

# Babylon Industrial Development Agency

ROBERT STRICOFF  
CHIEF EXECUTIVE OFFICER

Applicant Contact And Basic Information	
Name:	Jaser Realty LLC
Address:	104 Parkway Drive South Hauppauge, NY 11788
Phone Number(s):	
Fax Number(s)	
E-mail Address:	
Website Address:	www.fragrahcent.com
Applicant EIN Number:	

Application Date:

1. Financial Assistance Requested (check applicable option(s)):

☐ Bond Financing

☒ Straight Lease

2. Officer of Applicant serving as contact person:

	Firm:	Jaser Realty LLC

47 WEST MAIN STREET, SUITE 3, BABYLON, NY 11702 - TEL: (631) 587-3679 FAX: (631) 587-3675

WEBSITE: WWW.BABYLONIDA.ORG

E-MAIL: INFO@BABYLONIDA.ORG

3. Attorney of Applicant:

Name: Gary Meltzer	Firm: Meltzer Lippe Goodstein & Breitstone
Phone #: 516-747-0300	Fax #: 516-237-2893
E-mail Address: gmeltzer@meltzerlippe.com	Address: 190 Willis Avenue Mineola, NY 11501

4. CFO/Accountant of Applicant:

Name: Dennis Barkey	Firm:
Phone #: 631-940-6848	Fax #: 631-582-5204
E-mail Address: dbarkey@fragrancenet.com	Address:

5. Financial Advisor or Consultant (if applicable): n/a

Name:	Firm:
Phone #:	Fax #:
E-mail Address:	Address:

6. Applicant is (check one of the following, as applicable):

☐ General Partnership

☐ Limited Partnership

☐ C Corporation

☐ S Corporation

☒ Limited Liability Company

☐ Natural Person

☐ 501(c)(3) Organization

Other (specify):

7. Are any securities of Applicant publicly traded?

☐ Yes

☒ No

8. Applicant's state of incorporation or formation: New York

9. Applicant's date of incorporation or formation: 2009

10. States in which Applicant is qualified to do business: New York

11. Please provide a brief description of Applicant and nature of its business:

Real Estate company to hold title to property which will be leased to  
FragranceNet.com Inc. which is the business of selling brand name fragrances,  
products over the internet.  
Warehouse/ Distribution of Fragrances.

**Please note:** An "Affiliate" means any individual, corporation, partnership, joint venture, sole proprietorship, limited liability company, trust or other entity that controls, is controlled by or is under common control with the Applicant.

12. Please check all that apply:

- ☐ Applicant or an Affiliate is the fee simple owner of the Project realty.
- ☒ Applicant or an Affiliate is not currently, but expects to be the fee simple owner of the Project realty.
- ☐ Applicant or an Affiliate is not the owner of the Project realty, but is the occupant of a material portion thereof for the conduct of its business pursuant to a lease or other occupancy agreement.
- ☐ Applicant or an Affiliate is not the owner of the Project realty, but expects, immediately following the closing, to be the occupant of a material portion thereof for the conduct of its business pursuant to a lease or other occupancy agreement.
- ☐ None of the above categories fully describe Applicant and its relation to the Project realty, which may be more accurately described as follows (please provide copies of supporting documentation, as applicable):

13. If a special-purpose entity ("SPE") that is owned and controlled by the Applicant will own or otherwise control the Project realty, the SPE will be a (check one of the following as applicable):

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> General Partnership | <input type="checkbox"/> Limited Partnership       | <input type="checkbox"/> C Corporation                   |
| <input type="checkbox"/> S Corporation       | <input type="checkbox"/> Limited Liability Company | <input type="checkbox"/> Not-for-profit 501(c)(3) Entity |
| <input type="checkbox"/> Natural Person      | <input type="checkbox"/> Other (specify):          |  |

Name of SPE:

Address:

Phone Number(s):

Contact Person:

Affiliation of SPE to Applicant:

Owners of SPE and each respective ownership share:

SPE EIN Number:

**Please note:** If information required above for the SPE is unknown at time of Application submission, then please submit any missing information to the Babylon IDA as soon as it becomes available.

14. Give the following information with respect to all proposed tenants and sub-tenants at the proposed project site. Provide information on an additional sheet if space is needed.

Company Name	Phone	Affiliation with Applicant	SF& Floors (Percent of Occupancy)	Lease Expiration	Tenant Business
FragranceNet.com	631-582-5204		100%	10 yrs.	sale of fragrances

## Project Description and Financial Information

### Project Site

District:	0100
Section:	067.00
Block(s):	01.00
Lot(s):	022.023
Street address and zip code:	900 Grand Blvd., Deer Park, NY 11729
Zoning	Industrial GA
Area (acreage):	7.1
Square footage of existing building(s):	128,000
Number of floors:	1
Intended use(s) (e.g., office, retail, etc.):	office and warehouse

#### 1. Please provide the following Project information:

##### a. Please provide a brief description of the proposed Project:

Relocation of two warehouses from Hauppauge, New York to one warehouse (The Project) in the Town of Babylon with some interior renovations to be done.

b. Indicate the estimated date for commencement of the Project: 12/1/09

c. Indicate the estimated date for the completion of the Project: 3/15/10

d. Will the Project require any special permits, variances or zoning approval?

☒ Yes ☐ No

If Yes, please explain: building permit

e. Is any governmental entity intended or proposed to be an occupant at the Project site?

☐ Yes ☒ No

If Yes, please explain:

2. Please complete the following summary of Project sources and uses:

PROJECT COSTS		PROJECT FUNDING	
Land acquisition	6,290,000	Bonds	
Building acquisition		Loans	6,525,000
New construction		Affiliate/employee loans	
Renovations	710,000	Company funds	725,000
Fixed tenant improvements		Other (explain)	
Machine and/or equipment			
Soft costs	250,000		
Furnishings			
Other (explain)			
Total Project Costs	7,250,000	Total Project Funding Sources	7,250,000



## Background Information on Applicant and Applicant's Affiliates

**Please note:** "Principal" means the following with respect to the Applicant and/or the SPE: all persons (entities or individuals) that control the Applicant and/or the SPE, and/or own more than 10 percent of either; all executive officers; all directors; and all members and general partners for, respectively, limited liability companies and partnerships.

Please answer the following questions and, if necessary, include additional information as an attachment:

1. Has Applicant, or any Affiliate or Principal, ever received, or is any such person or entity currently receiving, financial assistance or any other kind of discretionary benefit from any local, state or federal governmental entity or agency, or any public authority or public benefit corporation, or any local development corporation?

☐ Yes

☒ No

If Yes, please provide details on an attached sheet.

Please note: local, state and federal governmental entities or agencies, public authorities or public benefit corporations, and local development corporations, shall be referred to as "Public Entit(y)(ies)."

2. Has Applicant, or any Affiliate or Principal, or any existing or proposed occupant at the Project site, obtained, or is any such person or entity in the process of obtaining, or contemplating obtaining, other assistance from the Babylon IDA?

☐ Yes

☒ No

If Yes, please provide details on an attached sheet.

3. Has Applicant, or any Affiliate or Principal, ever defaulted on a loan or other obligation to a Public Entity?

☐ Yes

☒ No

If Yes, please provide details on an attached sheet.

4. Has real property in which Applicant, or Affiliate or Principal, holds or has ever held an ownership interest and/or controlling interest of 25 percent or more, now or ever been (i) the subject of foreclosure (including a deed in lieu of foreclosure), or (ii) in arrears with respect to any type of tax, assessment or other imposition?

☐ Yes

☒ No

If Yes, please provide details on an attached sheet.

5. Does Applicant, or any Affiliate or Principal, have any contingent liabilities not already covered above (e.g., judgment liens, lis pendens, other liens, etc.)? Please include mortgage loans and other loans taken in the ordinary course of business only if in default.

☐ Yes

☒ No

If Yes, please provide details on an attached sheet.

6. List major customers: n/a

Company Name	Address	Contact	Phone

7. List major suppliers: n/a

Company Name	Address	Contact	Phone

8. List unions (if applicable): n/a

Company Name	Address	Contact	Phone

\_\_\_\_\_

[illegible]

## Project Description and Financial Information

**I, the undersigned officer/member/partner of Applicant, on behalf of Applicant, hereby request, represent, certify, understand, acknowledge and agree as follows:**

**I request that this Application, together with all materials and data submitted in support of this Application (collectively, these "Application Materials"), be submitted for review to the Babylon IDA Board, in order to obtain from the Babylon IDA Board an expression of intent to provide the financial assistance for the Project. I understand that this expression of intent will take the form of an inducement resolution to be adopted by the Board.**

**I represent that I have the authority to sign these Application Materials on behalf of, and to bind, Applicant.**

**I certify to the best of my knowledge and belief that all of the information provided in these Application Materials is accurate, true and correct. I understand that an intentional misstatement of fact, or, whether intentional or not, a material misstatement of fact, or the providing of materially misleading information, or the omission of a material fact, may cause the Babylon IDA Board to reject the request made in the Application Materials.**

**I understand the following: that Applicant and Principals will be subject to a background check and actual or proposed subtenants may be subject to a background check; that the Babylon IDA may be required under SEQR to make a determination as to the Project's environmental impact and that in the event the Babylon IDA does determine that the Project will have an environmental impact, Applicant will be required to prepare, at its own expense, an environmental impact statement; that the decision of the Board to approve or to reject the request made in the Application Materials is a discretionary decision; that no Bonds may be issued (if Bonds are being requested) unless such Bonds are approved by the Supervisor of the Town; that under the New York State Freedom of Information Law ("FOIL"), the Babylon IDA may be required to disclose the Application Materials and the information contained therein; and that Applicant shall be entirely responsible and liable for the fees referred to in these Application Materials, including (in the case of Bonds) but not limited to payment of the New York State bond issuance fees (if applicable to the Bonds in question) based upon the aggregate principal amount of the Bonds.**

**I further understand and agree as follows:**

**That** in the event the Application Materials are not submitted to the Babylon IDA Board for any reason including negative results obtained through the background check, and/or, with respect to Application Materials that are submitted to the Babylon IDA Board, in the event the Babylon IDA Board rejects same, then, under either of said circumstances, Applicant shall have no recourse against the Babylon IDA, or any directors, officers, employees or agents of the Babylon IDA, for the Application Fee, or for other expenses incurred by Applicant or other parties on behalf thereof, or for damages or specific performance; and that the Application Fee is under all circumstances (including but not limited to the ones just described and the ones described in the next succeeding paragraph) non-refundable; and

**That** if the Town of Babylon IDA Board adopts an inducement resolution with respect to the request made in the Application Materials, such adoption shall not be deemed a guaranty that the Town of Babylon IDA Board will adopt an authorizing resolution; or that the Babylon IDA will then provide the induced financial assistance; and

**That** Applicant shall indemnify the Babylon IDA for fees and disbursements incurred by bond counsel (in the case of a Bond transaction) or by project counsel (in the case of a straight-lease transaction); and that bond counsel or project counsel (as applicable) shall be a third-party beneficiary of this indemnity to the Babylon IDA regardless of whether financial assistance is granted and a bond closing or straight lease closing occurs and if no closing occurs, regardless of the reason thereafter and regardless of whether a closing was within or without the control of any of the Public Participants; and

**That** in the event Babylon IDA discloses the Application Materials in response to a request made pursuant to FOIL, Applicant hereby authorizes the Babylon IDA to make such disclosure and hereby releases the Babylon IDA from any claim or action that Applicant may have or might bring against the Babylon IDA, its directors, officers, agents, employees and attorneys, by reason of such disclosure; and that Applicant agrees to defend, indemnify and hold the Babylon IDA and its respective directors, officers, agents, employees and attorneys harmless (including without limitation for the cost of reasonable attorneys fees) against claims arising out of such disclosure as such claims may be made by any party including the Applicant, Affiliate, Owner or Principal, or by the officers, directors, employees and agents thereof.

I acknowledge and agree that the Babylon IDA reserves the right in its sole and absolute discretion to request additional information, waive any requirements set forth herein, and/or amend the form of this Application, to the full extent permitted by applicable law.

Requested, Represented, Certified, Acknowledged, Understood and Agreed by Applicant,  
this 29th day of September 2009.

Name of Applicant: Jaser Realty LLC  
By: Printed Name of Signer: Dennis M. Apfel

Title of Signer:  Manager/Member

Signature:

### Retail Questionnaire

1. Will any portion of the Project consist of facilities or property that are or will be primarily used in making retail sales of goods to customers who personally visit the Project?  
☐ Yes      ☒ No
2. If the answer to question 1 is "Yes," will the applicant or any other project occupant be a registered vendor under Article 28 of the Tax Law of the State of New York (the "Tax Law") primarily engaged in the "retail sale of tangible personal property" (as defined in Section 1101 (b)(4)(i) of the Tax Law)?  
☐ Yes      ☐ No
3. Will any portion of the Project consist of facilities or property that are or will be primarily used in making retail sales of services to customers who personally visit the Project?  
☐ Yes      ☒ No
4. If the answer to question 1 or question 3 is "Yes," what percentage of the cost of the Project will be expended on such facilities or property primarily used in making retail sales of goods or services to customers who personally visit the Project? percent
5. If the answer to question 1 or question 3 is "Yes," and the answer to question 4 is more than 33.33 percent, indicate whether any of the following apply to the Project:
  - a. Will a not-for-profit corporation operate the Project?  
☐ Yes      ☐ No
  - b. Is the Project likely to attract a significant number of visitors from outside the Town of Babylon?  
☐ Yes      ☐ No
  - c. Would the Applicant, but for the contemplated financial assistance from the Babylon IDA, locate the related jobs outside the State of New York?  
☐ Yes      ☐ No



- d. Is the predominant purpose of the Project to make available goods or services that would not, but for the Project, be reasonably accessible to Town of Babylon residents because of a lack of reasonably accessible retail trade facilities offering such goods or services?
- ☐ Yes      ☐ No
- e. Will the Project be located in one of the following: (a) an area designated as an economic development zone pursuant to Article 18-B of the General Municipal Law; or (b) a census tract or block numbering area (or census tract or block numbering area contiguous thereto) that, according to the most recent census data, has (i) a poverty rate of at least 20 percent for the year to which the data relates, or at least 20 percent of its households receiving public assistance, and (ii) an unemployment rate of at least 1.25 times the statewide unemployment rate for the year to which the data relates?
- ☐ Yes      ☐ No
6. If the answers to any of subdivisions (c) through (e) of question 5 are "Yes," will the Project preserve permanent, private sector jobs or increase the overall number of permanent, private sector jobs in the State of New York?
- If "Yes", please furnish details in a separate attachment.
7. If the answers to any of subdivisions (a) through (e) of question 5 are "Yes," please furnish details in a separate attachment.      n/a

THE UNDERSIGNED HEREBY CERTIFIES that the answers and information provided above, and in any statement attached hereto, are true and correct.

Name of Applicant: Jaser Realty LLC

By: Printed Name of Signer: Dennis M. Apfel

Title of Signer: Manager/Member

Signature: 

Date: September 29, 2009

### Anti-Pirating Questionnaire

1. Will the completion of the Project result in the removal of a plant or facility of the Applicant, or of a proposed occupant of the Project, from an area in New York State (but outside of the Town of Babylon) to an area within the Town of Babylon?

☒ Yes ☐ No

If "Yes," please provide the following information:

Address of the to-be-removed plant or facility:

104 Parkway Drive South, Hauppauge, NY and 35 Marcus Avenue, Hauppauge, NY 11788

Names of all current occupants of the to-be-removed plant or facility:

FragranceNet.com Inc.

2. Will the completion of the Project result in the abandonment of one or more plants or facilities of the Applicant, or of any proposed occupant of the Project, located in an area of New York State other than the Town of Babylon?

☒ Yes ☐ No

If "Yes," please provide the following information:

Addresses of the to-be-abandoned plant(s) or facility(ies):

104 Parkway Drive South, Hauppauge, NY and 35 Marcus Avenue, Hauppauge, NY 11788

Names of all current occupants of the to-be-abandoned plants or facilities:

FragranceNet.com Inc.

