



BABYLON INDUSTRIAL DEVELOPMENT AGENCY

Thomas E. Dolan
Chief Executive Officer

FORM APPLICATION FOR FINANCIAL ASSISTANCE

DATE: 08/29/2022

APPLICATION OF:

Manhattan Beer Distributors, LLC

Company Name of Beneficial User of Proposed Project
(Not Realty or Special Purpose Entity (SPE) created for liability)

CURRENT ADDRESS:

955 E 149th Street

Bronx, NY 10455

ADDRESS OF PROPERTY
TO RECEIVE BENEFITS:

401 Acorn Street (Formerly 2 Washington Ave)

Wyandanch, NY 11798 (Tax bill shows Wheatly Heights, NY 11798)

Tax Map # District 0100 Section 040.00 Block 03.00 Lot (s) 041.012

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Part I: User (Applicant) & Owner Data (if different)**I. User Data (Applicant):**A. User: Manhattan Beer Distributors, LLC / New York Cross Docking, LLCAddress: 955 E 149th StreetBronx, NY 10455Federal Employer ID #: 13-3992843Website: www.manhattanbeer.comNAICS Code: 424800

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

Name of User Officer Certifying Application: [REDACTED]Title of Officer: [REDACTED]Phone Number: [REDACTED]E-mail: [REDACTED]**B. Business Type:**Sole Proprietorship ☐Partnership ☐Privately Held ☒Public Corporation ☐Listed on Limited Liability CompanyState of Incorporation/Formation: New York**C. Nature of Business:**

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

Wholesale beverage distribution**D. User Counsel:**Firm Name: Akerman LLPAddress: 1251 Avenue of the Americas, 37th FloorNew York, NY 10020Individual Attorney: Steven P. PolivyPhone Number: (212) 822-2245E-mail: steven.polivy@akerman.com

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

Name	Percent Owned
Manhattan Beer Distributors, Inc.	40.75
Reebcan Distributors Corp.	40.75
Windmill Distributing Co., L.P.	18.50

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

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

No

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

No

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

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

MBD LLC NYS PAC (100% Ownership Single Member LLC)

I. List parent corporation, sister corporations and subsidiaries:

New York Cross Docking LLC (Sister)

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

Yes. Manhattan Beer Distributors, LLC and New York Cross Docking, LLC have a 15 year PILOT with the

Town of Babylon which expired 02/28/2023. Project location: 401 Acorn Street, Wyandanch, NY 11798

- K. List major bank references of the User:

JP Morgan Chase Bank, NA, 925 Westchester Ave, West Harrison, NY 10604

Account Officer: Elizabeth Atsalis, Phone: (914) 993-2251

2. Owner Data

**** (for co-applicants for assistance or where a landlord/tenant relationship will exist between the owner and the user) ****

- A. Owner (together with the User, the "Applicant"): Wyandanch Washington Realty LLC

Address: 955 E 149th Street

Bronx, NY 10455

Federal Employer ID #: 13-3949894

Website: _____

NAICS Code: 531120

Name of Owner Officer Certifying Application: Mark Johnson

Title of Officer: Authorized Representative

Phone Number: (718) 292-9300

E-mail: mjohnson@manhattanbeer.net

- B. Business Type:

Sole Proprietorship ☐

Partnership ☐

Privately Held ☒

Public Corporation ☐

Listed on Limited Liability Company

State of Incorporation/Formation: New York

- C. Nature of Business:

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

Commercial leasing warehouse and storage.

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

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

ii. If no, please complete all questions below.

E. Owner's Counsel:

Firm Name: Tannenbaum Helpern Syracuse & Hirschtritt LLP

Address: 900 Third Avenue

New York, NY 10022

Individual Attorney: Andre R. Jaglom

Phone Number: (212) 508-6740

E-mail: Jaglom@thsh.com

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

Name	Percent Owned
<u>Simon Bergson Financial Trust</u>	<u>99%</u>
<u></u>	<u></u>
<u></u>	<u></u>

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

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

No

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

No

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

N/A

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

N/A

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

N/A

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

Yes. Wyandanch Washington Realty, LLC is subject to an existing Babylon IDA PILOT Agreement.

- L. List major bank references of the Owner:

JP Morgan Chase Bank, NA, 925 Westchester Ave, West Harrison, NY 10604

Account Officer: Elizabeth Atsalis, Phone: (914) 993-2251

Part II – Operation at Current Location

1. Current Location Address: 401 Acorn Street, Wyandanch, NY 11798
2. Owned or Leased: Leased
3. Describe your present location (acreage, square footage, number of buildings, number of floors, etc.):
Building #1: Two stories, 170,000 sq ft of warehouse storage space
Building #2: One story, 12,000 sq ft of additional storage space
4. Type of operation (manufacturing, wholesale, distribution, retail, etc.) and products and/or services:
Wholesale beverage distribution
5. Are other facilities or related companies of the Applicant located within the State?
Yes ☒ No ☐
 - A. If yes, list the Address: See attachment 1
6. If yes to above ("5"), will the completion of the project result in the removal of such facility or facilities from one area of the state to another OR in the abandonment of such facility or facilities located within the State? Yes ☐ No ☒
 - A. If no, explain how current facilities will be utilized: Warehouse storage and distribution
 - B. If yes, please indicate whether the project is reasonably necessary for the Applicant to maintain its competitive position in its industry or remain in the State and explain in full:

7. Has the Applicant actively considered sites in another state? Yes ☒ No ☐

A. If yes, please list states considered and explain: New Jersey warehouse to cross dock product for
delivery in Long Island.

8. Is the requested financial assistance reasonably necessary to prevent the Applicant from moving out of New York State? Yes ☒ No ☐

A. Please explain: Necessary to maintain competitive position in the marketplace.

9. Number of full-time employees at current location and average salary: _____

239 Full time employees - average annual salary \$58,884

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Part III – Project Data**1. Project Type:**

A. What type of transaction are you seeking?: (Check one)

Straight Lease ☒ Taxable Bonds ☐ Tax-Exempt Bonds ☐
 Equipment Only Straight Lease ☐

B. Type of benefit(s) the Applicant is seeking: (Check all that apply)

Sales Tax Exemption ☒ Mortgage Recording Tax Exemption ☐
 Real Property Tax Abatement: ☒

2. Location of project:A. Street Address: 401 Acorn Street, Wyandanch, NY 11798B. Tax Map: District 0100 Section 040.00 Block 03.00 Lot(s) 041.012

C. Municipal Jurisdiction:

- i. Village: _____
 ii. School District: Wyandanch
 iii. Library: Wyandanch

D. Acreage: 14.800**3. Project Components (check all appropriate categories):**

- | | | |
|--|---|-----------------------------|
| A. Construction of a new building | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| i. Square footage: _____ | | |
| B. Renovations of an existing building | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| i. Square footage: _____ | | |
| C. Demolition of an existing building | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| i. Square footage: _____ | | |
| D. Land to be cleared or disturbed | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| i. Square footage/acreage: _____ | | |
| E. Construction of addition to an existing building | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| i. Square footage of addition: <u>15,000 / 40,000</u> | | |
| ii. Total square footage upon completion: <u>199,000 / 239,000</u> | | |
| F. Acquisition of an existing building | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| i. Square footage of existing building: _____ | | |

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

i. List principal items or categories of equipment to be acquired: _____

BORM order fulfillment system and ASRS (Automated storage and retrieval system).

4. Current Use at Proposed Location:

A. Does the Applicant currently hold fee title to the proposed location?

i. If no, please list the present owner of the site: Wyandanch Washington Realty LLC

B. Present use of the proposed location: Warehouse storage and distribution

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

i. If yes, explain: NY Cross Docking/Manhattan Beer is a current IDA client. MBD leases its delivery vehicles from NYCD. MBD subleases the property from NYCD. NYCD leases the property from WWR.

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

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

5. Proposed Use:

A. Describe the specific operations of the Applicant or other users to be conducted at the project site: We plan to add an estimated 15,000 sq ft. of warehousing, purchase and install a BORM (order fulfillment system).

We also plan to construct a 40,000 sq ft. addition, purchase and install an ASRS (automated storage and retrieval system).

Project to be completed in phases starting Q2 2023 and ending in 2025.

B. Proposed product lines and market demands: Alcoholic and non- alcoholic beverages

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

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

The purpose of the proposed project is to sustain local jobs / employment and maintain business activity in the area.

This will also allow us to improve our competitive position and maintain our facility in Suffolk County. Once this

significant investment is made, it solidifies Manhattan Beer's footprint in the location where the project occurs.

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

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

6. Project Work:

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

- | | | | | | |
|------|-----------------|---|--|------------|-------|
| i. | Site Clearance: | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | % Complete | _____ |
| ii. | Foundation: | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | % Complete | _____ |
| iii. | Footings: | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | % Complete | _____ |
| iv. | Steel: | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | % Complete | _____ |
| v. | Masonry: | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | % Complete | _____ |
| vi. | Other: | Design, engineering and architectural work underway | | | |

B. What is the current zoning? Commercial

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

Yes ☒ No ☐

D. If a variance or change of zoning is required, please provide the details/status of the variance or change of zone request:

E. Have site plans been submitted to the appropriate planning department? Yes ☒ No ☐

7. Project Completion Schedule:

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

i. Acquisition:

ii. Construction/Renovation/Equipping: May 2023

B. Provide an accurate estimate of the time schedule to complete the project and when the first use of the project is expected to occur: Phase 1 - Involves "squaring off the building" which will add 15,000 SF to the

existing 184,000 SF facility. Estimated cost \$3.0 million. Purchase and installation of \$8.0 million BORM order fulfillment system.

Total Phase 1 investment \$11.0 million. Phase 1 start date May 2023 with estimated completion date December 2024.

Phase 2 - Large scale building expansion. Constructing a 40,000 sq ft. addition and renovation project. Estimated cost \$45.0 million.

Purchase and install \$17.0 million ASRS (automated storage and retrieval system). Total Phase 2 investment \$62.0 million.

Phase 2 start date April 2024 with estimated completion date December 2025.

