasehold tenants and other occupants, including, without limitation, all tenants and other occupants currently occupying and/or conducting business on all or any part of the premises, whether under lease or otherwise, on or before the commencement of the Pre-Construction Period (hereinafter defined) ("Delivery Date"). If Landlord does not deliver such vacant possession of the premises to Tenant on or before the Delivery Date, then commencing on the Commencement Date, Tenant shall receive a day for day abatement of fixed rent for each day that the premises was not timely delivered to Tenant, from the commencement of the Construction Period until the actual date on which the Delivery Date occurred.

ARTICLE 2

TERM OF LEASE

A. **Effective Date of Lease.** The Effective Date of this lease (the "Effective Date") shall be as of September 15, 2018. The parties acknowledge that Tenant has completed its due diligence. The "Pre-Construction Period" shall commence as of September 15, 2018.

B. The Pre-Construction Period shall continue until the earlier of (i) June 15, 2019, or (ii) the later of (x) the date of issuance of a building permit by the applicable municipal authority for the commencement of Tenant's construction of the improvements to be constructed on the premises ("Building Permit") and (y) the date on which the Town of Babylon IDA agrees in writing to grant benefits to Tenant which are reasonably acceptable to Tenant in connection with the Proposed Development including, without limitation, (1) a PILOT, (2) sales tax exemptions, and (3) mortgage tax exemptions (collectively, "IDA Benefits") (such earlier date shall be referred to herein as the "Pre-Construction Period Expiration Date"). Tenant may, in its sole and absolute discretion, terminate this Lease by notice to Landlord if at any time prior to or after the Pre-Construction Period Expiration Date, Tenant shall determine in its sole and absolute discretion that Tenant has not obtained, or is not likely to obtain, the Building Permit and/or the IDA Benefits; provided that in order to so terminate this Lease, Tenant must provide written notice of termination to Landlord on or before the Construction Period Expiration Date (hereinafter defined). Upon the termination of this Lease as provided herein, Tenant shall remain responsible for and Landlord shall retain any Pre-Construction Rent and Construction Period Rent due to Landlord prior to the date of termination of this Lease, and Landlord and Tenant shall be released from all further liability to the other except for any provisions of this Lease which are expressly provided to survive the termination of this Lease.

C. If Tenant does not terminate this Lease on or before the Pre-Construction Period Expiration Date, then the "Construction Period" shall commence. The Construction Period shall continue for not more than six and one-half (6.5) months and shall end on the earlier of (i) the last day of the month which is six and one-half (6.5) months after the month in which the Pre-Construction Period Expiration Date occurred, (ii) the date Tenant obtains a certificate of occupancy for the Proposed Development, or (iii) December 31, 2019 ("Construction Period Expiration Date").

D. The term of this Lease (the "Term") shall commence on the first day of the month immediately following the Construction Period Expiration Date (the "Commencement Date") and shall be for a period of ninety-nine (99) years and nine (9) months, unless the Term shall sooner terminate pursuant to any of the conditional limitations or other express provisions of this Lease.

E. From and after the Effective Date and throughout the Term, Landlord shall not enter into any leases, covenants, easements or agreements affecting the premises or any part thereof, except as may be otherwise expressly permitted by the terms of this Lease or as may be consented to by Tenant in writing, which consent Tenant may withhold in its sole discretions.

ARTICLE 3

USE

The Tenant covenants and agrees that the premises may be used for any lawful use permitted by applicable zoning (including any use permitted by any change in zoning or zoning variance obtained by Tenant) (the "Permitted Use"), provided that if such use is other than retail (including, without limitation, the sale of goods and merchandise, including food and beverages, and any services to an end customer), restaurant, entertainment, hotel, office, industrial or residential, or uses incidental, ancillary or related to any of the foregoing uses, or any combination thereof, Landlord's consent shall be required, which consent shall not be unreasonably withheld, conditioned or delayed. Landlord further consents to the erection of Tenant's site development signage upon full execution of this Lease; provided however, from the period between the Effective Date and the Pre-Construction Period Expiration Date, Landlord may maintain at its cost and expense the existing signage for the golf driving range, and shall promptly remove such signage upon Tenant's request following the Pre-Construction Period Expiration Date.

ARTICLE 4

MUNICIPAL APPROVALS

A. Promptly after the Effective Date, Tenant, at its own cost and expense, shall apply to the Town Board of the Town of Babylon and any other appropriate municipal agencies for all approvals and permits for the Proposed Development. Tenant shall duly and diligently prosecute such application for said rezoning and any related variances or other approvals to the extent required by applicable laws. Upon the request of the Tenant, the Landlord shall participate in or otherwise cooperate with respect to such applications and the prosecution thereof, to the extent reasonably requested by Tenant, provided that the same shall be without out-of-pocket cost, expense or liability to Landlord.

B. Such approvals may include, without limitation, the IDA Benefits, zoning from the Town Board of the Town of Babylon site plan approval from the Town Planning Board, any necessary and related variances from the Town Zoning Board of Appeals, an unconditional negative SEQRA declaration or a statement of favorable findings, NYS Department of Transportation approval of curb cuts, Suffolk County Department of Health Service permits for waste disposal systems, Suffolk County Planning Commission approval of site plans, building and special use permits and SPEDES permits to develop, construct and utilize the subject premises for the uses as indicated on the preliminary site plan annexed hereto and made a part hereof as Schedule B.

ARTICLE 5

RENT

A. The following shall be payable as fixed rent, subject to and in accordance with the terms and provisions hereinafter set forth in this lease:

(i) Commencing as of September 15, 2018, Tenant shall pay to Landlord a monthly fixed rent in the amount of Five Thousand Dollars (\$5,000.00) ("Pre-Construction Rent").

(ii) Commencing on June 15, 2019, and continuing until December 31, 2019, Tenant shall pay to Landlord a monthly fixed rent in the amount of Ten Thousand Dollars (\$10,000.00) ("Construction Period Rent"). The Construction Period Rent for the period December 16, 2019 until December 31, 2019 shall be prorated.

(iii) Commencing on January 1, 2020, and thereafter throughout the Term of this Lease, Tenant shall pay to Landlord a fixed rent as set forth on the "Schedule of Rents" attached hereto, and made a part hereof as Schedule "B" (together with Pre-Construction Rent and Construction Period Rent, "Fixed Rent" or "fixed rent" or "rent").

B. All rent shall be absolutely net to Landlord, so that this lease shall, except as hereinafter provided to the contrary, yield net to Landlord the rent to be paid in each year during the Term of this lease. Accordingly, all costs, expenses and obligations of every kind or nature whatsoever relating to the demised premises or any improvements thereon which may arise or become due during the Term of this Lease shall be paid by the Tenant, and the Landlord shall be indemnified and saved harmless by the Tenant from and against same. Nothing herein contained shall be deemed to require the Tenant to pay or discharge (i) any interest, principal, cost, charge, penalty or any other sum of money due or to become due under any mortgage or security agreement which encumbers the fee title to the demised premises or Landlord's interest under this Lease; (ii) any sums which become due and payable with respect to any other lien or charge which arises as the result of any act, omission, breach or default by Landlord of any law, ordinance, rule or regulation, the performance of which is not expressly assumed by Tenant hereunder; (iii) any other lien, fine, charge, damage, expense, claim or cost which arises as the result of any negligence, act, omission, breach or default by Landlord unless, and then only to the extent that, the same directly arise out of, or is attributable to, a breach of a term, covenant or condition contained in this Lease on the Tenant's part to be kept or performed, which Tenant has failed to keep or perform within the applicable grace periods.

D. All fixed rent shall be payable by Tenant in equal monthly installments as set forth in Section 5A above, and on the first day of each and every calendar month beginning after the end of the Construction Period of this lease, in lawful money of the United States.

E. Tenant acknowledges that late payment by it to the Landlord of fixed rent will cause Landlord to incur costs not contemplated by this lease, the exact amount of which will be extremely difficult to ascertain. Accordingly, if any installment of fixed rent is unpaid after ten (10) days from the date same was due, Tenant shall pay to Landlord a late charge equal to two percent (2%) of such overdue amount. The parties agree that such late charge represents a fair and reasonable estimate of the cost Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount nor prevent Landlord from exercising any of their other rights. Notwithstanding the foregoing, for the first two (2) times in any year that Tenant has failed to pay any such installment of fixed rent, such late charge provided above shall not apply unless Tenant has failed to make such payments within three (3) business 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 year prior to assessing such late charge. Nothing contained in this Article 5 is intended in any way to reduce or extend the grace periods or notice periods, if any, provided for elsewhere in this Lease.

F. Commencing with the first day of the of the twenty-sixth (26th) Lease Year of the Lease, and each twenty-five (25) years thereafter (each a "rent adjustment date), the annual fixed rent shall be adjusted to an amount equal to eight (8%) percent of the fair market value of the premises, if vacant and unimproved, (the "FMV"), as of such date. In determining said value the current use of the demised premises, as of the applicable rent adjustment date, shall be taken into consideration, and if Tenant changed the use of the demised premises to a higher and better use during the previous twenty-five (25) year period, the FMV shall take into account such higher and better use. Said FMV shall be based on separate appraisals prepared by MAI- certified appraisers for Landlord and Tenant. If the parties are unable to agree on such FMV based on said appraisals, a third independent MAI-certified appraiser selected by such appraisers for the Landlord and Tenant will determine the FMV with the cost for said third appraisal being shared by the parties. The resulting annual fixed rent shall be eight (8%) percent of said FMV and such rent shall increase by ten (10%) percent every five (5) years thereafter until the next twenty-five (25) year revaluation.

ARTICLE 6

TAXES

A. Beginning on September 15, 2018, Tenant shall pay and discharge punctually, as additional rent, directly to the taxing authority (or to the leasehold mortgagee (if applicable) if the leasehold mortgagee requires) as and when the same shall become due and payable all taxes, special and general assessments, water rents, rates and charges, sewer, rents and other governmental impositions and charges of every kind and nature whatsoever, extraordinary as well as ordinary (hereinafter referred to as "taxes"), and each and every installment thereof which shall or may after the Construction Period of this lease be charged, levied, laid, assessed, imposed, become due and payable or liens upon or with respect to the building, appurtenances or equipment owned by Tenant thereof or therein or any part thereof, together with all interest and penalties thereon, under or by virtue of all present or future laws, ordinances, requirements, orders, directives, rules or regulations of the federal, state, county, town and city governments and of all other governmental authorities whatsoever (all of which shall also be included in the term "taxes" as heretofore defined) and will hold Landlord harmless from and against liability for any and all sewer rents, refuse removal and charges for water, steam, heat, gas, hot water, electricity, light and power and other service or services, furnished to the building or the occupants thereof during the Term of this Lease (hereinafter referred to as "utility expenses"). Notwithstanding anything to the contrary contained herein, Tenant shall not be obligated or required hereunder to pay any franchise, corporate, estate, inheritance, succession, capital levy or capital stock tax of Landlord, or any income, profit or revenue tax upon the income or receipts of Landlord, or any tax imposed solely because of the nature of the business entity of Landlord, or any occupancy or other tax, assessment, charge or levy upon the fixed rent or any additional rent required to be paid by Tenant, all of which Landlord shall promptly pay when due. The parties agree that Tenant shall reimburse Landlord for taxes paid for the period from September 15, 2018-November 30, 2018 in the sum of

\$7,976.50 within three (3) business days after the mutual execution and delivery of this Lease.

B. To the extent that the same may be permitted by law, Tenant shall have the right to apply for the conversion of any assessment for local improvements to be payable in annual installments and, upon such conversion, Tenant shall pay and discharge punctually such installments as they shall become due and payable during the Term of this lease. Landlord agrees to permit the application for the foregoing conversion to be filed in Landlord's name, if necessary, and shall execute any and all documents requested by Tenant to accomplish the foregoing result.

C. Tenant shall be deemed to have complied with the covenants of Section A of this Article, if payment of such taxes shall have been made within any period allowed by law or by the governmental authority imposing the same which payment is permitted without penalty of interest and Tenant shall exhibit to Landlord reasonably satisfactory evidence of such payment within thirty (30) days after the expiration of said grace period for any such installment. Notwithstanding the foregoing, after a default beyond the applicable notice and cure period in the payment of fixed annual rent or taxes, Landlord may require Tenant to pay a monthly escrow for taxes in lieu of direct payment by Tenant for the following twelve (12) month period.

D. The certificate, advice or bill of the appropriate official, designated by law to make or issue the same or to receive payment of any taxes or nonpayment thereof shall be prima facie evidence that such taxes are due and unpaid at the time of the making or issuance of such certificate, advice or bill.

E. All such taxes, including assessments which have been converted into installments as hereinabove set forth, which shall become payable during the tax year in which the Construction Period commences and the Term terminates, shall be apportioned pro rata between Landlord and Tenant in accordance with the respective portions of such year during which such term shall be in effect.

F. Tenant shall have the right to contest or review all such taxes by legal proceedings or in such other manner as it may deem suitable (which, if instituted, Tenant shall conduct promptly at its own cost and expense and free of all expense to Landlord). Landlord will cooperate with Tenant and execute any documents or pleadings reasonably required and appropriate for such purposes, provided that the same shall be without cost, liability or expense to Landlord. Notwithstanding the foregoing, Tenant shall, to the extent required by law, pay all such contested taxes in the manner and on the dates provided for in this Article 6 unless such payment would operate as a bar to such contest or materially interfere with the prosecution thereof; and in such case, Tenant may defer such payment upon condition that such deferral is permitted by law without imminent danger of forfeiture of the premises. For the purposes of this paragraph and those sections of this agreement to which this paragraph refers, the term Tenant shall also mean a designee of the Tenant which is legally permitted to commence the proceedings referred to herein.

G. The legal proceedings referred to in Section F shall include appropriate certiorari proceedings and appeals from orders therein and appeals from any judgment, decrees or others. In the event of any reduction, cancellation or discharge, Tenant shall pay the amount finally levied or assessed against the building or adjudicated to be due and payable on any such contested taxes.

H. Landlord covenants and agrees that if there shall be any refunds or rebates on account of the taxes paid by Tenant under the provisions of this lease, such refund or rebate shall belong to Tenant, subject to such rights thereto as may be asserted by the subtenants of Tenant. Any refunds received by Landlord shall be deemed trust funds and as such are to be received by Landlord in trust and paid to Tenant forthwith. Landlord will, upon the request of Tenant, sign any receipts which may be necessary to secure the payment of any such refund or rebate and will promptly pay over to Tenant such refund or rebate as received by Landlord. Landlord further covenants and agrees on request of Tenant at any time and from time to time, but without cost to Landlord, to make application in their own name (if legally required) or to join in Tenant's application (if legally required) for separate tax assessment for such portions of the premises as Tenant shall at any time and from time to time designate.

I. Nothing herein contained shall preclude Tenant from applying for a tax exemption under Section 485(b) of the Real Property Tax Law, and Landlord at no cost or expense to them will cooperate with Tenant in the processing of such application, including signing any necessary instruments in connection therewith.

