

LEASE AGREEMENT

BETWEEN

SUFFOLK COUNTY INDUSTRIAL LLC, LANDLORD

AND

1724 FIFTH AVENUE REALTY LLC, TENANT

1724 FIFTH AVENUE
BAYSHORE, NEW YORK

LEASE AGREEMENT

This LEASE AGREEMENT (this "Lease") entered into on the Lease Date set forth below by and between SUFFOLK COUNTY INDUSTRIAL LLC and the Tenant identified below.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto intending to be legally bound hereby agree as follows:

PART I OF LEASE (containing 2 parts and all exhibits and addendums, all of which constitute one and the same Lease)

SECTION 1 - BASIC LEASE INFORMATION

- 1.1. **Landlord:** Suffolk County Industrial, LLC
10 Hub Drive
Melville, NY 11747
- 1.2. **Tenant:** 1724 Fifth Avenue Realty LLC
1 Lexington Avenue
Bethpage, New York 11714
- 1.3. **Lease Date:** June 20, 2016
- 1.4. **Leased Premises:** A portion of the building (the "Building") located at 1724 Fifth Avenue, Bayshore, New York (the "Overall Premises"), as depicted on the site plan attached hereto as Exhibit A and made a part hereof (the "Site Plan").
- 1.5. **Square Footage of Leased Premises:** Approximately 295,260 rentable square feet, which is hereby deemed to be the square footage of the Leased Premises.
- 1.6. **Tenant's Percentage:** Tenant's proportionate share for Real Estate Taxes (as defined herein) is hereby deemed to be 74% of the PILOT payments for the Overall Premises; when the PILOT payments for the Overall Premises expire or are fully extinguished, Tenant's proportionate share for Real Estate Taxes shall be deemed to be 60%; and for everything else, Tenant's proportionate share is deemed to be 72%
- 1.7. **Term of Lease** (all as more fully set forth herein):
- 1.7.1. **Initial Term:** Fifteen (15) years from the Rent Commencement Date, commencing on the Commencement Date.
- 1.7.2. **Renewal Term:** Three (3) renewals term of ten (10) years commencing on the expiration of the prior term.

1.8. Fixed Minimum Rent:

1.8.1. Initial Term:

1.8.1. Initial Term:

<u>Lease Year</u>	<u>Annual Minimum Rent</u>	<u>Monthly Minimum Rent</u>
Year 1 - Year 5	\$1,493,345	\$124,445
Year 6	\$1,653,455	\$137,788
Year 7	\$1,686,524	\$140,544
Year 8	\$1,720,254	\$143,355
Year 9	\$1,754,660	\$146,222
Year 10	\$1,789,753	\$149,146
Year 11	\$1,825,548	\$152,129
Year 12	\$1,862,059	\$155,172
Year 13	\$1,899,300	\$158,275
Year 14	\$1,937,286	\$161,440
Year 15	\$1,976,032	\$164,669

1.8.2. Renewal Terms

<u>Lease Year</u>	<u>Annual Minimum Rent</u>	<u>Monthly Minimum Rent</u>
Year 16	\$2,015,552	\$167,963
Year 17	\$2,055,863	\$171,322
Year 18	\$2,096,981	\$174,748
Year 19	\$2,138,920	\$178,243
Year 20	\$2,181,699	\$181,808
Year 21	\$2,225,333	\$185,444
Year 22	\$2,269,839	\$189,153
Year 23	\$2,315,236	\$192,936
Year 24	\$2,361,541	\$196,795
Year 25	\$2,408,772	\$200,731
Year 26	\$2,468,991	\$205,749
Year 27	\$2,530,716	\$210,893
Year 28	\$2,593,983	\$216,165
Year 29	\$2,658,833	\$221,569
Year 30	\$2,725,304	\$227,109
Year 31	\$2,793,437	\$232,786
Year 32	\$2,863,272	\$238,606
Year 33	\$2,934,854	\$244,571
Year 34	\$3,008,226	\$250,685
Year 35	\$3,083,431	\$256,953
Years 36-45	See Section 3.3	

1.9. **Security Deposit:** None

1.10. **Use of Premises:** Tenant shall have the right to use the Premises for offices and warehouse for the operation of a supermarket and for any other legal use related to the food industry (other than for the primary sale of cooked food, such as a restaurant) and for no other purpose. Tenant's use of the Leased Premises is subject to the Prohibited Use set forth herein in Section 11.3.

1.11. **Notice:**

Landlord's Address for Notice:

Suffolk County Industrial, LLC
10 Hub Drive
Melville, NY 11742

Tenant's Address for Notice:

Initially:
Managing Member
1 Lexington Ave.
Bethpage, NY 11714
After substantial completion of Landlord's Work for the Office Space:
1724 Fifth Avenue, Bayshore, New York 11706

With a copy to:

Or Raitses, Esq.
1 Lexington Ave.
Bethpage, NY 11714

1.12. **Broker:** Colliers International LI Inc. and Buck Realty of L.I., Inc.

1.13. **Tenant's Guarantor:** Best Yet Market, Inc.

1.14. **List of Exhibits:**

Exhibit A	Site Plan
Exhibit A-1	First Floor Office Plan
Exhibit A-2	Second Floor Office Plan
Exhibit A-3	Third Floor Office Plan
Exhibit A-4	Coop Plan
Exhibit A-5	Warehouse Plan
Exhibit B	Landlord's Work
Exhibit C	Rent and Term Commencement Agreement
Exhibit D	Form of Tenant Agency Compliance Agreement
Exhibit E	Present Mortgagee's form of SNDA

Part I is an integral part of the Lease and does not stand alone as an independent understanding. All terms and provisions of Part I shall be construed in accordance with and are a material part of all other terms and provisions of the Lease, including all Exhibits attached hereto and thereto and/or made a part hereof or thereof by reference as if set forth in full.

PART II OF LEASE

SECTION 2 – CERTAIN DEFINITIONS

2.1. Certain Definitions. The following capitalized terms shall have the following meanings when used in this Lease.

“Commencement Date” shall mean the date of the closing of title on Landlord’s purchase of the Overall Premises.

“Coop Space” shall mean the space outlined on the plan attached hereto as Exhibit A-4 and shall be deemed to have 85,136 square feet.

“First Floor Space” shall mean the space outlined on the plan attached hereto as Exhibit A-1 and shall be deemed to have 45,191 square feet.

“Landlord’s Work” shall be as set forth in Exhibit B attached hereto and made a part hereof and as further detailed in Section 5.1

“Laws” shall mean any and all laws, codes, ordinances, regulations, directives, rulings, or similar requirements by any city, county, town, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, pertaining to the Leased Premises.

“Lease Year” shall mean each twelve month period during the Term of this Lease. The first Lease Year shall begin on the Rent Commencement Date if the Rent Commencement Date shall occur on the first day of a calendar month; if not, then the first Lease Year shall commence on the first day of the first month after the Rent Commencement Date. Each succeeding Lease Year shall commence on the anniversary date of the first Lease Year.

“Second Floor Office Space” shall mean the space outlined on the plan attached hereto as Exhibit A-2 and shall be deemed to have 44,539 square feet.

“Third Floor Office Space” shall mean the space outlined on the plan attached hereto as Exhibit A-3 and shall be deemed to have 20,715 square feet.

“Warehouse Space” shall mean the space outlined on the plan attached hereto as Exhibit A-5 and shall be deemed to have 99,679 square feet.

2.2. Leased Premises. Landlord hereby leases to Tenant, and Tenant hereby leases and accepts from Landlord, upon the conditions set forth herein, the premises the Leased Premises, subject to all liens, encumbrances, easements, restrictions, covenants and zoning laws and all regulations affecting or governing the Overall Premises and/or the Leased Premises.

2.3. Common Areas. Tenant has the non-exclusive right to use in common with other tenants in the Overall Premises, and subject to reasonable rules from time to time made by Landlord of which Tenant is given notice, the following areas appurtenant to the Leased Premises: parking areas, driveways, truckways, delivery passages, truck-loading areas (loading docks that connect to the Leased Premises are exclusive use of Tenant), access and egress roads, walkways, corridors, sidewalks and open areas, landscaped areas, and all other common facilities, and other areas that are not intended to be leased to tenants or reserved by Landlord, excluding therefrom those certain restricted areas as so indicated as restricted on the attached Site Plan (the “Common Areas”).

2.4. Parking in Common Area: Landlord agrees that Tenant may during the term hereof, with others, have the non-exclusive right in common to use the parking facilities of the Overall Premises for the accommodation and parking of automobiles of Tenant, its agents and employees, and its invitees and customers.

2.5. Parking: Tenant shall have the right to exclusive use of the parking spaces in the area designated in yellow on the Site Plan attached hereto as Exhibit A for the parking of automobiles. The number of parking spaces in such area shall include the minimum number required by the Town Code given the square footage of the retail use, which retail square footage shall not exceed 30,000 square feet. The retail spaces shall be designated by the Landlord with the marking "Supermarket Customers Parking". Landlord reserves the right at all times to redesignate the designated parking areas and to prescribe the use of the entire parking lot by rules and regulations which shall apply to all tenants occupying space in the Overall Premises. Such redesignation shall not reduce the number of parking spaces designated for the Tenant herein. All of the parking spaces and parking areas to be utilized hereunder are at the vehicle owners own risk, and Landlord shall not be liable for any injury to person or property or loss by theft or damage or otherwise of any automobile or its contents or from any other cause whatsoever. In addition, Owner shall not be responsible for policing any of the parking areas to prevent any unauthorized use thereof.

SECTION 3 - THE TERM

3.1. Initial Term. The term ("Term") of this Lease shall commence on the Commencement Date and shall terminate on the final day of the calendar month following the fifteenth (15th) anniversary of the Rent Commencement Date (the "Expiration Date"), unless renewed, extended, or sooner terminated as provided for herein.

3.2. Renewal Term. Tenant shall have three (3) options to renew this Lease (each, an "Option") for three additional terms of ten (10) years, each upon all the terms, covenants and conditions set forth herein (such period of ten (10) years shall each be referred to as the "Renewal Term"). Fixed Minimum Rent during the Renewal Terms shall be as provided in Section 1.8.2 above. All other lease terms shall be the same but there shall be no further right to renew after the third Renewal Term. The Options for the first and second Renewal Terms shall be automatically exercised unless Tenant has given Landlord written notice of its election not to renew not less than nine (9) months prior to the Expiration Date or the expiration of the prior Renewal Term, as the case may be (TIME BEING OF THE ESSENCE with respect to the giving of such non-renewal notice). Each such Option shall be conditioned upon: (i) Tenant not being in default hereunder beyond any applicable notice and cure period both at the time of the exercise of each such Option and at the commencement of each Renewal Term; (ii) no more than two (2) notices of default in any twelve (12) month period shall have been sent to Tenant, both at the time of the exercise of each Option and at the commencement of the Renewal Term; and (iii) for the third Renewal Term, Tenant giving Landlord written notice of its election to renew not less than nine (9) months prior to the expiration of the second Renewal Term (TIME BEING OF THE ESSENCE with respect to the giving of such renewal notice). After the exercise of each Option, all references to the Term and the Expiration Date shall be deemed to mean the Term or Expiration Date, as applicable, as extended pursuant to this Section 3.2.

3.3 Renewal Rent in the Third Renewal Term.

(a) No later than fifteen (15) days after Landlord receives Tenant's Third Option Notice for the third Renewal Term, Landlord shall send to Tenant its determination of the fair rental value of the Leased Premises during the third Renewal Term. Such fair rental value, as

determined by Landlord in its sole discretion, shall become the Fixed Minimum Rent during the Renewal Term.

(b) In the event that Tenant, for any reason, objects to Landlord's determination of fair rental value, within ten (10) days of Tenant's receipt of Landlord's determination, Tenant shall submit to Landlord its determination of fair rental value for the Leased Premises for the period in question. Should Landlord not accept Tenant's determination, then, within ten (10) days from notice of such determination, Landlord and Tenant shall then each select an independent appraiser with at least ten (10) years' experience in appraising commercial properties in the vicinity of the Leased Premises, and deliver to the other confirmation from such appraiser that it has been retained by the respective party and has paid such appraiser's fee. Should either party fail to deliver such confirmation, then the other party's determination of Fixed Minimum Rent during the third Renewal Term shall become binding.

(c) The two selected appraisers shall each prepare an appraisal of the fair rental value of the Leased Premises, on the current use basis if Tenant is an affiliate or subsidiary of Best Yet Market, Inc., or, if not, then on the highest and best use basis, as if pursuant to a new, market rent lease. They shall communicate and within twenty (20) days mutually agree to and appoint a third appraiser with the same qualifications or better and notify the parties within such twenty (20) day period of the name of such selection and deliver to such third appraiser their respective reports. In the event of a failure to agree on a third appraiser, the two appraisers shall so notify Landlord and Tenant, either of whom may then apply to the American Arbitration Association (or any successor thereto) for appointment of the third appraiser.

(d) Within ten (10) days from the appointment of the third appraiser, both Landlord and Tenant shall execute its retention agreement and pay 50% of its fee. Failure to do so will result in the abiding party's determination of fair rental value becoming the Fixed Minimum Rent hereunder.

(e) The third appraiser shall decide the fair rental value of the Leased Premises for such period without a hearing or evidence other than the appraisers' reports by selecting one (1) of the following two (2) options: either the Landlord's determination of fair rental value; or the Tenant's determination of fair rental value. Such determination shall be conclusive and binding on the parties for all purposes. The third appraiser shall have no other option other than those two stated, shall render such decision within thirty (30) days of its appointment and such decision shall be final and binding upon the parties.

(f) If the Renewal Term commences during the pending of such appraisal procedure or during any appeal of the appraiser's decision, then Tenant shall pay Landlord Fixed Rent at Landlord's determination of fair market value from the commencement of such period until such appraiser's decision is final or the appeal therefrom is final. If Tenant's determination of Fixed Minimum Rent for such period is selected by the third appraiser, Landlord will pay Tenant the difference, if any, between Fixed Minimum Rent collected by Landlord for such period and Fixed Minimum Rent as determined by the appraiser.

SECTION 4 - RENT

4.1. Rent and Additional Rent. Tenant covenants and agrees to pay without notice, demand or offset to Landlord, at the Landlord's address specified in Section 1.1, or at such place as Landlord shall from time to time designate in writing, Fixed Minimum Rent for the Leased Premises at the rate specified in Section 1.8 plus all other charges, expenses and amounts required to be paid

hereunder, all of which is referred to as "**Additional Rent**" (Fixed Minimum Rent and Additional Rent is hereinafter collectively referred to as the "**Rent**"), and proportionately at such rate for any partial month, which Fixed Minimum Rent and Additional Rent shall be paid monthly, in advance, on or before the first day of each and every calendar month during the term hereof (unless otherwise expressly set forth herein for certain items of Additional Rent), by Bank Cashier's check, provided, however, that after the first Rent payment, Landlord shall permit such payments to be made by means of a regular check drawn on accounts of a bank or depository institution licensed as such in the United States until one such regular check is not honored for payment.

4.2. Rent Commencement Date. Tenant's obligation to pay Rent shall commence on the Commencement Date (the terms "Commencement Date" and "Rent Commencement Date" shall be used interchangeably in this Lease and shall mean the same date).

4.3. Late Fees, Interest. In the event Tenant pays any Rent, Additional Rent, charge, fee or other amount stipulated under the terms of this Lease later than the fifth (5th) calendar day from the date when due, Tenant shall also pay a late fee equal to five (5%) percent of the total payment then due, in addition to all interest that may accrue thereon. Tenant shall pay to Landlord as Additional Rent, in addition to any Rent, Additional Rent, charge, fee or other amount stipulated under the terms of this Lease, interest thereon at the rate of fifteen percent (15%) per annum ("**Lease Interest Rate**") from the date due until payment has been made (i.e., good funds actually received by Landlord) in addition to all other late charges, administrative fees or other amounts due. This provision shall not prevent Landlord from exercising any other remedy herein provided in the event of any default by Tenant. In the event any check of Tenant's is returned by the bank due to non-sufficient funds in Tenant's accounts or any other reason, Tenant shall pay to Landlord, as Additional Rent, within five (5) days of demand and in addition to all other Rent, late fees, interest and charges due hereunder, a fee of One Hundred Fifty Dollars (\$150.00) for each such returned check as a charge for Landlord's administrative costs, and Tenant will immediately upon demand replace any returned check with a Bank Cashier's Check.

4.4 Rent and Term Commencement Agreement. Within thirty (30) calendar days following the Rent Commencement Date, Landlord and Tenant shall execute a Rent and Term Commencement Agreement, the form of which is attached hereto as **Exhibit C**, confirming the Commencement Date, Rent Commencement Date, and the Expiration Date, provided that failure to do so shall not affect such dates.

SECTION 5 - LEASEHOLD IMPROVEMENTS

5.1. Landlord's Work. Landlord shall improve the Leased Premises with Landlord's Work which shall be commenced within a reasonable time after the full execution of this Lease, and that the same will be prosecuted to completion with due diligence, subject to delays beyond Landlord's control, including, without limitation, delays in the nature of force majeure and that said work will be performed at Landlord's expense in a good and workmanlike manner. By taking possession of the Premises, and subject to any punch list items, Tenant accepts the Leased Premises and Landlord's Work AS IS, without representation or warranty of Landlord of any kind with respect to the condition of the Leased Premises or its fitness for any particular purpose, except as otherwise specifically provided for herein, and waives all claims of defect in the Leased Premises. Landlord shall not be liable to Tenant for bodily injury or property damage or any

other damage of any kind resulting from any defect in the construction or condition of Landlord's Work or the Leased Premises.