3. Will the completion of the Project in any way cause the removal and/or abandonment of plants and facilities anywhere in New York State (but outside of the Town of Babylon)?

☒ Yes ☐ No

If "Yes," please provide all information relevant to such future removal and/or abandonment:

The two warehouses presently located in Hauppauge, New York will be removed to The Project in the Town of Babylon at 900 Grand Blvd., Deer Park, New York.

If the answer to either question 1, 2 or 3, is "Yes," please continue and answer questions 4 and 5.

4. Is the Project reasonably necessary to preserve the competitive position of this Applicant, or of any proposed occupants of the Project, in its industry?

☒ Yes

☐ No

5. Is the Project reasonably necessary to discourage the Applicant, or any proposed occupant of the Project, from removing such plant or facility to a location outside New York State?

☒ Yes

☐ No

If the answer to question 4 and/or question 5 is "Yes," please provide on a separate sheet of paper a detailed statement explaining same.

See attached page 20A

The above project is necessary in order to permit FragranceNet.com to expand its product base and be able to run more efficiently from the larger single location rather than from two smaller separate locations. Based upon the Enhanced Tax Abatement program over fifteen (15) years and the Enhanced Sales Tax Program over three (3) years that the Town of Babylon is offering, the decision is made that the best interests lie in relocating to the Town of Babylon rather than relocating to a facility outside the State of New York.

THE UNDERSIGNED HEREBY CERTIFIES that the answers and information provided above, and in any statement attached hereto, are true and correct.

Name of Applicant: Jaser Realty LLC

By: Printed Name of Signer: Dennis M. Apfel

Title of Signer: Manager/Member

Signature: 

Date: September 29, 2009

### Employment Questionnaire

The Town of Babylon Industrial Development Agency requires all Applicants to fill out this Employment Questionnaire. As used in this Questionnaire, "Company" means the Applicant; "Project Location" means the project location which Applicant has identified in its Application; and "Tenant" means any person or entity to whom or to which Applicant intends to lease part or all of the Project Location. If Applicant is a real estate holding company that is an affiliate of an operating company and Applicant intends to lease the Project Location to such operating company, then the Applicant and the operating company must fill out separate copies of this Questionnaire.

Applicant Name: Jaser Realty LLC  
Address: 104 Parkway Drive South, Hauppauge, NY 11788  
Phone Number(s): 631-582-5204  
I.R.S. Employer ID Number: [REDACTED]  
Department of Labor Registration Number: [REDACTED]  
Project Location: 900 Grand Blvd., Deer Park, NY 11729

1. How many employees does Applicant employ in the Town of Babylon at the time of Application submission?

	Number	Average Annual Salary (FT) Hourly Rate (PT)	On average Part-time Workers Hours per week
Full Time	<u>0</u>	\$ <u>          </u>	
Part Time	<u>0</u>	\$ <u>          </u>	

2. How many employees referred to in question 1 reside in the Town of Babylon at the time of Application submission?

	Number	Average Annual Salary (FT) Hourly Rate (PT)	On average Part-time Workers Hours per week
Full Time	<u>n/a</u>	\$ <u>          </u>	
Part Time	<u>          </u>	\$ <u>          </u>	

## Employment Questionnaire

The Town of Babylon Industrial Development Agency requires all Applicants to fill out this Employment Questionnaire. As used in this Questionnaire, "Company" means the Applicant; "Project Location" means the project location which Applicant has identified in its Application; and "Tenant" means any person or entity to whom or to which Applicant intends to lease part or all of the Project Location. If Applicant is a real estate holding company that is an affiliate of an operating company and Applicant intends to lease the Project Location to such operating company, then the Applicant and the operating company must fill out separate copies of this Questionnaire.

Tenant

~~Applicant Name:~~ FragranceNet.com

Address: 104 Parkway Drive South, Hauppauge, NY 11788  
631-582-5204

Phone Number(s):

I.R.S. Employer ID Number: 11-3578387

Department of Labor. Registration Number: n/a

Project Location: 900 Grand Blvd., Deer Park, NY 11729

1. How many employees does Applicant employ in the Town of Babylon at the time of Application submission?

	Number	Average Annual Salary (FT) Hourly Rate (PT)	On average Part-time Workers Hours per week
Full Time	0	\$	
Part Time	0	\$	

2. How many employees referred to in question 1 reside in the Town of Babylon at the time of Application submission? n/a

	Number	Average Annual Salary (FT) Hourly Rate (PT)	On average Part-time Workers Hours per week
Full Time		\$	
Part Time		\$	



3. How many employees does Applicant employ outside of the Town of Babylon but in New York State at the time of Application submission?

Number	Average Annual Salary (FT)	On average Part-time Workers
	Hourly Rate (PT)	Hours per week
Full Time <u>110</u>	\$ <u>56,700</u>	
Part Time <u>0</u>	\$ <u>          </u>	

4. How many employees does the applicant employ at the project location (annual average) at the time of Application submission?

Number	Average Annual Salary (FT)	On average Part-time Workers
	Hourly Rate (PT)	Hours per week
Full Time <u>0</u>	\$ <u>          </u>	
Part Time <u>0</u>	\$ <u>          </u>	

5. Projected employment at Project Location for the Applicant on December 31 of each of the five calendar years following the completion of the Project.

Year	Number of Full-time Employees	Average Annual Full-time Salary	Number of Part-time Employees	Average Hourly Rate Part-time	Average Hours per week Part-time	Average Annual Part-time Salary	Total Estimated Annual Payroll
1	110	56,745	---	---	---	---	6.5
2	113	54,600	---	---	---	---	
3	116	54,400	---	---	---	---	
4	119	53,400	---	---	---	---	
5	122	52,400	---	---	---	---	

6. Describe the occupational composition of the workforce at the Project Location. Please describe pay levels and number of employees at each pay level.

12	customer service representatives	\$15.00/hour
69	warehouse	9.00/hour
6	accounting/bookkeeping	approx. \$40,000 to \$190,000
4	marketing	approx. \$40,000 to \$180,000
5	office	approx. \$35,000 to \$180,000
11	programmers	approx. \$40,000 to \$110,000
3	executives	\$800,000

7. Please provide documentary evidence (Form Year end W-2, Form EEO-1 or external or internal payroll statements(last quarter or year end statements) supporting the answer provided in question numbers 1, 3 and 4.

8. Does Applicant intend to employ new employees at the Project Location, and/or will Applicant transfer current employees from premises currently being used? Please provide details.

I authorize any private or governmental entity, including but not limited to the New York State Department of Labor ("DOL"), to release to the Babylon IDA and to its successors and assigns, any and all employment information under DOL's control that is pertinent to the Company and the Company's employees. This authorization shall remain in effect throughout the term of this Lease.

Name of Applicant: Jaser Realty LLC

By:

Printed Name of Signer:

Dennis M. Apfel

Title of Signer:

Manager/Member

Signature:

Date:

September 29, 2009

Attach to this Questionnaire your most recent four quarters of the NYS-45 "Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return." Attach additional pages if necessary.

7. Please provide documentary evidence (Form Year end W-2, Form EEO-1 or external or internal payroll statements(last quarter or year end statements) supporting the answer provided in question numbers 1, 3 and 4. See attached

8. Does Applicant intend to employ new employees at the Project Location, and/or will Applicant transfer current employees from premises currently being used? Please provide details.

The tenant will transfer its current employees from the current premises being used and will over the course of the years add additional employees to The Project location.

I authorize any private or governmental entity, including but not limited to the New York State Department of Labor ("DOL"), to release to the Babylon IDA and to its successors and assigns, any and all employment information under DOL's control that is pertinent to the Company and the Company's employees. This authorization shall remain in effect throughout the term of this Lease.

Tenant

Name of Applicant: FragranceNet.com Inc.

By: Printed Name of Signer: Dennis M. Apfel

Title of Signer: Chairman/CEO

Signature: 

Date: September 29, 2009

Attach to this Questionnaire your most recent four quarters of the NYS-45 "Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return." Attach additional pages if necessary.

## Labor Questionnaire

The Applicant and its Affiliates hereinafter will be referred to as the "Companies" or individually as a "Company." If any of the following questions applies to none of these Companies, answer "NONE"; but, for any question that does apply, be sure to specify to which of the Companies the answer is relevant. When the space provided for an answer is insufficient, provide the answer on a separate sheet of paper and attach that paper to this Questionnaire.

1. List all of the labor union contracts and collective bargaining arrangements to which any of the Companies is currently a party: none
  
2. Have any of the Companies during the current calendar year and the five calendar years preceding the current calendar year experienced labor unrest situations, including pending or threatened labor strikes, hand billing, consumer boycotts, mass demonstrations or other similar incidents?  
☐ Yes ☒ No If Yes, please explain:
  
3. Have any of the Companies received any federal and/or state unfair labor practices complaints asserted during the current calendar year and the three calendar years preceding the current calendar year?  
☐ Yes ☒ No If Yes, please describe and explain current status of complaints:
  
4. Do any of the Companies have pending or threatened requests for arbitration, grievance proceedings, labor disputes, strikes or disturbances during the current calendar year and the three calendar years preceding the current calendar year?  
☐ Yes ☒ No If Yes, please explain:

5. Are all employees of the Companies permitted to work in the United States?

☒ Yes

☐ No

If No, please provide details on an attached sheet.

What steps do the Companies take as a matter of course to ascertain their employees' employment status?

The company requires appropriate proofs of either citizenship or ability to work in the U.S. and uses the I-9 Verification System.

Do the Companies complete and retain all required documentation related to this inquiry, such as Employment Eligibility Verification (I-9) forms?

☒ Yes

☐ No

If No, please explain:

6. Has the United States Department of Labor, the New York State Department of Labor or any other local, state or federal department, agency or commission having regulatory or oversight responsibility with respect to workers and/or their working conditions and/or their wages, inspected the premises of any Company or audited the payroll records of any Company during the current calendar year or during the three calendar years preceding the current one?

☐ Yes

☒ No

If the answer to this question is "Yes," briefly describe the nature of the inspection, the inspecting governmental entity and when the inspection occurred. Briefly describe the outcome of the inspection, including any reports that may have been issued and any fines or remedial or other requirements imposed upon the Company or Companies as a consequence:

7. Has any Company incurred, or potentially incurred, any liability (including withdrawal liability) with respect to an employee benefit plan, including a pension plan?

☐ Yes

☒ No

If the answer to this question is "Yes," quantify the liability and briefly describe its nature and refer to any governmental entities that have had regulatory contact with the Company in connection with the liability:

8. Are the practices of any Company now, or have they been at any time during the three calendar years preceding the current calendar year, the subject of any complaints, claims, proceedings or litigation arising from alleged discrimination in the hiring, firing, promoting, compensating or general treatment of employees?

☐ Yes

☒ No

If the answer to this is "Yes," provide details. When answering this question, please consider "discrimination" to include sexual harassment.

THE UNDERSIGNED HEREBY CERTIFIES that the answers and information provided above, and in any statement attached hereto, are true and correct.

Name of Applicant:

FragranceNet.com Inc.

By:

Printed Name of Signer:

Dennis M. Apfel

Title of Signer:

Chairman/CEO

Signature:



Date:

September 29, 2009

In the matter of the Application of:

FULL DISCLOSURE  
AFFIDAVIT

P.O. Address

to the TOWN OF BABYLON

(title of applicable Board(s))

STATE OF NEW YORK

) ss.:

COUNTY OF SUFFOLK

Dennis M. Apfel

being duly sworn, deposes and says

1. This affidavit is made by your deponent and intended to be filed with the above board of the Town of Babylon to fulfill requirements of Article XXIII of the Building Zone Ordinance of the Town of Babylon with respect to the above-entitled Application made or intended to be made affecting property located and described as follows:

900 Grand Blvd., Deer Park, NY 11729

2. The name and address of the Applicant are as follows:

Jaser Realty LLC

3. The name and address of the person who has made and signed this Application are as follows:

Dennis M. Apfel, 104 Parkway Drive South, Hauppauge, NY 11788

4. The names and addresses of all persons having any interest whatsoever in the property described in this Application direct or indirect, vested or contingent, regardless of whatever such person has an interest as a contract vendor, contract vendee, lessor, sub-lessor, contract lessor, lessee, sub-lessee, contract lessee, holder of any beneficial interest, contract holder of any beneficial interest, mortgagor, mortgagee, holder of any encumbrance of lien, contract holder of any encumbrance or lien, guarantor, assignee, agent or broker, or otherwise, and regardless of whether the interest arises as the result of advancing or lending funds in connection with the acquisition or development of the property and regardless of whether the interest may arise or be affected by the decision to be made by this Board, are as follows:

Dennis M. Apfel, 104 Parkway Drive South, Hauppauge, NY 11788

Jason S. Apfel, 104 Parkway Drive South, Hauppauge, NY 11788

Eric J. Apfel, 104 Parkway Drive South, Hauppauge, NY 11788

FrAGRANCE.net Inc., 104 Parkway Drive South, Hauppauge, NY 11788

5. The names and addresses of all persons who will receive any benefit as a result of their work, effort or services in connection with this Application are as follows:

None at this time

6. The names and addresses of all persons hereinabove set forth under paragraph number 4 or paragraph number 5 of this Affidavit who also have any interest such as described in paragraph number 4 or in paragraph number 5 of this Affidavit, in any property within one mile of the property described in this Application, are as follows :

none

7. The names and addresses of all persons hereinabove set forth under paragraph number 4 or paragraph number 5 of this Affidavit who are officers or employees of the Town of Babylon, are as follows :

none

8. In detail, the nature and extent of the Interest in the property described in this Application, of all officers or employees of the Town of Babylon set forth under paragraph number 7 of this Affidavit, are as follows :

none

9. The names and addresses of all persons hereinabove set forth under paragraph 4 or paragraph 5 of this Affidavit, who are related to any officer or employee of the Town of Babylon are as follows :

none

10. In detail, the nature of the relationship between all persons set forth in paragraph number 9 of this Affidavit and any officers or employees of the Town of Babylon, are as follows :

none

11. In detail, the nature and extent of the interest in the property described in the Application of all persons set forth under paragraph number 9 of this Affidavit, are as follows :

none

The undersigned affirms the truth and completeness of the foregoing under penalty of perjury:

  
Dennis M. Apfel

Sworn before me this day  
29th day of September, 2009



BEATRICE BENCIVENGA  
Notary Public, State of New York  
No. 01BE4778761  
Qualified in Suffolk County  
Commission Expires May 31, 2011




CERTIFICATION

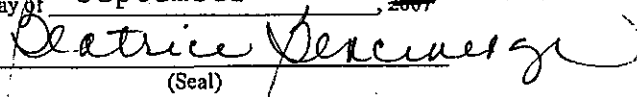
Dennis M. Apfel  
submitting application) deposes and says that he is the Manager/Member (Name of Chief Executive Officer of company) (title) of Jaser Realty LLC (Company Name), the LLC corporation named in the attached application: that he has read the foregoing application and knows the contents thereof; that the same is true to his knowledge.

Deponent further says that the reason this verification is being made by deponent and not by Jaser Realty LLC (Company Name) is because the said Company is a LLC corporation. LLC  
The grounds of deponent's belief relative to all matters in the said application which are not stated upon his own personal knowledge, are investigations which deponent has caused to be made concerning the subject matter of this application as well as information acquired by deponent in the course of his duties as an officer of and from the books and papers of said corporation.

As an member LLC officer of said LLC corporation (hereinafter referred to as 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") acting on behalf of the applicant in connection with this application and all matters relating to the lease back transaction. 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, then upon presentation of invoice, applicant shall pay to the Agency, its agents or assigns, all actual cost incurred with respect to the application, up to that date and time, including fees of project counsel and general counsel for the Agency. The applicant shall pay to the Agency an administrative fee set by the Agency not to exceed an amount equal to 1% of the total project cost, which amount is payable at closing.