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Part IV -- Project Costs and Financing

1. Project Costs:

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

<u>Description</u>	<u>Amount</u>
Land and/or building acquisition	\$ _____
Building(s) demolition/construction	\$ 45,000,000
Building renovation	\$ 3,000,000
Site Work	\$ _____
Machinery and Equipment	\$ 25,000,000 (BORM \$8M / ASRS \$17M)
Legal Fees	\$ _____
Architectural/Engineering Fees	\$ 500,000
Financial Charges	\$ _____
Other (Specify)	\$ _____
Total	\$ 73,500,000

2. Method of Financing:

	<u>Amount</u>	<u>Term</u>
A. Tax-exempt bond financing:	\$ _____	_____ years
B. Taxable bond financing:	\$ _____	_____ years
C. Conventional Mortgage:	\$ _____	_____ years
D. SBA (504) or other governmental financing:	\$ _____	_____ years
E. Public Sources (include sum of all State and federal grants and tax credits):	\$ _____	
F. Other loans:	\$ 65,500,000	10 years
G. Owner/User equity contribution:	\$ 8,000,000	_____ years

Total Project Costs \$ 73,500,000

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

0% _____

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

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

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

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

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

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

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Part V – Project Benefits

1. Mortgage Recording Tax Benefit:

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

\$ _____

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

\$ _____

2. Sales and Use Tax Benefit:

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

\$ 44,500,000 _____

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

\$ See attachment 1 _____

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

i. Owner: \$ _____

ii. User: \$ 3,838,125 _____

3. Real Property Tax Benefit:

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

No _____

- B. Agency PILOT Benefit:

i. Term of PILOT requested: See attachment 1 _____

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

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

Part VI – Employment Data

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

	<u>Present</u>	<u>First Year</u>	<u>Second Year</u>	<u>Residents of LMA</u>
Full-Time	239			64
Part-Time**	9.5			1.5

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

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

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

2. Salary and Fringe Benefits:

Category of Jobs to be Retained and Created	Number of Employees	Average Salary or Range of Salary	Average Fringe Benefits or Range of Fringe Benefits
Management	2	\$156,344	\$40,479
Professional			
Administrative	5	\$44,393	\$22,150
Production	4	\$58,808	\$23,415
Supervisor	24	\$80,115	\$26,691
Laborer	137.5	\$56,290	\$23,445
Other			
Sales Workers	76	\$49,125	\$12,449

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

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

FROM \$ 75,000 TO \$ 90,000

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

	<u>First Year</u>	<u>Second Year</u>	<u>Third Year</u>
* Full-Time	10	20	20
** Part-Time			

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

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

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Part VII – Representations, Certifications and Indemnification

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

Yes ☐ No ☒

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

- a. Labor practices,

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

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

- b. hazardous wastes, environmental pollution,

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

- c. other operating practices

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

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

Yes ☒ No ☐

Warehouse construction and warehouse mechanization / automation. Without this incentive, we may be unable to proceed with this project.

This incentive will allow us to improve our competitive position and maintain our facility in Suffolk County.

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

The impact is potentially an alternative site for warehousing in New Jersey where Financial assistance would be available.

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

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

Initial ME

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

Initial ME

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

Initial ME

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

Initial ME

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

Initial ME

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

Initial MF

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

Initial MF

Initial after receipt and acceptance of Schedule A and Schedule B

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

Initial MF

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

Initial MF

Part VIII – Submission of Materials

Please send under separate cover all information directly to Agency Counsel:

William F. Dudine, Partner
Katten Muchin Rosenman LLP
50 Rockefeller Plaza
New York, NY 10020-1605

1. Financial statements for the last two fiscal years (unless included in the Applicant's annual report).
2. Applicant's annual reports (or 10-K's if publicly held) for the two most recent fiscal years.
3. Quarterly reports (form 10-Q's) and current reports (form 8-K's) since the most recent annual report, if any.
4. In addition, please attach the financial information described in items A, B, and C of any expected guarantor of the proposed bond issue.
5. Completed Long Environmental Assessment Form.
6. Most recent quarterly filing of NYS Department of Labor Form 45, as well as the most recent fourth quarter filing. Please **remove or redact any employee Social Security numbers** and note the full-time equivalency for part-time employees.

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Part IX -- Certification

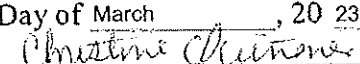
Mark Johnson (name of representative of company submitting application) deposes and says that he or she is the Chief Financial Officer (title) of Manhattan Beer Distributors, LLC, the corporation (company name) named in the attached application; that he or she has read the foregoing application and knows the contents thereof; and that the same is true to his or her knowledge.

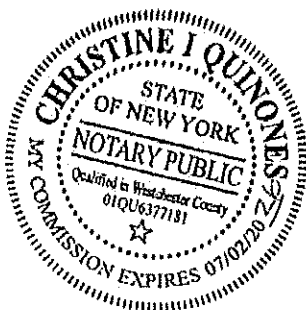
Deponent further says that s/he is duly authorized to make this certification on behalf of the entity named in the attached Application (the "Applicant") and to bind the Applicant. The grounds of deponent's belief relative to all matters in said Application which are not stated upon his/her personal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

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



Representative of Applicant

Sworn to me before this 9
Day of March, 20 23

(seal)



Part IX – Certification

Property Owner (if different from Applicant)


Mark Johnson (name of representative of owner submitting application)
deposes and says that he or she is the Authorized Person (title) of Wyandanch Washington Realty LLC, the corporation (company name) named in the attached application; that he or she has read the foregoing application and knows the contents thereof; and that the same is true to his or her knowledge.

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

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



Representative of Applicant

Sworn to me before this 9
Day of March, 20 23




Town of Babylon Industrial Development Agency

SCHEDULE A

Agency's Fee Schedule

10-Mar-23

New York Cross Docking, LLC
401 Acorn Street
Wyandanch NY, 11798 (WYAN SD)
0100-040.00-03.00-041.012

Application Fee	\$3,000
Estimated Public Hearing	\$1,200

Large Development			
1-15 M	15,000,000	1.00%	150,000
15- 25 M	10,000,000	0.75%	75,000
25 - 35 M	10,000,000	0.50%	50,000
< 35 M	43,500,000	0.25%	108,750
Estimated Project Pg 14	\$78,500,000		\$ 383,750

Estimated Savings 6,711,075 1% 67,110

Estimated Fee \$ 450,860

Estimated Closing Fee	\$ 450,860	\$ 450,860
15% Discounted Fee		\$ 383,231
Total Estimated Fees		\$387,431

Estimated Savings	15 @ 50	2,010,450
0.75 Est Mtg Rec pg 16	0%	-
0.08625 Sales Tax pg 16	100%	54,500,000 4,700,625
		6,711,075

EXHIBIT A

Proposed PILOT Schedule

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

Tax Savings for property with physical address of:

401 Acorn Street
Wyandanch, NY 11798
0100-040.00 03.00 041.012

March 8, 2023

Assuming:

Assessed Value of: 120410

2022-2023 Tax without Exemption 440,277

2022-2023 Tax Rate of: 364.9838

Rate Increment of: 2.00%

PILOT number of years 15

Abatements starting at 50%

Number of Years	Abatement %	PILOT %	Estimated Taxes To be Paid	Estimated Savings
1	50.000%	50.000%	\$ 229,347	\$ 228,500
2	46.667%	53.333%	249,444	217,550
3	43.334%	56.666%	270,253	206,050
4	40.000%	60.000%	291,835	194,000
5	36.667%	63.333%	314,132	181,400
6	33.334%	66.666%	337,204	168,200
7	30.000%	70.000%	361,116	154,400
8	26.667%	73.333%	385,807	140,000
9	23.334%	76.666%	411,342	124,950
10	20.000%	80.000%	437,789	109,250
11	16.667%	83.333%	465,083	92,850
12	13.334%	86.666%	493,294	75,800
13	10.000%	90.000%	522,497	57,950
14	6.667%	93.333%	552,621	39,450
15	3.334%	96.666%	583,792	20,100
Estimate Taxes to be paid			\$ 5,905,556	
Estimated Savings				\$ 2,010,450

SCHEDULE B

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

(a)(i) If there shall occur a Recapture Event after the date hereof, the Lessee or the Sublessee shall pay to the Agency as a return of public benefits conferred by the Agency, the following amounts:

(A) one hundred per cent (100%) of the Benefits (as defined below) if the Recapture Event occurs within the first five (5) years after the date hereof;

(B) eighty per cent (80%) of the Benefits if the Recapture Event occurs during the period from the sixth (6th) year through and including the eighth (8th) year after the date hereof;

(C) sixty per cent (60%) of the Benefits if the Recapture Event occurs during the ninth (9th) year after the date hereof;

(D) forty per cent (40%) of the Benefits if the Recapture Event occurs during the tenth (10th) year after the date hereof; or

(E) twenty per cent (20%) of the Benefits if the Recapture Event occurs during the eleventh (11th) year after the date hereof.

As used in this Section, the term "**Benefits**" shall mean, collectively:

(1) all real estate tax benefits which have accrued to the benefit of the Lessee or the Sublessee commencing from and after the "Commencement Date", and during the period of time that the Agency is the owner of the Facility, such tax benefits to be computed by subtracting the payments in lieu of taxes paid under Section 4.3 hereof from those payments which the Lessee or the Sublessee would have been required to pay during the term of this Agreement (within the meaning of Section 3.2 hereof) had the Town determined the amount of such real estate taxes as would be due if the Lessee had been the owner of the Facility Realty during such term; and

(2) all miscellaneous benefits derived from the Agency's participation in the straight-lease transaction contemplated by this Agreement, including, but not limited to, any exemption from any applicable state or local sales and use tax, mortgage recording tax and filing and recording fees accruing from and after the date hereof.

As used in this Section, the term "**Recapture Event**" shall mean any of the following events:

(1) The Lessee or the Sublessee shall have liquidated its operations and/or assets (absent a showing of extreme hardship);

(2) The Lessee or the Sublessee shall have ceased all or substantially all of its operations at the Facility (whether by relocation to another facility or otherwise, or whether to another facility either within or outside of the Town) through no force majeure event;

(3) The Lessee or the Sublessee shall have transferred all or substantially all of its employees within the Town to a location outside of the Town through no force majeure event;

(4) The Lessee or the Sublessee shall have subleased all or any portion of the Facility in violation of the limitations imposed by Section 9.3 hereof, without the prior written consent of the Agency;

(5) The Lessee or the Sublessee shall have sold, leased, transferred or otherwise disposed of all or substantially all of its interest in the Facility; or

(6) Base Employment Reduction Percentage shall be greater than fifteen percent (15%) due to a Relocation Reduction occurring with respect to an Annual Period.

Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a direct, immediate result of (i) a taking or condemnation by governmental authority of all or substantially all of the Facility, or (ii) the inability at law of the Lessee to rebuild, repair, restore or replace the Facility after the occurrence of a Loss Event to substantially its condition prior to such Loss Event, which inability shall have arisen in good faith through no fault on the part of the Lessee or any Affiliate.

(b) The Lessee covenants and agrees to furnish the Agency with written notification upon any Recapture Event or disposition of the Facility or any portion thereof made within twelve (12) years of the Commencement Date, which notification shall set forth the terms of such Recapture Event and/or disposition.