5.2. Tenant's Initial Work. Tenant has advised Landlord that it will need immediate access to the Leased Premises, before Landlord's Work is substantially completed, to begin retrofitting space and for storage of refrigeration and other equipment ("Tenant's Initial Work"). Subject to compliance with all of the terms of this Lease, including without limitation, Sections 7 and 8 regarding insurance and alterations, Tenant may begin Tenant's Initial Work provided same does not interfere with Landlord's Work. If Tenant's Initial Work does interfere with Landlord's Work, then Landlord shall notify Tenant by e-mail at "or.raitses@bestyetmarket.com" and if Tenant does not cure such interference within one (1) business day of the e-mail notice, then for each day the interference continues (each, a "Tenant's Delay"), Tenant shall be obligated to pay to Landlord one day's Rent, payable on demand. Notwithstanding the foregoing, if three (3) or more acts of Tenant's Delay occur, there shall be no e-mail notice with time to cure and for every day of each such interference, Tenant shall be obligated to pay to Landlord, in addition to any and all other Rent obligations, one day's Rent, payable on demand.

5.3 Tenant's Work Letter Allowance.

(a) Tenant agrees that it will immediately, upon the Commencement Date, pursue the application for the Certificate of Occupancy for both the Coop Space and the Warehouse Space. Tenant further agrees to diligently proceed to perform the work and obtain said Certificate of Occupancy.

(b) On the Commencement Date, Landlord will: (i) pay to Tenant the sum of \$373,335 on account of Tenant's work done or to be done at the Leased Premises and (ii) place into escrow the sum of \$497,780 (the "Work Escrow") to be disbursed as set forth below.

(c) During the period (the "Disbursement Period") beginning with the Commencement Date and ending on the earlier to occur of: (i) four (4) months after the Commencement Date and (ii) the date that the Certificate of Occupancy is issued for both the Warehouse Space and the Coop Space, Tenant may requisition, no more frequently than on a monthly basis (each such requisition, a "Requisition"), a disbursement from the Work Escrow, in the amount of \$4,148.16, for each day that has elapsed. No such disbursement shall be payable for any day that occurs after the end of the Disbursement Period or for any day that was previously paid under a prior Requisition.

5.4 Empire State Incentives. Tenant's obligations under this Lease are conditioned upon the granting to Tenant by New York State and Empire State Development ("ESD") of certain income tax credits (the "Incentives") in form, substance and amount satisfactory to Tenant. Tenant shall give Landlord immediate notice of ESD's granting of the Incentives, which shall be in the form of a commitment letter or other such letter from ESD (the "ESD Letter"). If the ESD Letter has not been received by July 15, 2016, Tenant may cancel this Lease by notice to Landlord. If Landlord has not received such notice of cancellation on or before July 18, 2016, this right to cancel shall be deemed waived and of no further force and effect.

SECTION 6 - REAL ESTATE TAXES AND COMMON AREA COSTS AND RIGHTS

6.1. Real Estate Taxes. Tenant agrees to pay, as further Additional Rent, Tenant's Percentage of Real Estate Taxes (as defined herein). Tenant shall pay, for each Lease Year, an amount equal to Tenant's Percentage (as defined in Section 1.6) of the Real Estate Taxes assessed for such Lease Year, which may be levied or assessed by any lawful authority against the land and improvements constituting the Overall Premises ("Tenant's Tax Contribution"). Tenant shall pay to Landlord Tenant's Tax Contribution as Additional Rent, as follows: Tenant shall pay a

monthly estimated payment on account in an amount equal to one-twelfth (1/12th) of Landlord's reasonable estimate of such Tenant's Tax Contribution on the first day of each month. In making such estimate, Landlord shall take into account the prior year's tax bills, if any, the present method of taxation or assessment and tax rates for the appropriate taxing authorities and any proposed changes thereof. Within a reasonable period after Landlord's receipt of the tax bill, it will send a copy of same to Tenant. The total billing for taxes less the amount previously paid by the Tenant will result in an adjustment whereby the Tenant will either receive a credit within thirty (30) days for any overpayment or Tenant will remit within thirty (30) days any balance due to Landlord for additional taxes. The monthly amount to be paid on account will be revised each year to more closely reflect one-twelfth (1/12) of Tenant's share of Real Estate Taxes most recently determined.

If Tenant's use of the Leased Premises shall cause an increase in the amount of Real Estate Taxes, whether due to the loss of the PILOT payments or otherwise, then Tenant shall pay one hundred percent (100%) of such increase in Real Estate Taxes, in addition to Tenant's Percentage of the Real Estate Taxes up to the increased amount.

For any portion of the aggregate lease term covered herein which is less than a full calendar year, the allocation of taxes shall be further reduced to limit such charge to a corresponding prorated portion of such year, based on a 360 day year. This last provision shall apply both at the beginning and end of the lease term.

The term "Real Estate Taxes" shall include, without limitation, all real estate taxes, PILOT payments, ad valorem taxes and assessments, occupancy, use and other governmental levies and charges of every kind and nature whatsoever, general or special, extraordinary as well as ordinary, which are or shall be charged, levied, assessed or imposed by any lawful taxing authority against the land, buildings rentals and all other improvements or betterments comprising the Overall Premises (as initially constructed or as the same may at any time thereafter be restored, changed, enlarged or reduced) including, without limitation, all reasonable costs and fees incurred by Landlord in contesting taxes, assessments and/or negotiating same with taxing authorities and any payments made to any state or local governmental authority by Landlord in lieu of any such taxes or assessments and including any excises (which excises may be based on the amount of income or revenue of Landlord). In the event that Landlord shall receive a net refund of such taxes as the result of contesting such taxes or assessments, Landlord shall credit a proportion of such net refund as shall be allocable to payments of taxes actually made by Tenant (less costs, expenses and fees in connection thereof) against the next succeeding payment of Real Estate Taxes due from Tenant. Real Estate Taxes shall not include any income, earnings, estate, inheritance, capital stock or franchise tax levied or assessed against Landlord. In no event shall the term Real Estate Taxes include any personal, income or capital gains taxes imposed upon Landlord due to Landlord's ownership of the Leased Premises or the Overall Premises

Included above in Real Estate Taxes and assessments shall be any and all costs, fees and expenses incurred by Landlord in reducing or maintaining the existing level of such tax obligations to any taxing authority.

Notwithstanding anything to the contrary contained herein, if at any time during the term of this Lease, the present method of taxation or assessment shall be changed so that the taxes now levied, assessed or imposed on real estate and buildings and improvements thereon shall, in lieu thereof, be imposed, assessed or levied wholly or partly as a capital levy or otherwise upon the fixed annual rent reserved herein or as a tax, corporation franchise tax, assessment, levy or charge, measured or based, in whole upon the Overall Premises or on the rents derived therefrom and imposed upon Landlord, then Tenant shall pay all such taxes so measured or based to the

extent that any such change in the present method of taxation or assessment relieves Tenant from the payment of such taxes on real estate as they are now known and to the extent that such taxes would be payable if the Overall Premises were the only property of Landlord subject to such taxes.

6.2. Common Area Costs. In addition to the Rent specified in Section 1.8 hereof, Tenant agrees to pay to Landlord in each calendar year, as Additional Rent, Tenant's Percentage of Common Area Costs (as defined hereinafter). Tenant shall pay to Landlord, for each Lease Year, an amount equal to Tenant's Percentage (as defined in Section 1.6 – i.e., 72%) of the Common Area Costs for such Lease Year ("Tenant's CAM Contribution"). Tenant shall pay to Landlord Tenant's CAM contribution as Additional Rent as follows: for one-time items or services, within thirty (30) days after written demand therefor; and for all other items or services, Tenant shall pay a monthly estimated payment on account in an amount equal to one-twelfth (1/12th) of Landlord's reasonable estimate of Tenant's CAM Contribution for such Lease Year. Within a reasonable period after the end of each calendar year, Landlord shall notify Tenant in writing of such actual amounts and adjust and revise Tenant's CAM Contribution for the current calendar year. If such actual amounts exceed Landlord's reasonable estimate of Common Area Costs for any calendar year, then Tenant shall, within thirty (30) days after the date of such notice from Landlord, pay to Landlord an amount equal to such excess. If the total Common Area costs paid by Tenant for any calendar year exceeds the amount of Common Area Costs payable for such year based upon actual Common Area Costs, and Tenant is not in default hereunder or otherwise indebted to Landlord, then Landlord shall credit such excess against Tenant's CAM Contribution next due from Tenant. No interest or penalties shall accrue on any amounts which Landlord is obligated to credit to Tenant by reason of this Section. After the first calendar year, all such estimates may take into consideration the prior year's actual expenditures, provided that Landlord shall also be permitted to estimate increases in such costs.

The term "Common Area Costs" as used in this Lease includes the total cost and expense incurred by or on behalf of Landlord in operating, maintaining and repairing the Common Areas and the Overall Premises, including, without limitation: gardening and landscaping; the cost of public liability, fire, casualty, worker's and unemployment compensation and all other insurance (including all additional and extended coverage thereunder) on all of the buildings, improvements and Common Areas in the Overall Premises, and such other insurance as may from time to time be maintained by or on behalf of Landlord (to the extent not otherwise reimbursed by tenants); repairs, replacements, modifications, painting, decorating, line painting, informational and directional signs, lights and devices, lighting (including the cost of electricity; maintenance and replacement of fixtures and bulbs); sanitary and environmental controls; the cost of personnel, whether direct or contracted, including all associated costs and equipment to regulate and direct traffic and parking, and to patrol and supervise the Common Areas, if any; security and safety, if provided; trash, garbage, debris and material removal and equipment, including all recycling, environmental and energy conservation measures; snow removal; fees; licenses and permits, and other amounts necessary for the Overall Premises; to comply with law; personal property taxes on all items used in connection with the Overall Premises; supplies, repair, maintenance, service and replacement of any facility (including, without limitation, the sprinkler system and central alarm system); the cost of inspection, repair, modification and replacement of any paving, curbs and walkways; and other improvements in areas not leaseable to tenants; the cost and expenses of vehicles used in connection with operation, maintenance, management and security of the Overall Premises and other transportation costs; accessory equipment including without limitation, snow plows, sand or salt spreaders, mowers, trash compactors, incinerators and environmental protection devices, sweepers, aerials, warning lights, sirens and horns, radio and public address apparatus (provided, however, that if the improvement, repair or replacement of any facility is of a nature that is properly chargeable to a capital account

according to usual and customary accounting practices ("**Capital Repair**"), the costs of such Capital Repair will be amortized over the useful life thereof with the then prevailing amortization schedules utilized by the Internal Revenue Service for tax purposes and Landlord shall be entitled to include in Common Area Costs during each calendar year such annual amortized portion); professional fees; total compensation and benefits (including premiums for workmen's compensation and other insurance) paid to or on behalf of employees involved in the performance of the work specified in this Section 6; all other costs and expenses customarily included in common area costs of premises similar to the Overall Premises. Common Area Costs shall not include any item that is a part of Landlord's Work set forth in **Exhibit B**.

6.3. Landlord's Covenants with Respect to Common Areas. With respect to the Common Area, Landlord shall:

(a) keep the Common Areas in good condition and repair, properly drained, reasonably free of obstructions and rubbish and in a sanitary condition (which shall include the removal of sewerage from the Overall Premises);

(b) keep the Common Areas reasonably free of snow (which shall include the moving of snow, if necessary, to those portions of the Common Areas that will minimize interference with the operation of Tenant's business in the Leased Premises), and use reasonable efforts to remove ice therefrom, and shall periodically cut the grassed areas of the Overall Premises during the growing season;

(c) make all necessary repairs and replacements and perform all required maintenance to the Common Areas, including, without limitation, the repair of major pot holes in the paving, including pylon sign structures but excluding signs of individual tenants, means of pedestrian and vehicular control, entrances, exits and landscaped areas; and

(d) maintain the ingress and egress between the Overall Premises and adjoining streets, except for temporary closings required for repairs, replacements, construction or to comply with governmental directives.

6.4 Commencement of Obligations of Real Estate Taxes and Common Areas Costs.

Tenant's obligation to pay Real Estate Taxes and Common Area Costs shall commence on the following dates: (a) for the Warehouse and Coop Space, on the earlier to occur of: (i) four (4) months after the Commencement Date and (ii) the date that the Certificate of Occupancy is issued for both the Warehouse Space and the Coop Space; (b) for the First Floor Space, on the date Landlord sends written notice to Tenant of substantial completion of Landlord's Work for the First Floor Space; and (c) for the Office Space, on the date Landlord sends written notice to Tenant of substantial completion of Landlord's Work for the Office Space.

SECTION 7 - INSURANCE AND INDEMNITY

7.1. Landlord's Insurance. Landlord shall procure and continue in force during the term of this Lease:

(a) commercial general liability insurance on an occurrence basis covering bodily injury, personal injury and death and property damage, including water damage, sprinkler leakage, fire and legal liability, in a per occurrence amount of not less than Three Million (\$3,000,000.00) Dollars combined single limit.

(b) fire insurance with extended coverage, vandalism and malicious mischief endorsements in an amount adequate to cover the full replacement value of the Overall Premises with an insurance company of recognized responsibility authorized to do business in the State of New York with an "A.M. Best" rating of "A-VII" or better, unless such insurance is not reasonably available, in which case such other rating as is the best which is then commercially available at reasonable rates.

(c) The insurance required by this Section 7.1 may be included in general coverage under policies that include the coverage of other property in which Landlord or its affiliates have an insurable interest, provided that the insurance benefits and limits required hereunder shall always be available for a loss at the Overall Premises.

7.2. Tenant's Insurance. Tenant shall, at its sole cost and expense, keep and maintain in full force during the Term of this Lease, insurance as follows:

(a) Commercial general public liability insurance with respect to the Leased Premises, the sidewalks, if any, abutting and adjoining the Leased Premises, and the business operated by Tenant and any subtenants, licensees and concessionaires of Tenant, on an occurrence basis covering bodily injury, personal injury and death, property damage, including water damage, sprinkler leakage, fire and legal liability, in an amount not less than Three Million Dollars (\$3,000,000.00) per occurrence and Five Million Dollars (\$5,000,000.00) aggregate.

(b) "All Risk" or "Special Form" insurance against fire, extended coverage, vandalism, malicious mischief and all risks, upon the Leased Premises and all other property owned by Tenant and located at the Premises, including furniture, fittings, installations, decorations, alterations, Tenant improvements and betterments, trade fixtures, contents, signs and any other personal property, in an amount adequate to cover the full replacement value thereof;

(c) Worker's Compensation, employer's liability insurance and unemployment compensation covering all Tenant's employees working in the Leased Premises in such amounts as are required by law;

(d) Business interruption insurance fully compensating for the amount of Rent and Additional Rent owed to Landlord by Tenant for a period of not less than twelve (12) months.

(e) Such insurance shall be written by one or more insurance companies authorized to issue such insurance in the State of New York which has an "A.M. Best" rating of "A-VII" or better, or an equivalent rating by another recognized rating organization acceptable to Landlord.

7.3. Tenant's Insurance Certificates. Tenant shall furnish to Landlord, on or before the Commencement Date and thereafter within thirty (30) days prior to the expiration of each such certificate, a certificate of insurance issued by the insurance carrier of each policy of insurance required to be carried by Tenant pursuant hereto, together with the declaration page of each policy and a list of the endorsements. Said certificates shall expressly provide that such policies shall not be cancelable or subject to reduction of coverage or otherwise be subject to modification except after thirty (30) days' prior written notice, by certified mail, return receipt requested, to the parties required to be named as additional insureds in this Section 7.3. Landlord and its managing agent, and any mortgagees and ground lessors of Landlord, as applicable, shall be named as additional insureds under all insurance required to be maintained by Tenant hereunder, except worker's compensation insurance. All insurance maintained by Tenant pursuant to this Lease shall be primary as respects any claims, losses or liabilities arising out of the use of the Leased Premises by Tenant, and any insurance carried by Landlord shall be excess and non-contributing.

If requested by Landlord, Tenant will provide a copy of each policy and all endorsements to Landlord. All policies required to be maintained hereunder shall be procured from insurance companies rated "A-/VII" or better, by Best's Insurance Reports and licensed to do business in New York.

7.4. Waiver of Subrogation and Recovery. Landlord hereby waives any and all right of recovery which it might otherwise have against Tenant, its servants, agents, and employees, for loss or damage occurring to the building and the fixtures, appurtenances and equipment therein.

Tenant hereby waives any and all right of recovery which it might otherwise have against Landlord, its servants, agents and employees for loss or damage to Tenant's furniture, furnishings, fixtures and other property removable by tenant.

Both parties agree the preceding waivers are applicable regardless of the cause of the damage or loss.

7.5. Indemnification of Landlord. Tenant shall indemnify and hold Landlord, its managing agents, their respective agents, members, partners, officers, directors and employees, harmless from and against any and all liability, damages, costs, expenses, causes of action, claims or judgments, including reasonable attorney's fees and courts costs, arising from or growing out of any injury to any persons or any damage during the Term (a) arising from any act or omission of Tenant, its employees, agents, representatives, licensees, contractors, invitees or permittees, (b) the use, maintenance, occupation or operation of the Leased Premises during the Term or (c) occurring in, or relating to any activity occurring at or on the Leased Premises including without limitation, any violation of this Lease, or of any Laws. Notwithstanding the foregoing, Tenant shall not be required to indemnify Landlord for any damage or injury of any kind arising as the result of the gross negligence or willful misconduct of Landlord or its agents or employees. Landlord shall name Tenant as an additional insured in its commercial general liability policy.

7.6. Tenant's Covenant. Tenant shall not do or commit, or suffer to be done or committed, any act or thing as a result of which any policy of insurance of any kind on or in connection with the Leased Premises or Overall Premises or any part thereof shall become void or suspended or the insurance risk on the Overall Premises or the Leased Premises or any part thereof shall (in the opinion of any insurer or proposed insurer) be rendered more hazardous. Tenant shall pay the amount of any increase of premiums for such insurance directly resulting from any breach of this covenant which an insurance carrier directly attributes to Tenant's act or thing. Tenant shall also be responsible, at Tenant's sole cost and expense, for all improvements required by any insurer to be made to the Overall Premises or the Leased Premises, or its systems, as a result of Tenant's use of the Overall Premises or the Leased Premises.