  
\_\_\_\_\_  
Chief Executive Officer of Company  
Dennis M. Apfel

Sworn to before me this 29th  
day of September, 2007 2009

  
\_\_\_\_\_  
(Seal)

BEATRICE BENCIVENGA  
Notary Public, State of New York  
No. 01BE4778761  
Qualified in Suffolk County  
Commission Expires May 31, 2011

Project I.D. Number \_\_\_\_\_

### Short Environmental Assessment Form

Part 1 – Project Information (To be completed by Applicant or Project Sponsor)

1. Applicant/Sponsor: Jaser Realty LLC
2. Project Name: 900 Grand Blvd.  
0100-067.00-01.00-022.023
3. Project Location: \_\_\_\_\_ SCTM# \_\_\_\_\_
4. Precise Location- Municipality / County:  
900 Grand Blvd., Deer Park, NY (Suffolk County)  
\_\_\_\_\_  
(Street address and road intersections, prominent land marks, etc. or provide map)
5. Is Proposed Action New Expansion ☒ Modification / Alteration
6. Describe Project Briefly:  
Consolidation of two warehouses outside the Town  
of Babylon into The Project of one larger warehouse  
at 900 Grand Blvd., Deer Park, New York 11729.
7. Amount of Land Affected (Initially) 7.1 acres (Ultimately) 7.1 acres
8. What proposed action complies with existing zoning or other existing land use restrictions? The relocation of the warehouse.  
\_\_\_\_\_  
\_\_\_\_\_
9. What is present land use in vicinity of project?  
☐ Residential  
☒ Industrial  
☒ Commercial  
☐ Agriculture  
☐ Park / Forrest/ Open Space  
☐ Other  
Describe: \_\_\_\_\_

10. Does action involve a permit approval, or funding, now or ultimately from any other governmental agency: ☒ yes ☐ no \_\_\_\_\_ (Federal, State or Local)?

11. Does any aspect of the action have a currently valid permit or approval?

☒ yes  
☒ no

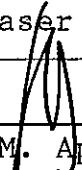
If yes, list agency name and permit / approval \_\_\_\_\_

12. As a result of proposed action will existing permit / approval require modification?

☒ yes  
☒ no

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

Applicant / Sponsor: Name Jaser Realty LLC Date September 29, 2009

Signature   
Dennis M. Apfel

Prepared by Project Sponsor

N/A - Purchase of existing Building

Notice: This document is assigned to assist in determining whether the action proposed may have a significant effect on the environment. Please complete the entire form, Parts A through E. Answers to these questions will be considered as part of the application for approval and may be subject to further verification and public review. Provide any additional information you believe will be needed to complete Parts 2 and 3.

It is expected that completion of the full EAF will be dependent on information requiring such additional work is unavailable, so indicate and specify each instance.

Name of action: Consolidation into warehouse

Location of Action, (Include Street address, Municipality, County)

900 Grand Blvd., Deer Park, NY 11729

Location of Applicant / Sponsor: 104 Parkway Drive South, Hauppauge, NY 11788

Business Telephone: 631-582-5204

Address 104 Parkway Drive South, Hauppauge, NY 11788

City/ PO:

State:

Zip Code:

Name of Owner, (If different):

Business Telephone:

Address:

City/PO:

State:

Zip Code:

Please complete each question- Indicate N.A. if not applicable

A. Site Description:

Physical setting of overall project, both developed and undeveloped areas:

1. Present land use:

- ☐ Urban
- ☐ Industrial
- ☐ Commercial
- ☐ Resident (suburban)
- ☐ Rural (non-farm)
- ☐ Forrest
- ☐ Agriculture
- ☐ Other

2. Total acreage of project area: \_\_\_\_\_ acres.

Approximate Acreage	Presently	After Completion
Meadow or Brush land (Non Agricultural)	_____ acres	_____ acres
Forested	_____ acres	_____ acres
Agricultural (includes orchards, croplands, pasture, etc.)	_____ acres	_____ acres
Wetland (freshwater or tidal as per articles 24,25 of ECL)	_____ acres	_____ acres
Water Surface Area	_____ acres	_____ acres
Unvegetate, (rock, earth or fill)	_____ acres	_____ acres
Roads, Buildings, Other Paved Surfaces	_____ acres	_____ acres
Other (indicate type)	_____ acres	_____ acres

3. What is the predominant soil type (s) on project site?

- a. Soil Drainage: \_\_\_\_\_ well drained \_\_\_\_\_ % of site  
\_\_\_\_\_ moderately well drained \_\_\_\_\_ % of site  
\_\_\_\_\_ poorly drained \_\_\_\_\_ % of site

b. If any agricultural land is involved, how many acres of soil are classified within soil group

c. 1 through 4 of the NYS Classification System? \_\_\_\_\_ acres. (See NYCRR 370).

4. Are there bedrock outcroppings on project site? \_\_\_\_\_ yes \_\_\_\_\_ no

a. What is the depth to bedrock? \_\_\_\_\_ (in feet)

5. Approximate percentage of proposed project site with slopes:

- \_\_\_\_\_ 0-10%
- \_\_\_\_\_ 10-15%
- \_\_\_\_\_ 15% or greater

6. Is project substantially contiguous to, or contain a building, site or district, listed on the State or National Registers of Historic Places: \_\_\_\_\_ yes \_\_\_\_\_ no

7. Is project substantially contiguous to a site listed on the Register of National Natural Landmarks: \_\_\_\_ yes \_\_\_\_ no

8. What is the depth of the Water Table? \_\_\_\_ (in feet)

9. Is the site located over a primary, principal or sole source aquifer? \_\_\_\_ yes \_\_\_\_ no

10. Does hunting, fishing or shell fishing opportunities presently exist in the project area?  
\_\_\_\_ yes \_\_\_\_ no

11. Does project site contain any species of plant or animal life that is identified as threatened or endangered? \_\_\_\_ yes \_\_\_\_ no

According to \_\_\_\_\_

Identify each species \_\_\_\_\_

12. Are there any unique or unusual land forms on the project site? (i.e. cliffs, dunes, other geological formations) \_\_\_\_ yes \_\_\_\_ no

Describe \_\_\_\_\_  
\_\_\_\_\_

13. Is the project site presently used by the community or neighborhood as an open space or recreation area? \_\_\_\_ yes \_\_\_\_ no

If yes explain \_\_\_\_\_

14. Does present site include scenic views known to be important to the community?  
\_\_\_\_ yes \_\_\_\_ no

15. Are there streams within or contiguous to project area? \_\_\_\_ yes \_\_\_\_ no

a. Name of stream and name of river to which it is  
tributary: \_\_\_\_\_  
\_\_\_\_\_

16. Lakes ponds, wetland areas within or contiguous to project area:

a. b. size \_\_\_\_\_

17. Is the site served by existing public utilities: \_\_\_\_ yes \_\_\_\_ no

a. If yes, does sufficient capacity exist to allow connection? \_\_\_\_ yes \_\_\_\_ no

b. B. If yes, will improvements be necessary to allow connection? \_\_\_\_ yes \_\_\_\_ no

18. Is the site located in an agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA Section 303 and 3047? \_\_\_\_yes \_\_\_\_no

19. Is the site located in or substantially contiguous to a Critical Environmental Area designated pursuant to article 8 of the ECL and 6 NYCRR 617? \_\_\_\_yes \_\_\_\_no

20. Has the site ever been used for disposal of solid or hazardous wastes? \_\_\_\_yes \_\_\_\_no

#### B. Project Description

1. Physical dimensions and scale of project, (fill in dimensions as appropriate)
  - a. Total contiguous acreage owned or controlled by project sponsors \_\_\_\_ acres.
  - b. Project acreage to be developed: \_\_\_\_ acres initially \_\_\_\_ acres ultimately.
  - c. Project acreage to remain undeveloped: \_\_\_\_ acres.
  - d. Length of project in miles: \_\_\_\_ (if appropriate).
  - e. If the project is an expansion, indicate percent of expansion proposed \_\_\_\_%.
  - f. Number of off-street parking spaces \_\_\_\_ existing \_\_\_\_ proposed.
  - g. Maximum vehicular trips generated per hour \_\_\_\_ (upon completion of project)?
  - h. If residential: number and type of housing units:  
One family \_\_\_\_ initially \_\_\_\_ ultimately  
Two Family \_\_\_\_ initially \_\_\_\_ ultimately  
Multiple Family \_\_\_\_ initially \_\_\_\_ ultimately  
Condominium \_\_\_\_ initially \_\_\_\_ ultimately
  - i. Dimension, ( in feet) of largest proposed structure  
\_\_\_\_ Height; \_\_\_\_ width; \_\_\_\_ length.
  - j. Linear feet frontage along a public thoroughfare project will occupy? \_\_\_\_ ft.
2. How much natural material, (i.e. rock, earth, etc.) will be removed from the site?  
\_\_\_\_ tons/cubic yards.
3. Will disturbed areas be reclaimed? \_\_\_\_yes \_\_\_\_no \_\_\_\_ N/A
  - a. If yes, for what intended purpose is the site being reclaimed?  
\_\_\_\_\_  
\_\_\_\_\_
  - b. Will topsoil be stockpiled for reclamation? \_\_\_\_yes \_\_\_\_no
  - c. Will upper subsoil be stockpiled for reclamation? \_\_\_\_yes \_\_\_\_no

4. How many acres of vegetation, (trees, shrubs, ground covers) will be removed from site: \_\_\_\_\_ acres
5. Will any mature forest, (over 100 years old) or other locally important vegetation be removed by this project? \_\_\_\_\_yes \_\_\_\_\_no
6. If single phase project: Anticipated period of construction \_\_\_\_\_ months, (including demolition).
7. If Multi-phased:
- a. Total number of phases anticipated \_\_\_\_\_ (number)
  - b. Anticipated date of commencement phase 1: \_\_\_\_\_ month \_\_\_\_\_ year. (including demolition)
  - c. Approximate completion date of final phase: \_\_\_\_\_ month \_\_\_\_\_ year
  - d. Is phase 1 functionally dependent on subsequent phases? \_\_\_\_\_yes \_\_\_\_\_no
8. Will blasting occur during construction? \_\_\_\_\_yes \_\_\_\_\_no
9. Number of jobs generated:
- a. during construction \_\_\_\_\_
  - b. after project is complete \_\_\_\_\_
10. Number of jobs eliminated by this project \_\_\_\_\_.
11. Will project require relocation of any projects or facilities? \_\_\_\_\_yes \_\_\_\_\_no  
If yes explain \_\_\_\_\_
12. Is surface liquid waste disposal involved? \_\_\_\_\_yes \_\_\_\_\_no  
a. If yes, indicate type of waste, ( sewage, industrial, etc.) and amount \_\_\_\_\_  
\_\_\_\_\_
13. Is subsurface liquid waste disposal involved? \_\_\_\_\_yes \_\_\_\_\_no.  
Explain: \_\_\_\_\_
14. Will surface area of existing water body increase or decrease by proposal?  
\_\_\_\_\_yes \_\_\_\_\_no Explain: \_\_\_\_\_  
\_\_\_\_\_
15. Is project or any portion of project located in a 100 year flood plain?  
\_\_\_\_\_yes \_\_\_\_\_no



16. Will the project generate solid waste? \_\_\_\_yes \_\_\_\_no  
 a. If yes, what is the amount per month \_\_\_\_tons)  
 b. If yes, will an existing solid waste facility be used? \_\_\_\_yes \_\_\_\_no  
 c. If yes, give name\_\_\_\_\_  
 d. Will any wastes not go into a sewage disposal system or into a sanitary landfill? \_\_\_\_yes \_\_\_\_no  
 e. If yes, explain\_\_\_\_\_
17. Will the project involve the disposal of solid waste? \_\_\_\_yes \_\_\_\_no  
 a. If yes, what is the anticipated rate of disposal? \_\_\_\_tons/month.  
 b. If yes what is the anticipated site life? \_\_\_\_years.
18. Will project use herbicides or pesticides \_\_\_\_yes \_\_\_\_no
19. Will project routinely produce odors, (more than one hour a day)?  
 \_\_\_\_yes \_\_\_\_no
20. Will project produce operating noise exceeding the local ambient noise levels?  
 \_\_\_\_yes \_\_\_\_no
21. Will project result in an increase in energy use?  
 \_\_\_\_yes \_\_\_\_no
22. If water supply is from wells, indicate pumping capacity \_\_\_\_gals/min.
23. Total anticipated water usage per day \_\_\_\_gals/day.
24. Does project involve Local, State or Federal Funding? \_\_\_\_yes \_\_\_\_no  
 If yes, explain\_\_\_\_\_

25. Approvals required:			Type	Submittal Date
City, Town, Village Board	yes	no		
City, Town, Village Plan Bd.	yes	no		
City, Town, Zoning Board	yes	no		
City, County, Health Dept.	yes	no		
Other Local Agencies	yes	no		
Other Regional Agencies	yes	no		
State Agencies	yes	no		
Federal Agencies	yes	no		

### C. Zoning and Planning Information

1. Does proposed action involve a planning or zoning decision \_\_\_\_ yes \_\_\_\_ no  
If yes, indicate decision required:  
\_\_\_\_ zoning amendment \_\_\_\_ zoning variance \_\_\_\_ special use permit  
\_\_\_\_ subdivision \_\_\_\_ site plan \_\_\_\_ new revision of master plan  
\_\_\_\_ resource management plan \_\_\_\_ other
2. What is the zoning classification of the site? \_\_\_\_\_
3. What is the maximum potential development of the site if developed as permitted by the proposed zoning? \_\_\_\_\_
4. What is the proposed zoning of the site? \_\_\_\_\_
5. What is the maximum potential development of the site if developed as permitted by the proposed zoning? \_\_\_\_\_
6. Is the proposed action consistent with the recommended uses in adopted local land use plans? \_\_\_\_ yes \_\_\_\_ no
7. What are the predominant land use(s) and zoning classifications within a ½ mile radius of proposed action? \_\_\_\_\_
8. Is the proposed action compatible with adjoining/surrounding land uses within a ¼ mile? \_\_\_\_ yes \_\_\_\_ no
9. If the proposed action is the subdivision of land, how many lots are proposed?  
\_\_\_\_\_
10. Will proposed action require any authorization(s) or the formation of sewer or water districts? \_\_\_\_ yes \_\_\_\_ no
11. Will the proposed action create a demand for any community provided services (recreation, education, police, and fire protection)? \_\_\_\_ yes \_\_\_\_ no  
If yes, is existing capacity sufficient to handle projected demand? \_\_\_\_ yes \_\_\_\_ no
12. Will the proposed action result in the generation of traffic significantly above present levels? \_\_\_\_ yes \_\_\_\_ no  
If yes, is the existing road network adequate to handle the additional traffic?  
\_\_\_\_ yes \_\_\_\_ no

**D. Informational Details**

Attach any information as may be needed to clarify your project. If there are or may be any adverse impacts associated with your proposal, Please discuss such impacts and the measures which you propose to mitigate or avoid them.

**E. Verification**

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

Applicant /Sponsor Name: \_\_\_\_\_

*Dennis M. Apfel*

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with the assessment.

Project Manager: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## ANNUAL STATEMENT OF DEPOSITS &amp; FILINGS

\*\* TAX YEAR 2008 \*\*

TELESCENTS INC 98 PERFUME FRAGRANCENET  
 DENNIS APFEL  
 104 PARKWAY DRIVE SOUTH  
 HAUPPAUGE NY 11788



TAX FILING SERVICE

STATEMENT DATE 02/21/09  
 BR/COMPANY 96/TLD  
 AGENT 005  
 COMBO NO  
 SHORT NAME YJ  
 FEDERAL ID: 11-3395304

## ANNUAL FUTA INFORMATION

TOTAL PAYMENTS PLUS EXEMPT	5,997,515.41		FUTA TAX	FUTA TAX
EXEMPT PAYMENTS:			LIABILITY	DEPOSITED
EXEMPT WAGES .....	.00	QTR 1	5,422.09	5,422.09
*SEE DETAIL RIGHT SIDE		QTR 2	1,592.18	1,592.18
EXCESS WAGES .....	4,771,571.40	QTR 3	190.32	.00
TOTAL EXEMPT PAYMENTS ..	4,771,571.40	QTR 4	2,602.97	2,793.29
FUTA TAXABLE WAGES .....	1,225,944.01			
GROSS FUTA TAX .....	9,807.55	TOTAL	9,807.56	9,807.56
TENTATIVE CREDIT ALLOWED..	.00			
CREDIT REDUCTION .....	.00	EXEMPT WAGES DETAIL:		
TOTAL FUTA TAX .....	9,807.55	FRINGE BENEFITS		.00
		GROUP TERM LIFE INS		.00
		RETIREMENT/PENSION		.00
		DEPENDENT CARE		.00
		OTHER		.00

ANNUAL FILING RESPONSIBILITY: ADP

## STATE WAGE RECAP

QBU BATCH NBR 08/4/763

STATE	SUI WAGES SUI ID	EXPERIENCE RATE/QTR	CONTRIBUTIONS ACTUALLY PAID
NY	1,388,161.39 36-21823	2.2250% 1-4 1	30,886.59
		TOTAL	30,886.59

Total FUTA tax deposits are correct. However, adjustments to prior quarter liability have been included with a subsequent quarter's tax deposit.