(c) In the event any payment owing by the Lessee or the Sublessee under this Section shall not be paid on demand by the Lessee or the Sublessee, such payment shall bear interest from the date of such demand at the then current interest rate imposed on delinquent payments of real property taxes until the Lessee or the Sublessee shall have paid such payment in full, together with such accrued interest to the date of payment, to the Agency.

(d) The Agency, in its sole discretion, may waive all or any portion of any payment owing by the Lessee or the Sublessee under this Section.

(e) The provisions of this Section shall survive the termination of this Agreement for any reason whatsoever, notwithstanding any provision of this Agreement to the contrary.

617.20
Appendix B
Short Environmental Assessment Form

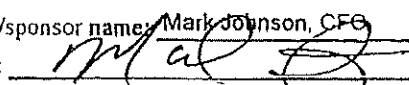
Instructions for Completing

Part I - Project Information. The applicant or project sponsor is responsible for the completion of Part I. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part I based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part I. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part I - Project and Sponsor Information							
Name of Action or Project: Wyandanch 2022 Project							
Project Location (describe, and attach a location map): 401 Acorn Street, Wyandanch, NY 11798							
Brief Description of Proposed Action: We plan to add an estimated 55,000 sq ft. of warehousing, purchase and install a BORM and ASRS.							
Name of Applicant or Sponsor: Manhattan Beer Distributors, LLC		Telephone: (718) 292-9300 E-Mail: mjohnson@manhattanbeer.net					
Address: 955 E 149th Street							
City/PO: Bronx		State: NY	Zip Code: 10455				
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			<table border="1" style="width: 100%; text-align: center;"> <tr> <td>NO</td> <td>YES</td> </tr> <tr> <td>✓</td> <td></td> </tr> </table>	NO	YES	✓	
NO	YES						
✓							
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval: Town of Babylon Department of Planning and Development, Division of Building - Demolition Permit Town of Babylon Department of Planning and Development, Division of Building - Building Permit Town of Babylon Department of Planning and Development, Division of Engineering - Site Plan Approval			<table border="1" style="width: 100%; text-align: center;"> <tr> <td>NO</td> <td>YES</td> </tr> <tr> <td></td> <td>✓</td> </tr> </table>	NO	YES		✓
NO	YES						
	✓						
3.a. Total acreage of the site of the proposed action?		14.8 acres					
b. Total acreage to be physically disturbed?		.33 acres					
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		14.8 acres					
4. Check all land uses that occur on, adjoining and near the proposed action. <input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input checked="" type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input checked="" type="checkbox"/> Residential (suburban) <input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other (specify): _____ <input type="checkbox"/> Parkland							

5. Is the proposed action, a. A permitted use under the zoning regulations?	NO	YES	N/A
b. Consistent with the adopted comprehensive plan?		✓	
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	NO	YES	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	NO	YES	
b. Are public transportation service(s) available at or near the site of the proposed action?	✓		
c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?		✓	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: Building insulation R rating meets requirement & LED lighting throughout.	NO	YES	
10. Will the proposed action connect to an existing public/private water supply? [If Yes, does the existing system have capacity to provide service? <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES] If No, describe method for providing potable water: _____	NO	YES	
11. Will the proposed action connect to existing wastewater utilities? [If Yes, does the existing system have capacity to provide service? <input type="checkbox"/> NO <input type="checkbox"/> YES] If No, describe method for providing wastewater treatment: <u>Septic</u>	NO	YES	
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places?	NO	YES	
b. Is the proposed action located in an archeological sensitive area?	✓		
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	NO	YES	
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____	✓		
14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input type="checkbox"/> Urban <input checked="" type="checkbox"/> Suburban			
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO	YES	
16. Is the project site located in the 100 year flood plain?	NO	YES	
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? <input type="checkbox"/> NO <input type="checkbox"/> YES b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: _____ <input type="checkbox"/> NO <input type="checkbox"/> YES	NO	YES	

18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____	NO	YES
	✓	
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____	NO	YES
	✓	
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: 1997, traces of copper were removed from septic tanks	NO	YES
		✓
I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE		
Applicant/sponsor name: Mark Johnson, CFO		Date: 02/14/2023
Signature: 		

Part 2 - Impact Assessment. The Lead Agency is responsible for the completion of Part 2. Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?		
2. Will the proposed action result in a change in the use or intensity of use of land?		
3. Will the proposed action impair the character or quality of the existing community?		
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?		
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?		
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?		
7. Will the proposed action impact existing:		
a. public / private water supplies?		
b. public / private wastewater treatment utilities?		
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?		
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?		

	No, or small impact may occur	Moderate to large impact may occur
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?		
11. Will the proposed action create a hazard to environmental resources or human health?		

Part 3 - Determination of significance. The Lead Agency is responsible for the completion of Part 3. For every question in Part 2 that was answered "moderate to large impact may occur", or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

- ☐ Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.
- ☐ Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.

Name of Lead Agency

Date

Print or Type Name of Responsible Officer in Lead Agency

Title of Responsible Officer

Signature of Responsible Officer in Lead Agency

Signature of Preparer (if different from Responsible Officer)

Attachment 1

Page 8, Question 5(A)

- I. 955 E 149th Street, Bronx, NY 10455
- II. 2 Atlantic Avenue, Pier 7, Brooklyn, NY 11201
- III. 47-47 Metropolitan Avenue, Ridgewood, NY 11385
- IV. 20 Dunnigan Drive, Suffern, NY 10901

Page 16, Question 2(B)

Phase 1 \$819,375

Phase 2 \$3,018,750

Page 16, Question 3(B)(i)

15-year PILOT. PILOT to commence at the completion of Phase 2. Estimated completion date December 2025.

Lease Agreement

Between

Washington Wyandanch Realty, LLC

As Landlord

And

New York Cross Docking LLC,

As Tenant,

for Premises known as

401 Acorn Street,

Wyandanch, NY 11798

THIS INDENTURE, made as of the 1st day of January 2015 between Washington Wyandanch Realty, LLC, a New York limited liability company with offices at c/o Bergson, PO Box 695, Palisades, NY 10964, party of the first, hereinafter referred to as Landlord, and New York Cross Docking LLC, a New York limited liability company with offices at 955 E. 149TH Street, Bronx, New York 10455, party of the second part, hereinafter referred to as Tenant.

WITNESSETH:

That Landlord hereby demises and leases to Tenant, and Tenant hereby hires and takes from Landlord, the premises described as 401 Acorn Street, Wyandanch, NY 11798, which premises are hereinafter called "the demised premises".

TO HAVE AND TO HOLD the demised premises for the term to commence on the date hereof and to end on December 31, 2030, both dates inclusive (unless such term shall be sooner terminated as hereinafter provided) at the rent specified in Paragraph 41, payable in equal monthly installments, in advance on the first day of each and every month during the term, together with the additional rent hereinafter reserved, all of which shall be payable to Landlord, at Landlord's address above-stated or at such other place or to such other person as Landlord shall by notice direct, in lawful money of the United States, which shall be legal tender in payment of all debts and dues, public and private, at the time of payment, without set off or deduction whatsoever.

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1. *Covenant to pay Rent.* Tenant shall pay the rent as provided IN SECTION 41.

2. *Additional Rent.* All taxes, charges, costs and expenses which Tenant assumes or agrees to pay hereunder, together with all interest and penalties that may accrue thereon in the event of Tenant's failure to pay the same as herein provided, all other damages, costs and expenses which Landlord may suffer or incur, and any and all other sums which may become due, by reason of any default of Tenant or failure on Tenant's part to comply with the agreements, terms, covenants and conditions of this lease on Tenant's part to be performed, and each or any of them, shall be deemed to be additional rent and, in the event of non-payment, Landlord shall have all the rights and remedies herein provided in the case of non-payment of rent.

3. *Taxes.* (a) Tenant shall bear, pay and discharge, on or before the last day on which payment may be made without penalty or interest, all taxes, assessments, water rents, rates and charges, sewer rents, and other governmental impositions and charges of every kind and nature whatsoever, extraordinary as well as ordinary, and each and every installment thereof, which shall or may during the term be charged, laid, levied, assessed, imposed, become due and payable, or liens upon, or arise in connection with the use, occupancy or possession of, or grow due or payable out of, or for, the demised premises or any part thereof, or any buildings, appurtenances or equipment thereon or therein or any part thereof, or the sidewalks or streets in front of or adjoining the demised premises, and all taxes charged, laid, levied, assessed or imposed in lieu of or in addition to the foregoing under or by virtue of all present or future laws, ordinances, requirements, orders, directions, rules or regulations of the federal, state, county and city governments and of all other governmental authorities whatsoever, and all fees and charges of public and governmental authorities for construction, maintenance, occupation or use during the term of any vault, passageway or space in, over or under any sidewalk or street on or adjacent to the demised premises, or for construction, maintenance or use during the term of any part of any building covered hereby within the limits of any street. To the

extent that the same may be permitted by law and shall not be inconsistent with any existing or future mortgage or mortgages affecting the demised premises, Tenant shall have the right to apply for the conversion of any special assessment for local improvements in order to cause the same to be payable in installments, and upon such conversion Tenant shall be obligated to pay and discharge punctually only such of said installments as shall become due and payable during the term. Tenant shall within twenty (20) days after the time above provided for the payment by Tenant of any such tax, assessment, water rent, rate or charge, sewer rent or other governmental imposition or charge produce and exhibit to Landlord satisfactory evidence of such payment.

(b) All such taxes, water rents, rates and charges, sewer rents and other governmental impositions and charges which shall be charged, laid, levied, assessed or imposed for each fiscal period in which the term of this lease commences and terminates shall be apportioned pro rata between Landlord and Tenant in accordance with the respective portions of each such fiscal period during which such term shall be in effect.

(c) Tenant shall have the right to contest or review by legal proceedings, or in such other manner as it may deem suitable (which, if instituted, Tenant shall conduct promptly at its own expense, and free of any expense to Landlord, and, if necessary, in the name of Landlord), any tax, assessment, water rent, rate or charge, sewer rent, or other governmental imposition or charge aforementioned. Tenant may defer payment of a contested item upon condition that, before instituting any such proceedings, Tenant shall furnish to Landlord, or to any mortgagee Landlord may designate, a surety company bond, a cash deposit, or other security satisfactory to Landlord and such mortgagee, sufficient to cover the amount of the contested item or items, with interest and penalties, for the period which such proceedings may be expected to take, securing payment of such contested items, interest and penalties, and all costs in connection therewith. Notwithstanding the furnishing of any such bond or security other than a cash deposit, Tenant shall promptly pay such contested item or items if at any time the demised premises or any part thereof shall be in danger of being sold, forfeited or otherwise

lost. If, however, Tenant shall have made a cash deposit, in any such event Landlord or such mortgagee, as the case may be, may pay such contested item or items out of such deposit. When any such contested item or items shall have been paid or cancelled, any balance of any such cash deposit not so applied shall be repaid to Tenant without interest. The legal proceedings referred to shall include appropriate proceedings to review tax assessments and appeals from orders therein and appeals from any judgments, decrees or orders, but all such proceedings shall be begun as soon as possible after the imposition or assessment of any contested item and shall be prosecuted to final adjudication with dispatch. If there shall be any refund with respect to any contested item based on a payment by Tenant, Tenant shall be entitled to the same to the extent of such payment, subject to apportionment as provided in the foregoing subdivision (b).