SECTION 8 - REPAIRS, MAINTENANCE AND ALTERATIONS

8.1. Tenant's Repairs and Maintenance. Tenant agrees that from and after the Commencement Date, and until the end of the Term hereof, it will keep neat and clean and maintain in good order, condition and repair or replacement, the Leased Premises and every part thereof, including, without limitation, the store front and the exterior and interior portions of all doors, windows, walls and plate glass surrounding the Leased Premises, all plumbing and sewage facilities within the Leased Premises, fixtures and interior walls, floors, ceilings, signs (including exterior signs where permitted), and all wiring, electrical system, alarm and sprinkler systems, interior building appliances, elevators, HVAC systems and equipment, and similar equipment and every other maintenance, repair and replacement excepting only those that Landlord is specifically

responsible for hereunder. Tenant shall, at Tenant's expense, subject to Landlord's written approval, repaint, refurbish, and remodel the Leased Premises and any part and portion thereof from time to time to assure that the same are kept in a tenantable and attractive condition throughout the term of this Lease. Tenant further agrees that the Leased Premises shall be kept in a clean, sanitary and safe condition in accordance, and shall in all respects comply, with applicable laws and ordinances, and in accordance with all Laws. Tenant shall not permit or commit any waste. There is excepted from this paragraph, however, only such damage as Landlord is required to repair pursuant to Section 8.3 hereof.

(a) Tenant agrees to procure and maintain throughout the Term, at Tenant's sole cost and expense, comprehensive maintenance contracts for all heating, ventilating and air conditioning systems with respect to the Leased Premises with reputable contractors reasonably approved by Landlord (the "**Maintenance Contract**"). The Maintenance Contract shall cover all parts and labor necessary to keep in good repair and operating condition the HVAC units and all heating units in or with respect to the Leased Premises and shall require that the contractor inspect and provide needed maintenance on the HVAC units and all heating units at least once every six (6) months. Each Maintenance Contract shall be reasonably satisfactory to Landlord in form and substance. Tenant shall furnish a copy of the Maintenance Contract to Landlord promptly upon execution of this Lease and shall provide Landlord with copies of any renewal or replacement thereof at least thirty (30) days prior to the expiration or termination of any Maintenance Contract.

(b) Tenant shall maintain the roof, but shall not be obligated to patch or replace any area of the roof in excess of one hundred (100) square feet per repair. Landlord shall be obligated to make any patch or replacement needed to the roof in excess of one hundred (100) feet per repair. The roof shall be delivered to Tenant free of leaks for each respective space on the applicable dates set forth for each space in Section 6.4.

8.2. **Landlord's Rights.** If Tenant fails to perform Tenant's obligations under **Section 8.1** hereinabove, or under any other provision of this Lease, Landlord shall have the option to enter upon the Premises after five (5) days' prior written notice to Tenant, or in the case of an emergency, immediately without prior notice, to perform such obligations on Tenant's behalf necessary to return the Premises to good order, condition, and repair. After thirty (30) days' prior written notice to Tenant, Landlord may obtain the Maintenance Contracts required pursuant to **Section 8.1** if Tenant has failed to do so. The cost of any such performance by Landlord pursuant to this Section 8.2 shall be due and payable by Tenant to Landlord, upon demand as Additional Rent.

8.3. **Landlord's Repair Obligations.** Landlord shall, at its sole cost and expense, maintain the foundation, and the structural soundness of the exterior walls of the Leased Premises (except plate glass and glass windows and doors and the load bearing store front, non-load bearing demising walls, and partition walls, irrespective of which party installed the same, all of which shall be Tenant's obligation to maintain), in good repair and condition, ordinary wear and tear and (subject to **Section 12**) damage by fire or casualty excepted and further provided that Landlord shall not be obligated to make any improvements or repairs as set forth in this Section 8 if such damage is or was caused by any act or negligence of Tenant, its employees, agents, invitees, licensees, or contractors and Tenant shall be solely responsible for same. Except as set forth in the preceding sentences of this Section 8.3 and 8.2 (b) and the repair obligations of Landlord under **Sections 12 and 13** hereof, Landlord shall have no obligation whatsoever to repair and maintain any part of the Leased Premises.

8.4. Alterations.

(a) Installation and Removal. Tenant shall not, without Landlord's prior written consent, make any alterations, improvements and/or additions, including, without limitation, Tenant's Initial Work (collectively "Alterations"), in, on or about the Leased Premises and, in any event, any such Alterations by Tenant shall be made in accordance with all applicable laws and in a good and first-class workmanlike manner and in accordance with this Lease and any conditions established by Landlord as a condition to such consent or as a general rule. In no event shall Tenant be entitled to penetrate the exterior or roof of the Leased Premises with respect to any alteration without Landlord's prior written consent which shall not be unreasonably withheld. Tenant shall comply with all reasonable conditions to any approval imposed by Landlord. All Alterations shall become the property of Landlord and be surrendered with the Premises at the expiration or earlier termination of the Term, unless Landlord advises that it does not wish to assume ownership thereof in which case they shall be removed and the Leased Premises restored to its pre-Alteration condition at Tenant's sole cost and expense. The usual trade fixtures and furniture which may be installed in the Leased Premises prior to or during the Term hereof at the cost of Tenant may be removed by Tenant from the Leased Premises upon the termination of this Lease. If Tenant is permitted to, but fails to so remove Tenant's Property upon the expiration or earlier termination of this Lease, Landlord may keep and use Tenant's Property, or remove and cause such Tenant's Property to be stored, disposed of or sold with or without notice and without any recourse on the part of Tenant. Further, Tenant covenants and agrees, at its sole cost and expense, to repair any and all damage to the Leased Premises resulting from or caused by such removal. In no event shall Tenant be entitled to remove any heating, ventilating, or air conditioning equipment, or anything that is a real estate fixture or attached to the Leased Premises.

(b) Plans and Permits. All requests for Alterations shall be presented to the Landlord with proposed detailed plans, and Tenant shall reimburse Landlord for all outside, third party professional fees incurred by Landlord in connection with the review and comment of such plans or the proposed Alterations and consent thereto and supervision and monitoring thereof. Landlord's consent shall be deemed conditioned upon Tenant's acquiring all permits and approvals to perform such Alterations from appropriate governmental agencies, and complying with all conditions of said permits and all provisions of law with respect to and/or occasioned by the Alterations. In connection with any Alterations, Landlord shall have the right to require Tenant to use the original installing contractor when necessary to maintain existing warranties, obtain lien releases during the progress of and/or waivers prior to construction and hold back a percentage of the cost of construction until lien free completion has occurred. Tenant shall reimburse to Landlord, upon demand, any out-of-pocket costs incurred for any outside, third party services contracted for by Landlord to assist Landlord in connection with such review and approval and updating the plans and specifications for the Leased Premises. Tenant shall notify Landlord, in writing, at least ten (10) days' prior to the commencement of any Alterations in the Leased Premises.

(c) Workmanlike Quality. All Alterations shall be done in a good and workmanlike manner and in compliance with all Laws.

8.5. Liens.

(a) No Liens. Tenant shall promptly pay and discharge all claims for services, supplies, labor or materials furnished or alleged to have been furnished in the Leased Premises,

which claims are or may be secured by any mechanics' or materialmen's lien against the Overall Premises and/or the Leased Premises. Tenant will not create or permit to be created or remain, and will discharge, every lien, encumbrance and charge (levied on account of any imposition or any mechanic's, laborer's or materialman's lien) which might be or become a lien, encumbrance or charge upon the Overall Premises and/or the Leased Premises or any part thereof or the income therefrom, any mechanic's notice or intention, and any notice of refusal naming Landlord as owner, and Tenant will not suffer any other matter or thing whereby the estate, rights and interest of Landlord in the Overall Premises or Leased Premises or any part thereof might be impaired; provided that any mechanic's, laborer's or materialman's lien, notice of intention, or notice of refusal, may be discharged in accordance with subsection (b) of this Section.

(b) Discharge of Liens. If any mechanic's, laborer's or materialman's lien, notice of intention, or notice of refusal, shall at any time be filed against the Overall Premises or Leased Premises or any part thereof, or against Landlord, Tenant, within thirty (30) days after notice of the filing thereof, will cause it to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant shall fail to cause such lien or notice to be discharged within the period aforesaid, then, in addition to any other right or remedy, Landlord may, but shall not be obligated to, discharge it either by paying the amount claimed to be due or by procuring the discharge of such lien or notice by deposit or by bonding proceedings, and in any such event, Landlord shall be entitled, if Landlord so elects, to compel the prosecution of any action for the foreclosure of any lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowances. Any amount so paid by Landlord and all costs and expenses incurred by Landlord in connection therewith, including but not limited to reasonable attorney's fees, together with interest thereon at the Lease Interest Rate from the respective dates of Landlord's making of the payments and incurring of the costs and expenses, shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand.

(c) No Consent of Landlord Intended. Nothing contained in this Lease shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific alteration, addition, improvement or repair to the Overall Premises or the Leased Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any lien against the Overall Premises or the Leased Premises or any part thereof, nor as evidencing Landlord's consent that the Leased Premises may be subject to any mechanic's, laborer's or materialman's lien.

(d) Written Contract. Prior to the performance of any Alterations, (i) Tenant will enter into a written contract with each contractor performing such work and with each supplier providing material and supplies in connection with such work which shall provide (A) that the contractor and supplier agree that neither they nor any subcontractors nor materialmen shall file any mechanic's or materialman's liens against the Leased Premises, or notices of intention therefor, against the Leased Premises or any part thereof or any notice of refusal relating to any work upon or material supplied to or for the Leased Premises, (B) that all subcontracts and purchase orders executed in connection with any such work shall contain agreements similar to those referred to in (A) above, by the subcontractors and suppliers, (C) that Tenant is entering into the contract as tenant and not on behalf of Landlord and that all stop notices thereafter filed by any subcontractor or supplier will be filed only against Tenant and will be binding only upon Tenant in connection with Tenant's obligation to make payments under the construction contract; and (ii) Tenant shall cause to be filed with Landlord a copy of the written contract with each such contractor and supplier and all specification accompanying the contract.

8.6. Surrender. Upon the expiration or earlier termination of the Term, Tenant shall repair any damage to the Leased Premises caused by the removal of Tenant's trade fixtures, furnishings, equipment and machinery and Alterations to the extent required. Tenant shall surrender the Leased Premises, including the non-moveable equipment and fixtures, required Alterations, landscaping, driveways, walkways, parking lots and any other improvements, to Landlord in its original condition as when received, in broom clean condition, ordinary wear and tear and damage by fire or casualty excepted, provided however that any Alterations to which Landlord has consented pursuant to Section 8.4 need not be removed unless Landlord has advised Tenant so to do. Tenant shall further patch and fill all holes within the Leased Premises and repair any damage to the Leased Premises caused by Tenant or Tenant's employees, agents or invitees. All penetrations of the roof shall be resealed to a watertight condition by Tenant. In no event may Tenant remove in whole or in part from the Leased Premises any mechanical or electrical systems, including heating, air conditioning, ventilating, air lines, power panels, electrical distribution, lighting fixture, lighting system, space heaters, plumbing, fencing, alarm and fire protection devices, inter alia.

SECTION 9 - TENANT'S FIXTURES AND PERSONAL PROPERTY

Subject to the provisions of Section 8.4 hereof, Tenant, at Tenant's sole cost and expense, may install any necessary trade fixtures, equipment, machinery and furniture ("Tenant's Personal Property") in the Leased Premises, provided that such items are installed and are removable without damage to the building. Such Tenant's Personal Property shall remain the property of Tenant and shall be removed by Tenant upon expiration or earlier termination of the Term, unless the same cannot be removed without material damage to the structure of the Building (in which event Landlord may still require their removal). Tenant shall repair, at Tenant's sole cost and expense, all damage caused by the installation or removal of Tenant's Personal Property and shall return the Leased Premises to its original condition.

SECTION 10 - UTILITIES AND EASEMENTS

10.1. Utilities. Tenant shall be solely responsible for, and shall promptly pay as and when same become due and payable, all charges for heat, air conditioning, water, gas, steam, electricity, alarm system, sprinkler charges, sewer, telecommunications, waste and debris removal, and any other utilities used or consumed on the Leased Premises, irrespective of whether any or all of same shall be supplied by a public utility or private company, municipality or governmental authority, or through Landlord. Except for interruptions caused solely by Landlord's intentional and malicious gross negligent acts, Landlord shall not be liable to Tenant for interruption or curtailment of any utility service, nor shall any such interruption or curtailment constitute a constructive eviction or grounds for any partial or total abatement of Rent. In the event that Landlord shall elect to supply any other utilities, then, insofar as and to the extent that such is permitted pursuant to the applicable law and regulations of the applicable utility company, Tenant agrees to purchase the same from Landlord, provided the rate does not exceed the rate which Tenant would have been required to pay the utility company furnishing the same to the Tenant. Further, Tenant shall pay for all utilities consumed on the Leased Premises from the Commencement Date and forward. If necessary, Landlord will install submeters for the Leased Premises, at Landlord's sole cost and expense but Tenant shall maintain the same throughout the Term.

10.2. Easements. Landlord reserves the right to grant easements on the Overall Premises, to make boundary adjustments to the Overall Premises, and to dedicate or license or lease for public

or private use portions of the Overall Premises, without Tenant's consent, provided that no such grant or dedication shall substantially interfere with Tenant's use of the Leased Premises as provided for herein.

SECTION 11 - USE OF THE PREMISES

11.1. General. The Leased Premises shall be used and occupied by Tenant for the term of this Lease only for the purposes set forth in Section 1.10 hereof (the "**Permitted Use**"), and for no other use or purpose.

11.2. Tenant Covenants: Tenant further agrees to conform to and comply with the following provisions during the entire term of this lease unless Landlord shall otherwise consent in writing:

(a) Tenant shall be permitted to conduct its operations in the Leased Premises under a trade name other than its present trade name – Best Market- but it shall give Landlord prior written notice of any such new trade name.

(b) Tenant shall always conduct its operations in the Leased Premises in a neat, clean, sanitary and safe condition in accordance with all laws, regulations and rules.

(c) Tenant shall not conduct any auction, fire, bankruptcy or going out of business sales in the Leased Premises.

(d) Tenant shall not use the sidewalks adjacent to the Leased Premises or any of the Common Area for any purposes other than access, egress and, where designated, parking (including, without limitation, the distribution of handbills or advertising of any type), except retail supermarket can use sidewalks for seasonal and occasional sale of merchandise provided same is in compliance with all Laws and Tenant obtains all applicable licenses and permits for same.

(e) Tenant shall keep the display windows and store front and signage of the Leased Premises clean and neat and shall keep the same electrically lighted during such periods of time as the Overall Premises shall be open;

(f) Tenant shall receive and deliver goods and merchandise only utilizing the delivery and receiving areas designated by Landlord and in the manner, and in such other areas, as may be designated by Landlord. Tenant shall keep all trash, refuse, and the like in covered metal cans or such other receptacles as Landlord shall approve, which cans shall be kept within the Leased Premises at all times, and in no event stored outside of the same. If Landlord provides for trash removal by a contractor, Tenant agrees to use said contractor for its trash removal and to pay when due all charges at the rate established therefor. If Tenant fails so to pay for trash removal, Landlord shall have the same remedies (even if such payment is due to such contractor and not to Landlord) as Landlord has for nonpayment of rent hereunder. At no time shall Tenant place more trash or debris in receptacles than is normal and customary in the regular course of business. If additional trash or debris is required because Tenant is surrendering, reconfiguring, renovating, performing Alterations, doing a "wholesale" cleaning or holding a clearance or other event out of the ordinary, Tenant shall, subject to Landlord's reasonable consent, arrange for and be responsible for additional receptacles.

(g) Tenant shall not place on the exterior or interior of the Leased Premises if visible from the exterior (including, but without limitation, windows, doors, and entrance lobbies) any

signs other than those signs which shall first have been approved by Landlord or Landlord's architect. All interior signs must be professionally prepared and shall be limited in number and shall not be taped to windows, walls, doors or any other portion of the Leased Premises. No political, sexual or religious signs are permitted at any time in any location of the Leased Premises.

(h) Tenant shall not perform any act or any practice which may injure or damage the Leased Premises or any other part of the Overall Premises, or cause any offensive odors or loud noise (including, but without limitation, the use of loudspeakers), or constitute a nuisance or menace to any other occupant, tenant or other persons in the Overall Premises, and in no event shall any objectionable noises or odors be emitted from the Leased Premises.

(i) Tenant shall at all times fully and adequately light, heat and/or air-condition (as the circumstances may require) the Leased Premises.

(j) Tenant agrees that it and its employees and others connected with Tenant's operations at the Leased Premises will abide by all reasonable rules and regulations from time to time established by Landlord with respect to the Overall Premises.

(k) Tenant shall not distribute or disperse any handbills, flyers, or other advertising media in any part of the Common Areas. Such conduct shall warrant Landlord to act in the interest of the Overall Premises, and shall be considered a violation of the Lease and Tenant shall be subject to default of its Lease.

(l) Tenant shall apply for and obtain at its own cost and expenses, all certificates, authorizations, permits and licenses required with respect to the Leased Premises, including, without limitation, building, health, food handling, use, occupancy, franchise, gross receipts, sales tax, sign, electrical, fire and plumbing permits, licenses, certificates and authorizations. Any site improvements required by the Town or any other municipal agency due to site plan submission for outside truck parking or storage and for the retail store shall be the sole responsibility and cost of Tenant. Any site improvements required by the Town or any other municipal agency due to the site plan submission for the office and warehouse shall be the sole responsibility and cost of Landlord.