ARTICLE 7

INSURANCE, INDEMNIFICATION, CASUALTY

A. Tenant shall procure, or shall cause its contractors to procure, effective as of the commencement of the Construction Period, a policy of commercial general liability insurance, with limits of liability in the amount of at least Three Million Dollars (\$3,000,000.00) for personal injuries to any number of persons in respect of any one accident or occurrence and property damage in respect of such accident or occurrence, which policy shall name the Landlord as an additional insured, and which policy may be covered by any combination of primary and excess or umbrella coverage. Personal injury shall include but not be limited to bodily injury and such other items and matters which are included within the definition of personal injury set forth in the standard endorsement of the Insurance Services Office of New York or its successor entity or any other entity which succeeds to its functions and activities. Said policy shall have annexed thereto a "broad form" endorsement which will include contractual liability. It is further understood that Landlord reserves the right to review said limits of liability from time to time and to reasonably request increases in same if Landlord reasonably deems that said limits are inadequate to protect Tenant and Landlord; provided however, that Landlord shall not reasonably request increases in Tenant's insurance more than once every five (5) years.

B. Tenant, at its own expense, will obtain and provide, or cause its contractors to obtain and provide, "All Risk" insurance on the building(s) which will insure against loss or damage to the building resulting from fire and such risks as are customarily included in extended coverage endorsements attached to fire insurance policies covering similar property in the County of Suffolk, State of New York, in amounts sufficient to avoid the effect of coinsurance but in no event less than one hundred percent (100%) of full insurable value (full insurable value as used in this Section 7.B shall consist of actual replacement value exclusive of footings, foundations, excavations, underground pipes, underground flues and underground drains, less actual physical

depreciation) of the premises as determined from time to time by the insurer or insurers or by an expert reasonably approved by both Tenant and Landlord, but no more frequently than once in every five (5) years. The insurer's determination of full insurable value shall be binding and conclusive upon the parties provided that such insurer issues an agreed value endorsement to the insurance policy. While any buildings are being constructed, the insurance to be maintained by Tenant under this Section 7B shall be maintained under a "builder's risk" policy of insurance, with extended coverage endorsement as aforesaid. Such policy shall be issued by an insurance company licensed and authorized to write such insurance in the State of New York.

C. Tenant shall procure and maintain, or cause its contractors to procure and maintain, during the Term of this lease an "umbrella" liability policy in limits of not less than Five Million Dollars (\$5,000,000.00) naming Landlord as an additional insured with endorsement designating the demised premises.

D. Certificates of the issuance of insurance policies under Sections A and C shall be delivered to Landlord on the Commencement Date or sooner as elsewhere herein provided. Certificates of the issuance of insurance policies under Section B shall be delivered to Landlord at or prior to commencement of construction. All such certificates shall, if available, contain an agreement by the insurance companies issuing the policies that the policies will not be canceled without thirty (30) days' prior written notice to the Landlord. At least four (4) weeks prior to the expiration of the original policy or any renewal thereof, a new certificate of the renewal of such insurance containing, if available, an agreement by the insurance company that the insurance will not be canceled without thirty (30) days' prior written notice to Landlord shall be delivered to Landlord. Any of the insurance coverages required under this Article 7 may be included within a so-called "blanket policy" covering any properties owned or leased by Tenant or one or more affiliates and such blanket policy may have a single limit for the fire and extended coverage casualties, provided such single limit is not less than that required for the Demised Premises under Section 7B above.

E. Prior to the commencement of any demolition or construction work by or on behalf of Tenant, its agents, contractors or subcontractors, Tenant at its own expense will obtain, or cause its contractors to obtain, and provide as follows:

a. A liability insurance policy for such demolition or construction (Owners' Protective Insurance) naming Landlord as insureds against loss by reason of its contingent liability for injuries to persons and property damage arising out of such operations, with limits of liability in the amount of Five Million Dollars (\$5,000,000.00) per occurrence for bodily injuries and One Million Dollars (\$1,000,000.00) per occurrence for damage to property. Such Owner's Protection Liability Insurance shall be issued by an insurance company or companies licensed and authorized to do business in the State of New York and, to the extent available, shall contain an agreement that the policy will not be canceled without thirty (30) days' prior notice to the Landlord. Such coverage amounts shall be adjusted every five (5) years to reflect the change in the cost of living as determined by the U.S. Dept. of Labor, Bureau of Labor Statistics, or any successor governmental agency; and

b. To the extent required by applicable laws, Tenant shall maintain in

full force and effect at its expense Workman's Compensation Insurance and Disability Insurance for all of its employees and likewise require its contractors and subcontractors to provide same.

F. Tenant agrees that in the event of damage or destruction to any building erected by Tenant upon the demised land by reason of fire, lightning or other damage or casualty, similar or dissimilar, which is insured under a Standard New York First policy for property damage with extended coverage, as specified in the New York Insurance Law, the Tenant will promptly after the obtaining of insurance proceeds or as necessary to seal off the building for security purposes, at its own cost and expense restore, repair, replace or rebuild the building as to the condition, quality and class in which the building existed immediately prior to such damage or destruction, modified or altered to the extent of such changes, modifications, alterations or additions as Tenant shall reasonably deem appropriate in connection with such repair and restoration, or, in the alternative, construct such improvements on the premises in the condition how Tenant deems reasonably appropriate in order to fit with a different concept that Tenant shall implement on the premises. Following the commencement of such restoration, repair or replacement, Tenant will prosecute the completion of the same with reasonable diligence, taking into account availability of materials, labor and other site conditions and conditions of the work.

G. Tenant agrees to keep in full force and effect for the benefit of Landlord rental value insurance equal to one (1) year's rental. To the extent that Landlord shall receive proceeds of rent insurance, if any, or rental value insurance, if any, representing compensation for loss of rental during the period from the date of casualty until Tenant's completion of the restoration, repair or reconstruction of the building or portions thereof so damaged or destroyed, the fixed rent and additional rent payable hereunder by Tenant for such period shall be fully abated. Except as expressly set forth herein with respect to the value of rent insurance or rental value insurance, Tenant's obligation to pay the fixed rent and additional rent provided for hereunder and to perform all other covenants and agreements contained herein on the part of Tenant to be performed, shall not be affected by reason of such damage or destruction or by reason of the fact that the building or portions thereof shall have been rendered unusable or untenable as a result of such damage and destruction. To the extent that the provisions of Section 227 of the Real Property Law are inconsistent herewith, Tenant waives the protective aspects of such provisions or of any similar statute or enactment now or hereafter relating to the subject matter thereof.

H. Tenant and Landlord hereby release each other from any and all liability or responsibility to it or its insurers by way of subrogation or otherwise, for any loss or damage caused by or arising from any occurrence, casualty or event covered by policies of insurance (including endorsements) required to be maintained pursuant to this Lease but only to the extent of the actual recovery of proceeds under such policies.

I. Notwithstanding the requirements of any other provision of this Lease, Tenant shall have the right, at its sole election, to self-insure with respect to some or all of the insurance required to be carried by Tenant pursuant to the terms of this Lease, as long as Tenant (or any subtenant) shall have a net worth determined under generally accepted accounting principles, of at least Seventy-Five Million Dollars (\$75,000,000.00), increased on an annual basis to reflect increases in the Consumer Price Index for All Urban Consumers (CPI-U) - U.S. City Average, All Items (1982-84 = 100), published by the Bureau of Labor Statistics of the U.S. Department of

Labor (or if that is discontinued, a reasonable substitute selected by Landlord on notice to Tenant) from the Commencement Date (the "Price Index"). To demonstrate that Tenant (or any subtenant) meets such test, Tenant (or such subtenant) shall submit the following to Landlord prior to commencement of self-insurance:

(1) A letter signed by an authorized representative of Tenant (or any such subtenant) stating that the above criteria is met; and

(2) If the stock of Tenant (or any such subtenant) is not publicly traded, a copy or the most recent annual financial statement of Tenant (or any such subtenant) prepared by an independent certified public accountant in accordance with generally accepted accounting principles.

In the event Tenant (or such subtenant) shall so self-insure, Tenant's self-insurance obligations hereunder shall be determined as if Tenant were the insurer under an insurance policy of the type described in this Article 7. If Tenant elects to self-insure and an event or claim occurs for which a defense and/or coverage would have been available from an insurance company, Tenant (or any such subtenant) shall undertake the defense of such claim, at Tenant's (or such subtenant's) sole cost and expense, and use Tenant's (or such subtenant's) own funds to pay any claim or otherwise provide the funds which would have been available from insurance proceeds but for such election by Tenant to self-insure.

J. Tenant will protect, indemnify and save Landlord harmless from and against all liabilities, obligations, damages, penalties, claims, causes of action, costs, charges and expenses, including reasonable attorneys' fees and expenses, which may be imposed upon or incurred by or asserted against Landlord by reason of (1) any occurrence, injury or damage to any person or property occurring in or on the premises; (2) failure on the part of Tenant to perform or comply with obligations to such third parties which Tenant is obligated to perform under this lease; and (3) any claim for the performance of labor or the furnishing of materials or other property in respect of the premises or any part thereof furnished and/or installed at Tenant's expense, except for (i) any claims or actions resulting from the negligence or willful acts of Landlord and/or Landlord's officers, agents, servants, employees and/or contractors occurring at any time, which shall be deemed to specifically include those resulting from the active or statutory negligence of Landlord, its agents, servants or employees, and (ii) any breach or default on the part of Landlord in the performance of any of Landlord's covenants or obligations under this Lease. In case any action or proceeding is brought against Landlord by reason of any such occurrence, Tenant, upon Landlord's request or at its own election made by notice to Landlord, will at its expense resist and defend such action or proceedings or cause same to be resisted and defended, either by counsel designated by Tenant or, where such occurrence is covered by liability insurance, by counsel designated by the insurer.

K. As a condition to the indemnification obligations of Tenant hereunder, if any third party shall make a claim or commence an action, the determination of which might reasonably be expected to require indemnification under this Lease, Landlord shall give prompt written notice thereof to Tenant and, provided that Tenant notifies Landlord promptly after receipt of such notice, Tenant shall be entitled to take over and assume control of the defense of such claim or action, at its own expense, with the reasonable cooperation of Landlord; provided, that Landlord shall have

the right to select separate counsel reasonably acceptable to Tenant ("Indemnatee's Counsel") to participate in the defense of such action on behalf of Landlord, at Landlord's expense, such participation to be limited to a review of all correspondences, proceedings and pleadings in connection with such actions or advice, attendance at any settlement negotiations, any general advice and counsel to Landlord and the counsel selected by Tenant ("Indemnifying Counsel"); it being agreed that the Indemnifying Counsel shall be considered the lead counsel in the defense of any such claims or actions and Tenant shall not be required to reimburse Landlord for the expense of Indemnatee's Counsel for services which constitute a duplication of effort with services being performed by Indemnifying Counsel.

L. i. If there is any material damage to or destruction of the demised premises or any part thereof, Tenant shall promptly give written notice thereof to the Landlord generally describing the nature and extent of such damage or destruction.

ii. If there is any damage to or destruction of the demised premises or any part thereof, whether or not covered by insurance, Tenant shall have no obligation to restore the premises and all insurance proceeds shall belong solely to Tenant, provided Tenant shall either (a) demolish what remains of any building on the premises, including foundation, fill and compact to grade, remove all debris and leave premises in a neat and orderly condition, either paved or landscaped, and in compliance with the provisions of this Lease and all laws, or (b) commence and complete, subject to unavoidable delays, any improvements Tenant chooses to construct on the premises at Tenant's election, provided that Tenant complies with the provisions of this Lease. Pending the completion of such work, Tenant shall perform all temporary work and take all such actions as may be reasonably necessary or desirable to protect and preserve the demised premises.

iii. All insurance proceeds shall be paid to Tenant on account of any damage to or destruction of the demised premises or any part thereof, unless Tenant is in monetary default under the leasehold mortgage, if any, or under this lease beyond the applicable notice and cure period or there has been filed against the Premises a mechanics' or similar lien for labor or materials theretofore supplied in connection with any restoration by Tenant. If Tenant is in monetary default under the leasehold mortgage or this lease beyond the applicable notice and cure period and such default has not been cured, or a mechanics' lien has been filed against the premises in connection with any restoration of the premises by Tenant and any such lien is not discharged by Tenant by bonding or otherwise, the insurance proceeds shall be used first to discharge the mechanics' lien, second to cure such monetary default under this lease and third to cure such default under the leasehold mortgage if susceptible to being so used, and the balance to Tenant as provided herein.

iv. Provided Tenant is not in default beyond the applicable notice and cure period, Landlord agrees that it will cooperate with Tenant, to such extent as Tenant may reasonably require, in connection with the prosecution or defense of any action or proceeding arising out of, or for the collection of any insurance monies that may be due in the event of any loss or damage, and that Landlord will execute and deliver to Tenant and/or such other parties such instruments as may be reasonably required to facilitate the recovery of any insurance monies.

ARTICLE 8

CONSTRUCTION, ALTERATIONS AND IMPROVEMENTS

A. For the purpose of this Lease, "building(s)" or "Building(s)" shall mean all structures or improvements hereafter created or situated on the Land, foundations and footings thereof, any and all fixtures, equipment and machinery of every kind and nature whatsoever hereafter affixed or attached to the building or hereafter used or procured for use in connection with the operation, use or occupancy thereof, and the appurtenances thereto, but excluding therefrom all trade fixtures, trade equipment, moveable furnishings and articles of personal property which may be removed without material injury to the freehold. Landlord agrees that Tenant shall have the right throughout the Term of this Lease to demolish, alter, improve, add, construct or permit the construction of any building, alteration, addition or improvement on the Land and to alter, demolish, substitute or relocate any building or improvement from time to time existing on the Land, provided that all necessary municipal approvals and permits are obtained therefore and provided further that all alterations, improvements and additions conform to all applicable laws and the uses permitted in this Lease.

B. The parties agree that title to the building(s), when erected, constructed, installed or placed upon the premises, shall automatically vest in and belong to Tenant without further action on the part of either party, but Landlord agrees to execute such documentation as Tenant shall reasonably request in confirmation of same. During the Term of this Lease, Tenant alone shall be entitled to claim depreciation on or any investment tax credit or other tax deduction or credit now or hereafter available with respect to (i) the building(s) or other replacements of or additions to the building(s), (ii) any additional fixtures, equipment or machinery of every kind hereafter installed or placed upon the premises, and (iii) any alteration, improvement, addition or restoration hereafter installed, erected or constructed, for all tax purposes.

C. Tenant shall have the right, without the consent of Landlord, to acquire, create or grant rights, licenses and/or easements (including, without limitation, utility, access and parking licenses and/or easements with adjacent properties) and acquire development rights, required in connection with the construction, installation, maintenance or operation of the building(s) provided that any such rights, licenses or easements shall not extend beyond the term of the Lease without the consent of Landlord, not to be unreasonable withheld, conditioned or delayed. At Tenant's request, Landlord will separately and/or jointly with Tenant execute and deliver to Tenant any and all documents or instruments reasonably required for the acquisition, creation or granting of any such right, license and/or easement. Upon the expiration or sooner termination of this Lease, Tenant shall promptly transfer all of its interest in and to such rights, licenses, easements and development rights as are then in force, by instruments in such form and substance as Landlord shall reasonably require.