(d) Tenant shall pay such taxes, water rents, rates and charges, sewer rents and other governmental impositions to the appropriate governmental agency in a timely manner, or if requested by Landlord, to the first mortgagee if required by the terms of any mortgage to which this lease is subordinate.

(e) It is the intention of the parties that the rent herein reserved is net and that Landlord shall receive the same free from all taxes that by provisions hereof are made payable by Tenant, and that Tenant shall pay all costs, charges, expenses and damages which shall or may be chargeable during the term against the demised premises and, except for the execution and delivery hereof, would or could have been payable by Landlord.

(f) Nothing herein contained shall require or be construed to require Tenant to pay any inheritance, estate, succession, transfer, gift, franchise, corporation, income or profit tax, or capital levy that is or may be imposed upon Landlord, its successors or assigns; provided, however, that in any case where a tax may be levied, assessed or imposed upon the income arising from the rent hereunder for the use and occupancy of the demised premises in lieu of or as substitute, in whole or in part, for a real estate tax upon the demised premises, Tenant shall pay the same.

4. *Assignments.* Neither Tenant, nor Tenant's successors or assigns, shall assign, mortgage, pledge or encumber this lease, in whole or in part, or sublet the demised premises, in whole or in part, or permit the same to be used or occupied by others, nor shall this lease be assigned or transferred by operation of law, without the prior consent in writing of Landlord in each instance. If this lease be assigned or transferred, or if all or any part of the demised premises be sublet or occupied by anybody other than Tenant, Landlord may, after default by Tenant, collect rent from the assignee, transferee, subtenant or occupant, and apply the net amount collected to the rent reserved herein, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of any agreement, term, covenant or condition

Addendum to Paragraph 4: Transfer, sale, assignment or other disposition (except testate or intestate disposition to legatees or distributes by reason of death) of any portion or all of the capital stock of Tenant, if there be a corporate Tenant, including legal or beneficial title or interest therein shall be the equivalent of an assignment of this lease and shall be subject to the restrictions set forth in this lease including but not limited to Paragraph 4. *

4A. Tenant, upon request from the Landlord, shall, within 14 days of such request submit an itemized list of rents, additional rents and lease expiration dates to the landlord. In addition Tenant shall submit to the Landlord or any mortgagee or prospective mortgagee a certified statement of income and expenses prepared by a Certified Public Accountant. Landlord shall request same in writing by certified mail, return receipt requested and Tenant shall, within thirty (30) days furnish same to Landlord.

- a. Landlord's consent shall not be required if Tenant enters into a merger, acquisition, consolidation, reorganization, or other business combination or restructuring and if, upon its consummation (i) Simon Bergson and Jeffery Honickman (including their respective spouses and children, their estates or trusts for their benefit,) and officers of Tenant who have held such offices for at least one year ("Tenant Officers") own, directly or indirectly, at least 50% of the issued and outstanding ownership interests in the surviving entity and Simon Bergson controls, directly or indirectly, by any combinations of ownership interests and contract rights, the policies by which the surviving entity does business.
- b. Tenant shall have the right to sublet, without the Landlord's consent, not more than 25% of the premises to any parent, subsidiary or affiliate of the Tenant. (A "parent" is an entity that owns, directly or indirectly, at least 50% of the tenant at the time of the sublet; a "subsidiary" is a entity that is at least 50% owned, directly or indirectly, by the tenant at the time of the sublet; and an "affiliate" is an entity that is at least 50% owned, directly or indirectly, by a parent or by a combination of persons who own at least 50% of the ownership interests of the Tenant at the time of the sublet.)

hereof, or the acceptance of the assignee, transferee, subtenant or occupant as tenant, or a release of Tenant from the performance or further performance by Tenant of the agreements, terms, covenants and conditions hereof, and Tenant shall continue liable hereunder in accordance with the agreements, terms, covenants and conditions hereof. The consent by Landlord to an assignment, mortgage, pledge, encumbrance, transfer or subletting shall not in any wise be construed to relieve Tenant from obtaining the express consent in writing of Landlord to any further assignment, mortgage, pledge, encumbrance, transfer or subletting.

5. *Alterations.* (a) Subject to the limitation that no substantial portion of any buildings on the demised premises shall be demolished or removed by Tenant without the prior consent in writing of Landlord, and, if necessary, of any mortgagee, Tenant may at any time or times during the term, and at its own cost and expense, make any alterations, rebuildings, replacements, changes, additions and improvements in and to the demised premises and to the buildings thereon provided:

(1) that the same shall be performed in a first class workmanlike manner, and shall not weaken or impair the structural strength, or lessen the value, of such buildings as shall be on the demised premises at the time, or change the purposes for which such buildings may be used;

(2) that the same shall be made according to plans and specifications therefor, which, provided the estimated cost thereof is more than \$50,000.00, shall be first submitted to and approved in writing by Landlord;

(3) that before the commencement of any such work such plans and specifications shall be filed with and approved by all governmental departments or authorities having jurisdiction, and any public utility company having an interest therein, and all such work shall be done subject to and in accordance with the requirements of law and local regulations, of all governmental departments or authorities having jurisdiction and of each public utility company; and

(4) that before the commencement of any such work Tenant shall pay the amount of any increase in premiums on insurance policies

provided for under Article 9 (a) (2) on account of endorsements to be made thereon covering the risk during the course of such work, and Tenant shall in addition, if the estimated cost of such work shall exceed \$50,000.00, at Tenant's expense, give to Landlord a surety company performance bond in a company acceptable to Landlord, in an amount equal to the estimated cost of such work, guaranteeing the completion of such work, free and clear of all liens, encumbrances, chattel mortgages and conditional bills of sale, according to said plans and specifications therefor; and

(5) that any contract or agreement (oral or written) for labor, services, materials or supplies in connection with any such alterations, rebuilding, replacement, change, addition or improvement which shall contemplate or call for an aggregate expenditure therefor of more than \$ 50,000.00 shall provide that no lien or claim shall thereby be created, or arise, or be filed by anyone thereunder upon or against the demised premises, or the buildings or improvements thereon, or to be erected on the demised premises or any of the equipment thereof and before the commencement of any such work, Tenant shall deliver to Landlord either (A) a duplicate original of such contract or (B) a written waiver by the architect, engineer, contractor, materialman, mechanic, person or corporation named in such contract of all right of lien which he or it might otherwise have upon or against the demised premises, or the buildings or improvements to be altered, repaired, improved or constructed, or the interest of Landlord therein.

(b) all buildings, alterations, rebuildings, replacement changes, additions, improvements, equipment and appurtenances on or in the demised premises at the commencement of the term, and which may be erected, installed or affixed on or in the demised premises during the term, are and shall be deemed to be and immediately become part of the realty and the sole and absolute property of Landlord and shall be deemed to be part of the demised premises, except that all movable trade fixtures (not including equipment) installed by Tenant shall be and remain the property of Tenant.

G. *Repairs.* Tenant shall, at all times during the term, and at its own cost and expense, put, keep, replace and maintain in thorough repair and in good, safe and substantial order and condition, all build-

ings and improvements on the demised premises at the commencement of the term and thereafter erected on the demised premises, or forming part thereof, and their full equipment and appurtenances, both inside and outside, structural and non structural, extraordinary and ordinary, howsoever the necessity or desirability for repairs may occur, and whether or not necessitated by wear, tear, obsolescence or defects, latent or otherwise; and shall use all reasonable precaution to prevent waste, damage or injury. Tenant shall also, at its own cost and expense, put, keep, replace and maintain in thorough repair and in good, safe and substantial order and condition, and free from dirt, snow, ice, rubbish and other obstructions or encumbrances, the sidewalks, areas, coalchutes, sidewalk hoists, railings, gutters and curbs in front of and adjacent to the demised premises.

Landlord shall not be required to furnish to Tenant any facilities or services of any kind whatsoever during the term, such as, but not limited to, water, steam, heat, gas, hot water, electricity, light and power.

Landlord shall in no event be required to make any alterations, rebuildings, replacements, changes, additions, improvements or repairs during the term.

7. *Mechanics' Lien.* Tenant shall have no power to do any act or make any contract which may create or be the foundation for any lien, mortgage or other encumbrance upon the reversion or other estate of Landlord, or of any interest of Landlord in the demised premises or in the buildings or improvements thereon; it being agreed that should Tenant cause any alterations, rebuildings, replacements, changes, additions, improvements or repairs to be made to the demised premises, or cause any labor to be performed or material to be furnished therein, thereon or thereto, neither Landlord nor the demised premises shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished, but all such alterations, rebuildings, replacements, changes, additions, improvements and repairs, and labor and material, shall be made, furnished and performed at Tenant's expense, and Tenant shall be solely and wholly responsible to contractors, laborers and materialmen furnishing and performing such labor and material.

If, because of any act or omission (or alleged act or omission) of Tenant, any mechanic's or other lien, charge or order for the payment of money shall be filed against the demised premises or any building or improvements thereon, or against Landlord or any conditional bill of sale or chattel mortgage shall be filed for or affecting any equipment or any materials used in the construction or alteration of any such building or improvement, (whether or not such lien, charge or order, conditional bill of sale or chattel mortgage is valid or enforceable as such), Tenant shall, at its own cost and expense, cause the same to be cancelled and discharged of record or bonded within ten (10) days after the date of filing thereof.