(m) Tenant covenants that it shall promptly pay all third parties who have sold to Tenant any perishable agricultural commodities which may be subject to the statutory trust imposed by the Perishable Agricultural Commodities Act of 1930 as amended ("PACA"). Tenant further covenants that it will not commingle any PACA trust assets with non-PACA trust assets and it shall promptly pay and otherwise discharge any PACA claims, liens and trusts ("PACA claims"). If Tenant receives a Notice of Intent to Preserve Trust Benefits, it shall pay the related amount due in full within ten (10) days of receipt thereof and provide Landlord with a copy of the notice and evidence of payment. Failure to comply with the terms of this Section 11.2 (m) shall be deemed a monetary default under this Lease. If Tenant shall fail to timely pay any PACA claims, then, in addition to any other right or remedy, Landlord may, but shall not be obligated to, pay the amount claimed to be due and any amount so paid by Landlord and all costs and expenses incurred by Landlord in connection therewith, including but not limited to reasonable attorney's fees, together with interest thereon at the Lease Interest Rate from the respective dates of Landlord's making of the payments and incurring of the costs and expenses, shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand.

(n) Tenant's use of the Leased Premises shall not exceed the sewer capacity of 12,000 gallons per day.

11.3. **Prohibited Use.** Notwithstanding anything contained herein to the contrary, in no event shall Tenant or anyone taking under or through Tenant use or occupy the Leased Premises or permit or suffer the Leased Premises to be used or occupied for any of the following uses or purposes (collectively, the "**Prohibited Use**"): (a) the manufacture or production of "Fresh Baked Goods"; or (b) the distribution of Fresh Baked Goods by any of the following competitors of Bimbo Bakeries USA, Inc. ("BBUI"), Landlord's tenant at the Overall Premises: Flower Foods, Pepperidge Farms, Schmidt's Baking Company, Amoroso Baking Company, H&S Bakery, Inc., Ginsburg Bakery, Super Bread, Super Cakes, McKee Foods, Apollo Global Management, Hostess, Mission Foods or their respective affiliates, co-venture partners, (including contractors engaged by such parties for the manufacture or distribution of Fresh Baked Goods) successors or assigns (collectively, "BBUI's Competitors"). For the purpose of this Lease, Fresh Baked Good shall be deemed to mean: (i) fresh, bagged, sliced bread, buns, rolls, sandwich thins, thin buns, bagels, English muffins, flat bread sold as traditional pita bread, tortillas and wrap products (collectively, the "Bread Products"); (ii) frozen fully baked or par baked Bread Products; or (iii) single-serve or multi-pack sweet baked products, including donuts. The parties acknowledge and agree that the foregoing use restriction is not intended to prohibit the following by Tenant: (1) instances where one of BBUI's Competitors delivers Fresh Baked Goods to Tenant at the Leased Premises to be used by Tenant as an incidental inventory component for supplying Tenant's own retail locations; or (2) incidental use of the Leased Premises for the manufacture or production of Fresh Baked Goods that do not directly compete with BBUI or similar commercial bakeries by Tenant (or artisan baker producing Fresh Baked Goods for Best Yet, but expressly excluding BBUI's Competitors), provided that the aggregate floor area in which such manufacture or production of Fresh Baked Goods is occurring comprises no more than five percent (5%) of the floor area of the Leased Premises. Upon one (1) business day written notice from Landlord, Tenant shall arrange to permit Landlord and/or BBUI and/or their designees to perform a walk through inspection and space measurement to confirm compliance with this use restriction.

11.4. **Compliance with Environmental Laws.** Tenant covenants that, during the Term of this Lease and any and all extensions thereof, it shall not engage in or permit the generation, manufacture, refining, transportation, treatment, storage, dumping, disposal, handling, processing, production or release in, on or around the Overall Premises and/or the Leased Premises (including the surface and subsurface thereof) of any pollutants, dangerous substances, toxic substances, hazardous wastes, hazardous materials, or hazardous substances or petroleum products or byproducts or distillates as defined in or pursuant to, nor cause or permit any violation of, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.* ("**CERCLA**") as amended by the Superfund Amendments and Reauthorization Act; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* ("**RCRA**"); the Hazardous Material Transportation Act, 42 U.S.C. § 1801 *et seq.* ("**HMTA**"); the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* ("**WPCA**"); the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.* ("**TSCA**"); the Occupational Safety and Health Act, 29 U.S.C. § 651 *et seq.* ("**OSHA**"); the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 *et seq.* ("**RKA**"); the Clean Air Act, 42 U.S.C. § 7401 *et seq.* ("**CAA**"); as amended, or any other federal, state or local environmental law, ordinance, rule or regulation or legal requirement, including, without limitation, laws relating to emissions, discharges, releases, or threatened releases of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances or wastes or petroleum products or byproducts or distillates into the environment (including, without limitation, ambient air, surface water, ground water, land surface or subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, chemicals, or industrial, toxic or hazardous

substances or wastes or petroleum products or byproducts or distillates. All such pollutants, contaminants, chemicals, dangerous substances, toxic substances, radioactive substances, hazardous wastes, hazardous materials or hazardous substances or petroleum products or byproducts or distillates are herein referred to as "hazardous materials". All of the aforementioned legal requirements, including CERCLA, RCRA, HMTA, WPCA, TSCA, OSHA, RKA, CAA and any other federal, state or local environmental law are herein referred to as "Environmental Laws."

11.5. Environmental Notices and Cleanup. In the event that Tenant shall receive a notice of a violation of any Environmental Law from the applicable governmental authorities having jurisdiction thereover or a notice of a discharge of any hazardous materials upon the Overall Premises and/or the Leased Premises, Tenant shall forthwith deliver to Landlord a copy of such notice. If the presence on or in the Leased Premises, or the generation, manufacture, refining, transportation, treatment, storage, disposal, handling, processing, production or release at the Leased Premises of any hazardous materials: (i) gives rise to liability (including, but not limited to, a response action, remedial action, or removal action) under any Environmental Law, (ii) causes a significant public health effect, or (iii) pollutes or threatens to pollute the environment, Tenant shall promptly take any and all remedial and removal action necessary to clean up the Leased Premises and mitigate exposure to liability arising from the hazardous materials, whether or not required by law, at Tenant's sole cost and expense. Tenant shall be solely responsible for any removal, cleanup and restoration work and materials required hereunder to return the Leased Premises and any other property of whatever nature to their condition existing prior to the appearance of any hazardous materials. In the event that Tenant shall fail or neglect to promptly commence to cure such violation of said Environmental Law or to clean up such discharge (as the case may be), whether or not required under said Environmental Law, and to diligently proceed to complete same, Landlord or its agents may, without any obligation to do so, enter the Leased Premises or such other property of Tenant, and cure such violation or clean up discharge at the sole cost and expense of Tenant, plus the actual costs and expenses of any third party supervisory and administrative services, and in case of Tenant's failure to pay therefore, the said cost and expense shall be Additional Rent immediately due to Landlord by Tenant.

11.6. Landlord's Right to Inspect. Landlord and Landlord's agents and employees shall have the right to enter the Leased Premises at reasonable times and conduct appropriate tests for the purpose of ascertaining that Tenant complies with all Environmental Laws as required hereunder.

11.7. Environmental Tests. Upon written request by Landlord, Tenant shall provide Landlord with copies of the results of appropriate tests of air, water or soil to demonstrate that Tenant complies with all applicable Environmental Laws.

11.8. Indemnification. Tenant agrees (i) at its sole cost and expense, to promptly discharge and remove any lien or other encumbrance against the Overall Premises and/or the Leased Premises; and (ii) to indemnify and hold harmless Landlord, its managing agents, members, officers, directors and employees harmless from and against any and all liability, penalties, losses, expenses, damages, costs, claims, causes of action, judgments and/or the like of whatever nature, including, but not limited to, reasonable attorneys' fees, to the extent said lien, encumbrance, liability, penalty, loss, expense, damage, cost, claim, cause of action, judgment and/or the like arise from or in connection with Tenant's failure or inability, for any reason whatsoever, to observe or comply with any Environmental Law.

11.9. Tenant Representations. Tenant represents, covenants and agrees that, with respect to the Leased Premises: (i) it shall not do or omit to do; and it shall not suffer the commission or omission of any act the commission or omission of which is prohibited by, or may result in

liability under any Environmental Law; and (ii) from and after the date hereof, whenever any Environmental Law requires the "owner or operator" to do any act, Tenant shall do such act on its own account and for the account of Landlord, it being the intention of the parties hereto that Landlord shall be free of all expenses and obligations arising from or in connection with compliance with any Environmental Law .

11.10. Survival. The provisions of Sections 11.4 through 11.09 of this Lease shall survive expiration or sooner termination of this Lease.

SECTION 12 - DAMAGE OR DESTRUCTION

12.1. Insured Casualty. In the event that the Leased Premises or any part thereof shall be damaged or destroyed by fire or other casualty, the risk of which is covered by Landlord's insurance, this Lease shall, except as hereinafter provided, remain in full force and effect, and, following prompt notice thereof by Tenant to Landlord, Landlord shall reasonably promptly thereafter (taking into account the nature of the damage and the time it takes for the insurance carrier to investigate and pay for the loss) expend so much of the insurance proceeds available to Landlord to repair or restore the Leased Premises to substantially the same quality they were in immediately prior to the casualty. Should the net amount of insurance proceeds available to Landlord be insufficient to cover the cost of restoring the Leased Premises, in the reasonable estimate of Landlord, Landlord may, but shall have no obligation to, supply the amount of such insufficiency and restore the Leased Premises with all reasonable diligence, or Landlord may terminate this Lease by giving notice to Tenant not later than a reasonable time after Landlord has determined the estimated net amount of insurance proceeds available to Landlord and the estimated cost of such restoration. If the damage to the Leased Premises shall render the whole or any material part thereof unsuitable for the use for which they were intended and theretofore employed, a just proportion of the Rent, according to the nature and extent of the deprivation, shall be suspended until the Leased Premises (or the portion for which rent suspension applies) shall be repaired or restored by Landlord to substantially the same quality they were in immediately prior to such casualty. If the insurance proceeds shall be greater than the cost of repair or restoration, the excess shall belong to Landlord.

12.2. Excessive Damage or Destruction. Notwithstanding anything to the contrary contained herein, it is agreed and understood that, if the Leased Premises shall be damaged or destroyed by fire or other casualty to the extent of thirty (30%) percent or more of their insurable value, Landlord or Tenant may, if it shall so elect, terminate the term of this Lease, by notice to the other within one hundred twenty (120) days after such damage or destruction.

12.3. Damage Near End of Term. Without limiting the previous provisions of this Section 12, if the Leased Premises is totally or partially destroyed or damaged during the last twenty-four (24) months of the Term or any exercised renewal, Landlord or Tenant may terminate this Lease as of the date of the occurrence of such damage or destruction by giving written notice thereof to Tenant or Landlord within one hundred twenty (120) days after the date of the casualty.

12.4. Restoration by Tenant. Unless this Lease is terminated as provided in this Section 12, if the Leased Premises shall be damaged or destroyed by fire or other casualty, then Tenant shall (i) repair and restore all portions of the Leased Premises not required to be restored by Landlord pursuant to this Section 12 to substantially the condition which such portions of the Leased Premises were in at the time of such casualty, (ii) equip the Leased Premises with trade fixtures and all personal property necessary or proper for the operation of Tenant's business, and (iii) open for business in the Leased Premises as soon thereafter as possible.

12.5. Casualty of Overall Premises. If the Overall Premises shall be substantially damaged or destroyed by fire or casualty, the risk of which is covered by Landlord's insurance, irrespective of whether or not the Leased Premises are damaged or destroyed, Landlord shall reasonably promptly restore, to the extent originally constructed by Landlord (consistent, however, with zoning laws and building codes then in existence), so much of such Overall Premises as was originally constructed by Landlord to substantially the same condition thereof at the time of such damage, unless Landlord, within a reasonable time after such loss, gives notice to Tenant of Landlord's election to terminate this Lease. If Landlord shall give such notice, then anything in this Section 12 to the contrary notwithstanding this Lease shall terminate as of the date of such notice.

12.6. Definitions. The terms "substantially damaged" and "substantial damage", as used in Section 12.5, shall have reference to damage of such a character as cannot reasonably be expected to be repaired or the premises restored within one hundred twenty (120) days from the time that such repair or restoration work would be commenced.

SECTION 13 - EMINENT DOMAIN

13.1. Total or Partial Condemnation. If the Leased Premises, or such portion thereof, shall be taken by condemnation or right of eminent domain, as to render the balance (when reconstructed) unsuitable for the purposes of Tenant in the reasonable opinion of Landlord, Landlord may, upon written notice to Tenant, terminate this Lease, provided that such notice is given not later than one hundred twenty (120) days after the Tenant has been deprived of possession. For the purposes of this Section 13, such a taking of Tenant's entire leasehold interest hereunder in the Leased Premises (or assignment or termination in lieu thereof) shall be treated as a taking of the entire Leased Premises, and in such event Tenant shall be treated as having been deprived of possession on the effective date thereof. Should any part of the Leased Premises be so taken or condemned, and should this Lease not be terminated in accordance with the foregoing provision, Landlord covenants and agrees within a reasonable time after such taking or condemnation, and the determination of Landlord's award therein, to expend so much as may be necessary of the net amount which may be awarded to Landlord in such condemnation proceedings in restoring the Leased Premises to an architectural unit as nearly like their condition prior to such taking as shall be practicable. Should the net amount so awarded to Landlord be insufficient to cover the cost of restoring the Leased Premises, as estimated by Landlord's architect, Landlord may, but shall not be obligated to, supply the amount of such insufficiency and restore said premises as above provided, with all reasonable diligence, or terminate this Lease. Further, if so much of the Overall Premises shall be so taken that continued operation of the Overall Premises would be uneconomic in Landlord's judgment or prohibited by zoning or other applicable law, Landlord shall have the right to terminate this Lease by giving notice to Tenant of Landlord's desire so to do not later than thirty (30) days after the effective date of such taking.

13.2. Temporary Condemnation. If all or any part of the Leased Premises shall be condemned for any temporary public or quasi-public use or purpose, this Lease shall remain in full force and effect and Tenant shall be entitled to receive a just and reasonable portion of any award made for such use with respect to the period of the taking.

13.3. Condemnation Award. If all or any portion of the Leased Premises is condemned, then Landlord shall be entitled to the entire award paid for such condemnation, and Tenant waives any right or claim in any part thereof from Landlord or the condemning authority. Tenant shall have the right to make and pursue a separate claim against and to recover from the condemning

authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant in its own right, without diminution of Landlord's award.

13.4. Parking Areas Condemnation. If the parking areas are condemned, the Lease shall continue in full force and effect and there shall be no reduction in the Rent, but Landlord shall use commercially reasonable efforts to locate substitute parking areas in the general vicinity of the Overall Premises. Notwithstanding the foregoing, if more than 40% of the overall parking area is condemned or more than 20% of the exclusive parking for retail customers is condemned, Tenant may cancel this Lease upon notice to Landlord, unless Landlord has located substitute parking spaces in the general vicinity of the Overall Premises.

SECTION 14 - DEFAULT

14.1. Events of Default. The occurrence of any of the following events shall constitute an "Event of Default" on the part of Tenant:

(a) Failure on the part of Tenant to make payment of rent, Additional Rent, late charges, interest or any other monetary amount due under this Lease within five (5) days after the same is due.

(b) Failure on the part of Tenant to cure a non-monetary default under this Lease within twenty (20) days after the Landlord has sent to Tenant notice of such default; provided, however, in the event of a non-monetary default involving an emergency, as determined by Landlord in Landlord's sole discretion, Landlord shall not be required to provide Tenant with such notice of default. Tenant shall be obligated to commence forthwith diligently and continuously pursue using its best efforts and to complete as soon as possible the curing of such default, and if Tenant fails so to do, the same shall be deemed to be an Event of Default.

(c) The commencement of any of the following proceedings, with such proceeding not being dismissed within thirty (30) days after it has begun: (i) the estate hereby created being taken on execution or by other process of law; (ii) Tenant being judicially declared bankrupt or insolvent according to law; (iii) an assignment being made of the property of Tenant for the benefit of creditors; (iv) a receiver, guardian, conservator, trustee in involuntary bankruptcy or other similar officer being appointed to take charge of all or any substantial part of Tenant's property or of Tenant's business by a court of competent jurisdiction; or (v) a petition being filed for the reorganization of Tenant under any provisions of the Bankruptcy Code or any federal or state law now or hereafter enacted providing a plan, liquidation or other means for a debtor to settle, satisfy or extend the time for the payment of debts. In the event any bankruptcy proceeding is instituted by or against Tenant or maintained with respect to Tenant, Tenant agrees that it shall not request, accept or comply with any extension of time for the (1) payment of debts; (2) the exclusivity period; or (3) rejecting and assuming leases; without Landlord's express, written consent thereto. Within the meaning of this Section 14.1(c), the term "Tenant" means "Tenant and/or any Tenant's Guarantor".

(d) Failure of Tenant, after the term of this Lease commences, to be open for and continuously conduct business to the public in accordance with the terms of this Lease, or if Tenant shall otherwise abandon or vacate the Leased Premises, any law or order of court to the contrary notwithstanding.

(e) If Tenant or anyone taking under or through Tenant, uses or occupies, or suffers or permits the use or occupancy of, the Leased Premises for a use other than a Permitted Use, or

Tenant uses or occupies, or suffers or permits the use or occupancy of, the Leased Premises for the Prohibited Use.

(f) If Tenant or anyone taking under or through Tenant breaches or fails to comply with any monetary provision of this Lease.