ARTICLE 9

REPAIRS, MAINTENANCE, SERVICES

At all times during the Term of this Lease Tenant shall at its expense make all repairs on and to the premises, whether structural, non-structural, interior, exterior or otherwise, including

but not limited to plumbing, heating, electrical, water, telephone lines, pipes, wires, conduits, fixtures or equipment utilized by the Tenant in connection with its use of the building and shall maintain the premises in a neat, orderly and good physical condition and the parking areas, driveways and sidewalks on the premises clean and free of rubbish, ice and snow.

ARTICLE 10

MORTGAGES, LIENS AND ENCUMBRANCES

A. Tenant shall not knowingly suffer or permit any mechanic's liens to be filed against the premises or against Tenant's leasehold interest therein by reason of work, labor, services or materials supplied or claimed to have been supplied to Tenant or anyone holding any interest in the premises or any part thereof through or under Tenant. If any such mechanic's lien shall at any time be filed against the premises, Tenant shall within sixty (60) days after notice of the filing thereof from Landlord, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant shall fail to cause such lien to be discharged within the period aforesaid, then in addition to any other right or remedy of Landlord, they may but shall not be obligated to discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event Landlord shall be entitled, if they so elect, to compel the prosecution of an action for the foreclosure of such mechanic's lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowances. Any amount paid by Landlord and all costs and expenses including reasonable attorneys' fees incurred by Landlord in connection therewith, together with interest thereon at the prime rate plus four percent (4%), shall be deemed to be additional rent and shall be paid by Tenant to Landlord on demand. Failure to pay such amount after demanded by Landlord in accordance with Article 13B(1) shall entitle Landlord to commence a summary proceeding for non-payment of rent thereon. Nothing contained in this lease shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to or repair of the premises or any part thereof, nor as giving Tenant a right, power or authority to contract for or permit the rendering of any services for the furnishing of any materials that would give rise to the filing of any mechanic's liens against the premises.

B. Tenant shall have the right to permit a security interest in the equipment and fixtures attached to the demised premises provided such security interest encumbers the leasehold interest and not the fee at any time during the Term of this Lease if Tenant deems it necessary to finance the acquisition, purchase or leasing of such equipment and fixtures of the facility constructed on the premises or to support the interest of the leasehold mortgage referred to in Section C hereof.

C. Tenant and every successor and assign of Tenant (including, but not limited to, any sublessee of Tenant, but only with Tenant's prior written consent) is hereby given the right by Landlord in addition to any other rights herein granted, without Landlord's prior written consent, to mortgage its interest in this Lease or any part or parts thereof and any subleases under one (1) or more leasehold mortgages as hereinafter defined and to assign, mortgage or otherwise encumber

this Lease or any part or parts thereof, and any subleases as collateral security for such mortgages, assignments or encumbrances and shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights and interests of Landlord herein, none of which covenants, conditions or restrictions is or shall be waived by Landlord by reason of the right given so to mortgage such interest in this Lease except as expressly provided herein (all such mortgages, encumbrances or assignments of this Lease as collateral security being herein collectively called "leasehold mortgages" and the holders, beneficiaries or assignees thereof being herein collectively called "leasehold mortgagees"). If Tenant and/or its successors and assigns (including but not limited to any sublessee of Tenant, but only with Tenant's prior written consent) shall mortgage this leasehold or any part or parts thereof, and if the holders or beneficiaries of such leasehold mortgages shall within thirty (30) days of its execution send to Landlord a true copy thereof, together with a written notice specifying the name and address of such leasehold mortgagee and the pertinent recording data with respect to such leasehold mortgages, Landlord agrees that so long as any such leasehold mortgages shall remain unsatisfied of record or until written notice of satisfaction is given by the holders thereof to Landlord, the following provisions shall apply:

1. Landlord will give the leasehold mortgagee(s) a copy of any notice or other communication from Landlord to Tenant hereunder at the time of giving such notice or communication to Tenant and notice of any rejection of this Lease by a trustee in bankruptcy of Tenant. Landlord will not exercise any right, power or remedy with respect to terminating this Lease by reason of any default hereunder beyond the applicable notice and cure period and no termination of this Lease in connection therewith shall be effective unless Landlord shall have given to the leasehold mortgagee(s) written notice or a copy of its notice to Tenant of such default. Upon receipt of such notice the leasehold mortgagee(s) shall have the same amount of time afforded Tenant under this Lease, plus the additional periods of time specified in paragraph 2(b) of this Section 10.C after service of such notice, to remedy, commence remedying, or cause to be remedied the defaults specified in the notice, and Landlord shall accept such performance by or at the instigation of the leasehold mortgagee(s) as if the same had been done by Tenant;

2. Landlord will not exercise any right, power or remedy with respect to terminating this Lease by reason of any default hereunder until the expiration of any grace period provided in this Lease with respect thereto, which grace period will commence to run from the date Landlord has given the leasehold mortgagee(s) written notice of such default or a copy of its notice to Tenant of such default, provided as follows:

a. any leasehold mortgagee(s) within such grace period shall give to Landlord written notice that it intends to undertake the correction of such default or to cause the same to be corrected; or if said default is predicated upon a failure to pay rent or additional rent the leasehold mortgagee(s) shall cure said default within the grace period as provided; and

b. the leasehold mortgagee(s) shall thereafter, in the case of any default beyond the applicable notice and cure period, other than a default predicated upon the failure to pay rent or additional rent, prosecute diligently the correction of such default by performance on behalf of Tenant of its obligations hereunder within thirty (30) days after notice thereof is given by Landlord to the leasehold mortgagee(s) specifying such failure, provided, however, in the case of a default which cannot with due diligence be remedied by the leasehold

mortgagee(s) within a period of thirty (30) days, if the leasehold mortgagee(s) proceeds as promptly as may reasonably be possible after the receipt of such notice and with all due diligence to remedy the default and thereafter to prosecute the remedying of such default with all due diligence, the period of time after the giving of such notice within which to remedy the default shall be extended for such period as may be necessary to remedy the same with due diligence but not in excess of a total of one hundred twenty (120) days (inclusive of the aforementioned thirty (30) day period) except that said one hundred twenty (120) day limitation shall not apply to defaults arising out of the bankruptcy or insolvency of Tenant provided Landlord is subject to an automatic stay imposed pursuant to such bankruptcy proceedings;

3. Any leasehold mortgagee(s) may make any payment or perform any act required hereunder to be made or performed by Tenant with the same effect as if made or performed by Tenant provided that no entry by the leasehold mortgagee(s) upon the premises for such purpose shall constitute or be deemed to be an eviction of Tenant and shall not waive or release Tenant from any obligation or default hereunder (except any obligation or default which shall have been fully performed or corrected by such payment or performance by the leasehold mortgagee(s)).

4. The parties hereto shall give the leasehold mortgagee(s) notice of any condemnation proceedings affecting the premises and such leasehold mortgagee(s) shall have the right to intervene and be made a party to such condemnation proceedings. Tenant's interest in any award or damages for such taking is hereby set over, transferred and assignment is provided for by the terms of any such leasehold mortgage.

5. The parties hereto agree that the leasehold mortgagee(s) shall be given notice of any judicial or arbitration proceedings by or between them and shall have the right to intervene therein and be made a party to such proceedings and shall receive notice of and a copy of any award or decision made in such proceedings.

6. Landlord agrees that the name of the leasehold mortgagees may be added to the "loss payable endorsement" of any and all casualty insurance policies required to be carried by Tenant hereunder on condition that the insurance proceeds are to be applied (either by Tenant or by any such leasehold mortgagee) in the manner specified in this lease.

7. No leasehold mortgagee(s) shall become personally liable under the agreements, terms, covenants or conditions of this Lease unless and until it becomes, and then only for as long as it remains the owner of the leasehold estate or asserts rights to occupy the premises. Upon any assignment of this Lease by any owner of the leasehold estate whose interest shall have been acquired by, through or under the leasehold mortgage or from any holder thereof, the assignor shall be relieved of any further liability which may accrue hereunder from and after the date of such assignment, provided that the assignee shall execute and deliver to Landlord a recordable instrument of assumption wherein such assignee shall assume and agree to perform and observe the covenants and conditions in this Lease contained on Tenant's part to be performed and observed, it being the intention of the parties that once the leasehold mortgagee shall succeed to Tenant's interest hereunder any and all subsequent assignments (whether by such leasehold mortgagee, any purchaser at a foreclosure sale or other transferee or assignee) shall effect a release

of the assignor's liability hereunder. Nothing contained herein shall be deemed to release the original Tenant of its liabilities hereunder without the prior written consent of Landlord.

8. There shall be no merger of this Lease nor of the leasehold estate created by this Lease with the fee estate in the premises or any part thereof by reason of the fact that the same person, firm, corporation or other entity may acquire or own or hold, directly or indirectly, the following:

a. this Lease or the leasehold estate created by this Lease or any interest in this Lease or in any such leasehold estate; and

b. the fee estate in the premises or any part thereof or any interest in such fee estate and no such merger shall occur unless and until all corporations, firms and other entities, including any leasehold mortgagee having any interest in this Lease or the leasehold estate created by this Lease and the fee estate in the premises or any part thereof or any interest in such fee state shall join in a written instrument affecting such merger and shall duly record the same.

c. There shall be no cancellation, surrender or modification of this Lease or attornment of any subtenant without the prior written consent of the leasehold mortgagee(s), and no such cancellation, surrender or modification shall be effective without such prior written consent.

9. There shall be no modification of the economic terms of this Lease by joint and mutual action of Landlord and Tenant without the prior consent of the leasehold mortgagee(s). The economic terms of the Lease shall be limited to the rent, taxes and the Term.

10. Any leasehold mortgagee or other acquirer of the leasehold estate of Tenant pursuant to foreclosure, assignment in lieu of foreclosure or other proceedings may, upon acquiring Tenant's leasehold estate, without consent of Landlord, and notwithstanding anything to the contrary in this Lease, sell and assign the leasehold estate on such terms and to such persons and organizations as are acceptable to such leasehold mortgagee or other acquirer and thereafter be relieved of all obligations under this Lease; provided that such assignee has delivered to Landlord its written agreement to assume all the obligations of Tenant and be bound by all of the provisions of this Lease.

11. A. Landlord agrees that if this Lease is terminated as set forth herein, Landlord will enter into a new lease for the premises, in the condition same are then in, with the leasehold mortgagee or its assignee or nominee, for the remainder of the Term, effective as of the date of such termination, for the rent, additional rent and other charges, and upon the terms, provisions, covenants and agreements as herein contained, and subject only to the same conditions herein contained, and to the rights, if any, of the parties then in possession of any part of the premises, provided:

i. Such leasehold mortgagee or its assignee or nominee shall request of Landlord such new lease within sixty (60) days after the date of such termination, and such request is accompanied by payment to Landlord of all sums, if any, then known by such leasehold

mortgagee to be due to Landlord under this Lease;

ii. Such leasehold mortgagee or its assignee or nominee shall pay to Landlord at the time of the execution and delivery of said new lease all sums which would at the time of the execution and delivery thereof be due pursuant to this Lease but for such termination; and

iii. Such leasehold mortgagee or its assignee or nominee shall perform and observe all covenants herein contained on Tenant's part to be performed and observed and shall further remedy any other conditions which Tenant was obligated to perform or remedy under the terms of this Lease, except for defaults or conditions, if any, which were expressly waived by Landlord or which are not curable; it being agreed that a default or condition shall not be deemed non-curable merely because any cure period provided under this Lease has passed.

B. Upon the execution of such new lease, Landlord shall allow to the Tenant named therein as an offset against the sums otherwise due under this paragraph 11 or under the new lease, an amount equal to the net income derived by Landlord from the premises during the period from the date of termination of this Lease to the date of the beginning of the lease term of such new lease.

C. Any new lease made pursuant to this paragraph 11 shall have the same priority and status as to liens as this Lease, and the Tenant under such new lease shall have the same right, title and interest in and to the premises and the improvements thereon as Tenant had under this Lease. Landlord shall make reasonable efforts to provide the new lease in accordance herewith, but does not warrant that it shall be able to do so.

D. If more than one leasehold mortgagee shall request a new lease pursuant to paragraph 11 of this Section 10.C, Landlord shall enter into such new lease with the leasehold mortgagee whose mortgage is prior in lien, or with the designee of such leasehold mortgagee. Landlord, without liability to Tenant, or any leasehold mortgagee with an adverse claim, may rely upon a mortgagee title insurance policy issued by a responsible title insurance company doing business within the State of New York as the basis for determining the appropriate leasehold mortgagee who is entitled to such new lease.

12. Landlord shall upon request execute, acknowledge and deliver to each leasehold mortgagee making such request an agreement prepared at the sole cost and expense of Tenant, in form satisfactory to such leasehold mortgagee on the leasehold mortgagee's standard form, between Landlord, Tenant and such leasehold mortgagee, agreeing to all of the provisions of this Section. A form of such a Non-Disturbance and Attornment agreement ("NDA") is attached hereto as Schedule "C", and the parties agree that the terms and conditions of said NDA may be modified only with the mutual consent of Landlord, Tenant and the leasehold mortgagee. The term "leasehold mortgage" whenever used herein shall include whatever security instruments are used in the locale of the premises, including without limitation deeds of trust, security deeds and conditional deeds as well as financing statement, security agreements and other documentation required pursuant to the Uniform Commercial Code and shall also include any instruments required in connection with a sale-leaseback transaction entered into by Landlord hereunder.

13. Landlord recognizes that at the date of execution hereof Tenant has not made definitive arrangements for construction or permanent leasehold financing. Landlord therefore agrees that when a commitment for construction or permanent financing of the Tenant's leasehold interest is obtained, the proposed mortgagee may request technical amendments to this Lease. In such event, Landlord will entertain reasonable requests for technical amendments, provided same do not individually or in concert cause substantive amendments to the terms and conditions of this Lease or encumber the fee title to the premises.