8. *Requirements of Law.* (a) During the term Tenant shall, at its own cost and expense, promptly observe and comply with all present and future laws, ordinances, requirements, orders, directions, rules and regulations of the federal, state, county and city governments and of all other governmental authorities having or claiming jurisdiction over the demised premises or appurtenances or any part thereof, and of all their respective departments, bureaus and officials, and of the insurance underwriting board or insurance inspection bureau having or claiming jurisdiction, or any other body exercising similar functions, and of all insurance companies writing policies covering the demised premises or any part thereof, whether such laws, ordinances, requirements, orders, directions, rules or regulations relate to structural alterations, changes, additions, improvements, requirements or repairs, either inside or outside, extraordinary or ordinary, or otherwise, to or in and about the demised premises, or any building thereon, or to any vaults, passageways, franchises, or privileges appurtenant thereto or connected with the enjoyment thereof or to alterations, changes, additions, improvements, requirements or repairs incident to or as a result of any use or occupation thereof, or otherwise, including, without limitation, the removal of any encroachment on the street or on adjoining premises by any building on the demised premises, and whether the same are in force at the commencement of the term or may in the future be passed, enacted or directed.

(b) Without limiting the generality of the foregoing Tenant shall also

- (1) Procure each and every permit, license, certificate or other authorization required in connection with the lawful and proper use of the demised premises or required in connection with any building or improvement now or hereafter erected thereon.
- (2) Require each and every person cleaning any window or windows on the demised premises from the outside to use the equipment and safety devices which may from time to time be required by Section 202 of the Labor Law of the State of New York and the rules supplemental thereto of any board or body administering such section, as said section or rules now exist or may hereafter be amended or supplemented.

(c) Tenant, only after notice to Landlord, may, by appropriate proceedings conducted promptly at Tenant's own expense, in Tenant's name and/or (whenever necessary) Landlord's name, contest in good faith the validity or enforcement of any such statute, law, ordinance, regulation or order and may defer compliance therewith, provided (A) such deferment shall not constitute a crime on the part of Landlord, (B) Tenant shall diligently prosecute such contest to a final determination by a court, department or governmental authority or body having jurisdiction thereof, and (C) Tenant shall furnish Landlord with such security by bond or otherwise, as Landlord may request in connection with such contest.

9. *Insurance.* (a) During the term Tenant, at its own cost and expense, shall:

- (1) Keep all buildings and improvements and equipment on, in or appurtenant to the demised premises at the commencement of the term and thereafter erected thereon or therein, including all alterations, rebuildings, replacements, changes, additions and improvements, insured against loss or damage by fire, with all standard extended coverage as may be usually required by any first mortgagee (and against loss or damage due to war or nuclear agents, if such insurance shall be available and required by any first mortgagee), in an amount sufficient to prevent Landlord and Tenant from becoming co-insurers under provisions of applicable policies of insurance but in any event

in an amount not less than 100% of the full replacement cost of the building together with improvements on the demised premises, excluding the cost of excavation and of foundation below the level of the lowest basement floor or, if there is no basement, below the level of the ground. If at any time there is a dispute as to the amount of such insurance the same shall be settled by arbitration.

(2) Provide and keep in force insurance against liability for bodily injury and property damage and boiler and machinery insurance, all such insurance to be in such amounts and in such forms of policies as may from time to time be required by Landlord.

(3) Provide and keep in force plate glass insurance covering the glass in the demised premises.

(4) Provide and keep in force rent insurance (and/or, as the case may require, use and occupancy insurance) in an amount not less than the annual net rent plus the estimated annual taxes, water charges, sewer rents and installments or assessments and the annual premiums for the insurance required by this Article 9.

(5) If a sprinkler system shall be located in any building, or portion thereof, on the demised premises, provide and keep in force sprinkler leakage insurance in amounts and forms satisfactory to Landlord.

(6) Provide and keep in force such other insurance and in such amounts as may from time to time be required by Landlord against such other insurable hazards as at the time are commonly insured against in the case of premises similarly situated.

(b) All insurance provided by Tenant as required by this Article 9 shall be carried in favor of Landlord and Tenant, as their respective interests may appear, and, in the case of insurance against damage to the demised premises by fire or other casualty, shall provide that loss, if any, shall be adjusted with and payable to Landlord. If requested by Landlord, such insurance against fire or other casualty shall include the interest of the holder of any mortgage on the fee and shall provide that loss, if any, shall be payable to such holder under a standard mortgage clause. Rent insurance and use and occupancy insurance may be carried in favor of Tenant but the proceeds thereof are hereby as-

signed to Landlord to be held by Landlord as security for the payment of the rent and additional rent hereunder until restoration of the demised premises. All such insurance shall be taken in such responsible companies as Landlord shall approve and the policies therefor shall at all times be held by Landlord or, when appropriate, by the holder of any such mortgage, in which case copies of the policies or certificates of such insurance shall be delivered by Tenant to Landlord. All such policies shall require fifteen (15) days notice by registered mail to Landlord of any cancellation thereof or change affecting Landlord's coverage thereunder.

(c) Tenant shall procure policies for all such insurance for periods of not less than one year and shall deliver to Landlord such policies with evidence of the payment of premiums thereon, and shall procure renewals thereof from time to time at least twenty (20) days before the expiration thereof.

(d) Tenant shall not violate or permit to be violated any of the conditions or provisions of any such policy, and Tenant shall so perform and satisfy the requirements of the companies writing such policies that at all times companies of good standing, satisfactory to Landlord or any mortgagee designated by Landlord, shall be willing to write and/or continue such insurance.

(e) Tenant and Landlord shall cooperate in connection with the collection of any insurance moneys that may be due in the event of loss, and Tenant shall execute and deliver to Landlord such proofs of loss and other instruments which may be required for the purpose of obtaining the recovery of any such insurance moneys.

(f) Tenant does hereby indemnify and hold harmless the Landlord from any and all damages which Landlord may sustain in the event the Tenant fails to maintain and to provide Landlord with the insurance coverage hereinabove required. If Tenant shall fail to purchase and maintain at any time any of the insurance coverage as required by this paragraph 9, Landlord shall have the right, but not the obligation, to purchase the same and to recover the cost thereof from the Tenant as additional rent by adding such cost to the next succeeding installment of rent.

10. Destruction -- Fire or Other Causes. (a) If, during the term, the buildings, improvements or the equipment on, in or appurtenant to the demised premises at the commencement of the term or thereafter erected thereon or therein shall be destroyed or damaged in whole or in part by fire or other cause, Tenant shall give to Landlord immediate notice thereof, and Tenant, at its own cost and expense, shall promptly repair, replace and rebuild same, at least to the extent of the value and as nearly as possible to the character of the buildings and improvements and the equipment therein existing immediately prior to such occurrence; and Landlord shall in no event be called upon to re-

pair, replace or rebuild any such buildings, improvements or equipment, nor to pay any of the costs or expenses thereof beyond or in excess of the insurance proceeds as herein provided.

(b) For the purpose of paying towards the cost of such repairs, replacement or rebuilding, Landlord shall make available all net sums received by Landlord under insurance policies covering such loss, as provided in Article 9 (a) (1), (3) and (5) (and Article 9 (a) (6), if applicable), to the parties whom Tenant may employ to repair, replace or rebuild the same as such repairs, replacement or rebuilding shall progress, or to Tenant as Tenant shall make or pay for such repairs, replacement or rebuilding, upon the certificates of the architect in charge of such work, whose selection shall be subject to the prior written approval of Landlord, which approval Landlord shall not unreasonably withhold. The disbursement of such insurance proceeds received by Landlord shall be made under a schedule of payments to be prepared by Tenant and approved by Landlord (which approval shall not be unreasonably withheld) each such payment to be in the proportion which the total net amount of insurance proceeds received and held by Landlord in connection therewith, plus so much of the total net amount thereof received by a mortgagee holding any of such policies as shall be made available therefor by such mortgagee, shall bear to the total estimated cost of the repairs, replacement or rebuilding; provided, however, that Landlord may withhold from each amount so to be paid by Landlord 25% thereof until the work of repairing or rebuilding shall have been completed and proof shall have been furnished to Landlord that no lien or liability has attached or will attach to the demised premises or to Landlord in connection with such repairs, replacement or rebuilding. If in the course of such work any mechanic's or other lien or order for the payment of money shall be filed against the demised premises or against Landlord or Tenant or any contractor of Tenant, or if Tenant shall default in the performance of any of the agreements, terms, covenants, or conditions hereof, Landlord shall not be obligated to make any payment of such insurance proceeds until and unless such lien or order shall have been fully bonded, satisfied, cancelled or discharged of record, and/or until such default shall have been cured. If the net amount of such insurance proceeds shall be insufficient for the proper and effective repair, replacement or rebuilding of such damaged or destroyed

buildings, improvements or equipment, Tenant shall pay the additional sums required, and if the amount of such insurance proceeds shall be in excess of the cost thereof the excess shall be paid to and retained by Landlord.

(c) Such work and the performance thereof shall be subject to and shall be performed in accordance with the provisions of Article 5 (a) (1), (2), (3), (4) and (5) except that the surety company performance bond provided for in Article 5 (a) (4) shall be in an amount, if any, by which the estimated cost of the work exceeds the insurance proceeds.

(d) At least ten days before the commencement of such repairs, replacement or rebuilding, Tenant shall notify Landlord of its intention to commence the same.

(e) This lease shall not terminate or be affected in any manner by reason of damage to or total, substantial or partial destruction of the buildings, improvements or equipment on, in or appurtenant to the demised premises at the commencement of the term or thereafter erected thereon or therein, or by reason of the untenability of the demised premises, or any part thereof, for or due to any reason or cause whatsoever.

11. *Condemnation.* (a) If the whole of the demised premises shall be taken or condemned by any competent authority for any public or quasi-public use or purpose, then and in that event this lease and the term hereof shall cease and terminate as of the date upon which title shall vest thereby in such authority and the rent reserved hereunder shall be apportioned and paid up to said date.

(b) If only a part of the demised premises shall be so taken or condemned, this lease and the term hereof shall not cease or terminate, but the rent payable hereunder after the date on which Tenant shall be required to surrender possession of the part of the demised premises so taken or condemned shall be reduced in such proportion and in such manner as the parties may agree or, if the parties cannot so agree, as shall be determined by arbitration. *

(c) In the event of any such taking or condemnation in whole or in part the entire awards shall belong to Landlord without any deduction

* however, if a portion of the demised premises is so taken, substantially interferes ** with the tenant's use of the premises, then at tenant's option the lease may cease or terminate 90 days after landlord's receipt of written notice from the tenant to be delivered within 10 days of the taking.

** (as objectively determined)

therefrom for the value of the unexpired term of this lease or for any other estate or interest in the demised premises now or hereafter vested in Tenant and Tenant hereby assigns to Landlord all of its right, title and interest in and to any and all such award or awards with any and all rights, estate and interest of Tenant now existing or hereafter arising in and to the same or any part thereof.