(g) If Tenant or anyone taking under or through Tenant commits three (3) or more breaches of any non-monetary provision of this Lease within any twelve (12) month period.

14.2. Landlord's Remedies.

(a) If an Event of Default occurs, Landlord and its authorized agents, representatives and attorneys, shall have the right to pursue any one or more of the following rights and remedies, without any notice or demand upon Tenant, and in addition to any other right or remedy of Landlord, at law, in equity or elsewhere in this Lease:

(1) To accelerate the whole or any part of the Rent for the entire unexpired balance of the term of this Lease, as well as all charges, payments, costs and expenses herein agreed to be paid by Tenant, and any Rent or other charges, payments, costs and expenses if so accelerated shall, in addition to any and all installments of Rent already due and payable and in arrears, and/or any other charges or payment herein reserved, included or agreed to be treated or collected as Rent and/or any other charges, expenses or costs herein agreed to be paid by Tenant which may be due and payable and in arrears, be deemed due and payable as if, by the terms and provisions of this Lease, such accelerated Rent and other charges, payments, costs and expenses were on that date payable in advance;

(2) to re-enter the Leased Premises and remove all persons and all or any property therefrom by summary dispossession proceedings or by any suitable action or proceeding at law, or by private right of self-help or private distraint where lawful, without being liable to indictment, prosecution or damages therefor, and repossess and enjoy the Leased Premises, together with all additions, alterations, fixtures, furnishings, inventory and improvements. Upon recovering possession of the Leased Premises by reason of or based upon or arising out of a default on the part of Tenant, Landlord may, at Landlord's option, either terminate this Lease or make such alterations and repairs as may be necessary in order to relet the Leased Premises and relet the Leased Premises or any part or parts thereof. No such re-entry or taking possession of the Leased Premises or the making of alterations and/or improvements thereto or the reletting thereof shall be construed as an election on the part of Landlord to terminate this Lease unless written notice of such intention be given to Tenant. Landlord shall in no event be liable in any way whatsoever for failure to relet the Leased Premises, or in the event that the Leased Premises or any part or parts thereof are relet, for failure to collect the rent thereof under such reletting;

(3) to terminate this Lease and the Term without any right on the part of Tenant to waive the forfeiture by payment of any sum due or by other performance of any condition, term or covenant broken, whereupon Landlord shall be entitled to recover, in addition to any and all sums and damages for violation of Tenant's obligations hereunder in existence at the time of such termination, damages for Tenant's default in an amount equal to the amount of the rent reserved for the balance of the term of this Lease, as well as all other charges, payments, costs and expenses herein agreed to be paid by Tenant, all discounted at the rate of six (6%) percent per annum to their then present worth, which amount shall be immediately due and payable from Tenant to Landlord.

(4) in the event Tenant or anyone taking under or through Tenant, uses or occupies, or suffers or permits the Leased Premises to be used or occupied, for a use other than a permitted use, a prohibited use or the failure of Tenant to continuously conduct and operate its business in the Leased Premises, Landlord shall have the right to injunctive or other equitable relief (in addition to or in lieu of damages at law) to enjoin any Event of Default set forth in this Section 14, and if Landlord does so, Tenant and those taking under and through Tenant hereby agree that such relief is appropriate and hereby irrevocably waive all objections to such relief. Tenant shall reimburse Landlord promptly on demand for any cost and expense (including attorney's fees) of Tenant in connection with such action or proceeding.

(b) If Landlord exercises any of the remedies provided for in Subsections 14.2(a)(2) and (3) hereof, Tenant shall vacate and immediately surrender possession of the Leased Premises to Landlord. Tenant hereby grants Landlord the right to re-enter and take complete and peaceful possession of the Leased Premises, with or without process of law, and further without the use of force, without any liability, and without being deemed guilty of trespass, eviction, or forcible entry and detainer and hereby releases, holds harmless and indemnifies Landlord and all of its agents, contractors, employees and counsel and all judicial and quasi-judicial officers, clerks, sheriffs, marshals, process servers and the like from all claims, demands, damages, including but without limitation punitive damages, loss, judgments, awards, fines, penalties and the like.

(c) In the event that Landlord terminates this Lease or Tenant's right of possession, such termination of possession shall not release Tenant from Tenant's obligation to pay Rent hereunder for the Term. Landlord shall have the right, from time to time, to recover from Tenant, and Tenant shall remain liable for all Rent which has accrued and all Rent thereafter accruing as it becomes due under this Lease to the end of the Term.

(d) All property removed from the Leased Premises by Landlord pursuant to any provisions of this Lease or by law may be handled, removed, stored or discarded by Landlord, at Tenant's sole cost and expense, and Landlord shall in no event be responsible for the value, preservation or safekeeping thereof. Tenant shall pay Landlord for all reasonable expenses incurred by Landlord in such removal and for reasonable storage charges for such property so long as the same shall be in Landlord's possession or under Landlord's control. All such property not removed from the Premises or retaken from storage by Tenant within thirty (30) days after the expiration or earlier termination of the Term shall be conclusively deemed to have been conveyed by Tenant to Landlord as by bill of sale, without further payment or credit by Landlord to Tenant.

(e) Tenant shall pay all of Landlord's costs, charges and expenses, including, without limitation, court and other costs, expert fees, receiver and trustee's fees, consultant fees, all costs and expenses in connection with litigation, service and attorneys' fees, incurred in enforcing Tenant's obligations and Landlord's rights and remedies under this Lease or incurred by Landlord in any litigation, negotiation or transaction in which Tenant causes Landlord, without Landlord's fault, to become involved or concerned.

(f) No right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy herein or by law or in equity provided, but each shall be cumulative and in addition to every other right or remedy given herein or now or hereafter existing at law or in equity or by statute.

(g) No waiver by Landlord of any breach by Tenant of any of Tenant's obligations, agreements or covenants herein shall be a waiver of any subsequent breach or of any obligation, agreement or covenant, nor shall any forbearance by Landlord to seek a remedy for any breach by

Tenant be a waiver by Landlord of any rights and remedies with respect to such or any subsequent breach.

SECTION 15 - ASSIGNMENT AND SUBLETTING

15.1. Tenant's Assignment or Subletting. Subject to section 15.3 below, Tenant shall not assign, mortgage, pledge or otherwise transfer this Lease, in whole or in part, nor sublet or permit occupancy by any party other than Tenant of all or any part of the Leased Premises without Landlord's prior written consent. Any purported assignment, subletting or pledge by Tenant shall be void and shall constitute an Event of Default hereunder.

15.2. Scope. The prohibition against assigning or subletting contained in this Section 15 shall be construed to include a prohibition against any assignment or subletting by operation of law, and by any change in the ownership of stock or partnership interests of a corporation or a partnership which constitutes a change in control. If this Lease is assigned, or if the Leased Premises or any part thereof is sublet, with or without authority or Landlord's consent, Landlord may collect rent from the assignee or subtenant and apply the net amount collected to the Rent provided for herein. No such assignment, subletting, or collection shall be deemed a waiver of this covenant, be construed as an approval of the assignee, or subtenant as tenant under this Lease, or release of Tenant from the performance by Tenant of its covenants hereunder. No assignment or subletting shall affect the continuing primary liability of Tenant (which, following assignment and subletting, shall be joint and several with the assignee or sublessee), and Tenant shall not be released from performing any of the terms, covenants and conditions of this Lease.

15.3. Permitted Assignment. Notwithstanding anything to the contrary contained in this Lease, provided Tenant shall not be in default under the Lease, and subject to the continued liability of Tenant as set forth in Section 15.2 above, Tenant shall have the right, without Landlord's prior written consent, to assign the Lease or sublet the Demised Premises, in whole or in part, to (i) any wholly owned subsidiary or to any parent corporation of Tenant, or (ii) any affiliate or entity under common control with Tenant or any affiliate or entity under common control with a parent or subsidiary of Tenant or; (iii) any entity of which Tenant, a Tenant affiliate, Tenant partner, Tenant subsidiary, Tenant parent, or under common control with Tenant is a shareholder or partner, or; (iv) Tenant's successors, or; (v) any entity which acquires all or substantially all of the assets or shares of Tenant, by merger, consolidation, acquisition or other business reorganization or by a purchase of all or substantially all of Tenant's assets. In addition, Tenant shall have the right, without Landlord's prior written consent, but upon notice to Landlord, to sublet to any entity provided the sublease is for less than 45% of the Leased Premises. An "Affiliate" shall mean any corporations or other business entities which control, are controlled by, or are under common control with the entity in question.

15.4. Waiver. Tenant hereby waives notice of any default by an assignee or subtenant and agrees that Landlord may, but is not obligated to first, proceed directly against Tenant without proceeding against or joining such assignee or sublessee.

15.5. Landlord's Assignment. Whenever Landlord conveys its interest in the Leased Premises, Landlord shall be automatically relieved from all liability as respects the further performance of its covenants or obligations hereunder and for any and all further liability, obligations, costs and expenses, demands, causes of action, claims or judgments arising from or growing out of, or in connection with this Lease. Without further agreement, the transferee of such title or interest shall be deemed to have assumed all of Landlord's obligations, duties, responsibilities and liabilities with respect to this Lease.

SECTION 16 - ESTOPPEL CERTIFICATES, ATTORNMENT AND SUBORDINATION

16.1. Estoppel Certificates. Within ten (10) days after request therefor by Landlord, or any mortgagee, purchaser, or lessor of Landlord, Tenant shall deliver, in recordable form, a certificate certifying, to the extent true, that (a) this Lease is in full force and effect and unmodified (or, if so modified, stating the modifications); (b) that no more than one (1) month's rent and other charges has been paid in advance; (c) that there are no uncured defaults by Landlord and no defenses or offsets outstanding (or, stating those uncured defaults, defenses or offsets claimed by Tenant); (d) that the Term has commenced and the full amount of rent is accruing hereunder; (e) that Tenant has accepted the Leased Premises; and (f) such other matters as such mortgagee, purchaser, lessor, or Landlord may reasonably request. Tenant's failure to deliver said statement in the allotted time shall be conclusive upon Tenant that this Lease is in full force and effect and unmodified, that no more than one (1) month's rent and other charges has been paid in advance, that there are no uncured defaults by Landlord and no defenses or offsets outstanding, that the Term has commenced and the full amount of rent is accruing hereunder, and that Tenant has accepted the Leased Premises.

16.2. Attornment. In the event any proceedings are brought for the foreclosure of any mortgage or deed of trust made by the Landlord, its successors or assigns, encumbering the Leased Premises, or any part thereof, or in the event of termination of the ground lease, if any, Tenant shall, upon request, attorn to the mortgagee, or purchaser upon such foreclosure, sale, or grant of a deed in lieu of foreclosure, or the ground lessor, as the case may be, and shall recognize such mortgagee, purchaser or ground lessor as the Landlord under the Lease.

16.3. Subordination. The rights of Tenant hereunder are, and shall be, subject and subordinate to any present and future mortgage and to the terms of the underlying lease to this Lease from the Town of Islip Industrial Development Agency (the "Agency"), to all advances made or hereafter to be made upon the security thereof, and to all modifications and renewals thereof. This provision shall be self-operative and no further instrument of subordination shall be necessary to establish same but upon the Agency's request, Tenant agrees to execute a Tenant Agency Compliance Agreement in the form attached hereto as Exhibit D. Landlord shall use its best efforts to obtain from the present mortgagee, and any future mortgagee, a subordination, non-disturbance and attornment agreement ("SNDA") on the lender's standard form. The present mortgagee's form SNDA is attached hereto as Exhibit E (the "Bethpage's SNDA"). If requested, Tenant agrees to execute the Bethpage SNDA, as well as whatever reasonable documentation may be requested to confirm the provisions of this Section 16.3.

SECTION 17 - NOTICES

All notices required to be given hereunder shall be in writing and mailed by reputable overnight courier, to the addresses indicated for Landlord and Tenant in Section 1.12, or at such other place or places as either Landlord or Tenant may, from time to time, designate in a written notice given to the other. Notices shall be deemed sufficiently served on the date of delivery.

SECTION 18 - MISCELLANEOUS

18.1. Waiver. No waiver of any default of any covenant by either party hereunder shall be construed from any failure by either party to take action on account of such default, unless such waiver is signed by Landlord or Tenant, as the case may be. No express waiver shall affect any default other than the default specified in such waiver. Waivers of any covenant, term or condition contained herein by either party shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. No custom or practice which may grow up between the parties shall be deemed to modify any term or condition of this Lease, unless such modification is agreed to by Landlord and Tenant in writing.

18.2. Accord and Satisfaction. Any payment by Tenant, or receipt by Landlord, of a lesser amount than the Fixed Minimum Rent, Additional Rent or other charges stipulated herein or due hereunder shall be deemed to be a partial payment thereof and not full payment notwithstanding any contrary statement or notation thereon or in any transmittal, cover or other communication. Any endorsement or statement on any check, or any letter accompanying any check or payment, purporting to be an accord and satisfaction is hereby automatically nullified and shall be deemed a partial payment, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent and other charges or pursue any other remedy provided in this Lease.

18.3. Landlord's Liability. Landlord is a limited liability company and Tenant shall look solely to Landlord's interest in the Overall Premises and/or Leased Premises and to no other assets of the Landlord or its members for satisfaction of any liability in respect to this Lease and shall not seek any recourse against Landlord's directors, officers, employees, members, affiliates, principals or lenders.

18.4. Entire Agreement. This Lease sets forth all the covenants, promises, agreements, conditions and understandings, whether oral or written, between the parties, except as are specifically set forth herein. Except as otherwise provided herein, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless expressed in writing and executed by both parties hereto.

18.5. Captions and Section Numbers. The captions, section numbers and article numbers appearing in this Lease are inserted only as a matter of convenience and in no way enlarge or limit the scope or intent of such sections or articles of this Lease nor in any way affect this Lease.

18.6. Severability. If any term, covenant, condition or provision of this Lease shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Lease shall remain in full force and effect.

18.7. Applicable Law. This Lease, and the rights and obligations of the parties hereto, shall be construed and enforced in accordance with the laws of the state in which the Leased Premises are located without regard to the conflict of laws provisions thereof.

18.8. Examination of Lease. Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option to lease, and it is not effective as a Lease or otherwise until and unless Landlord executes and delivers the Lease, executed by both Landlord and Tenant, to Tenant.

18.9. Lender's Requirements. Tenant hereby agrees to make any reasonable revisions to this Lease which may be required in good faith by any lender or mortgage in connection with the financing of all or any portion of the Overall Premises or the Leased Premises.

18.10. Holding Over. Tenant shall have no right to hold over after the expiration or earlier termination of the Term hereof, without the express written consent of Landlord. If Tenant holds over without Landlord's written consent, Tenant shall become a tenant at sufferance only, at a rental rate equal to the sum of double the amount of (a) Minimum Rent, plus (b) all of Tenant's - Additional Rent in effect immediately prior to such expiration or earlier termination. In the event of a holdover by Tenant, Landlord shall have no duty to prorate rent on a daily basis. Tenant's occupancy at sufferance shall otherwise be subject to all the terms, covenants and conditions of this Lease. Acceptance by Landlord of rent after such expiration or earlier termination shall not constitute a holdover hereunder or result in a renewal. The foregoing provisions of this Section 18.10 are in addition to and do not affect Landlord's right of reentry or any other rights of Landlord hereunder or at law. If Tenant fails to surrender the Leased Premises upon the expiration of this Lease despite a written request to do so by Landlord, Tenant shall indemnify and hold Landlord harmless from all loss or liability, including without limitation any claim and judgments for punitive damages made by any succeeding tenant resulting from such failure to surrender.

18.11. Authority. If Tenant is a corporation, trust, limited liability company or general or limited partnership, Tenant represents that the individual, in his or their corporate or limited liability capacity executing this Lease has full authority to execute the Lease on behalf of such entity and to bind Tenant thereto.

18.12. Landlord's Access. Landlord and Landlord's agents and employees shall have the right to enter the Leased Premises at reasonable times for the purpose of inspection of same; showing same to prospective tenants, purchasers or mortgagees; and making such alterations, repairs, improvements or additions to the Leased Premises as Landlord may deem reasonably necessary or desirable. Landlord may at any time during the last year of the Term of this Lease place on or about the Premises "For Sale" or "For Lease" signs.

18.13. Delays/Force Majeure. Landlord shall not be considered in default under this Lease on account of any failure or delay in performing any agreement, covenant or obligation to be performed by Landlord if such failure or delay is due in whole or in part to any strike, lockout, labor dispute, civil disorder, war, shortage of or delay in obtaining labor or materials, power or fuel shortage or disruption, restrictive governmental law or regulation, accident, civil unrest, casualty, act of God, or any other cause beyond the reasonable control of Landlord or Tenant, as the case may be.

18.14. Signs. Subject to Landlord's prior written approval, which shall not be unreasonably withheld, for each and any proposed signs, and subject to compliance with all Laws, Tenant shall have the right to install a sign on the front of the building, and on both sides of the pylon at the driveway entrance in common with other tenants. On or before the termination of this Lease, Tenant shall, at its sole expense, remove all such signs in a manner satisfactory to Landlord and shall immediately repair, at Tenant's expense, any injury or damage caused by removal.

18.15. Brokers. Landlord and Tenant both represent and warrant that neither has dealt with any broker, agent or other person in connection with this Lease other than the Broker designated in Part I of this Lease ("Broker"). Tenant agrees to indemnify and hold Landlord, its beneficiaries and managing agents, and their respective agents, partners, officers, directors and employees harmless from all losses, damages and liabilities, claims, liens, costs and expenses, including reasonably attorneys' fees, resulting from such representation being proven to be false. Unless

otherwise provided for, Landlord shall compensate and pay commissions to Broker pursuant to a separate agreement between Landlord and Broker, and said separate agreement shall constitute Landlord's sole obligation to Broker. The parties acknowledge that the principal broker of Buck Realty of L.I., Inc. is also a principal of Landlord.