We have filed the Annual 940 information.

**ANNUAL STATEMENT OF DEPOSITS & FILINGS**  
**\*\* TAX YEAR 2008 \*\***



**TAX FILING SERVICE**

TELESCENTS INC 98 PERFUME FRAGRANCENET  
DENNIS APFEL  
104 PARKWAY DRIVE SOUTH  
HAUPPAUGE NY 11788

STATEMENT DATE 02/21/09  
BR/COMPANY 96/TLD  
AGENT 005  
COMBO NO  
SHORT NAME  
FEDERAL ID: 11-3395304  
SIT-ID 113395304 8  
EFT-ID: 234857AAAA

**NEW YORK**

**SIT ANNUAL RECONCILIATION**

TOTAL GROSS WAGES ..... 5,871,574.76  
TOTAL SIT WITHHOLDING PER W-2S ..... 302,853.87  
TOTAL NUMBER OF EMPLOYEES ..... 314  
TOTAL NUMBER OF W-2S SUBMITTED ..... 314  
DEPOSIT FREQUENCY ..... 3 DAY DUE DAILY VIA EFT  
  
TOTAL FIT WITHHOLDING ..... 1,051,513.36  
TOTAL LOCAL WAGES ..... 26,925.97  
TOTAL NEW YORK CITY TAX WITHHELD . 626.79  
TOTAL YONKERS CITY TAX WITHHELD .. .00

ANNUAL FILING RESPONSIBILITY: ADP  
DEPOSIT DETAIL

QBU BATCH NBR 08/4/783

MONTH	DAY 01-07	DAY 08-15	DAY 16-22	DAY 23-LAST	TOTAL FOR MONTH	TOTAL FOR QUARTER
JAN	4,492.16	4,913.97	4,765.12	4,723.91	18,895.16	
FEB	4,715.16	9,823.78	4,851.69	4,891.41	24,282.04	
MAR	4,786.79	4,827.04	4,715.29	4,831.29	19,160.41	62,337.61
APR	4,871.55	5,819.51	5,795.99	5,792.52	22,279.57	
MAY	5,795.75	6,626.78	5,836.57	11,541.08	29,800.18	
JUN	5,735.51	5,771.58	5,696.03	5,698.66	22,901.78	74,981.53
JUL	5,608.94	5,679.44	5,647.44	5,605.98	22,541.80	
AUG	5,525.60	11,159.53	5,542.30	5,504.77	27,732.20	
SEP	5,567.09	5,658.25	5,617.96	5,682.55	22,525.85	72,799.85
OCT	5,669.20	5,634.96	5,666.79	11,733.60	28,704.55	
NOV	5,933.19	6,032.82	6,258.15	6,273.32	24,497.48	
DEC	8,210.98	10,059.05	10,303.03	11,586.58	40,159.64	93,361.67
TOTAL DEPOSITS						303,480.66
TOTAL WITHHOLDING PER W-2S						303,480.66
DIFFERENCE						.00

We have filed the Annual Reconciliation required by this state.

MASTER LEASE

ARTICLE I

Demise and Premises

ARTICLE II

Term

ARTICLE III

Rent and Payment

ARTICLE IV

"Sub-Tenant's Possession

ARTICLE V

Insurance

ARTICLE VI

Lien of "Master-Tenant"

ARTICLE VII

Construction and Mechanic's Liens

ARTICLE VIII

Alterations

ARTICLE IX

Repairs

ARTICLE X

Damage to Premises

ARTICLE XI

Eminent Domain

ARTICLE XII

Notices

ARTICLE XIII

Memorandum of Lease

ARTICLE XIV

Use

ARTICLE XV

Assignment, Subletting, etc.

ARTICLE XVI

"Master-Tenant's Warranty

ARTICLE XVII

Subordination

ARTICLE XVIII

Non-Liability of "Master-Tenant"

ARTICLE XIX

Indemnification of "Master-Tenant"

ARTICLE XX

Defaults and Remedies

ARTICLE XXI

Bankruptcy

DRAFT

ARTICLE XXII  
Service Contracts  
ARTICLE XXIII  
Access to Premises  
ARTICLE XXIV  
Signs  
ARTICLE XXV  
Security Deposit  
ARTICLE XXVI  
Premises "As Is"  
ARTICLE XXVII  
Financial Statements  
ARTICLE XXVIII  
Attornment  
ARTICLE XXIX  
End of Term  
ARTICLE XXX  
Intentionally Omitted  
ARTICLE XXXI  
Intentionally Omitted  
ARTICLE XXXII  
General Provisions  
ARTICLE XXXIII  
Definitions  
ARTICLE XXXIV  
Parking  
ARTICLE XXXV  
Compliance with Laws  
ARTICLE XXXVI  
Environmental Matters  
ARTICLE XXXVII  
Intentionally Omitted  
ARTICLE XXXVIII  
"Master-Tenant's" Insurance  
ARTICLE XXXIX  
Taxes and Impositions  
ARTICLE XL  
Utilities  
ARTICLE XLI  
Common Areas and Facilities/Charge for Operating Costs  
ARTICLE XLII  
Additional Rent/Escalations

DRAFT

THIS LEASE, dated as of the 15th day of December, 2009, between JASER REALTY LLC, a Limited Liability Company of the State of New York, having its principal office located at 104 Parkway Drive South, Hauppauge, New York 11788 (hereinafter designated as "Master-Tenant"), and FragranceNet.com, Inc. a Corporation of the State of Delaware, having an address at 104 Parkway Drive South, Hauppauge, New York 11788 (hereinafter designated as "Sub-Tenant").

WITNESSETH:

## ARTICLE I

### Demise and Premises

Section 1.01. Demise and Premises. "Master-Tenant" does hereby demise and lease to "Sub-Tenant", and "Sub-Tenant" does hereby take and hire from "Master-Tenant", those premises located at 900 Grand Blvd, Deer Park, NY comprising the entire building (the "Building") of +/- 128,000 square feet, the "Premises."

TO HAVE AND TO HOLD for the Term, as defined herein, and subject to the terms, covenants and conditions herein contained, which each of the parties hereto expressly covenants and agrees to keep, perform and observe.

## ARTICLE II

### Term

Section 2.01. Term. The term of this Lease (herein the "Term") shall be for a period of TEN (10) years plus One Month, commencing on or about December 15, 2009 or the date the Master-Tenant provides occupancy for the Premises with rent to commence on such occupancy.

## ARTICLE III

### Rent and Payment

Section 3.01. Rent During Term ("Basic Rent"). "Master-Tenant" reserves and "Sub-Tenant" covenants to pay to "Master-Tenant", without demand or notice, and without any setoff or deduction, net basic rental (herein the "Basic Rent") as follows:

SEE SCHEDULE "A"



Section 3.02. Payment of Rent. The Basic Rent and all additional rents and monies payable to "Master-Tenant" under this Lease shall be paid at the above address of "Master-Tenant" or at such other address as may be specified by "Master-Tenant" from time to time by notice given to "Sub-Tenant". Said rent shall be due and payable on or before the first (1st) day of each and every month during the entire Term of this Lease. With reference to each partial calendar month during the Term hereof, "Sub-Tenant" shall be liable for the payment of a fraction of the Basic Rent and all additional rents and monies payable hereunder, the numerator of which fraction shall be the number of days in said calendar month which are within the Term hereof and the denominator of which shall be the number of days in said calendar month.

#### ARTICLE IV

##### Sub-Tenant's Possession

Section 4.01. The taking of possession of the Premises by "Sub-Tenant" shall constitute acceptance by "Sub-Tenant" of the condition thereof.

#### ARTICLE V

##### Insurance

Section 5.01. "Sub-Tenant's" Insurance. Throughout the Term, "Sub-Tenant" shall, at its sole cost and expense:

- (a) Obtain and maintain in force Worker's Compensation Insurance as required by law;
- (b) Obtain and maintain Public Liability Insurance (issued by an insurance company licensed to do business in New York and reasonably acceptable to "Master-Tenant") covering the Premises in an amount per occurrence of TWO MILLION (\$2,000,000.00) DOLLARS combined single limit for bodily injury and property damage, and Five Hundred Thousand (\$500,000.00) DOLLARS for Personal Liability, which insurance shall name "Master-Tenant", the Agency (Babylon Industrial Development Agency) and the holder(s) of any mortgage(s) affecting the Premises as additional assureds thereunder; and
- (c) Obtain and maintain Fire and Extended Coverage on "Sub-Tenant's" personal property on the Premises and on any leasehold improvements which may be placed on or affixed to the Premises by "Sub-Tenant".

Section 5.02. Policies. "Sub-Tenant" shall, at all times during the Term, maintain in full force and effect and on deposit at "Master-Tenant's" office a certificate of insurance or a duplicate

original of the insurance policy for the coverages set forth in Section 5.01 of this Lease, together with evidence of payment of premium. Any such policy shall provide that it shall not be cancelable without at least ten (10) days' prior written notice to "Master-Tenant". If "Sub-Tenant" shall default in maintaining such insurance, "Master-Tenant" may, at its option and without waiving any of "Master-Tenant's" rights hereunder or releasing "Sub-Tenant" from any obligation hereunder, procure such insurance, and "Sub-Tenant" shall, on demand, reimburse "Master-Tenant", as additional rent, for the cost thereof with interest at the Lease Interest Rate (as hereinafter defined).

Section 5.03. Building Insurance. "Sub-Tenant" shall pay, as additional rent, the building insurance of the Master-Tenant to cover loss by any means including but not limited to fire, etc. and shall pay all costs, expenses, fines, penalties or damages which may be imposed upon "Master-Tenant" by reason of "Sub-Tenant's" failure to comply with the provisions of this Section 5.03 as set forth below. "Sub-Tenant" shall not keep anything in the Premises except as now or hereafter permitted by the Fire Department, Board of Fire Underwriters, Fire Insurance Rating Organization or other authority having jurisdiction, and then only in such manner and such quantity so as not to increase the premium for the "Master-Tenant's" insurance, nor shall "Sub-Tenant" use the Premises in a manner which will increase the rate for such insurance on the building or any other property located therein over that in effect at the commencement of "Sub-Tenant's" occupancy

Section 5.04. Right of Termination. If "Master-Tenant" shall be unable to procure fire and extended coverage insurance because of "Sub-Tenant's" use of the Premises, or violation of the provisions of Section 5.03 above, then "Master-Tenant" shall have the right to terminate this Lease upon written notice to "Sub-Tenant" specifying the reason for such termination, and Sub-Tenant shall be liable under the terms of this Lease.

Section 5.05. Waiver of Subrogation. "Master-Tenant" hereby releases "Sub-Tenant" from liability for damage or destruction to the land and Building of which the Premises form a part, and "Sub-Tenant" hereby releases "Master-Tenant" for liability for damage or destruction to any of its personal property or leasehold improvements, provided, however, that such release shall be in force and effect only in respect of damage or destruction covered by standard policies of fire insurance with extended coverage (as maintained by "Sub-Tenant" or "Master-Tenant" pursuant to this Lease), and such waiver shall be in effect solely to the extent of proceeds under any such policy. "Sub-Tenant" and "Master-Tenant" shall each cause any policies of insurance maintained by it with respect to the Premises and the personal property contained therein or appurtenant thereto and with respect to the building of which the Premises form a part, to contain a waiver by the insurers of any rights of subrogation. In the event that there is an extra premium for such waiver, the Sub-Tenant shall bear the cost.

Section 5.06 Additional Sub-Tenant's Insurance. The following insurance must be maintained by the Sub-Tenant and if any of the below provisions are at variance with any of the provisions in Section 5.02 through 5.06 then and in that event this Section shall apply:

At all times throughout the Lease Term, including, when indicated herein, during any Construction Period, the Sub-Tenant shall, at its sole cost and expense, maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by

businesses of like size and type and shall pay, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to:

a. Insurance against loss or damage by fire, lightning and other casualties customarily insured against, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the completed Improvements, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the Company, but in no event less than the principal amount of the Loan. During the Construction Period, such policy shall be written in the so-called "Builder's Risk Completed Value Non-Reporting Form" and shall contain a provision granting the insured permission to complete and/or occupy.

b. Workers' compensation insurance, disability benefits insurance and each other form of insurance which the Sub-Tenant or any permitted sublessee is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Sub-Tenant or any permitted sublessee who are located at or assigned to the Facility. This coverage shall be in effect from and after the Completion Date or on such earlier date as any employees of the Sub-Tenant, any permitted sublessee, any contractor or subcontractor first occupy the Facility.

c. Insurance protecting the Agency and the Master-Tenant against loss or losses from liability imposed by law or assumed in any written contract (including the contractual liability assumed by the Sub-Tenant under Section 8.2 hereof) or arising from personal injury, including bodily injury or death, or damage to the property of others, caused by an accident or other occurrence, with a limit of liability of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage); comprehensive automobile liability insurance covering all owned, non-owned and hired autos, with a limit of liability of not less than \$1,000,000 (combined single limit or equivalent for personal injury, including bodily injury or death, and property damage); and blanket excess liability coverage, in an amount not less than \$5,000,000 combined single limit or equivalent, protecting the Agency and the Mater-Tenant against any loss or liability or damage for personal injury, including bodily injury or death, or property damage. This coverage shall also be in effect during the Construction Period.

d. During the Construction Period (and for at least one year thereafter in the case of Products and Completed Operations as set forth below), the Sub-Tenant shall cause the general contractor to carry liability insurance of the type and providing the minimum limits set forth below: Workers' compensation and employer's liability with limits in accordance with applicable law. Comprehensive general liability providing coverage for:

Premises and Operations  
Products and Completed Operations  
Owners Protective  
Contractors Protective  
Contractual Liability  
Personal Injury Liability  
Broad Form Property Damage  
(including completed operations)

Explosion Hazard  
Collapse Hazard  
Underground Property Damage Hazard

Such insurance shall have a limit of liability of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).

(iii) Comprehensive auto liability, including all owned, non-owned and hired autos, with a limit of liability of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).

(iv) Excess "umbrella" liability providing liability insurance in excess of the coverages in (i), (ii) and (iii) above with a limit of not less than \$5,000,000.

e. A policy or policies of flood insurance in an amount not less than the principal amount of the Loan or the maximum amount of flood insurance available with respect to the Facility under the Flood Disaster Protection Act of 1973, as amended, whichever is less. This requirement will be waived upon presentation of evidence satisfactory to the Bank that no portion of the Land is located within an area identified by the U.S. Department of Housing and Urban Development as having special flood hazards.

## ARTICLE VI

### Lien of "Master-Tenant"

Section 6.01. Lien of "Master-Tenant". "Master-Tenant" is hereby granted a lien, in addition to any statutory lien or right to distraint that may exist, on all property of "Sub-Tenant" in or upon the Premises, to secure payment of the Basic Rent and all additional rent and the performance of the covenants and conditions of this Lease. Such lien is agreed to constitute a security interest and this Lease a Security Agreement within the meaning of Article 9 of the Uniform Commercial Code of New York and "Sub-Tenant" agrees to execute any and all financing statements to be filed with appropriate governmental agencies as evidence thereof, together with continuations thereof.

Section 6.02. Enforcement of Lien Rights. Upon default by "Sub-Tenant" beyond any grace period to cure same, "Master-Tenant" shall have the right, as agent of "Sub-Tenant", to take possession of any furniture, fixtures or other personal property of "Sub-Tenant" found in or about the Premises, and sell the same at public or private sale and to apply the proceeds thereof to the payment of any monies becoming due under this Lease, the "Sub-Tenant" hereby waiving the benefit of all laws exempting property from execution, levy and sale on distress or judgment. "Sub-Tenant" agrees to pay, as additional rent, all reasonable attorney's fees and other expenses incurred by "Master-Tenant" in enforcing its lien given above.

## ARTICLE VII

### Construction and Mechanic's Liens

Section 7.01. Construction and Mechanic's Liens Prohibited. "Sub-Tenant" shall not suffer any mechanic's notice of intention, mechanic's lien, construction lien claim, notice of unpaid balance and right to file a lien claim (collectively, "Lien Claims") to be filed against the Premises by reason of work, labor, services or materials performed for or furnished to "Sub-Tenant" or to anyone holding the Premises, or any part thereof, through or under "Sub-Tenant".

Section 7.02. "Master-Tenant's" Remedy for "Sub-Tenant's" Breach. If "Sub-Tenant" shall fail to remove or discharge any aforesaid Lien Claims within fourteen (14) days after notice or knowledge of the filing of same, then, in addition to all other rights of "Master-Tenant" hereunder or by law upon a default by "Sub-Tenant", "Master-Tenant" may, at its option, procure the removal or discharge of same. Any amount paid by "Master-Tenant" for such purpose, including all reasonable attorney's fees and other expenses therefor, together with interest thereon at the Lease Interest Rate (as hereinafter defined), shall become due and payable by "Sub-Tenant" to "Master-Tenant" as additional rent, and in the event of "Sub-Tenant's" failure to pay therefor within fifteen (15) days after demand, the same shall be added to and be due and payable with the next month's rent.

## ARTICLE VIII

### Alterations

Section 8.01. Alterations. "Sub-Tenant" shall make no changes in or to the Premises without "Master-Tenant's" prior written consent. Subject to the prior written consent of "Master-Tenant", and to the provisions of this Article, "Sub-Tenant" may make alterations, installations, additions or improvements which do not affect utility services or plumbing and electrical lines, in or to the interior of the Premises by using contractors or mechanics first approved in writing by "Master-Tenant". All fixtures, all electrical items and all paneling, partitions, railings and like installations, installed in the Premises at any time, either by "Sub-Tenant" or by "Master-Tenant" on "Sub-Tenant's" behalf, shall become the property of "Master-Tenant" and shall remain upon and be surrendered with the Premises unless "Master-Tenant", by notice to "Sub-Tenant" no later than thirty (30) days prior to the date fixed as the termination of this Lease or before sixty (60) days after the expiration of this Lease, elects to have them removed by "Sub-Tenant", in which event the same shall be removed from the Premises by "Sub-Tenant" forthwith. Nothing in this Article shall be construed to prevent "Sub-Tenant's" removal of trade fixtures, but upon removal of any such trade fixtures from the Premises or upon removal of other installations as may be required by "Master-Tenant", "Sub-Tenant" shall immediately and at its expense repair and restore the Premises to the condition existing prior to installation, and shall repair any damage to the Premises or the Building due to such removal. All property permitted or required to be removed by "Sub-Tenant" at the end of the Term remaining in the Premises after "Sub-Tenant's" removal shall be deemed abandoned and may be removed from the Premises by "Master-Tenant" at "Sub-Tenant's" expense, which right of

"Master-Tenant" shall survive the expiration of this Lease. "Sub-Tenant" shall, before making any alterations, additions, installations or improvements, obtain all permits, approvals and certificates required by any governmental or quasi-governmental bodies and (upon completion) certificates of final approval thereof and shall promptly deliver duplicates of all such permits, approvals and certificates to "Master-Tenant"; and "Sub-Tenant" agrees to carry such Worker's Compensation, General Liability, Personal and Property Damage Insurance as "Master-Tenant" may reasonably require. "Sub-Tenant" agrees to obtain and deliver to "Master-Tenant" written and unconditional waivers of Lien Claims upon the real property of which the Premises form a part, for all work, labor and services to be performed and materials to be furnished in connection with such work, signed by all contractors, subcontractors, materialmen and laborers who become involved in such work. The work shall be done in a good and workmanlike manner and in compliance with all applicable laws, ordinances, codes, governmental rules, regulations and requirements, and in accordance with the standards, if any, of the Board of Fire Underwriters the jurisdiction of which includes the Premises.

## ARTICLE IX

### Repairs

Section 9.01. Repairs. "Master-Tenant" shall make the necessary structural repairs to the roof and walls of the Building of which the Premises form a part unless occasioned by the acts of the Sub-Tenant. Except for the above and for what may otherwise be specifically provided for in this Lease, "Sub-Tenant" shall be responsible for all maintenance and repairs of and to the Premises, including but not limited to the following responsibilities: "Sub-Tenant" shall take good care of the Premises and the fixtures, appurtenances and systems in or affecting the Premises (including but not limited to plumbing, doors, painting, windows, electrical, heating and sprinkler and air conditioning, if any, and components thereof servicing the entire Building of which the Premises form a part, such as main power lines, water mains and general sewer lines), and shall make all repairs thereto or replace as and when needed to preserve them in good working order and condition, and shall maintain the Premises in a clean, neat and orderly condition. "Sub-Tenant" shall not permit or suffer the Premises to fall to such low temperature as would cause freezing of the water lines or sprinkler servicing the Premises; and, in default hereof, "Sub-Tenant" shall promptly effect and pay for all repairs the need for which shall arise from such freezing, and shall hold "Master-Tenant" harmless from any loss, damage or liability caused by or arising out of such freezing. Notwithstanding anything above to the contrary, all damage or injury to the Premises or to any other part of the Building, or to its fixtures, equipment and appurtenances, whether requiring structural or non-structural repairs, caused by or resulting from carelessness, omission, neglect or improper conduct of "Sub-Tenant", its servants, employees, invitees or licensees, shall be repaired promptly by "Sub-Tenant" at its sole cost and expense, to the reasonable satisfaction of "Master-Tenant" and in accordance with Section 8.01 hereinabove. "Sub-Tenant" shall also repair all damage to the Premises and to the Building of which the Premises form a part caused by the moving of "Sub-Tenant's fixtures, furniture or equipment. All of the aforesaid repairs shall be of quality or class at least equal to the original work or construction. If "Sub-Tenant" fails after ten (10) days' notice to proceed with due diligence to make repairs required to be made by "Sub-Tenant", the same may be made by "Master-Tenant", at "Master-Tenant's option (in which event "Master-Tenant"

shall not be liable for any injury to persons, damage to property or loss of business arising out of the making of such repairs) at the expense of "Sub-Tenant", and the expenses thereof incurred by "Master-Tenant" (together with interest at the Lease Interest Rate, as hereinafter defined) shall be collectible as additional rent within ten (10) days of demand therefor. There shall be no allowance to "Sub-Tenant" for a diminution of rental value and no liability on the part of "Master-Tenant" by reason of inconvenience, annoyance or injury to business arising from the making or failing to make by "Master-Tenant", "Sub-Tenant" or others, of any repairs, alterations, additions or improvements in or to the Premises or the fixtures, appurtenances or equipment thereof.

## ARTICLE X

### Damage to Premises

Section 10.01. Notice. If the Premises or any part thereof shall be damaged by fire or other casualty, "Sub-Tenant" shall give immediate notice thereof to "Master-Tenant", and this Lease shall continue in full force and effect except as hereinafter set forth.

Section 10.02. Partial Damage. Subject to Section 10.03 hereinbelow, if the Premises are partially damaged or rendered partially unusable by fire or other casualty, the damages thereto shall be repaired by "Master-Tenant" with all reasonable expedition, subject to delays due to adjustment of insurance claims, labor troubles and causes beyond "Master-Tenant's control.

Section 10.03. Substantial Damage. If the Premises are substantially damaged or rendered unusable or (whether or not the Premises are damaged in whole or in part) if the Building of which the Premises form a part shall be so damaged as, in "Master-Tenant's reasonable judgment, practically to require demolition or rebuilding thereof, then, in any of such events, "Master-Tenant" may elect to terminate this Lease by written notice to "Sub-Tenant" given within one hundred eighty (180) days after such fire or casualty, specifying a date for the expiration of this Lease, which date shall not be more than sixty (60) days after the giving of such notice, and upon the date specified in such notice the Term shall expire as fully and completely as if such date were the date set forth above for the expiration of this Lease, and "Sub-Tenant" shall forthwith quit, surrender and vacate the Premises, without prejudice, however, to "Master-Tenant's rights and remedies against "Sub-Tenant" under provisions of this Lease in effect prior to such termination, and any rent owing shall be paid up to such date, and any payments of rent made by "Sub-Tenant" which were on account of any period subsequent to such date shall be returned to "Sub-Tenant". Unless "Master-Tenant" shall serve a termination notice as provided for herein, "Master-Tenant" shall make the repairs and restorations with all reasonable expedition subject to delays due to adjustment of insurance claims, labor troubles and causes beyond "Master-Tenant's control, and this Lease shall continue in full force and effect. It is understood that there shall be no abatement of rent for any period of time during which the Premises shall be in a damaged condition, whether or not the Premises shall be partially or wholly unusable.

Section 10.04. "Sub-Tenant's Property. "Sub-Tenant" acknowledges that "Master-Tenant" will not carry insurance on "Sub-Tenant's furniture and/or furnishings or any fixtures or equipment,

improvements or appurtenances removable by "Sub-Tenant" and agrees that "Master-Tenant" will not be obligated to repair any damage thereto or replace same.

Section 10.05. Mortgages. It is understood and agreed that the provisions of this Article X are subject to the rights of mortgagees, if any, of the land and building of which the Premises form a part, and to the rights of mortgagees, if any, of "Master-Tenant's interest in the Lease.

## ARTICLE XI

### Eminent Domain

Section 11.01. Total Taking. In the event that any public authority or agency holding the power of eminent domain under applicable law shall at any time during the Term condemn, or acquire title in lieu of condemnation to, all or substantially all of the Premises, this Lease shall terminate and expire as of the date upon which title shall vest in such authority, and "Sub-Tenant" shall pay rent only to the time of such vesting of title.

Section 11.02. Partial Taking. If there shall be only a partial taking or condemnation as aforesaid totaling one-third (1/3) or less of the Building of which the Premises form a part and which shall not substantially prevent "Sub-Tenant's use of the Premises for purposes of its business, this Lease shall thereafter continue as to the untaken part and "Sub-Tenant" shall be entitled to a reduction in the Basic Rent in such proportion as "Master-Tenant" shall reasonably deem fair and equitable.

Section 11.03. Restoration by "Master-Tenant". If there shall be a partial taking and this Lease shall continue as to the remaining part of the Premises, "Master-Tenant", at its own expense and as promptly as practicable, shall restore such remaining part as nearly as may be practicable to its former condition, but only upon receipt of, and to the extent of, the condemnation award made on account of such partial taking.

Section 11.04. Award to "Master-Tenant". "Master-Tenant" reserves the exclusive right to negotiate with the condemning authority with respect to any proposed condemnation award, and all damages and compensation paid for the taking under the power of eminent domain, whether for the whole or a part of the Premises and whether by agreement or award, shall belong to and be the property of "Master-Tenant". "Sub-Tenant" hereby releases and disclaims any interest or right whatsoever in the award or compensation offered or paid by the condemning authority to the "Master-Tenant". There is expressly excluded from any right of compensation to the "Sub-Tenant", and "Sub-Tenant" expressly waives, any claim against the condemning authority for diminution in the value of the leasehold.

Section 11.05. Notice to "Sub-Tenant". "Master-Tenant" shall give prompt notice to "Sub-Tenant" of any eminent domain proceedings with respect to the Premises.



## ARTICLE XII

### Notices

Section 12.01. Notices. Every notice or demand required or permitted under this Lease shall, unless otherwise specifically provided herein, be given in writing and shall either be personally delivered to a principal of "Master-Tenant" or "Sub-Tenant", as the case may be, or sent by United States certified mail, return receipt requested, addressed by the party (or its attorney) or by overnight service, giving, making or sending the same to the other at the other's address first above given, or to such other address as either party may designate from time to time by a notice given to the other party. All mailed notices shall be effective upon mailing and all overnight service upon delivery to the party.

## ARTICLE XIII

### Memorandum of Lease

Section 13.01. Memorandum of Lease. "Sub-Tenant" shall not record this Lease, but if either party should desire to record a short form Memorandum of Lease setting forth only the parties, the Premises and the Term, such Memorandum of Lease shall be executed, acknowledged and delivered by both parties upon notice from either party.

## ARTICLE XIV

### Use

Section 14.01. Use. The Premises shall be used and occupied by "Sub-Tenant" for the distribution and warehousing of fragrance and related products, provided that same are not in violation of any law, statute, ordinance or regulation, and for no other purpose. "Sub-Tenant's" use of the Premises shall be in compliance with all applicable governmental laws, rules and regulations and ordinances, and other applicable codes, including, but not limited to, the requirements of the Occupational Safety and Health Administration and of any board of fire underwriters or like organization having jurisdiction over the Premises. "Sub-Tenant" shall not store, warehouse, handle, generate, dispose of or in any other way use hazardous substances, highly flammable material or red label items except as set forth above, anywhere on the Premises. "Sub-Tenant" represents that "Sub-Tenant's" Standard Industrial Classification number is .

## ARTICLE XV

### Assignment, Subletting, etc.

Section 15.01. Assignment, Subletting, etc. "Sub-Tenant" shall not sell, assign, mortgage, pledge or, in any manner, transfer or encumber this Lease or any estate or interest hereunder, or

sublet the Premises or any part thereof, without the previous written consent of "Master-Tenant" except that it may sublet a portion of the premises to Miller Apfel and Curran PLLC. In any of the events aforesaid, "Sub-Tenant" nevertheless shall remain primarily liable for the payment of the Basic Rent and all additional rents, and for the performance of "Sub-Tenant's other covenants and obligations hereunder. No consent to any assignment of this Lease or subletting of any or all of the Premises shall be deemed or be construed as a consent by "Master-Tenant" to any further or additional assignment or subletting. In the event of any assignment of this Lease, the assignee shall assume, by written recordable instrument reasonably satisfactory to "Master-Tenant", the due performance of all of "Sub-Tenant's obligations under this Lease. No assignment shall be valid or effective in the absence of such assumption. A true copy of such assignment and the original assumption agreement shall be delivered to "Master-Tenant" within ten (10) days of the effective date of such assignment.

Section 15.02. Transfer of Controlling Interest. The above prohibition against assignment of this Lease and subletting of the Premises shall be construed to prohibit any change or series of changes in the controlling interest of "Sub-Tenant", whether that change be effected by acquisition, merger, consolidation, change of controlling interest of stock or partnership interests or otherwise.

## ARTICLE XVI

### "Master-Tenant's Warranty

Section 16.01. Warranty. "Master-Tenant" warrants that it has the right to execute this Lease, and covenants that at the commencement of the Term, there will be no covenants, easements, restrictions or liens which would adversely affect "Sub-Tenant's use of the Premises for the purposes permitted hereunder. Notwithstanding the above, if "Master-Tenant" shall be unable to give possession of the Premises on the date of commencement of the Term, because of the holding over or retention of possession by any "Sub-Tenant", under Sub-Tenant" or occupant of the Premises, or because of the fact that a Certificate of Occupancy for the Premises has not been procured, or for any other reason not within "Master-Tenant's control, then, and in any of such events, "Master-Tenant" shall not be subject to any liability for failure to give possession on said date, and the validity of this Lease shall not be impaired under such circumstances, nor shall the same be construed in any way to extend the Term, but the rent payable hereunder shall be abated (provided "Sub-Tenant" is not responsible for the inability to obtain possession) until after "Master-Tenant" shall have given "Sub-Tenant" written notice that the Premises are substantially ready for "Sub-Tenant's occupancy.

## ARTICLE XVII

### Subordination

Section 17.01. Subordination to Mortgages. This Lease is hereby made and shall be subject and subordinate to all mortgages which may now or hereafter affect the Premises and the land and

Building of which the Premises form a part, and to all renewals, modifications, consolidations, replacements or extensions thereof.

Section 17.02. "Sub-Tenant's Certificate. Notwithstanding the automatic applicability, as to all current and future mortgages, of the subordination of this Lease, "Sub-Tenant" shall, upon request of "Master-Tenant", execute any instrument which may be deemed necessary or desirable by "Master-Tenant" to confirm such subordination or as otherwise required for mortgage financing or transfer of the Lease, including, but not limited to, certified financial statements and estoppel certificates executed and acknowledged to any mortgagee or transferee, or any proposed mortgage lender or transferee, including but not limited to certifications that this Lease is in full force and effect or, if not, in what respect it is not; that this Lease has not been modified, or the extent to which it has been modified; and that there are no existing defaults hereunder to the best of "Sub-Tenant's knowledge, or specifying the defaults, if any. If "Sub-Tenant" fails to respond after due notice within seven (7) days, it shall automatically constitute affirmation of the items contained in the estoppel statement.

## ARTICLE XVIII

### Non-Liability of "Master-Tenant"

Section 18.01. Non-Liability of "Master-Tenant". "Master-Tenant" shall not be responsible or liable to "Sub-Tenant" for any loss, damage or injury to person or property that may be occasioned by the acts or omissions of "Master-Tenant" or of persons occupying any property or space adjacent to or adjoining the Premises, or any part thereof, including, not in limitation of the foregoing, loss, damage or injury resulting to "Sub-Tenant" or to any other person or to any property of "Sub-Tenant" or of any other person, from water, gas, steam, fire or the bursting, stoppage or leakage of sewer or other pipes.

## ARTICLE XIX

### Indemnification of "Master-Tenant"

Section 19.01. Indemnification of "Master-Tenant". "Master-Tenant" shall not be liable or responsible for, and "Sub-Tenant" agrees to indemnify, defend and save "Master-Tenant" harmless from and against all liability and all losses, claims, damages, suits, actions, demands, costs and expenses, including reasonable attorney's fees and costs, arising out of and/or relating to the operation, maintenance, management and control of the Premises and/or in connection with (a) any injury or damage whatsoever caused to or by any person, including "Sub-Tenant", its employees, servants, guests, customers, invitees, contractors or agents, or to property, including "Sub-Tenant's property, arising out of any occurrence on or in the Premises; (b) any breach of this Lease by "Sub-Tenant"; (c) any act or omission of "Sub-Tenant" or of any person on the Premises, occurring in, on or about the Premises; or (d) any contest or proceeding brought by "Sub-Tenant" as may be provided for herein. The provisions hereof are not intended to abrogate the provisions of Section

5.05 hereinabove ("Waiver of Subrogation"). The provisions of this Section 19.01 shall survive the expiration or earlier termination of this Lease.

## ARTICLE XX

### Defaults and Remedies

Section 20.01. "Sub-Tenant's Defaults. If "Sub-Tenant" defaults in the timely payment of Basic Rent or any additional rent or sum herein reserved, as required in this Lease, or if "Sub-Tenant" defaults in compliance with any of the other covenants or conditions of this Lease and fails to cure such default, other than the payment of Basic Rent or any additional rent or sum herein reserved, within ten (10) days after the receipt of notice specifying the default, "Master-Tenant" may (a) cancel and terminate this Lease upon written notice to "Sub-Tenant" (whereupon the Term shall terminate and expire, and "Sub-Tenant" shall then quit and surrender the Premises to "Master-Tenant", but "Sub-Tenant" shall remain liable as hereinafter provided); and/or (b) at any time thereafter reenter and resume possession of the Premises as if this Lease had not been made, "Sub-Tenant" hereby waiving the service of any notice of intention to reenter or to institute legal proceedings to that end.

Section 20.02. Reentry by "Master-Tenant". If this Lease shall be terminated or if "Master-Tenant" shall be entitled to reenter the Premises and dispossess or remove "Sub-Tenant" under the provisions of Section 20.01 (either or both of which events are hereinafter referred to as a "Termination"), "Master-Tenant" or "Master-Tenant's agents or servants may immediately or at any time thereafter reenter the Premises and remove "Sub-Tenant", its agents, employees, servants, licensees and any sub tenant and other persons, firms or corporations, and all or any of its or their property therefrom, either by summary dispossess proceedings or by any suitable action or proceeding at law or by peaceable reentry or otherwise, without being liable to indictment, prosecution or damages therefor, and may repossess and enjoy the Premises, including all additions, alterations and improvements thereto.

Section 20.03. Effect of Termination. In case of a Termination, the Basic Rent and all other charges required to be paid by "Sub-Tenant" hereunder shall thereupon become due and shall be paid by "Sub-Tenant" up to the time of the Termination, and "Sub-Tenant" shall also pay to "Master-Tenant" all reasonable expenses which "Master-Tenant" may then or thereafter incur as a result of or arising out of a Termination, including but not limited to court costs, reasonable attorneys' fees, brokerage commissions and costs of terminating the tenancy of "Sub-Tenant", reentering, dispossessing or otherwise removing "Sub-Tenant", and restoring the Premises to good order and condition, and from time to time altering and otherwise preparing the same for reletting. Upon a Termination, "Master-Tenant" may, at any time and from time to time, relet the Premises, in whole or in part, either in its own name or as "Sub-Tenant's agent, for a term or terms which, at "Master-Tenant's option, may be for the remainder of the then current Term, or for any longer or shorter period.

Section 20.04. Damages. In addition to the payments required by Section 20.03 hereinabove, "Sub-Tenant" shall be obligated to, and shall, pay to "Master-Tenant" upon demand and at "Master-Tenant's" option:

(a) Liquidated damages in an amount which, at the time of the Termination, is equal to the excess, if any, of the then present amount of the installments of Basic Rent reserved hereunder, for the period which would otherwise have constituted the unexpired portion of the then current Term, over the then present rental value of the Premises for such unexpired portion of the then current Term; or

(b) Damages (payable in monthly installments), in advance, on the first day of each calendar month following the Termination, and continuing until the date originally fixed herein for the expiration of the then current Term in amounts equal to the excess, if any, of the sums of the aggregate expenses paid by "Master-Tenant" during the month immediately preceding such calendar month for all such items as, by the terms of this Lease, are required to be paid by "Sub-Tenant", plus an amount equal to the installment of Basic Rent which would have been payable by "Sub-Tenant" hereunder in respect to such calendar month, had this Lease not been terminated, over the sum of rents, if any, collected by or accruing to "Master-Tenant" in respect to such calendar month pursuant to a reletting or to any holding over by any sub tenant of "Sub-Tenant".

Section 20.05. No Obligation to Relet. "Master-Tenant" shall in no event be liable for failure to relet the Premises, or in the event that the Premises are relet, for failure to collect rent due under such reletting; and in no event shall "Sub-Tenant" be entitled to receive any excess of the rents received from such reletting over the sums payable by "Sub-Tenant" to "Master-Tenant" hereunder, but such excess shall be credited to the unpaid rentals due hereunder, and to the expenses of reletting and preparing for reletting as provided herein.

Section 20.06. Successive Suits. Suit or suits for the recovery of damages hereunder, or for any installments of rent, may be brought by "Master-Tenant" from time to time at its election, and nothing herein contained shall be deemed to require "Master-Tenant" to postpone suit until the date when the Term would have expired if it had not been terminated under the provisions of this Lease, or under any provision of law, or had "Master-Tenant" not reentered into or upon the Premises.

Section 20.07. Acceleration. Anything to the contrary hereinbefore notwithstanding, "Master-Tenant" shall have the option to accelerate all future rentals due and hold "Sub-Tenant" responsible, in advance, for the aggregate "damages" (as described in this Article XX) to be suffered by "Master-Tenant" during the remainder of the then current Term or renewal term, as well as damages covering any renewal term, the option for which shall have been exercised by "Sub-Tenant".

Section 20.08. Late Fee. "Master-Tenant", at its option, in addition to any and all remedies available to it, shall have the right to charge reasonable legal fees, court costs necessary to collect late rental and a fee for any payment of rent received more than TEN (10) days after the due date thereof, which fee shall be FIVE (5%) percent per month in the amount of such overdue rent. In addition, in the event that any payment required to be made by "Sub-Tenant" to "Master-Tenant"

pursuant to this Lease is not received within TEN (10) days of its due date, interest shall accrue upon said payment at the Lease Interest Rate from said due date until said payment is received by "Master-Tenant", which interest shall be payable simultaneously with said payment.

Section 20.09. Waiver of Redemption. "Sub-Tenant" hereby waives all rights of redemption to which "Sub-Tenant" or any person claiming under "Sub-Tenant" might be entitled, after an abandonment of the Premises, or after a surrender and acceptance of the Premises and the "Sub-Tenant's leasehold estate, or after a dispossession of "Sub-Tenant" from the Premises, or after a termination of this Lease, or after a judgment against "Sub-Tenant" in an action in ejectment, or after the issuance of a final order or warrant of dispossession in a summary proceeding, or in any other proceeding or action authorized by any rule of law or statute now or hereafter in force or effect.

## ARTICLE XXI

### Bankruptcy

Section 21.01. Bankruptcy, Insolvency, etc. If at any time after the date of this Lease (whether prior to the commencement of or during the Term) (a) any proceedings in bankruptcy, insolvency or reorganization shall be instituted against "Sub-Tenant" pursuant to any Federal or State law now or hereafter enacted, or any receiver or trustee shall be appointed of all or any portion of "Sub-Tenant's business or property, or any execution or attachment shall issue against "Sub-Tenant" or any of "Sub-Tenant's business or property or against the leasehold estate created hereby, and any of such proceedings, process or appointment are not discharged and dismissed within thirty (30) days from the date of such filing, appointment or issuance; or (b) "Sub-Tenant" shall be adjudged a bankrupt or insolvent, or "Sub-Tenant" shall make an assignment for the benefit of creditors, or "Sub-Tenant" shall file a voluntary petition in bankruptcy or petition for (or enter into) an arrangement for reorganization, composition or any other arrangement with "Sub-Tenant's creditors under any Federal or State law now or hereafter enacted, or this Lease or the estate of "Sub-Tenant" herein shall pass to or devolve upon, by operation of law or otherwise, anyone other than "Sub-Tenant" (except as herein provided), the occurrence of any one of such contingencies shall be deemed to constitute and shall be construed as a repudiation by "Sub-Tenant" of "Sub-Tenant's obligations hereunder and shall cause this Lease ipso facto to be cancelled and terminated, without thereby releasing "Sub-Tenant"; and upon such termination, "Master-Tenant" shall have the immediate right to reenter the Premises and to remove all persons and property therefrom and this Lease shall not be treated as an asset of "Sub-Tenant's estate and neither "Sub-Tenant" nor anyone claiming by, through or under "Sub-Tenant" by virtue of any law or any order of any Court shall be entitled to possession of the Premises or to remain in possession thereof. Upon the termination of this Lease, as aforesaid, "Master-Tenant" shall have the right to retain as partial damages, and not as a penalty, any prepaid rents deposited by "Sub-Tenant" hereunder, and "Master-Tenant" shall also be entitled to exercise such rights and remedies to recover from "Sub-Tenant" as damages such amounts as are specified in Article XX hereof. As used in this Article XXI, the term "Sub-Tenant" shall be deemed to include "Sub-Tenant" and its successors and assigns and the guarantor(s), if any, of "Sub-Tenant's obligations under this Lease.

## ARTICLE XXII

### Service Contracts

Section 22.01. The Sub-Tenant shall at all times have in place a service contract for the mechanical systems and sanitary systems such as heating, air conditioning etc. as long as same is procurable but shall nevertheless be responsible for any and all repairs and/or replacements thereto.

## ARTICLE XXIII

### Access to Premises

Section 23.01. "Master-Tenant's Right of Access. "Sub-Tenant" shall permit "Master-Tenant" or its agents to enter the Premises at any time during business hours for the purpose of inspecting or showing the Premises. "Sub-Tenant" shall in no way interfere with "Master-Tenant's" right to enter, inspect and show the Premises. "Sub-Tenant" shall, upon its being given notice of "Master-Tenant's" desire or intent to enter, inspect and/or show the Premises, and/or within one year prior to the expiration of the Term or any renewal term, permit the usual "To Let" and "For Rent" signs to be placed at reasonable locations on the Premises and to remain thereon without hindrance and molestation. "Master-Tenant" and/or its agents and third party designees shall also have the right, but not the obligation, to enter the Premises at reasonable times to run utility, plumbing or sewer lines, conduits, ducts and the like, over, under or through the Premises, and to make repairs and to conduct environmental sampling and/or remediation of the Premises.

## ARTICLE XXIV

### Signs

Section 24.01. Erection of Signs. "Sub-Tenant" shall have the right, with the prior written consent of "Master-Tenant", to erect, at the main entrance to the Premises, signs for advertising purposes in connection with its business at the Premises. All signs shall comply with applicable governmental rules and regulations, and "Sub-Tenant" shall remove such signs at the expiration of the Term or sooner termination of this Lease, as the case may be, and restore the sign area to its original condition.

Section 24.02. Repair of Damages. "Sub-Tenant" shall be responsible for any damage caused to the Premises or the Building by the erection or maintenance on the Premises of said signs, and any damage so caused shall be repaired forthwith at "Sub-Tenant's" sole cost and expense. In the event any sign erected by "Sub-Tenant" is removed during the Term or at the expiration or earlier termination thereof, "Sub-Tenant" shall, at its sole cost and expense, repair any damage whatsoever caused by the removal.

## ARTICLE XXV

### Security Deposit

Section 25.01. Security Deposit. "Sub-Tenant" has this day deposited with "Master-Tenant" the sum of \_\_\_\_\_ (\$\_\_\_\_\_) DOLLARS as security for the payment of the rent due hereunder and the full and faithful performance by "Sub-Tenant" of the covenants and conditions on the part of "Sub-Tenant" to be performed. Said sum shall be returned to "Sub-Tenant", without interest, after the expiration of the Term, provided that "Sub-Tenant" has fully and faithfully performed all such covenants and conditions and is not in arrears in rent. "Master-Tenant" may, if it so elects, have recourse to such security to make good any default by "Sub-Tenant", in which event "Sub-Tenant" shall, on demand, promptly restore said security to its original amount. "Master-Tenant" shall assign or transfer said security for the benefit of "Sub-Tenant", to any subsequent owner or holder of "Master-Tenant's" interest in this Lease, in which case such assignee or transferee shall become liable for the repayment thereof as herein provided, and the assignor or transferor shall be deemed to be released by "Sub-Tenant" from all liability to return such security. This provision shall be applicable to every assignment or transfer of "Master-Tenant's" interest in this Lease and shall in no way be deemed to permit "Master-Tenant" to retain the security after termination of "Master-Tenant's" ownership of such interest. "Sub-Tenant" shall not mortgage, encumber or assign said security without the prior written consent of "Master-Tenant". The Security Deposit shall at all times equal to One Month's Basic Rent, and as Basic Rent increases from time to time, "Sub-Tenant" shall immediately deposit with "Master-Tenant" such amounts as shall be necessary for the Security Deposit to equal ONE (1) months' Basic Rent.

## ARTICLE XXVI

### Premises "As Is"

Section 26.01. "As Is". Neither "Master-Tenant" nor "Master-Tenant's" agents have made any representations or promises with respect to the physical condition of the Building of which the Premises form a part, the land upon which such Building is erected or the Premises, the rents, leases, expenses of operation or any other matter or thing affecting or related to the Premises, except as herein expressly set forth, and no rights, easements or licenses are acquired by "Sub-Tenant" by implication or otherwise, except as herein expressly set forth. "Sub-Tenant" has inspected the Building and the Premises, has had the opportunity to conduct environmental, engineering and/or surveying tests, and is thoroughly acquainted with the condition of the Premises, and agrees to take the same "as is" and acknowledges that the taking of possession of the Premises by "Sub-Tenant" shall be conclusive evidence that the Premises and the Building of which the Premises form a part were in good and satisfactory condition at the time such possession was so taken.



## ARTICLE XXVII

### Financial Statements

Section 27.01. Financial Statements. If requested by "Master-Tenant", "Sub-Tenant" shall furnish "Master-Tenant" annually, within thirty (30) days after the end of each fiscal year of "Sub-Tenant", with a copy of its annual statement (prepared by an independent Certified Public Accountant), including balance sheet and statement of profit and loss. It is agreed that "Master-Tenant" may deliver a copy of said statement to its mortgagee, but otherwise "Master-Tenant" shall treat such statement and information contained therein as confidential.

## ARTICLE XXVIII

### Attornment

Section 28.01. Attornment. "Sub-Tenant" agrees that in the event of a transfer or assignment of the Premises, the Building and/or the land of which the Premises form a part, and/or "Master-Tenant's" interest in this Lease, or in the event any proceedings are brought for the foreclosure of or for the exercise of any power of sale under any mortgage constituting a lien upon the Premises, to attorn to and to recognize such transferee, assignee, or mortgagee, as "Master-Tenant" under this Lease. The foregoing provisions of this Section shall be self-operative and no further instrument shall be required to give effect to said provisions. "Sub-Tenant", however, agrees, at the request of the party to which it has attorned, to execute, acknowledge and deliver without charge, from time to time, instruments acknowledging such attornment, and to execute, acknowledge and deliver such other documents, including estoppel certificates and certified financial statements, as may reasonably be requested by such party.

## ARTICLE XXIX

### End of Term

Section 29.01. Condition of Premises. "Sub-Tenant" shall, on the last day of the Term or renewal term, as the case may be, or upon the earlier termination of this Lease, peaceably and quietly surrender and deliver up to "Master-Tenant" the Premises broom-clean, with the Premises and all equipment in or appurtenant thereto, in as good condition and repair as when delivered to "Sub-Tenant".

## ARTICLE XXX

INTENTIONALLY OMITTED

## ARTICLE XXXI

INTENTIONALLY OMITTED

## ARTICLE XXXII

### General Provisions

Section 32.01. No Waste. "Sub-Tenant" covenants and agrees not to do or suffer any waste, damage or injury to the Premises or the fixtures and equipment therein.

Section 32.02. "Master-Tenant's Liability. If "Master-Tenant" shall breach any of the provisions hereof, "Master-Tenant's liability shall in no event exceed "Master-Tenant's interest in the Premises as of the date of "Master-Tenant's breach; and "Sub-Tenant" expressly agrees that any judgment or award which it may obtain against "Master-Tenant" shall be recoverable and satisfied solely out of the right, title and interest of "Master-Tenant" in and to the Premises and that "Sub-Tenant" shall have no rights against the members, partners, general and limited, of "Master-Tenant" or rights of lien or levy against any other property of "Master-Tenant" (or of any person or entity comprising "Master-Tenant"), nor shall any other property or assets of "Master-Tenant" be subject to levy, execution or other enforcement proceedings for the collection of any such sums or satisfaction of any such judgment or award.

Section 32.03. Partial Invalidity. If any term or provision of this Lease or the application thereof to any party or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

Section 32.04. No Waiver. One or more waivers by either party of the obligation of the other to perform any covenant or condition shall not be construed as a waiver of a subsequent breach of the same or any other covenant or condition. The receipt of rent by the "Master-Tenant", with knowledge of any breach of this Lease by "Sub-Tenant" or any default by "Sub-Tenant" in the observance or performance of any of the conditions or covenants of this Lease, shall not be deemed to be a waiver of any provision of this Lease. Neither the acceptance of the keys to the Premises nor any other act or thing done by "Master-Tenant" or any agent or employee during the Term shall be deemed to be an acceptance of a surrender of the Premises, excepting only an agreement, in writing, signed by the "Master-Tenant" accepting or agreeing to accept such a surrender.

Section 32.05. Number and Gender. 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, when the context requires same.

Section 32.06. Successors and Assigns. The terms, covenants and conditions herein contained shall be binding upon and inure to the benefit of the respective parties and their successors and assigns.

Section 32.07. Article and Marginal Headings. The article and marginal headings herein are intended for convenience in finding the subject matters, and are not to be used in determining the intent of the parties.

Section 32.08. Entire Agreement. This instrument contains the entire and only agreement between the parties, and no oral statements or representations or prior written matter not contained or referred to in this instrument shall have any force or effect. This Lease shall not be modified in any way or terminated by mutual agreement except by a writing executed by both parties.

Section 32.09. Obligations also Covenants. Whenever in this Lease any words of obligation or duty are used, such words or expressions shall have the same force and effect as though made in the form of covenants.

Section 32.10. Cost of Performing Obligations. Unless otherwise specified in this Lease, the respective obligations of the parties to keep, perform and observe any terms, covenants or conditions of this Lease shall be at the sole cost and expense of the party so obligated.

Section 32.11. Remedies Cumulative. The specified remedies to which the "Master-Tenant" or "Sub-Tenant" 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 the "Master-Tenant" or "Sub-Tenant" may be lawfully entitled in case of any breach or threatened breach of any provision of this Lease.

Section 32.12. Holding Over. If "Sub-Tenant" holds over after the expiration or earlier termination of this Lease, and if "Sub-Tenant" is not otherwise in default hereunder, such holding over shall not be deemed to create an extension of the Term, but such occupancy shall be deemed to create a month-to-month tenancy at two hundred percent (200%) of the Basic Rent, and on the same terms and conditions (except as the same may be then inapplicable) as are in effect on the date of said expiration or earlier termination.

Section 32.13. Force Majeure. The period of time during which either party hereto is prevented from performing any act required to be performed under this Lease by reason of fire, catastrophe, labor difficulties, strikes, lockouts, civil commotion, acts of God or of the public enemy, governmental prohibitions or preemptions, embargoes, inability to obtain materials or labor by reason of governmental regulations or prohibitions, or other events beyond the reasonable control of "Master-Tenant" or "Sub-Tenant", as the case may be, shall be added to the time for performance of such act, and neither party shall be liable to the other or in default under this Lease as the result thereof. The provisions of this Section shall not apply to or in any manner extend or defer the time for any obligations to make payment of monies required of either party hereunder.

Section 32.14. Vacancy or Abandonment. In the event that the Premises shall become vacant as the result of being vacated or abandoned by "Sub-Tenant" during the Term, "Master-Tenant" may reenter the same, either by peaceable reentry or otherwise, without being liable to prosecution therefor, and relet the Premises as agent of "Sub-Tenant" and receive the rent therefor and apply the same first to payment of such expenses as "Master-Tenant" may incur in reentering, and then to payment of rent due under this Lease. In addition, such vacancy or abandonment shall constitute a default under Section 20.01 of this Lease, entitling "Master-Tenant" to the exercise of all remedies specified in such Section or otherwise allowed by law.

Section 32.15. Governing Law. The interpretation and validity of this Lease shall be governed by the substantive law of New York.

Section 32.16. Brokerage. "Master-Tenant" and "Sub-Tenant" represent that, there was no broker involved in this Lease procurement, and neither party has had any dealing with or entered into agreement with any broker in connection with this Lease. Each party shall indemnify and hold harmless the other from all loss, cost or expense of any nature, including reasonable attorney's fees, arising out of a misrepresentation by such indemnifying party. Such indemnification shall survive the expiration or earlier termination of this Lease.

Section 32.17. Floor Loads. "Sub-Tenant" shall not place a load upon any floor of the Premises exceeding the floor load per square foot area which it was designed to carry and which is allowed by law. "Master-Tenant" reserves the right to prescribe the weight and position of all safes, business machines and mechanical equipment in the Premises. Such installations shall be placed and maintained by "Sub-Tenant", at "Sub-Tenant's expense, in settings sufficient, in "Master-Tenant's judgment, to absorb and prevent vibration, noise and annoyance.

Section 32.18. Waiver of Jury Trial. IT IS MUTUALLY AGREED BY AND BETWEEN "MASTER-TENANT" AND "SUB-TENANT" THAT THE RESPECTIVE PARTIES HERETO SHALL, AND THEY HEREBY DO, WAIVE THE RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF "MASTER-TENANT" AND "SUB-TENANT", "SUB-TENANT'S USE OR OCCUPANCY OF THE PREMISES, AND ANY EMERGENCY STATUTORY OR ANY OTHER STATUTORY REMEDY. IT IS FURTHER MUTUALLY AGREED THAT IN THE EVENT "MASTER-TENANT" COMMENCES ANY SUMMARY PROCEEDING FOR NONPAYMENT OF RENT, "SUB-TENANT" WILL NOT INTERPOSE ANY COUNTERCLAIM OF ANY NATURE OR DESCRIPTION IN ANY SUCH PROCEEDING.

Section 32.19. No Option. For the convenience of "Sub-Tenant", this Lease may be submitted to "Sub-Tenant" prior to its execution by or on behalf of "Master-Tenant", but such submission shall not constitute an offer or an option, and this Lease shall not bind "Master-Tenant" in any manner whatsoever unless and until this Lease shall have been signed and delivered on behalf of "Master-Tenant".

Section 32.20. Modification of Lease Terms. "Sub-Tenant" shall enter into any modification of the terms of this Lease requested by any bona fide institutional lender of "Master-Tenant" to facilitate mortgaging, provided that such modification shall not alter the configuration or size of the Premises, the Basic Rent, additional rent or Term hereof. Not in limitation of the foregoing, it is agreed that if requested by any lender, "Sub-Tenant" shall enter into an agreement with "Master-Tenant" or such lender, as requested, to the effect that this Lease shall not be modified or surrendered, nor rent prepaid, without the consent of such lender.

Section 32.21. Restrictions on "Sub-Tenant".

(a) Trash. "Sub-Tenant" shall store and dispose of all trash and garbage in suitable containers and locate same in suitable areas as "Master-Tenant" may designate from time to time. "Sub-Tenant" shall not burn any paper, trash or garbage in or about the Premises.

(b) Infestation. "Sub-Tenant" shall keep the Premises in a clean and sanitary condition, free from vermin and escaping offensive odors.

(c) Plumbing Facilities. "Sub-Tenant" shall not use or permit others to use any plumbing facilities in the Premises or the common areas for any purpose other than that for which they were constructed or to dispose of any damaging or injurious substance or any grease or garbage therein.

(d) Obstruction. "Sub-Tenant" shall not obstruct or permit others to obstruct any entrances to the Building of which the Premises form a part, or the halls, stairs, doors, or loading facilities thereof.

(e) Storage. "Sub-Tenant" shall not store any materials, equipment, parts, pallets or any other items used in its business outside the Premises.

Section 32.22. Quiet Enjoyment. Upon the payment of the Basic Rent and all additional rents and sums herein reserved and due and upon the due performance of all of the terms, covenants and conditions herein contained on "Sub-Tenant's" part to be kept and performed, "Sub-Tenant" shall and may at all times during the Term peaceably and quietly enjoy the Premises, subject to the terms of this Lease.

Section 32.23. Mortgagee's Notice and Opportunity to Cure. "Sub-Tenant" agrees to give any mortgagees, by registered mail, a copy of any notice of default served upon "Master-Tenant", provided that, prior to such notice, "Sub-Tenant" has been notified in writing of the address of such mortgagees. "Sub-Tenant" further agrees that, if "Master-Tenant" shall have failed to cure such default within the time provided for in this Lease, then the mortgagees shall have an additional thirty (30) days within which to cure such default, or if such default cannot be cured within that time, then such additional time as may be necessary, if within such thirty (30) days, any mortgagee has commenced and is diligently pursuing the remedies necessary to cure such default (including but not limited to commencement of foreclosure proceedings if necessary to effect such cure), in which event this Lease shall not be terminated while such remedies are being so diligently pursued.

Section 32.24. Corporate Authority. If "Sub-Tenant" is a corporation, "Sub-Tenant" represents and warrants that this Lease and the undersigned's execution of this Lease has been duly authorized and approved by the corporation's Board of Directors. The undersigned officers and representatives of the corporation executing this Lease on behalf of the corporation represent and warrant that they are officers of the corporation with authority to execute this Lease on behalf of the corporation, and within fifteen (15) days of execution hereof, "Sub-Tenant" will provide "Master-Tenant" with a corporate resolution confirming the aforesaid.

Section 32.25. "Sub-Tenant's Access. "Sub-Tenant" shall be entitled to 24-hour, seven (7) day a week access to the Premises.

Section 32.26. Rules and Regulations. "Master-Tenant" may, from time to time, promulgate additional reasonable rules and regulations for the health, safety and welfare of all of the "Sub-Tenant's of the Building of which the Premises are a part, including, but not limited to, use of any common areas and facilities, and "Sub-Tenant" agrees that such rules and regulations shall, upon notice to "Sub-Tenant", automatically be incorporated herein as if fully set forth herein.

Section 32.27. Triple Net Lease. The Basic Rent specified in this Lease shall be net to "Master-Tenant" in each year during the Term of this Lease. Accordingly, "Sub-Tenant" shall pay, as Additional Rent hereunder, "Sub-Tenant's Pro Rata Share (which is 100%) of all Real Property Taxes and assessments, insurance, utilities, repairs, Operating Costs, snow removal and all other costs, expenses and obligations of every kind relating to the Premises and the Building which may arise, accrue or become due during the Term of this Lease. "Sub-Tenant" hereby indemnifies and holds "Master-Tenant" harmless from and against any and all such costs, expenses and obligations.

### ARTICLE XXXIII

#### Definitions

Section 33.01. "Reenter and Reentry." The terms "reenter" and "reentry", as used in this Lease, are not restricted to their technical, legal meaning.

Section 33.02. "'Master-Tenant'". The term "'Master-Tenant'", as used in this Lease, means only the holder, for the time being, of "Master-Tenant's interest in the Premises so that in the event of any transfer of "Master-Tenant's interest in the Premises, "Master-Tenant" shall be and hereby is entirely freed and relieved of all obligations of "Master-Tenant" hereunder accruing after such transfer, and it shall be deemed without further agreement between the parties that such grantee, transferee or assignee has assumed and agreed to observe and perform all obligations of "Master-Tenant" hereunder arising during the period that it is the holder of "Master-Tenant's interest hereunder.

Section 33.03. "Lease Interest Rate". The term "Lease Interest Rate", as used in this Lease, shall mean interest at the then current "prime" plus three (3%) percent rate of interest charged by KEY BANK, to its commercial customers.

Section 33.04. "Additional Rent". All costs and charges of whatever nature to be paid by "Sub-Tenant" under this Lease, whether to be made to "Master-Tenant" or to any other party, shall be deemed additional rent, whether or not expressly so stated elsewhere in this Lease.

Section 33.05. "'Sub-Tenant's Pro Rata Share". The term "'Sub-Tenant's Pro Rata Share", as it appears in this Lease, shall be ONE HUNDRED (100%) percent.

#### ARTICLE XXXIV

##### Parking

Section 34.01. Parking. "Sub-Tenant" shall have the non-exclusive privilege to use all unassigned parking spaces in the common parking areas for the parking of "Sub-Tenant's and its employees' motor vehicles.

#### ARTICLE XXXV

##### Compliance with Laws

Section 35.01. Compliance with Laws. "Sub-Tenant" shall, at "Sub-Tenant's sole expense, promptly execute and comply with all requirements of all laws, orders, county and municipal authorities and any board of fire underwriters or similar organization having jurisdiction over the Premises, concerning the Premises and/or the use and occupancy thereof, including but not limited to all requirements of the Occupational Safety and Health Administration, and "Sub-Tenant" shall not make any claim against "Master-Tenant" for any expense or damages resulting from such execution and compliance. "Sub-Tenant" shall also comply with ISRA, as hereinafter defined, and shall do all things and execute all documents necessary for said compliance including, but not limited to, the submission to the New York Department of Environmental Protection ("DEP") of all necessary documentation upon the termination of this Lease, the termination of the use set forth in Section 14.01 hereof, or the conveyance of title to the Premises.

#### ARTICLE XXXVI

##### Environmental Matters

##### Section 36.01. Environmental Matters.

(a) If "Sub-Tenant" receives any notice of the happening of any event involving the use, spill, discharge or cleanup of any hazardous or toxic substances or waste, or any oil or pesticide on or about the Premises or into the sewer, septic system or waste treatment system

servicing the Premises (any such event is hereinafter referred to as a "Hazardous Discharge") or of any complaint, order, citation, or notice with regard to air emissions, water discharges, noise emissions or any other environmental, health or safety matter affecting the "Sub-Tenant" (an "Environmental Complaint") from any person or entity, including the DEP and the United States Environmental Protection Agency ("EPA"), then the "Sub-Tenant" shall give immediate oral or written notice of same to the "Master-Tenant", detailing all relevant facts and circumstances.

(b) Without limitation of the foregoing, "Master-Tenant" shall have the right, but not the obligation, to exercise any of its rights as provided in Article XX of this Lease or to enter onto the Premises or to take such actions as it deems necessary or advisable to clean up, remove, resolve or minimize the impact of or otherwise deal with any Hazardous Discharge or Environmental Complaint upon its receipt of any notice from any person or entity, including without limitation the DEP and EPA, asserting the happening of a Hazardous Discharge or an Environmental Complaint on or pertaining to the Premises. All costs and expenses incurred by "Master-Tenant" in the exercise of any such rights shall be deemed to be additional rent hereunder and shall be payable by the "Sub-Tenant" to the "Master-Tenant" upon demand.

(c) The occurrence of any of the following events shall constitute an Event of Default under this Lease:

(i) If "Master-Tenant" receives its first notice of a Hazardous Discharge or an Environmental Complaint, of which "Sub-Tenant" has knowledge, or should reasonably have knowledge, on or pertaining to the Premises, other than from "Sub-Tenant", and "Master-Tenant" does not receive a notice (which may be given in any oral or written form, provided same is followed with all due dispatch by written notice given by certified mail, return receipt requested) of such Hazardous Discharge or Environmental Complaint from "Sub-Tenant" within twenty-four (24) hours of the time "Master-Tenant" first receives said notice other than from "Sub-Tenant"; or

(ii) If the DEP, EPA or any other state or federal agency asserts a claim against "Sub-Tenant", the Premises or "Master-Tenant" for damages or cleanup costs related to a Hazardous Discharge or an Environmental Complaint on or pertaining to the Premises, provided, however, such claim shall not constitute a default if, within five (5) days of notice to "Sub-Tenant" of the occurrence giving rise to the claim:

(A) "Sub-Tenant" can prove to "Master-Tenant's" satisfaction that "Sub-Tenant" has commenced and is diligently pursuing either: (x) cure or correction of the event which constitutes the basis for the claim, and continues diligently to pursue such cure or correction to completion, or (y) proceedings for an injunction, a restraining order or other appropriate emergent relief preventing such agency or agencies from asserting such claim, which relief is granted within ten (10) days of the occurrence giving rise to the claim and the emergent relief is not thereafter dissolved or reversed on appeal; and

(B) In either of the foregoing events, "Sub-Tenant" has posted a bond, letter of credit or other security satisfactory in form, substance and amount to "Master-



Tenant” and the agency or entity asserting the claim to secure the proper and complete cure or correction of the event which constitutes the basis for the claim.

(d) In the event of “Sub-Tenant’s failure to comply in full with this Article, “Master-Tenant” may, at its option, perform any or all of “Sub-Tenant’s obligations as aforesaid and all costs and expenses incurred by “Master-Tenant” in the exercise of this right shall be deemed to be additional rent payable on demand.

(e) This Article shall survive the expiration or sooner termination of this Lease.

## ARTICLE XXXVII

### INTENTIONALLY OMITTED

## ARTICLE XXXVIII

### “Master-Tenant’s Insurance

#### Section 38.01. “Master-Tenant’s Insurance.

“Master-Tenant” shall maintain fire and extended coverage and general liability insurance on the Building of which the Premises form a part. “Sub-Tenant” shall pay to “Master-Tenant”, as additional rent, within ten (10) days of demand therefor, its Pro Rata Share of the amount of insurance premiums payable by “Master-Tenant”. “Sub-Tenant” shall also pay, as additional rent, all costs, expenses, fines, penalties or damages which may be imposed upon “Master-Tenant” by reason of “Sub-Tenant’s failure to comply with the provisions of this Section 38.01.

## ARTICLE XXXIX

### Taxes and Impositions

#### Section 39.01. Real Estate Taxes and Impositions.

As additional rent hereunder, “Sub-Tenant” shall reimburse to “Master-Tenant”, upon demand or in accordance with Section 39.03 hereinbelow, at “Master-Tenant’s option, all of the Real Property Taxes (as hereinafter defined) and assessments whether special, for improvements or otherwise, levied or assessed against the land and Building of which the Premises form a part.

#### Section 39.02. Definition.

The term "Real Property Taxes" means all real property taxes currently in existence on the land and Building of which the Premises form a part, together with any and all taxes or imposts which may at some future time be levied by any governmental entity in total or partial

substitution for current real property taxes, including, without limiting the generality thereof, personal property taxes, rental gross receipt taxes, leasehold improvement taxes, use and occupancy taxes and excise taxes.

#### Section 39.03. Payment.

Upon notice by the "Master-Tenant", the "Sub-Tenant" shall pay within 15 days the full amount of any real estates taxes due.

#### Section 39.04. Apportionment During First and Last Year of Term.

The amount of real property taxes and assessments payable by "Sub-Tenant" during any partial calendar year during the Term shall be apportioned between "Master-Tenant" and "Sub-Tenant" in accordance with the portion of the tax year within the Term.

### ARTICLE XL

#### Utilities

##### Section 40.01. Utilities.

Except as may otherwise be provided in this Lease, "Sub-Tenant" shall undertake and be responsible for having all utilities installed and metered in its name in the Premises and agrees to pay, on or before the due date, all charges for same directly to the respective utility companies. Such utilities include but not be limited to electric, gas, water, sewer, heat, air conditioning, power, telephone, or other communications service or other utility or service used by, or rendered or supplied to, "Sub-Tenant" at the Premises throughout the Term. "Master-Tenant" may, at its option, furnish any one or more utilities to "Sub-Tenant", in which event "Sub-Tenant" shall pay for such utility as metered (or if not separately metered, "Sub-Tenant" shall pay its Pro Rata Share thereof) as additional rent within ten (10) days of "Master-Tenant's demand therefor from time to time. In no event shall "Master-Tenant" incur any liability to "Sub-Tenant" by reason of the interruption of any utility service for reasons beyond the control of "Master-Tenant". If "Sub-Tenant" fails to make payment as herein provided, "Master-Tenant" may, without further notice, terminate such utility service. "Sub-Tenant" shall thereafter be liable for all costs in connection with the termination and reinstallation or reestablishment of such utility services.

### ARTICLE XLI

#### Common Areas and Facilities/Charge for Operating Costs

##### Section 41.01. Use, Control and Maintenance of Common Areas and Facilities.

All automobile parking areas, dividers, driveways, entrances and exits thereto, and other facilities furnished by "Master-Tenant" in or near the Premises, including employee parking

areas, truck way or ways, loading docks, package pick-up stations, pedestrian sidewalks and ramps, landscaped areas, exterior stairways, roofs, drainage facilities, sewer, electricity and other utility services, transformers, access roads, signs and sidewalks and all other areas and improvements provided by "Master-Tenant" from time to time for the general use, of "Sub-Tenant's, their agents, employees and customers (all of the foregoing being hereinafter collectively referred to as the "Common Areas and Facilities"), shall at all times be subject to the exclusive control and management of "Master-Tenant". "Sub-Tenant" shall have the non-exclusive privilege to use the Common Areas and Facilities, subject to the terms and conditions of this Lease and any rules and regulations with respect thereto but "Sub-Tenant" shall be responsible to pay for all of the following, including, but not limited to, cleaning, planting, replanting, and maintaining landscaping, repairs, repaving, line repaving, lighting, sanitary or cesspool systems, removal of snow, ice, trash, garbage and other refuse removal.

## ARTICLE XLII

### Additional Rent/Escalations

Section 42.01. Real Estate Tax Escalation. (a) If, during the Term, the Real Estate Taxes (as hereinafter defined) for the Building shall be greater than the previous year (adjusted proportionately for periods less than a Lease Year), then "Sub-Tenant" shall pay to "Master-Tenant", as additional rent, "Sub-Tenant's Pro Rata Share of all such Real Estate Taxes.

(b) As used in this Section 38.01, the following terms shall have the following meanings:

(i) "Real Estate Taxes" shall mean the real property taxes and assessments imposed upon the Building and the land upon which the Building is situated, or upon the Basic Rent and additional rent, as such, payable to "Master-Tenant", including, but not limited to, real estate, city, county, village, school and transit taxes, or taxes, assessments or charges levied, imposed or assessed against the Building by any other taxing authority, whether general or specific, foreseen or unforeseen, ordinary or extraordinary. If, due to a future change in the method of taxation, any franchise, income or profit tax shall be levied against "Master-Tenant" in substitution for, in lieu of, or in addition to, any tax which would otherwise constitute a Real Estate Tax, such franchise, income or profit tax shall be deemed to be a Real Estate Tax for the purposes hereof; conversely, any additional Real Estate Tax hereafter imposed in substitution for, in lieu of, or in addition to, any franchise, income or profit tax (which is not in substitution for, in lieu of, or in addition to, a real estate tax as hereinbefore provided), shall not be deemed a Real Estate Tax for the purposes hereof.

(ii) Notwithstanding anything to the contrary contained in this Section 38.03, "Sub-Tenant" hereby assumes and agrees to pay to "Master-Tenant", in full, at the time of paying the Basic Rent, any excise, sales, gross receipts, use or other taxes, other than a net income or excess profits tax, which may be imposed on or measured by such Basic Rent, or which may be imposed on "Master-Tenant" or on account of the tenancy hereunder or which "Master-Tenant" may be required to pay or collect under any law now in effect or hereafter enacted.

Section 42.02. Lease Year/Calendar Year. As used in this Article XXXVIII, Lease Year shall mean the twelve (12) month period commencing on occupancy and ending TWELVE months thereafter, and each twelve (12) month period thereafter. As used in this Article XXXVIII, Calendar Year shall mean the calendar year January 1 through December 31. Once the Base Costs are established, in the event that any lease period is less than a full Calendar Year, then the Base Costs shall be adjusted to equal the proportion that said period bears to a Calendar Year, and "Sub-Tenant" shall pay to "Master-Tenant", as additional rent for such period, an amount equal to "Sub-Tenant's Pro Rata Share of Base Costs for said period with respect to both Operating Costs and Real Estate Taxes.

Section 42.03. Payment. At any time, and from time to time, after the establishment of the Base Costs, "Sub-Tenant's Pro Rata Share shall be 100% for any full year, and for each succeeding year, month or proportionate part thereof if the last period prior to the expiration of the Term is less than twelve (12) months. Thereafter, "Sub-Tenant" shall pay, as additional rent, "Sub-Tenant's Pro Rata Share of the Base Costs for the then current period affected by the invoice (as same may be periodically revised by "Master-Tenant" as additional costs are incurred), in equal monthly installments on the first day of each month. All of the foregoing is subject to final adjustment at the expiration of each Lease Year, or proportionate part thereof, if the last period prior to the expiration of the Term is less than twelve (12) months. Notwithstanding anything to the contrary contained in this Article XXXVIII, in the event that the last period prior to the expiration of the Term is less than twelve (12) months, the Base Costs shall be proportionately reduced to correspond to the duration of said final period.

Section 42.04. Books and Records. "Master-Tenant" shall maintain books of account which may be reviewed by "Sub-Tenant" and its representatives at all reasonable times, so that "Sub-Tenant" can determine that such Operating Costs and Real Estate Taxes have, in fact, been paid or incurred. In the event of any dispute with respect to any one or more of such charges which is not settled between "Master-Tenant" and "Sub-Tenant", such dispute shall be resolved by an independent certified public accountant to be mutually agreed upon, and if such accountant can not be agreed upon, either party may request the American Arbitration Association to select an arbitrator, whose decision on the dispute shall be final and binding upon both parties. The costs and expenses of such arbitration shall be equally shared by "Master-Tenant" and "Sub-Tenant". Pending the resolution of such dispute, "Sub-Tenant" shall pay to "Master-Tenant" the sum as billed by "Master-Tenant", subject to its resolution as aforesaid.

Section 42.05. Right of Review. After the Operating Costs and Real Estate Taxes have been finally determined by "Master-Tenant" at the expiration of a Calendar Year, "Sub-Tenant" shall only be entitled to dispute the amount and method of calculation of all of such charges for a period of six (6) months after such charges are finally established. "Sub-Tenant" hereby expressly waives any right to dispute any such charges after the expiration of said six (6) month period.

Section 42.06. Use, Control and Maintenance of Common Areas and Facilities.

All automobile parking areas, dividers, driveways, entrances and exits thereto, and other facilities furnished by "Master-Tenant" in or near the Premises, including employee parking areas, truck way

or ways, loading docks, package pick-up stations, pedestrian sidewalks and ramps, landscaped areas, exterior stairways, roofs, drainage facilities, sewer, electricity and other utility services, transformers, access roads, signs and sidewalks and all other areas and improvements provided by "Master-Tenant" from time to time for the general use, in common, of "Sub-Tenant's, their agents, employees and customers (all of the foregoing being hereinafter collectively referred to as the "Common Areas and Facilities"), shall at all times be subject to the exclusive control and management of "Master-Tenant". "Sub-Tenant" shall have the non-exclusive privilege to use the Common Areas and Facilities, subject to the terms and conditions of this Lease and any rules and regulations with respect thereto.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed the day and year first above written.

WITNESS/ATTEST: "SUB-TENANT":

BY: \_\_\_\_\_

WITNESS/ATTEST: "MASTER-TENANT":

BY: \_\_\_\_\_

BY: \_\_\_\_\_

SCHEDULE "A"

PROPERTY DESCRIPTION

or ways, loading docks, package pick-up stations, pedestrian sidewalks and ramps, landscaped areas, exterior stairways, roofs, drainage facilities, sewer, electricity and other utility services, transformers, access roads, signs and sidewalks and all other areas and improvements provided by "Master-Tenant" from time to time for the general use, in common, of "Sub-Tenant's, their agents, employees and customers (all of the foregoing being hereinafter collectively referred to as the "Common Areas and Facilities"), shall at all times be subject to the exclusive control and management of "Master-Tenant". "Sub-Tenant" shall have the non-exclusive privilege to use the Common Areas and Facilities, subject to the terms and conditions of this Lease and any rules and regulations with respect thereto.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed the day and year first above written.

WITNESS/ATTEST: "SUB-TENANT":

BY: \_\_\_\_\_ BY: \_\_\_\_\_

WITNESS/ATTEST: "MASTER-TENANT":

BY: \_\_\_\_\_ BY: \_\_\_\_\_

## SCHEDULE "A"

During the term of this Lease, Sub-Tenant shall pay minimum annual rent ("Basic Rent") as follows:

During the first lease year the Base Rent shall be \$705,650 (\$5.50 per foot) payable in equal monthly installments of \$58,804.00. This annual Base Rent shall increase over the previous year by the greater of 2% or the increase in the Consumer Price index as set forth below for each year.

On each anniversary year of the Lease, the minimum Base Rent specified in this lease shall be subject to increase in accordance with changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) [*or Consumer Price Index for All Urban Consumers (CPI-U)*] as promulgated by the Bureau of Labor Statistics of the United States Department of Labor, using the immediately preceding year as a base of 100.

For each succeeding year the minimum Base Rent shall increase by the same percentage as the Consumer Price Index increases over the immediately preceding year but in no event less than 2% per year.

In the event that the Consumer Price Index ceases to incorporate a significant number of items, or if a substantial change is made in the method of establishing such Consumer Price Index, then the Consumer Price Index shall be adjusted to the figure that would have resulted had no change occurred in the manner of computing such Consumer Price Index. In the event that such Consumer Price Index (or a successor or substitute index) is not available, a reliable governmental or other nonpartisan publication, evaluating the information for use in determining the Consumer Price Index, shall be used in lieu of such Consumer Price Index.