14. During the Term of this Lease Landlord shall have the right or power to mortgage or otherwise create security interests affecting the fee interest in the demised premises to revise, modify, replace, extend or refinance such mortgages and to assign this Lease and the fixed rent and additional rents due hereunder as security therefor, provided and subject to the following conditions:

a. as long as this Lease remains in full force and effect Tenant's leasehold interest and any leasehold mortgage thereon, shall not be subject or subordinate to any mortgage placed on the fee of the demised premises, provided that no such leasehold mortgage will encumber said fee interest but shall be a mortgage only upon the tenant's leasehold estate created herein. Upon request of any such fee mortgagee, Tenant or any leasehold mortgagee in possession shall execute a commercially reasonable form of Non-Disturbance and Attornment Agreement with the fee mortgagee;

b. the holder of such fee mortgage shall not, in the exercise of any of its rights arising or which may arise out of such mortgage or any instrument modifying or amending the same or entered into in substitution or replacement thereof, disturb or deprive Tenant (or any of its sublessee) in or of its possession or its right to possession of the premises or of any part thereof under this Lease provided that Tenant and any sublessees are not in default beyond the applicable notice and cure period and said Lease is in full force and effect;

c. in the event of a default under any such fee mortgage, Tenant shall not be made a party in any action or proceedings to any action or proceeding to foreclose said mortgage nor shall Tenant be evicted or removed or its possession or right of possession be disturbed or in any manner interfered with, and this Lease shall continue in full force and effect as a direct Lease from the holder of the fee mortgage, or the purchaser of the demised land at a foreclosure sale pursuant to the fee mortgage, to Tenant under the terms and provisions of this Lease;

d. in the event of a default under any such fee mortgage at a time when this Lease shall not then be in force and effect, but under circumstances where a sublease affecting a subtenant's tenancy containing a non-disturbance clause shall, immediately prior to such mortgage default, be in full force and effect, then and in such event the subtenant shall not be made a party in any action or proceeding to foreclose such fee mortgage, nor shall the subtenant be evicted or removed or its possession or right of possession be disturbed or in any manner interfered with, and its sublease shall continue in full force and effect as a direct lease from the holder of the fee mortgage or the purchaser of the demised land at a foreclosure sale pursuant to a fee mortgage

to the subtenant under the terms and provisions of its sublease; provided, however, that this paragraph shall not apply if Tenant has defaulted under the terms of this Lease beyond the applicable notice and cure period, and all rentals required to be paid hereunder are not current for thirty (30) days after Tenant's receipt of Landlord's notice indicating the same and the Landlord elects to terminate this Lease and demolish and remove the physical improvements on the premises thereby necessitating the termination of subtenant's possession; and

e. The NDA referred to in Section 10(C)(12) shall be (a) an agreement in recordable form between Tenant and the holder of any such mortgage or the owner of the fee in the case of a sale-leaseback, binding on such holder and/or fee owner, as the case may be, and on future holders of any such mortgage or future fee owners, or (b) an agreement by such holders expressed in such mortgage or in such lease governing the terms of a sale-leaseback, which shall provide in substance as follows:

i. all condemnation awards and proceeds of insurance shall be applied in the manner provide for in this Lease; and

ii. neither such holder nor any other holder of such mortgage shall name or join Tenant as a party defendant or otherwise in any suit, action or proceeding to enforce, nor will this Lease or the term thereof be terminated, except as permitted by the provisions of this Lease, or otherwise affected by enforcement of, any rights given to any holder of said mortgage or fee owner, pursuant to the terms, covenants or conditions contained in such mortgage or sale-leaseback or any other documents held by any holder or fee owner or any rights given to any holder or fee owner as a matter of law. Upon request of the holder of a permitted mortgage or fee owner, Tenant shall

(A) execute, acknowledge and deliver to such holder or fee owner an agreement to attorn to such holder or fee owner as Landlord if such holder or fee owner becomes Landlord hereunder; and/or

(B) execute, acknowledge and deliver to such holder or fee owner an agreement not to make any payment of fixed rent for a period of more than one (1) month in advance.

ARTICLE 11

ASSIGNMENT BY TENANT OF LEASEHOLD INTEREST; SUBLETTING; PERSONAL LIABILITY

A. It is hereby covenanted and agreed by and between the parties hereto that the Tenant may not sell and convey or assign its controlling interest in the demised premises prior to Tenant's completion of the construction of the improvements shown on the final site plan approved by the Town of Babylon for which Tenant has obtained a building permit during the Construction Period, as evidenced by the issuance of a final certificate of occupancy for all such improvements ("C of O Date"). However, Landlord agrees that Tenant may, without limitation, assign this Lease to a single purpose limited liability company created by Tenant specifically to

develop and own the intended project on the premises. After the C of O Date, Tenant may, without the consent of Landlord, assign this lease or sell or convey said interests provided that Tenant shall remain liable for all of Tenant's obligations under this Lease.

B. Tenant may sublease, in whole or in part or parts, the premises to any reputable person or entity and may permit its subtenant or subtenants to assign, sublease, in whole or in part or parts, mortgage or otherwise encumber this lease or any sublease of all or any part of the premises without the consent of Landlord, provided that any such sublease shall be subject to this Lease and shall not extend beyond the term hereof except as may be hereinafter provided. Both Landlord and Tenant recognize that with respect to subleases of all or a portion of the premises, Tenant may not be able to finalize the same unless Tenant is in a position to afford certain subtenants an agreement duly executed by Landlord which provides that in the event of the termination of this Lease, the rights of the subtenant under the sublease shall continue in full force and effect so long as the subtenant is not in default beyond any applicable notice and cure period under the sublease as would entitle Tenant (as sublandlord thereunder) to terminate same, and that such sublease will continue as a direct lease between the subtenant on the one hand and Landlord on the other, with each party attorning to the other as though the same were a direct lease between said parties. Accordingly, provided the Recognition Conditions (hereinafter defined) are satisfied, Landlord agrees to execute and deliver to any Qualified Subtenant (hereinafter defined) for whom Tenant requests same, an Owner's Recognition, Non-Disturbance and Attornment Agreement in the form of Schedule "D" annexed hereto and made a part hereof. A "Qualified Subtenant" is a subtenant who is an international, national or regional retailer then operating at least ten (10) stores. The "Recognition Conditions" are as follows: (i) such subtenant agrees to attorn to Landlord under its sublease (including the payment of all rental and other charges payable under the sublease without offset for prepayments previously made other than rental and other charges paid not more than one month in advance) and agrees not to effect the termination of its sublease due to any termination of this Lease, (ii) Tenant has delivered a copy of the sublease to Landlord and the sublease has been made at arms length and does not include, without limitation, front end loading of payments, payment of key money or decreases in rent during the term and is with a subtenant that is not affiliated in any way with Landlord, (iii) the term of such sublease (including any extension periods) shall expire not later than one (1) day prior to the expiration date of the Term of this Lease, (iv) the fixed rent payable by such subtenant under its sublease shall not be less than the fixed rent due to Landlord from Tenant on a per square foot basis under this Lease for the portion of the demised premises leased by such subtenant, (v) Landlord shall not be responsible to such subtenant for any obligations more onerous than the obligations Landlord has to Tenant under this Lease, except that notwithstanding the foregoing, the terms of such sublease may impose more onerous obligations on Landlord (such as, for example, without limitation, imposing an obligation on Landlord to maintain the roof and structure of such subtenant's building), provided that the excess rent (above the rent on a per square foot basis payable by Tenant under this Lease) Landlord will receive from such subtenant under the applicable sublease will reasonably cover the cost to perform such additional obligations, and (vi) notwithstanding such attornment and recognition, Landlord shall not be: (A) liable for any previous act or omission of Tenant as landlord under any such sublease, (B) subject to any offset or defense that shall have accrued to the subtenant thereunder against Tenant, (C) bound by any prepayment of more than one month's rent or for any security deposit which prepayment of rent or security deposit shall not have been delivered to Landlord, or (D) responsible to pay any broker commissions or

construction allowances, perform any tenant work, or expend funds to restore any premises after a casualty in excess of insurance proceeds therefor actually received by Landlord. Notwithstanding the foregoing, Tenant shall remain liable for all of Tenant's obligations under this Lease.

C. Any act required to be performed by Tenant pursuant to the terms of this Lease (including, without limitation, Tenant's obligation to maintain insurance pursuant to Article 7 above) may be performed by any sublessee of Tenant occupying all or any part of the premises and the performance of such act shall be deemed to be performed by Tenant and shall be acceptable as Tenant's act by Landlord.

D. Notwithstanding anything contained elsewhere in this lease, however, the Tenant shall have no personal liability pursuant to this Lease other than Tenant's interest in this Lease, the demised premises and the building and any other building or improvements constructed thereon, such exculpation of personal liability to be absolute. Conversely, the Landlord shall never have any personal liability, pursuant to this Lease, other than Landlord's interest in the premises, this Lease and the loss of rent reserved in this Lease. Such exculpation of personal liability to be absolute.

ARTICLE 12

UTILITIES (HEAT, ELECTRIC, WATER, ETC.)

A. Tenant shall at its own cost and expense install, provide and pay for all of the necessary utilities and services needed for the proper operation and functioning of the building(s). Such utilities include but are in no way limited to electricity, telephone services, water supply, heating, plumbing and air-conditioning. Such installations shall include but not be limited to pipes, lines, wires, plumbing, conduits, control equipment and all the fixtures and equipment related to the aforementioned utilities. Tenant shall pay any and all charges in connection with the installation and/or maintenance of same. Tenant agrees to obtain and pay for charges connected with any permits, approvals, certificates or other required documents or work to be performed.

B. Tenant shall have the right to enter into reasonable agreements with utility companies creating any and all easements in favor of such companies as are required in order to serve the building(s). Landlord covenants and agrees to consent to any such agreements and to execute any and all documents, agreement and instruments and to take all other actions in order to effectuate the same, all at Tenant's cost and expense for the purpose of encumbering the fee interest of Landlord in the demised land.

C. Landlord agrees, upon request from Tenant and without any cost, to execute any and all documents required or requested by any utility company or authority for the installation of utilities and/or quasi utilities (including without limitation water, sewer, gas, telephone and electric) on the premises.

ARTICLE 13

TERMINATION ON DEFAULT

A. Tenant covenants and agrees that if it shall at any time, after the applicable notice and cure period set forth in subsection 13B below, (i) fail to pay any taxes in accordance with the provisions of Article 6, (ii) or to take out, pay for, maintain or deliver any insurance policies provided for in Article 7, (iii) or fail to cause any lien of the character referred to in Article 10(A) to be discharged as therein provided, or (iv) fail to perform any other act on its part to be performed, then Landlord may but shall not be obligated to, upon thirty (30) days' written notice to the Tenant (except in case of emergency) and without waiving or releasing Tenant from any obligations of Tenant in this Lease contained, (1) pay any taxes payable by Tenant pursuant to the provisions of Article 6, (2) take out, pay for and maintain any of the insurance policies provided for in Article 7, (3) discharge any lien of the character referred to in Section 10(A), or (4) perform any other act on Tenant's part to be performed as in this Lease provided; however, so long as a leasehold mortgage shall be outstanding, Landlord shall not, except in the case of emergency, take any action specified in the foregoing clauses (1), (2), (3) and (4) until after expiration of thirty (30) days' written notice to the leasehold mortgagee, if any.

Such failure to perform shall not be deemed an Event of Default as hereinafter defined, unless Landlord declares an Event of Default and gives the notice required by Section 13(B). All sums so paid by Landlord and all necessary and reasonable incidental costs and expenses paid or incurred by Landlord in connection with the performance of any such act by Landlord, together with interest thereon at the rate of prime plus four percent (4%) per annum from the date of making of such expenditure by Landlord, shall be deemed additional rent and shall be payable to Landlord on written demand, or, at the option of Landlord, may be added to any basic rent then due or thereafter becoming due under this Lease and Tenant covenants to pay any such sum or sums with interest as aforesaid. All sums which may become payable to Landlord by Tenant for taxes pursuant to Article 6, insurance premiums pursuant to Article 7, and all other charges and expenses of whatsoever nature which Tenant assumes or agrees to pay pursuant to this Lease, shall be deemed additional rent thereunder and payable as aforesaid, and Landlord shall have, in addition to any other right or remedy of Landlord, the same rights and remedies in the event of the nonpayment of any such sums by Tenant as in the case of default by Tenant in the payment of the basic rent.

B. Subject to the provisions of Section 10(C), in case one or more of the following events (herein called an "Event of Default") shall have occurred and shall not have been remedied:

1. failure to pay when due the fixed rent or any item of additional rent and such failure shall continue for a period of thirty (30) days after notice is given by Landlord to Tenant specifying such failure, which notice may not be given until the expiration of thirty (30) days from the due date of such rent;

2. failure to perform any other covenant or condition of this lease on the part of Tenant to be performed hereunder and continuance of such default for a period of thirty (30) days after notice thereof is given by Landlord to Tenant specifying such failure, provided, however, in the case of a default which cannot with due diligence be remedied by Tenant within a period of thirty (30) days if Tenant proceeds as promptly as may reasonably be possible after the

receipt of such notice and with all due diligence to remedy the default and thereafter to prosecute the remedying of such default with all due diligence, the period of time after the giving of such notice within which to remedy the default shall be extended for such period as may be necessary to remedy the same with all due diligence; or

3. if pursuant to an order, judgment or decree entered by any court of competent jurisdiction (a) a receiver, trustee or liquidator of Tenant or of all or a substantial part of Tenant's assets shall be appointed, or (b) Tenant shall be adjudicated a bankrupt or insolvent, or (c) a petition seeking reorganization of Tenant or an arrangement with creditors or to take advantage of any insolvency law shall be approved, and as a result of the happening of any of such contingencies, the obligation of Tenant to pay the fixed rent or any item of additional rent shall be modified or abrogated, and if any such proceeding shall not be dismissed within one hundred twenty (120) days after the institution of the same;

Landlord may at its option give to Tenant notice of election to end the term of this Lease at the expiration of thirty (30) days from the date of service of such notice and, if such notice is given, then at the expiration of said thirty (30) days if such default is not then cured or remedied by or on behalf of Tenant, the Term of this lease and all right, title and interest of Tenant hereunder shall expire as fully and completely as if that day were the date herein specifically fixed for the expiration of the Term of this Lease and Tenant will then quit and surrender the premises to Landlord but Tenant shall remain liable as hereinafter provided. Landlord agrees that any or all of the events set forth in Section 13(A) shall not constitute an Event of Default which would entitle Landlord to exercise or avail themselves of the remedies granted to it under this Section 13(B) so long as any leasehold mortgagee or subtenant of Tenant makes all payments of fixed rent, additional rent or other charges required to be paid to Landlord pursuant to the provisions of this Lease and otherwise complies with all of the other terms, provisions and covenants of this Lease on the part of Tenant to be performed.

C. In case of the occurrence of an Event of Default, Landlord agrees that if within thirty (30) days after notice pursuant to subsection 13(B) is given by Landlord to the holder of a leasehold mortgage, such holder shall

1. notify Landlord of its election to proceed with due diligence to foreclose the leasehold mortgage or otherwise to proceed promptly to acquire possession of the premises and of Tenant's interest in this Lease; and

2. deliver to Landlord an instrument in writing duly executed and acknowledged wherein the holder of the leasehold mortgage agrees as follows:

a. during the period that such holder shall be in possession of the premises and/or during the pendency of any such foreclosure or other proceedings and until the interest of the then Tenant in this Lease shall terminate, as the case may be, it will pay or cause to be paid to Landlord all sums from time to time becoming due under this Lease for fixed rent or any items of additional rent; and

b. if delivery of possession of the premises shall be made to such

holder or in the event such holder is an institution, to its nominee, whether voluntarily or pursuant to any foreclosure or other proceedings or otherwise, such holder shall promptly following such delivery of possession perform or cause such nominee to perform, as the case may be, all the covenants and agreement herein contained on Tenant's part to be performed to the extent that Tenant shall have failed to perform the same to the date of delivery or possession, as aforesaid, except such covenants and agreements which cannot with the exercise of due diligence be performed by such holder or such nominee.

Landlord will postpone terminating this Lease for such period or periods of time as may be necessary for such holder, with the exercise of due diligence, to acquire the then-Tenant's interest in this Lease as aforesaid and to perform or cause to be performed all of the covenants and agreements herein contained, provided that during such period holder shall pay all rent and additional rent due under such lease.