18.16. Tenant's Inspection of Premises. Tenant warrants and represents that Tenant has examined the Leased Premises and has made such inquiry as it, in its sole discretion, deems appropriate regarding the Leased Premises and the Overall Premises and is entering into and executing this Lease solely in reliance on its own research and inquiry and has not thereby relied, in any way, upon any representation or information supplied by Landlord or its employees, representatives, agents, officers or counsel, except as specifically set forth in this Lease.

18.17. Quiet Enjoyment. Upon payment of all rents and other charges herein provided, and upon the observance and performance of all the covenants, terms and conditions on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the Leased Premises for the term hereby demised without hindrance or interruption by Landlord or any other person or persons lawfully or equitably claiming by, through or under the Landlord, subject, nevertheless, to the terms and conditions of this Lease and to any mortgage, deed of trust or ground lease to which this Lease is subordinate.

18.18. Tenant's Remedy for Landlord's Failure to Perform. In the event Tenant claims or asserts that Landlord has violated or failed to perform any covenant of this Lease, including but not limited to, Landlord unreasonably withholding or delaying Landlord's consent or approval, or in any case where Landlord's reasonableness in exercising its judgment is in issue, Tenant's sole remedy shall be an action for specific performance, declaratory judgment or injunction and in no event shall Tenant be entitled to any money damages for a breach of such covenant and in no event shall Tenant claim or assert any claims for any money damages in any action or by way of set off, defense or counterclaim and Tenant hereby specifically waives the right to any money damages or other remedies.

18.19. Enforcement Costs and Fees. In the event Landlord incurs costs and counsel fees in the successful enforcement of its rights under this Lease, it shall be entitled to reasonable costs and reasonable counsel fees of same.

18.20. Counterparts and Electronic Signatures. This Lease may be executed in multiple counterparts, and each counterpart, when fully executed and delivered, shall constitute an original instrument and all such multiple counterparts shall constitute but one and the same instrument. Either party's signature, or an electronic image thereof, shall be deemed to be an original signature for all purposes. Such signatures may be delivered to the other party by facsimile, electronic mail, or other electronic transmission device under which the signature of or on behalf of such delivering party can be seen, and such execution and delivery shall be considered valid, binding and effective for all purposes. At the request of any party, the parties agree to execute an original of this Lease with an original handwritten signature and deliver such document to the requesting party.

SECTION 19 - SUCCESSORS BOUND

19.1. This Lease and each of its terms, covenants and conditions shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, assigns and legal representatives, subject to the provisions hereof. Whenever in this Lease a reference is made to Landlord, such reference shall be deemed to refer to the person in whom the interest of

the Landlord shall be vested. Any successor or assignee of Tenant who accepts an assignment of this Lease and enters into possession or enjoyment thereunder shall thereby assume and agree to perform and be bound by the terms, covenants and conditions thereof. Nothing herein contained shall be deemed in any manner to allow an assignment by Tenant pursuant to Section 15 hereof; other than as provided for in Section 15.3.

SECTION 20 - ADA COMPLIANCE

20.1. Tenant's Compliance with ADA. Tenant shall be responsible for the cost of any improvements or any repairs, equipment, design, removal and work within the Leased Premises required by the provisions of The Americans with Disabilities Act and all regulations, guidelines, directives, orders, precedent, policies and procedures thereunder, (the "ADA") which are required as a result of Tenant's alterations or use or operations in, on, about and of the Leased Premises during the Term of this Lease. Tenant hereby agrees to release, indemnify and hold harmless Landlord and its agents, owners, directors, officers, affiliates, successors, attorneys, engineers, consultants and assigns from and against any claim, judgment, fine, penalty, cost, expense, fee or action of every name and nature made as a result of or arising connection with the ADA as it pertains to the Leased Premises as set forth herein.

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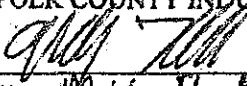
SECTION 21 - EXHIBITS AND RIDERS

- EXHIBIT A Site Plan
- EXHIBIT A-1 First Floor Plan
- EXHIBIT A-2 Second Floor Office Plan
- EXHIBIT A-3 Third Floor Office Plan
- EXHIBIT A-4 Coop Plan
- EXHIBIT A-5 Warehouse Plan
- EXHIBIT B Landlord's Work
- EXHIBIT C Rent and Term Commencement Agreement
- EXHIBIT D Form of Tenant Agency Compliance Agreement
- EXHIBIT E Present Mortgagee's form of SNDA

IN WITNESS WHEREOF, and intending to be legally bound hereby, Landlord and Tenant have executed this Lease on the day and year first above written.

LANDLORD:

SUFFOLK COUNTY INDUSTRIAL LLC

By: 
Name: Mark Fischel
Title: Member

TENANT:

1724 FIFTH AVENUE REALTY LLC

By: _____
Name: _____
Title: _____

SECTION 21 - EXHIBITS AND RIDERS

- EXHIBIT A Site Plan
- EXHIBIT A-1 First Floor Plan
- EXHIBIT A-2 Second Floor Office Plan
- EXHIBIT A-3 Third Floor Office Plan
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IN WITNESS WHEREOF, and intending to be legally bound hereby, Landlord and Tenant have executed this Lease on the day and year first above written.

LANDLORD:

SUFFOLK COUNTY INDUSTRIAL LLC

By: _____
Name: _____
Title: _____

TENANT:

1724 FIFTH AVENUE REALTY LLC

By: _____
Name: AVIV RAITSES
Title: managing member

**EXHIBIT A
SITE PLAN**

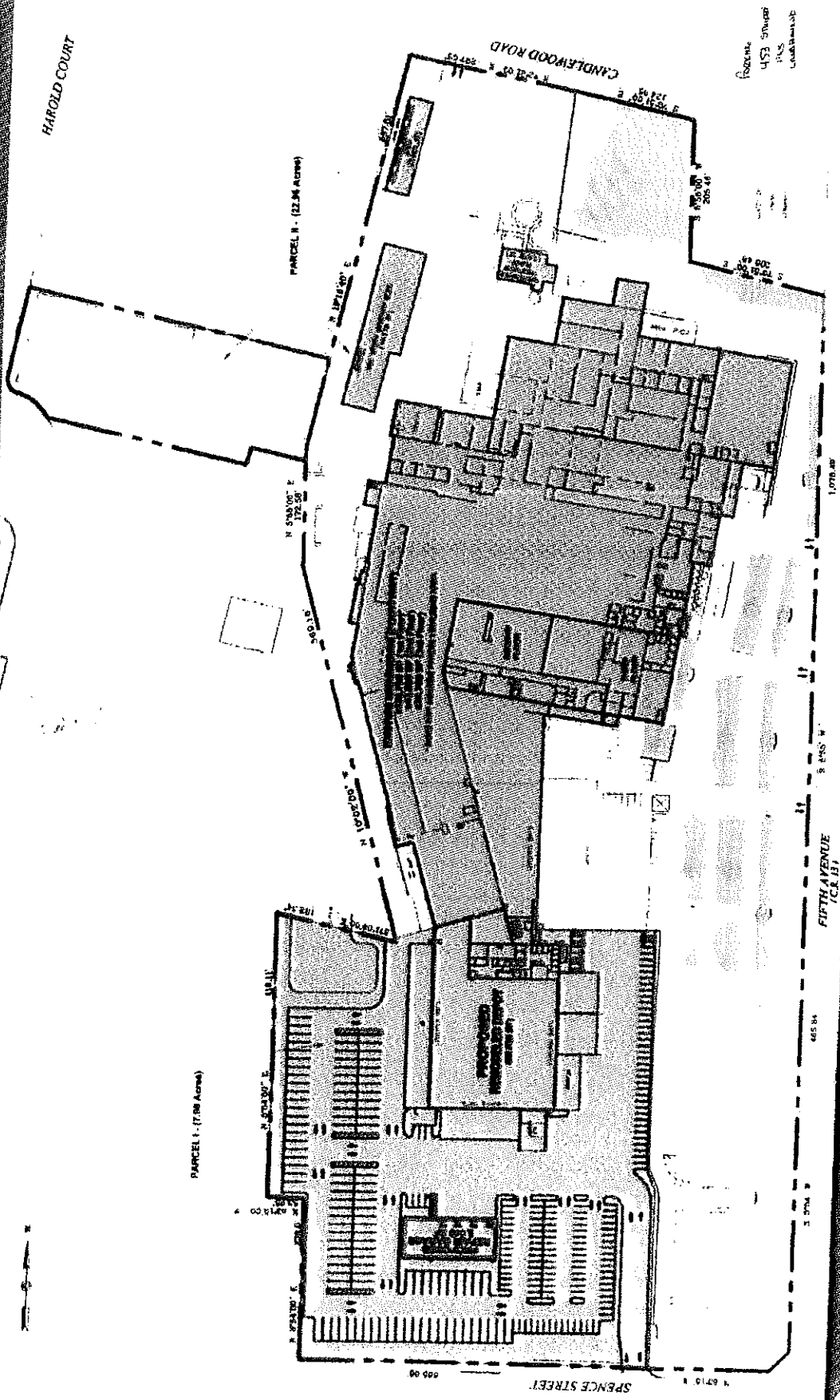
Ciombi Bakeries - Fifth Avenue (C.R. 100) Bay Shore Town of L.I.C.P., NY

Site Exhibit

HAROLD COURT

PARCEL 1 - (7.08 Acres)

PARCEL 2 - (12.24 Acres)



Scale
1" = 50'
1" = 100'

DATE: 02/15/2015

3345 Spence Avenue, Bay Shore, LI, New York 11706
 516-338-1111
 www.ciombi.com

EXHIBIT A-1
FIRST FLOOR PLAN

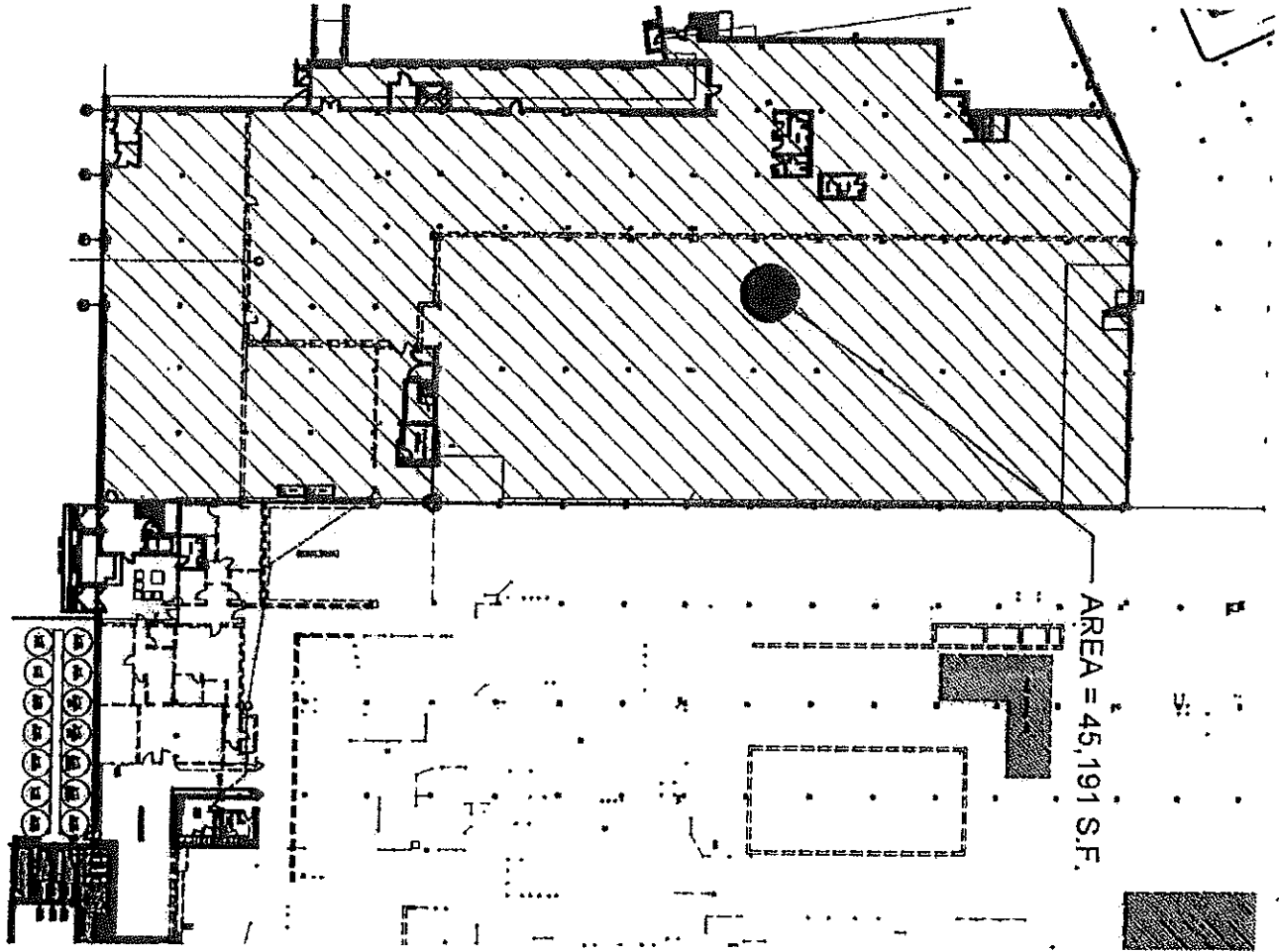
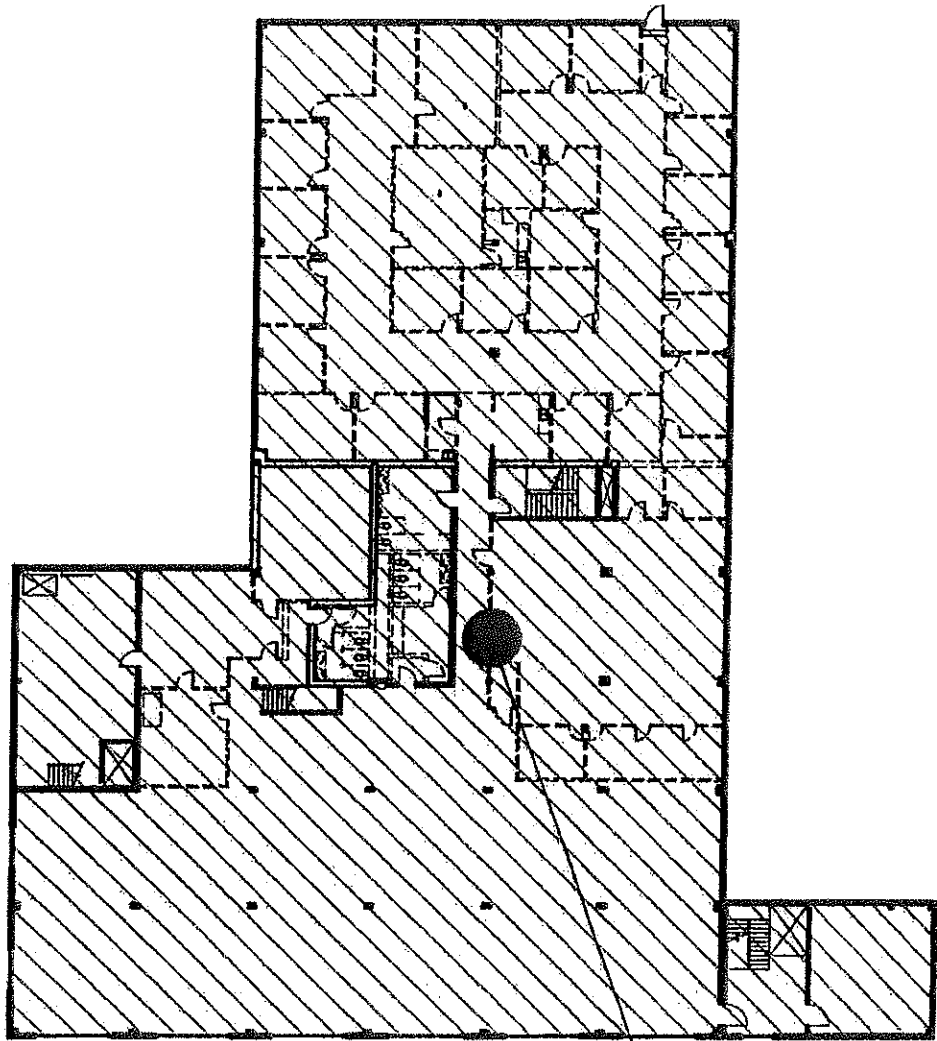


EXHIBIT A-3
THIRD FLOOR OFFICE PLAN

THIRD FLOOR PLAN



N.T.S.

AREA = 20,715 S.F.