(d) In the event of a partial taking, however, Tenant shall promptly proceed to restore the remainder of the building on the demised premises to a complete, independent and self-contained architectural unit, and Landlord shall pay to Tenant, subject to the same provisions and limitations specified in Article 10 (b), the cost of restoration but in no event to exceed a sum equal to the amount of the separate award made to and received by Landlord for consequential damage. Such work and the performance thereof shall be subject to and shall be performed in accordance with the provisions of Article 5 (a) (1), (2), (3), (4) and (5) except that the surety company performance bond provided for in Article 5 (a) (4) shall be in an amount, if any, by which the estimated cost of the work exceeds said separate award for consequential damage. In the event that there is no separate award for consequential damage, the same shall be fixed and settled by arbitration as herein provided. The balance of such separate award or allocated amount not so used shall belong to and be retained by Landlord as its own property.

(e) In case of any governmental action, not resulting in the taking or condemnation of any portion of the demised premises but creating a right to compensation therefor, such as, without limitation, the changing of the grade of any street upon which the demised premises abut, or if less than a fee title to all or any portion of the demised premises shall be taken or condemned by any federal, state, municipal or governmental authority for temporary use or occupancy, this lease shall continue in full force and effect without reduction or abatement of rent, and the rights of Landlord and Tenant shall be unaffected by the other provisions of this Article 11 and shall be governed by applicable law.

12. *Subordination.* ~~This lease and all rights of Tenant hereunder are and shall be subject and subordinate to the lien of any and all mort-~~

~~any mortgage or mortgages, or consolidation mortgage or mortgages, which may now or hereafter affect the demised premises, or any part thereof, or the demised premises and other premises, and to any and all renewals, modifications, consolidations, replacements and extensions of any such mortgage or mortgages. Tenant shall upon demand at any time or times execute, acknowledge and deliver to Landlord, without expense to Landlord, any and all instruments that may be necessary or proper to subordinate this lease and all rights hereunder to the lien of any such mortgage or mortgages and each such renewal, modification, consolidation, replacement and extension, and, if Tenant shall fail at any time to execute, acknowledge and deliver any such subordination instrument, Landlord, in addition to any other remedies available to it in consequence thereof, may execute, acknowledge and deliver the same as the attorney in fact of Tenant and in Tenant's name, place and stead, and Tenant hereby irrevocably makes, constitutes and appoints Landlord, its successors and assigns, such attorney in fact for that purpose.~~ SEE ATTACHED RIDER 12A

13. *Landlord not liable for injury or damage.* Tenant is and shall be in exclusive control and possession of the demised premises as provided herein, and Landlord shall not in any event whatsoever be liable for any injury or damage to any property or to any person happening on or about the demised premises, nor for any injury or damage to any property of Tenant, or of any other person contained therein. The provisions hereof permitting Landlord to enter and inspect the demised premises are made for the purpose of enabling Landlord to be informed as to whether Tenant is complying with the agreements, terms, covenants and conditions hereof, and to do such acts as Tenant shall fail to do.

14. *No rent abatement.* No abatement, diminution or reduction of rent, charges or other compensation shall be claimed by or allowed to Tenant, or any persons claiming under it, under any circumstances, whether for inconvenience, discomfort, interruption of business, or otherwise, arising from the making of alterations, changes, additions, improvements or repairs to any buildings now on or which may hereafter be erected on the demised premises, by virtue or because of any present or future governmental laws, ordinances, requirements, orders,

Rider 12 A

This Lease shall be subordinate and subject to all ground or underlying leases and any mortgages covering the Premises, that now or may hereafter affect the Premises, and to all of the terms and conditions contained therein and to all renewals, modifications, consolidations, replacements or extensions thereof. If the ground or underlying lessor and/or mortgagee or any successor in interest shall succeed to the rights of the Landlord under this Lease, whether through possession, surrender, assignment, subletting, judicial or foreclosure action, or delivery of a deed or otherwise, the Tenant will attorn to and recognize such successor-landlord as the Tenant's landlord in accordance with the provisions of this Lease. This clause shall be self-operative and no further instrument of subordination or attornment shall be required.

directions, rules or regulations or by virtue or arising from, and during, the restoration of the demised premises after the destruction or damage thereof by fire or other cause or the taking or condemnation of a portion only of the demised premises (except as provided in Article 11) or arising from any other cause or reason.

15. *Access to Premises.* Tenant shall permit Landlord or its agents to enter the demised premises at all reasonable hours for the purpose of inspection, or of making repairs that Tenant may neglect or refuse to make in accordance with the agreements, terms, covenants and conditions hereof, and also for the purpose of showing the demised premises to persons wishing to purchase the same and, at any time within one year prior to the expiration of the term, to persons wishing to rent the same; and Tenant shall within six months prior to the expiration of the term permit the usual notices of "To Let", "For Rent" and "For Sale" to be placed on the demised premises and to remain thereon without hindrance and molestation.

16. *Vaults.* In case any vault or basement in front of or adjoining the demised premises, or any portico, stoop, window or other projection or erection of any kind beyond the building lines, as the same shall be authorized and fixed by law from time to time during the term, shall be ordered removed or shall be removed as the result or by virtue of any present or future laws, ordinances, requirements, orders, directions, rules or regulations of any federal, state, county or city government or other governmental authority, such removal, whether entire or partial, shall not constitute nor be deemed to be a violation or breach of any covenant hereof on the part of Landlord to be kept, observed and performed, an eviction, actual or constructive, or a ground for any claim for the abatement, diminution or reduction of rent or other charges; and such removal and incidental alteration and repair shall be made by and at the expense of Tenant.

17. *No Unlawful Occupancy.* Tenant shall not use or occupy, nor permit or suffer, the demised premises or any part thereof to be used or occupied for any unlawful or illegal business, use or purpose, nor for any business, use or purpose deemed by Landlord disreputable or extrahazardous, nor in such manner as to constitute a nuisance of

any kind, nor for any purpose or in any way in violation of any present or future governmental laws, ordinances, requirements, orders, directions, rules or regulations. Tenant shall immediately upon the discovery of any such unlawful, illegal, disreputable or extrahazardous use take all necessary steps, legal and equitable, to compel the discontinuance of such use and to oust and remove any subtenants, occupants or other persons guilty of such unlawful, illegal, disreputable or extrahazardous use.

18. *Indemnity.* Tenant shall indemnify and save harmless Landlord against and from all costs, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties, claims and demands of every kind or nature, including reasonable counsel fees, by or on behalf of any person, party or governmental authority whatsoever arising out of (a) any failure by Tenant to perform any of the agreements, terms, covenants or conditions of this lease on Tenant's part to be performed (b) any accident, injury or damage which shall happen in or about the demised premises or appurtenances or on or under the streets, sidewalks, curbs or vaults in front of or adjacent thereto, however occurring, and any matter or thing growing out of the condition, occupation, maintenance, alterations, repair, use or operation of the demised premises, or any part thereof, and/or of the streets, sidewalks, curbs or vaults adjacent thereto during the term (c) failure to comply with any laws, ordinances, requirements, orders, directions, rules or regulations of any federal, state, county or city governmental authority (d) any contest permitted by the provisions of Articles 3 (c) and 8 (c) hereof, or (e) any mechanic's lien, conditional bill of sale or chattel mortgage filed against the demised premises or any equipment therein or any materials used in the construction or alteration of any building or improvement thereon.

19. *Default.* (a) Each of the following events shall be a default hereunder by Tenant and a breach of this lease:

(1) If Tenant (or any successor or assignee of Tenant while in possession) shall file a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state or shall voluntarily take advantage of any such law or act by answer or other-

wise or shall be dissolved (if Tenant or such successor or assignee be a corporation) or shall make an assignment for the benefit of creditors.

(2) If involuntary proceedings under any such bankruptcy law or insolvency act or for the dissolution of a corporation shall be instituted against Tenant (or such successor or assignee) or if a receiver or trustee shall be appointed of all or substantially all of the property of Tenant (or such successor or assignee) and such proceedings shall not be dismissed or such receivership or trusteeship vacated within ~~thirty (30)~~ ^{ninety} days after such institution or appointment.

(3) If Tenant shall fail to pay Landlord any rent or additional rent as and when the same shall become due and payable and shall not make such payment within ten (10) days after same shall be due and payable.

(4) If Tenant shall fail to perform any of the other agreements, terms, covenants or conditions hereof on Tenant's part to be performed and such non-performance shall continue for a period of thirty (30) days after notice thereof by Landlord to Tenant or, if such performance cannot be reasonably had within such thirty-day period, Tenant shall not in good faith have commenced such performance within such thirty-day period and shall not diligently proceed therewith to completion.

(5) If Tenant shall vacate or abandon the demises premises.

(6) If this lease or the estate of Tenant hereunder shall be transferred to or shall pass to or devolve upon any other person or party, except in a manner herein permitted.

(7) If Tenant shall fail to take possession of the demised premises on the term commencement date (if fixed herein) or within fifteen (15) days after notice that the demised premises are available for occupancy (if the term commencement date is not fixed herein or shall be deferred as herein provided).

(h) In the event of any such default:

(1) Landlord shall have the right to cancel and terminate this lease, as well as all of the right, title and interest of Tenant hereunder, by giving to Tenant not less than five (5) days' notice of such cancellation and termination, and upon the expiration of the time fixed

in such notice this lease and the term hereof, as well as all of the right, title and interest of Tenant hereunder, shall expire in the same manner and with the same force and effect, except as to Tenant's liability, as if the expiration of the time fixed in such notice of cancellation and termination were the end of the term herein originally demised.

(2) Landlord at its option may, but shall not be obligated to, make any payment required of Tenant herein or comply with any agreement, term, covenant or condition, required hereby to be performed by Tenant and Landlord shall have the right to enter the demised premises for the purpose of correcting or remedying any such default and to remain therein until the same shall have been corrected or remedied but any expenditure for such performance by Landlord shall not be deemed to waive or release Tenant's default or the right of Landlord to take such action as may be otherwise permissible hereunder in the case of such default.

(c) In the event of cancellation or termination of this lease either by operation of law by issuance of a dispossessory warrant, by service of notice of cancellation or termination as herein provided, or otherwise, ~~except as provided in Article 19 or in the event of a default referred to in Articles (3) and (4) of Article 19~~ (a) Landlord may re-enter and repossess the demised premises, using such force for that purpose as may be necessary without being liable to prosecution therefor, and Tenant shall nevertheless remain and continue liable to Landlord in a sum equal to all rent and additional rent reserved herein for the remainder of the term herein originally demised. If Landlord shall so re-enter, Landlord may repair and alter the demised premises in such manner as to Landlord may seem necessary or advisable, and/or let or relet the demised premises or any parts thereof for the whole or any part of the remainder of the term herein originally demised or for a longer period, in Landlord's name or as the agent of Tenant, and out of any rent collected or received as a result of such letting or reletting Landlord shall first, pay to itself the cost and expense of retaking, repossessing, repairing and/or altering the demised premises, and the cost and expense of removing all persons and property therefrom; second, pay to itself the cost and expense sustained in securing any new tenants, and if Landlord shall

maintain and operate the demised premises the cost and expense of operating and maintaining the demised premises; and, third, pay to itself any balance remaining on account of the liability of Tenant to Landlord for the sum equal to all rent and additional rent reserved herein and unpaid by Tenant for the remainder of the term herein originally demised. No re-entry by Landlord, whether had or taken under summary proceedings or otherwise, shall absolve or discharge Tenant from liability hereunder.

(d) Should any rent so collected by Landlord after the aforementioned payments be insufficient to fully pay to Landlord a sum equal to all such rent and additional rent reserved herein, the balance or deficiency shall be paid by Tenant on the rent days herein specified, that is, upon each of such rent days Tenant shall pay to Landlord the amount of the deficiency then existing; and Tenant shall be and remain liable for any such deficiency, and the right of Landlord to recover from Tenant the amount thereof, or a sum equal to all such rent and additional rent reserved herein, if there shall be no reletting, shall survive the issuance of any dispossessory warrant or other cancellation or termination hereof, and Landlord shall be entitled to retain any overplus; and Tenant hereby expressly waives any defense that might be predicated upon the issuance of such dispossessory warrant or other cancellation or termination hereof.

~~(*) In any of the circumstances hereinabove mentioned in which Landlord shall have the right to hold Tenant liable upon the several rent days as above provided, Landlord shall have the election, in place and instead of holding Tenant so liable, forthwith to recover against Tenant as damages for loss of the bargain and not as a penalty, in addition to any other damages becoming due under Article 20 hereof, an aggregate sum which, at the time of such termination of this lease or of such recovery of possession of the demised premises by Landlord, as the case may be represents the then present worth of the excess, if any, of the aggregate of the rent and additional rent and all other charges payable by Tenant hereunder that would have accrued for the balance of the term over the aggregate rental value of the demised premises (such rental value to be computed on the basis of a tenant paying not only a rent to the Landlord for the use and occupation of the demised premises, but also such additional rent and other charges~~

as are required to be paid by Tenant under the terms of this lease) for the balance of such term.

(f) Suit or suits for the recovery of such deficiency or damages, or for a sum equal to any installment or installments of rent and additional rent hereunder, may be brought by Landlord, from time to time at Landlord's election, and nothing herein contained shall be deemed to require Landlord to await the date whereon this lease or the term hereof would have expired by limitation had there been so such default by Tenant or no such cancellation or termination.

(g) Tenant hereby expressly waives service of any notice of intention to re-enter. Tenant hereby waives any and all rights to recover or regain possession of the demised premises or to reinstate or to redeem this lease or other right of redemption as permitted or provided by or under any statute, law or decision now or hereafter in force and effect.

(h) Nothing in this Article 19 contained shall limit or prejudice the right of Landlord to prove and obtain as liquidated damages in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding an amount equal to the maximum allowed by any statute or law governing such proceeding and in effect at the time when such damages are to be proved, whether or not such amount be greater, equal to or less than the amount of the damages referred to in either of the preceding subdivisions.

(i) Any right or remedy herein conferred upon and referred to Landlord is intended to be exclusive of any other right or remedy herein or by law provided but which shall be cumulative and in addition to every other right or remedy given hereunder or now or hereafter existing at law or equity or by statute.

20. Bankruptcy or Insolvency. If this lease shall be cancelled and terminated as provided in Article 19 (b) (1) Tenant covenants and agrees, any other covenant in this lease to the contrary notwithstanding:

(1) That the demised premises shall be then in the same condition as that in which Tenant has agreed to surrender them to Landlord at the expiration of the term hereof;

(2) That Tenant, on or before the occurrence of any such event, shall perform any covenant contained in this lease for the making of any improvement, alteration or betterment to the demised premises, or for restoring any part thereof; and

(3) That, for the breach of any covenant above-stated in this Article 20, Landlord shall be entitled *ipso facto* without notice or without action by Landlord to recover and Tenant shall pay as and for liquidated damages therefor the then cost for performing such covenant.

Each and every covenant contained in this Article 20 shall be deemed separate and independent and not dependent upon other provisions of this lease, and the performance of any such covenant shall not be considered to be rent or other payment for the use of the demised premises. The damages for failure to perform the same shall be deemed in addition to and separate and independent of the damages accruing by reason of the breach of any other covenant contained in this lease.

21. *Remedies of Landlord.* (a) In the event of a breach or a threatened breach by Tenant of any of the agreements, terms, covenants or conditions hereof, Landlord shall have the right of injunction to restrain the same and the right to invoke any remedy allowed by law or in equity, as if specific remedies, indemnity or reimbursement were not herein provided.

(b) The rights and remedies given to Landlord in this lease are distinct, separate and cumulative, and no one of them, whether or not exercised by Landlord, shall be deemed to be in exclusion of any of the others herein or by law or equity provided.

(c) In all cases hereunder, and in any suit, action or proceeding of any kind between the parties, it shall be presumptive evidence of the fact of the existence of a charge being due, if Landlord shall produce a bill, notice or certificate of any public official entitled to give the same to the effect that such charge appears of record on the books in his office and has not been paid.

(d) No receipt of moneys by Landlord from Tenant, after the cancellation or termination hereof in any lawful manner, shall reinstate, continue or extend the term, or affect any notice theretofore given to Tenant or operate as a waiver of the right of Landlord to enforce the payment of rent and additional rent then due or thereafter falling due, or operate as a waiver of the right of Landlord to recover possession of the demised premises by proper suit, action, proceed-

ings or other remedy; it being agreed that, after the service of notice to cancel or terminate as herein provided and the expiration of the time therein specified, after the commencement of any suit, action, proceedings or other remedy, or after a final order or judgment for possession of the demised premises, Landlord may demand, receive and collect any moneys due, or thereafter falling due, without in any manner affecting such notice, suit, action, proceedings, order or judgment; and any and all such moneys so collected shall be deemed to be payments on account of the use and occupation of the demised premises, or at the election of Landlord, on account of Tenant's liability hereunder.

22. *No Representations by Landlord.* At the commencement of the term, Tenant shall accept the buildings and improvements and any equipment on or in the demised premises in their existing condition and state of repair, and Tenant covenants that no representations, statements, or warranties, express or implied, have been made on or on behalf of Landlord in respect thereof, in respect of their condition, or the use or occupation that may be made thereof, and that Landlord shall in no event whatsoever be liable for any latent defects therein.

23. *No waiver.* The failure of Landlord to insist upon a strict performance of any of the agreements, terms, covenants and conditions hereof shall not be deemed a waiver of any rights or remedies that Landlord may have and shall not be deemed a waiver of any subsequent breach or default in any of such agreements, terms, covenants and conditions.

24. *End of Term.* Tenant shall, on the last day of the term, or upon the sooner termination of the term, peaceably and quietly surrender and deliver the demised premises to Landlord free of subtenancies, broom-clean, including all buildings, replacements, changes, additions and improvements constructed, erected, added or placed by Tenant thereon, with all equipment in or appurtenant thereto, except all movable trade fixtures (not including equipment) installed by Tenant, in good condition and repair. Any trade fixtures or personal property not used in connection with the operation of the demised premises and belonging to Tenant or to any subtenant, if not removed

at such termination and if Landlord shall so elect, shall be deemed abandoned and become the property of Landlord without any payment or offset therefor. If Landlord shall not so elect, Landlord may remove such fixtures or property from the demised premises. ~~and store them at Tenant's risk and expense.~~ Tenant shall repair and restore, and save Landlord harmless from, all damage to the demised premises caused by the removal therefrom, whether by Tenant or by Landlord, of all such trade fixtures and personal property.

Tenant
shall repair
Landlord for
the cost of
removal

25. *Quiet Enjoyment.* Landlord covenants that, so long as Tenant shall faithfully perform the agreements, terms, covenants and conditions hereof, Tenant shall and may peaceably and quietly have, hold and enjoy the demised premises for the term hereby granted without molestation or disturbance by or from Landlord and free of any encumbrance created or suffered by Landlord, except those to which this lease is made subject and subordinate as herein provided.

26. *Arbitration.* In such cases where this lease provides for settlement of a dispute or question by arbitration, the same shall be settled by arbitration in accordance with the rules, then obtaining, of JAMS/Endispute and judgment upon the award rendered may be entered in any court having jurisdiction thereof.

27. *Estoppel Certificate.* Tenant shall, without charge, at any time and from time to time hereafter, within ten days after request of Landlord, certify by a written instrument duly executed and acknowledged to any mortgagee or purchaser, or proposed mortgagee or proposed purchaser, or any other person, firm or corporation specified by Landlord, as to the validity and force and effect of this lease, in accordance with its tenor, as then constituted, as to the existence of any default on the part of any party thereunder, as to the existence of any offsets, counterclaims or defenses thereto on the part of Tenant, and as to any other matters may be reasonably requested by Landlord.

28. *Notice.* Whenever it is provided herein that notice, demand, request or other communication shall or may be given to or served upon either of the parties by the other, and whenever either of the parties shall desire to give or serve upon the other any notice, demand, request or other communication with respect hereto or the demised

premises, each such notice, demand, request or other communication shall be in writing and, any law or statute to the contrary notwithstanding, shall be effective for any purpose if given or served as follows:

(a) If by Landlord, by mailing the same to Tenant by registered or certified mail postage prepaid, return receipt requested, addressed to Tenant at 400 WALNUT AVENUE, BRONX, NY 10454 *;

or at such other address as Tenant may from time to time designate by notice given to Landlord by registered mail.

(b) If by Tenant, by mailing the same to Landlord by registered or certified mail, postage prepaid, return receipt requested, addressed to Landlord at c/o Bergson, 68 Woods Road, Palisades, New York, 10964* or at such other address as

Landlord may from time to time designate by notice given to Tenant by registered mail.

Every notice, demand, request or other communication hereunder shall be deemed to have been given or served at the time that the same shall be deposited in the United States mails, postage prepaid, in the manner aforesaid. Nothing herein contained however, shall be construed to preclude personal service of any notice, demand, request or other communication in the same manner that personal service of a summons or other legal process may be made.

29. *Shoring.* In the event that an excavation shall be made for building or other purposes upon land (including land in the bed of a street) adjacent to the demised premises or shall be contemplated to be so made, Tenant shall afford, to the person or persons causing or authorized to cause such excavation, license to enter upon the demised premises for the purpose of doing such work as said person or persons shall deem to be necessary to preserve the wall or walls, structure or structures of the building which is a part of the demised premises from injury or damage and to support the same by proper foundations. Tenant shall, at its own expense, repair or cause to be repaired any damage caused to any part of the demised premises because of any excavation, construction work or other work of a similar nature which may be done on any such adjacent lands and Landlord hereby assigns to Tenant any and all rights to sue for or recover against the adjoining

*with a copy to:

Tannenbaum Helpert Syracuse & Hirschtritt
900 Third Avenue, Suite 1200
N.Y., NY 10022
Attention: Andre R. Jagolm, Esq.

owners, or the parties causing such damages, the amounts expended or injuries sustained by Tenant because of the provisions of this Article 29 requiring the Tenant to repair any damages sustained by such excavations, construction work or other work.

30. Definitions. The term "Landlord" as used in this Lease shall at any given time mean the person or persons, corporation or corporations, or other entity or entities who are the owner or owners of the reversionary estate of Lessor in and to the demised premises.*see page 3 In the event of any conveyance or other divestiture of title to the reversionary estate of Landlord in and to the demised premises the person or persons, corporation or corporations, or other entity or entities who are divested of its or their interest in the demised premises shall be entirely freed and relieved of all covenants and obligations thereafter accruing hereunder, and the person or persons, corporation or corporations, or other entity or entities who succeeds or succeed to said interest in the demised premises shall be deemed to have assumed the covenants and obligations of Lessor thereafter accruing hereunder, and until the next divestiture of title, Lessee shall look solely to said successor for the observance and performance of the covenants and obligations of Landlord hereunder so assumed by said successor. Neither Landlord nor any successor of Landlord shall be personally liable for any monetary judgment obtained against it as a result of nonperformance of any obligations under this Lease, and Tenant shall look only to the interest of Landlord and its successors in and to the demised premises for satisfaction of any such judgment. Tenant agrees to attorn to any such successor of Landlord.

The word "equipment" as used herein shall, among other things include, but shall not be limited to, all machinery, engines, dynamos, boilers, elevators, electrical refrigerators, air-conditioning compressors, ducts, units and equipment, heating and hot water systems, pipes, plumbing, wiring, gas, steam, water and electrical fittings, ranges and radiators.

The words "re-tenant" and "re-entry" as used herein shall not be restricted to their technical legal meaning.

The use herein of the neuter pronoun in any reference to Landlord or Tenant shall be deemed to include any individual Landlord or Tenant, and the use herein of the words "successors and assigns" or "successors or assigns" of Landlord or Tenant shall be deemed to include the heirs, legal representatives and assigns of any individual Landlord or Tenant.

31. Entire Agreement. This lease contains the entire agreement between the parties and cannot be changed or terminated orally, but only by an instrument in writing executed by the parties.

32. *New York Law.* This agreement shall be governed by and construed in accordance with the laws of the State of New York.

33. *Waiver of Trial by Jury.* It is mutually agreed by and between Landlord and Tenant that the respective parties hereto shall and they hereby do waive 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, Tenant's use or occupancy of the demised premises, and/or claim of injury or damage.

34. *Descriptive Notes.* The descriptive notes are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this lease nor in any way affect this lease.

35. *Successors and Assigns.* The agreements, terms, covenants and conditions herein shall bind and inure to the benefit of Landlord and Tenant and their respective heirs, personal representatives, successors and, except as otherwise provided herein, their assigns.

36. *Security.* The Tenant hereby deposits the sum of \$ ~~100,000~~ ^{100,000} with the Landlord, receipt of which is hereby acknowledged, as security for the full and faithful performance by the Tenant of each and every term, covenant and condition of this lease. In the event that the Tenant defaults in respect to any of the terms, provisions, covenants and conditions of this lease, including but not limited to payment of rent and additional rent, the Landlord may use, apply or retain the whole or any part of the security so deposited for the payment of any rent and additional rent in default or for any other sum which the Landlord may expend or be required to expend by reason of the Tenant's default, including any damages or deficiency in the re-letting of the premises, whether such damage or deficiency accrue before or after summary proceedings or other re-entry by the Landlord. In the event that the Tenant shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this lease, the security or any balance thereof shall be returned to the Tenant after the time fixed as the expiration of the herein demised term. The Tenant shall not be entitled to any interest on the afore-

** Interest - bearing account. Interest as accrued to be added as security, less 1% annually to be paid to Landlord as administration expense.

said security. In the absence of evidence satisfactory to the Landlord of any assignment of the right to receive the security, or the remaining balance thereof, the Landlord may return the security to the original Tenant, regardless of one or more assignments of the lease itself. In the event of a bona fide sale, subject to this lease, the Landlord shall have the right to transfer the security to the vendee for the benefit of the Tenant and Landlord shall be considered released by the Tenant from all liability for the return of such security; and the Tenant agrees to look to the new Landlord solely for the return of the said security, and it is agreed that this shall apply to every transfer or assignment made of the security to a new Landlord. The security deposited under this lease shall not be mortgaged, assigned or encumbered by the Tenant without the written consent of the Landlord. It is expressly understood and agreed that the issuance of a warrant and the re-entering of said premises by the Landlord for any default on the part of the Tenant prior to the expiration of the demised term, shall not be deemed such a termination of this lease as to entitle the Tenant to the recovery of the said security, that the said deposit shall be retained and remain in the possession of the Landlord until the end of the term as hereinbefore stated.

37. No Broker. Tenant represents that it had no conversations or negotiations with any broker concerning the renting of the demised premises and that no broker was instrumental in obtaining the execution of this lease and Tenant agrees to indemnify and hold Landlord harmless for any and all claims for brokerage commission.

Reservation of Air Rights.

38. The Tenant shall have no right to make structural changes in the building. Landlord reserves to itself the air rights above, below and around the building, including any space below the present basement or vaults. Landlord further reserves the rights to join in any zoning lot declaration to its benefit or for the benefit of any adjoining lot within the block where the premises are located, pursuant to Zoning Lot Resolution 12-10 of the City Planning Commission and any legislation or regulation which is substitution or is in expansion of or in amendment thereof.

39. Late Rent Payment Charge. In the event any installment of rent shall be overdue for more than a period of ten (10) days, a late charge of 2¢ for each dollar so overdue shall become immediately due to the Landlord as liquidated damages for failure to make prompt payment and same shall be deemed additional rent immediately due and payable.

No Pornographic or Other Illegal Use.

40. Tenant shall not use or occupy, nor permit or suffer the leased property or any part thereof to be used or occupied for any unlawful or illegal business use or purpose, nor for any business, use or purpose deemed disreputable or extra-hazardous, nor in such manner as to constitute a nuisance of any kind, nor for any purpose or in any way in violation of any present or future governmental laws, ordinances, requirements, order, directions, rules, or regulations. Tenant shall, immediately upon the discovery of any such unlawful, illegal, disreputable, or extra-hazardous use, take all necessary steps, legal and equitable, to compel the discontinuance of such use and to oust and remove any subtenants, occupants, or other persons guilty of such unlawful, illegal, disreputable, or extra-hazardous use. Tenant shall indemnify and save harmless Landlord against and from all costs, expenses, liabilities, losses, damages, injunctions, suits, fines, penalties, claims and demands including reasonable counsel fees, arising out of or by reason of or on account of any violation of or default in the covenants of this paragraph.

Tenant shall not sell or display on or about the leased property any obscene photographs, pictures, posters, films, books, magazines, periodicals or printed matter, nor shall it sell any such matter or other merchandise which is offensive to or is calculated to offend the sense of decency of the general public. Tenant shall not offer for viewing in the leased property motion pictures or films of any type whatsoever nor shall Tenant conduct in the leased property any show or exhibit for which a charge is made for viewing. Tenant shall not conduct a health club, massage parlor or private club of any kind whatsoever in the leased property. It is understood and agreed that the tenant shall use the premises as any legal use. The premises may be used for storage, sale marketing and distribution of alcoholic beverages for itself or others, provided said use is legal.

A breach of any of the terms of this paragraph shall be deemed a substantial and major breach of this lease to call into effect the operation of a conditional limitation automatically terminating this lease as follows:

If Landlord determines that a violation of the terms of this paragraph has occurred the landlord will send notice to the tenant by certified mail, return receipt requested of the violation of this provision and if said condition has not been completely eliminated to the complete satisfaction of the landlord, or said illegal, disreputable or other prohibited use has not been discontinued within thirty (30) days from the date of such notice, then and in that event this lease shall be deemed cancelled and shall be null and void and of no force and effect and shall automatically cease without upon further communications or notice thirty (30) days from the date of the written notice of cancellation by the landlord to the tenant as if the ~~thirtieth~~ ^{five} day fifth following said notice had been stated in this lease as the termination and expiration date of said lease, and the landlord or its agent shall have the absolute right to re-enter the demised premises without any further legal procedures or summary proceedings of or by any court or other proceedings or by force or otherwise to repossess said demised premises.

Further, if the tenant shall remain in possession after the lease has been cancelled as a result of the operation of the conditional limitation or the landlord's right to cancel for violation of the use clause of this lease, then the landlord shall be entitled to exercise any and all legal proceedings against the tenant to remove it in addition to its other remedies as provided in this clause. FURTHER, if the tenant shall remain in possession after the thirtieth day from the date of notice aforementioned the tenant shall pay TWO THOUSAND (\$2,000.00) DOLLARS per day for each and every day it remains in

41. RENT

From the commencement date of this lease until the termination of this lease, the fixed rent shall be One Million Two Hundred Nineteen Thousand Nine Hundred Sixty Eight (\$1,219,968.00) dollars per annum, payable in twelve equal installments of One Hundred One Thousand Six Hundred Sixty Four and 00/100 (\$101,664) Dollars on the first day of each calendar month subject to a 3% increase in rent effective January 1 of each year.

In witness whereof, the parties here to have executed this Lease as of the day and year first above written.

Definition of Landlord or owner of the fees of the demised premises only so long as such Landlord shall be such owner, so that in the event of a sale, transfer or conveyance of the fee of the demised premises, the purchaser, transferee or grantee shall succeed to the rights of and shall be deemed to have assumed all obligations of Landlord hereunder, and from and after the date of such sale, transfer or conveyance the grantor shall be deemed to be and shall be released of and from all covenants and obligations of Landlord hereunder accruing from and after the date of such transfer, but Landlord shall remain liable for any moneys or other security not turned over to the purchaser, transferee or grantee all sums in which tenant has an interest.

In witness whereof, the parties here to have executed this Lease as of the day and year first above written.

LANDLORD:

WASHINGTON WYANDANCH REALTY, LLC

By: _____

TENANT:

NEW YORK CROSS DOCKING, LLC

By: _____