D. Upon the expiration of the term of this Lease, pursuant to any of the provisions of this Article, it shall be lawful for Landlord to re-enter and recover possession of the premises, as follows: (1) if the expiration of the term of this Lease is based upon Tenant's default, then re-entry shall be conditioned upon Landlord obtaining issuance of a warrant dispossessing Tenant based upon a final determination by a court of competent jurisdiction; and (2) if the expiration of the term of this Lease occurs in any other way, then re-entry may be effected by any lawful means.

If the expiration of the term of this Lease and recovery of possession is based upon Tenant's default as in subdivision (1) above, then Landlord shall be entitled to use and occupancy in an amount equal to the rent reserved hereunder of the premises through the date Landlord recovers possession.

E. Upon the termination of this Lease pursuant to this Article 13, and upon Landlord recovering possession of the premises in the manner or in any of the circumstances whatsoever pursuant to the legal process, by reason of or based upon or arising out of the occurrence of an Event of Default, Landlord may at its option at any time, and from time to time, relet the premises or any part or parts thereof and receive and collect the rents therefor, applying the same first to the payment of such expenses as Landlord may have incurred in recovering possession of the premises, for putting the same into good order or condition or preparing or altering the same for re-rental and for expenses, commissions and charges paid by Landlord in and about the reletting thereof and then to the fulfillment of the covenants of Tenant hereunder. Any such reletting herein provided for may be for the remainder of the term of this lease or for a longer or shorter period. Subject to the provisions of Section 11(D), in any such case Tenant shall pay to Landlord the fixed rent, additional rent and all other charges required to be paid by Tenant up to the time of such termination of this Lease, or of such recovery of possession of the premises by Landlord, as the case may be, and thereafter Tenant covenants and agrees, if required by Landlord, to pay to Landlord until the end of the Term of this Lease, the equivalent rent and all other charges required to be paid by Tenant, less the net avails of reletting, if any, and the same shall be due and payable by Tenant to Landlord as follows: upon each of the rent payment days under this Lease Tenant shall pay to Landlord the net amount of the deficiency then existing after crediting any surplus of the net avails or reletting, if any, over the amount of all fixed rent reserved herein, additional rent and all other charges required to be paid by Tenant less the net avails of reletting, if any. Landlord

shall have the election in place and instead of holding Tenant so liable, forthwith to recover against Tenant as damages for loss of the bargain and not as a penalty, an aggregate sum which at the time of such termination of this Lease or of such recovery of possession of the premises by Landlord, as the case may be, represents the then present worth of the excess, if any, at the time of termination or recovery of possession, of the aggregate of the rent, additional rent and all other charges payable to Landlord hereunder that would have accrued for the balance of the term of this Lease then running over the aggregate rental value of the premises for the balance of such term. Nothing herein contained shall limit or prejudice Landlord's right to prove and obtain liquidated damages arising out of any termination of this Lease as a result of the happening of any of the contingencies referred to in Section 13(B).

F. Except for notice of commencement of any action or proceeding to dispossess Tenant as required by law, Tenant hereby expressly waives service of any notice of intention to re-enter which may be provided for in any statute. Tenant waives any and all rights of redemption in case Tenant shall be dispossessed by a judgment or by warrant of any court or judge. Tenant and Landlord each waive and will waive any and all right to a trial by a jury in the event that summary proceedings shall be instituted by Landlord and the right to counterclaim in such proceedings (excluding compulsory counterclaims). The terms "enter", "re-enter" or "re-entry" as used in this Lease are not restricted to their legal meaning. Landlord shall be entitled to reasonable attorneys' fees, costs and disbursements incurred if successful in the commencement and prosecution of any summary proceeding resulting in either a judgment for possession or rent, or a settlement providing for possession or payment of rent and such sums shall be deemed additional rent and shall be collectable in the same manner as fixed rent.

G. Upon the termination of this Lease, whether by expiration of the Term hereof or otherwise, Tenant shall surrender the demised premises to Landlord in good order and repair, reasonable wear and tear and damage by fire, casualty, condemnation or the elements excepted. Upon such termination Tenant shall also deliver to Landlord all leases, lease files, plans, records, registers and all other papers and documents (excluding any confidential or privileged information) which are then in Tenant's possession and may be necessary or appropriate for the proper operation and management of the premises. Title to and ownership of the improvements shall automatically vest in Landlord free and clear of all lease claims and encumbrances without the execution of any further instruments of payment therefor by Landlord.

H. Tenant agrees to permit Landlord and their authorized representative, on reasonable notice, to enter the building(s) at all reasonable times during usual business hours for the purpose of inspecting the same or exhibiting the same to any prospective purchaser. Landlord agrees that in giving such notice and making or causing to be made the requisite inspections provided for herein, Tenant's obligations to Landlord shall be subject to such commitments as Tenant shall have to its subtenants with respect to non-interference with the activities of such subtenants. In the alternative, Landlord shall have the right to require Tenant to remove the improvements at the expense of the Tenant and restore the premises to vacant, unimproved real property with level grade to adjacent streets.

ARTICLE 14

TITLE TO BUILDINGS

As between Landlord and Tenant, title to the building(s), related improvements and any other improvements situated on the premises which then remain, if any, shall be and remain in Tenant until the occurrence of any of the following events:

A. the entry of a final order of a court of competent jurisdiction dispossessing Tenant and the issuance of a warrant based thereon. If an appeal is taken "final order" as used herein is determined to mean the final order of the highest Appellate Court to which appeal is taken or which grants leave to appeal; or

B. the expiration of the Term under this Lease.

C. the execution of a surrender of this Lease by Tenant.

ARTICLE 15

CONDEMNATION

A. If at any time during the Term of this Lease there shall be a total or constructive total taking as hereinafter defined of the premises in any condemnation proceeding or through the exercise of the right or power of eminent domain (other than a temporary taking), this Lease shall terminate on the date of such taking and the fixed rent and other additional rent and charges payable by Tenant hereunder shall be apportioned and paid only through the date of taking. To the extent that any of such rents or additional charges shall have been prepaid for any period beyond the date of taking, such prepaid rent and other charges shall be refunded to Tenant hereunder. Notwithstanding the foregoing, if such total or constructive total taking either (i) is of any floor area of a subtenant's premises, or (ii) results in a reduction of more than ten percent (10%) of the parking spaces in the premises, or (iii) results in a termination of at least one (1) existing point of access to the premises, or (iv) otherwise impairs Tenant's or any subtenant's development, use or occupancy of the premises or impairs the then economic benefits in effect immediately prior to the total or constructive total taking, all in objectively verifiable respects, at Tenant's election either (a) the fixed rent and additional rent shall be equitably adjusted to reflect such impairment, or (b) provided all leasehold mortgagees consent, Tenant may terminate this Lease. If the parties are unable to agree upon whether such impairment has occurred and/or an equitable adjustment of rent and additional rent, the matter shall be determined by arbitration pursuant to Article 18 hereof, but utilizing three MAI appraisers selected in the manner set forth in Section NM-iv. All rights to demand an award for any consequential damages with respect to the building(s) shall repose with and remain the rights of Tenant.

B. The term "constructive total taking" shall mean a taking which Tenant claims, by notice to Landlord, and which is agreed upon between the parties or is determined as provided below to be of such scope and magnitude as would prevent Tenant from conducting its business with the same degree of efficiency and economic return as that business was conducted prior to the taking. In addition to any other basis for the making of this determination, a constructive total taking shall be deemed to have occurred if as a result of the taking it becomes reasonably necessary

for Tenant, in order to continue to conduct its business as prior to the taking as provided above, to either (1) obtain additional space outside the premises, or (2) expend additional funds or provide additional consideration apart from the award in the condemnation proceeding for the purpose of obtaining additional space.

C. Landlord and Tenant in any such condemnation proceedings or proceedings involving the exercise of the right or power of eminent domain shall each be free to make claim against the condemning or taking authority for the amount of damage done to each of them, respectively, as a result thereof and each of them shall be responsible for their own expenses with respect thereto. Subject to the rights of the holder of any leasehold mortgage to receive all sums secured by the leasehold mortgage and the terms of Section 10.C, in connection with any such claims the Landlord shall be entitled to an award (subject to the rights of any fee mortgage) which represents compensation for the value of the Land taken (but without any right to claim the cost of the Buildings and/or removing same). In connection with any such claims the Tenant shall be entitled to an award which represents compensation for (1) the value of the Buildings, (2) Tenant's and any subtenant's fixtures and equipment, (3) any consequential or severance damages sustained by Tenant resulting from the diminution in the value of the portion of the building(s), provided however that in determining the value of the buildings the same shall be determined as though title to it were to remain permanently in the Tenant without regard to the termination of this Lease as a result of the taking or in any other way, and (4) the value of Tenant's leasehold estate as determined below. If at the time of the taking Tenant shall be in monetary default under this Lease beyond the applicable notice and cure period but this Lease shall still be in full force and effect, Tenant shall out of any condemnation award received by Tenant pay over to Landlord any such sums due from Tenant to Landlord at the time of such taking under this Lease together with interest thereon at the prime rate plus four percent (4%) to the date of payment. The value of Tenant's leasehold estate shall be determined and shared by the parties as follows:

1. the value of the Land exclusive of buildings and improvements shall be determined using the market data (comparable land sales) approach to value based on highest and best use and the amount thus determined shall belong to and be paid to the Landlord;

2. the total value of the Land, buildings and improvements shall then be determined using the income method of valuation;

3. the balance remaining (total value of Land, buildings and improvements, less value of Land) shall be deemed the value of the leasehold interest and shall be shared between the parties in the following proportions: in year one (1) of the lease term, Tenant shall receive one hundred percent (100%) of that portion of the condemnation award representing the value of the leasehold interest and the Landlord shall receive zero percent (0.0%); and

4. for each successive five (5) year period thereafter, Tenant's share of the value of the leasehold interest shall decrease by five percent (5%) and Landlord's share shall increase by five percent (5%), as shown by the following examples:

| <u>If Condemnation Occurs in</u> | <u>Tenant's Share</u> | <u>Landlord's Share</u> |
|----------------------------------|-----------------------|-------------------------|
| 5 th year | 95% | 5% |

| | | |
|-----------------------|-----|-----|
| 10 th year | 90% | 10% |
| 25 th year | 75% | 25% |
| 49 th year | 51% | 49% |
| 70 th year | 30% | 70% |
| 90 th year | 10% | 90% |

5. Nothing contained in this Lease shall be deemed a waiver by Tenant of its right to present a claim in the condemnation proceedings for the loss of business profits, loss of good will and moving expenses, should these items then be compensable as subsequently determined by settlement or after trial provided, however, loss of business profits and loss of goodwill does not diminish Landlord's award.

D. Intentionally deleted.

E. In the event of a taking not resulting in termination under the provisions hereof, the Lease shall terminate only as to the portion of the premises so taken and the fixed rent and additional rent payable under this Lease from the date following the date of taking shall be reduced so as to equal the proportion by which the rental value of the demised land immediately after the taking bears to the rental value of the demised land immediately before the taking multiplied by the fixed rent and additional rent immediately before the taking.

F. If at any time during the term of this Lease the whole or any part of the building(s) or of Tenant's leasehold estate under this Lease shall be taken in condemnation proceedings or by any right of eminent domain for temporary use or occupancy, the foregoing provisions of this section shall not apply and Tenant shall continue to pay in the manner and at the same times herein specified the full amounts of the fixed rent and all additional rent and other charges payable by Tenant hereunder; and, except only to the extent that Tenant may be prevented from so doing pursuant to the terms of the order of the condemning authority, Tenant shall perform and observe all of the other terms, covenants, conditions and obligations hereof upon the part of Tenant to be performed and observed as though such taking had not occurred. In the event of any such taking of the character in this subsection referred to, Tenant shall be entitled to receive the entire amount of the condemnation or eminent domain proceeds for such taking, whether paid by way of damages, rent or otherwise, unless such period of temporary use or occupancy shall extend beyond the termination of this lease, in which case the condemnation or eminent domain proceeds shall be apportioned between Landlord and Tenant as of the date of termination of this Lease. Tenant covenants that upon expiration of any such period of temporary use or occupancy during the Term of this Lease it will, at its sole cost and expense, restore the building(s) as nearly as may be reasonably possible to its condition immediately prior to such taking, subject to the receipt by Tenant of the condemnation or eminent domain proceeds and to the extent of the amount thereof, for the restoration of the building(s) (except that any work required to be done to prevent injury to persons or property shall be done promptly so as to avoid such injury without awaiting payment from the condemning authority). Any portion of the condemnation or eminent domain proceeds received by Tenant prior to the termination of the Lease as compensation for the cost of restoration of the building(s), if such period of temporary use or occupancy shall extend beyond the Term of this Lease, shall be paid to Landlord on the date of termination of this Lease; and, upon the making of such payment by Tenant to Landlord, Tenant shall be relieved of any and all responsibility of

any kind or nature to cause the restoration of such building(s).

G. In any condemnation proceeding Landlord and Tenant shall request the court to separately set forth the values used in arriving at the amounts to be awarded to the respective recipients under the provisions of the various subsections of this Article 15 and to separately set forth the amount of compensation for restoration of the building(s) under the provisions respecting temporary taking as elsewhere provided for herein. The parties agree that they will cooperate in applying for and in prosecuting any and all claims for any awards in any such taking or condemnation proceedings.

H. To the extent that the Tenant hereunder shall or may assign to any leasehold mortgagee any condemnation or eminent domain proceeds or portion thereof to which Tenant shall or may become entitled under the provisions of this Article 15, Landlord agrees that they will recognize the validity of such assignment and will consent and hereby do consent to the payment of such condemnation or eminent domain proceeds to such assignee as such assignee's interest may appear, provided, however, that at the time of such taking this Lease shall be in full force and effect and provided further that, to the extent that Tenant shall be in default under the terms of this Lease beyond the applicable notice and cure period at the time of the taking in the payment of fixed rent, additional rent or other charges on the part of Tenant to be paid hereunder, Landlord shall have the right to withhold from such assignee any sum or sums equal to the amounts as to which the Tenant is then in default beyond the applicable notice and cure period, until Tenant cures any such default.

I. Landlord and Tenant each have the right to participate in any condemnation proceeding for the purpose of protecting their respective rights hereunder, and in this connection specifically and without limitation they shall have the right (A) to introduce evidence independently to establish their respective rights to recovery, (B) to participate in and approve any settlement in any condemnation proceeding with aspect to their respective rights, and (C) at their own cost and expense to prosecute any appeals from any determinations made with respect to their respective rights in connection with the condemnation proceeding.