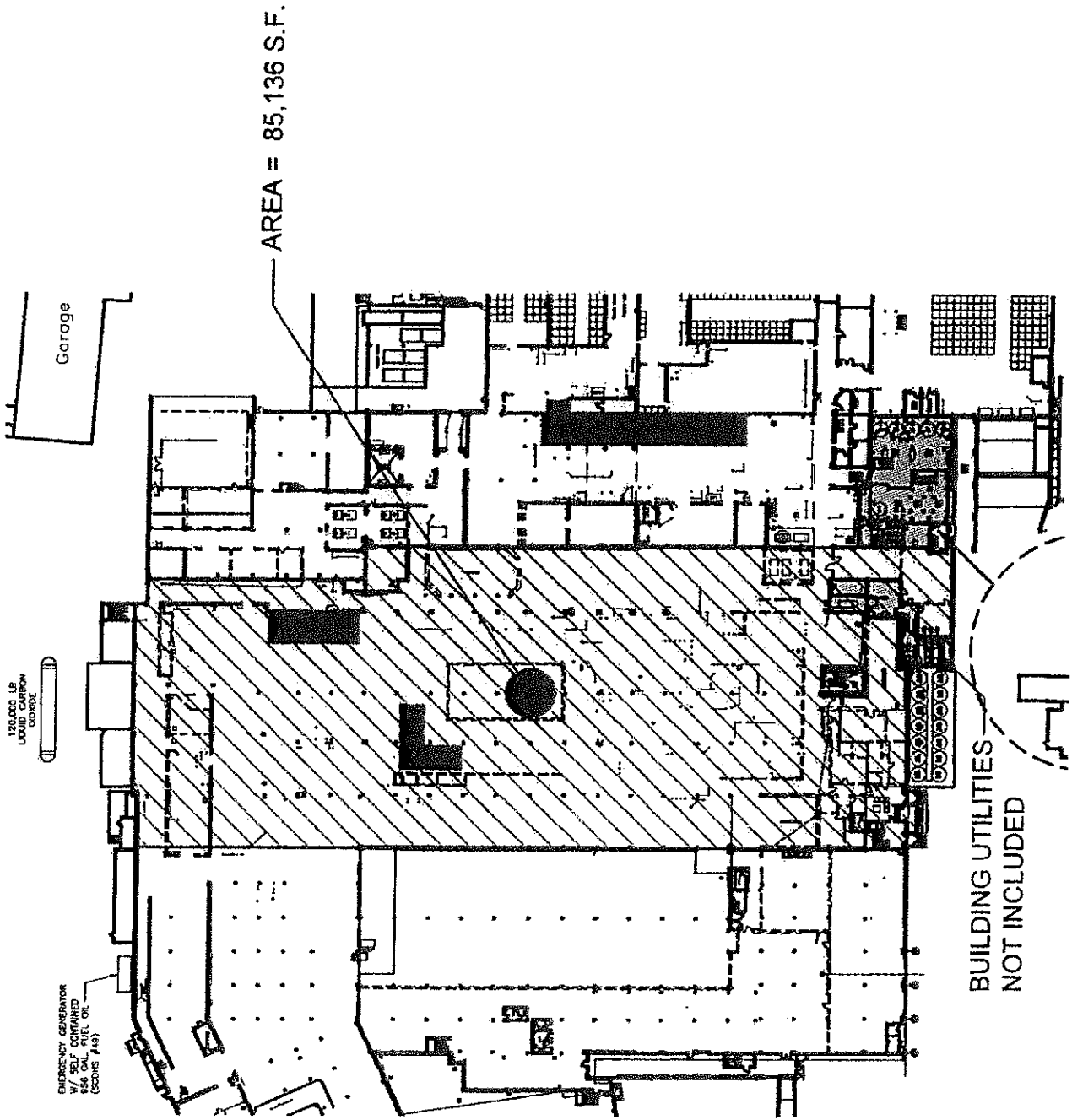


EXHIBIT A-4
COOP PLAN

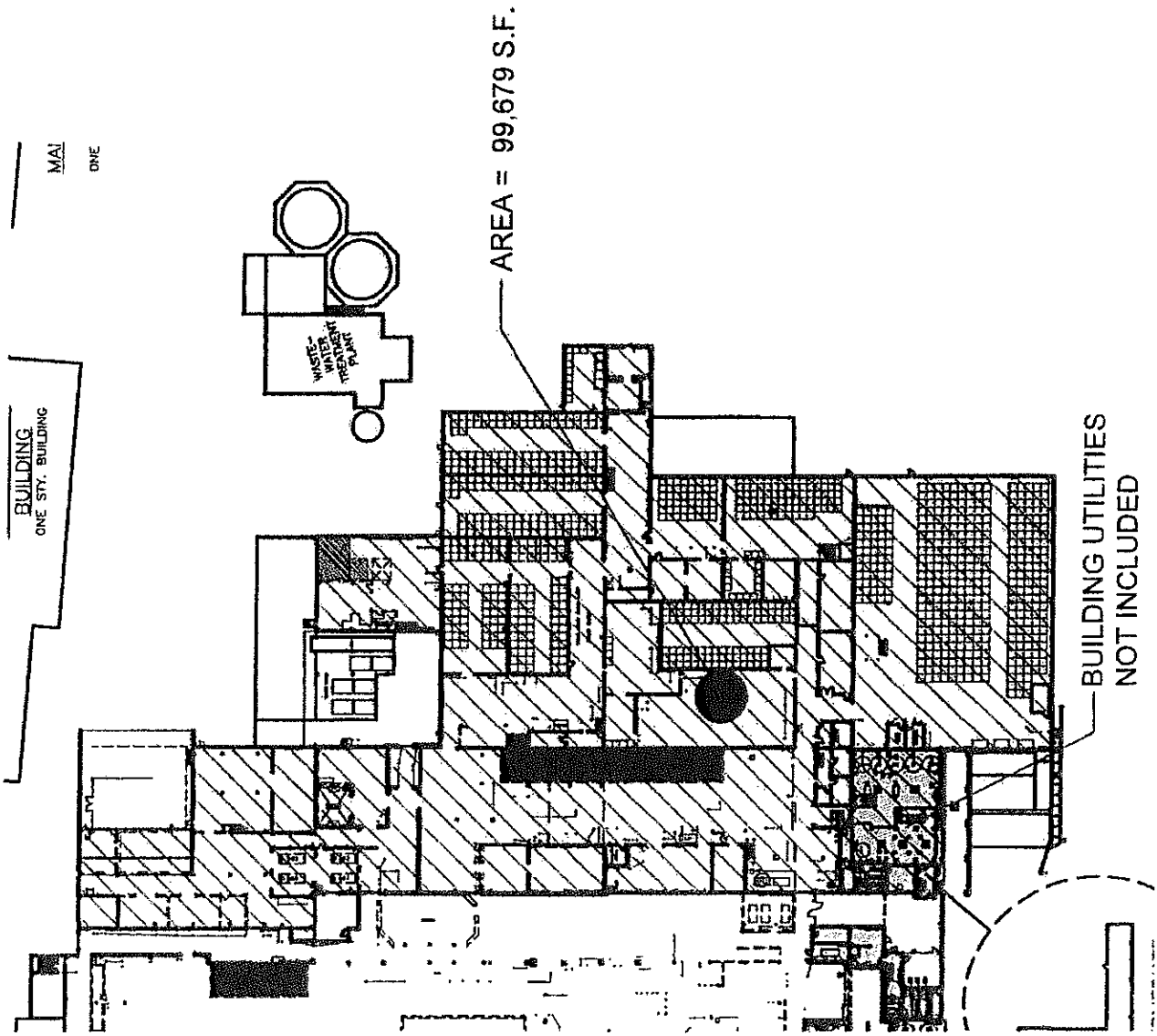


EXHIBIT A-5
WAREHOUSE PLAN

EXHIBIT B
Landlord's Work

1. Warehouse – Demising the premises as per attached Plan. All demising walls to be constructed fire- rated walls to code and ready for use.
2. Office – Demolish existing office space on 1st, 2nd and 3rd floor as per attached Plan and provide working HVAC throughout the Office Space.
3. Life safety – the existing life safety equipment at the Leased Premises shall be in working order and to current code for each respective space on the applicable dates set forth for each space in Section 6.4. Notwithstanding anything contained herein, any life safety requirements or equipment needed for Tenant's refitment of the Leased Premises shall be done at Tenant's sole cost and expense. For the avoidance of doubt, the life safety equipment currently in place must comply with and be acceptable to any governmental authority, building, fire or otherwise who may have jurisdiction over this building. Any modifications and or replacements required to the current system not caused by Tenant's build-out shall be Landlord's responsibility. Furthermore, Tenant shall be responsible for any and all life safety equipment issues as and when Tenant takes occupancy or as a result of Tenant's use after Tenant takes occupancy.
4. Remove canopy outside maintenance shop. Within thirty (30) days after Tenant receives its Certificate of Occupancy for both the Coop Space and the Warehouse Space, Landlord will apply for the building permit, and shall thereafter proceed diligently, to install four (4) additional loading docks as per attached plan.
5. Make any necessary repairs/upgrades to elevators and to obtain all necessary county licenses/certificates for vertical transportation equipment.
6. Convert the heating system to a gas non/boiler system.
7. All mechanical roll-up doors to be in working operable condition,
8. All dock drains clear and operating.
9. The electrical service shall be separate from the rest of the Building by sub-metering.
10. Parking Lot – to be repaired, re-striped and replaced as necessary, as determined by Landlord. Within 60 days after Tenant receives municipal approvals and starts work to construct the retail space, outdoor lighting sufficient for retail parking.

EXHIBIT C

RENT AND TERM COMMENCEMENT AGREEMENT

WHEREAS, Suffolk County Industrial LLC, a New York limited liability company ("Landlord") and 1724 Fifth Avenue Realty LLC, a New York limited liability company ("Tenant") entered into a Lease Agreement dated _____, 2016 (the "Lease") for the premises located at 1724 Fifth Avenue, Bayshore, New York 11021 (the "Premises");

WHEREAS, Section 4.4 of the Lease calls for Landlord and Tenant to execute a Rent and Term Commencement Agreement confirming the Commencement Date, Rent Commencement Date and Expiration Date; and

WHEREAS, in accordance with the terms and conditions of the Lease, Landlord and Tenant hereby enter into this Rent and Term Commencement Agreement (the "Agreement").

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

1. The Commencement Date as defined in Section 2.1 of the Lease shall hereafter be _____, 20__.
2. The Expiration Date as described in Section 3.1 of the Lease shall be _____, unless Tenant notifies Landlord of its intent to exercise its option to renew as defined in Section 3.3 of the Lease.
3. The Rent Commencement Date as defined in 4.2 of the Lease shall be _____, 20__.
4. All capitalized terms not defined herein shall have the meaning given them in the Lease.

[Intentionally blank; signatures on the following page]

IN WITNESS WHEREOF, each of the undersigned has executed this Agreement as of the dates written below.

LANDLORD:

SUFFOLK COUNTY INDUSTRIAL LLC

By: _____
Name: _____
Title: _____
Date: _____

TENANT:

1724 FIFTH AVENUE REALY LLC

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT D

TENANT AGENCY COMPLIANCE AGREEMENT

THIS TENANT AGENCY COMPLIANCE AGREEMENT, dated as of _____, 20____, is between the TOWN OF ISLIP INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its office at 40 Nassau Avenue, Islip, New York 11751 (the "Agency"), and _____, a [banking corporation] [business corporation] [general partnership] [limited liability company] [limited liability partnership] [limited partnership] duly organized and validly existing under the laws of the State of _____ having its principal office at _____ (the "Tenant").

WITNESSETH

WHEREAS, the Agency was created by Chapter 47 of the Laws of 1974 of the State of New York, as amended, pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act"); and

WHEREAS, the Agency has agreed to assist in the acquisition of an approximately 32.88 acre parcel of land located at 1724 Fifth Avenue, Bay Shore, New York 11706 (the "Land"), the renovation of an existing approximately 400,000 square foot building located thereon, together with the acquisition and installation of improvements, structures and other related facilities attached to the Land (the "Improvements"), and the acquisition and installation therein of certain equipment and personal property (the "Equipment"; and, together with the Land and the Improvements, the "Facility"), which Facility will be leased by the Agency to Suffolk County Industrial LLC, a New York limited liability company (the "Company"), and used by the Company as an industrial complex for further sublease by the Company to Bimbo Bakeries USA, Inc. and future tenants not yet determined (collectively, the "Sublessees"); and

WHEREAS, the Agency acquired a subleasehold and leasehold interest in the Facility, all pursuant to the Lease Agreement, dated as of March 1, 2016 (the "Lease Agreement"), by and between the Agency and the Company; and

WHEREAS, the Company intends to sub-sublease a portion of the Facility (the "Demised Premises") to the Tenant pursuant to a [Tenant Lease Agreement], dated as of _____, 20____ (the "Tenant Lease Agreement"), by and between the Company and the Tenant, which may be amended from time to time.

NOW, THEREFORE, the parties hereto hereby agree as follows:

ARTICLE I
REPRESENTATIONS AND COVENANTS OF TENANT

Section 1.1 Representations and Covenants of Tenant. The Tenant makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Tenant is a [banking corporation] [business corporation] [general partnership] [limited liability company] [limited liability partnership] [limited partnership] duly organized

and validly existing under the laws of the State of _____, and in good standing under the laws of the State of New York, and has full legal right, power and authority to execute, deliver and perform this Tenant Agency Compliance Agreement. This Tenant Agency Compliance Agreement has been duly authorized, executed and delivered by the Tenant.

(b) To the best of the Tenant's knowledge, neither the execution and delivery of this Tenant Agency Compliance Agreement nor the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions hereof will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of any law or ordinance of the State or any political subdivision thereof, the Tenant's organizational documents, as amended, or any restriction or any agreement or instrument to which the Tenant is a party or by which it is bound.

(c) Any and all leasehold improvements undertaken by the Tenant with respect to the Demised Premises and the design, acquisition, construction, equipping and operation thereof by the Tenant will conform in all material respects with all applicable zoning, planning, building and environmental laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Facility. The Tenant shall defend, indemnify and hold harmless the Agency from any liability or expenses, including reasonable attorneys' fees, resulting from any failure by the Tenant to comply with the provisions of this subsection.

(d) The Tenant Agency Compliance Agreement constitutes a legal, valid and binding obligation of the Tenant enforceable against the Tenant in accordance with its terms.

(e) The Tenant will complete construction of any and all leasehold improvements undertaken by the Tenant with respect to the Demised Premises in accordance with the terms and provisions of the Tenant Lease Agreement.

ARTICLE II INSURANCE

Section 2.1 **Insurance Required.** At all times throughout the Lease Term, the Tenant shall, at its sole cost and expense, maintain or cause to be maintained insurance against such risks, and for such amounts, as are customarily insured against by businesses of like size and type and shall pay, as the same become due and payable, all premiums with respect thereto. Such insurance shall include, without limitation, the following (but without duplication of insurance provided by the Company pursuant to the Lease Agreement covering the same risks and insured(s)):

(a) Insurance against loss or damage by fire, lightning and other casualties customarily insured against, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the completed Improvements by the Tenant, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the Tenant, but in no event less than \$1,000,000. During the construction of the Facility, such policy shall be written in the so-called "Builder's Risk Completed Value Non-Reporting Form" and shall contain a provision granting the insured permission to complete and/or occupy.

(b) Insurance protecting the Agency, the Company and the Tenant against loss or losses from liability imposed by law or assumed in any written contract (including the contractual liability assumed by the Tenant under Section 3.2 hereof) or arising from personal injury, including bodily injury or death, or damage to the property of others, caused by an accident or other occurrence, with a limit of liability of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage), and blanket excess liability coverage, in an amount not less than \$5,000,000 combined single limit or equivalent, protecting the Agency and the Tenant against any loss or liability or damage for personal injury, including bodily injury or death, or property damage. This coverage shall also be in effect during any construction or renovation period with respect to the Demised Premises.

(c) During any construction period with respect to the Demised Premises (and for at least one year thereafter in the case of Products and Completed Operations as set forth below), the Tenant shall cause the general contractor to carry liability insurance of the type and providing the minimum limits set forth below:

(i) Workers' compensation and employer's liability with limits in accordance with applicable law.

(ii) Comprehensive general liability providing coverage for:

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

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

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

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

Section 2.2 Additional Provisions Respecting Insurance.

(a) All insurance required by this Tenant Agency Compliance Agreement shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State and selected by the entity required to procure the same. The company issuing the policies required hereby shall be rated "A" or better by A.M. Best Co., Inc. in Best's Key Rating Guide. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the procuring entity is engaged. All policies of insurance required by Section 2.1 hereof shall provide for at least ten (10) days prior written notice to the Agency of the restriction, cancellation or modification thereof. The policy evidencing the insurance required by Section 2.1(b) hereof shall name the Agency as an additional named insured. All policies evidencing the insurance required by Section 2.1 (c)(ii) and (iv) shall name the Agency and the Tenant as additional named insureds.

(b) The policy (or a certificate and binder) of insurance required by Section 2.1(b) hereof shall be delivered to the Agency on or before the date hereof. A copy of the policies (or certificates and binders) of insurance required by Section 2.1(c)(ii) and (iv) hereof shall be delivered to the Agency on or before the commencement of any construction or renovation of the Demised Premises. The Tenant shall deliver to the Agency before the first Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect, with a term covering the current year of the Tenant's insurance policy, insurance of the types and in the amounts required by Section 2.1 hereof and complying with the additional requirements of Section 2.2(a) hereof. Prior to the expiration of each such policy or policies, the Tenant shall furnish to the Agency and any other appropriate Person a new policy or policies of insurance or evidence that such policy or policies have been renewed or replaced or are no longer required by this Tenant Agency Compliance Agreement. The Tenant shall provide such further information with respect to the insurance coverage required by this Tenant Agency Compliance Agreement as the Agency may from time to time reasonably require.

Section 2.3 Application of Net Proceeds of Insurance. Subject to the provisions of Section 2.2(a) hereof, the Net Proceeds of the insurance carried pursuant to the provisions of Section 2.1 hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 2.4 Right of Agency to Pay Insurance Premiums. If the Tenant fails to maintain or cause to be maintained any insurance required to be maintained by Section 2.1 hereof, the Agency may pay or cause to be paid the premium for such insurance. No such payment shall be made by the Agency until at least ten (10) days shall have elapsed since notice shall have been given by the Agency to the Tenant. No such payment by the Agency shall affect or impair any rights of the Agency hereunder arising in consequence of such failure by the Tenant. The Tenant shall, on demand, reimburse the Agency for any amount so paid pursuant to this Section, together with interest thereon from the date of payment of such amount by the Agency.

ARTICLE III SPECIAL COVENANTS

Section 3.1 No Warranty of Condition or Suitability by Agency. THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY, OR THE SUITABILITY OF THE FACILITY FOR THE PURPOSES OR NEEDS OF THE TENANT OR THE EXTENT TO WHICH FUNDS AVAILABLE TO THE TENANT WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE FACILITY. THE TENANT ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE TENANT, ON BEHALF OF ITSELF IS SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR PURPOSES OF THE TENANT. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE TENANT OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

Section 3.2 Hold Harmless Provisions.

(a) The Tenant agrees that the Agency and its directors, members, officers, agents and employees shall not be liable for, and agrees to defend, indemnify, release and hold the Agency and its directors, members, officers, agents and employees harmless from and against, any and all (i) liability for loss or damage to Property or injury to or death of any and all Persons that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the Demised Premises or to common areas or other portions of the Facility to which the Tenant has regular access (such areas, together with the Demised Premises, are hereinafter referred to as the "Tenant Premises"), or arising by reason of or in connection with the occupation or the use thereof or the presence of any Person or Property on, in or about the Tenant Premises, and (ii) liability arising from or expense incurred in connection with the Agency's participation in the subleasing of the Demised Premises to the Tenant, including, without limiting the generality of the foregoing, all claims arising from the breach by the Tenant of any of its covenants contained herein, the exercise by the Tenant of any authority conferred upon it pursuant to this Tenant Agency Compliance Agreement and all causes of action and reasonable attorneys' fees (whether by reason of third party claims or by reason of the enforcement of any provision of this Tenant Agency Compliance Agreement (including without limitation this Section) or any other documents delivered by the Agency in connection with this Tenant Agency Compliance Agreement), and any other expenses incurred in defending any claims, suits or actions which may arise as a result of any of the foregoing, to the extent that any such losses, damages, liabilities or expenses of the Agency are not incurred and do not result from the gross negligence or intentional or willful wrongdoing of the Agency or any of its directors, members, agents or employees. Except as otherwise provided herein, the foregoing indemnities shall apply

notwithstanding the fault or negligence in part of the Agency, or any of its members, directors, officers, agents or employees, and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of any such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

(b) Notwithstanding any other provisions of this Tenant Agency Compliance Agreement, the obligations of the Tenant pursuant to this Section shall remain in full force and effect after the termination of this Tenant Agency Compliance Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought, and payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all expenses and charges incurred by the Agency or its members, directors, officers, agents and employees relating to the enforcement of the provisions herein specified.

(c) In the event of any claim against the Agency or its members, directors, officers, agents or employees by any employee or contractor of the Tenant or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Tenant hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, disability benefits or other employee benefit acts.

Section 3.3 Right to Inspect Demised Premises. The Agency and its duly authorized agents shall have the right at all reasonable times and upon reasonable prior written notice to inspect the Demised Premises.

Section 3.4 Qualification as Project.

(a) The Tenant will not take any action, or fail to take any action, which action or failure to act would cause the Facility not to constitute a "project" as such quoted term is defined in the Act. Without limited the generality of the foregoing, the Tenant will in no event use the Demised Premises in such a way as to cause or permit the Facility to be used in violation of Section 862(2)(a) of the Act.

(b) The occupation of the Demised Premises has not and will not result in the removal of a facility or plant of the Tenant 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 Tenant located within the State.

Section 3.5 Compliance with Orders, Ordinances, Etc.

(a) The Tenant, throughout the Lease Term, agrees that it will promptly comply, and cause any sublessee of the Tenant or occupant of the Demised Premises which is occupying the Demised Premises by permission of the Tenant to comply, with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof, or to the acquisition, construction

and equipping thereof, or to any use, manner of use or condition of the Facility or any part thereof, of all federal, state, county, municipal and other governments, departments, commissions, boards, courts, authorities, officials and officers having jurisdiction of the Facility or any part thereof, and companies or associations insuring the premises.

(b) The Tenant shall keep or cause the Demised Premises to be kept free of Hazardous Substances arising by or through its acts or omissions of those of its agents, contractors, employees and invitees. Without limiting the foregoing, the Tenant shall not cause or permit the Demised Premises to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Substances, except in compliance with all applicable federal, state and local laws or regulations, nor shall the Tenant cause or permit, as a result of any intentional or unintentional act or omission on the part of the Tenant or any of its contractors, subcontractors or tenants, a release of Hazardous Substances onto the Facility or onto any other property. The Tenant shall comply with, and ensure compliance by all of its contractors, subcontractors and subtenants with, all applicable federal, state and local environmental laws, ordinances, rules and regulations, whenever and by whomever triggered, and shall obtain and comply with, and ensure that all of its contractors, subcontractors and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder. The Tenant shall (i) conduct and complete all investigations, studies, sampling and testing and all remedial, removal and other actions necessary to clean up and remove all Hazardous Substances released, stored, generated or used by it on, from or affecting the Facility (A) in accordance with all applicable federal, state and local laws, ordinances, rules, regulations and policies, (B) to the satisfaction of the Agency, and (C) in accordance with the orders and directives of all federal, state and local governmental authorities; and (ii) defend, indemnify and hold harmless the Agency, its employees, agents, officers, members and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to (A) the presence, disposal, release or threatened release of any Hazardous Substances which are on, from or affecting the soil, water, vegetation, buildings, personal property, persons, animals or otherwise, (B) any bodily injury, personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substances, (C) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substances, or (D) any violation of laws, orders, regulations, requirements or demands of government authorities, or of any policies or requirements of the Agency, which are based upon or in any way related to such Hazardous Substances, and in all cases which result from the intentional or unintentional act or omission of the Tenant or any of its contractors, subcontractors or subtenants, including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses. The provisions of this Section shall be in addition to any and all other obligations and liabilities the Tenant may have to the Agency at common law and shall survive the transactions contemplated herein.

(c) Notwithstanding the provisions of subsections (a) and (b) hereof, the Tenant may in good faith contest the validity or the applicability of any requirement of the nature referred to in such subsections (a) and (b) by appropriate legal proceedings conducted in good faith and with due diligence. In such event, the Tenant may fail to comply with the requirement or

requirements so contested during the period of such contest and any appeal therefrom, unless the Agency shall notify the Tenant that, by failure to comply with such requirement or requirements, the Facility or any part thereof may be subject to loss, penalty or forfeiture, in which event the Tenant shall promptly take such action with respect thereto or provide such security as shall be reasonably satisfactory to the Agency. If at any time the then existing use or occupancy of the Facility shall, pursuant to any zoning or other law, ordinance or regulation, be permitted only so long as such use or occupancy shall continue, the Tenant shall use reasonable efforts not to cause or permit such use or occupancy by the Tenant to be discontinued without the prior written consent of the Agency, which consent shall not be unreasonably withheld.

(d) Notwithstanding the provisions of this Section, if, because of a breach or violation of the provisions of subsection (a) or (b) hereof (without giving effect to subsection (c) hereof), the Agency or any of its members, directors, officers, agents or employees shall be threatened with a fine, liability, expense or imprisonment, then, upon notice from the Agency, the Tenant shall immediately provide legal protection or pay an amount or post a bond in an amount necessary, in the opinion of the Agency and of its members, directors, officers, agents and employees, to the extent permitted by applicable law, to remove the threat of such fine, liability, expense or imprisonment.

(e) Notwithstanding any provisions of this Section, the Agency retains the right to defend itself in any action or actions which are based upon or in any way related to such Hazardous Substances. In any such defense of itself, the Agency shall select its own counsel, and any and all costs of such defense, including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses, shall be paid by the Tenant.

Section 3.6 Agreement to Provide Information. The Tenant shall file with the New York State Department of Taxation and Finance an annual statement of the value of all sales and use tax exemptions claimed in connection with the Facility in compliance with Sections 874(8) of the New York State General Municipal Law. The Tenant shall also provide the Agency with the information necessary to comply with Section 874(9) of the GML. The Tenant shall submit a copy of such annual statement to the Agency at the time of filing with the Department of Taxation and Finance. The Tenant further agrees to provide and certify or cause to be provided and certified whenever requested by the Agency such information concerning the Tenant, its respective finances, its respective operations, its respective employment and its affairs necessary to enable the Agency to make any report required by law, governmental regulation, including, without limitation, any reports required by the Act, the Public Authorities Accountability Act of 2005, or the Public Authorities Reform Act of 2009, each as amended from time to time, or any other reports required by the New York State Authority Budget Office or the Office of the State Comptroller, or any of the Agency Documents or Tenant Documents. Such information shall be provided within thirty (30) days following written request from the Agency.

Section 3.7 Employment Opportunities; Notice of Jobs. The Tenant covenants and agrees that, in consideration of the participation of the Agency in the transactions contemplated herein, it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, cause any new employment opportunities created in connection with the

Demised Premises to 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 Facility is located (collectively, the "Referral Agencies"). The Tenant also agrees that it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, 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.

Section 3.8 Subleasing. The Tenant may not assign the Tenant Lease Agreement or sub-lease the Facility in whole or part without the prior written consent of the Agency. Any assignment or sub-lease shall conform with the restrictions and requirements set forth in Section 9.3 of the Lease Agreement.

Section 3.9 Recognition Agreement.

(a) So long as the Tenant is not in default in the performance of any of the terms of the Tenant Lease Agreement beyond applicable notice and cure periods, the parties agree that upon the occurrence and the continuation of an Event of Default under the Lease Agreement and upon the Agency's exercise of its right under Section 10.02(a)(iii) of the Lease Agreement, whereby the Agency will sublease the Facility to the Lender or an entity owned or controlled by the Lender, such Lender or entity shall take such subleasehold interest in the Facility subject to the Tenant Lease Agreement. The Tenant's sub-leasehold estate in the Facility shall remain intact and the terms of this Tenant Agency Compliance Agreement shall remain in full force and effect.

(b) Notwithstanding anything to the contrary above, if the Agency chooses to exercise its remedy in accordance with Section 10.02(a)(ii) of the Lease Agreement and terminates the Lease Agreement and the Company Lease, all obligations of the Agency to recognize the Tenant under the Tenant Lease Agreement shall cease and terminate.

Section 3.9 Definitions. All capitalized terms used in this Tenant Agency Compliance Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached to the Lease Agreement as Schedule A.

Section 3.10 Execution of Counterparts. This Tenant Agency Compliance Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

(Remainder of Page Intentionally Left Blank – Signature Page Follows)

IN WITNESS WHEREOF, the Agency and the Tenant have caused this Tenant Agency Compliance Agreement to be executed in their respective names by their duly authorized representatives, all as of _____, 20__.

**TOWN OF ISLIP INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Name:
Title:

[NAME OF ENTITY]

By: _____
Name:
Title:

EXHIBIT E

PRESENT MORTGAGEE'S FORM OF SNDA

SUBORDINATION NONDISTURBANCE AND ATTORNMENT AGREEMENT

This Subordination Nondisturbance and Attornment Agreement (being hereinafter referred to as this "Agreement") made as of this _____ day of _____, 2015, between **BETHPAGE FEDERAL CREDIT UNION**, having its principal offices at 899 South Oyster Bay Road, Bethpage, New York 11714 ("Mortgagee") and _____ having an office at _____ ("Tenant").

W I T N E S S E T H :

WHEREAS, Mortgagee now owns and holds a certain mortgage set forth on Schedule A annexed hereto, which mortgage is in the principal sum of \$ _____ made between Mortgagee and _____ ("Landlord") and which mortgage affects that certain parcel of land and improvements thereon more particularly described in Schedule B annexed hereto which includes that land and building known as _____ (hereinafter referred to as the "Mortgage" and such building being hereinafter sometimes referred to as the "Building"); and

WHEREAS, by lease dated _____, a true copy of which has been furnished to Mortgagee, Landlord has leased and demised to Tenant and Tenant has hired and taken from Landlord space located in the Building (such lease being hereinafter referred to as the "Lease" and such Building or part thereof so leased and demised to Tenant being hereinafter sometimes referred to as the "Demised Premises") for a term commencing _____ and ending on _____, or on such earlier or later dates as provided in the Lease; and

WHEREAS, at the request of Tenant, Mortgagee is willing to enter into this Agreement with Tenant upon the terms, covenants and conditions contained herein;

NOW, THEREFORE, in consideration of the foregoing premises and the covenants and agreements hereinafter set forth, the parties hereto mutually covenant and agree as follows:

1. The Lease and all rights of Tenant thereunder are and shall be subject and subordinate to the Mortgage, to each and every advance made or to be made thereunder, and to all renewals, modifications, consolidations, spreaders, replacements and extensions thereof, whether now or hereafter made or in force. The provisions of this paragraph shall be self-operative and no further instrument of subordination shall be required or needed.

Nevertheless, in confirmation of such subordination, Tenant shall, at the request of the holder of the Mortgage, promptly execute, acknowledge and deliver such further instrument of subordination as may be required by such holder.

2. As long as no default under the Lease on the part of Tenant then exists beyond the expiration of any grace period:

(a) Tenant shall not be named or joined as a party defendant in any foreclosure action or proceeding to collect the debt secured by the Mortgage which may be instituted or taken by Mortgagee under or in connection with the Mortgage or any obligation secured thereby or by any holder of the Mortgage or by any holder of any interest in the Mortgage or by any successor or assignee of such interest (unless required by law); and

(b) Tenant shall not be evicted from the Demised Premises or any part(s) thereof nor shall Tenant's leasehold estate or possession of the Demised Premises under the Lease be terminated or disturbed nor shall any of Tenant's rights under the Lease be affected in any way solely by reason of any default under the Mortgage.

(c) Tenant shall be permitted to make structural repairs provided that Mortgagee has the opportunity to review the plans for such repairs. Mortgagee will not unreasonably withhold, delay or condition its consent. Mortgagee shall have ten (10) business days after receipt of a request for Mortgagee's consent to provide same. If Mortgagee shall not respond within such ten (10) days, consent shall be deemed to be given. Tenant shall not be required to obtain Mortgagee's consent for replacing or adding laundromat equipment.

(d) In the event of property casualty at the Premises, Mortgagee shall permit the insurance proceeds to be used for restoration in accordance with the terms set forth in the Mortgage.

3. If Mortgagee or any holder of the Mortgage or any holder of any interest in the Mortgage or any successor or assignee of any one or more of the foregoing shall succeed to the rights of Landlord under the lease, whether through possession or foreclosure action or delivery of a new deed, then the Lease shall not terminate and Tenant shall attorn to and recognize the party so succeeding to Landlord's rights (such party being hereinafter referred to as the "Successor Landlord") as Tenant's landlord under the Lease and shall promptly execute and deliver any instrument that Successor Landlord may request to evidence such attornment, and Successor Landlord shall be conclusively deemed to have accepted such attornment. Upon such attornment the Lease shall continue in full force and effect as, or as if it were, a direct lease between Successor Landlord and Tenant upon all of the same terms, conditions and covenants as are set forth in the Lease, except that Successor Landlord shall not:

(a) be responsible for any monies owing by or on deposit with Landlord to the credit of Tenant, except to the extent turned over to Successor Landlord;

(b) be bound by any previous modification or extension of the Lease not expressly provided for in the Lease or by any previous prepayment of rent for more than one (1) month, unless such modification, extension or prepayment shall have been expressly approved in writing by Mortgagee;

(c) be liable for any act, omission, neglect or default on the part of Landlord under the Lease; or

(d) be subject to any claim, counterclaim, defense or setoff which shall have theretofore accrued to Tenant against Landlord.

4. No modifications may be made to the Lease by Landlord and/or Tenant without Mortgagee's prior written consent.

5. Tenant hereby represents and warrants to Mortgagee that as of the date hereof (i) Tenant is the owner and holder of the tenant's interest under the Lease, (ii) the Lease has not been modified or amended, (iii) the Lease is in full force and effect in accordance with its terms, (iv) neither Tenant nor Landlord is in default under any of the terms, covenants or provisions of the Lease which default has continued beyond the expiration of any applicable cure period, no event has occurred which but for the passage of time or the giving of notice or both would constitute an event of default by Tenant or Landlord under the Lease, (v) neither Tenant nor Landlord has commenced any action or given or received any notice for the purpose of terminating the Lease, (vi) all rents, additional rents and other sums due and payable under the Lease have been paid in full and no rents, additional rents or other sums payable under the Lease have been paid for more than one (1) month in advance of the due dates thereof, and (vii) there are no offsets or defenses to the payment of the rents, additional rents, or other sums payable by Tenant under the Lease.

6. Tenant agrees that if there shall occur any action or omission by Landlord which would give Tenant the right to terminate the Lease or to claim a partial or total eviction, Tenant shall not exercise any such right (i) until Tenant has notified Mortgagee in writing of such act or omission; (ii) until a reasonable period for commencing and curing the remedy of such act or omission shall have elapsed following the giving of such notice (which reasonable period shall in no event be less than the period to which Landlord would be entitled under the Lease or otherwise after similar notice to effect such remedy); and (iii) Mortgagee shall have failed, within such reasonable period, to give Tenant notice of intention to and actually to commence and continue to remedy such act or omission and to cause the same to be remedied.

7. This Agreement may not be discharged or modified orally or in any manner other than by an instrument in writing specifically referring to this Agreement and signed by a duly authorized officer or other representative of Mortgagee and by a duly authorized or other representative of Tenant.

8. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof.

9. The covenants and agreements herein contained shall apply to, inure to the benefit of, and be binding upon Mortgagee, Tenant and their respective successors, assigns and legal representatives.

10. This Agreement supersedes all previous Subordination Agreements between Tenant and any previous holder of any mortgage encumbering the Demised Premises which has been assigned to Mortgagee and such previous agreement shall be null and void and of no further force or effect.

IN WITNESS WHEREOF, Mortgagee and Tenant, intended to be legally bound, have duly executed this Agreement as of the day and year first above written.

BETHPAGE FEDERAL CREDIT UNION

By: _____

By: _____