ARTICLE 16

LAWS, LEGAL ACTION AND NOTICES

A. All notices, demands, requests, plans, specifications and other instruments under this lease shall be in writing and shall be considered properly given and received by the party to whom addressed if sent by overnight mail for next business day delivery by a nationally recognized courier service providing for written evidence of delivery, or by personal hand delivery against written receipt, addressed or delivered as follows:

1. if to Tenant, to the address set forth herein Attention: Jonathan E. Cohen, with a copy to (i) BDG, LTD., 300 Robbins Lane, Syosset, New York 11791, Attention: David J. Kaplan, Esq., and (ii) Westerman Ball Ederer Miller Zucker & Sharfstein, LLP, 1201 RXR Plaza, Uniondale, New York 11556, Attention: Stuart S. Ball, Esq., or at such other address as Tenant shall hereafter have furnished to Landlord in writing; and

2. if to Landlord, at the address set forth herein, with a copy to Bruce Kennedy, Esq., 31 Greene Avenue, Amityville, New York 11701 or at such other address as Landlord shall have furnished to Tenant in writing.

Notices sent in the manner aforesaid shall be deemed to have been given on the business day same was delivered or on the day on which delivery was refused. Any notice required or permitted to be given by either party may be given by that party's attorney.

B. All notices required to be given to Tenant by Landlord as herein provided shall simultaneously be given to all leasehold mortgagees and all subtenants whose names and addresses have been given to Landlord in writing.

C. Subject to the provisions of Section 16(I) below, Tenant shall at its sole cost and expense comply with all federal, state, county and municipal statutes, laws, rules, orders, regulations and ordinances affecting the premises and the use thereof, including those ordinances affecting the premises and the use thereof which require the making of any structural, unforeseen or extraordinary changes (whether or not any such states, laws, rules, orders, regulations and ordinances which may hereafter be enacted, involve a change of policy on the part of the governmental body enacting the same), and with all other reasonable rules, orders and regulations which must be complied with by Tenant in order to keep in full force and effect all insurance required to be kept in force by Tenant. Tenant shall comply with the reasonable requirements of all policies of liability, fire and other insurance at any time in force and effect with respect to the premises.

D. 1. Tenant covenants and agrees for itself, its heirs and assigns, that it will not carry on or permit any use or process in or upon the demised premises in such manner as will emit noxious or unreasonable odors, noise in violation of applicable governmental standards, or which results in the production or discharge of any toxic or hazardous wastes, chemicals or other contaminants into the grounds, sanitary system or sewer, if any. Tenant further agrees not to accumulate or store any contaminated toxic or hazardous wastes or materials upon the demised premises unless such storage or accumulation is permitted by the applicable governmental agencies having jurisdiction thereof. A copy of any such permit obtained by the Tenant shall be served upon the Landlord within ten (10) days after written demand of the Landlord. Tenant shall further upon demand of the Landlord furnish them with the name and address of the licensed hazardous waste remover employed by the Tenant for the removal of such hazardous waste material. Landlord or their agents and employees shall have the right to enter upon the demised premises upon reasonable notice to the Tenant and at reasonable times to make such inspections or tests as may insure compliance by the Tenant with the provisions of this paragraph, provided Landlord does not interfere with the construction, use or operation of the premises or any part thereof. If as a result of such tests or inspections contaminated, toxic or hazardous waste materials are found in the ground arising from any act or course of conduct of the Tenant, its employees, contractors or sub-tenants, then the Tenant shall reimburse Landlord for the cost of such tests or inspections upon presentation of bills therefor by the Landlord to Tenant. Landlord shall give Tenant reasonable notice of the time such tests will be made. For purposes of this Lease, "hazardous wastes" shall mean any petroleum, petroleum products, fuel oil, derivatives of

petroleum products or fuel oil, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, toxic substances, toxic chemicals, radioactive materials, medical waste, biomedical waste, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

2. To the best of its knowledge, Landlord represents and warrants to Tenant that the premises are free and clear of any hazardous wastes and Landlord has no knowledge of any hazardous wastes released, spilled or discharged on or under the premises or any surrounding properties.

3. Tenant shall be solely responsible for the removal or elimination of any contaminated, toxic or hazardous waste upon the premises arising from any act or course of conduct of Tenant, its employees, contractors or sub-tenants and shall proceed with such removal or elimination on demand from the governmental agency having jurisdiction and in compliance with all applicable environmental laws.

4. Tenant represents to the Landlord that in connection with the permitted uses authorized in Article 3 herein no toxic or hazardous waste, chemicals or other contaminants in violation of applicable laws are or will be produced in the course of the use of the demised premises by Tenant or its subtenants.

5. No underground storage tank shall be installed by the Tenant for the storage or containment of any petroleum products, detergents or other chemicals, waste materials or byproducts irrespective of whether or not a permit therefor can be issued by any governmental officer or agency whether environmental or otherwise.

6. Tenant expressly indemnifies and agrees to save Landlord harmless from any and all claims and/or demands, fines and/or penalties inclusive of reasonable attorneys' fees, court costs and disbursements Landlord may sustain or be subjected to as a result of Tenant's failure to fully comply with all of the terms and provisions of this paragraph and/or failure on the part of the Tenant to fully comply with any and all rules, ordinances and/or regulations adopted by federal, state, county and/or local authorities relating to the environmental and/or toxic and/or hazardous wastes or materials.

7. Notwithstanding the foregoing or anything to the contrary contained in this Lease, Landlord shall be solely liable for all hazardous wastes existing on or affecting the demised premises prior to the Delivery Date ("Pre-Existing Hazardous Materials") and Landlord shall protect, defend, indemnify and hold harmless Tenant and its subtenants and their respective agents, members, officers, directors, contractors, employees, parents, subsidiaries, successors and assigns from and against any and all loss, damage, liability, cost and expense (including reasonable attorneys' fees and costs) related to any Pre-Existing Hazardous Materials. This indemnity shall survive the termination of this Lease.

E. The specified remedies to which either party may resort under the terms of this Lease are cumulative and are not intended to be exclusive of any other remedies or means of

redress to which such party may be lawfully entitled in case of any breach or threatened breach by the other of any provisions of this Lease. The failure of either party to insist in any one or more cases upon the strict performance of any of the covenants of this Lease or to exercise any option herein contained shall not be construed as a waiver or a relinquishment for the future of such covenant or option. A receipt by Landlord or payment by Tenant of fixed rent with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach and no waiver by either party of any provision of this Lease shall be deemed to have been made unless expressed in writing and signed by the party against whom waiver is asserted. In addition to the other remedies provided in this Lease, either party shall be entitled to the restraint by injunction of the violation or attempted or threatened violation of any of the covenants, conditions or provisions of this Lease.

F. Either party shall without charge at any time and from time to time hereafter, within ten (10) business days after written request by the other, certify by written instrument duly executed and acknowledged to any mortgagee or purchaser or proposed mortgagee or proposed purchaser, any assignee or sublessee of Tenant, or any other person, firm or corporation specified in such request as to the following:

1. whether this Lease has been supplemented or amended and if so the substance and manner of such supplement or amendment;
2. the validity and force and effect of this Lease in accordance with its tenor as then constituted;
3. whether or not, to the actual knowledge of the signer of such certificate, the existence of any default hereunder;
4. to the actual knowledge of the signor of such certificate, the existence of any offsets, counterclaims or defenses thereto on the part of such other party;
5. the commencement and expiration dates of the term of this Lease, and the dates to which the rent and additional rent have been paid in advance, if any; and
6. any other matters as may reasonably be so requested.

Any such certificate may be relied upon by the party requesting it and any other person, firm or corporation to whom the same may be required to be delivered, but such certificate may not extend to any event of default as to which the party executing the certificate shall have had no notice or actual knowledge.

G. This Lease and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of New York.

H. If any term, covenant, condition or provision of this lease or the application thereof to any person or circumstance shall at any time or to any extent be invalid or unenforceable, the remainder of this lease or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and

each term, covenant, condition and provision of this lease shall be valid and be enforced to the fullest extent permitted by law.

I. Tenant shall have the right to contest by appropriate legal proceedings in the name of Tenant without out-of-pocket cost or expense to Landlord the validity or application of any law, ordinance, rule, order, regulation or requirement of the nature herein referred to regarding the demised premises, and if by the term of any such law, ordinance, order, rule, regulation or requirement compliance therewith pending the prosecution of any such proceeding may legally be held in abeyance without incurring a lien, charge or liability of any kind against the building or Landlord's interest or Tenant's leasehold interest therein and without subjecting Tenant or Landlord to any liability, civil or criminal, of whatsoever nature for failure to so comply therewith, Tenant may postpone compliance therewith until the final determination of any proceedings, provided that all such proceedings shall be prosecuted with all due diligence and dispatch, and if any lien, charge or civil liability is incurred by reason of noncompliance, Tenant may nevertheless make the contest aforesaid and delay compliance as aforesaid, provided that Tenant furnishes to Landlord security reasonably satisfactory to Landlord against any loss or injury by reason of such noncompliance or delay therein and prosecutes the contest aforesaid with due diligence. Notwithstanding the foregoing provisions of this Section, if a leasehold mortgagee shall be the Tenant hereunder, such leasehold mortgagee shall not be required to furnish the security required under this Section. Landlord agrees to execute and deliver any papers which may be necessary or proper to permit Tenant to contest the validity or application of any such law, ordinance, order, rule, regulation or requirement but nothing contained herein shall be deemed to constitute an acquiescence to the relief requested or a concession by Landlord that Tenant's contest is meritorious.

ARTICLE 17

RIGHT OF FIRST OFFER

Provided Tenant is not in default of this Lease beyond the applicable notice and cure period, Tenant shall have a right of first offer to purchase the premises as set forth herein. If Landlord decides to sell the premises or any part thereof, Landlord shall notify Tenant in writing of the acceptable terms and conditions of a sale offered by Landlord to a bona fide third party prospective purchaser (the "Offering Notice"), and Tenant shall have thirty (30) days from receipt of such Offering Notice to exercise its right of first offer by written response to Landlord. Acceptance shall be on the same terms and conditions as proposed by Landlord to be offered to a bona fide third party purchaser. In the event Tenant shall exercise its right of first offer, Landlord and Tenant shall thereupon enter into a contract providing for the purchase and sale of the premises containing the terms and conditions set forth in the Offering Notice and such other terms and provisions as either Landlord or Tenant may reasonably require to effectuate the sale and acquisition of the premises or any part thereof. Closing shall take place within ninety (90) days thereafter. If Tenant fails to respond in writing within such thirty (30) day period, the right of first offer shall be waived; provided that Landlord sells the premises to a bona fide third party purchaser upon the same terms and conditions as those offered to Tenant in the Offering Notice and that such sale is consummated under a contract executed and delivered within three (3) months after Tenant declined (or was deemed to have waived) the Offering Notice and such closing occurs within six

(6) months after Tenant declined (or was deemed to have waived) the Offering Notice. If no such sale is consummated within the foregoing time periods, then Landlord must again give an Offering Notice to Tenant before selling the premises or any part thereof, and Tenant shall again have the right to accept Landlord's offer as set forth above. Notwithstanding the foregoing, Landlord shall have the right to transfer the premises by will, or to a family trust, a family limited partnership or to immediate family members of John Joseph Gazza or to any entity owned by him or any immediate family members without triggering this right of first offer, provided that such transferee shall be subject to Tenant's right of first offer as to a subsequent transfer.

ARTICLE 18

INTENTIONALLY DELETED

ARTICLE 19

SHORT FORM LEASE/KEY DATES AGREEMENT

A. A short form lease or memorandum of lease (the "Memo") in the form annexed hereto as Schedule "E" shall be executed by both parties and recorded in the Suffolk County Clerk's Office after the Date the Construction Period commences. Any modifications to this Lease shall be reflected in the Memo by a recorded amendment thereto or by recordation of a new Memo, provided in the reasonable opinion of either party such modifications require disclosure in order to maintain the effectiveness of the Memo pursuant to the applicable laws.

B. Upon the request of either party, Landlord and Tenant agree to execute a Key Dates Agreement confirming the Pre-Construction Period, Construction Period, Commencement Date and any other dates or item reasonably requested by either party.

ARTICLE 20

MISCELLANEOUS PROVISIONS

A. Tenant acknowledges that, except as expressly set forth in this Lease, neither the Landlord nor its agents have made any representations and/or warranties, expressed or implied, with respect to the premises and effective on the date of the commencement of the Construction Period, Tenant shall accept same in the condition same was in on the Effective Date without recourse to Landlord as to the nature, condition or usability thereof or the uses to which the premises may be put, except as provided in Article "3". The Landlord shall not be responsible or liable for any latent defect or condition and the rent hereunder shall not be withheld or diminished on account of any defect in the condition of the premises or damages occurring therefrom, subsequent to the issuance of Tenant's leasehold title insurance.

B. This Lease contains the entire agreement by and between the parties hereto, and

any executory agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of it, in whole or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the same is hereby sought.

C. Landlord covenants that provided no Event of Default has occurred and is continuing, Tenant may peacefully and quietly have, hold and enjoy the premises for the Term of the Lease.

D. The parties represent that no broker was involved in this transaction. Landlord and Tenant agree that should any broker make a claim for commission with respect to this Lease, each party shall indemnify, defend and hold the other party harmless from any such claim arising out of the first party's acts, statements and agreements. This provision shall survive termination of the Lease.

E. Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders and vice versa, as the context shall require. Article headings used herein are for reference and convenience only and shall not enter into the interpretation hereof. This Lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument, and may be delivered by electronic transmission of a scanned image (in PDF format or otherwise) to the party's regular e-mail address. Upon written request from the other party, a party delivering this Lease will deliver a "hard" original signature copy, but the failure to do so will not affect or vitiate the viability of this Lease or the admissibility in evidence of the electronically transmitted counterpart. The terms "Landlord" and "Tenant" whenever used herein shall mean only the owner at the time of Landlord's or Tenant's interest herein, and upon any sale or assignment of the interest of either Landlord or Tenant herein, their respective successors in interest and /or assigns shall, during the terms of their ownership of their respective estates herein, be deemed to be the Landlord or Tenant, as the case may be.

F. Except as herein otherwise expressly provided, covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective heirs, successors, administrators and assigns, including, without limitation, leasehold mortgagee(s) succeeding to the interest of Tenant hereunder whether by foreclosure or by deed in lieu of foreclosure or otherwise.

G. Wherever in this Lease Landlord's consent is required, Landlord covenants and warrants that said consent shall not be unreasonably withheld, conditioned or delayed.

H. INTENTIONALLY DELETED

I. Subject to the access rights of Tenant and its representatives during the Pre-Construction Period, Landlord shall have exclusive possession of the premises until the Construction Period and be solely entitled and obligated to all the benefits of ownership and liabilities associated with ownership until the commencement of the Construction Period. Landlord may take any portion of the existing improvements on the premises they desire and leave behind any portion of the golf driving range they desire. Tenant agrees to accept the premises

"AS IS" on the commencement of the Construction Period. Tenant and Landlord shall agree in writing of the exact commencement of the Construction Period thirty (30) days in advance thereof to allow adequate time to close down the golf driving range.

J. In the event of any unavoidable delays or "force majeure" under this Lease, the time of performance of the covenants and obligations under this Lease in question (which shall in no event include any requirement for the payment of a sum of money unless caused by bank error or failure of postal authorities or courier or delivery services to deliver in a timely manner) shall automatically be extended for a period of time equal to the aggregate period of the unavoidable delays or force majeure.

K. This Lease shall be governed by, and construed and enforced in accordance with, the laws of the State of New York.

L. Wherever in this Lease the approval or consent of a party is necessary and the Lease provides that a response to a request for such approval or consent will be forthcoming within a specified time period, the failure of such party to respond in such manner as is required under the applicable provisions of this Lease within said time period shall be deemed to be a consent or approval by such party. In the event no time period is provided for a response to a request for a consent or approval so required, Landlord and Tenant agree that such response shall be forthcoming within ten (10) business days next-following receipt of a request therefor, and if no response is forthcoming within said ten (10) business day period, such consent or approval shall be deemed to have been given.

M. Upon Tenant recording a memorandum of this Lease, Tenant shall timely pay any and all transfer taxes arising out of or in connection with the execution and delivery of this Lease and/or the recording of such memorandum hereof and upon request by Landlord, Tenant shall deliver evidence of such payment to Landlord. Tenant shall indemnify Landlord against any and all amounts, fines, penalties, interest, damages, costs and expenses incurred by Landlord by reason of Tenant failing to timely pay such transfer taxes as aforesaid.

N. Landlord hereby represents and warrants to Tenant as to the following matters:

(a) Landlord will be the owner in fee simple of good and marketable title to the Demised Premises in its entirety prior to the commencement of the Construction Period, and that no mortgagees, deeds of trust or other liens or encumbrances of any nature presently encumber the demised premises;

(b) There are no covenants, restrictions or other encumbrances which would prohibit, impede or interfere with the construction and/or use and operation of the demised premises for the Proposed Development or add any financial obligations on Tenant to the knowledge of Landlord which have not been disclosed to Tenant;

(c) Except for existing month to month leases with Galer Golf Corp., Grimaldi

Pool Tables and Dominion Construction Corp., which month to month leases shall be terminated by Landlord before the commencement of the Construction Period, there are no leases or other rights of occupancy affecting the demised premises, and no persons are in possession or have any right to possession of all or any part of the Premises. Landlord has not entered into any other presently effective agreement to sell or lease the demised premises, or any portion thereof; nor has it granted any presently effective option for the sale or lease of the demised premises or any portion thereof or right refusal with respect thereto;

(d) Landlord has received no written complaint or written notice of and has no knowledge of any violation of any law, ordinance or governmental regulation or code affecting the demised premises which has not been corrected;

(e) Landlord has no knowledge of any pending or contemplated condemnation proceedings affecting the demised premises or any part thereof;

(f) No litigation, proceeding (zoning or otherwise) or investigation by a governmental authority, is pending, or to the knowledge of the Landlord, threatened against or relating to the demised premises or this Lease, nor, to the knowledge of the Landlord, is there any basis for such action.

(g) The execution, delivery and performance by Landlord of this Lease in accordance with its terms does not violate the terms of any contract, agreement, commitment, order, judgment or decree to which Landlord is a party or by which it is bound;

(h) There are no actions, proceedings or investigations pending against Landlord or the demised premises, including, without limitation, proceedings or investigations in respect of air, water, surface or sub-surface environmental conditions resulting directly or indirectly from the use, transportation, storage or discharge of pollutants, asbestos or toxic wastes, in, about or relating to the demised premises;

(i) Landlord has the full right, power and authority to enter into this Lease; and

(j) To the best of Landlord's knowledge, there are no water, sewer or other utility restrictions affecting the demised premises imposed by any governmental authority or non-governmental authority.

(k) To the best of Landlord's knowledge, information and belief, the demised premises are presently in compliance with any and all legal requirements, including, without limitation, any laws pertaining to hazardous wastes or environmental matters; the Landlord is not aware of any hazardous wastes having been released, generated, stored, transported or disposed of at, on or from the demised premises or any adjoining parcels.

(l) To the best of Landlord's knowledge, no services, material or work has been supplied to the Landlord or to Landlord's contractors, subcontractors or materialmen with respect to the demised premises for which payment has not been made in full. If, subsequent to the date hereof, any mechanic's or other lien, charge or order for the payment of money shall be

filed against the demised premises or against the Tenant or the Tenant's assigns, based upon any act or omission, real or alleged, which first occurred prior to the commencement of the Construction Period, within thirty (30) days after notice to Landlord of the filing thereof, Landlord will take such action by bonding, discharge, payment or otherwise as will remove and satisfy such lien or record against the demised premises.

(m) INTENTIONALLY DELETED

(n) There are no management arrangements or services or maintenance contracts affecting the demised premises which will not be terminated as of the commencement of the Construction Period.

(o) In no event shall the Landlord take any action which interferes with (i) visibility of the demised premises or of Tenant's (or its subtenant's) signs from and about the Demised Premises; (ii) access to the demised premises; or (iii) the conduct of Tenant's (or its subtenant's) business on the demised premises.

O. In any action, lawsuit, motion or proceeding brought to enforce or interpret the provisions of this Lease and/or arising out of or relating to any dispute between or among the parties, the prevailing party with respect to any particular issue shall be entitled to recover all of its reasonable attorneys' fees, costs and all other costs relating to such issue in addition to any other relief to which such party may be entitled.

P. As an inducement for Landlord to enter into this Lease, Tenant agrees to cause Blumenfeld Development Group, LTD. ("BDG") to execute and deliver to Landlord, simultaneously with the execution and delivery of this Lease, a guaranty of the completion of the construction of the improvements shown on the final site plan approved by the Town of Babylon for which Tenant has obtained a building permit during the Construction Period, as evidenced by the issuance of a final certificate of occupancy for all such improvements, in the form annexed hereto as Schedule "F" and made a part hereof.

[SIGNATURE PAGE FOLLOWS]

LANDLORD:

TENANT:

BC FARM, LLC

By: BDG Asset Management, Inc.



JOHN JOSEPH GAZZA

By: 

JONATHAN E. COHEN

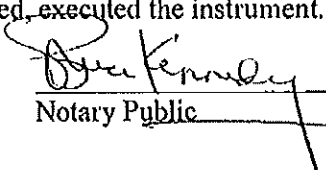
Its: 

V. P.

STATE OF NEW YORK)
)ss:
COUNTY OF SUFFOLK)

On the 10th day of October in the year 2018 before me, the undersigned, personally appeared John Joseph Gazza, 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.

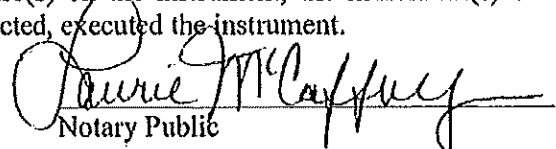
BRUCE KENNEDY
Notary Public, State of New York
No. 02KE4503483
Qualified in Suffolk County
Commission Expires May 31, 2019



Notary Public

STATE OF NEW YORK)
)ss:
COUNTY OF Nassau)

On the 7th day of November in the year 2018 before me, the undersigned, personally appeared Jonathan E. Cohen 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

LAURIE MC CAFFREY
Notary Public - State of New York
NO. 01MC8291372
Qualified in Nassau County
My Commission Expires Oct 15, 2021

SCHEDULE A

LEGAL DESCRIPTION

METES & BOUNDS DESCRIPTION

SCTM 100-48-2-14.1

FARMINGDALE (TOWN OF BABYLON)
SUFFOLK COUNTY, STATE OF NEW YORK

BEGINNING AT A POINT ON THE WESTERLY SIDE OF BROAD HOLLOW ROAD (A.K.A. NEW YORK STATE HIGHWAY ROUTE 110, A.K.A. HUNTINGTON-AMITYVILLE PART 2, S.H. NO 1219, VARIABLE WIDTH RIGHT OF WAY), SAID POINT BEING IN THE SOUTHERLY LINE OF TAX LOT 12; BLOCK 2, SECTION 48 (N/F LANDS OF NEW YORK STATE), SAID POINT ALSO BEING DISTANT THE FOLLOWING TWO (2) COURSES FROM A POINT ON THE NORTHERLY END OF A CURVE HAVING A RADIUS OF 50.00 FEET CONNECTING SAID WESTERLY SIDE OF BROAD HOLLOW ROAD WITH THE NORTHERLY SIDE OF MICHAEL DRIVE:

- A) NORTH 02 DEGREES – 23 MINUTES – 23 SECONDS EAST, A DISTANCE OF 1,134.00 FEET TO A POINT, THENCE;
 - B) NORTH 02 DEGREES – 21 MINUTES – 00 SECONDS EAST, A DISTANCE OF 12.09 FEET TO THE POINT AND PLACE OF BEGINNING AND FROM SAID BEGINNING POINT RUNNING, THENCE;
1. ALONG THE AFOREMENTIONED WESTERLY SIDE OF BROAD HOLLOW ROAD, SOUTH 02 DEGREES – 21 MINUTES – 00 SECONDS WEST, A DISTANCE OF 12.09 FEET TO A POINT, THENCE;
 2. ALONG THE WESTERLY SIDE OF BROAD HOLLOW ROAD PER MAP NO. 332, PARCEL NO. 332, SOUTH 03 DEGREES – 25 MINUTES – 24 SECONDS WEST, A DISTANCE OF 182.01 TO A POINT, THENCE;
 3. ALONG A NEW LINE RUNNING THROUGH LOT 14, BLOCK 2, SECTION 48, NORTH 86 DEGREES – 34 MINUTES – 36 SECONDS WEST, A DISTANCE OF 459.53 FEET TO A POINT, THENCE;
 4. ALONG A LINE DIVIDING LOT 14 AND LOT 13.1 (N/F LANDS OF 500 BI-COUNTY CW NF, LLC), BLOCK 2, SECTION 48, NORTH 30 DEGREES – 57 MINUTES – 04 SECONDS EAST, A DISTANCE OF 307.52 FEET TO A POINT, THENCE;
 5. ALONG A LINE DIVIDING LOT 14 AND SAID LOT 12, BLOCK 2, SECTION 48, SOUTH 72 DEGREES – 39 MINUTES – 30 SECONDS EAST, A DISTANCE OF 326.77 FEET TO THE POINT AND PLACE OF BEGINNING.

CONTAINING 93,451 SQUARE FEET OR 2.1453 ACRES

SCHEDULE B

JOHN JOSEPH GAZZA

SCHEDULE OF RENTS

Tenant agrees to pay and Landlord agrees to accept fixed rent for the premises commencing upon the Commencement Date. Such rent set forth in this Schedule of Rents shall be paid in equal monthly installments in advance on the first day of every month during the Term of this Lease, beginning on the Commencement Date as follows (the "Fixed Rent" or "fixed rent")

| | <u>Annual Rent</u> | <u>Monthly Installments</u> |
|----------------------------|--------------------|-----------------------------|
| Commencement Date – Year 5 | \$300,000.00 | \$25,000.00 |
| Years 6 – 10 | \$330,000.00 | \$27,500.00 |
| Years 11 – 15 | \$363,000.00 | \$30,250.00 |
| Years 16 – 20 | \$399,300.00 | \$33,275.00 |
| Years 21 – 25 | \$439,230.00 | \$36,602.50 |

TO BE REVALUED AT YEAR 25
PURSUANT TO ARTICLE 5
SECTION F, AND EACH 25 YEARS
THEREAFTER.

Years 26 – 30

Years 31 – 35

Years 36 - 40

Years 41 - 45

Years 46 – 50

Years 51 – 55

Years 56 – 60

Years 61 – 65

Years 66 – 70

Years 71 – 75

Years 76 – 80

Years 81 – 85

Years 86 – 90

Years 91 – 95

Years 96 - 99

SCHEDULE C
INTENTIONALLY DELETED

SCHEDULE D

OWNER'S RECOGNITION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS OWNER'S RECOGNITION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT is made as of _____, between _____, a _____, having an office at _____ ("Owner"), and _____, a _____, having an office at _____ ("Subtenant").

RECITALS:

A. Owner is the owner of certain real property located in Farmingdale, Suffolk County, New York, which real property is more particularly described on Schedule "A" attached hereto ("Property").

B. By Ground Lease, dated as of _____ (the "Lease"), between Owner, as landlord, and _____, as tenant ("Tenant"), a memorandum of which was recorded in the Suffolk County Clerk's Office on _____ in Deed book ____, page ____, Owner leased to Tenant the Property.

C. By sublease dated as of _____ between Tenant, as Landlord, and Subtenant, as Tenant (the "Sublease"), Tenant subleased to Subtenant [a portion of] the Property as shown on Schedule "A-1" annexed to the Sublease (the "Demised Premises").

D. Subtenant desires to be assured of and Owner desires to assure Subtenant of Subtenant's continued occupancy and possession of the Demised Premises under the terms of the Sublease, subject to the provisions of this agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, Owner and Subtenant agree as follows:

1. Owner hereby acknowledges receipt of a fully executed copy of the Sublease and consents to the Sublease and recognizes Subtenant as the tenant thereunder.

2. Owner shall, from and after the date hereof, so long as the Sublease is in full force and effect, give to Subtenant, in the manner provided herein for the giving of notice, copies of all notices of default that Owner may give or is required to give to Tenant pursuant to the Lease.

3. Provided sublessee is not in default of the Sublease beyond any applicable notice and cure period, if the Lease is terminated for any reason whatsoever and on the date of such termination the Sublease is in full force and effect:

- a) the Sublease shall not terminate or otherwise be affected by reason of such expiration or termination of the Lease;
- b) Subtenant shall not be joined as a party defendant in any action or proceeding which may be instituted or taken with respect to or pursuant to the provisions of the Lease;

- c) Subtenant shall not be evicted from the Demised Premises by Owner or any assignee whose rights derive from, under or through Owner and Subtenant's right of possession and other rights under the Sublease shall not be terminated, disturbed, extinguished, diminished or interfered with;
- d) the Sublease shall continue in full force and effect as a direct lease between Owner, as landlord and Subtenant, as tenant upon the same rental and all of the other terms, covenants and conditions contained in the Sublease, without necessity for executing a new lease.
- e) the obligations of Owner under the Lease which are for the benefit of Subtenant, shall continue in full force and effect as a direct obligation of Landlord to Subtenant; As of the date that Owner succeeds to Tenant's interest in the Sublease, Subtenant shall attorn to Owner, and recognize Owner as landlord, Owner shall accept Subtenant's attornment and recognize Subtenant as tenant under the Sublease and the terms, covenants and conditions of the Sublease and the rights, remedies and obligations thereunder shall be binding upon and inure to the benefit of Subtenant and Owner as if the Sublease had been made by Subtenant as tenant and Owner as original landlord.

4. Owner shall comply with all of the covenants and obligations of the landlord under the Sublease accruing after the time Owner so succeeds to Tenant's interests in and to the Sublease and Subtenant attorns to Owner including, but not limited to, the obligation to cure non-monetary defaults of Tenant continuing after such succession, provided Subtenant gives Owner written notice of such default and a reasonable time (in any event not less time than that granted by the Sublease) within which to cure such default.

5. Owner agrees that if the Demised Premises or any part thereof is damaged or destroyed by fire or other casualty or taken by the exercise of any right of eminent domain or any condemnation, the proceeds of any insurance or condemnation awards therefor shall be made available for the purposes of repair or restoration or both, as provided in the Lease.

6. Neither the Lease nor any other instrument executed in connection therewith shall cover or be construed as subjecting in any manner to the lien thereof, any trade fixtures, signs or other personal property at any time furnished or installed in the Demised Premises by Subtenant or its subtenants or licensees regardless of the manner or mode of attachment thereof ("Tenant's Property"). Although the provisions of this Paragraph 6 shall be self-operative without any further action by Owner or Subtenant, Owner agrees that if any lender to which Subtenant shall grant a security interest in Tenant's Property or any Landlord who shall lease Tenant's Property to Subtenant shall request that Owner confirm that it has waived any lien which Owner may have thereupon by operation of law or otherwise, Owner shall promptly execute and deliver to Subtenant an instrument so requested of it in form reasonably satisfactory to such lender or Landlord and to Owner. Owner agrees that any lender to whom Subtenant shall grant a security interest in Tenant's Property, as aforesaid, or any Landlord of Tenant's Property, shall have the right to enter upon the Demised Premises for the purposes of removing Tenant's Property, and that Owner shall not hinder or delay such removal, provided that such lender or Landlord shall (a) repair any damage to the demised premises caused by such removal, (b) indemnify Owner and hold Owner harmless from and against all claims for personal injury or property damage caused by

the negligence or willful misconduct of such Landlord or lender or its employees, agents, servants or representatives, and (c) otherwise comply with the terms of the Lease in connection with such removal.

7. Any notice or demand which any party hereto shall desire or be required to serve upon another party hereto shall be delivered by Federal Express or other nationally recognized overnight delivery service providing for written evidence of delivery ("Courier Service"), and such notice shall be deemed given one (1) business day after sent by Courier Service marked for next business day delivery.

8. Notices and demands sent to Owner or Subtenant shall be sent as follows:

To Owner at the following address:

with a courtesy copy to:

To Subtenant at the following address:

with a courtesy copy to:

or such other address as Owner or Subtenant may hereinafter designate in writing in the manner provided in this Article 8.

9. The provisions hereof shall be construed in accordance with the laws of the State of New York.

10. This Agreement may not be changed, amended or modified in any manner other than by an agreement in writing specifically referring to this Agreement and executed by Owner and Subtenant.

11. The provisions of this Agreement shall bind and inure to the benefit of the parties hereto and their heirs, successors and assigns. The word "Owner" as used herein shall mean not only the original Owner named in the first paragraph of this instrument but also all future owners of the Property, the word "Subtenant" as used herein shall mean not only the original subtenant named in the first paragraph of this agreement but also all future holders of the tenant's leasehold estate under the Sublease.

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

OWNER:

_____, a _____

By: _____

Name:

Title:

SUBTENANT:

_____, a _____

By: _____

Name:

Title:

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 whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

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 whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

SCHEDULE A

SCHEDULE A-1

SCHEDULE E

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (this "Memorandum") is entered into as of _____, 2017 (the "Effective Date") by and between John Joseph Gazza, having an address at 388 Broadhollow Road, Farmingdale, New York 11735 ("Landlord"), and BC FARM, LLC, having an address at c/o Blumenfeld Development Group, Ltd., 300 Robbins Lane, Syosset, New York 11791 ("Tenant").

ARTICLE 1 *Premises.* Landlord owns the parcel of real property commonly known as _____, more particularly described in Exhibit A (the "Premises").

ARTICLE 2 *Lease.* Landlord and Tenant entered into a Lease for the Premises with an effective date of September 15, 2018 (the "Lease").

ARTICLE 3 *Demise of Tenant's Premises.* For good and valuable consideration, Landlord has demised the Premises to Tenant as described in the Lease.

ARTICLE 4 *Term.* The Term of the Lease shall begin on the Commencement Date and expires approximately ninety-nine (99) years thereafter, unless the Lease is terminated earlier, as provided therein.

ARTICLE 5 *Right of First Offer.* The Lease contains a right of first offer for Tenant to purchase the Premises.

ARTICLE 6 *Cross Easement Agreements.* It is understood and agreed that cross easement agreements have been or will be entered into between Landlord and Tenant's affiliate, BDG Farmingdale, LLC, providing reciprocal access to and from Broadhollow Road (NYS Rt 110), on and to and from the demised premises and the premises demised to Tenant's affiliate by Joseph Frederick Gazza and The Koehler Family Limited Partnership.

ARTICLE 7 *Successors and Assigns.* The Lease and this Memorandum will bind and benefit the parties and their successors and permitted assigns. The foregoing is not intended to, and is not to be construed so as to, affect any restrictions or limitations on assignment or other transfers pursuant to the Lease.

ARTICLE 8 *Further Assurances.* Each party agrees to execute, acknowledge (where necessary), and deliver such further documents, and perform such further acts, as may be reasonably necessary to achieve the intent of the parties as expressed in the Lease and this Memorandum. If the Lease terminates, then Tenant will execute, acknowledge (where necessary), and deliver such documents that are required by Landlord or by any title insurance, abstract company, or institutional lender to remove this Memorandum of record.

ARTICLE 9 *Counterparts.* This Memorandum may be executed in counterparts. In the event of any conflict between this Memorandum and the Lease, the Lease shall prevail.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum as of the Effective Date.

LANDLORD

TENANT

BC FARM, LLC

JOHN JOSEPH GAZZA

By: _____

Its: _____

Date Executed: _____

Date Executed: _____

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 whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

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 whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

EXHIBIT A

SCHEDULE F

GUARANTY

THIS GUARANTY (this "Guaranty") is made as of September 15, 2018, by Blumenfeld Development Group, Ltd., having an address at 300 Robbins Lane, Syosset, New York 11791 ("Guarantor"), to John Joseph Gazza having an address at 388 Broadhollow Road, Farmingdale, New York 11735 ("Landlord").

RECITALS:

A. Concurrently with the execution and delivery hereof, Landlord is entering into a certain ground lease agreement (the "Lease") with BC FARM, LLC ("Tenant") for the certain premises located at Farmingdale, Town of Babylon, County of Suffolk and State of New York (the "demised premises").

B. Landlord has advised Guarantor that it will not enter into the Lease unless Guarantor executes this Guaranty, and Guarantor has agreed to execute this Guaranty in consideration of Landlord's execution and delivery of the Lease.

C. Guarantor has an interest in, directly or indirectly, or is affiliated with Tenant or has a commonality of interest with Tenant and will benefit, directly or indirectly from the Lease.

ACCORDINGLY, in consideration of, and to induce Landlord to enter into the Lease, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Guarantor, Guarantor covenants and agrees as follows:

1. Obligations Guaranteed. Provided (a) Tenant has not terminated the Lease on or before the Construction Period Expiration Date, and (b) Tenant has obtained final site plan approval from the Town of Babylon, Guarantor hereby guarantees to Landlord the completion of the construction of the improvements shown on the final site plan approved by the Town of Babylon for which Tenant has obtained a building permit during the Construction Period, as evidenced by the issuance of a final certificate of occupancy for such improvements (the "Guaranteed Obligations").

2. Obligations Not Affected. The obligations and liability of Guarantor under this Guaranty will not be impaired, abated, deferred, diminished, modified or otherwise affected by: (a) any amendment, extension or modification of or addition or supplement, to the Lease executed by Landlord and Tenant; (b) any compromise, settlement, adjustment or extension of any obligation or liability under the Lease; (c) any waiver, consent, indulgence, forbearance, lack of diligence, action or inaction on the part of Landlord in enforcing any obligations of Tenant, or Guarantor in connection with the Lease; (d) any irregularity in or invalidity or unenforceability of all or any part of the Lease, or the obligations or liability of Tenant thereunder; (e) any bankruptcy, insolvency, reorganization, arrangement, adjustment, composition, liquidation, rehabilitation or similar or dissimilar proceeding involving or affecting Tenant or the Lease, including, without limitation, any disaffirmance, termination or rejection of the Lease in connection with such proceedings (and

any limitation on the liability of Tenant in such proceeding will not diminish or limit the liability of Guarantor); (f) any assignment, conveyance, mortgage, extinguishment, merger or other transfer, voluntarily or involuntarily (whether by operation of law or otherwise), of all or any part of Tenant's interest in the Lease except as specifically set forth in the Lease; (g) any failure of Landlord to mitigate damages arising from a breach, violation or default by Tenant or Guarantor; and (h) any other circumstance or condition whatsoever, whether or not Guarantor has notice of knowledge thereof, which might give rise to a discharge, limitation or reduction of liability of a surety or Guarantor, other than actual payment and performance to the extent the same would result in commensurate reduction of liability.

3. Recovery against Guarantor. Landlord may join Guarantor in any action, suit or proceeding with respect to the Guaranteed Obligations commenced by Landlord against Tenant. Landlord may have recovery against Guarantor in such an action, suit or proceeding or in an independent action, suit or proceeding without any requirement that Landlord first or simultaneously assert, prosecute or exhaust any right, power or remedy against Tenant.

4. Indemnity; Costs of Enforcement. Guarantor will indemnify and hold Landlord harmless from and against any and all losses, expenses, liabilities and claims arising from any breach by Guarantor of its obligations under this Guaranty. Guarantor will also promptly reimburse Landlord for all reasonable costs and expenses (including reasonable counsel fees and disbursements) incurred by or on behalf of Landlord in enforcing the obligations or liability of Guarantor under this Guaranty with respect to the Guaranteed Obligations.

5. Waiver. Guarantor absolutely and unconditionally waives all requirements of diligence and all notices and consents which may otherwise be necessary, whether by statute, rule of law or otherwise, including, without limitation, notice of acceptance of this Guaranty and notice of default, to charge Guarantor or to preserve Landlord's rights and remedies against Guarantor hereunder.

6. Amendment; No Waiver. No right or benefit in favor of Landlord hereunder will be deemed waived, and no obligation or liability of Guarantor hereunder will be deemed modified, diminished, released, compromised, extended, discharged (other than to the extent of actual performance of the Guaranteed Obligations), terminated or otherwise affected, and no provision or term hereof may be amended, modified, terminated or otherwise changed except by an instrument in writing, specifying the same, signed by Landlord. No delay on the part of Landlord in exercising any right, power or privilege under this Guaranty nor any failure to exercise the same will operate as a waiver of or otherwise affect any right, power or privilege, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

7. Definitions. Any capitalized terms that are not defined in this Guaranty will have the meaning given to them in the Lease.

8. Notices. All notices, consents, demands and requests (collectively, "notices" and individually, a "notice") which are required to be given by either party to the other shall be in writing. All notices by either party to the other shall be (i) sent by United States Express Mail or

nationally recognized courier service providing for written evidence of delivery for next business day delivery, or (ii) hand delivered against written receipt, addressed to the other party at its address set forth below, or at such other address or addresses as it may from time to time designate in a notice to the other party. All notices to Guarantor shall be addressed to Guarantor as follows:

Blumenfeld Development Group, Ltd.
300 Robbins Lane
Syosset, New York 11791
Attention: Mr. Jonathan E. Cohen

with a copy simultaneously sent to:

Blumenfeld Development Group, Ltd.
300 Robbins Lane
Syosset, New York 11791
Attention: David J. Kaplan, Esq.

and

Westerman Ball Ederer Miller Zucker & Sharfstein, LLP
1201 RXR Plaza
Uniondale, New York 11556
Attention: Stuart S. Ball, Esq.

All notices to Landlord shall be addressed to Landlord as follows:

John Joseph Gazza
388 Broadhollow Road
Farmingdale, New York 11735

with a copy simultaneously sent to:

Bruce Kennedy, PC
31 Greene Avenue
Amityville, New York 11701

or in either case, to such other person or address as the party giving such notice shall have been previously notified from time to time by the party to whom such notice is given. Notices delivered in the manner aforesaid shall be deemed to have been given on the business day after delivery to any such courier service for next business day delivery, or on the day so delivered by hand against written receipt. Any notice required or permitted to be given by either party may be given by that party's attorney.

9. Miscellaneous.

(a) The validity and enforcement of this Guaranty will be governed by and

construed in accordance with the laws of the State of New York.

(b) Guarantor will, at any time and from time to time, within ten (10) business days following request by Landlord, execute, acknowledge and deliver to Landlord a statement certifying that this Guaranty is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating such modifications) and that, to Guarantor's knowledge, Guarantor is not in default hereunder (or if there is such a default, describing such default in reasonable detail).

(c) This Guaranty will inure to the benefit of, and may be enforced by, Landlord and its successors and assigns, and will bind Guarantor and Guarantor's successors and assigns.

(d) This Guaranty may be assigned by Landlord to any person or entity to which Landlord assigns its interest under the Lease, and such assignee may enforce the provisions of this Guaranty, provided that notice of such assignment, together with copies of the instruments assigning Landlord's interest in the Lease and this Guaranty, is given to Tenant.

(e) All remedies afforded to Landlord by reason of this Guaranty or the Lease, or otherwise available at law or in equity, are separate and cumulative remedies and it is agreed that no one remedy, whether or not exercised by Landlord, will be deemed to be in exclusion of any other remedy available to Landlord and will not limit or prejudice any other legal or equitable remedy which Landlord may have.

(f) If any provision of this Guaranty or the application thereof to any circumstances, to any extent, held void, unenforceable or invalid, then the remainder of this Guaranty will not be affected thereby and each remaining provision of this Guaranty will be valid and enforceable to the fullest extent permitted by law.

(g) Guarantor waives trial by jury of any and all issues arising in any action, suit or proceeding to which Landlord and Guarantor may be parties upon, under or connected with this Guaranty or any of its provisions, directly or indirectly.

(h) Any singular word or term herein will also be read as in the plural and the masculine will include the feminine gender whenever required or appropriate in accordance with the sense of this Guaranty.

(i) This Guaranty will be deemed to have been jointly drafted, on an arm's length basis, by both parties and their counsel and no inference will be drawn based on a claim that one party drafted this Guaranty.

10. Representations. Guarantor represents and warrants that:

(a) This Guaranty is supported by adequate consideration and constitutes a legal, valid and binding obligation of Guarantor enforceable in accordance with its terms;

(b) the execution, delivery and performance of this Guaranty does not violate any provision of any law or regulation or of any judgment, order, decree, determination or award of any court, arbitrator or governmental authority, bureau or agency or of any mortgage, indenture, loan or security agreement, lease, contract or other agreement, instrument or undertaking to which Guarantor is a party or which purports to be binding upon Guarantor or any of Guarantor's property or assets or result in the creation or imposition of any lien on any of the property or assets of Guarantor pursuant to the provisions of any of the foregoing; and

(c) no litigation, arbitration, investigation or administrative proceeding of or before any court, arbitrator or governmental authority, bureau or agency is currently pending or, to the knowledge of Guarantor, threatened against or affecting Guarantor, or any of Guarantor's property or assets, which, if adversely determined, would have a material adverse effect on the business, operations, assets or condition, financial or otherwise, of Guarantor.

11. Termination. Notwithstanding anything to the contrary contained in this Guaranty, this Guaranty shall automatically terminate and shall be of no further force or effect, without the necessity of any further document, upon the completion of the Guaranteed Obligations.

NO FURTHER TEXT; SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed the day and year first above written.

BLUMENFELD DEVELOPMENT
GROUP, LTD

By:
Title: