

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

STICKY'S HOLDINGS LLC, et al. ¹

Reorganized Debtors.

Chapter 11

Case No. 24-10856 (JKS)

(Jointly Administered)

[Proposed] Hearing Date: 4/29/2025 @ 1:00 p.m.

[Proposed] Obj. Deadline: 4/28/2025 at 4 p.m.

MOTION OF ESRT 10 UNION SQUARE LLC: (I) TO COMPEL IMMEDIATE PAYMENT OF POST-CONFIRMATION RENT AND GRANT RELIEF FROM AUTOMATIC STAY/PLAN INJUNCTION TO PERMIT LANDLORD TO SETOFF SUCH AMOUNT AGAINST SECURITY DEPOSIT AND ASSERT CLAIM AGAINST ADMINISTRATIVE CLAIM RESERVE; (II) COMPEL IMMEDIATE REJECTION AND SURRENDER OF ASSUMED LEASE AND PERMIT CLEAN-UP OF PREMISES FREE OF ANY THIRD-PARTY LIABILITY; AND (III) FOR WAIVER THE STAY OF ENFORCEMENT OF ANY ORDER UNDER FED. R. BANKR. P. 4001(a)(3)

ESRT 10 Union Square LLC ("Landlord"), by its undersigned counsel, submits this Motion: (a) to Compel Immediate Payment of Post-Confirmation Rent and Grant Relief from the Automatic Stay/Plan Injunction to Permit Landlord to Setoff such Amount Against the Security Deposit and Assert Claim against Administrative Claim Reserve; (b) Compel Immediate Rejection and Surrender of Assumed Lease and Permit Clean-Up Free of Premises Free of any Third-Party Liability; and (c) for Waiver of the Stay of Enforcement of any Order under Fed. R. Bankr. P. 4001(3) (the "Motion"). In support of this Motion, the Landlord respectfully submits as follows:

RELEVANT BACKGROUND

1. On April 25, 2024 (the "Petition Date"), the Debtor filed a petition for relief under

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number are as follows: Sticky's Holdings LLC (3586); Sticky Fingers LLC (3212); Sticky Fingers II LLC (7125); Sticky Fingers III LLC (3914); Sticky Fingers IV LLC (9412); Sticky Fingers V LLC (1465); Sticky Fingers VI LLC (0578); Sticky's BK I LLC (0423); Sticky's NJ I LLC (5162); Sticky Fingers VII LLC (1491); Sticky's NJ II LLC (6642); Sticky Fingers IX LLC (5036); Sticky's NJ III LLC (7036); Sticky Fingers VIII LLC (0080); Sticky NJ IV LLC (6341); Sticky's WC I LLC (0427); Sticky's Franchise LLC (5232); Sticky's PA GK I LLC (7496); Stickys Corporate LLC (5719); and Sticky's IP LLC (4569). The Debtors' mailing address is 21 Maiden Lane, New York, NY 10038 (collectively, the "Reorganized Debtors")



chapter 11 (SubV) with this Court. Prior to the Petition Date, Landlord and debtor Sticky Finger V LLC (“Tenant”) entered into an Agreement of Lease (Store) dated December 11, 2017 of nonresidential real property (“Lease”) for premises located at the Suite 104, 10 Union Square, New York, New York 10003 (the “Premises”). A true and correct copy of the Lease is attached hereto as **Exhibit A**. To secure payment of its obligations/any damages under the Lease, Tenant has provided Landlord with a security deposit in the current amount of \$125,741.42 (the “Security Deposit”).

2. On October 21, 2024, Debtors filed their *Subchapter V Debtors’ Modified First Amended Plan of Reorganization* [DI 368] (the “Plan”). The Plan provides that the “Effective Date shall not occur unless and until the Equity Raise is consummated and fully funded to the Debtors” Plan at Art. 8. The Equity Raise is \$300,000 as defined in the Plan at 1.8.

3. On November 13, 2024, the Bankruptcy Court entered its *Findings of Fact, Conclusions of Law, and Order Confirming Subchapter V Debtors’ Modified First Amended Plan of Reorganization* [D.I. 398] (the “Confirmation Order”). Pursuant to the terms of the Plan, the Confirmation Order, and the *Notice of Filing of Plan Supplement* [D.I. 268] (the “Plan Supplement”), the Lease was assumed by the Tenant pursuant to section 365 of the Bankruptcy Code (as such, the “Assumed Lease”). On December 2, 2024, the Reorganized Debtors filed the *Notice of Effective Date* [D.I. 431] with respect to the Plan.

4. Notwithstanding the reorganization and confirmed Plan, a few months later, on February 10, 2025, the Reorganized Debtors filed the *Motion of Reorganized Debtors to Convert the Chapter 11 Cases to Cases under Chapter 7 of the Bankruptcy Code* [D.I. 481] (the “Motion to Convert”). The Motion to Convert represents that, “[d]ue to the severe financial situation the Reorganized Debtors have undergone, the Reorganized Debtors no longer have sufficient cash on hand to administer these Chapter 11 Cases and continue as a going concern.” Motion to Convert at ¶ 9. The Motion to Convert also represents the Debtors lack sufficient cash to make February rent payments for its ten stores.” *Id.* at ¶21.

The Reorganized Debtors are administratively insolvent (“Administrative costs in the Chapter 11 Cases continue to accrue and there is insufficient cash to meet such expenses.”) *Id.* at 28.

5. On April 3, 2025, the Reorganized Debtors filed the *Motion For Entry of an Order (I) Authorizing Entry Into Proposed Letter of Intent with Harker Palmer Investors LLC; (II) Authorizing Reorganized Debtors and their Professionals to Perform Obligations thereunder; and (III) Granting Related Relief* [Docket No. 545] (the “HP LOI Motion”). The HP LOI Motion contemplates rejection of all of the Reorganized Debtors’ unexpired leases promptly following approval of the HP LOI Motion. *See* HP LOI Motion at 2 (rejection of all real property leases). The HP LOI Motion contemplates the establishment of an Allowed Administrative Claims Reserve. *Id.* at 2.¹ It is possible that the relief sought by HP LOI Motion implicates the Premises, and Landlord reserves all rights.²

6. The status of the case may be summarized as follows: the Debtors are out of business, administratively insolvent since at least February 10, 2025, the Premises have been abandoned, and the Debtors freely acknowledge they have not and cannot pay administrative rent or sell the Assumed Lease. The automatic stay/Plan Injunction, however, remains in place preventing Landlord from setting off rent and other damages against the Security Deposit or re-taking the Premises to start the clean-up and search for a new tenant. The monthly Base Rent³ for the Assumed Lease is \$33,352.94 and the Debtors owe Landlord back rent for the months of February, March, and April of 2025 in an amount not less than

¹ After the Security Deposit is exhausted, Landlord reserves the right to file a Request for Allowance of Administrative Claim and participate in such reserve on a ratable basis.

² *See* Lease at 4L: All Alterations installed or constructed in the Demised Premises at any time, either by Tenant or by Landlord on Tenant's behalf, shall, upon installation or completion, become the property of Landlord and shall remain upon and be surrendered with the Demised Premises, unless Landlord, by notice to Tenant no later than thirty (30) days prior to the date fixed as the termination of this Lease (or within thirty (30) days after any sooner termination of the term), elects to relinquish Landlord's rights thereto and to have them removed from the Demised Premises by Tenant prior to the expiration of the Lease (or after such sooner termination, as the case may be), at Tenant's expense. Nothing in this Article shall be construed to give Landlord title to, or to prevent Tenant's removal of, trade fixtures, or moveable office furniture and equipment, but upon removal of same from the Demised Premises or upon removal of other installations as may be required by Landlord, Tenant shall immediately and at its expense, repair and restore the Demised Premises to the condition existing prior to any such installations, and repair any damage to the Demised Premises or the Building due to such removal. All property permitted or required to be removed by Tenant at the end of the term remaining in the Demised Premises after Tenant's removal shall be deemed abandoned and may, at the election of Landlord, either be retained as Landlord's property or may be removed from the Demised Premises by Landlord at Tenant's expense.

³ Unless defined herein, capitalized terms shall have the meanings ascribed to them under the Lease.

\$110,662.61 plus attorney's fees⁴ (the "§365(d)(3) Rent").

RELIEF REQUESTED

7. By this Motion, Landlord seeks the following relief: (a) to Compel Immediate Payment of Post-Confirmation Rent and Grant Relief from the Automatic Stay/Plan Injunction to Permit Landlord to Setoff such Amount Against the Security Deposit and Assert Claim against Administrative Claim Reserve; (b) Compel Immediate Rejection and Surrender of Assumed Lease and Permit Clean-Up Free of Premises Free of any Third-Party Liability; and (c) for Waiver of the Stay of Enforcement of any Order under Fed. R. Bankr. P. 4001(3).

BASES FOR RELIEF

A. The Court Should Compel Immediate Payment of Post-Confirmation §365(d)(3) Rent, Permit Landlord to Setoff such Rent and other Damages against the Security Deposit and Make Provisions for Ratable Payment of All Chapter 11 Expenses of Administration from the Administrative Claim Reserve.

8. Section 365(d)(3) of the Bankruptcy Code provides that "the trustee shall timely perform all of the obligations of the debtor...arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title." 11 U.S.C. § 365(d)(3). Section 365(d)(3) does not condition Landlord's right to payment on the use of the property and expressly provides "notwithstanding section 503(b)(1) of this title." In the Third Circuit, a debtor must fulfill all contractual lease obligations that arise "post-order and prior to rejection...not in part, but in full." *Montgomery Ward*, 268 F.3d at 212. The Third Circuit based its conclusion in part on the following reasoning:

The clear and express intent of § 365(d)(3) is to require the trustee to perform the lease in accordance with its terms. To be consistent with this intent, any interpretation must look to the terms of the lease to determine both the nature of the "obligation" and when it "arises." If one accepts this premise, it is difficult to find a textual basis for a proration approach.

⁴ See *In re Crown Books Corp.*, 269 B.R. 12 (Bankr. D. Del. 2001). The court in *Crown* considered a request for payment of legal fees in the context of lease assumption. The court noted that attorneys' fees are permitted if the lease so provides. The Lease provides for the payment of attorney's fees. Lease at ¶¶ 7D, 17D and 18A.
{00041081. }

Id. at 209.

9. The Debtors ignored the mandate of § 365(d)(3) in several ways. First, the Debtors chose not to pay Landlord post-confirmation administrative rent when due and owing. Second, the Debtors, upon information and belief, instead chose to pay themselves and their counsel at Landlord's expense. Third, even though the Debtors knew they were administratively insolvent in February 2025, and could not pay the rent, they delayed for three months before seeking to reject the Lease. During that time, upon information and belief, other expenses of administration were paid, but Landlord was forced to observe the automatic stay/Plan injunction. Section 365(d)(3) does not permit the Debtors to store FF&E "rent-free" at the Premises or keep the Lease open without payment. To mitigate its claim for §365(d)(3) Rent and administrative rejection damages, Landlord should be permitted to setoff the Security Deposit and participate ratably in the Administrative Claim Reserve. Landlord was forced to hire counsel and this Motion ensued.

10. In addition to §365(d)(3) Rent, Landlord has a substantial administrative claim for damages resulting from the rejection of the Assumed Lease. *See In re Dura Auto. Sys.*, No. 06-11202 (KJC), 2008 Bankr. LEXIS 3490, at *12-13 (Bankr. D. Del. Dec. 30, 2008) (citing cases)("Bankruptcy Code Section 365(g)(2) acknowledges the consequences of a debtor's rejection of a previously assumed executory contract. *In re Braude Jewelry Corp.*, 333 B.R. 156, 161 (Bankr. N.D. Ill. 2005) ("Since the leases were breached or rejected after having been assumed, the Landlords are entitled to an administrative priority for the claims arising from that breach."); *In re Mushroom Transp. Co., Inc.*, 78 B.R. 754, 759 (Bankr. E.D. Pa. 1987) ("As such, it is an administrative expense claim, should the debtor elect to reject the lease after it has been assumed, an action permitted by 11 U.S.C. § 365(g)(2)."); *In re World Wines, Ltd.*, 77 B.R. 653, 656-657 (Bankr. N.D. Ill. 1987) ("Leases which are assumed post-petition and then subsequently rejected are accorded administrative expense priority under Section 365(g)(2).")."

11. A fundamental tenet of bankruptcy law is that similarly situated creditors—here, administrative creditors—must be treated equally in a liquidation. The Reorganized Debtors freely admit in the Motion to Convert they could not pay all expenses of administration. The Court should adopt procedures to ensure that all administrative creditors participate ratably in the Allowed Administrative Claims Reserve. Such procedures also should take into account that some administrative creditors may have received payment post-Effective Date.

12. The case for permitting Landlord to setoff §365(d)(3) Rent, its attorney’s fees, and other administrative expenses against the Security Deposit may be made from pleadings filed by the Debtors themselves: (a) the Motion to Convert and (b) the HP LOI Motion. The Debtors are no longer in business, are administratively insolvent and cannot pay post-confirmation rent, have abandoned the Premises and already have had a full and fair opportunity to market and sell the Lease. The market has spoken. No further “rent free” time to sell the Lease or just delay its rejection should be permitted unless and until they pay the §365(d)(3) Rent in full. To the extent the Debtors intend to sell any FF&E at the Premise, such rent continues to accrue⁵ and Landlord reserves all rights. The automatic stay/Plan Injunction should be lifted so Landlord may mitigate its damages by application of the Security Deposit, immediately re-take the Lease and Premises and restore it to gainful use. Landlord has shown sufficient cause for that relief.

B. The Tenant Should Be Directed to Immediately Reject the Lease and Surrender the Premises.

12. The Reorganized Debtors freely acknowledge they could not pay rent under the Assumed Lease since February 2025. But even though they could not and did not pay rent, they did not seek to reject the Lease immediately. Instead, they kept the Lease open without paying for it. The Reorganized Debtors should be compelled to immediately pay §365(d)(3) Rent in full or reject the Lease and surrender the Premise. Further, §365(d)(3) Rent, beyond the amount in the Security Deposit, is due and

⁵ As of May 1, 2025, the amount owed will be \$151,011.85.
{00041081. }

payable on May 1, 2025.

13. Based on the Debtors failure to pay §365(d)(3) Rent, and any notion of fair play and equity, the Debtors should be compelled to surrender and reject the Lease immediately. In connection with any such rejection and clean-up of the Premise, Landlord should be authorized to dispose of any remaining fixtures, furniture, and equipment without liability to the Debtors, their estates, or third parties.

C. Bankruptcy Rule 4001(a)(3) Should be Waived.

14. The clean-up work and re-letting process should commence immediately free of any restriction imposed by Bankruptcy Rule 4001(a)(3). That Rule provides that an “an order granting a motion for relief from an automatic stay made in accordance with Rule 4001(a)(1) is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” FED. R. BANKR. P. 4001(a)(3). Landlord requests that the relief sought in the Motion be effective immediately upon entry of the order granting this Motion. There is no basis for a stay.

WHEREFORE, the Landlord respectfully requests that the Court grant the requested relief and such other and further relief that is just and proper.

Dated: April 21, 2025
Wilmington, Delaware

THE ROSNER LAW GROUP LLC

/s/ Frederick B. Rosner

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Exhibit A

Lease

**AGREEMENT OF LEASE
(STORE)**

between

ESRT 10 UNION SQUARE, L.L.C.,

Landlord

and

STICKY FINGERS V LLC,

Tenant

Premises: Suite 104
10 Union Square
New York, New York

Date: As of ~~November 10~~ ^{DECEMBER 11} 2017

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LEASE ("Lease") made as of this ^{11th} ~~20~~ day of ^{DECEMBER} ~~November~~, 2017, between ESRT 10 UNION SQUARE, L.L.C., a Delaware limited liability company, with an address c/o Empire State Realty Trust, Inc., 111 West 33rd Street, New York, New York 10120, hereinafter referred to as "Landlord", and STICKY FINGERS V LLC, a New York limited liability company, with an office at 21 Maiden Lane, New York, New York 10038, hereinafter referred to as "Tenant".

WITNESSETH:

Landlord hereby leases to Tenant and Tenant hereby hires from Landlord those certain premises known as Suite 104 on the first (1st) floor of the building (the "Building") known as 10 Union Square, New York, New York, approximately as shown on the space diagram attached hereto and made a part hereof as Exhibit A (the "Demised Premises"), which Demised Premises is a portion of the condominium unit known as Unit No. Retail (the "Retail Unit") in the project known as the One Union Square East Condominium (the "Condominium"), which Condominium was established pursuant to a certain declaration of condominium, dated June 23, 1987, and recorded in the New York County Office of the Register of The City of New York on August 10, 1987 in Reel 1271, Page 2440 (which declaration, as amended, is hereinafter called the "Declaration"), and which Retail Unit is also designated as Tax Lot 1003 in Block 870 of Section 3 of the Borough of Manhattan on the Tax Map of the Real Property Assessment Department of The City of New York, for a term to commence and to end as provided in Article 1 of this Lease (or until such term shall sooner cease and expire as hereinafter provided), both dates inclusive, at the fixed annual rental rates set forth in Article 2B of this Lease, which Tenant agrees to pay in lawful money of the United States which shall be legal tender in payment of all debts and dues, public and private, at the time of payment, in equal monthly installments in advance on the first day of each month during said term, at the office of Landlord or such other place as Landlord may designate, without any set off or deduction whatsoever, except as otherwise set forth herein.

For all purposes under this Lease, the parties agree that the square foot area of the Demised Premises shall be deemed to be 1,182 square feet, irrespective of any disparity between such figure and any actual measurement of such area.

The parties hereto, for themselves, their heirs, distributees, executors, administrators, legal representatives, successors and assigns, hereby covenant and agree as follows:

1. COMMENCEMENT DATE; TERM; ETC.

A. The term of this Lease shall commence on the date (the "Commencement Date") that Landlord makes possession of the Demised Premises available to Tenant with Landlord's Work (as such term is defined in Article 14C of this Lease) Substantially Completed (as such term is defined below); and the term of this Lease shall expire on the date (the "Expiration Date") which is the last day of the month in which the day immediately preceding the tenth (10th) anniversary of the Rent Commencement Date (as such term is hereinafter defined) occurs.

B. Landlord's Work shall be deemed to have been "Substantially Completed" despite the fact that minor insubstantial details of construction and/or mechanical adjustments (i.e., "Punch List Items") remain to be completed, provided the Demised Premises are accessible and reasonably

usable by Tenant for the purpose of effecting the Initial Alteration Work (as such term is defined in Article 14D(i) of this Lease). Landlord shall nevertheless seek to complete such Punch List Items with reasonable diligence. Landlord shall provide Tenant with at least five (5) days' prior written notice of such Substantial Completion (which written notice may given by email to Jonathan Sherman at jonathan.a.sherman@gmail.com).

C. Landlord shall, in accordance with the foregoing, fix the Commencement Date and notify Tenant of the date so fixed.

D. For purposes of determining the Rent Commencement (as such term is defined in Article 2B of this Lease), the Commencement Date shall be made one day earlier for each day or fraction thereof of delay in Landlord's Work due to any act or omission (where there is a duty to act) of Tenant, its agents, employees or contractors, or any change requested by Tenant, or Tenant's failure to reasonably cooperate with Landlord or respond to any reasonable request by Landlord (each such delay, a "Tenant Delay").

2. RENT; ADDITIONAL RENT; TAX ESCALATION; COMMON EXPENSE ESCALATION; ETC.

A. Tenant shall pay Landlord fixed annual rent ("Fixed Annual Rent") and Additional Rent (as such term is hereinafter defined) as herein provided. If the obligation to pay Fixed Annual Rent commences on any day other than the first day of a calendar month, then the Fixed Annual Rent for such first month shall be prorated on a per diem basis, and any overpayment of the first monthly installment of Fixed Annual Rent shall be credited against the next monthly installment of Fixed Annual Rent coming due. All amounts payable by Tenant pursuant to this Lease in excess of the amount of Fixed Annual Rent, including, but not limited to, any payments to Landlord attributable to increased taxes and any other amounts, charges and obligations to be paid by Tenant under the terms of this Lease, shall be deemed "Additional Rent" (together with the Fixed Annual Rent, collectively, "Rent") for the purposes of this Lease. Landlord shall have the same rights and remedies with respect to defaults in the payment of Additional Rent pursuant to the provisions of Article 16, or any other applicable provisions of this Lease and of the law, as Landlord has with respect to defaults in the payment of Fixed Annual Rent. All Rent shall be paid by good and sufficient checks drawn on a bank having a branch in the Borough of Manhattan, City of New York, by wire transfer of funds, or by electronic funds transfer. Landlord shall, at Tenant's request, provide Tenant with all information reasonably necessary for Tenant to pay rent by wire transfer or electronic funds transfer.

B. Fixed Annual Rent: (i) Commencing on the Commencement Date, Tenant shall pay Landlord Fixed Annual Rent at the following rates:

- (a) \$336,870.00 per annum (\$28,072.50 per month) for the period commencing on the Commencement Date through and including the day immediately preceding the third (3rd) anniversary of the Rent Commencement Date (as such term is hereinafter defined); it being understood that if and so long as Tenant is not in default, beyond any applicable grace or cure period, of any monetary or other material term of this Lease, the Fixed Annual Rent for

the period commencing on the Commencement Date through and including the day immediately preceding the Rent Commencement Date shall be abated; it being expressly acknowledged and agreed however, that Tenant shall continue to be responsible for paying all Additional Rent without any credit, set off, deduction or reduction during the aforesaid period;

- (b) \$367,188.30 per annum (\$30,599.03 per month) for the period commencing on the third (3rd) anniversary of the Rent Commencement Date through and including the day immediately preceding the sixth (6th) anniversary of the Rent Commencement Date;
- (c) \$400,235.25 per annum (\$33,352.94 per month) for the period commencing on the sixth (6th) anniversary of the Rent Commencement Date through and including the day immediately preceding the ninth (9th) anniversary of the Rent Commencement Date; and
- (d) \$436,256.42 per annum (\$36,354.70 per month) for the period commencing on the ninth (9th) anniversary of the Rent Commencement Date through and including the Expiration Date.

(ii) The "Rent Commencement Date" shall be the date which is one hundred fifty one (151) days after the Commencement Date.

C. Real Estate Tax Escalation: (i) Tenant shall pay to Landlord, as Additional Rent, tax escalation in accordance with this Article 2C.

(ii) For the purposes of this Article 2C, the following definitions shall apply:

(a) The term "Applicable Tax Rate" shall mean the real estate tax rate for any fiscal tax year (or portion thereof) of the City of New York applicable to Retail Unit for the purpose of computing real estate taxes.

(b) The term "Base Year Taxes" shall mean the real estate taxes payable with respect to the Retail Unit for the tax year commencing July 1, 2017 and ending June 30, 2018.

(c) The term "Base Tax Year" shall mean the tax year commencing on July 1, 2017 and ending on June 30, 2018.

(d) The term "Base Tax Year assessment" means the taxable assessed value (without regard or giving effect to any abatement, exemption or credit) of the Retail Unit, other improvements related thereto and the land on which the Retail Unit is located, for the tax year commencing July 1, 2017 and ending June 30, 2018.

(e) The term "Comparative Year" shall mean each tax year commencing on or after July 1, 2018 (or such other 12-month period commencing on or after July 1, 2018 adopted by the City of New York as its fiscal tax year).

(f) The term “Comparative Year Assessment” shall mean the actual assessed value (without regard or giving effect to any abatement, exemption or credit) of the Retail Unit for the relevant Comparative Year for which Additional Rent under this Article 2C is being calculated.

(g) The term “Comparative Year Taxes” shall mean the Real Estate Taxes determined by applying the Applicable Tax Rate to the Comparative Year Assessment.

(h) The term “The Percentage” shall mean 2.04 (2.04%) percent.

(i) The term “Real Estate Taxes” shall mean the total of all taxes and special or other assessments levied, assessed or imposed at any time by any governmental authority upon or against the Retail Unit, any tax or assessment levied, assessed or imposed at any time by any governmental authority in connection with the receipt of income or rents from the Retail Unit, to the extent that same shall be in lieu of all or a portion of any of the aforesaid taxes or assessments, or additions or increases thereof, upon or against said Building Project. The term “Real Estate Taxes” shall not include a franchise, inheritance, estate, succession, income, transit, profit, capital stock, excise or other tax or governmental disposition, however designated, unless due to a future change in the method of taxation or in the taxing authority, or for any other reason, a franchise, inheritance, estate, succession, income, transit, profit, capital stock, excise or other tax or governmental imposition, however designated, shall be levied against Landlord in substitution in whole or in part for the Real Estate Taxes, or in lieu of additions to or increases of said Real Estate Taxes. If, due to a future change in the method of taxation or in the taxing authority, or for any other reason, a franchise, income, transit, profit or other tax or governmental imposition, however designated, shall be levied against Landlord in substitution in whole or in part for the real estate taxes, or in lieu of additions to or increases of said real estate taxes (whether or not the enabling legislation states that such tax is in substitution in whole or in part for the real estate taxes, or in lieu of additions to or increases of said real estate taxes), then such franchise, income, transit, profit or other tax or governmental imposition shall be deemed to be included within the definition of “real estate taxes” for the purposes hereof. As to special assessments which are payable over a period of time extending beyond the term of this lease, only a pro rata portion thereof covering the portion of the term of this lease unexpired at the time of the imposition of such assessment, shall be included in “real estate taxes.” If by law, any assessment may be paid in installments, then, for the purposes hereof (a) such assessment shall be deemed to have been payable in the maximum number of installments permitted by law and (b) there shall be included in real estate taxes, for each comparative year in which such installments may be paid, the installments of such assessment so becoming payable during such comparative year, together with a reasonable rate of interest payable during such comparative year in respect of any such installment. Real Estate Taxes shall not include any interest (except as provided above) or penalties.

(j) The term “Tax Year” means any fiscal tax year of the City of New York.

(k) Where more than one assessment is imposed by the City of New York for any tax year, whether denominated an “actual assessment” or “transitional assessment” or otherwise, then the phrases herein “assessed value” and “assessments” shall mean whichever of the

actual, transitional or other assessment is designated by the City of New York as the taxable assessment for that tax year.

(iii) (a) Before or after the start of each Comparative Year (commencing with the Comparative Year commencing on July 1, 2018), Landlord shall furnish to Tenant a statement of the Comparative Year Taxes, and a statement of the Real Estate Taxes payable during the Base Tax Year. If the Comparative Year Taxes exceed the Base Year Taxes, Additional Rent for such Comparative Year, in an amount equal to The Percentage of the excess, shall be due from Tenant to Landlord, and such Additional Rent shall be payable by Tenant to Landlord in equal monthly installments each equal to one-twelfth (1/12th) of The Percentage of the excess of the relevant Comparative Year Taxes over the Base Year Taxes, each payable with the monthly installment of Fixed Annual Rent. If such statement is tendered to Tenant after the commencement of any Comparative Year, Tenant shall pay to Landlord within thirty (30) days after such statement is tendered, a lump sum equal to the product resulting from multiplying The Percentage of such excess of the Comparative Year Taxes over the Base Year Taxes, by a fraction the numerator of which is the number of full and partial months elapsed from the commencement of the relevant Comparative Year and the denominator of which is twelve (12). Thereafter, Tenant shall commence paying the monthly installments of such Additional Rent with the next installment of Fixed Annual Rent next due and continue paying such amount until a subsequent statement with respect thereto is rendered by Landlord.

(b) Provided Landlord does not require Tenant to make any early payment or prepayment, the benefit of any discount for any early payment or prepayment of Real Estate Taxes shall accrue solely to the benefit of Landlord, and such discount shall not be subtracted from the Real Estate Taxes payable for any Comparative Year. Additionally, Tenant shall pay to Landlord, within twenty (20) days after demand, a sum equal to The Percentage of any business improvement district assessment payable by the Building Project as allocated to the Retail Unit.

(c) Should the Base Year Taxes be reduced or increased by final determination of legal proceedings, settlement or otherwise, then, the Base Year Taxes shall be correspondingly revised, the Additional Rent theretofore paid or payable hereunder for all Comparative Years shall be recomputed on the basis of such increase or reduction, and Tenant shall pay to Landlord as Additional Rent, within thirty (30) days after being billed therefor, any deficiency between the amount of such Additional Rent as theretofore computed and the amount thereof due as the result of such recomputations. Should the Real Estate Taxes payable during the Base Tax Year be increased by such final determination of legal proceedings, settlement or otherwise, then appropriate recomputation and adjustment also shall be made..

(d) If, after Tenant shall have made a payment of Additional Rent under this Article 2C and Landlord shall receive during the term hereof a refund of any portion of the Real Estate Taxes paid for any Comparative Year after the Base Tax Year on which such payment of Additional Rent shall have been based, as a result of a reduction of such Real Estate Taxes by final determination of legal proceedings, settlement or otherwise, Landlord shall promptly after receiving the refund credit to Tenant The Percentage of the refund less The Percentage of expenses (including reasonable attorneys' and appraisers' fees) incurred by Landlord in connection with any

such application or proceeding. If prior to the payment of Real Estate Taxes for any Comparative Year, Landlord shall have obtained a reduction of that Comparative Year's assessed valuation of the Retail Unit, and therefore of said Real Estate Taxes, then the term "Real Estate Taxes" for that Comparative Year shall be deemed to include the amount of Landlord's expenses in obtaining such reduction in assessed valuation, including reasonable attorneys' and appraisers' fees.

(e) The statement of the Real Estate Taxes to be furnished by Landlord as provided above shall be certified by Landlord and shall constitute a final determination as between Landlord and Tenant of the Real Estate Taxes for the periods represented thereby, unless Tenant within sixty (60) days after they are furnished, time being of the essence, shall give a written notice to Landlord that it disputes their accuracy or their appropriateness, which notice shall specify the particular respects in which the statement is inaccurate or inappropriate. If Tenant shall so dispute said statement then, pending the resolution of such dispute, Tenant shall pay the additional rent to Landlord in accordance with the statement furnished by Landlord.

(f) In no event shall the Fixed Annual Rent under this Lease (exclusive of the Additional Rents under this Article) be reduced by virtue of this Article 2C.

(g) Upon the date of any expiration or termination of this Lease (except termination because of Tenant's default) whether the same be the date hereinabove set forth for the expiration of the term or any prior or subsequent date, a proportionate share of said Additional Rent for the Comparative Year during which such expiration or termination occurs shall immediately become due and payable by Tenant to Landlord, if it was not theretofore already billed and paid. The said proportionate share shall be based upon the length of time that this Lease shall have been in existence during such Comparative Year. Landlord shall promptly cause statements of said Additional Rent for that Comparative Year to be prepared and furnished to Tenant. Landlord and Tenant shall thereupon make appropriate adjustments of amounts then owing.

(h) Landlord's and Tenant's obligations to make the adjustments referred to in subparagraph (iii)(g) above shall survive any expiration or termination of this Lease.

(i) Any delay or failure of Landlord in billing any tax escalation hereinabove provided shall not constitute a waiver of or in any way impair the continuing obligation of Tenant to pay such tax escalation hereunder.

D. Common Expense Escalation: Tenant shall pay to Landlord, as additional rent, common expense escalation in accordance with this Article 2D:

(a) Definitions: For the purpose of this Article, the following definitions shall apply:

(i) The term "base year" shall mean the calendar year 2018.

(ii) The term "The Percentage", for purposes of computing common expense escalation, shall be deemed to mean 2.04 percent (2.04%).

(iii) The term "comparative year" shall mean the calendar year 2019 and each subsequent period of twelve (12) months.

(iv) The term "Common Expenses" shall mean, for the Retail Unit only, (a) the total of all sums payable by Landlord to the Condominium Board or the Commercial Board (each as defined in the Condo Documents) on behalf of, or which are attributable to, the Retail Unit with respect to General Common Expenses and Commercial Common Expenses (each as defined in the Condo Documents), and (b) the total of all other costs and expenses incurred or borne by Landlord with respect to the operation and maintenance of the Retail Unit and the services provided to all tenants or other occupants in the Retail Unit only, including, but not limited to, the costs and expenses incurred for and with respect to: steam and any other fuel; electricity; water rates and sewer rents; air conditioning, ventilation and heating; protection and security; snow removal; repairs, replacements and improvements which are appropriate for the continued operation of the Retail Unit as a first-class retail condominium unit; maintenance; fire, extended coverage, boiler and machinery, sprinkler, apparatus, public liability and property damage, rental and plate glass insurance and any insurance required by a mortgagee or actually carried by Landlord; supplies; property management fees, not to exceed such fees customary for similar first class retail condominium units in New York City; professional and consulting fees.

Provided, however, that the foregoing costs and expenses shall exclude or have deducted from them, as the case may be and as shall be appropriate:

(a) leasing commissions, attorneys' fees and other expenses incurred in connection with the leasing of space in the Retail Unit or enforcing the provisions of existing leases;

(b) employees' salaries above the grade of property manager and superintendent;

(c) expenditures for capital improvements except capital expenditures for capital improvements to the Retail Unit only which under generally applied real estate practice are expensed or regarded as deferred expenses and except for capital expenditures required by law, in either of which cases the cost thereof shall be included in Common Expenses for the lease year in which the costs are incurred and subsequent lease years, on a straight line basis, to the extent that such items are amortized over an appropriate period, but not more than ten years, with an interest factor equal to the "Prime Rate" published in the Wall Street Journal (or successor thereto) at the time of Landlord's having incurred said expenditure.

(d) amounts received by Landlord through proceeds of insurance to the extent the proceeds are compensation for expenses which were previously included in Common Expenses hereunder;

(e) cost of repairs or replacements to the Retail Unit only incurred by reason of fire or other casualty to the extent to which Landlord is compensated therefor through proceeds of insurance, or caused by the exercise of the right of eminent domain;

(f) advertising and promotional expenditures;

(g) legal fees for disputes with tenants and legal and auditing fees, other than legal and auditing fees reasonably incurred in connection with the maintenance and operation of the Retail Unit or in connection with the preparation of statements required pursuant to additional rent or lease escalation provisions;

(h) costs incurred in performing work or furnishing services for individual tenants (including this Tenant) at such tenant's expense to the extent that such work or service is in excess of any work or service Landlord at its expense is obligated to furnish to this Tenant; costs of performing work or furnishing services for tenants other than this Tenant at Landlord's expense to the extent that such work or service is in excess of any work or service Landlord is obligated to furnish to this Tenant at Landlord's expense; if any work or service is performed or furnished by Landlord to or for any tenant other than this Tenant at such tenant's expense, then, but only to the extent that Landlord is obligated to perform such work or furnish such service to or for this Tenant at Landlord's expense, such work or service shall be deemed to have been performed or furnished to such other tenant at Landlord's expense and shall therefore be included in Common Expenses;

(i) costs of services or other benefits of a type which are not available to Tenant but which are available to other tenants or occupants, and costs for which Landlord is reimbursed by other tenants of the Retail Unit;

(j) costs of leasehold improvements for Tenant or other tenants of the Retail Unit;

(k) costs, fines or penalties incurred due to Landlord's violation of any law, rule or regulation;

(l) nonrecurring costs incurred to remedy structural defects in the original construction of the Retail Unit; and

(m) any cost or expense incurred by the Landlord or any of its related parties related to all areas of the Building (other than the Retail Unit) except for General Common Expenses and Commercial Common Expenses paid to the Condominium.

If Landlord shall purchase any item of capital equipment or make any capital expenditure designed to result in savings or reductions in Common Expenses for the Retail Unit only, then the costs for same shall be included in Common Expenses. The costs of capital equipment or capital expenditures are so to be included in Common Expenses for the comparative year in which the costs are incurred and subsequent comparative years, on a straight line basis, to the extent that such items are amortized over such period of time as reasonably can be estimated as the time in which such savings or reductions in Common Expenses to the Retail

Unit only, are expected to equal Landlord's costs for such capital equipment or capital expenditure, with an interest factor equal to the "Prime Rate" published in the Wall Street Journal (or successor thereto) at the time of Landlord's having incurred said costs. If Landlord shall lease any such item of capital equipment designed to result in savings or reductions in Common Expenses, then the rentals and other costs paid pursuant to such leasing shall be included in Common Expenses for the comparative year in which they were incurred.

If during all or part of any comparative year, Landlord shall not furnish any particular item(s) of work or service (which would constitute a Common Expense hereunder) to portions of the Retail Unit, due to the fact that such portions are not occupied or leased, or because such item of work or service is not required or desired by the tenant of such portion, or such tenant is itself obtaining and providing such item of work or service, or for other reasons, then, for the purposes of computing the additional rent payable hereunder, the amount of the expenses for such item for such period shall be increased by an amount equal to the additional operating and maintenance expenses which would reasonably have been incurred during such period by Landlord if it had at its own expense furnished such item of work or service to such portion of the Retail Unit.

(b) (1) If the Common Expenses for any comparative year shall be greater than the Common Expenses for the base year, Tenant shall pay to Landlord, as additional rent for such comparative year, in the manner hereinafter provided, an amount equal to The Percentage of the excess of the Common Expenses for such comparative year over the Common Expenses for the base year (such amount being hereinafter called the "Common Expense Payment").

Following the expiration of each comparative year and after receipt thereof from Landlord's certified public accountant, Landlord shall submit to Tenant a statement, certified by Landlord, setting forth the Common Expenses for the preceding comparative year and the Common Expense Payment, if any, due to Landlord from Tenant for such comparative year. The rendition of such statement to Tenant shall constitute prima facie proof of the accuracy thereof and, if such statement shows a Common Expense Payment due from Tenant to Landlord with respect to the preceding comparative year then (i) Tenant shall make payment of any unpaid portion thereof within thirty (30) days after receipt of such statement; and (ii) Tenant shall also pay to Landlord, as additional rent, within thirty (30) days after receipt of such statement, an amount equal to the product obtained by multiplying the total Common Expense Payment for the preceding comparative year by a fraction, the denominator of which shall be twelve (12) and the numerator of which shall be the number of months of the current comparative year which shall have elapsed prior to the first day of the month immediately following the rendition of such statement; and (iii) Tenant shall also pay to Landlord, as additional rent, commencing as of the first day of the month immediately following the rendition of such statement and on the first day of each month thereafter until a new statement is rendered, 1/12th of the total Common Expense Payment for the preceding comparative year.

The aforesaid monthly payments based on the total Common Expense Payment for the preceding comparative year shall be adjusted to reflect, if Landlord can reasonably so estimate, known increases in rates, for the current comparative year, applicable to

the categories involved in computing Common Expenses, whenever such increases become known prior to or during such current comparative year. The payments required to be made under (ii) and (iii) above shall be credited toward the Common Expense Payment due from Tenant for the then current comparative year, subject to adjustment as and when the statement for such current comparative year is rendered by Landlord.

(2) The statements of the Common Expenses to be furnished by Landlord as provided above shall be certified by Landlord, and shall be prepared in reasonable detail for the Landlord by a certified public accountant (who may be the certified public accountant now or then employed by Landlord for the audit of its accounts); said certified public accountant may rely on Landlord's allocations and estimates wherever operating cost allocations or estimates are needed for this Article. The statements thus furnished to Tenant shall constitute a final determination as between Landlord and Tenant of the Common Expenses for the periods represented thereby, unless Tenant within sixty (60) days after they are furnished shall give a notice to Landlord that it disputes their accuracy or their appropriateness, which notice shall specify the particular respects in which the statement is inaccurate or inappropriate. Pending the resolution of such dispute, Tenant shall pay the additional rent to Landlord in accordance with the statements furnished by Landlord.

(3) In no event shall the fixed annual rent under this Lease be reduced by virtue of this Article.

(4) If the commencement date of this Lease occurs on a day which is not the first day of a comparative year, then the additional rent due hereunder for such comparative year shall be a proportionate share of said additional rent for the entire comparative year, said proportionate share to be based upon the length of time that the term of this Lease will be in existence during such comparative year. Upon the date of any expiration or termination of this Lease (except termination because of Tenant's default) whether the same be the date hereinabove set forth for the expiration of the term or any prior or subsequent date, a proportionate share of said additional rent for the comparative year during which such expiration or termination occurs shall immediately become due and payable by Tenant to Landlord, if it was not theretofore already billed and paid. The said proportionate share shall be based upon the length of time that this Lease shall have been in existence during such comparative year. Landlord shall, as soon as reasonably practicable, cause statements of the Common Expenses for that comparative year to be prepared and furnished to Tenant. Landlord and Tenant shall thereupon make appropriate adjustments of amounts then owing.

(5) Landlord's and Tenant's obligation to make the adjustments referred to in subparagraphs (1), (2) and (4) above shall survive any expiration or termination of this Lease.

(6) Any delay or failure of Landlord in billing any common charge escalation hereinabove provided shall not constitute a waiver of or in any way impair the continuing obligation of Tenant to pay such expense escalation hereunder.

(c) Notwithstanding anything contained herein to the contrary, in no event shall Tenant be required to common expense escalation to Landlord prior to the Rent Commencement Date.

E. No Right to Apply Security: Tenant shall not have the right to apply any security deposited to assure Tenant's faithful performance of Tenant's obligation hereunder to the payment of any installment of Fixed Annual Rent or Additional Rent, unless agreed to in writing by Landlord.

F. Miscellaneous: If Landlord receives from Tenant any payment less than the sum of the Fixed Annual Rent and Additional Rent then due and owing pursuant to this Lease, Tenant hereby waives its right, if any, to designate the items to which such payment shall be applied and agrees that Landlord in its sole discretion may apply such payment in whole or in part to any Fixed Annual Rent, Additional Rent, any other charge payable hereunder or to any combination thereof then due and payable hereunder. Unless Landlord shall otherwise expressly agree in writing, acceptance of any portion of the Fixed Annual Rent or Additional Rent from anyone other than Tenant shall not relieve Tenant of any of its other obligations under this Lease, including the obligation to pay other Fixed Annual Rent and Additional Rent, and Landlord shall have the right at any time, upon notice to Tenant, to require Tenant (rather than someone other than Tenant) to pay the Fixed Annual Rent and Additional Rent payable hereunder directly to Landlord. Furthermore, such acceptance of Fixed Annual Rent and Additional Rent shall not be deemed to constitute an assignment of this Lease, a subletting of the Demised Premises or Landlord's consent to an assignment of this Lease or a subletting or other occupancy of the Demised Premises by anyone other than Tenant, nor a waiver of any of Landlord's rights or Tenant's obligations under this Lease.

H. Gross Receipts: (i) Tenant shall prepare and furnish to Landlord, within thirty (30) days after the end of each calendar year, a statement signed by Tenant's chief financial officer, showing accurately and in reasonable detail the full amount of Tenant's Gross Receipts (as such term is defined below) during the calendar year immediately preceding the end of such 30-day period.

(ii) (a) For purposes of this Lease, Tenant's "Gross Receipts" shall be deemed to include the following:

- (1) Tenant's receipts of every nature, directly or indirectly through an affiliated or related entity, from (A) admission charges, cover charges or other fees; (B) sales made or services rendered at or from the Demised Premises (including, without limitation, over the internet); (C) orders taken at the Demised Premises for sales made or services rendered elsewhere (including, without limitation, over the internet); (D) concessions or licenses granted at or from the Demised Premises; and (E) vending machines, pay telephones, or other similar devices installed in the Demised Premises;

- (2) the gross amount charged for sales made or services rendered on credit; and
 - (3) if payment is made in the form of concessions for advertising or display at or off the Demised Premises, "Gross Receipts" shall include the amount or value of such concessions; and
 - (4) the Gross Receipts of all sublessees, licensees or concessionaires occupying any portion of the Demised Premises.
- (b) For purposes of this Lease, "Gross Receipts" shall be deemed to exclude the following:
- (1) all sums received by Tenant on account of sales, excise, and similar taxes paid by patrons; and
 - (2) receipts in payment of bills for sales or services on credit, the charge for which is included in subparagraph (ii)(a)(2) above.

3. USE; OCCUPANCY; BUSINESS CONDUCT; ETC.

A. (i) To the extent such use is permitted by any applicable laws, regulations (including, without limitation, zoning regulations) and ordinances, and subject to Article 6 and the provisions of this Article, Tenant shall use and occupy the Demised Premises solely as a "Sticky's Finger Joint" restaurant for the retail sale of gourmet chicken fingers and such other items as are typically sold in all or substantially all other Sticky's Finger Joint restaurants located in New York City (the "Permitted Use"); and Tenant shall use the Demised Premises for no other purpose.

(ii) Tenant, at its own expense, shall promptly apply for and with due diligence obtain, all licenses and permits from time to time required to enable Tenant to conduct its business under this Lease, and any license or permit required for Tenant's signage or the operation of Tenant's heating, venting and air conditioning ("HVAC") equipment for the Demised Premises.. No failure of Tenant to obtain or to maintain any such licenses, permits or extensions or renewals thereof, shall release Tenant from the performance and observance of Tenant's obligations under this Lease.

(iii) Tenant agrees that the Demised Premises shall be operated under the name "Sticky's Finger Joint". Any change in the name under which the Demised Premises shall be operated shall first be approved by Landlord in writing, which approval shall not be unreasonably withheld, conditioned or delayed with respect to a change in the name under which all or substantially all other "Sticky's Finger Joint" restaurants are operated. Tenant shall not erect or install any structures, permanent or temporary, "free standing" or attached to, or projecting beyond the building line and the entrance door to the Demised Premises. No music or noise from the Demised Premises shall be audible in the Building outside the Demised Premises and no

unreasonably loud music or noises from the Demised Premises may be audible outside of the Building. Subject to emergencies, any applicable Legal Requirements, Landlord's rules and regulations, and the Condo Documents, Tenant may permit its customers to queue in front of the Demised Premises, provided they do so in an orderly manner and do not block or otherwise unreasonably impede any tenants, invitees, guests or any other persons from entering the Building through any other entrance to the Building. Tenant shall indemnify and hold the Landlord Parties harmless from and against any and all claims, damages, losses, liabilities, costs and expenses (including, without limitation, fines, penalties and legal costs) arising from any queueing of Tenant's customers outside of the Demised Premises. All doors to the Demised Premises shall be kept in a closed position at all times, except that when Tenant is open for business in the Demised Premises, said doors may be used for ingress or egress purposes (and except as otherwise required by law).

(iv) It is expressly understood that no portion of the Demised Premises shall be used as, by or for any of the following uses: (a) retail operations of any retail or branch bank, trust company, savings bank, industrial bank, savings and loan association, credit union or personal loan association or other form of entity, (b) a public stenographer or typist, (c) a barber shop or manicure parlor, (d) a telephone or telegraph agency, (e) a telephone, court reporting, stenographic or secretarial service, (f) a messenger service, (g) a travel or tourist agency, (h) an employment agency, (i) a restaurant (other than the Permitted Use), (j) a commercial document reproduction or offset printing service, except in connection with the Permitted Use, (k) a public vending machines operation, (l) a retail, wholesale or discount shop for sale of books, magazines, audio or video tapes, CD ROM, DVD ROM, Blu-ray or other devices for the recording or transmitting of audio or visual signals, images, music or speech, electronic equipment and accessories or any other merchandise, (m) retail service shop, (n) a labor union, (o) a school or classroom, (p) a governmental or *quasi*-governmental bureau, department or agency, including an autonomous governmental corporation, embassy or consular office of any country or other *quasi*-autonomous or sovereign organization, whether or not subject to the Foreign Sovereign Immunities Act of 1976, as from time to time amended, or any successor statute, (q) an advertising agency, (r) a firm whose principal business is real estate brokerage, (s) a company engaged in the business of renting office or desk space, (t) any person, organization, association, corporation, company, partnership entity or other agency immune from service or suit in the courts of the State of New York or the assets of which may be exempt from execution by Landlord in any action for damages, (u) a factory of any kind, (v) any use to which increased security costs or insurance premiums payable by Landlord may be attributed, (w) a payroll office or check cashing operation, (x) a clinic, (y) a film, radio or video production or broadcasting studio, (z) laundry facilities, (aa) discotheque or night club, (bb) an amusement arcade, (cc) a substance abuse center or medical office or clinic, (dd) a homeless care center, (ee) a funeral parlor, (ff) an auto repair shop, or (gg) any illegal purpose.

(v) Tenant agrees that the value of the Demised Premises and the reputation of the Landlord will be seriously injured if the Demised Premises are used for any obscene or pornographic purposes or any sort of commercial sex establishment. Tenant agrees that Tenant will not bring or permit any obscene or pornographic material on the Demise Premises, and shall not permit or conduct any obscene, nude or semi-nude life performances on the Demised Premises, nor permit use of the Demised Premises for nude modeling, rap sessions, or as a so called rubber goods shop, or as a sex club or any sort, or as a "massage parlor". Tenant agrees further that

Tenant will not permit any of these uses by any sublessee or assignee of the Demised Premises. This subparagraph (v) shall directly bind any successors in interest to the Tenant. Tenant agrees that if at any time Tenant violates any of the provisions of this subparagraph (v), such violation shall be deemed a breach of the substantial obligation of the terms of this Lease and objectionable conduct. Pornographic material is defined for purposes of this Article as any written or pictorial matter with prurient appeal, or any objects or instrument that are primarily concerned with lewd or prurient sexual activity. Obscene material is defined here as it is in Penal Law §235.00. The parties understand and agree that the foregoing prohibitions and requirements are not intended to be limited to matters deemed “pornographic” within the meaning of applicable law, but rather are intended to preserve the character and dignity of the Building and/or the Retail Unit.

(vi) Tenant, recognizing that the Retail Unit is being maintained as a location for an outstanding type of business occupancy, and as a special inducement to Landlord to enter into this Lease, covenants and agrees that at all times (a) Tenant’s use of the Demised Premises throughout said term will be consistent with the character and dignity of the Building and the Retail Unit, (b) the business to be conducted at, through and from the Demised Premises will be first-class quality and reputable in every respect, (c) the sales methods employed in said business, as well as all other elements of merchandising, display and advertising, will be dignified and in conformity with the standards of practice exercised as of the date hereof at the Sticky’s Finger Joint restaurant located at 484 3rd Avenue, New York, New York 10016, and (d) the appearance of the Demised Premises (including the lighting and other appurtenances thereto), and the appearance, number, location, nature and subject matter of all displays and exhibits placed or installed in or about the Demised Premises, and of any signs, lettering, announcements, or any other kinds of forms of inscriptions displayed in or about the Demised Premises will be of a first-class quality and reputable in every respect. In connection with, but not in limitation of, the foregoing, Tenant shall keep the windows of the Demised Premises well lighted during such hours and days as Tenant is required to remain open for business hereunder.

(viii) Tenant will, promptly after demand by Landlord, and as often as each such demand shall occur, forthwith discontinue selling, or offering for sale, or permitting to be sold, or otherwise dealing in, or exhibiting, or advertising, in the Demised Premises, or any part thereof, any article or merchandise to which Landlord may reasonably object, except if such items are sold at all of the other Sticky’s Finger Joint restaurants located in New York City and are not, in Landlord’s judgment, highly objectionable (such as, without limitation, obscene or pornographic in nature). Tenant will, promptly after demand by Landlord, and as often as each such demand shall occur, forthwith discontinue any advertisement, sign, notice, object, poster, exhibit and/or display in the Demised Premises, or any part thereof, to which Landlord may reasonably object.

B. Tenant agrees that it will not at any time during the term of this Lease, either directly or indirectly, employ or permit the employment of any employee or any contractor, mechanic or laborer, or permit any materials in or about the Demised Premises, if the use of such employee, contractor, mechanic, or laborer, or such materials (i) creates any difficulty, work slowdown, sabotage, wildcat strike, strike, or jurisdictional dispute with other employees, contractors, mechanics and/or laborers engages by Tenant or Landlord (“Labor Trouble”), or (ii) disturbs the peaceful or harmonious maintenance, cleaning, repair, management, security or operation of the Building, the Retail Unit, or any part thereof (“Building Disruption”). In the event

any such Labor Trouble or Building Disruption shall occur or reasonably be perceived by Landlord to be imminent, Tenant, upon demand of Landlord, shall cause employee or any all contractors, mechanics or laborers, or all materials, causing such Labor Trouble or Building Disruption to leave or be removed from the Building or the Retail Unit immediately, and Tenant shall not permit such employees or workers to return or such materials to be redelivered, until the Labor Trouble or Building Disruption or threat thereof, has been eliminated.

C. Tenant acknowledges that its continued occupancy of the Demised Premises, and the regular conduct of its business therein, are of utmost importance to the Landlord in the renewal of other leases in the Building, in the renting of vacant space in the Building, in the providing of electricity, air conditioning, steam and other services to the tenants in the Building, and in the maintenance of the character and quality of the tenants in the Building. Tenant therefore covenants and agrees that it will occupy the entire Demised Premises, and will conduct its business therein in the regular and usual manner, at least from 11:00 A.M. to 7:00 P.M., Mondays through Sundays, throughout the term of this Lease, commencing on the date that Tenant opens for business in the Demised Premises, except that (i) Tenant shall not be required to conduct its business therein on days observed by the Federal, State or local government as legal holidays and on up to three (3) additional days selected by Tenant during each calendar year, and (ii) Tenant shall be permitted to temporarily cease conducting its business in the Demised Premises in order to perform Alterations therein which have been approved by Landlord, provided that any such Alteration is completed within a period of fifteen (15) days (a "Permitted Closure"). Tenant acknowledges that Landlord is executing this Lease in reliance upon these covenants and that these covenants are a material element of consideration inducing the Landlord to execute this Lease. Tenant further agrees that, other than in connection with a Permitted Closure, its failure to so conduct its business therein, at any time during the term of this Lease, without the prior written consent of the Landlord, shall constitute a default by Tenant under the terms of this Lease for which Landlord shall have all of the remedies available to it under this Lease and the law.

D. The violation by Tenant of any of the covenants, agreements, terms, provisions and conditions contained in this Article shall be deemed a default by Tenant under the terms of this Lease. Mention in this Article of any particular remedy shall not preclude Landlord from any other remedy in law or in equity. Any demand or demands by Landlord pursuant to the provisions of this Article and compliance therewith by Tenant shall not impair this Lease or affect Tenant's liability hereunder, nor shall Tenant be entitled to any compensation or diminution or abatement of rent by reason thereof.

E. Tenant acknowledges that it has been advised by Landlord that the restrictive covenants set forth in Exhibit B attached hereto and made a part hereof (the "Restrictive Covenants") have been granted to tenants occupying portions of the Retail Unit. Tenant agrees that at no time during the term of this Lease will it use the Demised Premises in a manner that will violate the provisions of any of the Restrictive Covenants. Tenant further agrees that (i) Landlord shall have no liability of whatsoever nature to Tenant or to any affiliated or related entity or to any other occupant of the Demised Premises or to any principal of Tenant or of any such occupant, whether disclosed or undisclosed, in connection with, or in any way relating to, the Restrictive Covenants, (ii) Tenant shall immediately cease and desist from any activity which shall result in a claim that Landlord is in violation or breach of the Restrictive Covenants, and (iii) Tenant shall

indemnify, defend and hold Landlord harmless from and against any and all liability, costs, loss, damage or injury of whatsoever nature which may be sustained by Landlord as a result of the violation or alleged violation of the Restrictive Covenants.

4. ALTERATIONS

A. All alterations, installations, additions or improvements, decorating or painting, in and to the Demised Premises, by or on behalf of Tenant, whether before or during the term of this Lease (“Alterations”), shall be effected and installed in accordance with and pursuant to the terms and conditions of this Article 4.

B. Tenant shall make no Alterations in or to the Demised Premises without Landlord’s prior written consent. Landlord will not unreasonably withhold, condition or delay consent to nonstructural Alterations which do not adversely affect the proper functioning of the electrical, plumbing, HVAC, mechanical or other systems of the Building and/or the Retail Unit, and which do not affect the exterior of the Demised Premises or of the Building. Tenant shall submit to Landlord plans and specifications (suitable for filing with the New York City Department of Buildings (the “DOB”), stamped and certified by an architect or engineer duly licensed in the State of New York) of all work to be done by Tenant and no work shall be commenced thereunder without the prior written approval of the Landlord of said plans and specifications, if and to the extent Tenant is required to provide same to any applicable governmental agency in connection with the underlying Alterations. Said work shall be performed by the Tenant in strict accordance with said approved plans and specifications without any deviations therefrom, unless first approved by the Landlord in writing. Notwithstanding the foregoing, Landlord’s prior written approval shall not be required with respect to any decorative or cosmetic work, such as painting or wall covering, or any other work that does not require the filing of plans with the DOB; nor does Tenant need to provide plans therefor, provided that: (x) Tenant gives Landlord at least ten (10) days’ prior written notice of any such work, (y) that such work does not affect utility services or plumbing and electrical lines or other systems of the Building, and (z) such work is performed in accordance with the other applicable provisions of this Article.

C. Tenant shall, before making any Alterations, at its expense, obtain all permits, approvals and certificates required by any governmental or quasi-governmental bodies (if any) and (upon completion) certificates of final approval thereof, and shall deliver promptly duplicates of all such permits, approvals and certificates to Landlord. Tenant shall use Landlord’s code consultant (currently Rizzo Group Inc.) in connection with the issuance of any necessary governmental permits, approvals and/or certificate of occupancy changes, provided that any such code consultant charges rates that are reasonably competitive with code consultants of comparable skill and experience operating in midtown Manhattan. If Landlord and Tenant cannot agree on whether the prices being charged by the code consultant designated by the Landlord are reasonably competitive to those charged by such other code consultants, Landlord or Tenant may submit such dispute to arbitration pursuant to the provisions of Article 23B hereof.

D. With respect to contractors, subcontractors, materialmen and laborers, and architects, engineers and designers, for all work or materials to be furnished to Tenant at the Demised Premises, Tenant agrees to obtain and deliver to Landlord written and unconditional

waivers of mechanics liens upon the Demised Premises, the Retail Unit or the Building, after payments to the contractors, their subcontractors and vendors, Tenant's architects, engineers, designers and consultants, subject to any then applicable provisions of the Lien Law. Notwithstanding the foregoing, if any mechanic's lien is filed against the Demised Premises, the Retail Unit or the Building for work claimed to have been done for, or materials furnished to, Tenant, whether or not done pursuant to this Article, the same shall be discharged by Tenant within thirty (30) days after written notice to Tenant thereof, at Tenant's expense, by payment or filing a bond as permitted by law.

E. All Alterations in and for the Demised Premises shall be done in a good and workmanlike manner and in compliance with Landlord's reasonable rules and regulations thereon, without limitation, the Design Criteria and the Special Conditions for Construction of the Retail Portion of 10 Union Square East, as set forth in the Tenant Manual attached hereto and made a part hereof as Exhibit D ("Tenant Manual") and with all laws, orders, ordinances and rules and regulations of each and every Department and Bureau of the City and State of New York and of the United States of America, and any other lawful authority having or asserting jurisdiction in the Demised Premises, including without limitation, the Americans with Disabilities Act of 1990 (the "ADA") and New York City Local Law No. 58/87 and similar present or future laws, and regulations issued pursuant thereto, and also New York City Local Law No. 76 and similar present or future laws, and regulations issued pursuant thereto, on abatement, storage, transportation and disposal of asbestos, which work, if required, shall be effected by contractors and consultants reasonably approved by Landlord and in strict compliance with the aforesaid rules and regulations and with Landlord's rules and regulations thereon. Tenant shall reimburse the Landlord for any expense incurred on account of the failure of the Tenant to comply with any of such requirements, after thirty (30) days' written notice from Tenant to Landlord.

F. In the event Tenant shall employ any contractor to do in the Demised Premises any work permitted by this Lease, such contractor and any subcontractor shall agree to employ only such labor as will not result in jurisdictional disputes or strikes. Tenant will inform Landlord in writing of the names of any contractor or subcontractor Tenant proposes to use in the Demised Premises in connection with any Alteration at least fifteen (15) days prior to the beginning of work by such contractor or subcontractor. Any contractor or contractors employed by Tenant, and any subcontractors, shall be subject to Landlord's prior written approval, shall be fully covered by worker's compensation insurance, and certificates thereof shall be furnished to the Landlord before the commencement of any work by any contractor or subcontractor. Any contractor or subcontractor of Tenant working outside of the Demised Premises or on the sprinkler system within the Demised Premises shall be chosen by Tenant from Landlord's approved list of contractors, provided the charges of such contractor shall be competitive.

G. Prior to the commencement of any work by or for Tenant, Tenant shall furnish to Landlord certificates evidencing the existence of the following insurance (which shall be maintained (x) by Tenant on behalf of its contractors (of any tier) and vendors or (y) by Tenant's contractors (of any tier) and vendors on behalf of themselves):

- (i) worker's compensation insurance covering all persons employed for such work;

(ii) a policy of commercial general liability insurance on an occurrence basis, providing coverage that is at least as broad as the current edition of ISO Form CG 00 01 and naming the holder of any mortgage on the Retail Unit, Landlord, its managing agent and its designees as additional insureds, with coverage of at least \$5,000,000 combined single limit;

(iii) builder's risk insurance in an amount reasonably satisfactory to Landlord naming the holder of any mortgage on the Retail Unit, Landlord, its managing agent and its designees as additional insureds; and

(iv) business automobile liability insurance for all owned, non-owned and hired vehicles with a \$1,000,000 combined single limit.

G. During the progress of the work to be done by the Tenant hereunder, said work shall be subject to inspection by representatives of the Landlord who shall be permitted access and the opportunity to inspect at all reasonable times.

H. Landlord shall not be responsible for any structural defect, latent or otherwise, in the Demised Premises, or change of conditions elsewhere in the Building, the Retail Unit, or in the Demised Premises, resulting from or arising out of any Alteration in or to the Demised Premises by or for Tenant, or for any damage to the Building, the Retail Unit, or the Demised Premises due to such Alterations or to any person or goods or things contained or placed thereon, therein or in the vicinity thereof due to such Alterations.

I. Prior to commencement of any work, Tenant shall obtain and deliver to Landlord a written letter of authorization, in form satisfactory to Landlord's counsel, signed by all architects, engineers, surveyors and designers to become involved in such work, which shall confirm that, in the event such work is discontinued or abandoned, any of their drawings or plans are to be removed from any filing with governmental authorities on the request of Landlord.

J. All work to be performed by Tenant shall be done in a manner which will not interfere with or disturb other tenants and occupants of the Building and the Retail Unit, and shall be performed in a good and workmanlike manner. No Alteration or the work to be performed with respect thereto may result in the reduction of any environmental rating for the Building and/or the Retail Unit which may now or hereafter be made, such as made pursuant to LEED (Leadership in Energy and Environmental Design), Green Globes or Energy Star.

K. Tenant acknowledges that it understands that it may require the approvals of the New York Landmarks Preservation Commission (the "Landmarks Commission") of Tenant's plans for any work in and to the Demised Premises, interior (to the extent required) or exterior. Tenant, at its expense, will use its best efforts diligently to obtain any necessary approval from the Landmarks Commission required in connection with its Initial Alteration Work or any subsequent alteration work effected by or on behalf of Tenant. Landlord will cooperate with Tenant in such endeavor, at no liability or expense to Landlord.

L. All Alterations installed or constructed in the Demised Premises at any time, either by Tenant or by Landlord on Tenant's behalf, shall, upon installation or completion, become the property of Landlord and shall remain upon and be surrendered with the Demised Premises, unless Landlord, by notice to Tenant no later than thirty (30) days prior to the date fixed as the termination of this Lease (or within thirty (30) days after any sooner termination of the term), elects to relinquish Landlord's rights thereto and to have them removed from the Demised Premises by Tenant prior to the expiration of the Lease (or after such sooner termination, as the case may be), at Tenant's expense. Nothing in this Article shall be construed to give Landlord title to, or to prevent Tenant's removal of, trade fixtures, or moveable office furniture and equipment, but upon removal of same from the Demised Premises or upon removal of other installations as may be required by Landlord, Tenant shall immediately and at its expense, repair and restore the Demised Premises to the condition existing prior to any such installations, and repair any damage to the Demised Premises or the Building due to such removal. All property permitted or required to be removed by Tenant at the end of the term remaining in the Demised Premises after Tenant's removal shall be deemed abandoned and may, at the election of Landlord, either be retained as Landlord's property or may be removed from the Demised Premises by Landlord at Tenant's expense.

M. Tenant understands that it may become necessary for Landlord and/or the Condominium to erect scaffolding or a sidewalk bridge (collectively, "Scaffolding") in front of the Building in connection with alterations, repairs, maintenance or improvements to the Building and/or the Retail Unit. Tenant agrees that, except as expressly provided herein, the existence of such Scaffolding will not entitle Tenant to make a claim against Landlord for damages or entitle Tenant to an abatement of Fixed Annual Rent or any Additional Rent. Notwithstanding the foregoing, if Landlord shall erect any Scaffolding directly in front of Tenant's storefront, (1) such Scaffolding shall (a) be placed "double height" so as to minimize the impact such Scaffolding bridge shall have on the visibility of Tenant's exterior signage (or any portion thereof), (b) include reasonably sufficient sidewalk lighting and (c) not impede access to the Demised Premises in any material respect, and (2) Landlord shall erect, at Landlord's sole cost and expense, a temporary, Building standard Tenant sign on or hanging below the Scaffolding in front of the Demised Premises (provided such sign and its specific location shall be subject to Landlord's prior written approval (which shall not be unreasonably withheld or delayed) and any required approval of the board of managers of the Condominium, and shall comply with all applicable Legal Requirements and the Condo Documents). Any such temporary sign may be the maximum size permitted by applicable law and the Condo Documents, and shall remain for so long as such Scaffolding shall be permitted to remain in place in front of the Demised Premises.

N. Notwithstanding anything herein set forth to the contrary, within forty-five (45) days after final completion of any Alteration, Tenant shall deliver to the Landlord (a) final record drawings of the Alteration including, as may be pertinent to the work performed, a reflected ceiling plan, mechanical and electrical drawings, partition plan and any other drawings which may be required to indicate accurately the layout and systems of the Demised Premises and (b) a summary by trade of the costs incurred in performing such work and such other records as Landlord may require to document such costs. Tenant shall require its architect to load and maintain such record plans on a CADD system.

5. REPAIRS

A. Tenant shall, throughout the term of this Lease, take good care of the Demised Premises and the fixtures, systems and appurtenances therein, and at its sole cost and expense, make all repairs thereto as and when needed to preserve them in good working order and condition, reasonable wear and tear, obsolescence and damage from the elements, fire or other casualty, excepted. Additionally, Tenant shall, at its sole cost and expense, throughout the term of this Lease, take good care of sidewalks adjacent to the Demised Premises and make any repairs or replacements thereto, but only if and to the extent such repairs or replacements are necessitated by any act or omission (where there is a duty to act) of Tenant, its agents, employees or contractors. Except as specifically provided in Article 8 or elsewhere in this Lease, there shall be no allowance to the Tenant for the diminution of rental value and no liability on the part of Landlord by reason of inconvenience, annoyance or injury to business arising from Landlord, Tenant or others, making or failing to make any repairs, alterations, additions or improvements in or to any portion of the Building and/or the Retail Unit, including the erection or operation of any crane, derrick or sidewalk shed, or in or to the Demised Premises or the fixtures, appurtenances or equipment thereof. It is specifically agreed that Tenant shall not be entitled to any set off or reduction of Rent by reason of any failure of Landlord to comply with the covenants of this or any other Article of this Lease. The provisions of this Article 5 with respect to the making of repairs shall not apply in the case of fire or other casualty, which are dealt with in Article 8 hereof.

B. Notwithstanding anything contained herein to the contrary, Tenant shall maintain in good order and condition and repair the non-structural portions of the exterior of the Demised Premises, including the store front, windows, doors, fittings, any signs, awnings and/or any other equipment, as well as the interior of the Demised Premises. Tenant shall replace, at the expense of Tenant, any plate glass and other glass damaged or broken from any cause whatsoever in and about the Demised Premises, in a manner reasonably satisfactory to Landlord, except if and to the extent such damage or breakage is caused by any act or omission (where there is a duty to act) of Landlord, its agents, contractors or employees.

C. Notwithstanding anything contained herein to the contrary, Tenant covenants and agrees that it will maintain and repair, and replace whenever necessary, at its own cost and expense, the storefront, windows and all exterior doors leading to the Demised Premises, the gate, and fittings appurtenant thereto, if any, including, without limitation, the front door assemblies, jambs, transoms, checks and hardware, except if and to the extent such repair or replacement is necessitated by any act or omission (where there is a duty to act) of Landlord, its agents, contractors or employees. In the event Tenant fails to maintain, repair and/or replace, as the case may be, the storefront, windows, gate, doors and appurtenances of the Demised Premises (collectively the "Front of the Store Premises"), and such failure continues for a period of thirty (30) days after written notice to Tenant thereof, Landlord shall have the option (i) to repair or replace the said Front of the Store Premises, and charge Tenant with the cost thereof, to be deemed Additional Rent hereunder, and/or (ii) to consider the failure to do so a default for which Landlord will have the same remedies as in the case of any other default under the terms of this Lease.

D. It is understood and agreed that if the plumbing, electrical, heating or other systems of the Retail Unit, to the extent located outside of the Demised Premises, are damaged by Tenant

due to its use thereof, then such repairs shall be made at Tenant's expense and Tenant shall pay such costs, on demand, as Additional Rent. Show windows (interior and exterior) shall be cleaned on a daily basis by Tenant or by contractors approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed, and interior and exterior metal frames of such show windows and stone on the exterior of Tenant's storefront shall be cleaned on at least a quarterly basis by Tenant or by contractors approved by Landlord. Tenant shall provide Landlord with copies of such any such service contract, upon request and at the commencement of each calendar year. If Tenant fails to meet its cleaning obligations set forth in paragraph B above, then, at Landlord's option, any such show windows, metal and/or stone may be cleaned by contractors employed by Landlord and the reasonable cost of such cleaning shall be paid by Tenant to Landlord, on demand, as Additional Rent.

E. Tenant acknowledges that the condition of the exterior of the Demised Premises and that portion of the interior of said Demised Premises visible from the exterior thereof is of utmost importance to Landlord in preserving the image of the Building as a first-class commercial and residential building. Tenant therefore agrees that Landlord shall have the right to require Tenant to make such changes in the condition and appearance of the exterior of the Demised Premises, or the interior of the Demised Premises as is readily visible from the exterior thereof by ordinary pedestrian traffic, as are necessary, in Landlord's reasonable judgment, to preserve such image, except that, subject to the provisions of Article 35B hereof, Tenant shall not be required to make any such change if such interior portion of the Demised Premises is in substantial conformity with the interior portions of all other Sticky's Finger Joint restaurants located in New York City and is not, in Landlord's judgment, highly objectionable (such as, without limitation, obscene or pornographic in nature).

F. Notwithstanding anything contained in this Lease to the contrary, Tenant will not clean or require, permit, suffer or allow any window in the Demised Premises to be cleaned from the outside in violation of Section 202 of the New York State Labor Law or other applicable law or of the Rules of the Board of Standards and Appeals, or of any other Board or body having or asserting jurisdiction.

6. REQUIREMENTS OF LAW; FIRE INSURANCE

Prior to the Commencement Date, if Tenant is then in possession, and at all times thereafter, Tenant, at Tenant's sole cost and expense, shall promptly comply with all present and future laws, orders and regulations of all state, federal, municipal and local governments, departments, commissions and boards and any direction of any public officer pursuant to law, and all orders, rules and regulations of the New York Board of Fire Underwriters or the Insurance Services Office, or any similar body ("Legal Requirements"), which shall impose any violation, order or duty upon Landlord or Tenant with respect to the Demised Premises or the Retail Unit (or the Building), provided such Legal Requirements are Tenant Generated (as hereinafter defined), in which event Tenant shall be responsible for compliance with same whether structural or non-structural in nature. Landlord shall be responsible for compliance with Legal Requirements that are Landlord Generated (as hereinafter defined), whether same are structural or non-structural in nature. For purposes hereof, the term "Tenant Generated" shall mean that the Legal Requirement was necessitated by any act or work performed by or on behalf of Tenant or its agents or by the

particular nature of Tenant's use of the Demised Premises (i.e., the Permitted Use, as distinguished from general retail use) or by the particular manner of the conduct by Tenant of the Permitted Use. The term "Landlord Generated" shall mean that the Legal Requirement was made necessary by any act or work performed by or on behalf of Landlord or its agents or contractors. If Legal Requirements are neither Tenant Generated nor Landlord Generated, then such Legal Requirements shall be deemed "General Requirements". Tenant shall also be responsible for all General Requirements, whether structural or nonstructural in nature, which are applicable to the Demised Premises (as distinguished from other portions of the Retail Unit (or the Building)). Landlord shall be responsible for all General Requirements which are applicable to the Retail Unit or the Building (as distinguished from the Demised Premises), and the sidewalks and curb cuts adjacent to the Building, whether structural or non-structural in nature. Tenant shall not do or permit any act or thing to be done in or to the Demised Premises which is contrary to law, or which will invalidate or be in conflict with public liability, fire or other policies of insurance at any time carried by or for the benefit of Landlord. Tenant shall pay all costs, expenses, fines, penalties or damages, which may be imposed upon Landlord by reason of Tenant's failure to comply with the provisions of this Article. If the fire insurance rate shall, at the beginning of the Lease, or at any time thereafter, be higher than it otherwise would be, then Tenant shall reimburse Landlord, as Additional Rent hereunder, for that portion of all fire insurance premiums thereafter paid by Landlord which shall have been charged due to Tenant's use of the Demised Premises. In any action or proceeding wherein Landlord and Tenant are parties, a schedule or "make-up" of rate for the Building, the Retail Unit, or the Demised Premises issued by a body making fire insurance rates applicable to said Demised Premises shall be conclusive evidence of the facts therein stated and of the several items and charges in the fire insurance rate then applicable to said Demised Premises.

7. PROPERTY LOSS; TENANT'S INSURANCE; DAMAGE; INDEMNITY; ETC.

A. Neither Landlord nor any of its agents shall be liable to Tenant or anyone else, for any loss or damage to person, property or business, unless due to its negligence. Neither Landlord nor any of its agents shall be liable for any damage to property of Tenant or of others entrusted to employees of the Building and/or the Retail Unit, nor for the loss of or damage to any property of Tenant by theft. Except as otherwise set forth in this Lease, neither Landlord nor any of its agents shall be liable for any injury or damage to persons or property resulting from fire, explosion, falling ceilings, falling plaster, steam, gas, electricity, water, rain or snow or leaks from any part of said building or from the pipes, appliances or plumbing works or from the roof, street or subsurface or from any other place or by dampness or by any other cause of whatsoever nature, including but not limited to the making or repairs and improvements, unless caused by or due to the negligence of Landlord, its agents or employees; nor shall Landlord or its agents be liable for any such damage caused by other tenants or persons in said building or caused by operations in construction of any private, public or quasi-public work; nor shall Landlord be liable for any latent defect in the Demised Premises or to the Building and/or the Retail Unit. Tenant shall give prompt notice to Landlord in case of fire or accidents in the Demised Premises or in the Building and/or the Retail Unit or of defects therein or in any fixtures or equipment.

B. Tenant shall comply with the following requirements (collectively, the "Insurance Requirements") at all times during the term of this Lease:

(i) At all times during the term of this Lease, Tenant shall maintain, at Tenant's expense, the following insurance coverage:

(a) special form property insurance, including theft and, if applicable, boiler and machinery coverage, written at replacement cost value in an adequate amount to avoid coinsurance and a replacement cost endorsement insuring Tenant's trade fixtures, furnishings, equipment and all items of personal property of Tenant located in the Demised Premises;

(b) broad form commercial general liability insurance, written on a per occurrence basis with a per occurrence limit of not less than \$5,000,000;

(c) business interruption insurance covering risk of loss due to the occurrence of any of the hazards covered by the insurance, with power outage endorsement with a Period of Restoration no less than seventy-two (72) hours, to be maintained by Tenant described in subparagraph (i)(a) with coverage in a face amount of not less than the aggregate amount, for a period of twelve (12) months following the insured-against peril, of 100% of all fixed annual rent and Additional Rent to be paid by Tenant under this Lease;

(d) worker's compensation insurance and employer's liability coverage in statutory limits, and New York State disability insurance as required by law, covering all employees; and

(e) such other coverage as Landlord may reasonably require with respect to the Demised Premises, its use and occupancy and the conduct or operation of business therein, provided that such coverage is consistent with that required of similarly situated retail tenants by landlords of comparable buildings in Midtown Manhattan.

Landlord may, from time to time, but not more frequently than once every five (5) years, adjust the minimum limits set forth above, provided that such limits are consistent with those required of similarly situated retail tenants by landlords of comparable buildings in Midtown Manhattan.

(ii) All insurance policies to be maintained as set forth above (a) shall be issued by companies of recognized responsibility, authorized to do business in the State of New York, reasonably acceptable to Landlord, and maintaining a rating of A-/XII or better in Best's Insurance Reports-Property-Casualty (or an equivalent rating in any successor index adopted by Best's or its successor), (b) shall provide that they may not be canceled or materially modified unless Landlord and all additional insureds and loss payees thereunder are given at least thirty (30) days prior written notice of such cancellation or modification, (c) shall name, as additional insureds, Landlord, the managing agent of the Retail Unit and any other person or entity whose name and address shall have been furnished to Tenant and (d) shall be primary and non-contributory in all respects. All policies providing fire and extended coverage property insurance coverage pursuant to paragraph (i)(a) shall name Landlord as loss payee with respect to improvements and alterations, and shall name Tenant as loss payee with respect to Tenant's property.

(iii) Prior to the Commencement Date, Tenant shall deliver to Landlord certificates of insurance for the insurance coverage required by subparagraph (i) above. Tenant shall procure and pay for renewals of such insurance from time to time before the expiration thereof, and Tenant shall deliver to Landlord certificates of renewal at least ten (10) days before the expiration of any existing policy. If Tenant fails to procure or maintain any insurance required by this Lease and to pay all premiums and charges therefor, Landlord may (but shall not be obligated to), after notice and opportunity to cure, pay the same, and Tenant shall reimburse Landlord, within twenty (20) days after demand, for all such sums paid by Landlord. Any such payment shall not cure or waive any default by Tenant in the performance of its obligations hereunder, nor shall the foregoing right of Landlord to make such payment in any way limit, reduce, diminish or impair the rights of Landlord under the terms of this Lease or at law or in equity arising as a result of any such default.

(iv) Tenant shall not carry separate or additional insurance, concurrent in form or contributing in the event of any loss or damage with any insurance required to be obtained by Tenant under this Lease unless the parties required by subparagraph (ii) above to be named as additional insureds or loss payees thereunder are so named. Tenant may carry any insurance coverage required of it hereunder pursuant to blanket policies of insurance so long as the coverage afforded Landlord and the other additional insureds or loss payees thereunder, as the case may be, shall not be less than the coverage that would be provided by direct policies.

C. (i) Landlord agrees that, if obtainable at no additional cost, it will include in its “special form” property insurance policies appropriate clauses pursuant to which the insurance companies: (a) waive all right of subrogation against Tenant with respect to losses payable under such policies, and (b) agree that such policies shall not be invalidated should the insured waive in writing prior to a loss any or all right of recovery against any party for losses covered by such policies. But should any additional premiums be exacted for any such clause or clauses, Landlord shall be released from the obligation hereby imposed unless Tenant shall agree to pay such additional premium. Landlord, however, represents that such clauses are currently obtainable at no additional cost.

(ii) Tenant agrees to include, if obtainable at no additional cost, in its “special form” property insurance policy and policies on its furniture, furnishings, fixtures and other property removable by Tenant under the provisions of this Lease appropriate clauses pursuant to which the insurance company or companies (a) waive the right of subrogation against Landlord with respect to losses payable under such policy or policies and/or (b) agree that such policy or policies shall not be invalidated should the insured waive in writing prior to a loss any or all right of recovery against any party for losses covered by such policy or policies. But should any additional premium be exacted for any such clause or clauses, Tenant shall be released from the obligation hereby imposed unless Landlord shall agree to pay such additional premium. Tenant, however, represents that such clauses are currently obtainable at no additional cost.

(iii) 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 Retail Unit and the fixtures, appurtenances and equipment therein, to the extent the same is covered by Landlord's insurance, notwithstanding that such loss or damage may result from the

negligence or fault of Tenant, its servants, agents or employees. Tenant hereby waives any and all right of recovery which it might otherwise have against Landlord, its servants, and employees, for loss or damage to, Tenant's furniture, furnishings, fixtures and other property removable by Tenant under the provisions hereof to the extent that same is covered by Tenant's insurance, notwithstanding that such loss or damage may result from the negligence or fault of Landlord, its servants, agents or employees.

(iv) Landlord and Tenant hereby agree to advise the other promptly if the clauses to be included in their respective insurance policies pursuant to subparagraphs (i) and (ii) above cannot be obtained. Landlord and Tenant hereby also agree to notify the other promptly of any cancellation or change of the terms of any such policy which would affect such clauses.

D. Tenant shall defend, indemnify and hold harmless Landlord, its members and supervisor, managing agent, other agents, officers, directors, shareholders, partners, principals, and employees (whether disclosed or undisclosed) (hereinafter collectively referred to as the "Landlord Parties") from and against any and all claims, demands, liability, losses, damages, costs and expenses (including reasonable attorneys' fees and disbursements) arising from or in connection with: (a) any breach or default by Tenant in the full and prompt payment and performance of Tenant's obligations hereunder; (b) the use or occupancy or manner of use or occupancy of the Demised Premises by Tenant or any person claiming under or through Tenant; (c) any negligence or willful misconduct of Tenant or any of its subtenants, assignees or licensees or its or their partners, principals, directors, officers, agents, invitees, employees, guests, customers or contractors; (d) any accident, injury or damage occurring in or about the Demised Premises during the term hereof; (e) the performance by Tenant of any alteration or improvement to the Demised Premises, including, without limitation, Tenant's failure to obtain any permit, authorization or license or failure to pay in full any contractor, subcontractor or materialmen performing work on such alteration; (f) mechanics lien filed, claimed or asserted in connection with any alteration or any other work, labor, services or materials done for or supplied to, or claimed to have been done for or supplied to, or claimed to have been done for or supplied to Tenant, or any person claiming through or under Tenant (other than Landlord's Work); and (g) any certification made by any architect or engineer retained by or on behalf of Tenant to any governmental authority in connection with any alteration or improvement to the Demised Premises. If any claim, action or proceeding is brought against any of the Landlord Parties for a matter covered by this indemnity, Tenant, upon notice from the indemnified person or entity, shall defend such claim, action or proceeding with counsel reasonably satisfactory to Landlord and the indemnified person or entity. The provisions of this paragraph D shall survive the expiration or sooner termination of this Lease.

E. Except as otherwise set forth herein, Tenant agrees to look solely to Landlord's estate and interest in the Retail Unit, or the lease of the Retail Unit, and the Demised Premises, for the satisfaction of any right or remedy of Tenant for the collection of a judgment (or other judicial process) requiring the payment of money by Landlord, in the event of any liability by Landlord, and no other property or assets of Landlord shall be subject to levy, execution, attachment, or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this Lease, the relationship of Landlord and Tenant hereunder, or Tenant's use and occupancy of the Demised Premises, or any other liability of Landlord to Tenant.

C. If the Demised Premises shall be totally damaged or rendered wholly untenable by fire or other casualty, and the repair or restoration of the Demised Premises or a portion thereof shall be the obligation of the Condominium under the Condo Documents, or if the Demised Premises and/or the retail Unit shall be materially damaged by fire or other casualty and the effective use of the Demised Premises shall be dependent upon such repair and restoration which are the obligation of the Condominium under the Condo Documents, and in either such event the Condominium shall exercise its right not to perform such repair and restoration, then, in any of such events, Landlord, at Landlord's option, may give to Tenant, within ninety (90) days after such fire or other casualty, a five (5) days' notice of termination of this Lease and, in the event such notice is given, this Lease and the term hereof shall come to an end and expire whether or not said term shall have commenced, upon the expiration of said five (5) day period were the date originally set forth herein for the expiration of the term, and the fixed rent and all additional rent shall be apportioned as of such date.

D. (i) If the Demised Premises are rendered wholly unusable or (whether or not the Demised Premises are damaged in whole or in part) if the Retail Unit shall be so damaged that Landlord shall decide to demolish it or to rebuild it, then, in any of such events, Landlord may elect to terminate this Lease by written notice to Tenant given within ninety (90) days after such fire or casualty or thirty (30) days after adjustment of the insurance claim for such fire or casualty, whichever is sooner, specifying a date for the expiration of the Lease, which date shall not be more than sixty (60) days after the giving of such notice, and upon the date specified in such notice the term of this Lease shall expire as fully and completely as if such date were the date set forth above for the termination of this Lease and Tenant shall forthwith quit, surrender and vacate the Demised Premises without prejudice, however, to Landlord's rights and remedies against Tenant under the Lease provisions in effect prior to such termination, and any Rent owing shall be paid up to such date and any payments of Rent made by Tenant which were on account of any period subsequent to such date shall be returned to Tenant. Unless Landlord shall serve a termination notice as provided for herein, Landlord shall make the repairs and restorations under the conditions of paragraphs B and C of this Article, with all reasonable expedition subject to delays due to adjustment of insurance claims, labor troubles and causes beyond Landlord's control. After any such casualty, Tenant shall cooperate with Landlord's restoration by removing from the Demised Premises as promptly as reasonably possible, all of Tenant's salvageable inventory and moveable equipment, furniture and other property. Tenant's liability for Rent shall resume five (5) days after written notice from Landlord that Landlord has Substantially Completed its repair and restoration work, as above provided (unless Tenant sooner occupies the Demised Premises, as above provided).

(ii) Subject to Landlord's right to cancel this Lease pursuant to subparagraph (i) above or paragraph F below, within ninety (90) days after the date of any such fire or other casualty which renders the Demised Premises untenable for the Permitted Use hereunder or which denies Tenant any reasonable access to the Demised Premises, Landlord shall deliver to Tenant a statement from a reputable independent contractor (the "Contractor's Statement") setting forth such contractor's good faith estimate as to the time required to repair such damage. If the estimate of the time period exceeds twelve (12) months from the date of such casualty, Tenant may elect to terminate this Lease by giving Landlord written notice thereof not later than thirty (30) days after the receipt of such statement. If such notice is given, the term of this Lease shall expire upon the

fifteenth (15th) day after notice of such election is given, and Tenant shall vacate and surrender the Demised Premises in their present “as is” condition upon the expiration of such fifteen (15) day period. Notwithstanding anything to the contrary contained herein, if (i) either Tenant shall not have elected to terminate this Lease pursuant to the provisions hereof or Tenant shall not have had the right to terminate this Lease pursuant to the provisions hereof because the estimated time period set forth in the Contractor’s Statement did not exceed twelve (12) months, and (ii) Landlord shall have failed to make such repairs on or before the date which is one (1) month after the estimated time period set forth in the Contractor’s Statement, then Tenant may elect to terminate this Lease by notice given to Landlord within fifteen (15) days after the expiration of such one (1) month period. If Tenant makes such election, the term of this Lease shall expire on the fifteenth (15th) day after notice of such election is given by Tenant, and Tenant shall vacate the Demised Premises and surrender the same to Landlord in accordance with the provisions of this subparagraph (ii).

E. Tenant acknowledges that Landlord will not carry insurance on Tenant’s furniture and/or furnishings or any fixtures or equipment, improvements, or appurtenances removable by Tenant, and agrees that Landlord will not be obligated to repair any damage thereto or replace the same.

F. In case the Retail Unit or the Demised Premises shall be substantially damaged or destroyed by fire or other cause at any time during the last twenty-four (24) months of the term of this Lease, then Landlord may cancel this Lease upon written notice to the Tenant given within ninety (90) days after such damage or destruction.

G. Tenant hereby waives the provision of Section 227 of the Real Property Law and agrees that the provisions of this Article shall govern and control in lieu thereof.

9. EMINENT DOMAIN

A. In the event that the whole of the Demised Premises shall be lawfully condemned or acquired by private purchase in lieu thereof, or taken in any manner for any public or quasi-public use or purpose, or so much of the Retail Unit (whether or not the Demised Premises are affected) is so taken that Landlord elects not to restore the Retail Unit, then this Lease and the term and estate hereby granted shall forthwith cease and terminate as of the date of vesting of title (hereinafter referred to as the “date of taking”) and Tenant shall have no claim against Landlord for, or make any claim for the value of any unexpired terms of this Lease, and the rent and Additional Rent, shall be apportioned as of such date.

B. In the event that only part of the Demised Premises shall be so condemned or taken, then this Lease (absent Landlord’s election not to restore the Retail Unit, as aforesaid) shall be and remain unaffected by such condemnation or taking, except that the Fixed Annual Rent and Additional Rent allocable to the part so taken shall be apportioned as of the date of taking, provided, however, that Tenant may elect to cancel this Lease in the event that more than twenty-five (25%) percent of the Demised Premises should be so condemned or taken, provided such notice of election is given by Tenant to Landlord not later than thirty (30) days after the date when title shall vest in the condemning authority. Upon the giving of such notice, this Lease shall terminate on the thirtieth day following the date of such notice and the rent and Additional Rent

F. Landlord and its agents are hereby released from and shall not be liable for any damages to persons or property resulting from or incidental to any criminal act or terrorist attack notwithstanding any act or omission of any access control or security guard personnel that Landlord may from time to time employ in the Retail Unit to control access to the Retail Unit or to deter unlawful activity.

G. Notwithstanding anything contained in this Lease to the contrary, but subject to the provisions of Articles 8 and 9 hereof, if, as a result of the failure of Landlord to provide any Essential Service (as hereinafter defined) to the Demised Premises which Landlord is obligated to provide under this Lease (except if such failure is due to any of the causes set forth in Article 25 of this Lease, including, without limitation, a failure by any utility company to provide service to the Building or due to any act or omission of Tenant or any person or entity claiming by, through or under Tenant (each a "Tenant Act"; collectively, "Tenant Acts"), Tenant is unable for at least five (5) days to operate Tenant's business and Tenant in fact ceases to operate Tenant's business in the Demised Premises or a portion thereof in substantially the same manner that Tenant conducted its business prior to such event, then, provided and upon the condition that this Lease is in full force and effect and Tenant is not in default hereunder beyond any applicable notice and/or grace period, Tenant shall be entitled to a pro rata abatement of Fixed Annual Rent and tax escalation Additional Rent for each day after such five (5) day period for such portion of the Demised Premises which is unusable as set forth above until such service is restored (or such earlier date that Tenant recommences its business operations in the Demised Premises). In the event Landlord is unable to restore service because of any of the causes set forth in Article 25 of this Lease and/or any Tenant Acts, then the five (5) day period shall be extended one (1) day for each day of such cause set forth in Article 25 of this Lease or Tenant Act. The provisions of Articles 8 and 9 shall govern in lieu of this Article 7G in the event of a casualty or condemnation. The term "Essential Service" shall mean electricity, gas, water, condenser water, sprinkler and fire safety and alarm services, if and to the extent Landlord is expressly obligated to provide such services under this Lease.

8. DESTRUCTION; FIRE; OTHER CASUALTY

A. If the Demised Premises or any part thereof shall be damaged by fire or other casualty, Tenant shall give immediate notice thereof to Landlord and this Lease shall continue in full force and effect except as hereinafter set forth.

B. If the Demised Premises are partially damaged or rendered partially unusable by fire or other casualty, the Fixed Annual Rent and Additional Rent, until such repair shall be substantially completed, shall be apportioned from the day following the casualty according to the part of the Demised Premises which is useable. Landlord shall not have any obligation to repair or restore any damage to the Demised Premises caused by fire or other casualty which the Condominium is obligated to repair or restore under the Condo Documents, and Landlord shall have no liability to Tenant in the event that the Condominium shall fail to comply with such obligation. Tenant shall cooperate with Landlord, the Condominium and the insurance companies of Landlord, in the adjustment of any claims for any damage to the Retail Unit, and if applicable, the building.

shall be apportioned as of such termination date. Upon such partial taking and this Lease continuing in force as to any part of the Demised Premises, the Fixed Annual Rent and Additional Rent shall be diminished by an amount representing the part of said Fixed Annual Rent and Additional Rent properly applicable to the portion or portions of the Demised Premises which may be so condemned or taken. If as a result of the partial taking (and this Lease continuing in force as to the part of the Demised Premises not so taken), any part of the Demised Premises not taken is damaged, Landlord agrees with reasonable promptness to commence the work necessary to restore such damaged portion of the Retail Unit to the condition existing immediately prior to the taking, and prosecute the same with reasonable diligence to its completion.

C. Nothing hereinabove provided shall preclude Tenant from appearing, claiming, proving and receiving in the condemnation proceeding, Tenant's moving expenses, and the value of Tenant's fixtures, or Tenant's alterations, installations and improvements which did not theretofore become part of the Retail Unit or property of Landlord.

D. In the event that only a part of the Demised Premises shall be so taken and Tenant shall not have elected to cancel this Lease as above provided, the entire award for a partial taking shall be paid to Landlord, and Landlord, at Landlord's own expense, shall restore the unaffected part of the Retail Unit to substantially the same condition and tenantability as existed prior to the taking, but Tenant shall nonetheless be permitted make a separate claim in any condemnation proceedings for the value of any Tenant's Property included in such taking, and for any moving and other expenses, so long as Landlord's award is not reduced thereby.

E. Until said unaffected portion is restored, Tenant shall be entitled to a proportionate abatement of Rent for that portion of the Demised Premises which is being restored and is not usable until the completion of the restoration or until the said portion of the Demised Premises is used by Tenant, whichever occurs sooner. Said unaffected portion shall be restored within a reasonable time but not more than six (6) months after the taking; provided, however, if Landlord is delayed by strike, lockout, the elements, or other causes beyond Landlord's control, or by the act or omission of Tenant, the time for completion shall be extended for a period equivalent to the delay. Should Landlord fail to complete the restoration within the said six (6) months or the time as extended, Tenant may elect to cancel this Lease and the term hereby granted in the manner and with the same results as set forth in the next two sentences of this paragraph. If such partial taking shall occur in the last two years of the term hereby granted, either party, irrespective of the area of the space remaining, may elect to cancel this Lease and the term hereby granted, provided such party shall, within thirty (30) days after such taking, give notice to that effect, and upon the giving of such notice, the rent shall be apportioned and paid to the date of expiration of the term specified and this Lease and the term hereby granted shall cease, expire and come to an end upon the expiration of said thirty days specified in said notice. If either party shall so elect to end this Lease and the term hereby granted, Landlord need not restore any part of the Demised Premises and the entire award for partial condemnation shall be paid to Landlord, and Tenant shall have no claim to any part thereof, except as to the items set forth above where same are applicable.

10. ASSIGNMENT; SUBLETTING; ETC.

A. Tenant, for itself, its heirs, distributees, executors, administrators, legal representatives, successors and assigns, expressly covenants that it shall not assign, mortgage or encumber this Lease, nor underlet, or suffer or permit the Demised Premises or any part thereof to be used or occupied by others, without the prior written consent of Landlord in each instance, which Landlord may withhold in its sole and arbitrary discretion. The transfer of a majority of the issued and outstanding capital stock of any corporate tenant or subtenant of this Lease or a majority of the total record equity interests (or a majority of the ultimate beneficial ownership interest) in any partnership tenant or subtenant or any other form of entity or organization, however accomplished, and whether in a single transaction or in a series of transactions, and the conversion of a tenant or subtenant entity to another form of entity, including, without limitation, a limited liability company or a limited liability partnership in each case, be deemed an assignment of this Lease or of such sublease. The merger or consolidation of a tenant or subtenant, whether a corporation, partnership, limited liability company or other form of entity or organization, where the net worth of the resulting or surviving corporation, partnership, limited liability company or other form of entity or organization, is less than the net worth of Tenant or subtenant immediately prior to such merger or consolidation shall be deemed an assignment of this Lease or of such sublease. If this Lease be assigned, or if the Demised Premises or any part thereof be underlet or occupied by anybody other than Tenant, Landlord may, after default by Tenant, beyond any applicable notice and/or cure period, collect rent from the assignee, undertenant or occupant, and apply the net amount collected to the Rent herein reserved, but no assignment, underletting, occupancy or collection shall be deemed a waiver of the provisions hereof, the acceptance of the assignee, undertenant or occupant as tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained. The consent by Landlord to an assignment or underletting shall not in any way be construed to relieve Tenant from obtaining the express consent in writing of Landlord to any further assignment or underletting. In no event shall any permitted subtenant assign or encumber its sublease or further sublet all or any portion of its sublet space, or otherwise suffer or permit the sublet space or any part thereof to be used or occupied by others, without Landlord's prior written consent in each instance. Any modification or amendment, or extension of a sublease shall be deemed a sublease. In no event may this Lease be assigned to or any portion of the Demised Premises be underlet to a Prohibited Person (as hereinafter defined in Article 37). If any lien is filed against the Demised Premises or the Retail Unit for brokerage services claimed to have been performed for Tenant, whether or not actually performed, the same shall be discharged by Tenant within thirty (30) days thereafter, at Tenant's expense, by filing the bond required by law, or otherwise, and paying any other necessary sums, and Tenant agrees to indemnify Landlord and its agents and hold them harmless from and against any and all claims, losses or liability resulting from such lien for brokerage services rendered. For the purposes of this Article, an "interest" shall mean a right to participate, directly or indirectly, through one or more intermediaries, nominees, trustees or agents, in any of the profits, losses, dividends, distributions, income, gain, losses or capital of any entity or other organization. Neither the listing of a name other than that of Tenant, whether on the doors of the Demised Premises, the Building and/or the Retail Unit directory or otherwise, nor the issuance of an ID badge or Building pass shall vest any right or interest in this Lease or the Demised Premises and shall not be deemed to be the consent of Landlord to any assignment or transfer of this Lease, to any sublessee or licensee of the premises, or to any use or occupancy thereof by anyone not Tenant.

B. If Tenant requests Landlord's consent to a specific assignment or subletting, it shall submit in writing to Landlord (i) the name and address of the proposed assignee or sublessee, (ii) a true and complete copy of the proposed agreement of assignment or sublease, (iii) reasonably satisfactory information as to the nature and character of the business of the proposed assignee or sublessee, and as to the nature of its proposed use of the space, and (iv) banking, financial (certified by a certified public accountant or by an officer of the proposed assignee or sublessee), and other proofs and information relating to the proposed assignee or sublessee reasonably sufficient to enable Landlord to determine the experience, the reputation and the financial responsibility and character of the proposed assignee or sublessee, and the bona fides of any proposed sale.

C. Tenant understands and agrees that no such assignment or subletting, as aforescribed, shall be effective unless and until (i) Tenant, upon receiving any necessary consent, gives Landlord written notice of the transaction, together with a true copy of the assignment or of the sublease complying with the provisions hereof, and (ii) any such assignment of lease shall contain an assumption by the assignee of all of the terms, covenants and conditions of this Lease to be performed by Tenant, and any subtenant shall agree to perform all applicable provisions of this Lease on the part of Tenant to be performed.

D. Anything herein contained to the contrary notwithstanding:

(i) Tenant shall not advertise (but may list with brokers) its space for assignment or subletting at a rental rate lower than the then Building rental rate for such space.

(ii) The transfer of outstanding capital stock of any corporate tenant, for purposes of this Article, shall not include sale of such stock by persons other than those deemed "insiders" within the meaning of the Securities Exchange Act of 1934 as amended, and which sale is effected through the "over-the-counter market" or through any recognized stock exchange.

(iii) No assignment or subletting shall be made:

(a) To any person or entity which shall at that time be a tenant, subtenant or other occupant (or an affiliate thereof) of any part of the Retail Unit, or who dealt with Landlord or Landlord's agent (directly or through a broker) with respect to space in the Retail Unit during the twelve (12) months immediately preceding Tenant's request for Landlord's consent;

(b) By the legal representatives of Tenant or by any person to whom Tenant's interest under this Lease passes by operation of law, except in compliance with the provisions of this Article;

(c) To more than one (1) subtenant;

(d) For a sublease term that shall expire not later than one (1) day prior to the expiration of the term of this Lease;

(e) For any use of the Demised Premises other than a use permitted pursuant to Article 3 hereof, unless otherwise approved by Landlord in writing (and in Landlord's sole and absolute discretion); or

(g) Which would result in more than one (1) occupants (including Tenant) to occupy the entire Demised Premises.

(iv) No assignment of less than all of Tenant's interest in this Lease and no sublease or license of less than the entire rentable area of the Demised Premises shall be permitted under any circumstance.

(v) Any sublease shall provide that if this Lease is rejected pursuant to Section 365 of the Bankruptcy Code or any similar or successor statute, (a) such rejection shall be treated by the subtenant as a termination of the term of this Lease notwithstanding any contrary interpretation given by law to such rejection and (b) notwithstanding any such rejection/termination, the subtenant shall, at the option of Landlord, attorn to Landlord and will perform for Landlord's benefit all the terms, covenants and conditions of such sublease as if such sublease were a direct lease between Landlord and such subtenant.

(vi) No assignment of less than all of Tenant's interest in this Lease is permitted.

(vii) No assignment or subletting shall be effective if Tenant is then in default of any payment or other obligation to be performed under this Lease beyond any applicable notice, grace and/or cure period.

(viii) Any sublease shall provide that such sublease is subject and subordinate to the terms of this Lease and if this Lease is terminated for any reason whatsoever, Landlord, at Landlord's option may take over all of the right, title and interest of the transferor under the sublease and the transferee, at Landlord's option, shall attorn to Landlord and perform for Landlord's benefit all the terms, covenants and conditions of such sublease as if such sublease were a direct lease between Landlord and such subtenant provided however, Landlord shall not be (1) liable for any act or omission of the transferor under such sublease (except for any such acts or omissions that (x) continue after the date that Landlord succeeds to the interest of the transferor under such sublease, and (y) may be remedied by providing a service or performing a repair), (2) subject to any defense or offsets which the transferee may have against the transferor that accrue prior to the date that Landlord succeeds to the interest of the transferor, (3) bound by any previous payment that the transferee made to the transferor more than thirty (30) days in advance of the date that such payment was due, (4) bound by any obligation to make any payment to or on behalf of the transferee that accrues prior to the date that Landlord succeeds to the interest of the transferor under such sublease, (5) bound by any obligation to perform any work or to make improvements to the Demised Premises, or the applicable portion thereof demised by such sublease (other than the obligation to perform maintenance, repairs or restoration that in each case first becomes necessary from and after the date that Landlord succeeds to the interest of the transferor under such sublease), (6) bound by any amendment or modification of such sublease made without Landlord's consent, and (7) bound to return the transferee's security deposit, if any, until such deposit has come into Landlord's actual possession and the transferee is entitled to such security deposit pursuant to the terms of such sublease (the requirements of a proposed sublease as set forth in this subparagraph (viii) being collectively referred to herein as the "Basic Sublease Provisions").

E. In no event shall Tenant be entitled to make, nor shall Tenant make, any claim, and Tenant hereby waives any claim, for money damages (nor shall Tenant claim any money damages by way of setoff, counterclaim or defense) based upon any claim or assertion by Tenant that Landlord has unreasonably withheld or unreasonably delayed its consent or approval to a proposed assignment or subletting as provided for in this Article. Tenant's sole remedy shall be an action or proceeding to enforce any such provision, or for specific performance, injunction or declaratory judgment.

F. (i) Notwithstanding anything to the contrary contained herein (but subject to the provisions of Articles 10D(vi) above and 10O below), Tenant shall have the right to assign Tenant's entire interest under this Lease to an Affiliate (as such term is hereinafter defined) of Tenant without (a) Landlord's prior approval and (b) Tenant being required to pay the amounts set forth in Article 10M below (profit sharing), provided that in each case (1) no default beyond any applicable notice, grace and/or cure period has occurred and is then continuing as of the effective date of any such assignment, (2) the Affiliate satisfies the Net Worth Test (as such term is defined in Article 30J(ii) of this Lease) is satisfied, (3) Tenant, together with the copy of such assignment, provides Landlord with evidence that such entity constitutes an Affiliate of Tenant, (3) Tenant gives notice thereof to Landlord, not later than the tenth (10th) Business Day prior to the effective date of any such assignment, which notice shall include reasonable proof of the satisfaction of the Net Worth Test, together with an instrument, duly executed by Tenant and the aforesaid Affiliate, in form reasonably satisfactory to Landlord, to the effect that such Affiliate assumes all of the obligations of Tenant under this Lease to the extent arising from and after the effective date of such assignment, and (4) the Demised Premises shall continue to be used for the Permitted Use. The term "Affiliate" shall mean an individual or an entity that (i) Controls, (ii) is under the Control of, or (iii) is under common Control with, the individual or entity in question. The term "Control" shall mean the direct or indirect ownership of more than fifty (50%) percent of the outstanding voting stock of a corporation or other majority equity interest if not a corporation and the possession of power to direct or cause the direction of the management and policy of such corporation or other entity, whether through the ownership of voting securities, by statute or by contract.

(ii) Notwithstanding anything to the contrary contained herein (but subject to the provisions of Articles 10D(vi) above and 10O below), Tenant shall have the right to sublease all but not part of the Demised Premises to an Affiliate of Tenant, without (a) Landlord's prior approval and (b) Tenant being required to pay the amounts set forth in Article 10M below (profit sharing), provided that in each case, (1) no default beyond any applicable notice, grace and/or cure period has occurred and is then continuing as of the effective date of any such sublease, (2) Tenant gives to Landlord a copy of such sublease, not later than the tenth (10th) Business Day prior to the effective date of any such sublease, (3) Tenant, with such copy of such sublease, provides Landlord with reasonable evidence to the effect that the entity to which Tenant is so subleasing the Demised Premises constitutes an Affiliate of Tenant, (4) any such sublease includes the Basic Sublease Provisions, and (5) any such sublease requires the subtenant to continue to use the Demised Premises for the Permitted Use (and for no other purpose).

(iii) Notwithstanding anything contained herein to the contrary, if and so long as Tenant is not in default under this Lease beyond any applicable notice, grace and/or cure period,

Landlord's consent shall not be required with respect to an assignment of this Lease to any corporation or other entity (each a "Successor Entity") (a) to which all or substantially all of the assets of Tenant are transferred or (b) into or with which Tenant may be merged or consolidated, provided that: (1) such transferee or of the resulting or surviving corporation or other entity, as the case may be, shall satisfy the Net Worth Test; (2) the Demised Premises shall continue to be used for the Permitted Use; and (3) any such transaction shall comply with the other provisions of this Article. Tenant shall give Landlord at least ten (10) days' prior written notice of any transaction covered by this subparagraph F(iii), which notice shall include reasonable proof of the satisfaction of the Net Worth Test; provided, however, if it would be prohibited for such notice to be presented to Landlord prior to the transaction being consummated due to either Legal Requirements or commercially reasonable requirements of the transaction regarding confidentiality, the same shall be provided to Landlord within three (3) Business Days after the transaction is consummated.

G. Each subletting pursuant to this Article shall be subject to all of the covenants, agreements, terms, provisions and conditions contained in this Lease, excepting the monetary terms hereof. Notwithstanding any such subletting to any subtenant and/or acceptance of rent or additional rent by Landlord from any subtenant, Tenant shall and will remain fully liable for the payment of the fixed annual rent and additional rent due and to become due hereunder and for the performance of all of the covenants, agreements, terms, provisions and conditions contained in this Lease on the part of Tenant to be observed and performed and for all of the acts and omissions of any licensee, subtenant, or any other person claiming under or through any subtenant that shall be in violation of any of the obligations of this Lease, and any such violation shall be deemed to be a violation by Tenant. Tenant further agrees that, notwithstanding any such subletting, no further subletting (including, without limitation, any extensions or renewals of any initial sublettings) of the Demised Premises by Tenant, or any person claiming through or under Tenant shall, or will be, made, except upon compliance with, and subject to, the provisions of this Article.

H. Any assignment or transfer shall be made only if, and shall not be effective until, the assignee shall execute, acknowledge and deliver to Landlord an agreement, in form and substance reasonably satisfactory to Landlord, whereby the assignee shall assume all of the obligations of this Lease on the part of Tenant to be performed or observed and whereby the assignee shall agree that the provisions contained herein shall, notwithstanding such assignment or transfer, continue to be binding upon it in respect of all future assignments and transfers. The original named Tenant covenants that, notwithstanding any assignment or transfer whether or not in violation of the provisions hereof, and notwithstanding the acceptance of Fixed Annual Rent and/or Additional Rent by Landlord from an assignee, transferee or any other party, the original named Tenant shall remain fully liable for the payment of the Fixed Annual Rent and Additional Rent and for the other obligations of this Lease on the part of Tenant to be performed or observed.

I. If Landlord shall, acting in good faith and in accordance with the provisions of this Article, decline to give consent to any proposed assignment or sublease, Tenant shall indemnify, defend and hold Landlord harmless from and against any and all losses, liabilities, costs and expenses (including reasonable attorneys' fees) resulting from any claims that may be made against Landlord by the proposed assignee or subtenant or by any brokers or other persons claiming a commission or similar compensation in connection with the proposed assignment or sublease.

This provision shall survive the expiration or sooner termination of this Lease. Tenant shall pay to Landlord on demand Landlord's reasonable out-of-pocket costs (including, without limitation, legal, architect's and engineering fees) incurred in connection with reviewing Tenant's request for any such consent.

J. The joint and several liability of Tenant and any assignee of this Lease, and the due performance of the obligations of this Lease on Tenant's part to be performed or observed, shall not be discharged, released or impaired in any respect by any agreement or stipulation made by Landlord extending the time of, or modifying any of the obligations of, this Lease, or by any waiver or failure of Landlord to enforce any of the obligations of this Lease.

K. The term "Tenant" when used in this Article shall include the originally denominated Tenant and each proximate or remote assignee thereof or successor in interest thereto. Wherever in this Article Tenant or any other person is required to provide Landlord with banking, financial or other credit information such information shall include, without limitation, a balance sheet (in reasonable detail, listing all assets and liabilities and prepared in accordance with generally accepted accounting principles) of each relevant party to the transaction in question certified to Landlord by an independent certified public accountant or its chief financial officer.

L. The listing of a name other than that of Tenant named herein, whether on the doors of the Demised Premises, the Building and/or the Retail Unit directory or otherwise shall not vest any right or interest in this Lease or the Demised Premises and shall not be deemed to be the consent of Landlord to any assignment or transfer of this Lease, to any sublessee of the Demised Premises, or to any use or occupancy thereof by anyone not Tenant named herein.

M. If Tenant effects any assignment or subletting requiring Landlord's consent hereunder, then Tenant thereafter shall pay to Landlord a sum equal to fifty percent (50%) of: (i) any Rent or other consideration (including, without limitation, sums for fixtures, furniture, equipment and other personal property) paid to Tenant by any subtenant which (after deducting the costs of Tenant, if any, in effecting the subletting, including reasonable alteration costs, rent abatements or other rent concessions or work allowances (which are consistent with then current market conditions), commissions and legal fees) is in excess of the Rent, allocable strictly on a *per* square foot basis (calculated by dividing aggregate consideration by the number of rentable square feet in the area so subleased), without regard to any other allocation of value, which is then being paid by Tenant to Landlord pursuant to the terms hereof with respect to the same area, allocable strictly on a *per* square foot basis, and (ii) any other profit or gain (after deducting any necessary expenses incurred, including alteration costs, rent abatements or other rent concessions or work allowances (which are consistent with then current market conditions), commissions and legal fees) realized by Tenant from any such subletting or assignment. All sums payable hereunder by Tenant shall be payable to Landlord as Additional Rent within thirty (30) days after receipt thereof by Tenant.

N. Under no circumstance may this Lease be assigned or the Demised Premises be sublet in whole or in part to a Prohibited Person (as such term is defined in Article 37 of this Lease).

O. Notwithstanding anything to the contrary contained herein, Tenant shall not, and Tenant shall not permit any other party permitted to occupy the Demised Premises pursuant to this Article 10 to, enter into any lease, sublease, license, concession or other agreement for use or occupancy of the Demised Premises or any portion thereof which provides for a rental or other payment for such use or occupancy based in whole or in part on the net income or profits derived by any person or entity from the property leased, occupied or used, or which would require the payment of any consideration that would not qualify as "rents from real property," as that term is defined in Section 856(d) of the Internal Revenue Code of 1986, as amended.

11. ELECTRICITY

A. Except to the extent such work is included in Landlord's Work, the parties acknowledge and agree that Tenant, at its own expense, shall diligently commence and complete all necessary applications and alterations and installations, including a meter or meters, so that Tenant shall obtain and pay for all of its electricity requirements for the Demised Premises, including all electricity used by the heating or air conditioning equipment servicing the Demised Premises, directly from the public utility(ies) servicing the Demised Premises.

B. Any risers, feeders or other equipment or service proper or necessary to supply Tenant's electrical requirements, upon the written prior approval of Landlord, will be installed by and at the sole cost and expense of Tenant, if in Landlord's sole judgment, the same are necessary and will not cause damage or injury to the Building, the Retail Unit, or the Demised Premises or cause or create a dangerous or hazardous condition or entail excessive or unreasonable alterations, repairs or expense or interfere with or disturb other tenants or occupants. Rigid conduit only will be allowed. Only copper conductors and connectors shall be used.

C. Landlord shall not in anywise be liable or responsible to Tenant for any loss or damage or expense which Tenant may sustain or incur if either the quantity or character of electric service is changed or is no longer available or suitable for Tenant's requirements, unless such change is due to the negligence or willful misconduct of Landlord or its employees, contractors or agents. Electricity and electric service, as used herein, shall mean any element affecting the generation, transmission, and/or redistribution of electricity, including but not limited to, services which facilitate the distribution of service.

D. The parties acknowledge and agree as follows: that there is currently 200 amps of electrical service available for Tenant's use in the Demised Premises, which Tenant shall have the right to use throughout the term of this Lease (subject to the terms hereof); that Tenant may require up to a maximum of 400 amps of electrical service (such additional electrical service up to, but in no event in excess of, 200 amps of additional electrical service being the "Additional Electrical Service") in connection with the operation of its business in the Demised Premises; that if Tenant requires any of such Additional Electrical Service, it shall provide Landlord with a "load letter" from a licensed electrical engineer reasonably acceptable to Landlord, substantiating the need for such Additional Electrical Service for Tenant's operations in the Demised Premises.

12. ACCESS TO DEMISED PREMISES

A. Landlord or Landlord's agents shall have the right (but shall not be obligated) to enter the Demised Premises in any emergency at any time, and, at other reasonable times, to examine the same and to make such repairs, replacement and improvements as Landlord may deem necessary and reasonably desirable to any portion of the Retail Unit or which Landlord may elect to perform, in the Demised Premises, following Tenant's failure to make repairs or perform any work which Tenant is obligated to perform under this Lease, or for the purpose of complying with laws, regulations and other directions of governmental authorities. Tenant shall permit Landlord to use and maintain and replace pipes and conduits in and through the Demised Premises and to erect new pipes and conduits therein, provided they are concealed within the walls, floors or ceiling, wherever reasonably practicable, and such installation does not adversely affect the conduct of Tenant's business in the Demised Premises (other than to a de minimis extent). Landlord may, during the progress of any work in the Demised Premises, take all necessary materials and equipment into the Demised Premises without the same constituting an eviction, nor shall the Tenant be entitled to any abatement of rent while such work is in progress, nor to any damages by reason of loss or interruption of business or otherwise, provided that such installation does not adversely affect the conduct of Tenant's business in the Demised Premises (other than to a de minimis extent). Landlord shall not perform any such installation or other work in the Demised Premises during the hours of 12:00 P.M. and 3:00 P.M. and 5:00 P.M. and 7:00 P.M., except in the event of an emergency or as required by any applicable Legal Requirement. Throughout the term hereof, Landlord shall have the right to enter the Demised Premises at reasonable hours, for the purpose of showing the same to prospective purchasers, lenders or investors with respect to the Retail Unit or Landlord's interest therein, and during the last year of the term for the purpose of showing the same to prospective tenants. Any such entry, storage, work or taking back of a portion of the Demised Premises in connection with any such repair, replacement or improvement, as described above, shall not constitute an eviction (whether actual or constructive) of Tenant, in whole or in part, or breach of the covenant of quiet enjoyment, shall not be grounds for any abatement of Rent, and shall not impose any liability on Landlord to Tenant by reason of inconvenience or injury to Tenant's business or to the Demised Premises, except as otherwise set forth herein. In the event of an emergency, if Tenant is not present to open and permit an entry into the Demised Premises, Landlord or Landlord's agents may enter the same whenever such entry may be necessary or permissible, by master key or forcibly, and provided reasonable care is exercised to safeguard Tenant's property, such entry shall not render Landlord or its agents liable therefor, nor in any event shall the obligations of Tenant hereunder be affected.

B. Landlord shall have the right at any time, without the same constituting an eviction and without incurring liability to Tenant therefore, to change the arrangement and/or location of public entrances, passageways, doors, doorways, corridors, elevators, stairs, toilets, or other public parts of the Retail Unit, and to change the name, number or designation by which the Retail Unit may be known.

13. VAULT; VAULT SPACE; AREA

No vaults, vault space or area, whether or not enclosed or covered, not within the property line of the Building, is leased hereunder, anything contained in or indicated on any sketch, blue print or plan, or anything contained elsewhere in this Lease to the contrary notwithstanding. Landlord makes no representation as to the location or the property line of the Building. All vaults

and vault space an all such areas not within the property line of the Building, which Tenant may be permitted to use and/or occupy, is to be used and/or occupied under a revocable license, and if any such license be revoked, or if the amount of such space or area be diminished or required by any federal, state or municipal authority or public utility, Landlord shall not be subject to any liability, nor shall Tenant be entitled to any compensation or diminution or abatement or rent, nor shall such revocation, diminution or requisition be deemed constructive or actual eviction. Any tax, fee or charge of municipal authorities for such vault or area shall be paid by Tenant.

14. CONDITION OF DEMISED PREMISES; LANDLORD'S WORK; INITIAL ALTERATION WORK

A. Tenant will not at any time use or occupy the Demised Premises in violation of Article 3 of this Lease, or of the certificate of occupancy issued for the Building, a copy of which certificate of occupancy is attached hereto and made a part hereof as Exhibit F. Landlord represents and warrants to Tenant that (a) Landlord owns the Retail Unit in fee simple and (b) Landlord has the full right and lawful authority to lease the Demised Premises to Tenant upon the terms set forth in this Lease.

B. Tenant expressly acknowledges that it has inspected the Demised Premises and is fully familiar with the physical condition thereof. Tenant agrees to accept the Demised Premises in their "as is" condition, except to the extent otherwise prescribed in paragraph C of this Article. Tenant acknowledges that Landlord (i) has made no representation respecting the physical condition of the Demised Premises, including the existence or non-existence of any hazardous substances, any defects or other matters concerning their physical condition or area or their suitability for Tenant's intended use and (ii) shall have no obligation to do any work in and to the Demised Premises in order to make them suitable and ready for occupancy and use by Tenant, except such "Landlord's Work" as may specifically be set forth in paragraph C of this Article and such "Gas Work" (as such term is defined in Article 14I of this Lease) as may specifically be set forth in paragraph I of this Article.

C. Landlord, at its sole cost and expense, shall effect the following work ("Landlord's Work") to prepare the Demised Premises for Tenant's occupancy and use:

- i. any work necessary to stub a cold water line (1½ inch) into the Demised Premises, at a location designated by Landlord and reasonably acceptable to Tenant;
- ii. any work necessary to stub a sanitary waste line (3") into the Demised Premises, at a location designated by Landlord and reasonably acceptable to Tenant;
- iii. any work necessary to provide adequate space for a grease trap in a location designated by Landlord and reasonably acceptable to Tenant;
- iv. provided that Tenant delivers to Landlord a "load letter" which substantiates Tenant's need for additional electrical capacity (in accordance with the provisions of Article 11D of this Lease), any work necessary to install one (1)

electric panel, fused at 400 amps (3 phase) at a location designated by Landlord and reasonably acceptable to Tenant;

- v. any work necessary to provide adequate space for Tenant to install a cooking exhaust system;
- vi. repaint the storefront of the Demised Premises, painted surfaces only, using Landlord's standard paint, color to be selected by Landlord;
- vii. provide an original ACP-5 for existing conditions; and
- viii. any work necessary to replace the broken storefront window in the Demised Premises.

Landlord's Work shall be performed in a prompt and expeditious fashion after the execution and delivery of this Lease by Landlord and Tenant, in a good and workmanlike manner, and in compliance with all applicable laws, rules and regulations.

D. (i) Tenant shall effect all such Alterations and decorations as are needed or desirable in order to create a "Sticky's Finger Joint" restaurant in the Demised Premises, in manner, and using such fixtures and materials, as is consistent with the Sticky's Finger Joint restaurant located at 484 3rd Avenue, New York, New York 10016, as of the date hereof, and in order to make the Demised Premises suitable and ready for occupancy and use by Tenant (the "Initial Alteration Work"). Tenant agrees that the Initial Alteration Work shall include, without limitation, (a) all work necessary to provide and distribute all of Tenant's HVAC requirements in the Demised Premises. Tenant specifically acknowledges that Landlord will not supply Tenant with any form of HVAC, except as otherwise specifically set forth herein.

(ii) Within sixty (60) days after the date of this Lease, Tenant shall submit to Landlord, for Landlord's approval (which shall be granted or withheld in accordance with the criteria set forth in Article 4B hereof) a full set of architectural and engineering plans and specifications (including architectural plans and specifications comprised of partition plans, reflected ceiling plans as well as air conditioning, heating and all other mechanical drawings and electric plans) in form suitable for filing with the appropriate agencies of the City of New York to obtain such alteration or Building permit to perform the Initial Alteration Work. If the Landlord withholds its approval of any aspect of such plans and specifications, then Tenant shall make appropriate modifications to the plans and specifications to correct or eliminate the objections specified by Landlord in such disapproval and shall resubmit the modified plans and specifications to the Landlord within ten (10) days after they are returned to Tenant unapproved. The terms and provisions set forth in this subparagraph (ii) governing the approval and disapproval of plans and specifications shall apply equally to approving and disapproving revised plans and specifications and all change orders. If Landlord fails to respond to any request for approval within ten (10) Business Days after Landlord's receipt of such plans and specifications, then Tenant may send Landlord a second request for such approval. If Landlord fails to respond to such second request within five (5) Business Days after the date of Landlord's receipt of same, then Landlord shall be deemed to have approved such plans and specifications, provided that any such second request for

approval provides in bold and capital letters: "**LANDLORD'S FAILURE TO RESPOND TO THIS SECOND NOTICE WITHIN FIVE (5) BUSINESS DAYS AFTER THE DATE THAT LANDLORD RECEIVES THIS SECOND NOTICE FROM TENANT SHALL BE DEEMED TO BE LANDLORD'S CONSENT TO THE ALTERATIONS DESCRIBED HEREIN**". Notwithstanding the foregoing, in no event shall such deemed approval apply to any Alterations which are not standard for a normal retail installation or which are structural in nature or which affect Building systems outside of the Demised Premises. No work may be performed without Landlord's prior approval of such plans and specifications, and of all contractors and sub-contractors engaged to perform such work. No work shall be commenced without the appropriate permits and approvals therefor having been issued by the City of New York Department of Buildings and any other governmental agency having jurisdiction thereof. Approval by Landlord of any aspect of such plans or specifications shall not be deemed to constitute a warranty or representation that such plans or specifications shall conform to applicable laws and regulations or shall be approved by the Department of Buildings or any other governmental agency.

(iii) Intentionally omitted.

(iv) Tenant shall cause the Initial Alteration Work to be effected, at its own cost and expense (except as provided in subparagraph (iii) above), in a good and workmanlike manner, in accordance with Tenant's approved plans and specifications, in accordance with the provisions of this Article, Article 4 and all other applicable provisions of this Lease (except that in the event of a conflict between the provisions of this Article and the provisions of Article 4 and the other applicable provisions of this Lease, the provisions of this Article shall prevail), and in compliance with all applicable laws, rules and regulations. Tenant shall use Landlord's code consultant, currently Rizzo Group Inc., in connection with the issuance of any necessary governmental approvals and/or certificate of occupancy changes, provided that any such code consultant charges rates that are reasonably competitive with code consultants of comparable skill and experience operating in midtown Manhattan. If Landlord and Tenant cannot agree on whether the prices being charged by the code consultant designated by the Landlord are reasonably competitive to those charged by such other code consultants, Landlord or Tenant may submit such dispute to arbitration pursuant to the provisions of Article 23B hereof.

(v) The Initial Alteration Work shall be commenced promptly after Landlord approves all of Tenant's plans and specifications therefor, and shall be completed diligently and in no event later than two hundred seventy (270) days after the Commencement Date (such 270th day, as such date may be extended as hereinafter provided, being the "Outside Completion Date"); provided, however, that such 270 day period shall be extended by one day for each day that the completion of the Initial Alteration Work is delayed due to the occurrence of any of the conditions set forth in Article 25 of this Lease. Upon completion of the Initial Alteration Work, Tenant shall fully stock and adequately staff the Demised Premises and shall open for business therein, in a manner consistent with Sticky's Finger Joint restaurant currently being operated at 484 3rd Avenue, New York, New York 10016, as of the date hereof. It is understood and agreed that Tenant's failure to complete its Initial Alteration Work on or before the Outside Completion Date and to thereafter, within a reasonable time after the Outside Completion Date (not to exceed thirty (30) days, however), open for business in the Demised Premises, shall be deemed a default by Tenant

under this Lease, for which Landlord shall have all rights and remedies available to it under this Lease and under the law

(vi) Notwithstanding anything contained herein to the contrary, Tenant, or its general contractor, shall maintain, at Tenant's expense, in addition to any other insurance required pursuant to this Lease with respect to alterations, a Builders All Risk insurance policy (Broad Form) covering the full replacement cost of the Initial Alteration Work and the materials and supplies delivered and stored in the Demised Premises for the purpose of being incorporated in such work.

(vii) Notwithstanding anything herein set forth to the contrary, within thirty (30) days after final completion of the Initial Alteration Work, Tenant shall deliver to the Landlord final record drawings of the Initial Alteration Work, including, as may be pertinent to the work performed, a reflected ceiling plan, mechanical and electrical drawings, partition plan and any other drawings which may be required to indicate accurately the layout and systems of the Demised Premises. Tenant shall require its architect to load and maintain such record plans on a CADD system and to deliver diskettes or other medium suitable for Landlord's needs and compatible, if feasible, with Landlord's computer applications, so as to enable Landlord to use such CADD-saved plans. Tenant shall move into, and open for business in, the Demised Premises after substantial completion of the Initial Alteration Work.

E. Tenant shall install furniture, fixtures and equipment in the Demised Premises, and repair and replace same, as necessary, with items of equal quality and utility, so that at all times the physical condition and appearance of the Demised Premises shall be commensurate with that of a typical "Sticky's Finger Joint" restaurant.

F. In connection with the Initial Alteration Work, Tenant, at its own expense, shall comply in the Demised Premises with present and future requirements, structural or non-structural, foreseen or unforeseen, under the ADA and New York City Local Laws No. 58/87, No. 76 and No. 5 or any similar or successor laws, and regulations issued pursuant thereto, and all other laws and regulations.

G. Tenant by entering into occupancy of the Demised Premises shall be conclusively deemed to have agreed that Landlord up to the time of such occupancy had performed all of its obligations hereunder and that the Demised Premises were in satisfactory condition as of the date of such occupancy, unless within twenty (20) days after such date Tenant shall give written notice (hereinafter called the "Punch List Notice") to Landlord specifying the respects in which the same were not in satisfactory condition, in which event the Demised Premises shall be conclusively deemed to be in satisfactory condition except for the items set forth in the Punch List Notice for which Landlord is responsible hereunder. The giving of the Punch List Notice shall have no effect whatsoever upon the Commencement Date.

H. Tenant agrees that the Initial Alteration Work shall include, without limitation, all work necessary to install a new Type 1 cooking exhaust and ventilation system for the Demised Premises, including, without limitation, any necessary make-up air system for cooking exhaust, which cooking exhaust and ventilation system shall be approved in advance by Landlord.

Landlord approves, in concept only, a ventilation system that vents in a location above the storefront of the Demised Premises; it being acknowledged and agreed, however, that the design and installation of such ventilation system shall be effected in accordance with the provisions of Articles 4 and 14 hereof, including, without limitation, the provisions thereof governing the approval of plans and specifications for, and performance of, such work. Tenant agrees that such cooking exhaust and ventilation system shall include a box that accepts filters. Tenant agrees to operate such cooking exhaust and ventilation system in such a manner as to carry off all fumes, vapors and cooking, food or other offensive odors at all times and in compliance with all applicable laws, rules and regulations, including Landlord's rules and regulations thereon. Such cooking exhaust and ventilation system shall be installed in a manner and in a location approved in advance by Landlord, and shall vent air only as approved in advance by Landlord. Tenant shall maintain such system in good condition and repair at all times, and shall make any necessary replacements thereto. Tenant acknowledges that it is of vital importance to Landlord that such system be operable at all times and that it efficaciously and effectively dissipate such fumes, vapors and cooking, food and other offensive odors in order to preserve the image, dignity and reputation of the Building, and to prevent the spread of such fumes, vapors and cooking, food or other offensive odors outside of the Demised Premises. Tenant agrees that if, for any reason whatsoever, said system shall not effectively carry off and dissipate such fumes, vapors and cooking, food or other offensive odors in a manner that prevents the spread of same outside of the Demised Premises, then Landlord shall give Tenant notice thereof, and if Tenant, within a period of five (5) days' after Landlord gives Tenant such notice, fails to cure such condition (so that such fumes, vapors or cooking (or other offensive) odors are no longer being spread outside of the Demised Premises), or if such condition cannot reasonably be cured within such five (5) day period, if Tenant fails to commence to cure same within such five (5) day period and to thereafter diligently prosecute such cure to completion, then Tenant shall be deemed to be in material and substantial default under this Lease, for which Landlord shall have all remedies available to it under this Lease (including, without limitation as provided in Article 29L hereof) and under the law.

I. In addition to Landlord's Work, Landlord shall, at Landlord's expense, perform all work necessary to stub a gas line (2") into the Demised Premises, at a location designated by Landlord and reasonably acceptable to Tenant, and to pressure test such gas line (the "Gas Work"). Landlord shall perform the Gas Work in a good and workmanlike manner, and in compliance with all applicable laws, rules and regulations. The completion of the Gas Work shall in no event constitute a condition to the occurrence of the Commencement Date. Tenant shall reasonably cooperate with Landlord in connection with the Gas Work, including, without limitation, by providing Landlord and its contractors with such access to the Demised Premises as is necessary to perform the Gas Work. Landlord shall use commercially reasonable efforts to commence the Gas Work prior to the Commencement Date. Subject to any of the causes set forth in Article 25 of this Lease and/or any act or omission (where there is a duty to act) of Tenant, its agents, employees or contractors, Landlord shall complete the Gas Work on or before the date (the "Outside Date") that is one hundred twenty (120) days after the date of this Lease. Notwithstanding the foregoing, if Landlord fails to complete the Gas Work on or before the Outside Date (as the Outside Date may be extended due to the occurrence of any of the causes set forth in Article 25 of this Lease and/or any act or omission (where there is a duty to act) of Tenant, its agents, employees or contractors), then, as Tenant's sole and exclusive remedy in connection therewith, the Rent Commencement Date shall be adjourned one (1) day for each day in the period

beginning on the Outside Date and ending on the day immediately preceding the date that Landlord completes the Gas Work. Landlord shall use commercially reasonable efforts to perform the Gas Work in a manner that minimizes any interference with the performance of the Initial Alteration Work by Tenant; it being understood and agreed, however, that the Gas Work may be performed on Business Days, during Business Hours.

15. BANKRUPTCY

A. Anything elsewhere in this Lease to the contrary notwithstanding, this Lease may be cancelled by Landlord by the sending of a written notice to Tenant within a reasonable time after the happening of any one or more of the following events: (i) the commencement of a case in bankruptcy or under the laws of any state naming Tenant as the debtor, which (if involuntary) is not vacated within forty-five (45) days after the date it is commenced; or (ii) the making by Tenant of an assignment or any other arrangement for the benefit of creditors under any state statute. Neither Tenant nor any person claiming through or under Tenant, or by reason of any statute or order of court, shall thereafter be entitled to possession of the Demised Premises but shall forthwith quit and surrender the Demised Premises. If this Lease shall be assigned in accordance with its terms, the provisions of this Article 15 shall be applicable only to the party then owning Tenant's interest in this Lease.

B. It is stipulated and agreed that in the event of the termination of this Lease pursuant to paragraph A of this Article, Landlord shall forthwith, notwithstanding any other provisions of this Lease to the contrary, be entitled to recover from Tenant, as and for liquidated damages, an amount equal to the difference between the rent reserved hereunder for the unexpired portion of the term demised and the fair and reasonable rental value of the Demised Premises for the same period. In the computation of such damages the difference between any installment of rent becoming due hereunder after the date of termination and the fair and reasonable rental value of the Demised Premises for the period for which such installment was payable shall be discounted to the date of termination at the rate of four percent (4%) per annum. If the Demised Premises, or any part thereof, be re-let by the Landlord for the unexpired term of said Lease, or any part thereof, before presentation of proof of such liquidated damages to any court, commission or tribunal, the amount of rent reserved upon such re-letting shall be deemed to be the fair and reasonable rental value for the part or the whole of the Demised Premises so re-let during the term of the re-letting. Nothing herein contained shall limit or prejudice the right of the Landlord to prove for and obtain as liquidated damages, by reason of such termination, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater, equal to, or less than the amount of the difference referred to above.

16. DEFAULT

A. Landlord may terminate this Lease on notice to Tenant: (a) if Fixed Annual Rent or Additional Rent or any other payment due hereunder is not paid within five (5) days after Landlord notifies Tenant in writing that such Fixed Annual Rent or Additional Rent is past due, or if Landlord shall receive Rent after the date when first due three (3) times within any twelve (12) month period (which shall be deemed to be a persistent default or behavior); (b) if any guarantor

hereunder (if any) defaults under any guarantee of this Lease; or (c) unless otherwise provided elsewhere in this Lease, if Tenant shall have failed to cure a default in the performance of any covenant of this Lease (except the payment of Rent), or any rule or regulation hereinafter set forth, within thirty (30) days after written notice thereof from Landlord, or if such default cannot be completely cured in such time, if Tenant shall not promptly proceed to cure such default within said thirty (30) days, or shall not complete the curing of such default with due diligence; or (c) irrespective of that Tenant's interest in this Lease may have been assigned (with or without Landlord's consent [if permitted herein or by law]) when and to the extent permitted by law, if a petition in bankruptcy shall be filed by or against Tenant or if Tenant shall make a general assignment for the benefit of creditors, or receive the benefit of any insolvency or reorganization act; or (d) if a receiver or trustee is appointed for any portion of Tenant's property and such appointment is not vacated within forty-five (45) days; or (e) if an execution or attachment shall be issued under which the Demised Premises shall be taken or occupied or attempted to be taken or occupied by anyone other than Tenant; or (f) if the Demised Premises become and remain vacant or abandoned; or (g) if Tenant shall default beyond any grace period under any other lease, license or occupancy agreement between Tenant and Landlord; or (h) intentionally omitted; or (i) if Tenant shall have made a material misrepresentation herein. Notwithstanding anything herein to the contrary set forth, Tenant shall not commit waste or cause any damage to any portion of the Building irrespective of whether within or without the Demised Premises. The willful infliction of damage on any property or the interference with the quiet enjoyment by any other occupant of the Building shall be deemed to be a conditional limitation of the term of this Lease. Tenant shall not create any nuisance or other disturbance within the Building.

B. The termination of this Lease (which shall include, without limitation, any rights of renewal or extension thereof) shall be effective on the third (3rd) day following the expiration of the applicable notice and/or cure period referred to in the preceding paragraph without the need for any further act and thereupon this Lease shall terminate as completely as if that were the date originally fixed for the expiration of the term of this Lease; but Tenant shall remain liable as hereinafter provided, and Landlord may institute summary or other proceedings to repossess the Demised Premises or re-enter and take possession of the Demised Premises by any means permitted by law. TENANT HEREBY EXPRESSLY WAIVES THE BENEFITS OF ANY LAW, STATUTE OR OTHER LEGAL AUTHORITY REQUIRING A PERIOD OF TIME (SUCH AS 5 DAYS) TO BE ADDED TO THE TIME REQUIRED HEREIN TO BE GIVEN FOR NOTICES. The terms "re-enter" and "re-entry", as used in this Lease, are not restricted to their technical legal meanings, and include, without limiting the foregoing, self-help by Landlord, which self-help is expressly permitted hereby.

C. Landlord hereby authorizes its then current managing agent of the Retail Unit at any time to act on Landlord's behalf to make demands on and give notices to Tenant hereunder, including without limitation (i) demands for payment of Fixed Annual Rent or Additional Rent, performance of any obligation, or cure of any default, (ii) notices of default or termination, and (iii) all other notices that may be required by law or this Lease in connection with or as a predicate to any action or proceeding for rent and/or possession of the Demised Premises. Tenant acknowledges and agrees that such managing agent is authorized to give such notices and shall not (and hereby waives the right to) contest such authorization or raise any defense to any action or

proceeding predicated on any allegation of lack of such authorization. Notices sent by either party hereunder may be sent by counsel to such party with the same effect as if sent by such party.

D. Tenant acknowledges and agrees that, after the date that Tenant commences to occupy the Demised Premises, all notices of default and demands for the payment of Rent or performance of any other obligation shall be sent or delivered to the Demised Premises and notwithstanding that Tenant may have another office or place of business (of which Landlord may have actual knowledge) or may have vacated the Demised Premises, delivery of any such notice or demand or delivery of service of process to the Demised Premises shall be sufficient for all purposes (including, without limitation, obtaining jurisdiction over [and entry of judgment against] Tenant in any action or proceeding).

17. REMEDIES OF LANDLORD AND WAIVER OF REDEMPTION

A. Tenant hereby expressly waives any right of redemption granted by any present or future law. In the event of a breach or threatened breach of any of the covenants or provisions hereof Landlord shall have the right of injunction. Mention herein of any particular remedy shall not preclude Landlord from any other available remedy. Landlord shall recover as liquidated damages, in addition to accrued Rent and other charges, if Landlord's re-entry is the result of Tenant's bankruptcy, insolvency, or reorganization, the full rental for the maximum period allowed by any act relating to bankruptcy, insolvency or reorganization.

B. (i) In case of any re-entry, dispossession by summary proceedings or termination of the term hereof due to Tenant's default, (x) the Rent shall become due thereupon and be paid up to the time of such re-entry, dispossession and/or termination; (y) Landlord may re-let the Demised Premises or any part or parts thereof, either in the name of Landlord or otherwise, for a term or terms, which may at Landlord's option be less than or exceed the period which would otherwise have constituted the balance of the term of this Lease and may grant concessions or occupancy free of rent for any period; and (z) Tenant shall also pay Landlord as liquidated damages for the failure of Tenant to perform any obligation, at Landlord's election, either of the amounts provided for in item (1) or item (2) below and, in addition thereto, the amounts provided for in item (3) below. Landlord shall have no obligation to re-let the Demised Premises, and its failure or refusal to do so, or failure to collect rent on re-letting, shall not affect Tenant's liability hereunder. In no event shall Tenant be entitled to a credit or repayment for re-rental income which exceed the sums payable to Tenant hereunder or which covers a period after the original term of this Lease. Said items (1), (2) and (3) are as follows:

(1) In the event that Landlord terminates this Lease, a sum which, at the time of such re-entry, dispossession or termination, as the case may be, represents the then value (using a discount rate equal to the yield on United States Treasury obligations selected by Landlord maturing closest to the date set forth herein as the then established expiration date of the term of this Lease) of the amount by which (x) the aggregate of the Fixed Annual Rent and any regularly payable Additional Rent hereunder that would have been payable by Tenant for the period commencing with such re-entry, dispossession or termination, as the case may be, and ending on the date then established herein for the expiration of the term of this Lease exceeds (y) the aggregate

rental value of the Demised Premises, as determined by Landlord, for the same period (which sum is sometimes hereinafter called "the lump sum payment"); or

(2) Sums equal to any deficiency between the Rent hereby reserved and/or covenanted to be paid and the net amount, if any, of the rents collected (*i.e.*, the amount of rents collected hereunder less all of the costs referred to in item (3) below incurred by Landlord) on account of the lease or leases of the Demised Premises for each month of the period which would otherwise have constituted the balance of the term of this Lease. Such deficiency shall become due and payable monthly, as it is determined; and

(3) A sum to be added to such lump sum payment or deficiency, as the case may be, equal to the expenses that Landlord incurs in connection with re-letting the Demised Premises and pursuing Landlord's rights and remedies (whether or not any legal action is commenced) including, but not limited to, legal expenses, reasonable attorneys' fees, court costs, brokerage commissions, advertising costs, the value of any rent-free period, the costs of all alterations and decorations deemed advisable by Landlord to market the Demised Premises following such re-entry or dispossession or in connection with leasing the Demised Premises to a new tenant, and costs to keep the Demised Premises in good order and/or for preparing the same for re-letting.

(ii) For the purposes of determining the lump sum payment, estimates of (a) prospective retail rents, (b) leasing brokerage commissions, (c) allowances and other concessions offered to street-front retail tenants, (d) contributions to tenant improvements, (so-called free rent periods), (e) periods the Demised Premises may remain vacant before being re-let (f) and other customary street-front retail leasing costs may be used as factors for determining the rental value of the Demised Premises. Any such valuation made by Landlord based upon a valuation made by any of the ten (10) largest (as measured by gross leasable square feet for which leasing commissions were earned during the most recent calendar year preceding the date of Tenant's default) brokerage/leasing companies in the City of New York shall be conclusive and binding upon Tenant and not subject to review by any court or arbitration panel.

C. If Landlord re-enters the Demised Premises for any cause, or if Tenant abandons the Demised Premises, any property left in the Demised Premises by Tenant shall be deemed to have been abandoned by Tenant, and Landlord shall have the right to retain or dispose of such property in any manner without any obligation to account therefor to Tenant. If either party shall at any time be in default under this Lease and if the non-defaulting party shall institute an action or summary proceeding against the defaulting party based upon such default, then the losing party in such action or summary proceeding will reimburse the prevailing party for its reasonable attorneys' fees and disbursements.

D. IF TENANT SHALL AT ANY TIME DEFAULT IN THE PERFORMANCE OF ANY MONETARY OR NON-MONETARY OBLIGATION UNDER THIS LEASE AND LANDLORD SHALL (A) INSTITUTE ANY ACTION, SUMMARY PROCEEDING OR ARBITRATION OR (B) MAKE ANY CLAIM IN ANY BANKRUPTCY PROCEEDING INSTITUTED BY TENANT OR BY ANY THIRD PARTY AGAINST, TENANT, THEN TENANT SHALL REIMBURSE LANDLORD (PROVIDED IT IS THE PREVAILING PARTY)

FOR THE REASONABLE LEGAL FEES AND OTHER EXPENSES THEREBY INCURRED BY LANDLORD. FURTHERMORE, IF IN ANY ACTION, PROCEEDING, BANKRUPTCY PROCEEDING OR ARBITRATION INSTITUTED BY LANDLORD, TENANT OR ANY OTHER PARTY, LANDLORD SHALL BE COMPELLED TO OR SHALL DEEM IT NECESSARY TO ENFORCE ANY PROVISION HEREOF, IMPEAD ANY PARTY OR DEFEND AGAINST ANY CLAIM MADE OR ACTION BROUGHT BY TENANT OR ANY OTHER PARTY SEEKING TO INVALIDATE, REJECT (INCLUDING, WITHOUT LIMITATION, THE REJECTION OF THIS LEASE UNDER THE BANKRUPTCY CODE OR ANY SUCCESSOR STATUTE THERETO) OR TO PREVENT THE ENFORCEMENT OF ANY PROVISION HEREOF, LANDLORD SHALL LIKEWISE BE ENTITLED TO AND TENANT SHALL—REIMBURSE LANDLORD (PROVIDED LANDLORD IS THE PREVAILING PARTY) FOR THE REASONABLE LEGAL FEES AND OTHER EXPENSES INCURRED BY LANDLORD IN CONNECTION WITH OR ARISING OUT OF ANY SUCH ACTION, PROCEEDING, BANKRUPTCY PROCEEDING OR ARBITRATION.

E. The exercise of any remedy hereunder shall not preclude Landlord from simultaneously therewith or subsequent thereto, exercising any and all other remedies permitted by law or in equity. All remedies are deemed to be cumulative and the exercise of any one remedy shall not preclude the exercise of any other. Landlord need not apply any security hereunder to cure a default by Tenant as a condition precedent to exercising any other right or remedy and the application of any such security shall not preclude the exercise of any other remedy.

18. FEES AND EXPENSES

A. If Tenant shall default in performing any covenant or condition of this lease, Landlord may perform the same for the account of Tenant, and if Landlord, in connection therewith, or in connection with any default by Tenant, makes any expenditures or incurs any obligations for the payment of money, including but not limited to attorneys' fees and disbursements, such sums so paid or obligations incurred shall be deemed to be additional rent hereunder, and shall be paid by Tenant to Landlord, together with interest at the average of all prime rates published from time to time in *The Wall Street Journal* (Eastern Edition) plus four percent (4%), calculated from the date of each expenditure by Landlord, within five (5) days of rendition of any bill or statement therefor, and if Tenant's lease term shall have expired at the time of the making of such expenditures or incurring such obligations, such sums shall be recoverable by Landlord as damages.

B. Except in connection with the Initial Alteration Work, whenever Tenant shall submit to Landlord any plan, agreement or other document for Landlord's consent or approval, Tenant agrees to pay Landlord, upon demand as Additional Rent hereunder, a processing fee in a sum equal to the reasonable fee for review of same, including the services of any architect, engineer or attorney employed by Landlord to review said plan, agreement or document.

19. NO REPRESENTATIONS BY LANDLORD

Neither Landlord nor Landlord's agent have made any representations or promises with respect to the physical condition of the Building, the land upon which it is erected or the Demised

Premises, the Retail Unit, the rents, leases, expenses of operation, or any other matter of thing affecting or related to the Demised Premises, except as herein expressly set forth, and no rights, easements or licenses are acquired by Tenant by implication or otherwise, except as expressly set forth in the provisions of this Lease. Tenant has inspected the Building, the Retail Unit, and the Demised Premises and is thoroughly acquainted with their condition, and, subject to the performance of Landlord's Work and Landlord's maintenance and repair obligations as set forth in this Lease, agrees to take the same "as-is", and acknowledges that the taking of possession of the Demised Premises by Tenant shall be conclusive evidence that the said Demised Premises, the Retail Unit, and the Building of which the same for a part were in good and satisfactory condition at the time such possession was so taken, except as to latent defects. All understandings and agreements heretofore made between the parties hereto are merged in this contract, which alone fully and completely expresses the agreement between Landlord and Tenant, and any executory agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of it in whole or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought.

20. END OF TERM

A. Upon the expiration or other termination of the term of this Lease, Tenant shall quit and surrender to Landlord the Demised Premises, "broom-clean" in good order and condition, ordinary wear excepted, and Tenant shall remove all its property (as well as any installation or improvement which Landlord requires Tenant to remove hereunder). Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of this Lease.

B. Tenant agrees it shall indemnify and save Landlord harmless against all costs, claims, loss or liability resulting from delay by Tenant in surrendering the Demised Premises on the date of expiration or sooner termination of the term of this Lease, including, without limitation, any claims made by any succeeding tenant founded on such delay. Additionally, the parties recognize and agree that other damage to Landlord resulting from any failure by Tenant to timely surrender the Demised Premises will be substantial, will exceed the amount of monthly rent theretofore payable hereunder, and will be impossible of accurate measurement. Tenant therefore agrees that if possession of the Demised Premises is not surrendered to Landlord within one (1) day after the date of the expiration or sooner termination of the term of this Lease, then Tenant will pay Landlord as liquidated damages for each month and for each portion of any month during which Tenant holds over in the Demised Premises after expiration or termination of the term of this Lease, a sum equal to two (2) times the average Fixed Annual Rent and Additional Rent that was payable per month under this Lease during the last six (6) months of the term thereof, which sum shall be pro-rated on a per diem basis. Anything in this Lease to the contrary notwithstanding, the acceptance of any rent shall not preclude Landlord from commencing and prosecuting a holdover or summary eviction proceeding, and the preceding sentence shall be deemed to be an agreement expressly "providing otherwise" within the meaning of Section 232-c of the Real Property Law of the State of New York and any successor law of like import. Tenant expressly waives, for itself and for any person claiming through or under the Tenant, any rights which the Tenant or any such Person may have under the provisions of Section 2201 of the New York Civil Practice Law and Rules and of any successor law of like import then in force in connection with

any holdover summary proceedings which the Landlord may institute. Tenant's obligations under this paragraph shall survive the expiration or sooner termination of the term of this Lease

21. QUIET ENJOYMENT

Landlord covenants and agrees with Tenant that upon Tenant paying the Fixed Annual Rent and Additional Rent and observing and performing all the terms, covenants and conditions, on Tenant's part to be observed and performed, Tenant may peaceably and quietly enjoy the Demised Premises hereby demised, subject, nevertheless, to the terms and conditions of this Lease, including, but not limited to, Article 41 hereof and to the ground leases, underlying leases and mortgages mentioned therein.

22. POSSESSION

If Landlord shall be unable to give possession of the Demised Premises because of the retention of possession of any occupant thereof or any alteration or construction work, or for any other reason, Landlord shall not be subject to any liability for such failure. In such event, this Lease shall stay in full force and effect, without extension of its term. However, the Rent hereunder shall not commence until the Demised Premises are available for possession by Tenant. If delay in possession is due to work, changes or decorations being made by or for Tenant, or is otherwise caused by Tenant, there shall be no rent abatement and the term and rent shall commence on the date(s) specified in this Lease. If permission is given to Tenant to occupy the Demised Premises or other premises prior to the date specified as the commencement of the term, such occupancy shall be deemed to be pursuant to the terms of this Lease, except that the parties shall separately agree as to the obligation of Tenant to pay Rent for such occupancy. The provisions of this Article are intended to constitute an "express provision to the contrary" within the meaning of Section 223(a), New York Real Property Law. Landlord shall be deemed to have given and/or tendered possession of the Demised Premises to Tenant upon notifying Tenant that the Demised Premises are available for Tenant's occupancy and, when applicable, that the keys or other means of entry to the Demised Premises may be obtained from Landlord at Landlord's (or its agent's) office in the Building.

23. NO WAIVER; ARBITRATION

A. The failure of Landlord to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this Lease or of any of the Rule or Regulations set forth or hereafter adopted by Landlord, shall not prevent a subsequent act which would have originally constituted a violation from having all the force and effect of an original violation. The receipt by Landlord of Fixed Annual Rent and/or Additional Rent with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach, and no provision of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing and signed by Landlord. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement of any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any

other remedy in this Lease provided. No act or thing done by Landlord or Landlord's agents during the term hereby demised shall be deemed in acceptance of a surrender of the Demised Premises and no agreement to accept such surrender shall be valid unless in writing signed by Landlord. No employee of Landlord or Landlord's agent shall have any power to accept the keys of the Demised Premises prior to the termination of the Lease, and the delivery of keys to any such agent or employee shall not operate as a termination of the Lease or a surrender of the Demised Premises. No act or omission of Landlord or its agents shall constitute an actual or constructive partial or total eviction or give rise to a right of Tenant to terminate this Lease or receive an abatement of any portion of its rent, or to be relieved of any other obligation hereunder or to be compensated for any loss or injury suffered by it, except as otherwise explicitly set forth herein. FOR THE AVOIDANCE OF DOUBT, NO COURSE OF CONDUCT (FOR HOWEVER LONG IT MAY HAVE CONTINUED) THAT MAY HAVE DEVIATED FROM THE EXPRESS TERMS OF THIS LEASE OR CHANGE IN THE COURSE OF CONDUCT (HOWEVER LONG THE PREVIOUS COURSE OF CONDUCT MAY HAVE CONTINUED) OF LANDLORD (SUCH AS THE ACCEPTANCE OF LATE PAYMENT OF RENT WITHOUT COMPELLING PAYMENT OF A LATE CHARGE OR INSTITUTING ANY LEGAL PROCEEDING) SHALL BE DEEMED TO BE A WAIVER OR AMENDMENT OF ANY TERM OF THIS LEASE AND SHALL BE CONSTRUED SOLELY AS A TEMPORARY AND NON-BINDING ACCOMMODATION TO TENANT, AT TENANT'S REQUEST AND MADE WITHOUT PREJUDICE TO LANDLORD'S RIGHTS AND REMEDIES. This Lease contains the entire agreement between the parties, and no modification thereof shall be binding unless in writing and signed by the party concerned. No easement for light and air is conveyed by this Lease.

B. In each case specified in this Lease in which resort to arbitration shall be required, such arbitration (unless otherwise specifically provided in other provisions of this Lease) shall be in Manhattan in accordance with the Commercial Arbitration Rules of the American Arbitration Association and the provisions of this Lease, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Except as specifically set forth in this Lease, there shall be no right to arbitrate any dispute arising out of this Lease and any other action or proceeding shall be adjudicated in the state or federal courts sitting in New York County, New York.

24. WAIVER OF TRIAL BY JURY

It is mutually agreed by and between Landlord and Tenant that the respective parties hereto shall, and they thereby do, waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other (except for personal injury or property damage) on any matters whatsoever arising out of, or in any way connected with, this Lease, the relationship of Landlord and Tenant, Tenant's use of or occupancy of the Demised Premises, and any emergency statutory or other statutory remedy. It is further mutually agreed that in the event Landlord commences any proceeding or action for possession, including a summary proceeding for possession of the Demised Premises, Tenant will not interpose any counterclaim of whatever nature or description in any such proceeding, including a counterclaim under Article 16 of this Lease, except for statutory mandatory counterclaims.

25. INABILTY TO PERFORM

Except as otherwise provided in this Lease, the obligation of Tenant to pay rent hereunder and perform all of the other covenants and agreements hereunder on the part of Tenant to be performed shall in no wise be affected, impaired or excused because Landlord is unable to fulfill any of its obligations under this Lease, or to supply, or is delayed in supplying, any service expressly or impliedly to be supplied, or is unable to make, or is delayed in making, any repair, additions, alterations or decorations, or is unable to supply or is delayed in supplying, any equipment, fixtures or other materials, if Landlord is prevented or delayed from so doing by reason of strike or labor troubles, government preemption or restrictions, or by reason of any rule, order or regulation of any department or subdivision thereof of any government agency, or by reason of conditions which have been or are affected, either directly or indirectly, by war or other emergency, or when, in the judgment of Landlord, temporary interruption of such services is necessary by reason of accident, mechanical breakdown, or to make repairs, alterations or improvements.

26. BILLS AND NOTICES

A. Except as otherwise expressly provided in this Lease, any bills, statements, consents, notices, demands, requests or other communications that a party desires or is required to give to the other party under this Lease shall (1) be in writing, (2) be deemed sufficiently given if (a) delivered by hand (against a signed receipt), (b) sent by registered or certified mail (return receipt requested), or (c) sent by a nationally-recognized overnight courier (with verification of delivery), and (3) be addressed in each case:

If to Tenant prior to the
Commencement Date:

Sticky Fingers V LLC
21 Maiden Lane
New York, New York 10038
Attn: Jonathan Sherman

If to Tenant on or after the
Commencement Date:

Sticky Fingers V LLC
10 Union Square, Suite 104
New York, New York 10003
Attn: Jonathan Sherman

If to Landlord:

ESRT 10 Union Square, L.L.C.
111 West 33rd Street
New York, New York 10120
Attn: Lease Administration Department

with copies of any default notice only to:

Bleckner P.C.
350 Fifth Avenue, Suite 6440
New York, New York 10118

Attn: David J. Bleckner, Esq.

and

Empire State Realty Trust, Inc.
111 West 33rd Street
New York, New York 10120
Attn: Legal-Leasing

with a copy of any notice regarding Alterations ("Alterations Notice") to:

ESRT 10 Union Square, L.L.C.
c/o ESRT Management, L.L.C.
10 Union Square
New York, New York 10003
Attn: Amer Rada, Portfolio Manager

and

via electronic mail with a request for a "Read Receipt", sent to the attention of Vincent Sultana, at vsultanta@empirestaterealtytrust.com; it being understood and agreed that the copy of the plans included with such electronic transmission of the Alterations Notice must be legible both electronically and when printed,

or to such other address or addresses as Landlord or Tenant may designate from time to time on at least ten (10) Business Days of advance notice given to the other in accordance with the provisions of this Article 26. Any such bill, statement, demand, notice, request or other communication shall be deemed to have been rendered or given (x) on the date that it is hand delivered, as aforesaid, or (y) three (3) days after being sent by registered or certified mail or (z) one (1) Business Day after being sent by nationally recognized overnight courier. Notwithstanding anything to the contrary contained herein, an Alterations Notice shall be deemed given on the later to occur of (i) the applicable date specified in the immediately preceding sentence and (y) the date on which Tenant receives a "Read Receipt" on Tenant's electronic transmission thereof. **TENANT HEREBY EXPRESSLY WAIVES THE BENEFITS OF ANY LAW, STATUTE OR OTHER LEGAL AUTHORITY REQUIRING A PERIOD OF TIME (SUCH AS 5 DAYS) TO BE ADDED TO THE TIME REQUIRED HEREIN TO BE GIVEN FOR NOTICES.**

B. Notwithstanding the foregoing, (i) all bills, statements, notices, demands, requests and other communications from Landlord to Tenant pursuant to Article 2 or Article 3 and any notices changing any of the addresses set forth herein, may be given, at Landlord's option, by regular first class United States mail or via electronic mail sent to the party to whom Landlord's representative was so instructed to send such bills, statements, notices, demands, requests and other communications and (ii) bills and statements issued by Landlord and/or Landlord's agents or representatives, may be sent in the manner specified herein without copies to any other party.

Tenant acknowledges and agrees that if any notices of default or demands for the payment of Rent or performance of any other obligations hereunder that are sent to the address(es) set forth herein are returned as undeliverable, then such notices and demands may thereafter be sent or delivered to the Demised Premises and, notwithstanding that Tenant may have another office or place of business (of which Landlord may have knowledge) or may have vacated the Demised Premises, delivery of any such notice or demand or delivery of service of process to the Demised Premises shall be sufficient for all purposes (including, without limitation, obtaining jurisdiction over and entry of judgement against Tenant) in any action or proceeding.

C. Landlord hereby authorizes and appoints as Landlord's agents, the then current property manager, the then current managing agent of the Retail Unit, if any, and any attorney retained by Landlord at any time, jointly and severally, to act on Landlord's behalf to make demands on and give notices to Tenant hereunder, including without limitation, (i) demands for payment of Rent, performance of any obligation, or curing of any default, (ii) notices of Default or notices of termination of this Lease, and (iii) all other notices that may be required by Requirements or this Lease in connection with or as a predicate to any action or proceeding whether for rent, possession of the Demised Premises or enforcement of any other right or remedy. Tenant acknowledges and agrees that (x) such managing agent and attorney, either together or individually, are authorized to give such notices and (y) Tenant shall not (and hereby waives the right to) contest such authorization on the grounds that any such notice was not given by Landlord or raise any defense to any action or proceeding predicated on any allegation of lack of such authorization. No notice given by such agent or attorney shall be required to state or evidence the authority for giving the same, and it shall be conclusively presumed that any notice from any such managing agent or attorney was properly authorized.

D. This Article 26 has been specifically negotiated between the parties hereto.

27. WATER CHARGES

If Tenant requires, uses or consumes water for any purpose in addition to ordinary lavatory purposes (of which fact Tenant constitutes Landlord to be the sole judge), Landlord may install a water meter and thereby measure Tenant's water consumption for all purposes. Tenant shall pay Landlord for the cost of the meter and the cost of the installation thereof, and throughout the duration of Tenant's occupancy Tenant shall keep said meter and installation equipment in good working order and repair at Tenant's own cost and expense. Tenant agrees to pay for water consumed, as shown on said meter, as and when bills are rendered. Tenant covenants and agrees to pay the sewer rent, charge or any other tax, rent, levy or charge which now or hereafter is assessed, imposed or a lien upon the Demised Premises or the realty of which they are a part pursuant to law, order or regulation made or issued in connection with the use, consumption, maintenance or supply of water, water system or sewage or sewage connection or system. The bill rendered by Landlord shall be payable by Tenant as Additional Rent. If the Building or the Demised Premises, or any party thereof, be supplied with water through a meter through which water is also supplied to other premises, Tenant shall pay to Landlord, as Additional Rent, on the first day of each month Tenant's proportionate share of the total meter charges. Independently of, and in addition to, any of the remedies reserved to Landlord hereinabove or elsewhere in this

Lease, Landlord may sue for and collect any monies to be paid by Tenant or paid by Landlord for any of the reasons or purposes hereinabove set forth.

28. FIRE ALARM SYSTEMS; SPRINKLERS

Anything elsewhere in this Lease to the contrary notwithstanding, if the New York Board of Fire Underwriters or the Insurance Services Office, or any bureau, department or official of the federal, state or city government, require or recommend the installation of a sprinkler system or that any changes, modifications, alterations, or additional sprinkler heads or other equipment be made or supplied in an existing sprinkler system or that any changes, modifications, alterations, or additional sprinkler heads or other equipment be made or supplied in an existing sprinkler system by reason of Tenant's business, or the location of partitions, trade fixtures, or other contents of the Demised Premises, or for any other reason, or if any such sprinkler system installations, changes, modifications, alterations, additional sprinkler heads or other such equipment, become necessary to prevent the imposition of a penalty or charge against the full allowance for a sprinkler system in the fire insurance rate set by any said Exchange or by any fire insurance company, Tenant shall, at Tenant's expense, promptly make such sprinkler system installations, changes, modifications, Alterations, and supply additional sprinkler heads or other equipment as required, whether the work involved shall be structural or non-structural in nature. Tenant shall also pay any inspection, maintenance and upkeep expenses for the sprinkler system required by the New York City Fire Department or any other Governmental Authority.

29. HVAC; SERVICES; FREIGHT ENTRANCE; ETC.

A. Landlord will provide no cleaning services for the Demised Premises, no HVAC service, and no services other than herein or elsewhere in this Lease expressly set forth.

B. Tenant acknowledges and agrees that it will be required, at its sole cost and expense, to install any and all HVAC equipment necessary or desirable in connection with the operation of Tenant's business in the Demised Premises. Said equipment shall be maintained and repaired, and replaced, as necessary, by Tenant at Tenant's expense. Electricity used by said equipment shall be paid for by Tenant pursuant to Article 11 of this Lease.

C. Tenant shall keep and maintain the entire inside of the Demised Premises in clean and orderly condition at all times, to the reasonable satisfaction of Landlord. The interior of the Demised Premises shall be cleaned thoroughly at least once per day by Tenant. All carpets and furniture in the Demised Premises shall be kept clean and in good repair at all times, reasonable wear and tear excepted.

D. Tenant shall at its own expense make replacements to any concourse or sidewalk and curbs adjacent to the Demised Premises where made necessary by the negligence or willful misconduct of Tenant, its agents, employees, customers or contractors; and Tenant shall use reasonable efforts to keep said concourse, sidewalks and curbs free from dirt, rubbish, snow and ice.

E. Tenant shall keep all of its refuse and rubbish in air-tight containers, in a location in the Demised Premises reasonably designated by Landlord, and in compliance with the rules and regulations established by the Building and the Retail Unit from time to time and those of all governmental agencies having jurisdiction. Tenant shall independently contract for the removal of its rubbish and refuse, but only by such contractor as shall first have been approved in writing by Landlord, which approval shall not be unreasonably withheld or delayed; and removal of refuse and rubbish shall be subject to such rules and regulations as, in the reasonable judgment of Landlord, are necessary for the proper operation of the Retail Unit. Landlord hereby approves Crown Waste Corp as Tenant's rubbish and refuse removal contractor. In no event may Tenant place any of its refuse or rubbish on the sidewalk in front of the Building for pick-up, on Business Days, during Business Hours. Tenant shall provide Landlord with written proof of such contract upon demand.

F. Tenant, at its own cost and expense, shall keep the Demised Premises free from vermin, rodents or anything of like, objectionable nature ("Vermin"), and shall employ only such Vermin exterminating contractors as are approved by Landlord. In the event of Tenant's failure to keep the Demised Premises free from Vermin after ten (10) days' notice from Landlord, Landlord shall have the right, at Tenant's expense, to take all necessary and proper measures to eradicate any and all Vermin from the Demised Premises. Landlord approves RJS Pest Management as Tenant's Vermin exterminating contract.

G. All deliveries to the Demised Premises shall be made through the entrance door to the Demised Premises on 14th Street, in compliance with all applicable laws, rules and regulations, including, without limitation, the rules and regulations of the Condominium thereon. Tenant agrees that there shall be no major loading or unloading or staging of deliveries on the sidewalk in front of the Demised Premises (or the Building) during Business Hours on Business Days.

H. Landlord and/or the Condominium shall have the right to temporarily stop the service of any Building steam, sprinkler, life safety, plumbing, electrical, HVAC and/or other mechanical systems, when necessary by reason of accident, or repairs, alterations or improvement until such condition shall have been cured, and this Lease and the obligations of Tenant hereunder shall in no way be affected, nor shall Landlord and/or the Condominium be liable to Tenant or anyone else for any loss or damage to business, by reason of such stoppage of service, except as otherwise set forth herein. Landlord and/or the Condominium further shall have no responsibility or liability to Tenant for failure to supply, if and where required by this Lease, any Building steam, sprinkler, plumbing and electrical service or HVAC, when prevented from so doing by strikes, accidents or by any other cause beyond the reasonable control of Landlord and/or the Condominium, or by order or regulations of any federal, state or municipal authority, or failure of fuel supply or by the inability by the exercise of reasonable diligence to obtain suitable fuel.

I. (i) If Tenant shall install a wireless intranet, Internet, communications network or "Wi-Fi" (or other iteration thereof) capability (any of the foregoing being hereinafter referred to as a "Network") within the Demised Premises, such Network shall be for the use by and only by Tenant and its employees and customers, subject to the terms hereof. Any antenna in the Demised Premises shall not exceed one meter in size and shall, subject to the following provisions

of this paragraph I, conform to all FCC specifications. No antenna shall be permitted outside of the Demised Premises.

(ii) Tenant shall not solicit, suffer, or permit other tenants or occupants of the Building or the Retail Unit to use the Network or any other communications service, including, without limitation, any wired or wireless Internet service that passes through, is transmitted through, or emanates from the Demised Premises.

(iii) Tenant agrees that Tenant's communications equipment and the communications equipment of Tenant's service providers and contractors retained to service the Demised Premises including, without limitation, any antennas, switches, or other equipment (collectively hereinafter referred to as, "Tenant's Communications Equipment") shall be of a type and, if applicable, a frequency that will not cause radio frequency, electromagnetic, or other interference to any other party or any equipment of any other party including, without limitation, Landlord, other tenants, or occupants of the Building, the Retail Unit or any other party, in violation of FCC specifications concerning radio frequency interference (hereinafter referred to as "RFI"). In the event that Tenant's Communications Equipment causes or is believed to cause any such prohibited RFI, upon receipt of notice from Landlord of such interference, Tenant will take all steps necessary to correct and eliminate the interference. If the prohibited RFI is not eliminated within twenty-four (24) hours (or a shorter period if Landlord believes a shorter period to be appropriate) then, upon request from Landlord, Tenant shall shut down the Tenant's Communications Equipment pending resolution of the interference, with the exception of intermittent testing upon prior notice to and with the approval of Landlord. No Network or Tenant's Communication Equipment may be installed in any lobby, corridor, building common area or any other area not within the exclusive control of Tenant.

(iv) Tenant acknowledges that Landlord has granted and/or may grant lease rights, licenses, and other rights to various other tenants and occupants of the Retail Unit and to telecommunications service providers.

J. There shall be no smoking or using of vaporizers for the consumption of tobacco products or any other substances within the Demised Premises or any other portion of the Building or the Retail Unit.

K. There shall be no smoking within the Demised Premises or any other portion of the Building.

L. Notwithstanding anything to the contrary contained in this Lease, (i) Tenant agrees to do and perform everything necessary with respect to its operations and equipment in the Demised Premises and its manner of use of such equipment to prevent the spread of cooking, food and other offensive odors outside the Demised Premises and everything necessary to comply with the requirements of all governmental bodies and fire insurance underwriters with respect thereto; and (ii) if, despite complying with its obligations under the foregoing clause (i), Tenant is unable to prevent the spread of such cooking, food and/or other offensive odors outside of the Demised Premises, Landlord shall notify Tenant thereof, and if Tenant, within five (5) days after Landlord gives Tenant such notice, is still unable to cure such condition (so that such cooking, food or other

offensive odors are no longer being spread outside of the Demised Premises), of if such condition cannot reasonably be cured within such five (5) day period, if Tenant fails to commence to cure same within such five (5) day period, or to thereafter diligently prosecute such cure to completion, then Landlord, at Tenant's sole cost and expense (which sums shall be paid to Landlord on demand and as Additional Rent hereunder) may undertake such measures as are reasonably required to cause such seepage of odors outside the Demised Premises to be eliminated entirely or reduced to a level which is reasonably acceptable to Landlord. Tenant further agrees (1) to thoroughly clean the hoods over the stoves and ranges, if any, not less than quarterly, and, upon Landlord's request, to furnish a statement of completion to Landlord, attesting to the completion of each such cleaning; and (2) to thoroughly clean all air conditioning ducts within the Demised Premises on at least an annual basis, and, upon Landlord's request, to furnish a statement of completion to Landlord, attesting to the completion of such cleaning. Tenant shall maintain and install grease traps in the sewerage lines connected to its cooking equipment, as necessary to prevent the stopping of the sewerage ejecting system of the Building by such grease. Tenant shall at all times keep all stove hoods and ducts in the Demised Premises free of grease so that the same shall at no time constitute a fire hazard.

30. SECURITY DEPOSIT

A. It is agreed that Tenant shall provide Landlord with a security deposit of \$168,435.00 Dollars in the form of a letter of credit (the "Letter of Credit") which complies with the provisions of paragraphs B, C and D of this Article and is substantially in the form of the letter of credit annexed hereto and made part hereof as Exhibit E, as security for the faithful performance and observance by Tenant of the terms, provisions and conditions of this Lease. If Tenant shall comply fully with the terms of this Lease, the security shall be returned to Tenant after the date fixed as the end of this Lease. In the event of a sale or lease of the Retail Unit, Landlord may transfer the security to the purchaser or tenant, and Landlord shall thereupon be released from all liability for the return of the security and Tenant shall look solely to such purchaser or tenant for the return thereof. This provision shall apply to every transfer or assignment of the security to a new landlord. Tenant shall have no legal power to assign or encumber the security herein described.

B. The Letter of Credit shall be issued or confirmed by a banking organization chartered by the United States of America, any of the several States thereof or the District of Columbia and insured by the Federal Deposit Insurance Corporation, whose long-term, unsecured and unsubordinated debt obligations are rated in the highest category by at least two of Fitch Ratings, Ltd, (hereinafter referred to as "Fitch"), Moody's Investors Service, Inc. (hereinafter referred to as "Moody's") and Standard & Poor's Rating Service (hereinafter referred to as "S&P") (hereinafter referred to collectively as, the "Rating Agencies") or their respective successors (which on the date hereof means AAA from Fitch and S&P and Aaa from Moody's) and has a short-term deposit rating in the highest category from at least two of the aforesaid Rating Agencies (which on the date hereof means F1 from Fitch, P-1 from Moody's and A-1 from S&P) (the "LOC Criteria"). If at any time during the term hereof the banking organization which issued the Letter of Credit shall cease to satisfy the LOC Criteria or such banking organization shall be declared insolvent by the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation or any applicable State regulatory authority or shall be placed on the Federal

Deposit Insurance Corporation's "Watch List," Tenant shall, within ten (10) Business Days after notice from Landlord, replace such Letter of Credit with another Letter of Credit issued by a banking organization that satisfies the LOC Criteria and should Tenant fail to do so, Landlord may draw down the then extant Letter of Credit (in which case Tenant shall have the right to substitute a new Letter of Credit which complies with the provisions of this Article, upon which Landlord shall return such cash to Tenant) or if such Letter of Credit is not honored, require Tenant within ten (10) Business Days after notice of such dishonoring to replace the Letter of Credit with cash security. Time shall be of the essence with respect to each such ten (10) Business Day period set forth in this Article.

C. Tenant shall pay to Landlord, on demand and as Additional Rent hereunder, all fees and charges paid by Landlord to the bank issuing the Letter of Credit or any portion thereof in connection with the transfer of same to any future owner of the Retail Unit. In the event of a default by Tenant with respect to any of the terms, provisions or conditions of this Lease, Landlord shall be permitted to draw down the entire amount of the Letter of Credit or any portion thereof and apply the proceeds (or a portion thereof) in accordance with the terms and provisions hereinafter set forth. Landlord shall also have the right to draw down the entire amount of the Letter of Credit in the event that Landlord receives notice that the date of expiry of the Letter of Credit will not be extended by the issuing bank.

D. If any default occurs, Landlord may draw all or any portion of the Letter of Credit but no such draw shall work to diminish or limit the damages suffered or recoverable by Landlord, it being agreed that the Letter of Credit is Landlord's property and its return to Tenant is a reduction of the consideration for this Lease in consideration of Tenant's complete performance of its obligations.

E. Any and all cash held by Landlord as a result of a draw upon such Letter of Credit which has not been applied in accordance with the terms hereof shall be held as a security deposit in accordance with the terms of this Article, pending application by Landlord or return to Tenant as provided herein. If Landlord is holding any such cash security, Landlord may, in its sole discretion, hold such security in an interest-bearing savings account, in which case Tenant shall be entitled to the interest earned thereon annually, less the maximum administrative fee allowed by law to which Landlord shall be entitled under law. Tenant shall execute such documents (including, without limitation, a W-9 form) as Landlord may reasonably require to open such account or sub-account into which the security deposit shall be deposited.

F. It is agreed that in the event Tenant defaults in respect of any of the terms, provisions and conditions of this Lease, including, but not limited to, the payment of Fixed Annual Rent and Additional Rent, Landlord may use, apply or retain the whole or any part of the security so deposited to the extent required for the payment of any Fixed Annual Rent and Additional Rent or any other sum as to which Tenant is in default or for any sum which Landlord may expend or may be required to expend by reason of Tenant's default in respect of any of the terms, covenants and conditions of this Lease, including, but not limited to, any damages or deficiency in the reletting of the Demised Premises, whether such damages or deficiency accrued before or after summary proceedings or other re-entry by Landlord. The amount of the security deposit or any portion thereof applied to cure any default or reimburse Landlord for any costs or damages shall

not be construed as liquidated damages or deemed to limit any damages for which Landlord has a right to recover or otherwise to limit any right or remedy of Landlord at law or in equity. Tenant further covenants that it shall not assign or encumber or attempt to assign or encumber the monies (or the Letter of Credit) deposited or delivered under this Article and that neither Landlord nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance. In the event Landlord applies or retains any portion or all of the security deposited, Tenant shall forthwith restore the amount so applied or retained so that at all times the amount deposited shall be the amount herein above then required to be maintained as the security deposit, exclusive of accrued interest, if any.

G. Intentionally omitted.

H. Notwithstanding anything contained herein to the contrary, if and so long as (i) Tenant has never been in default under this Lease beyond any applicable notice, grace or cure period, and (ii) Tenant is not then in default under this Lease, then, effective as of the fourth (4th) anniversary of the Rent Commencement Date, and upon notice thereof given by Tenant to Landlord, the amount of the security deposit required under this Article shall be reduced by \$28,072.50 to a total of \$140,362.50. Such reduction in the amount of the security deposit may be effected by Tenant causing the bank issuing the Letter of Credit to deliver to an amendment to the Letter of Credit to Landlord or a new Letter of credit which complies with the applicable provisions of this Article 30 (either of which shall constitute the notice required above).

I. (i) Simultaneously herewith, Tenant is delivering to Landlord a “good guy” guaranty (hereinafter referred to as the “Good Guy Guaranty”) in the form annexed hereto and made part hereof as Exhibit G, executed by the principal of Tenant, Jonathan Sherman (hereinafter referred to as the “Good Guy Guarantor”). Landlord may pursue any remedy under the Good Guy Guaranty simultaneously with its pursuing any remedy hereunder and Tenant hereby waives any right to defend against any action, proceeding or arbitration prosecuted by Landlord based on any theory or doctrine of election of remedies.

(ii) Notwithstanding anything contained herein to the contrary, in the event of a permitted assignment of this Lease in accordance with the terms of Article 10 hereof, Landlord shall release the Good Guy Guarantor from its obligations under the Good Guy Guaranty thereafter accruing, but only if, as and when Tenant provides Landlord with a replacement good guy guaranty, in substantially the same form and substance as the Good Guy Guaranty, duly executed and unconditionally delivered by a new guarantor who shall be the sole shareholder and/or member of such assignee and shall otherwise be acceptable to Landlord in its sole but reasonable discretion.

J. (i) Simultaneously herewith, Tenant shall deliver to Landlord a Guaranty (herein referred to as the “Guaranty”) in the form annexed hereto and made part hereof as Exhibit H which is executed by Tenant’s parent company, Sticky’s Holdings LLC. Landlord may pursue any remedy under the Guaranty simultaneously with its pursuing any remedy hereunder and Tenant hereby waives any right to defend against any action, proceeding or arbitration prosecuted by Landlord based on any theory or doctrine of election of remedies.

(ii) Notwithstanding anything contained herein to the contrary, in the event of a permitted assignment of this Lease in accordance with the terms of Article 10 hereof, Landlord shall release the Guarantor from its obligations under the Guaranty thereafter accruing, but only if, as and when Tenant provides Landlord with a replacement guaranty, in substantially the same form and substance as the Guaranty, duly executed and unconditionally delivered by a new guarantor that (i) shall be reasonably acceptable to Landlord, (ii) shall be the parent company and sole owner of the assignee and (iii) shall have, immediately after the effective date of such assignment, a net worth that is equal to or greater than the net worth of the Guarantor on the date of this Lease (the "Net Worth Test"). Notwithstanding the foregoing, if the assignee in such permitted assignment satisfies the Net Worth Test, then Tenant shall not be required to provide Landlord with any such substitute guaranty from a parent company. Tenant shall, together with Tenant's request for Landlord's consent to any such assignment of this Lease, deliver to Landlord banking, financial or other credit information relating to Sticky's Holdings LLC and the proposed assignee or the parent company of such proposed assignee, as the case may be, reasonably sufficient, as determined by Landlord, to enable Landlord to determine the net worth Sticky's Holdings LLC on the date of this Lease and the net worth of the proposed assignee or its parent company, as the case may be.

31. CAPTIONS

The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe neither the scope of this Lease nor the intent of any provision thereof.

32. ADJACENT EXCAVATION - SHORING

If an excavation shall be made upon land adjacent to the Demised Premises, or shall be authorized to be made, Tenant shall afford to the person causing or authorized to cause such excavation, a license to enter upon the Demised Premises for the purpose of doing such work, as said person shall deem necessary, to preserve the wall or the Building of which the Demised Premises form a part from injury or damage and to support the same by proper foundations, without any claim for damages or indemnity against Landlord, or diminution or abatement of rent.

33. RULES AND REGULATIONS

Tenant and Tenant's servants, employees, agents, visitors, and licensees shall observe faithfully, and comply strictly with, the Rules and Regulations and such other further reasonable Rules and Regulations as Landlord or Landlord's agents may from time to time adopt. Notice of any additional rules or regulations shall be given in such manner as Landlord may elect. In case Tenant disputes the reasonableness of any additional Rule or Regulation hereafter made or adopted by Landlord or Landlord's agents, the parties hereto agree to submit the question of the reasonableness of such Rule or Regulation for decision to the New York office of the American Arbitration Association, whose determination shall be final and conclusive upon the parties hereto. The right to dispute the reasonableness of any additional Rule or Regulation upon Tenant's part shall be deemed waived unless the same shall be asserted by service of a notice, in writing, upon Landlord, within fifteen (15) days after the giving of notice thereof. Nothing in this Lease

contained shall be construed to impose upon Landlord any duty or obligation to enforce the Rules and Regulations or terms, covenants or conditions in any other Lease, as against any other tenant, and Landlord shall not be liable to Tenant for violation of the same by any other tenant, its servants, employees, agents, visitors or licensees.

34. SUCCESSORS AND ASSIGNS

The covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective heirs, distributees, executors, administrators, successors, and, except as otherwise provided in this Lease, their assigns. Tenant shall look only to Landlord's estate and interest in the land and Building for the satisfaction of Tenant's remedies for the collection of a Judgment (or other judicial process) against Landlord in the event of a default by Landlord hereunder, and no other property or assets of such Landlord (or any partner, member, officer or director thereof, disclosed or undisclosed), shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under, or with respect to, this Lease, the relationship of Landlord and Tenant hereunder, or Tenant's use and occupancy of the Demised Premises

35. SIGNS; SHOW WINDOWS; ETC.

A. Tenant shall be privileged to erect and to maintain a suitable sign or signs outside the Demised Premises, but only within such area or areas as Landlord shall designate in writing, and subject to the prior written approval of Landlord with respect to type, size, shape, design and manner of installation, and subject, also, to compliance with all applicable legal requirements or regulations and the rules and regulations of the Condominium thereon (including, without limitation, those set forth in the Tenant Manual). Landlord shall reasonably cooperate with Tenant in obtaining all necessary governmental permits and/or approvals for Tenant's installation and maintenance of Tenant's signs, including, without limitation, by signing any permit applications promptly after Landlord's receipt of same. Notwithstanding anything contained herein to the contrary, Tenant expressly acknowledges and agrees that paper signs, neon signs, "A" frame signs and illuminated ticker signs shall not be permitted. Upon the Expiration Date or sooner termination of the term of this Lease, unless Landlord shall elect otherwise in writing, Tenant at its own expense shall remove such sign or signs and restore the exterior of the Demised Premises (and the Demised Premises) to its original condition, reasonable wear and tear excepted. Such obligation of Tenant shall survive the Expiration Date or sooner termination of the term of this Lease. In no event shall Tenant place signs (or decals) on the inside, or the outside of, or displays of any kind on the inside or outside of, the store windows, open front, doors, or exterior of the Demised Premises without the prior written approval of Landlord in each instance. Notwithstanding anything contained herein to the contrary, Landlord hereby approves the installation of the signage of the design and in the location set forth in Exhibit C attached hereto and made a part hereof. Notwithstanding anything contained in the Tenant Manual to the contrary, Landlord may not withdraw its approval to signage, provided that such signage remains the same as when first approved by Landlord.

B. The parties acknowledge and agree that Landlord reserves control over the "Display Window Control Zone" of the Demised Premises, which shall be deemed to mean the exterior of

the Demised Premises and that portion of the interior of the Demised Premises which is within three (3) feet of the interior face of the exterior wall of the Building, including the right to renovate the same from time to time. The appearance of any display item (i.e., any sign, advertisement, notice, projection, awning, signal, promotional material, lettering, numbering, image, lighting, paint, merchandise, item, sticker, or other display of any kind (such items, collectively, "Display Items")) in the Display Window Control Zone shall in all respects be presented in a manner consistent with such standards of appearance and decor established by Landlord for the Demised Premises and the Retail Unit; it being understood and agreed that any such Display Items in the Demised Premises shall be deemed to be consistent with such standards of appearance and décor if they are consistent with the Display Items in the other Sticky's Finger Joint restaurants located in New York City and are not, in Landlord's judgment, highly objectionable (such as, without limitation, obscene or pornographic in nature). Landlord shall have the right to regulate the lighting (as to the type, intensity and hours of illuminations), signage and all other aspects of design, presentation and marketing of Tenant's goods and services in the Display Window Control Zone. Accordingly, Tenant acknowledges that Landlord may, at any time and from time to time throughout the term of this Lease, and at Landlord's sole discretion, remove, modify, adjust, or relocate any Display Items located or displayed within the Display Window Control Zone. Furthermore, Landlord may, at any time and from time to time throughout the term of this Lease, at Landlord's sole discretion, renovate, alter and/or improve the Display Window Control Zone, including, without limitation, affixing, erecting, inscribing, painting, installing, exhibiting or displaying within the Display Window Control Zone any Display Item selected or designed by Landlord, the costs of which shall be payable by Tenant to Landlord as Additional Rent hereunder; provided, however, that in no shall the provisions of this Article 35B entitle Landlord to prevent access to the Demised Premises or block Tenant's approved signage or window displays from the public (unless such signage or displays are, in Landlord's judgement, highly objectionable (such as, without limitation, obscene or pornographic). Tenant agrees to cooperate with Landlord and Landlord's agents, employees and contractors in the design, redesign, renovation, modification, alteration, improvement, adjustment, relocation, removal or installation of the Display Window Control Zone and/or the Display Items therein. Tenant further acknowledges and agrees that such modification, adjustment, relocation, removal and installation may be performed at such times and in such a manner as Landlord may elect, and that Tenant is not and will not be entitled to any abatement of rent or Additional Rent in connection with the same. Furthermore, Tenant hereby agrees to release Landlord and Landlord's successors and assigns of and from any claims, including, without limitation, claims by reason of loss or interruption of business, damages, liability, action or causes of action of every kind and nature whatsoever arising under or in connection with any design, redesign, renovation, modification, alteration, improvement, adjustment, relocation, removal or installation of the Display Window Control Zone and/or the Display Items therein and any obstruction or blocking of Tenant's storefront or other Display Items that may result therefrom. Tenant further acknowledges and agrees that no Display Items shall be removed from, altered or relocated within, or added to the Display Window Control Zone without Landlord's prior written approval in each instance. In the event that any Display Items are removed from, altered or relocated within or added to the Display Window Control Zone without Landlord's prior written approval, the same shall be restored by Landlord at Tenant's sole cost and expense, plus eight (8%) percent of such cost for Landlord's overhead and profit, as Additional Rent under this Lease. In addition to any other rights available to Landlord hereunder or at law or

in equity for Tenant's failure to comply with the provisions of this paragraph, Landlord shall have the right to enjoin any usage of the Display Window Control Zone not approved by Landlord.

C. In no event shall Tenant use, or permit to be used, the space adjacent to or any other space outside of the Demised Premises, for display, sale or any other similar undertaking. In no event shall Tenant use, or permit to be used, any advertising medium and/or loud speaker and/or sound amplifier and/or radio or television broadcast which may be heard in any portion of the Building outside of the Demised Premises or which does not comply with the reasonable rules and regulations of Landlord or the Condominium which then will be in effect.

D. Tenant shall, within a reasonable time after the Commencement Date (but not to exceed thirty (30) days in any event), install in the exterior windows of the Demised Premises at least one (1) "Coming Soon" sign utilizing Tenant's then standard sign scheme (including, without limitation, logo and color) for the purposes of announcing and advertising Tenant's business in the space. Additionally, if Tenant installs any sidewalk shed or barricade in front of the Demised Premises in connection with the Initial Alteration Work, then Tenant shall install "Coming Soon" signs on such sidewalk shed or barrier, as the case may be, within five (5) days after such installation. Any such "Coming Soon" signs on the exterior windows or any sidewalk shed or barricade shall be subject to the provisions of paragraph A of this Article.

E. Landlord shall have the right to prohibit any advertising or display by Tenant mentioning the Building or the Retail Unit which in Landlord's reasonable opinion tends to impair the reputation or desirability of the Building or the Retail Unit in any material respect, provided that the foregoing shall not be construed to apply to Tenant's standard advertising signage used at other stores in the New York City area to identify the location of the Demised Premises, provided further, that such advertising signage does not mention the Building, the Retail Unit, Landlord, or any affiliate of Landlord or building owned by such affiliate, except to identify the location of such building.

F. It is understood and agreed that violation by Tenant of any of the obligations or restrictions contained in this Article shall be deemed a material and substantial default by Tenant under the terms of this Lease.

36. NAME OF BUILDING

Landlord shall have the full right at any time to name and change the name of the Retail Unit and to change the designated address of the Retail Unit. The Retail Unit may be named after any person, firm, or otherwise, whether or not such name is, or resembles, the name of a tenant of the Retail Unit.

37. ANTI-TERRORISM REQUIREMENTS

Tenant represents and warrants that (i) Tenant is not listed on the list maintained by the United States Department of the Treasury, Office of Foreign Assets Control (commonly known as the OFAC List) or otherwise qualifies as a terrorist, Specially Designated National and Blocked Person or a person with whom business by a United States citizen or resident is prohibited (each a

“Prohibited Person”); (ii) Tenant is not in violation of any to anti-money laundering or anti-terrorism statute, including, without limitation, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, U.S. Public Law 107-56 (commonly known as the USA PATRIOT Act), and the related regulations issued thereunder, including temporary regulations, and Executive Orders (including, without limitation, Executive Order 13224) issued in connection therewith, all as amended from time to time; and (iii) Tenant is not acting on behalf of a Prohibited Person. Tenant shall indemnify and hold Landlord harmless from and against all claims, damages, losses, risks, liabilities and costs (including fines, penalties and legal costs) arising from any misrepresentation in this paragraph or Landlord’s reliance thereon. Tenant’s obligations under this paragraph shall survive the expiration or sooner termination of the term of this Lease.

38. DEFINITIONS; ETC.

A. The term “Landlord” as used in this Lease means only the owner, or the mortgagee in possession, for the time being of the land and the Retail Unit (or the owner of a lease or sublease of the Retail Unit or of the land and Building), so that in the event of any transfer of title to said land and Building or said lease, or in the event of a lease of the Retail Unit, upon notification to Tenant of such transfer or lease the said transferor Landlord shall be and hereby is entirely freed and relieved of all existing or future covenants, obligations and liabilities of Landlord hereunder, and it shall be deemed and construed as a covenant running with the land without further agreement between the parties or their successors in interest, or between the parties and the transferee of title to said the Retail Unit or said lease, or the said lessee of the Retail Unit, that the transferee or the lessee has assumed and agreed to carry out any and all such covenants, obligations and liabilities of Landlord hereunder.

B. The words “re-enter” and “re-entry” as used in this Lease are not restricted to their technical legal meaning.

C. The term “Business Days” as used in this Lease shall exclude Saturdays, Sundays and all days observed by the Federal, State or local government as legal holidays as well as all other days recognized as holidays under applicable union contracts. The term “Business Hours” as used in this Lease shall mean 8:00 a.m. to 6:00 p.m. on Business Days.

D. If Tenant is more than five (5) days late in making any payment due to Landlord from Tenant under this Lease, then interest shall (without requirement of notice to Tenant) become due and owing to Landlord on such payment from the date when it was due, computed at the lesser of (i) ten percent (10%) per annum or (ii) the maximum legal rate of interest payable by a tenant of the nature of this Tenant.

E. The words “shall” and “will” are interchangeable, each imposing a mandatory obligation upon the party to whom such verb applies. The words “include” and “including” shall be interpreted to mean “including, without limitation.” The word “control” and the variations thereof used in this Lease shall have the meanings ascribed to them under the Securities Act of 1933, as amended, and the regulations promulgated under it. Wherever appropriate in this Lease, personal pronouns shall be deemed to include the other genders and the singular or plural of any

defined term or other word shall, as the context may require, be deemed to include, as the case may be, either the singular or the plural. All Article and paragraph and subparagraph references set forth herein shall, unless the context otherwise specifically requires, be deemed references to the Articles, paragraphs and subparagraphs of this Lease.

F. Wherever herein Tenant is required to comply with laws, orders and regulations of any governmental authority having or asserting jurisdiction over the Demised Premises, such laws, orders and regulations shall include, without limitation, each such law, order and regulation referenced in Article 6 and any other law, order or regulation referenced in Article 42, as each may be amended and any successor statutes of like or similar import.

G. References to Landlord as having no liability to Tenant shall mean that, except as otherwise provided in this Lease, Tenant is not entitled to terminate this Lease, or to claim actual or constructive eviction, partial or total, to receive any abatement or diminution of rent, to be relieved in any manner of any of its other obligations hereunder, to be compensated for loss or injury suffered or to enforce any other kind of liability whatsoever against Landlord under or with respect to this Lease or with respect to tenant's use or occupancy of the Demised Premises.

I. The term "termination of this Lease" or any variant thereof shall mean the "termination of the term of this Lease."

39. RENT CONTROL; ETC.

A. In the event the Fixed Annual Rent, percentage rent or Additional Rents or any part thereof provided to be paid by Tenant under the provisions of this Lease during the demised term shall become uncollectible or shall be reduced or required to be reduced or refunded by virtue of any Federal, State, County or City law, order or regulation, or by any direction of a public office or body pursuant to law, or the orders, rules, code or regulations of any organization or entity be public or private, then Landlord, at its option, may at any time thereafter terminate this Lease, by not less than thirty (30) days' written notice to Tenant, on a date set forth in said notice, in which event this Lease and the term hereof shall terminate and come to an end on the date set forth in said notice as if the said date were the date originally fixed herein for the termination of the demised term. Landlord shall not have the right to so terminate this Lease if Tenant within such period of thirty (30) days shall in writing lawfully agree that the rentals herein reserved are a reasonable rental and agree to continue to pay said rentals, and if such agreement by Tenant shall then be legally enforceable by Landlord.

B. If any provision of this or any other Article of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of such Article, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of such Article and of this Lease shall be valid and be enforced to the fullest extent permitted by law.

C. In construing this Lease, it shall be deemed to be a document fully negotiated and drafted jointly by counsel to Landlord and counsel to Tenant and the authorship of any term or provision hereof shall not be deemed germane to its meaning. The existence or non-existence in

any prior draft hereof of any term or provision whether included herein or not shall not be relevant to the establishment of the intent of the parties hereto or the meaning of any term or provision hereof and may not be used as evidence to establish any such intent or meaning.

D. This Lease shall be deemed to have been made in New York County, New York, and shall be construed in accordance with the laws of New York. All actions or proceedings relating, directly or indirectly, to this Lease shall be litigated only in courts located within the County of New York. Landlord and Tenant, any guarantor of the performance of Tenant's obligations hereunder and their respective successors and assigns, hereby subject themselves to the jurisdiction of any state or federal court located with such county. Tenant hereby waives the right to raise any defense based upon inconvenient forum or make any plea or motion seeking to remove any case to another venue.

40. BROKERAGE

Tenant represents and warrants that it neither consulted nor negotiated with any broker or finder with regard to the Demised Premises other than Zelnik & Company, LLC (the "Broker") and SRS Real Estate Partners-Northeast, LLC ("SRS"). Tenant agrees to indemnify, defend and save Landlord harmless from and against any claims for fees or commissions from anyone other than the Broker with whom Tenant has dealt in connection with the Demised Premises or this Lease (including, without limitation, SRS). Landlord agrees to pay any commission or fee due and owing to the Broker pursuant to separate agreements with them. Nothing in this Article 40 shall be construed to be a third party beneficiary contract.

41. SUBORDINATION; ESTOPPEL CERTIFICATE; SUPERIOR LEASE

A. This Lease and Tenant's rights hereunder are and shall be subject and subordinate to any and all master leases of the Retail Unit, ground or underlying leases and to all mortgages, Building loan agreements, Leasehold mortgages, spreader and consolidation agreements and other similar documents and instruments, as well as the Condo Documents (as hereinafter defined), and to any renewals, modifications, consolidations, replacements or extensions of the Condo Documents (individually, a "Superior Interest" and collectively, "Superior Interests"), which may now or hereafter affect such Leases or the real property of which the Demised Premises form a part and to all renewals, modifications, consolidations, replacements, extensions, assignments, spreaders, consolidations and refinancings thereof and to all advances made or hereafter made thereunder. The term "Condo Documents" when used herein shall mean any and all instruments executed, delivered, adopted or filed for the purpose of causing the building, or any subparts thereof (including common elements), to be converted into, and to be regulated as, condominium property and to constitute one or more condominium units (including subdivisions thereof) pursuant to the New York State Condominium Act or any future law of similar purposes, including, without limitation, the Declaration, bylaws, offering plan, rules and regulations, floor plans and other similar documents, and any modifications or amendments thereto.

B. Any holder of a Superior Interest may elect that this Lease shall have priority over such Superior Interest and, upon notification by such holder of a Superior Interest to Tenant, this Lease shall be deemed to have priority over such Superior Interest, whether this Lease is dated prior to or subsequent to the date of such Superior Interest. In the event that any master lease or

any other ground or underlying lease is terminated as aforesaid, or if the interests of Landlord under this Lease are transferred by reason of or assigned in lieu of foreclosure or other proceedings for enforcement of any mortgage, or if the holder of any mortgage acquires a lease in substitution therefor, or if the holder of any Superior Interest shall otherwise succeed to Landlord's estate in the Lease or the Retail Unit, or the rights of Landlord under this Lease, then Tenant will, at the option to be exercised in writing by the lessor under any such master lease or other ground or underlying lease, the holder of any other Superior Interest or such purchaser, assignee or lessee, as the case may be, (i) attorn to it and will perform for its benefit all the terms, covenants and conditions of this Lease on the Tenant's part to be performed with the same force and effect as if said lessor, mortgagee or such purchaser, assignee or lessee, were the landlord originally named in this Lease, or (ii) enter into a new lease with said lessor, mortgagee or such purchaser, assignee or lessee, as landlord, for the remaining term of this Lease and otherwise on the same terms, conditions and rentals as herein provided. The foregoing provisions shall inure to the benefit of any such successor landlord, shall apply notwithstanding that, as a matter of law, this Lease may terminate upon the termination of any Superior Interest, shall be self-operative upon any such request and no further instrument shall be required to give effect to said provisions; provided, however, that upon request of any such successor landlord, Tenant shall promptly execute and deliver, from time to time, any reasonable and customary instrument in recordable form that any successor landlord may reasonably request to evidence and confirm the foregoing provisions of this paragraph, in form and content reasonably satisfactory to each such successor landlord, acknowledging such attornment and setting forth the terms and conditions of its tenancy. Upon such attornment, this Lease shall continue in full force and effect as a direct lease between such successor landlord and Tenant upon all of the then executory terms of this Lease except that such successor landlord shall not be: (a) liable for any previous act or omission or negligence of any prior landlord under this Lease (including, without limitation, Landlord); (b) subject to any counterclaim, demand, defense, deficiency, credit or offset which Tenant might have against any prior landlord under this Lease (including, without limitation, Landlord); (c) bound by any modification, amendment, cancellation or surrender of this Lease or by any prepayment of more than one month's rent or Additional Rent (or more than three (3) months Additional Rent where such rent payments are payable in intervals of more than one month), unless such modification, cancellation, surrender or prepayment shall have been approved in writing by the successor landlord; (d) bound by any security deposit, cleaning deposit or other prepaid charge which Tenant might have paid in advance to any prior landlord under this Lease (including, without limitation, Landlord), unless such payments have been received by the successor landlord; and (e) bound by any agreement of any landlord under this Lease (including, without limitation, Landlord) with respect to the completion of any improvements affecting the Demised Premises, the Retail Unit, or any part thereof or for the payment or reimbursement to Tenant of any contribution to the cost of the completion of any such improvements.

C. From time to time, Tenant, on fifteen (15) days' prior written request by Landlord, will deliver to Landlord and the holder of any Superior Interest a statement in writing certifying that this Lease is unmodified and is in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications) and the dates to which the rent and other charges have been paid, stating the date of expiration of the term hereof and whether any renewal options exists (and if so, the terms thereof), stating whether any defense or counterclaim to the payment of any rent exists, whether any allowance or work is due to Tenant

from Landlord, stating whether or not Landlord is in default in performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which Tenant may have knowledge stating whether any bankruptcy case has been commenced with respect to Tenant, and containing such other information as the holder of any Superior Interest may request. Any such statement that contains language to the effect that such statement is not a waiver of rights or remedies for possible but unspecified defaults or with respect to defaults discovered subsequent to the delivery of the statement and/or that in the case of a conflict between such statement and this Lease, that the terms of this Lease control, shall not comply with Tenant's obligations under this paragraph D. If Tenant shall fail to deliver such a statement within such ten (10) day period, Landlord is hereby appointed the true and lawful attorney-in-fact of Tenant, coupled with an interest, for the purpose of executing and delivering such statement on behalf of Tenant and the holder of any such Superior Interest may rely on any such certificate so executed and delivered. Nothing contained herein will be deemed to impair any right, privilege or option of the holder of any Superior Interest. If, in connection with obtaining, continuing or renewing financing or refinancing for the Retail Unit and/or the land, the lender shall request reasonable modifications to this Lease as a condition to such financing or refinancing, Tenant will not unreasonably withhold, delay or defer its consent thereto, provided that such modifications do not increase the obligations of Tenant hereunder, decrease Tenant's rights (other than to a de minimis extent), or materially and adversely affect the leasehold interest created by this Lease. If any act or omission by Landlord shall give Tenant the right, immediately or after the lapse of time, to cancel or terminate this Lease or to claim a partial or total eviction, Tenant shall not exercise any such right until: (a) it shall have given written notice of such act or omission to each holder of any Superior Interest of which it has written notice, and (b) a reasonable period for remedying such act or omission shall have elapsed following such notice (which reasonable period shall be equal to the period to which Landlord would be entitled under this Lease to effect such remedy, plus an additional thirty (30) day period), provided such holder or lessor shall, with reasonable diligence, give Tenant notice of its intention to remedy such act or omission and shall commence and continue to act upon such intention. Tenant agrees that, except for the first month's rent hereunder, it will pay no rent under this Lease more than thirty (30) days in advance of its due date.

D. Landlord agrees that Landlord shall use commercially reasonable efforts to obtain (i) from Metropolitan Life Insurance Company (the "Existing Lender"), the holder of the existing mortgage encumbering the Retail Unit, and (ii) from the holder of any other superior mortgage hereafter encumbering the Retail Unit, for the benefit of Tenant, a subordination, non-disturbance and attornment agreement ("SNDA"), in the form then customarily used by the Existing Lender or such holder, as the case may be, but in any event providing in substance that so long as Tenant is not in default under this Lease beyond any applicable notice and/or grace period, the grantor of such SNDA will not take any action to recover possession of the Demised Premises, notwithstanding any foreclosure of such mortgage. However, Landlord's failure to obtain such SNDA, despite the exercise of such commercially reasonable efforts by Landlord, shall not affect the validity or effectiveness of this Lease, which shall remain in full force and effect. Tenant shall promptly execute and deliver such SNDA and shall pay any reasonable attorneys' fees incurred by the grantor of such SNDA in connection with the preparation and negotiation of such SNDA.

42. INTENTIONALLY OMITTED

43. LATE CHARGES

If Tenant shall fail to pay all or any part of any installment of Fixed Annual Rent or Additional Rent for more than ten (10) days after the same shall have become due and payable, Tenant shall pay, upon demand, as Additional Rent hereunder to Landlord a late charge of five (\$.05) cents for each dollar of the amount of such Fixed Annual Rent or Additional Rent which shall not have been paid to Landlord within such ten (10) days after becoming due and payable. Tenant acknowledges that the payment of rent after the date when first due shall result in loss and injury to Landlord the exact amount of which is not susceptible of reasonable calculation and that the aforesaid amount of late charge represents a reasonable estimate of such losses and injury under the circumstances, especially after taking into account the grace period hereby afforded Tenant before such late charge is to be imposed. The late charge payable pursuant to this Article shall be without prejudice to any of Landlord's rights and remedies hereunder at law and equity for non-payment or late payment of rent or other sums and in addition to any such rights and remedies, including the right to institute and prosecute a proceeding under Article 7 of the Real Property Actions and Proceedings Law. No failure by Landlord to insist upon the strict performance by Tenant of Tenant's obligation to pay late charges as provided in this Article shall constitute a waiver by Landlord of its right to enforce the provisions of this Article in any instance thereafter occurring. The provisions of this Article shall not be construed in any way to extend the grace periods or notice periods provided for elsewhere in this Lease.

44. CONDOMINIUM PROVISIONS

A. Notwithstanding anything in this Lease to the contrary, if at any time during the term hereof, Landlord shall receive written notice from the Condominium, unit owners of the Condominium or other occupants of the Condominium or other persons that any use or manner of use or the operation of the Demised Premises or part thereof (whether or not such use or manner of use is otherwise in compliance with the provisions hereof) by Tenant or other persons claiming by, through or under Tenant, violates any provision of the Condo Documents or results in a breach of any duty or obligation which Landlord may have or owe to the Condominium, any unit owner of the Condominium or other occupant of the Condominium or other person, then Tenant hereby agrees to indemnify, defend and hold Landlord, its successors and assigns, harmless from and against any cost, loss or expense (including reasonable attorney fees) suffered or incurred by Landlord, its successor or assigns, in connection with any such claim and any action or proceeding thereon, such indemnification obligation to survive the expiration or other terminations of this Lease.

B. If at any time, pursuant to law or the provisions of the Condo Documents, the Building shall cease to be a Condominium, unless any condition exists pursuant to which this Lease may otherwise be terminated, then, this Lease shall continue in full force and effect between Tenant and the new owner of the Building, except, that this Lease shall be deemed modified to delete provisions relating to the Condominium which are no longer relevant. At the request of Landlord, Tenant will execute a modification of this Lease confirming such changes at that time.

C. Tenant acknowledges that certain matters may require the consent of the board of managers pursuant to the Condo Documents, and Tenant agrees that if the board of managers shall

deny (or be deemed to have denied) its consent, then such denial (or deemed denial) of consent shall conclusively be deemed a reasonable basis for Landlord to deny its consent, without the necessity of Landlord bringing legal action against the party which has denied (or is deemed to have denied) such consent to determine the propriety of such denial and/or whether such party was acting reasonably with respect to such denial. However, upon Tenant's written request, Landlord shall use commercially reasonable efforts to obtain such consent. If any fee or other charge is required by the board of managers or any other party pursuant to the Condo Documents in connection with any request for consent made by Landlord in connection with a request of Tenant, then Tenant shall pay all such amounts to Landlord upon demand therefor as a condition to Landlord's obligation to seek such consent.

D. With regard to any items of repair, maintenance, restoration, services or other obligations of Landlord under this Lease which under the Condo Documents are the duty or responsibility of the Condominium, the board of managers, or the owner of any other unit in the Condominium (each of the foregoing being a "Responsible Party"), Landlord shall use commercially reasonable good faith effort to cause the Responsible Party to comply with such duty or responsibility, including, without limitation, by exercising Landlord's rights under the Declaration and Condo Documents as a Unit Owner to cause the Common Elements, as such term is defined in the Condo Documents, to be operated, maintained, repaired and replaced during the term of this Lease by the Condominium in the manner required by the Condo Documents, and Landlord shall have no liability to Tenant for the performance (or the failure to perform) such work or obligations and Tenant shall look directly to the Responsible Party (if same is not Landlord) whose obligation is involved for such work or obligations therefor and for any damages therefrom; provided, however, that Landlord shall reasonably cooperate with Tenant in connection therewith, including, without limitation, by permitting Tenant to commence an action against the Responsible Party, in Landlord's name if necessary, but at Tenant's sole cost and expense. Without limiting the foregoing, the failure of any Responsible Party to perform any of its obligations shall not be the grounds for any termination of this Lease by Tenant on the basis of a claim for constructive eviction against Landlord.

E. Neither Landlord nor Tenant shall do anything that would constitute a default under the Condo Documents or omit to do anything that such party is obligated to do under the terms of this Lease so as to cause there to be a default under the Condo Documents, or cause the other to incur any such expense or liability under the Condo Documents (and, if either party shall cause the other to incur any such expense in violation hereof, the party causing the same shall reimburse the other party within thirty (30) days after demand.).

F. Notwithstanding anything contained in this Lease to the contrary, if the Demised Premises shall be totally damaged or rendered wholly untenable by fire or other casualty, and the repair or restoration of the Demised Premises or a portion thereof shall be the obligation of the Condominium under the Condo Documents, or if the Demised Premises and/or the Commercial Unit shall be materially damaged by fire or other casualty and the effective use of the Demised Premises shall be dependent upon such repair and restoration which are the obligation of the Condominium under the Condo Documents, and in either such event the Condominium shall exercise its right under the Condo Documents not to perform such repair and restoration, then, in any of such events, Landlord shall give to Tenant, within ninety (90) days after such casualty (or,

if the Condominium has not yet made its election, within fifteen (15) days after the Condominium exercises such right), a five (5) days' notice of termination of this Lease and, in the event such notice is given, this Lease and the term hereof shall come to an end and expire whether or not said term shall have commenced, upon the expiration of said five (5) day period were the date originally set forth herein for the expiration of the term, and the Fixed Annual Rent and all Additional Rent shall be apportioned as of such date.

G. Notwithstanding anything contained in this Lease to the contrary, Tenant will not knowingly use or permit the Demised Premises to be used or occupied in any manner which will violate the Condo Documents. This Lease does not create any right in favor of Tenant to purchase the Demised Premises, now or at any time in the future, except as otherwise specifically set forth herein. Landlord may at any time lease, sell, transfer, or subdivide into separate condominium units all or part of the Unit. Tenant agrees that it shall promptly execute and deliver to Landlord any and all documents or instruments necessary or desirable to effectuate such transactions. Landlord shall not agree to any modification of the Condo Documents that adversely affects Tenant's rights under this Lease or increases any obligations of Tenant under this Lease other than in each instance to a de minimus extent (unless Landlord assumes responsibility for such increased obligations).

H. Notwithstanding anything contained in this Lease to the contrary, Tenant agrees to observe and comply with rules and regulations promulgated by the Condominium, as such rules and regulations apply to the Demised Premises, provided they do not materially increase Tenant's obligations or materially decrease Tenant's rights hereunder.

45. CONFIDENTIALITY

Tenant agrees to keep the terms of this Lease confidential and shall use commercially reasonable efforts to cause its agents to do so and Tenant and its agents shall not disclose same to any other person not a party hereto without the prior written consent of Landlord (including, without limitation, posting the terms of this Lease or any part thereof on the internet or in any mailing or providing a copy to third parties via electronic mail), provided that Tenant may disclose the terms hereof (i) to Tenant's accountants, attorneys, employees, and others in privity with Tenant such as Tenant's lenders, professional advisors, prospective lenders or prospective purchasers of Tenant's business to the extent reasonably necessary for Tenant's business purposes without such prior consent but subject to the confidentiality requirement hereof, and (ii) pursuant to government order or court order without Landlord's prior consent.

46. LEASE SUBMISSION

A. Landlord and Tenant agree that this Lease is submitted to Tenant on the understanding that it shall not be considered an offer and shall not bind Landlord in any way unless and until (a) Tenant has duly executed and delivered duplicate originals hereof to Landlord and tendered all sums and other documents due upon the execution hereof and (b) Landlord has executed and delivered a duplicate original of this Lease to Tenant.

B. If Tenant is a corporation, partnership, limited liability company or other form of organization or association, each individual executing this Lease on behalf of Tenant hereby agrees that by executing this Lease such individual represents and warrants to Landlord that Tenant is a duly formed and validly existing entity and that Tenant has full right and authority to execute and deliver this Lease and that each person signing on behalf of Tenant is authorized to do so.

47. LANDLORD'S CANCELLATION OPTION

Effective as of 11:59 p.m. on April 30, 2023 (the "Cancellation Date"), if Landlord has a bona fide intention to combine the Demised Premises with any space adjacent thereto in connection with a lease of the premises (or a portion thereof), currently designated as Suite 105, located on the first (1st) floor of the Building, Landlord shall have the right to cancel this Lease ("Landlord's Cancellation Right"), subject to Landlord's compliance with the following terms and conditions:

A. Landlord shall give Tenant written notice of such election to cancel on or before May 1, 2022. Notwithstanding anything contained herein to the contrary, if Landlord fails to give Tenant written notice of such election to cancel on or before May 1, 2022, then Landlord shall no longer have the right to exercise Landlord's Cancellation Right.

B. Notwithstanding any such cancellation by Landlord hereunder, Tenant shall remain liable to satisfy any obligation of Tenant under any of the terms, covenants, and conditions of this Lease which accrued up to and including the Cancellation Date. Such obligations of Tenant shall be satisfied within the periods provided herein, and such obligations of Tenant shall survive any such cancellation.

C. Upon cancellation and surrender of possession as provided in this Article, Landlord and Tenant shall be relieved of any obligations under this Lease, except for those accruing on or prior to the Cancellation Date.

D. On or prior to the Cancellation Date, Tenant shall vacate the Demised Premises and surrender possession thereof to Landlord in accordance with the provisions of this Lease, as if said Cancellation Date were the original expiration date hereof, and Tenant shall execute any documents reasonably required by Landlord in connection with said cancellation. If Tenant fails to vacate and surrender possession of the Demised Premises in accordance with the foregoing provisions of this paragraph D, then Tenant shall be deemed to be holding over in the Demised Premises and shall be subject to the provisions of Article 20B of this Lease.


E. Provided that Tenant vacates the Demised Premises in accordance with the first sentence of paragraph D above, then, within thirty (30) days after the Cancellation Date, Landlord shall pay to Tenant an amount equal to \$500,000.00 (as reimbursement to Tenant for certain unamortized costs incurred by Tenant in connection with this Lease, including, without limitation, the costs of performing Initial Alteration Work).

48. COUNTERPARTS

This Lease may be executed in one (1) or more counterparts, each of which counterpart shall be an original and all such executed counterparts shall constitute one agreement, binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart. Delivery of an executed counterpart of this Lease by facsimile or electronic transmission in a Portable Document Format ("PDF") or other digital format shall be equally effective as manual delivery of an executed counterpart of this Lease, and each such counterpart, whether delivered manually, by facsimile or PDF or such other digital format shall be deemed an original. Any party delivering an executed counterpart of this Lease by facsimile or PDF or other digital format shall also manually deliver an executed counterpart of this Lease; however the failure to do so shall have no effect on the validity, enforceability or binding nature and effect of this Lease.

IN WITNESS WHEREOF, Landlord and Tenant have respectively signed and sealed this Lease as of the day and year first above written.

LANDLORD:
ESRT 10 UNION SQUARE, L.L.C.
By: Empire State Realty OP, L.P., its sole member
By: Empire State Realty Trust, Inc., its general partner

By: 
Name: Thomas P. Durels
Title: Executive Vice President
Director of Leasing and Operations

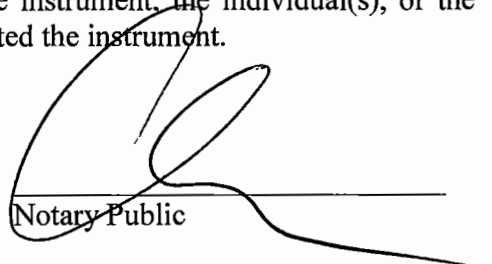
TENANT:
STICKY FINGERS V LLC

By: 
Name: Jonathan Sherman
Title: CEO

UNIFORM FORM CERTIFICATE OF ACKNOWLEDGMENT
(Within New York State)

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

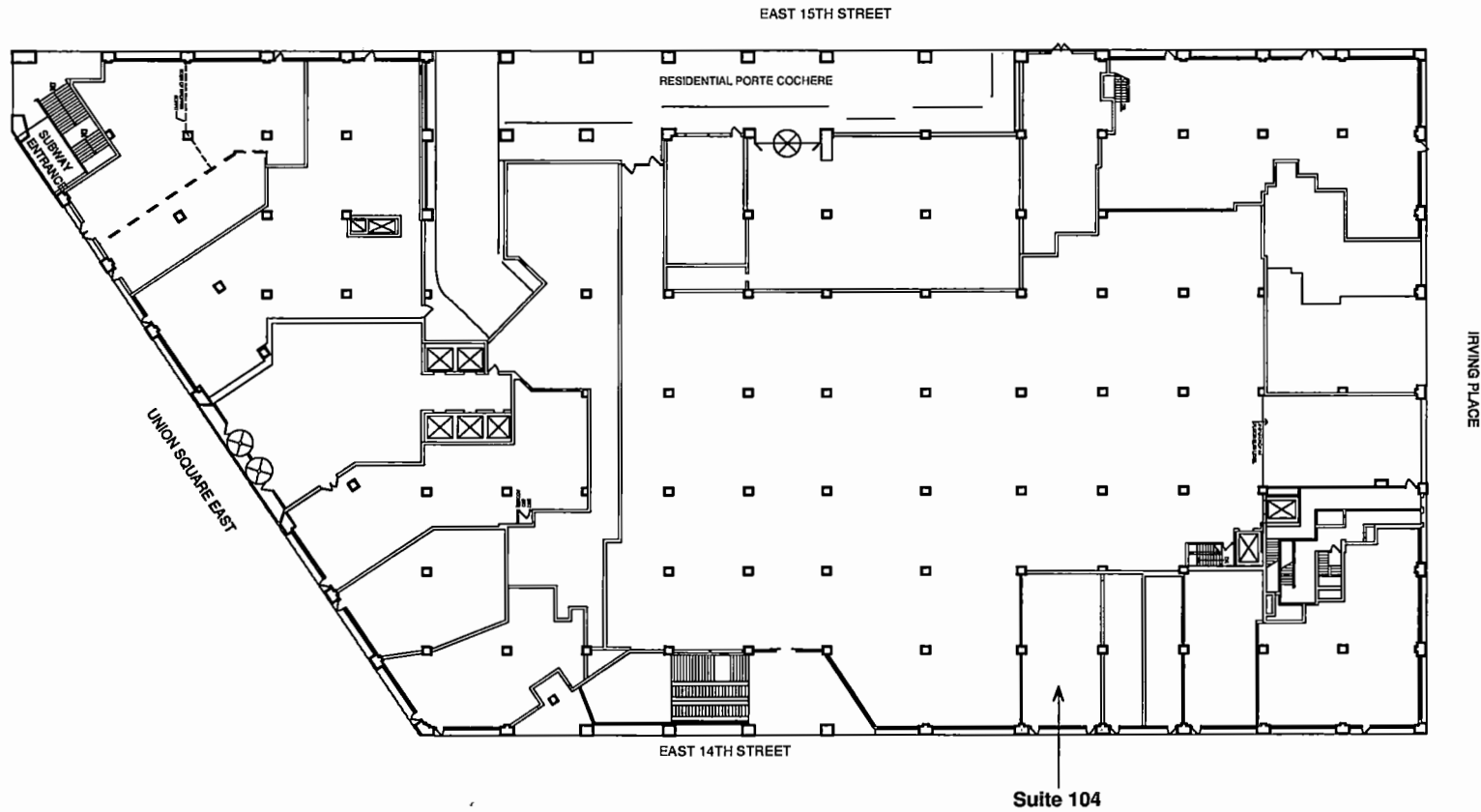
On the 31 day of October, in the year 2017, before me, the undersigned personally appeared Joseph Shuman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


Notary Public

DAVID FEINBERG
Notary Public, State of New York
No. 02FE6148584
Qualified in Nassau County
Commission Expires June 26, 20 18

EXHIBIT A

DIAGRAM OF THE DEMISED PREMISES



EMPIRE STATE
REALTY TRUST

Union Square
New York, NY

Ground Level

All areas and dimensions
are approximate. Field
verification is necessary.
Date Updated: 3/30/2017



LINK
SYSTEMS

212 East 47th St
Suite 6D
New York, NY 10017
Ph 877 221-0229
Fx 646 964-6624

EXHIBIT B

RESTRICTIVE COVENANTS

A + P Restrictive Covenants

the option to renew this Lease for a third additional period of five (5) years (the "Third Renewal Term"). The third renewal option shall expire and be of no force of effect unless exercised by Tenant giving written notice thereof to Landlord at least nine (9) months prior to the expiration of the Second Renewal Term. All of the terms, conditions and provisions of this Lease shall remain in full force and effect during the Third Renewal Term, except that the Fixed Minimum Rent shall be \$940,510.86 per annum.

D. Neither the options granted to Tenant to renew this Lease nor the exercise of such options by Tenant shall prevent Landlord from exercising any right granted or reserved to Landlord in this Lease to terminate this Lease, either during the original Lease Term or during the Renewal Terms. Any termination of this Lease shall serve to terminate the renewal options whether or not Tenant shall have exercised same. Any right on the part of Landlord to terminate this Lease shall continue during the Renewal Terms and the options granted to Tenant to renew this Lease shall not be deemed to give Tenant any further option to renew. The term "Lease Year" as used herein shall include any Renewal Term exercised by Tenant.

61. RESTRICTIVE COVENANT:

A. Landlord covenants and agrees (and in the event the Building is at any time subject to a condominium then the Condominium Declaration shall provide) that except as otherwise provided in Paragraph 61 D no portion of the Commercial Area (other than the Demised Premises) shall be used, leased or occupied for the retail sale, for off-premises consumption, of the following foods (hereinafter collectively referred to as the "Restricted Product"):

- (1) groceries ("groceries" being defined as canned, refrigerated, frozen or packaged food);
- (2) produce ("produce" being defined as fruits and vegetables);
- (3) milk and dairy products (but the term "milk and dairy products" does not include ice cream, whether hard or soft, frozen yogurt, or similar products);
- (4) delicatessen, ("delicatessen" being defined as ready to eat cooked meats, poultry and fish and cheeses and prepared salads);
- (5) bakery items (but this restriction does not apply to the sale of cookies, croissants, donuts or bagels);
- (6) uncooked meat or poultry;
- (7) uncooked fish;
- (8) packaged cheese.

B. If (1) the Lease is terminated, or (2) the Demised Premises remains closed for a period of time more than one hundred eighty (180) consecutive days (as such period may be extended by Unavoidable Delays) for any reason other than (a) to permit remodeling, or (b) to permit repair of damage or destruction to the Demised Premises resulting from a fire or other casualty or from a taking of the Demised Premises by condemnation, or (3) the use of all or substantially all of the Demised Premises is changed from use as a supermarket, then Landlord shall have the right to terminate the restrictive covenant set forth in Paragraph 61A by giving thirty (30) days notice to Tenant and if such notice be given, the restrictive covenant shall terminate on the date set forth in such notice unless the Demised Premises reopen, or the use is changed back to use as a supermarket, as the case may be, within such thirty (30) day period. If within six (6) months of the date Tenant first opens a supermarket for business in the Demised Premises, Tenant has not opened a department therein selling any particular category of Restricted Product enumerated in Paragraphs 61 A (1) - (8), or in the event Tenant opens such department and thereafter such department is closed for a period of time greater than thirty (30) consecutive days for any reason other than those described in clauses 2 (a) or (b) of the first sentence in this Paragraph 61 B, then Landlord shall have the right to terminate, as to any such category of Restricted Product, the applicable portion of the restrictive covenant set forth in Paragraph 61A by giving thirty (30) days notice to Tenant, and if such notice be given, the restrictive covenant shall terminate as to such category on the date set forth in such notice unless such department opens, or reopens, as the case may be, within such thirty (30) day period. In the event any portion of the restrictive covenant set forth in Paragraph 61A is terminated, Tenant shall, within ten (10) days after written request by Landlord, execute, acknowledge and deliver to Landlord a written confirmation of such termination.

C. Intentionally deleted.

D. The restrictions set forth in Paragraph 61 A shall not prohibit the use or occupancy of any portions of the Commercial Area for any or all of the following uses, all of which are expressly permitted:

- (1) one or more restaurants, of any kind or nature whatsoever, without limitation as to size or style, or the type or kind of food or beverage being sold, including the Restricted Product, which restaurants may provide take-out or delivery service in addition to the on-premises consumption of food, provided however, that:
 - (a) such sales of Restricted Product may be made only in connection with the ordinary business of a restaurant, and not as a non-restaurant retail store or department;
 - (b) a restaurant may not engage in the retail sale of items of Restricted Product except for items which are the same (but in either cooked or uncooked form) as items served by such restaurant (for example, a steak restaurant may sell at retail uncooked meat similar to the cooked meat which it serves to patrons and a delicatessen restaurant may sell at retail cold cuts and other delicatessen products similar to the cold cuts and other delicatessen products which it serves to patrons);
 - (c) a "delicatessen type" restaurant must devote not less than forty percent (40%) of its non-storage floor area to table service.

- (2) one or more stores of the type commonly known as "fast-food" operations primarily selling prepared foods, including the Restricted Product, for ready consumption, such as, by way of illustration and not of limitation, cookies, ice cream, candy, chicken, hamburgers, fish, popcorn, pizza or croissants, provided however, that:
 - (a) such sales of Restricted Product may be made only in connection with the ordinary business of a "fast-food" operation, and not as a non "fast-food" retail store or department;
 - (b) a "fast-food" operation may not engage in the retail sale of items of Restricted Product except for items which are the same (but in either cooked or uncooked form) as items served by such "fast-food" operation, and
 - (c) no "fast-food" operation may primarily sell delicatessen;

- (3) uses such as "coffee services" or "luncheon wagons" servicing the Commercial Area or "in-house" cafeterias or dining rooms servicing one or more tenants in the Commercial Area; and

- (4) one or more stores consisting of a combination restaurant "fast food"/bakery operation such as Au Bon Pain, or of the nature of Everything Yogurt (sale of frozen yogurts and salads, etc.); and

- (5) up to four (4) stores in the Commercial Area may each have incidental to its primary business one or more sales areas or showcases devoted to one or more of the Restricted Products, excluding, however, uncooked meat or poultry and uncooked fish, provided that the aggregate display capacity of Restricted Product in any of such stores shall not exceed eighty (80) cubic feet. For purposes of computation, for all items except delicatessen, aggregate display capacity shall be the actual height of the display times the actual width of the display times the greater of (a) the actual depth of the display or (b) two (2) feet, and for delicatessen, aggregate display capacity shall be the actual dimensions of the showcase displaying the delicatessen measured from the outside of the showcase, together with the cubic area, if any, beneath the showcase; the cubic area beneath the showcase shall be calculated by multiplying the distance from the floor to the bottom of the case by the width of the case (which shall be the widest dimension of the case) by the depth of the case (which shall be the deepest dimension of the case).

62. CONDOMINIUM REPRESENTATION:

A. The Condominium Declaration shall provide (i) that at least one member of the condominium board shall be selected by the owners of condominium units comprising the Commercial Area and that any such member may be a lessee of a portion of such unit or its designee and (ii) that the right of such representation may not be abridged without the consent of all owners of the condominium units comprising the Commercial Area. Provided Tenant, not less than six (6) months prior to the next scheduled election of condominium board members involving a seat controlled by Landlord, has given notice to Landlord requesting direct representation on the condominium board, Landlord shall thereafter, during the term of this Lease and until such time as Tenant notifies Landlord that it does not wish its designee to serve in such capacity, select Tenant's designee to fill one seat on the condominium board and on any commercial board. If Tenant elects direct representation on the condominium board under the preceding sentence and thereafter advises Landlord that it does not wish its designee to serve on the condominium board, Tenant shall have no further right to direct representation on the condominium board or commercial board. Landlord further agrees that it shall not vote to abolish any seat on the condominium board or the commercial board held by Tenant's designee. Tenant agrees that on each occasion when a person must be designated by it to fill any such seat it will cause a responsible individual to accept such designation, will cause such individual to attend meetings and otherwise diligently discharge his or her responsibilities as a member of the condominium board and/or the commercial board, and will at all times keep Landlord advised of the matters considered and actions taken by said individual(s) and said board(s).

CHIPOTLE RESTRICTIVE COVENANT

“67. Neither Landlord nor its affiliates or successors or assigns shall permit or suffer any other tenant on the 14th Street side of the Retail Unit, other than any tenant or other occupant of the 14th Street side of the Retail Unit on the date hereof, to engage in the sale of burritos, Mexican food wraps, fajitas or tacos (the “Exclusive Use”) provided, however, the foregoing Exclusive Use shall not be deemed or construed to be violated in the event a tenant or other occupant of the 14th Street side of the Retail Unit which operates a full service sit down restaurant in the 14th Street side of the Retail Unit which does not principally serve Mexican food, serves burritos, Mexican food wraps, fajitas or tacos which are incidental to its main menu items (i.e., the sale thereof collectively do not account for more than ten (10%) percent of such other tenant’s revenues in any given calendar year).”

EXHIBIT C

APPROVED SIGNAGE

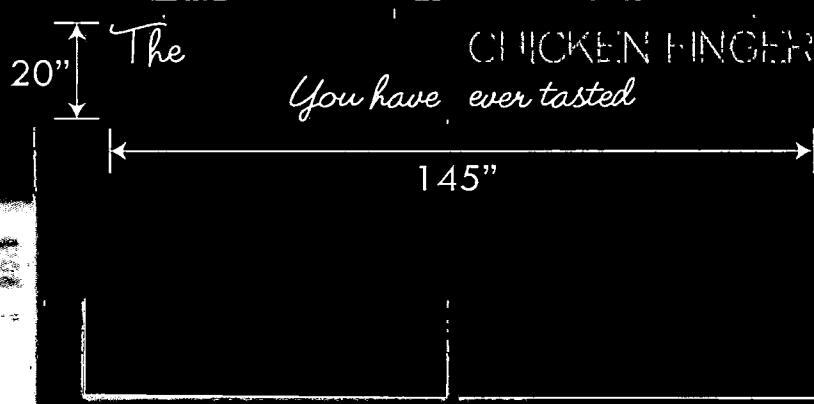
Option 3 Channel Letters

- LED illumination
- Translucent red faces
- Mounted to raceway painted to match facade



Option 3 Window Neon

- Mounted to clear deadframe
- Remote transformers



Exact locations of details illustrated in this drawing may vary from final fabrication and installation. These details can include neon unit sections, electrode placement, wires, support posts, etc.



LETTERBENEON
 38 WHITE STREET • NYC 10013
 212.226.4883
 WWW.LETTERBENEON.COM

CLIENT
Sticky's
 PROJECT
10 Union Square East

DATE 9/19/2017
 10/27/2017

BY GLR	REP Jeff
SCALE NTS	PAGE# 1 of 1

?

EXHIBIT D
TENANT MANUAL

TENANT MANUAL

10 UNION SQUARE EAST

AKA 159-173 UNION SQUARE EAST

101-119 EAST 14TH STREET

2-18 UNION SQUARE EAST

1 IRVING PLACE



Empire State Realty Trust, Inc.
ESRT 10 Union Square L.L.C.
111 West 33rd Street, 12th Floor
New York, New York 10120
212-850-2700

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INTRODUCTION

This tenant manual provides new tenants and their architects with an overview of the design concept and parameters for the entire storefront signage renovation. Further, it details specific guidelines for the selection and specification of storefront banner and signage materials for their use in preparation of construction documents to be submitted to the landlord for review and approval.

The sign band is designed to accept the individual channel lit lettering specified for the project. This system allows a great variety in signage while maintaining a consistent quality.

Banners are used to provide retail vitality as well as unity to the streetscape. Banners are consistent in color, height, length and projection from the building.

UNION SQUARE EAST ESRT PROJECT PERSONNEL

PORTFOLIO MANAGER:

Mr. Amer Rada
Empire State Realty Trust
111 West 33rd Street, 12th Floor
New York, New York 10120
212-850-2788
arada@empirestaterealtytrust.com

VICE PRESIDENT:

Mr. Vincent Sultana
Empire State Realty Trust
111 West 33rd Street, 12th Floor
New York, New York 10120
212-850-2718
vsultana@empirestaterealtytrust.com

SENIOR VICE PRESIDENT, LEASING & MARKETING:

Mr. Fred Posniak
Empire State Realty Trust
111 West 33rd Street, 12th Floor
New York, New York 10120
(212) 850-2618
fposniak@empirestaterealtytrust.com

ARCHITECT:

Mr. Neil Carnow
Neil Carnow a.i.a. Architect
52 Blair Heights
Carmel, NY 10512
(845) 704-1622
nca@neilcarnowarchitect.com

ZECKENDORF TOWERS - RESIDENTIAL SECTION OF ONE UNION SQUARE EAST CONDO

PROPERTY MANAGER: Toni D'Egidio
Maxwell-Kates, Inc.
Tel: (212) 260-5521
Fax: (212) 228-8768
TDeGidio@maxwellkates.com

FRONT DESK: (212) 529-6030

SUPERINTENDENT: Anthony Medina
(212) 979-1509
Amedina1irving@nyc.rr.com

MOUNT-SINAI HEALTH SYSTEM – PHILLIPS AMBULATORY CARE CENTER

Ed Cucu	Doug Hentz
Tel: (212) 844-8981	(212) 844-8983
Mobile: (917) 295-1130	dhentz@chpnet.org
ecucu@chpnet.org	

UNION SQUARE EAST OVERVIEW

The subject premises encompass the entire block bounded by Union Square East, East 14th Street, Irving Place and East 15th Street.

The building consists of a seven-story base with four towers of 27 stories each.

The superstructure consists of reinforced concrete beams and columns, and reinforced concrete floor slabs. The exterior walls are brick walls.

The building was filed with the Department of Buildings under N.B. #48/85 and completed in mid 1987.

A condominium sub-division plan was filed with the Real Property Assessment Bureau on August 5, 1987. The condominium plan was subsequently amended five times.

The units created by the Condominium sub-division are the "Office" unit, the "Retail" unit, Theater" unit, "Garage" unit and the "Residential" unit.

The retail unit consists of a portion of the cellar, and the majority of the first floor.

The retail unit, according to the Declaration of Condominium is obligated in its percent in common interest for maintenance of General Common Elements, Commercial Limited Common Elements and Retail Limited Common Elements.

*The General Common Elements consists of the following architectural and structural components:

- a) All foundations, footings, columns, girders, beams, supports, interior load bearing walls.
- a) Exterior walls.
- b) Service corridor at cellar and sub-cellar.
- c) Sixth/seventh floor roof garden & structural slab.
- d) Driveways and private sidewalk on East 15th Street.
- e) All sidewalks adjacent to building (implied in declaration).

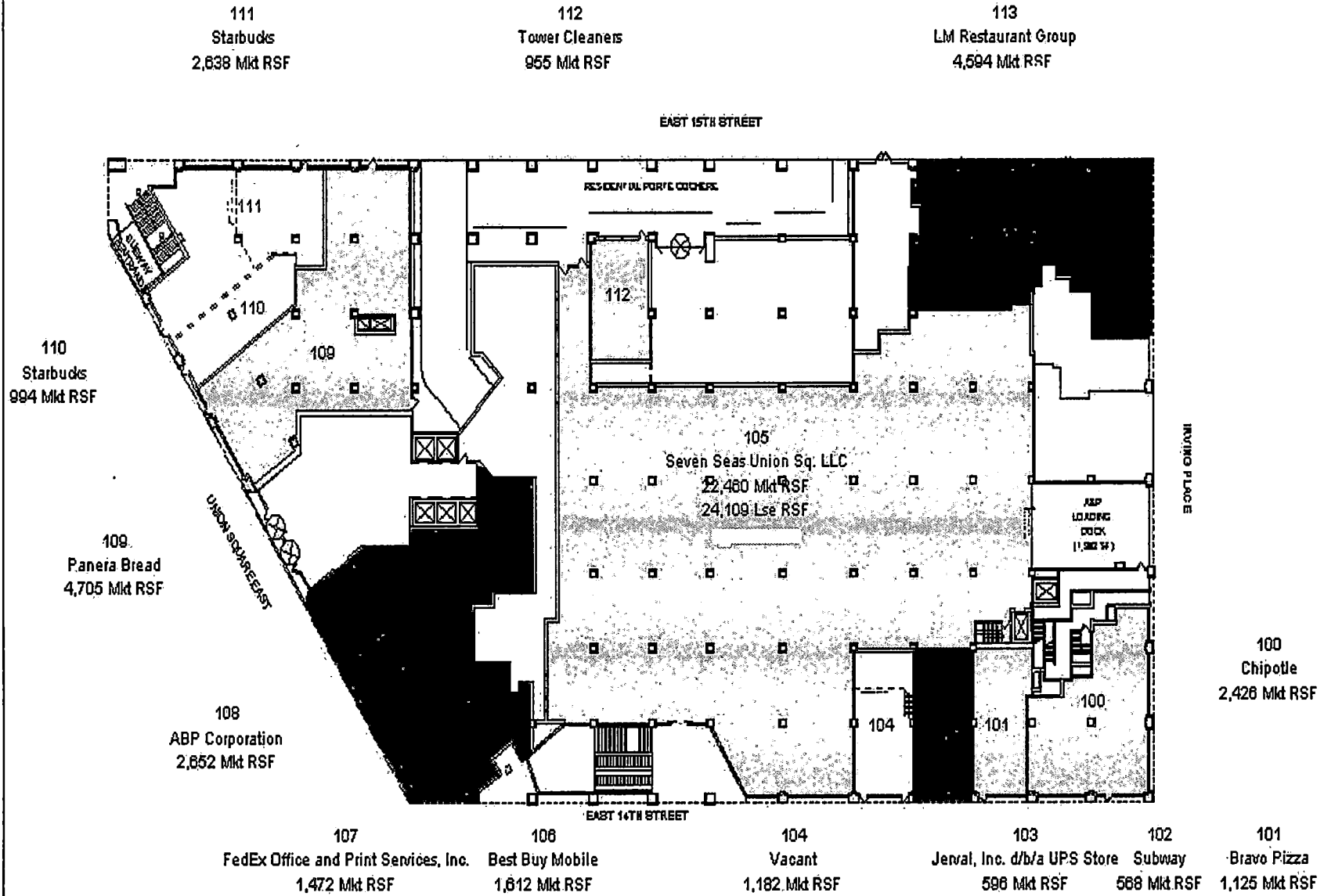
THE ZECKENDORF TOWERS	
Building Square Footage:	1,071,823
Residential Square Footage:	470,546
Office Square Footage:	466,387
Retail Square Footage:	63,105
Garage Square Footage:	59,634
Lot Dimensions:	244 Feet x 425 Feet
Block/Lot:	00870-7501
Zoning District:	C6-4
Neighborhood:	Union Square/Gramercy Park
Year Built:	1988

LIST OF CONTRACTORS AND SUPPLIERS

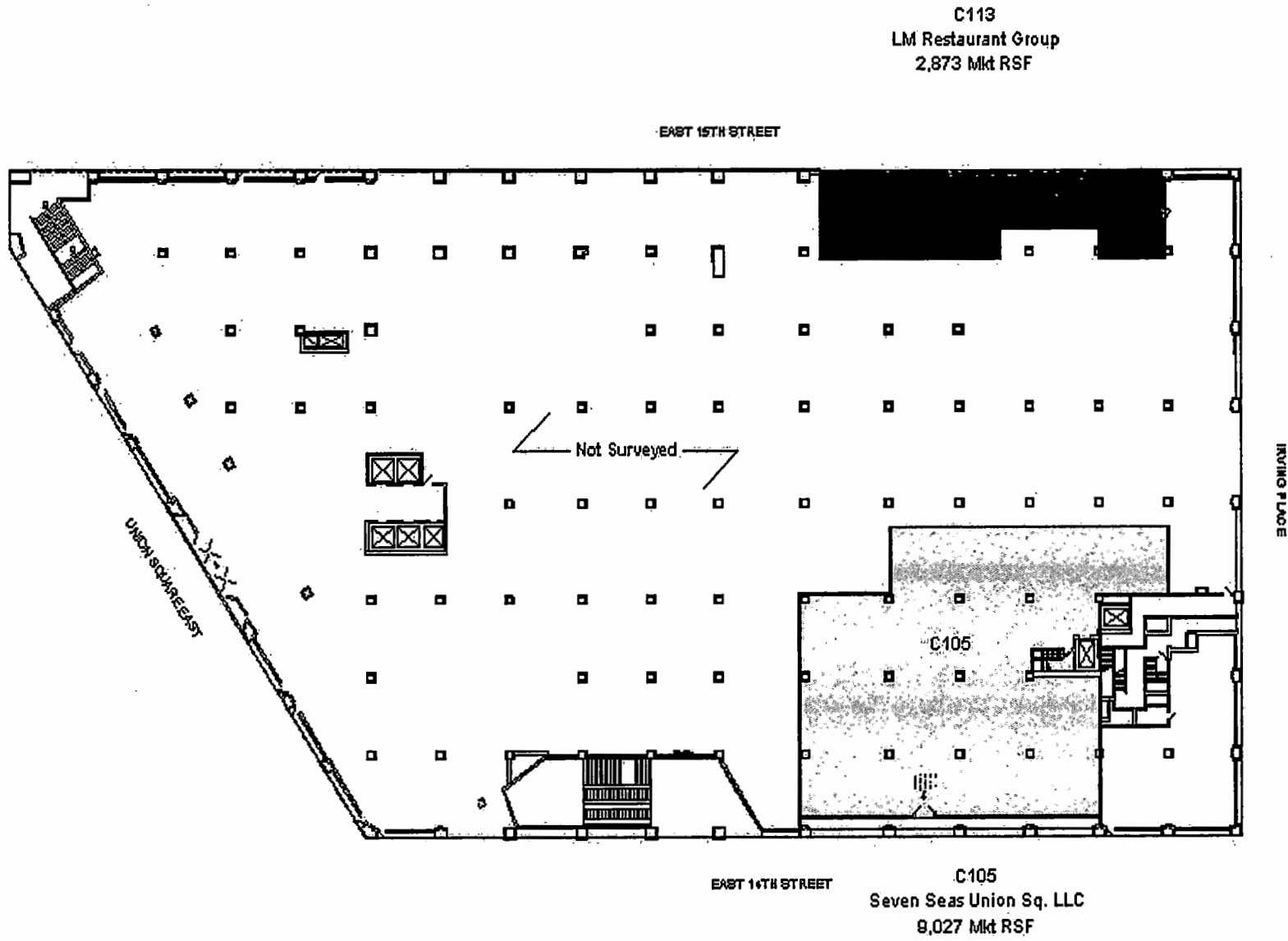
The following list of supplier and contractors are authorized vendors for this project. Contractor substitutions must be approved by landlord.

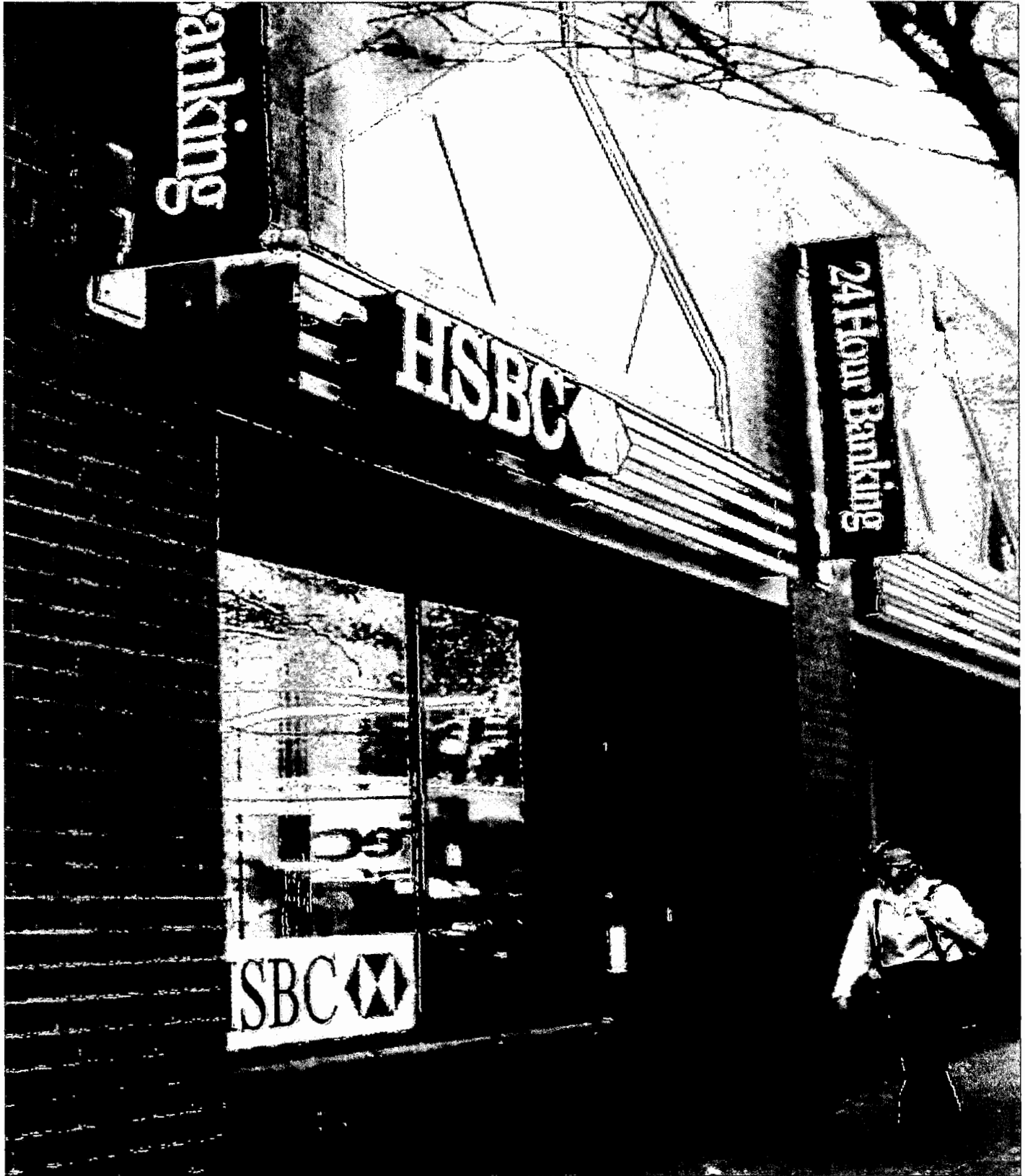
1. Banner Fabrication & Installation of Banner, Sign Box Face and Sign Band:
Tru-Art Sign Co.
187 N. Main Street
Freeport, NY 11520
Phone: (516) 378-0066
Fax: (516) 378-0175

10 UNION SQUARE EAST SITE MAP - GROUND FLOOR



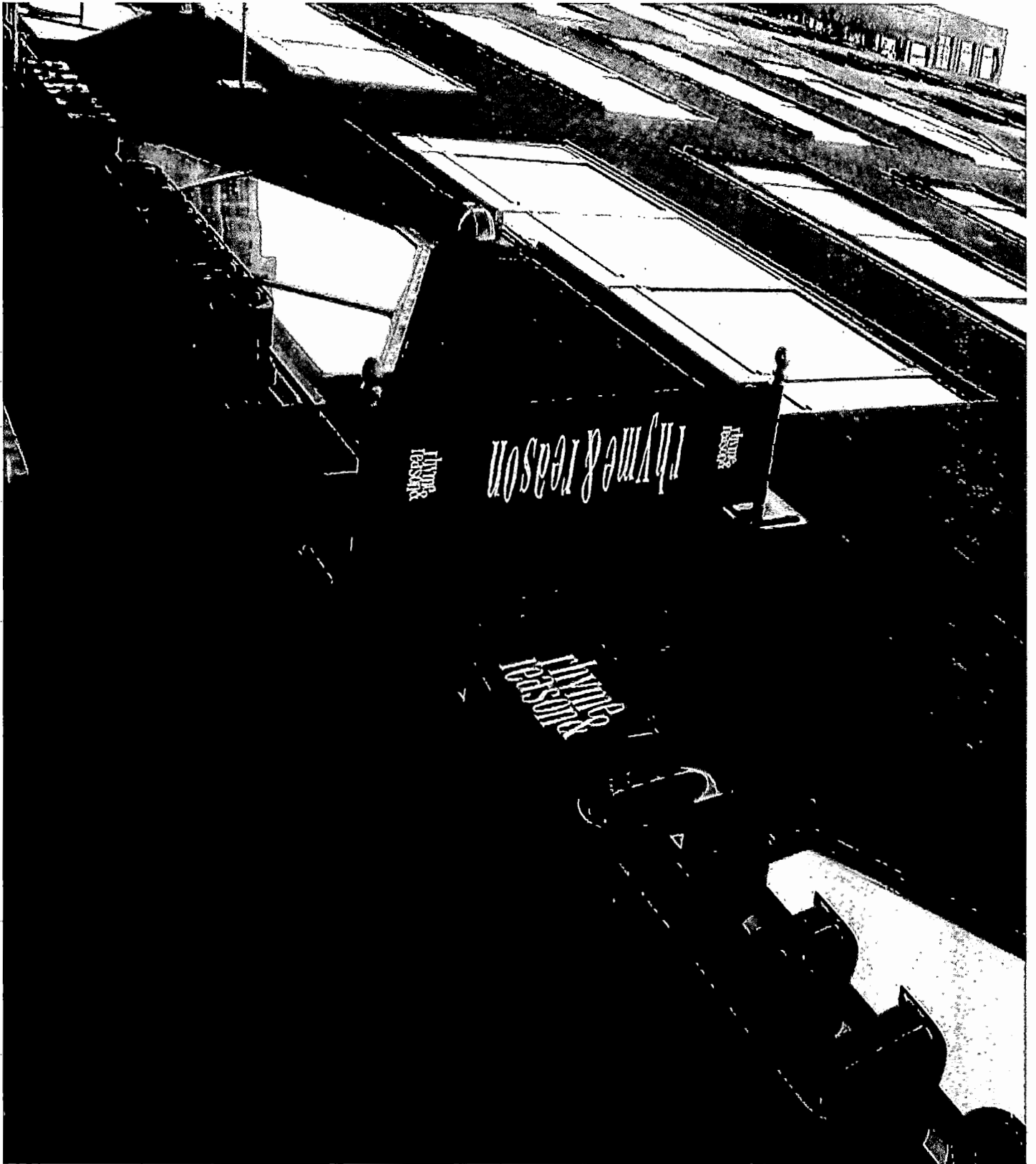
10 UNION SQUARE EAST SITE MAP - CELLAR



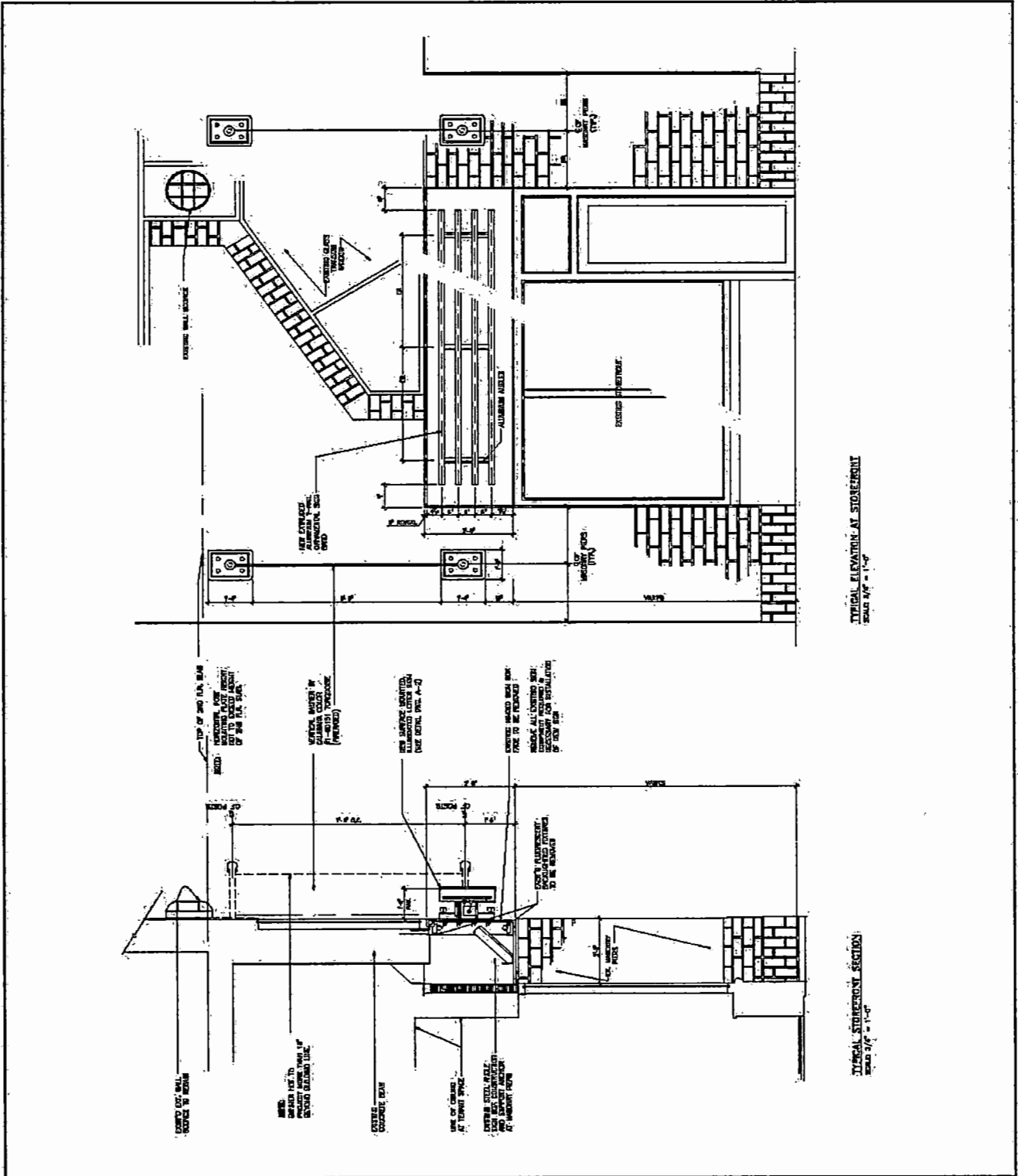








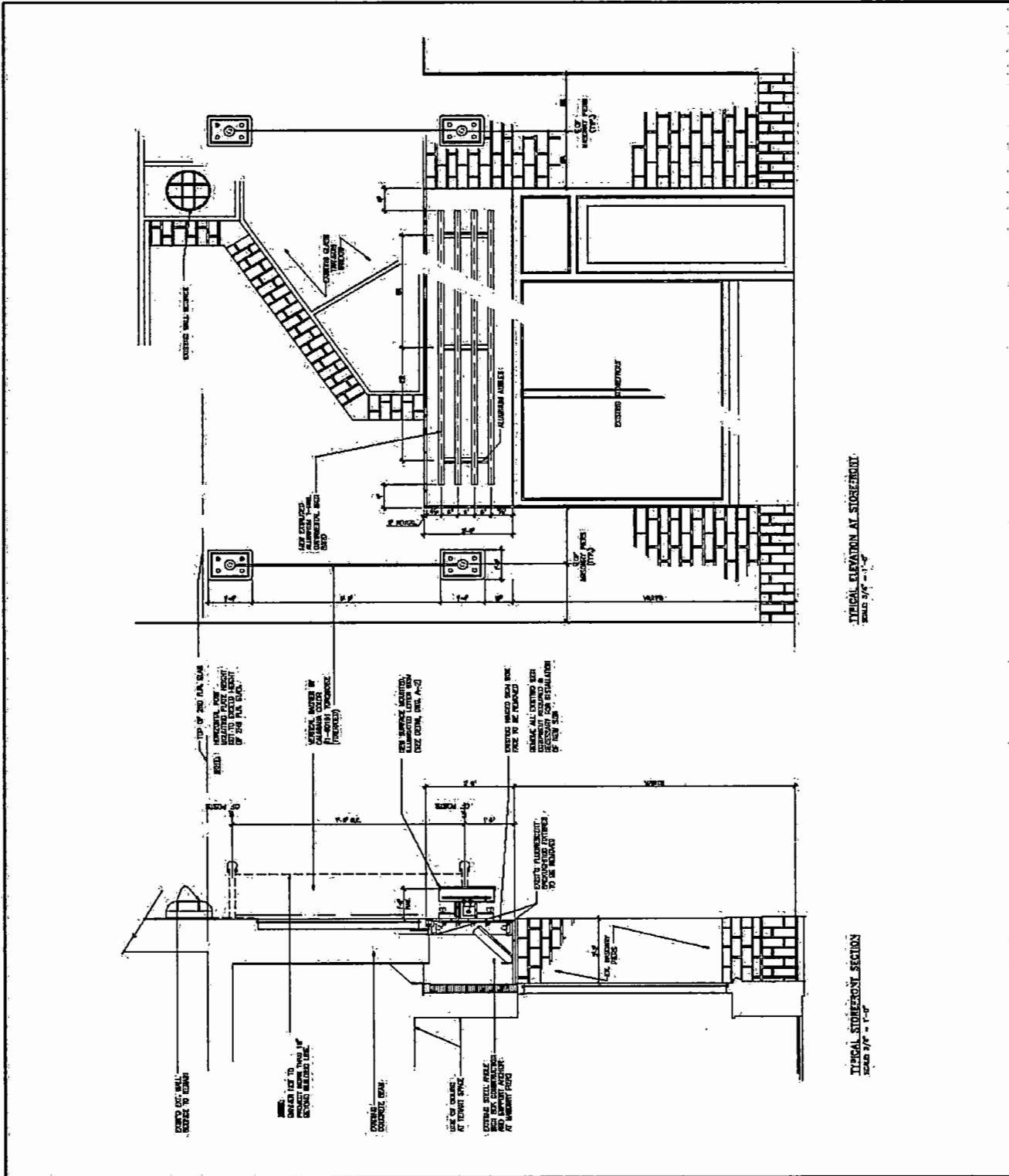
TYPICAL 'STOREFRONT' SECTION.



TYPICAL ELEVATION AT STOREFRONT
SCALE 3/4" = 1'-0"

TYPICAL STOREFRONT SECTION
SCALE 3/4" = 1'-0"

TYPICAL STOREFRONT SECTION

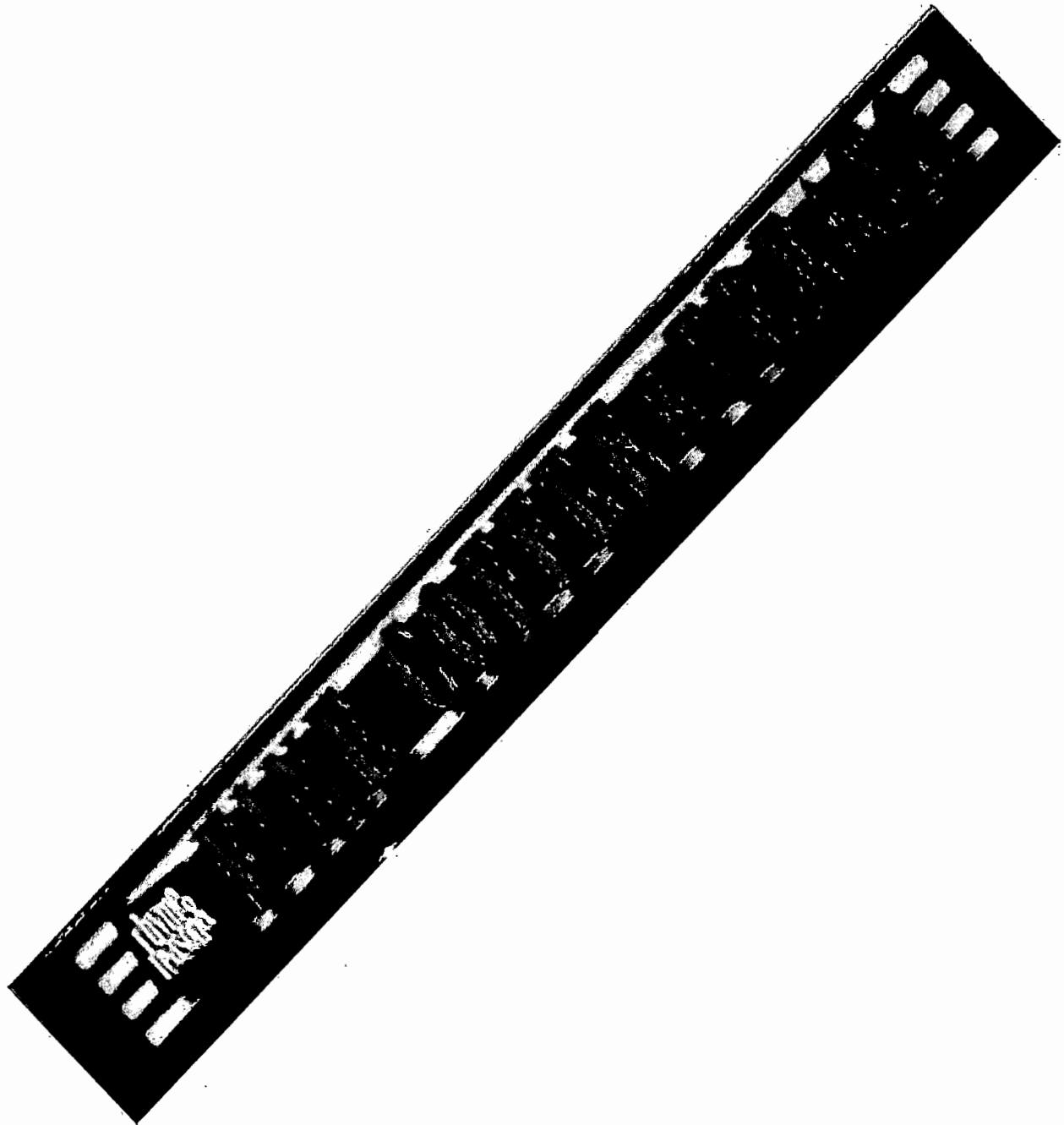


TYPICAL ELEVATION AT STOREFRONT
SCALE: 3/4" = 1'-0"

TYPICAL STOREFRONT SECTION
SCALE: 3/4" = 1'-0"

SIGN BAND EXAMPLE

SIGN BAND EXAMPLE



UNION SQUARE EAST DESIGN CRITERIA

1. SIGN AND BACKGROUND AREA

- A. Intended to provide new consistent material and color background for building façade and to house new sign band. See detail.
- B. New 1/8" thick aluminum panel painted to match building standard green. See detail.

2. SIGN BAND

- A. Sign bands shall be installed as shown on detail in this manual.

3. TENANT IDENTIFICATION SIGN

- A. All signs shall be individual channel letters with internal illumination.
- B. Letter returns shall be minimum 4" and maximum 6" deep and shall be "Dark Bronze Metallic" by Alliance Metals.
- C. The face of individual letters shall be acrylic sheet as manufactured by PLEXIGLAS in the following colors:

1) Blue	#2051	6) Ivory	#2146
2) Blue	#2114	7) Yellow	#2037
3) Light Blue	#2648	8) Orange	#2119
4) Green	#2030	9) Red	#2415
5) Green	#2108	10) White	#7328

- D. Signs shall start and stop a minimum of 1'-0" from end points of sign band. In larger stores, permitted length shall be approved by landlord's architect.
- E. Sign letter height shall be less than or match the height of sign band; sign letters will be a maximum of 18" in height and a minimum of 6" in height.

4. HVAC: HVAC requirements will be determined on a store by store basis.

5. NEON AND SIGN POWER CONNECTION

- It will be the responsibility of each tenant to provide the necessary power to operate the exterior tenant sign associated with the demised premises. A photosynthesis switch is required to automatically turn signage on at dusk and off at dawn. Tenant shall indicate this information including amperage and voltage requirements of exterior sign(s), point of connection to exterior sign, branch circuit riser diagram showing connections to sign, on drawings to be submitted to landlord.
- No exterior wall treatment, signage, lighting, etc., except as previously outlined, will be allowed.
- All proposed colors, materials, details, etc. will be reviewed for approval by landlord's architect prior to start of construction.

6. FIBER OPTIC LIGHTING AT SPANDREL WINDOW

Landlord reserves the right to require tenant to install this feature during lease term. It is suggested that any construction include provision to add this element in the future. Currently this element is not a requirement.

7. SIGN BANNERS

- Horizontal support rod of aluminum (painted) Matthew Acrylic Polyurethane color -- "Brilliant Gold" #46-400 (VOC 286-400) and Satin Gloss Top Coat #42-228 (VOC 281-228) and brass with decorative mounting plate as shown in detail.
- Vertical banner to be double-faced (signage on both sides) fire rated canvas by Sunbrella color #4643 Persian Green. Printed letters to match illuminated sign letters in color. A 3½" edge border on banner should be maintained with no lettering falling within this border.

Banners must not project more than 18" beyond building line banners. Mounting bracket not to exceed level of top of 2nd floor slab. All banners to be uniform in dimensions, size, height and level.

COLOR SAMPLES

CHANNEL LETTER FACE COLORS



PLEXIGLAS
2415 RED



PLEXIGLAS
2108 GREEN



PLEXIGLAS
2030 GREEN



PLEXIGLAS
2114 BLUE



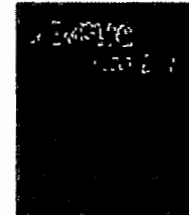
PLEXIGLAS
2051 BLUE



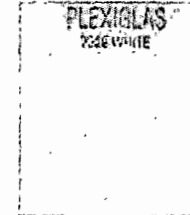
PLEXIGLAS
2648 LIGHT BLUE



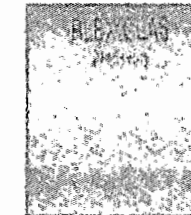
PLEXIGLAS
2119 ORANGE



PLEXIGLAS
2037 YELLOW



PLEXIGLAS
7328 WHITE



PLEXIGLAS
2146 IVORY

BANNER POST



MATTHEWS PAINT
BRILLIANT GOLD #46-400 (MP30133)

(MOUNTING PLATE FOR POST TO MATCH
EXISTING DESIGN AND COLOR)

LETTER RETURN



ALLIANCE METALS
DARK BRONZE METALLIC

BANNER COLOR/FABRIC



SUNBRELLA
4643 PERSIAN GREEN

**UNION SQUARE EAST
NEW YORK, NEW YORK**

SPECIAL CONDITIONS FOR CONSTRUCTION
AT THE RETAIL PORTION OF UNION SQUARE EAST

PURPOSE

The purpose of the following set of requirements is to assist Tenants and their Contractors with the smooth and easy accomplishment of their work in an effort to avoid delays, answer questions and familiarize them with the retail stores located at Union Square East.

All Contractors are requested to read and familiarize themselves with the requirements as stated. If for any reason the tenant feels that it cannot comply with any part of these requirements, it should contact the landlord before any work is performed. If no questions are asked or objections made, it will be automatically assumed that all requirements are understood and will be met.

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Article 1	Drawings and Specifications
Article 2	Building Permits
Article 3	Schedule
Article 4	Security
Article 5	Union Affiliation/Training
Article 6	Licenses/Work
Article 7	HVAC
Article 8	Electrical
Article 9	Plumbing
Article 10	Rigging/Scaffolding
Article 11	Safety
Article 12	Cleaning the Job Site
Article 13	Lien Wavers
Article 14	Insurance Requirements

ARTICLE 1 – DRAWING AND SPECIFICATIONS

1.1 All Design drawings, shop drawings and specifications are to be submitted to W & M Properties, LLC for review and written approval prior to any work being performed. All pertinent drawings and specifications and any subsequent revisions thereto shall be issued at the earliest possible time.

Drawings shall be transmitted in the following manner and quantities:

- 1 set mylar transparencies
- 4 sets blue-line copies
- 4 sets of specifications; and

Upon completion of the project, a complete set of "As-Built" transparencies shall be submitted to ESRT 10 UNION SQUARE, LLC, C/o Empire State Realty Trust, INC.

1.2 All work performed must be in compliance with the attached tenant manual which outlines the design criteria established by Landlord. Also, see Article 6.3 with respect to this item.

1.3 Specifications for the exterior storefront, signage, sign band and banners must be submitted to Empire State Realty Trust, Inc. prior to the start of work. Samples, manufacturer's cuts and/or shop drawings are required and must be submitted for the following:

- 3 samples of the banner color and material
- 3 shop drawings for banner construction
- 3 shop drawings for sign letters
- 3 samples of sign letter material

ARTICLE 2 – BUILDING PERMITS

- 2.1 Unless otherwise noted, all building permits and/or applications shall be obtained from the New York City Building Department and any other agencies having jurisdiction.
- 2.2 Contractors must comply with all New York City Building Codes and Requirements, OSHA Regulations, The National Fire Protection Association and all other Governmental Agencies having jurisdiction over work being performed.
- 2.3 The following is a list of N.Y.C. Agency sign-off's most common for store renovation and a copy is required to be submitted to ESRT 10 UNION SQUARE, LLC, C/o Empire State Realty Trust, INC:
 - A) Directive 14 Completion Letter
 - B) Plumbing on site and completion card.
 - C) TR-1 form certifying all controlled inspection and final inspection.
 - D) Equipment Use Permit Cards for HVAC.
 - E) Copy of ACP-5 Form for asbestos investigation.
 - F) Certificate of Electrical Inspections for electrical work.
- 2.4 Upon receipt of approval from the New York City Building Department; the Tenant shall transmit same to ESRT 10 UNION SQUARE, LLC. In addition, the Tenant shall transmit copies of all correspondence and drawings submitted to and approved by the New York City Building Department, up to and including project sign-off.

ARTICLE 3 – SCHEDULES

- 3.1 All work shall be scheduled so as not to interfere with the normal daily operation of the building. Normal working hours are 8:00 am to 6:00 pm, Monday through Friday.

ARTICLE 4 – SECURITY

- 4.1 Tenant's contractor must secure the premises at the end of each work day.

ARTICLE 5 – UNION AFFILIATION/TRAINING

- 5.1 Tenant's contractor is to be responsible for employing the proper tradesman per union jurisdictions past, present and future. Should questions of union jurisdiction arise, the Tenant shall immediately take steps to settle such disputes and shall employ such labor as may be determined to have jurisdiction.

The Tenant/Contractor shall use adequate numbers of skilled workmen who are thoroughly trained and experienced in the necessary trades and crafts and who are completely familiar with the specified requirements and methods needed for the proper performance of the work.

ARTICLE 6 – LICENSES/WORK

- 6.1 Copies of all Licenses and/or Certificates of Fitness to perform the required work shall be submitted, prior to any work being performed.
- 6.2 The Tenant/Contractor will arrange for all required inspections and tests.
- 6.3 All questions shall be clarified before work begins. It is the Tenant's/Contractor's responsibility to familiarize themselves with the work to be performed, the job conditions, location of the work and all other conditions requiring consideration. If any discrepancies or omissions exist in the drawings, specifications or field conditions which prevent the Tenant/Contractor from performing the work as described, and if such discrepancies or omissions are deemed to adversely impact the building, it should be brought to the attention of Empire State Realty Trust, Inc immediately.

ARTICLE 7 – HVAC

- 7.1 A detailed plan must be submitted outlining the proposed location of all HVAC and/or refrigeration units, which are to be located outside the demised premises in a common area, e.g. roof, courtyard, etc. No work may proceed without the written consent of Empire State Realty Trust, Inc and ESRT 10 Union Square L.L.C... As approvals from the Condominium Board of Managers is also necessary, this installation should be given as much lead time as possible. All work must conform to all environmental regulations (especially sight and noise) under jurisdiction of the Environmental Control Board.

ARTICLE 8 – ELECTRICAL

- 8.1 Tenant's electrical Contractor is required to comply with all New York City Electrical Codes and directive of the Bureau of Gas and Electricity including, but not necessarily limited to, the following items:
- A) Ground all receptacles.
 - B) Require all ballasts to Class P.
 - C) Hung ceilings and new drywall will require conduit or EMT tubing.
 - D) There shall be no power shutdowns without prior approval by ESRT 10 UNION SQUARE, LLC, C/o Empire State Realty Trust, Inc.
 - E) Strict adherence to circuit loading shall be followed; and
 - F) Directories shall be installed upon completion of all projects.

ARTICLE 9 – PLUMBING

- 9.1 Any shutdowns of water risers required for tie-ins of plumbing fixtures shall be coordinated with the commercial building superintendent or contact Vincent M. Sultana at 212 850 2700 for assistance.

ARTICLE 10 – RIGGING/SCAFFOLDING

- 10.1 All rigging work performed in the course of a project shall comply with the standards of the Occupational Safety and Health Administration and be designed for a minimum safety factor of 4.
- 10.2 Empire State Realty Trust, Inc., at its discretion, may request its consulting engineers to inspect and approve any and all rigging.

ARTICLE 11 – SAFETY

- 11.1 An approved fire extinguisher of not less than five (5) pounds charges capacity shall be provided on the job site by the Contractor, as well as adequate protection of existing premises and contents thereof during alteration work.
- 11.2 Contractors using oxygen and combustible gases to weld and/or burn shall post a copy of current New York City Fire Department Certificate of Fitness or Citywide Permit at the job site.
- 11.3 All exits shall be kept free of obstructions at all times.
- 11.4 Tenant hereby agrees that neither he nor any General Contractor or Sub-Contractor, for any part of the work, shall require any laborer or mechanic employed in the performance of the Contract to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his or her health or safety as determined by standards, rules, regulations and/or orders adopted pursuant to the Occupational Safety and Health Act of 1970, as the same may be amended from time to time.

ARTICLE 12 – CLEANING THE JOB SITE

- 12.1 All rubbish, as a result of work, shall be removed from the job site on a daily basis.
- 12.2 The sidewalk and curb directly in front of the demised premises shall be kept clean and free of all debris and construction.
- 12.3 All areas adjacent to those wherein work is being performed shall be fully protected from any damage.

ARTICLE 13 – LIEN WAVERS

- 13.1 Tenant is required to submit lien wavers for all sub-contractors and general contractors at the completion of their work to Empire State Realty Trust, Inc.

ARTICLE 14 – INSURANCE REQUIREMENTS

14.1 Tenant shall furnish certificates from insurance carriers illustrating that their Contractor carries insurance in the following minimum limits:

- 1) Workers' Compensation and Employers' Liability Insurance, providing statutory coverage as required by New York State Workers' Compensation Law, with a limit of liability under the Employers' Liability Insurance of \$100,000 for disease, including death resulting therefrom, not covered by New York State Workers' Compensation Law.

Excess liability limits of \$2,000,000 shall apply to Employers' Liability Insurance.

- 2) A Comprehensive General Liability policy including Completed Operations Coverage insuring the Owner(s) and ESRT 10 UNION SQUARE, LLC, C/o Empire State Realty Trust, INC with the following minimum limits of liability:

- A) Bodily Injury and Property Damage with combined single limit of \$1,000,000 per occurrence and with an excess rider in the amount of \$2,000,000 per occurrence. All coverage subject to same limits.

Empire State Realty Trust, Inc, Empire State Realty OP, L.P. and ESRT 10 Union Square, L.L.C. shall be named as additional insured on all policies of insurance and insurer shall endorse policy to provide Empire State Realty Trust, Inc. with thirty (30) days prior written notice of any change made in or cancellation of the policy.

To be acceptable, copies of insurance certificates submitted to Empire State Realty Trust, Inc. shall include and read under name and address of Certificate Holder:

ESRT 10 Union Square Square, LLC
c/o Empire State Realty Trust, Inc.
111 West 33rd Street, 12th Floor
New York, New York 10120
Attention: Amer Rada

14.2 The Contractor shall assume entire responsibility for any and all damage or injury of any kind or nature whatsoever (including death resulting therefrom) to all persons, whether employees of the Contractor or otherwise and to all property caused by, resulting from, arising out of, or occurring in connection with the execution of the work provided for in this Agreement, and if any person shall make a claim for any damage or any injury (including death resulting therefrom) as hereinabove described, whether such claim may be based upon Empire State Realty Trust, Inc. and/or the Owner(s) alleged active or passive negligence or participation in the wrong or upon any alleged breach of any statutory duty or obligation on the part of Empire State Realty Trust, Inc. and/or the Owner(s), the Contractor shall indemnify and save agents, servants and employees from and against any and all loss, expense, damage or injury that Empire State Realty Trust, Inc. and/or the Owner(s) may sustain as a result of any such claims and the Contractor shall, on behalf of Empire State Realty Trust, Inc. and/or the Owner(s), defend any action at law or in equity, which may be brought against Empire State Realty Trust, Inc. and/or Owner(s), upon such claim and to pay on behalf of Empire State Realty Trust, Inc. and/or Owner(s), upon its demands, the amount of any judgment that may be entered against Empire State Realty Trust, Inc. and/or Owner(s) in any such action.

CURB APPEAL & ON-GOING MAINTENANCE AT 10 UNION SQUARE

1. SIDEWALK

- A. The sidewalk and curb directly in front of the demised premises shall be kept clean and free of all debris. Tenant shall hose and scrub sidewalks after trash pick-ups and whenever necessary.
- B. Tenant shall use a biodegradable degreasing agent to eliminate and prevent staining when necessary. Tenant shall scrape stickers and gum from sidewalk to prevent accumulation.
- C. Tenant shall keep the sidewalk in front of the demised premises free of snow and ice.

2. TRASH REMOVAL

- A. Tenant shall arrange with a private carting for the removal of trash and or recyclables.
- B. Tenant under no circumstances shall allow for trash to be left on the sidewalk for a period longer than 10 hours.

3. AWNINGS

- A. Tenant must periodically scrub and wash awnings to prevent dust accumulation.
- B. Awning(s) must be kept free of tears, markings, fraying, or any other defects. If such defect arises, tenant must remedy within Ten (10) business days.

4. WINDOW SIGNAGE

- A. Tenant must submit renderings of proposed widow and door signage to landlord for approval prior to installation.
- B. Landlord shall be required to approve, reject or send comments and revision requirements within ten (10) business days of receiving rendering.
- C. Limited window signage and door identification shall be permitted upon landlord approval.
- D. Landlord reserves the right to request removal of any window signage for any reason or no reason at all, including window signage previously approved. If such request is made, it shall be through email or letter from a landlord representative and tenant will have ten (10) business days to comply.

5. STOREFRONT AND GLASS WINDOW

- A. Tenant must keep storefront clean and orderly at all times.
- B. Tenant must immediately remedy or replace any vandalized element of the storefront including, but not limited to window etching, cracks, and other such defects.

6. EXTERIOR SIGNAGE

- A. It will be the responsibility of each tenant to provide the necessary power to operate the exterior tenant sign associated with the demised premises.
- B. Signage must be controlled by an automated timer and is to be illuminated from dusk to dawn, 365 days a year.
- C. Tenant must inspect and make any necessary repairs to maintain exterior signage lighting.

7. MISCELANEOUS SIGNAGE

- A. No exterior wall treatment, signage, lighting, etc. except as previously outlined, will be allowed.
- B. No A-Frame type signs or any kind of sidewalk promotional signage or display is permissible at any time.
- C. No signs may be suspended from the awning(s).

8. BICYCLES

- A. Delivery bicycles, scooters, or vehicles of any kind are not permitted in front of the premises or on the sidewalk abutting the ground floor retail.

EXHIBIT E

LETTER OF CREDIT

Letter of Credit

[Letterhead of the Bank]

, 20__

ESRT 10 Union Square, L.L.C.
c/o Empire State Realty Trust, Inc.
One Grand Central Place
60 East 42nd street
New York, New York 10165

Irrevocable Letter of Credit No.

Gentlemen:

We hereby issue our Irrevocable Letter of Credit No. _____ (“Letter of Credit”) in your favor, for the account of [name of Tenant] for the amount of [amount of security deposit], available from time to time on or after the date hereof and not later than the close of business on [insert a date which is not less than one year after the Commencement Date] or such later date through which this credit may be automatically extended and renewed as set forth below. Drawings under this Letter of Credit shall be by one or more sight drafts, in the form of Exhibit 1 hereto, presented at our office, bearing this Letter of Credit number and accompanied by the original of this Letter of Credit.

Partial drawings under this Letter of Credit are permitted. We shall, immediately after each presentation of this Letter of Credit, return the same to you, marking this Letter of Credit to show the amount paid by us and the date of such payment.

This Letter of Credit may be transferred or assigned one or more times without our consent and without cost to you upon presentation to us of (i) a duly completed transfer instruction in the form of Exhibit 2 to this Letter of Credit and (ii) the original of this Letter of Credit. No other documents or presentations shall be required by us in connection with any such transfer or assignment of this Letter of Credit.

WE HEREBY AGREE WITH EACH DRAWER, ENDORSER AND BONA FIDE HOLDER OF ANY DRAFT DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT THAT SUCH DRAFT SHALL BE DULY HONORED ON DUE PRESENTATION TO US.

It is a condition of this Letter of Credit that it shall automatically be extended and renewed for additional periods of one year from the then current expiration date hereof. However, this Letter of Credit shall not be automatically extended and renewed if, at least sixty (60) days prior to any such expiration date, we notify you in writing at your address set forth above (or in any transfer instruction, if applicable), by certified mail, return receipt requested, that we elect not to so extend and renew this Letter of Credit. In the event we shall have so notified you of our election not to so extend and renew this Letter of Credit, then the entire face or principal amount of this Letter of Credit (as the same may have been reduced as set forth above) may be drawn upon at any time during the ten (10) days immediately preceding the then current expiration date of this Letter of Credit upon the presentation by you of only a sight draft bearing this Letter of Credit number and the original of this Letter of Credit. This Letter of Credit, if automatically extended and renewed, shall continue as set forth herein, except that the expiration date hereof shall be the first anniversary of the then current expiration date of this Letter of Credit.

Subject to the last paragraph of this Letter of Credit, this Letter of Credit sets forth the full terms of our undertaking, and such undertaking shall not in any way be modified, amended or amplified by reference to any document, instrument or agreement referred to in this Letter of Credit or in which this Letter of Credit is referred to or to which this Letter of Credit relates; and any such reference shall not be deemed to incorporate herein the terms of any such referenced document, instrument or agreement.

THIS LETTER OF CREDIT SHALL EXPIRE AT THE CLOSE OF BUSINESS ON [insert a date which is not less than one year and one month after the commencement date after the term of the lease] or such later date through which this Letter of Credit may be automatically extended and renewed as set forth above.

All drafts, documents, instructions and communications pertinent to this Letter of Credit must be presented to our office located at _____, New York, New York ____, Attention: Letter of Credit Department, or at any other office in New York, New York which may be designated by our written notice delivered to you.

This Letter of Credit is issued subject to the Uniform Customs and Practice for Documentary Credits (1994 revision), International Chamber of Commerce Publication No. 500, and any amendments thereof. This Letter of Credit shall be deemed to be a contract made under the laws of the State of New York and shall, as to matters not governed by said Uniform Customs and Practice for Documentary Credits, be governed by and construed in accordance with the laws of said State.

Yours very truly,

[Name of Issuing Bank]

By:
Authorized Signature

Exhibit 1 to Letter of Credit No.

DRAFT

Letter of Credit No.:

Date of Letter Credit:

Date of this Draft:

_____, 20__

To the Order of

Pay _____ (\$_____) Dollars at sight for value received under Letter of Credit No.

To: [Insert name and address
of Issuing Bank]

This Draft is payable only at: [Insert name and address of Issuing Bank]

ESRT 10 Union Square, L.L.C.

By: _____
Title:

EXHIBIT 2 To Letter of Credit No. _____

_____, 20____

INSTRUCTION TO TRANSFER IN FULL

New York, New York
Attention: Letter of Credit Division

Re: Your Irrevocable Letter of Credit No.

Gentlemen:

The undersigned beneficially irrevocably transfers all rights of the undersigned beneficiary to draw under the above Letter of Credit to:

(Name of Transferee)

(Address of Transferee)

By this transfer all rights of the undersigned beneficiary in such Letter of Credit are transferred to the transferee.

The above Letter of Credit is returned herewith, and in accordance therewith we ask you to issue a new irrevocable Letter of Credit in favor of the above-named transferee in the amount of \$_____ and with other provisions consistent with the above Letter of Credit.

Very truly yours,

[Bank]

By:

EXHIBIT F

CERTIFICATE OF OCCUPANCY



Certificate of Occupancy

CO Number: 120934551T007

This certifies that the premises described herein conforms substantially to the approved plans and specifications and to the requirements of all applicable laws, rules and regulations for the uses and occupancies specified. No change of use or occupancy shall be made unless a new Certificate of Occupancy is issued. *This document or a copy shall be available for inspection at the building at all reasonable times.*

A.	Borough: Manhattan Address: 10 UNION SQUARE EAST Building Identification Number (BIN): 1083247	Block Number: 00870 Lot Number(s): 7501 Building Type: Altered	Certificate Type: Temporary Effective Date: 09/15/2017 Expiration Date: 12/14/2017
This building is subject to this Building Code: 1968 Code			
<i>For zoning lot metes & bounds, please see BISWeb.</i>			
B.	Construction classification: 1 (Prior to 1968 Code designation) Building Occupancy Group classification: A-2 (2014/2008 Code) Multiple Dwelling Law Classification: HAEA		
	No. of stories: 27	Height in feet: 300	No. of dwelling units: 637
C.	Fire Protection Equipment: Standpipe system, Sprinkler system		
D.	Type and number of open spaces: None associated with this filing.		
E.	This Certificate is issued with the following legal limitations: None		
Outstanding requirements for obtaining Final Certificate of Occupancy:			
There are 11 outstanding requirements. Please refer to BISWeb for further detail.			
Borough Comments: None			

Borough Commissioner

Commissioner

DOCUMENT CONTINUES ON NEXT PAGE



Certificate of Occupancy

CO Number: **120934551T007**

Permissible Use and Occupancy						
All Building Code occupancy group designations below are 2008 designations.						
Floor From To	Maximum persons permitted	Live load lbs per sq. ft.	Building Code occupancy group	Dwelling or Rooming Units	Zoning use group	Description of use
CEL	79	100	A-1		8	THEATRE AND SAFE AREA
CEL	152	100	S-2		8	MECHANICAL STORAGE PARKING (61 CARS) OFFICES
SC1	199	OG	A-1		8	THEATRE AND SAFE AREA
SC1	96	OG	S-2		8	PARKING (137 CARS) MECHANICAL STORAGE
001	180	100	A-1		8	THEATRE LOBBY
001	1818	100	B R-2		2	LOBBY, LOADING DOCKS, OFFICE, RETAIL STORES
001	237	100	A-2		6	EATING & DRINKING ESTABLISHMENT, KITCHEN
001	163	100	A-2			EATING & DRINKING ESTABLISHMENT
002	474	75	B		6	OFFICE
002	102	75	A-1		6	LECTURE HALL
002	129	75	A-1		6	CONFERENCE ROOM ATRIUM
003	650	75	B		6	OFFICE ATRIUM
004	650	75	B S-2		6	OFFICE STORAGE MECHANICAL ATRIUM

Borough Commissioner

Commissioner

DOCUMENT CONTINUES ON NEXT PAGE



Certificate of Occupancy

CO Number: **120934551T007**

Permissible Use and Occupancy						
All Building Code occupancy group designations below are 2008 designations.						
Floor From To	Maximum persons permitted	Live load lbs per sq. ft.	Building Code occupancy group	Dwelling or Rooming Units	Zoning use group	Description of use
005	650	75	S-2		6	OFFICE STORAGE MECHANICAL ATRIUM
006		40	R-2	51	2	APARTMENTS LAUNDRY ROOM
006	50	40	R-2		2	HEALTH CLUB
007		40	R-2	59	2	FIFTY-NINE (59) APARTMENTS
007	50	40	R-2		2	HEALTH CLUB
008		40	R-2	30	2	THIRTY (30) APARTMENTS
009		40	R-2	36	2	THIRTY-SIX (36) APARTMENTS
010		40	R-2	35	2	THIRTY-FIVE (35) APARTMENTS
011		40	R-2	34	2	THIRTY-FOUR (34) APARTMENTS
012		40	R-2	29	2	TWENTY-NINE (29) APARTMENTS
013		40	R-2	36	2	THIRTY-SIX (36) APARTMENTS
014		40	R-2	36	2	THIRTY-SIX (36) APARTMENTS
015		40	R-2	35	2	THIRTY-FIVE (35) APARTMENTS

Borough Commissioner

Commissioner

DOCUMENT CONTINUES ON NEXT PAGE



Certificate of Occupancy

CO Number: **120934551T007**

Permissible Use and Occupancy						
All Building Code occupancy group designations below are 2008 designations.						
Floor From To	Maximum persons permitted	Live load lbs per sq. ft.	Building Code occupancy group	Dwelling or Rooming Units	Zoning use group	Description of use
016		40	R-2	35	2	THIRTY-FIVE (35) APARTMENTS
017		40	R-2	32	2	THIRTY-TWO (32) APARTMENTS
018		40	R-2	34	2	THIRTY-FOUR (34) APARTMENTS
019		40	R-2	35	2	THIRTY-FIVE (35) APARTMENTS
020		40	R-2	15	2	FIFTEEN (15) APARTMENTS
021		40	R-2	16	2	SIXTEEN (16) APARTMENTS
022		40	R-2	16	2	SIXTEEN (16) APARTMENTS
023		40	R-2	16	2	SIXTEEN (16) APARTMENTS
024		40	R-2	16	2	SIXTEEN (16) APARTMENTS
025		40	R-2	16	2	SIXTEEN (16) APARTMENTS
026		40	R-2	13	2	THIRTEEN (13) APARTMENTS
027		40	R-2	12	2	TWELVE (12) APARTMENTS
028		40	S-2		2	MECHANICAL

Borough Commissioner

Commissioner

DOCUMENT CONTINUES ON NEXT PAGE



Certificate of Occupancy

CO Number: 120934551T007

C841005ZMM - CHANGE IN ZONING TO ESTABLISH SPECIAL UNION SQUARE DISTRICT N84100ZRM TO AMEND NEW SPECIAL UNION SQUARE DISTRICT ARTICLE XL, CHAPTER 8

END OF SECTION

A handwritten signature in black ink, consisting of stylized, overlapping letters.

Borough Commissioner

A handwritten signature in black ink, appearing to read "Peter Chanler" in a cursive style.

Commissioner

END OF DOCUMENT

120934551/007 9/15/2017 11:07:23 AM

EXHIBIT G

“GOOD GUY” GUARANTY

GUARANTY

THIS GUARANTY, dated as of the 20 day of ~~October~~ ^{November}, 2017 (this "Guaranty"), made by JONATHAN SHERMAN, an individual, residing at 145 East 76th Street, Apt 8A, New York, New York 10021 ("Guarantor"), to and in favor of ESRT 10 UNION SQUARE, L.L.C., having an address c/o ESRT Management, L.L.C., 111 West 33rd Street, New York, New York 10120 ("Landlord").

WITNESSETH:

WHEREAS, simultaneously herewith, Landlord has entered into an Agreement of Lease (the "Lease"), with Sticky Fingers V LLC ("Tenant") for a portion of the first (1st) floor in the building known as and by the street address of 10 Union Square, New York, New York, as more particularly described in the Lease (the "Premises"), which Premises are a portion of the condominium unit known as Unit No. Retail (the "Retail Unit") in the project known as the One Union Square East Condominium (the "Condominium"), which Condominium was established pursuant to a certain declaration of condominium, dated June 23, 1987, and recorded in the New York County Office of the Register of The City of New York on August 10, 1987 in Reel 1271, Page 2440, and which Retail Unit is also designated as Tax Lot 1003 in Block 870 of Section 3 of the Borough of Manhattan on the Tax Map of the Real Property Assessment Department of The City of New York;

WHEREAS, Guarantor, as the owner of a majority of the membership interests in Sticky's Holdings LLC, which is the sole member of Tenant, will derive substantial benefit from the Lease; and

WHEREAS, Landlord would not have entered into the Lease unless Guarantor executed and delivered this Guaranty.

NOW, THEREFORE, in consideration of the execution and delivery of the Lease, the promises herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Guarantor, Guarantor covenants, agrees, represents and warrants to the Landlord as follows:

1. Capitalized Terms & Other Terms. Unless otherwise specifically defined herein, all capitalized terms used in this Guaranty shall have the same meanings ascribed to such terms in the Lease. As used in this Guaranty, words such as "hereby," "herein," "hereinafter," "hereof," "hereto" and "hereunder" are to be read as referring to this Guaranty as a whole and not merely the clause, sentence, paragraph, section or article in which such word appears. Whenever and wherever herein the singular number is used, this will also include the plural, and *vice versa* as the context may require. The use of the masculine or neuter form of any third person pronoun includes, as the case may be, the masculine, feminine or neuter genders as well.

2. Representations and Warranties.

(A) Guarantor represents and warrants to Landlord, that:

(i) Guarantor has full power, authority and legal right to cause this Guaranty to be signed and delivered, and to perform and observe the provisions of this Guaranty, including, without limitation, the payment of all moneys, if and when due, hereunder;

(ii) Guarantor, as of the date hereof, is not in violation of any decree, ruling, judgment, order or injunction applicable to it, nor any law, ordinance, rule or regulation of whatever nature, nor are there any actions, proceedings or investigations pending or threatened against or affecting Guarantor (or any basis therefor known to Guarantor) before or by any court, arbitrator, administrative agency or other governmental authority or entity, any of which, if adversely decided, would materially or adversely affect its ability to carry out any of the terms, covenants and conditions of this Guaranty.

(iii) neither the execution and delivery of this Guaranty, nor the consummation of the transactions herein contemplated, nor compliance with the terms and provisions hereof, conflict or will conflict with or result in a breach of any of the terms, conditions or provisions of any order, writ, injunction or decree of any court or governmental authority, or of any agreement or instrument to which Guarantor is a party or by which

it is bound, or constitutes or will constitute a default thereunder or violate any law, ordinance, rule or regulation of whatever nature in effect as of the date hereof;

(iv) Guarantor is not and by the execution and delivery hereof shall not then become insolvent as defined under Section 101(32) of the United States Bankruptcy Code (11 U.S.C. §101(32)) nor under any foreign bankruptcy or insolvency law;

(v) this Guaranty constitutes a legal valid and binding obligation of Guarantor and is enforceable in accordance with its terms;

(vi) no authorization, approval, consent or permission (governmental or otherwise) of any court, agency, commission or other authority or entity is required for (x) the due execution and delivery of this Guaranty by Guarantor, (y) the performance or observance by Guarantor of any of the terms, covenants and conditions set forth in this Guaranty or (z) for the payment of any sums hereunder by Guarantor;

(vii) Guarantor owns all of the outstanding and issued capital stock (or other equity interests in any non-corporate tenant) of the Tenant or controls the Tenant;

(viii) Guarantor further represents and warrants that (x) Guarantor is not listed on the list maintained by the United States Department of the Treasury, Office of Foreign Assets Control (commonly known as the OFAC List) or otherwise qualifies as a terrorist, Specially Designated National and Blocked Person or a person with whom business by a United States citizen or resident is prohibited (each a "Prohibited Person"); (y) Guarantor is not in violation of any anti-money laundering or anti-terrorism statute, including, without limitation, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, U.S. Public Law 107-56 (commonly known as the USA PATRIOT Act), and the related regulations issued thereunder, including temporary regulations, and Executive Orders (including, without limitation, Executive Order 13224) issued in connection therewith, all as amended from time to time; and (z) Guarantor is not acting on behalf of a Prohibited Person;

(ix) Guarantor is not entitled to immunity from judicial proceedings and agrees that, in the event Landlord brings any suit, action or proceeding in New York or any other jurisdiction to enforce any obligation or liability of Guarantor arising, directly or indirectly, out of or relating to this Guaranty, no immunity from such suit, action or proceedings will be claimed by or on behalf of Guarantor; and

(x) all representations and warranties made to the Landlord herein are factually correct and there has been no omission of any fact which by its inclusion in any representation or warranty herein would materially alter the accuracy, truthfulness or meaning of any such representation or warranty.

(B) Each of the representations and warranties made by Guarantor herein is deemed to be material to inducing Landlord to enter into the Lease and to perform Landlord's obligations thereunder. Guarantor acknowledges that Landlord, by virtue of entering into the Lease and performing its obligations thereunder, has acted and changed, and shall hereafter act and change, its position in reliance on this Guaranty and Guarantor's representations and warranties made herein. Guarantor shall indemnify and hold Landlord harmless from and against all claims, damages, losses, risks, liabilities and costs (including fines, penalties and legal costs) arising from any misrepresentation in this Guaranty or Landlord's reliance thereon. Guarantor's indemnification obligations under this Paragraph 2 shall survive the expiration or sooner termination of the Term of the Lease.

3. Obligations Guaranteed.

(A) Guarantor hereby irrevocably, absolutely and unconditionally guarantees to the Landlord the full and timely payment and performance of all obligations of Tenant under the Lease (including, without limitation, Article 20 thereof) through and including the "Surrender Date" (as hereinafter defined) with the same force as if Guarantor had been a signatory thereto. The term "Surrender Date" shall mean the later of (i) the date on which Tenant delivers vacant and exclusive possession of the Premises to Landlord in accordance with the provisions of the Lease (which, for the avoidance of any doubt, includes the delivery of keys to the Premises to Landlord's designated managing agent together with any and all applicable security access codes thereto), and (ii) the sixtieth (60th) day following the date set forth in a notice given by Tenant to Landlord pursuant to and in accordance with the notice provisions of the Lease that Tenant is vacating the Premises (it being agreed that if Tenant fails to give such notice to Landlord then such sixty (60) day period shall commence on the date that Tenant delivers vacant and exclusive possession of the Premises to Landlord in accordance with the provisions of the Lease (which, for the avoidance of any doubt, includes the delivery of keys to the Premises to Landlord's

designated managing agent, together with any and all applicable security access codes thereto). The aforesaid guaranty includes, without limitation, the full and prompt payment of all damages and expenses that may arise in connection with or as a consequence of the non-performance or non-observance of the terms, covenants and conditions of the Lease (including but not limited to interest, attorneys' fees, costs, disbursements and costs of collection) without requiring any notice of non-performance or non-observance or proof of notice or demand upon Tenant, all of which Guarantor hereby expressly waives.

(B) Each and every default in the payment of any of the Fixed Annual Rent, Additional Rent, interest, service charges, security deposits or other payments due under the Lease or in the performance of any other obligation to be performed or observed by Tenant pursuant to the Lease shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises.

(C) Guarantor acknowledges that its liability hereunder is primary and that Landlord, at Landlord's option, may join Guarantor in any action or proceeding commenced by Landlord against Tenant in connection with or based upon the Lease or any term, covenant or condition thereof, and recovery may be had against any Guarantor in such action or proceeding or in any independent action or proceeding against any Guarantor without Landlord first giving notice to, asserting, prosecuting, or exhausting any remedy or claim against Tenant and without having first to apply any security deposit under the Lease; it being expressly understood and agreed that Landlord shall have no obligation whatsoever to give notice to Guarantor of the occurrence of any default (or threatened default) under the terms and provisions of the Lease or of any circumstance that may give warning or expectation of a subsequent default; it being further agreed that under no circumstance shall Landlord be obligated to apprise Guarantor of any change in the financial condition or position of Tenant. Guarantor shall be solely responsible for keeping apprised of the financial position and condition of Tenant.

(D) Notwithstanding anything contained herein to the contrary, in no event shall Guarantor be liable for any accelerated rent identified in Article 17 of the Lease, except if and to the extent only that same represents the Fixed Annual Rent and/or Additional Rent due to Landlord under the Lease for the period through and including the Surrender Date which has not been previously paid by Tenant or Guarantor.

4. Guaranty Unconditional, Irrevocable, Absolute and Continuing.

(A) Except as limited in Paragraph 3(A) above, Guarantor acknowledges and agrees that (i) this Guaranty is an unconditional, irrevocable and absolute guaranty of payment and performance and not merely of collection and (ii) and the obligations under this Guaranty shall continue to accrue, and remain in full force and effect beyond the stated expiration date of the Lease, regardless of whether the Lease has been terminated or whether the Tenant is no longer in possession of the Premises for any other reason, until all of the Tenant's obligations under the Lease, including the payment of all Fixed Annual Rent, Additional Rent, interest, service charges, security deposits and other payments due under the Lease, have been satisfied in their entirety and all other sums due to the Landlord pursuant to this Guaranty have been indefeasibly paid in full.

(B) To the fullest extent permitted by law, the obligations of Guarantor hereunder shall be valid and enforceable under all circumstances whatsoever and in furtherance but not in limitation thereof, Guarantor's liability shall in no way be affected, modified, diminished, released, impaired or terminated by any state of facts or the happening from time to time of any event, including any one or more of the following whether or not with notice to or the consent of Guarantor, and Guarantor waives any defense to the payment of any sum or the performance of any other obligation under this Guaranty, based or predicated in whole or in part upon any of the following:

(i) the invalidity, illegality or unenforceability of, or any defect in this Guaranty or the Lease or any respective part thereof;

(ii) the release or discharge of Tenant from the performance or observance of any of the terms, covenants or conditions contained in the Lease pursuant to the terms thereof, by operation of law, by reason of any of the events described in Paragraph 4(B)(vii) hereof, or otherwise;

- (iii) any change in the relationship between Guarantor and Tenant;
- (iv) any consent, approval, waiver or other action, inaction or omission under or concerning the Lease, including without limitation, any action which Landlord may take or fail to take against Tenant by reason of any waiver of, or failure to enforce, any of the rights or remedies reserved to Landlord in the Lease, or allowed at law or in equity or otherwise;
- (v) any negotiations, compromises, settlements, dealings or transactions occurring between Landlord and Tenant;
- (vi) the default or failure of Guarantor to perform any of its obligations set forth in this Guaranty;
- (vii) any bankruptcy, insolvency, reorganization, arrangement, assignment for the benefit of creditors, receivership or trusteeship affecting Tenant, the liquidation or dissolution of Tenant, the marshaling of assets and liabilities of Tenant, or readjustment of debts in respect of Tenant in its capacity as a debtor or obligor; or other similar events or proceedings affecting Tenant or any allegation or contest of the validity of this Guaranty or the Lease in any such proceeding; it being the intent and purpose of this Guaranty that Guarantor shall and does hereby waive all rights and benefits which might accrue to Guarantor by reason of any such proceedings;
- (viii) the release, substitution or replacement, whether or not in accordance with the terms of the Lease, of any property subject thereto or any re-delivery, repossession, surrender or destruction of any such property, in whole or in part ;
- (ix) any failure of or refusal by Landlord to mitigate damages (including the failure or refusal to re-let the Premises or any portion thereof and/or any failure to collect rent under any such re-letting) resulting from any default by Tenant under the Lease or the termination thereof;
- (x) any amendments or other modifications of the Lease, including without limitation, any increases in the Rental, any extensions of the Term of the Lease, and any additions of any space to the premises demised under the Lease as of the date of this Guaranty and/or the lawful termination of the Lease by Landlord;
- (xi) the assignment of the Lease by Tenant or any direct or indirect successor to Tenant under the Lease and/or the subletting of all or any portion of the Premises and/or the actual or purported assignment of any of the obligations, covenants and agreements contained in this Guaranty;
- (xii) any alterations, repairs, replacements and/or decorations in the Premises as Landlord, in Landlord's sole judgment, considers advisable and necessary for the purpose of re-letting the Premises; and
- (xiii) any other circumstance or condition that may result in a discharge, limitation or reduction of liability of a surety or guarantor (including, without limitation, any present or future law or order of any government (*de jure* or *de facto*) or of any agency thereof purporting to reduce the rent under, amend or otherwise affect the Lease).

(C) If after receipt of any payment hereunder applied (or intended to be applied) to the payment of, all or any part of any sums guaranteed hereunder, Landlord is compelled to surrender such payment or proceeds to any person because such payment or application of proceeds is or may be avoided, invalidated, declared fraudulent, set aside, determined to be void or voidable as a preference, fraudulent conveyance, impermissible set off or a diversion of trust funds, then the obligations or part thereof intended to be satisfied shall be reinstated and continue and this Guaranty shall continue in full force as if such payment or proceeds had not been received by Landlord, notwithstanding any revocation thereof or the cancellation of the Lease, any note or other instrument evidencing any obligation of Tenant or otherwise; and Guarantor shall be liable to pay to Landlord, and hereby does indemnify Landlord and hold Landlord harmless for, the amount of such payment or

proceeds so surrendered and all expenses (including all reasonable attorneys' fees, court costs and expenses attributable thereto) incurred by Landlord in the defense of any claim made against Landlord that any payment or proceeds received by Landlord in respect of all or any part of such sums guaranteed hereunder must be surrendered, unless Tenant pays to Landlord the amount which Landlord is compelled to surrender and such payment is not similarly subject to being avoided, invalidated, declared fraudulent, set aside, determined to be void or voidable as a preference, fraudulent conveyance, impermissible set off or a diversion of trust funds and Landlord is not compelled to surrender the amount of Tenant's payment. Landlord shall not be required to litigate or otherwise dispute its obligation to surrender such payments if, in good faith and on the advice of counsel, Landlord believes that such obligation exists. The provisions of this Paragraph 4.C shall survive the termination of this Guaranty, and any satisfaction and discharge of Tenant by virtue of any payment, court order or any federal or state law.

(D) Guarantor's obligations hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including, without limitation, any claim of waiver, release, surrender, attention, settlement or compromise, and shall not be subject to, and Guarantor hereby irrevocably waives, any defense or set-off, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of Guarantor's obligations hereunder or otherwise.

(E) Any suit or proceedings brought against Guarantor to collect any amounts specified in Article 6 of the Lease for any month or months shall not prejudice in any way the rights of Landlord to collect any such amounts for any subsequent month or months in any similar suit or proceeding.

5. Waivers.

(A) Guarantor hereby waives notice of the acceptance of this Guaranty and presentment and demand for payment, notice of non-payment, notice of dishonor, protest, notice of protest, non-performance, non-observance and any other notice or demand to which such Guarantor might otherwise be entitled. This Guaranty shall become effective immediately upon delivery of an executed counterpart hereof to Landlord.

(B) AS FURTHER INDUCEMENT TO LANDLORD TO ENTER INTO THE LEASE, AND IN CONSIDERATION THEREOF, GUARANTOR HEREBY WAIVES TRIAL BY JURY OF ANY AND ALL ISSUES ARISING IN ANY ACTION OR PROCEEDING BETWEEN THE PARTIES, UPON, UNDER OR IN CONNECTION WITH THIS GUARANTY AND/OR THE LEASE. GUARANTOR ALSO AGREES THAT IT WILL BE CONCLUSIVELY BOUND BY THE JUDGMENT IN ANY SUCH ACTION BY LANDLORD AGAINST TENANT (WHEREVER BROUGHT) AS IF GUARANTOR WERE A PARTY TO SUCH ACTION, EVEN THOUGH GUARANTOR IS NOT JOINED AS A PARTY IN SUCH ACTION AND EVEN THOUGH GUARANTOR HAS NO NOTICE OF SUCH ACTION PRIOR TO THE ENTRY OF JUDGMENT.

(C) Guarantor acknowledges that Guarantor has no right or interest in or to any security posted by Tenant under the Lease and the same may be retained and/or applied in Landlord's sole discretion. Guarantor waives any and all defenses, claims, counterclaims, affirmative defenses, and other causes of action with regard to such security. For example, and without limiting the foregoing, in any action or proceeding brought by Landlord against Guarantor for the payment of Rental, Guarantor agrees that it shall be responsible for the full amount of any security held by Landlord.

(D) Nothing herein contained in this Guaranty is intended or shall be construed to give to Guarantor any right of subrogation under the Lease or any right to participate in any way therein or in Landlord's right, title and interest in the Lease. Notwithstanding any payments made under this Guaranty, all rights of subrogation and participation are expressly waived and released by Guarantor. Guarantor shall have no right of subrogation to the rights of Landlord against Tenant by reason of any payments or acts of performance by Guarantor in compliance with the obligations of Guarantor hereunder. Guarantor hereby waives any right to enforce any remedy which Guarantor now or hereafter shall have against Tenant by reason of any one of more payments or acts of performance in compliance with the obligations of Guarantor hereunder. Guarantor hereby subordinates any liability or indebtedness of Tenant now or hereafter held by Guarantor or any affiliate of Guarantor to the obligations of Tenant to Landlord under the Lease.

6. Restrictions on Guarantor.

Guarantor agrees not to dispose of any, all or substantially all of its property, business or assets remaining after the execution and delivery of this Guaranty without receiving fair consideration.

7. Submission to Jurisdiction. Guarantor hereby irrevocably:

(A) submits to the jurisdiction of the state courts of the State of New York and to the jurisdiction of the United States District Court for the Southern District of New York, for the purposes of each and every suit, action or other proceeding arising out of or based upon this Guaranty or the subject matter hereof brought by Landlord, it being expressly understood and agreed that this consent to jurisdiction shall be self-operative and no further instrument or action, other than service of process in one of the manners specified in this Guaranty or as otherwise permitted by such law, shall be necessary in order to confer jurisdiction upon such Guarantor in any such court; and

(B) waives, and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding brought in any such court, any claim that such Guarantor is not subject personally to the jurisdiction of the above-named courts, that such Guarantor's property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court, and further agrees to waive, to the fullest extent permitted under applicable law, the benefit of any defense that would hinder, fetter or delay the levy, execution or collection of any amount to which Landlord is entitled pursuant to the final judgment of any court having jurisdiction.

8. Further Instruments. Guarantor shall, from time to time, upon request by Landlord, execute, acknowledge, deliver and file all further instruments necessary or desirable to make effective or confirm the provisions of this Guaranty.

9. Consent to Service of Process. Guarantor hereby consents to service of process by certified or registered mail or nationally-recognized overnight courier to Guarantor's address as set forth herein, as provided in Paragraph 11 hereof or in any other manner permitted by law. Guarantor agrees that service in the foregoing manner shall be deemed, in every respect, effective service of process upon Guarantor and be taken and held to be valid personal service upon, and personal delivery to, Guarantor. Guarantor agrees that Guarantor's submission to jurisdiction and consent to service of process by mail and overnight courier is made for the express benefit of Landlord.

10. Enforcement of Judgement. Final judgment against Guarantor in any such action, suit or proceeding shall be conclusive, and may be enforced in other jurisdictions:

(A) by suit, action or proceeding on the judgment, a certified or true copy of which shall be conclusive evidence of the fact and of the amount of any indebtedness or liability of Guarantor therein described; or

(B) in any other manner provided by or pursuant to the laws of such other jurisdiction; provided, however, that Landlord may at its option bring suit, or institute other judicial proceedings against Guarantor or any of Guarantor's assets in any state or federal court of the United States or of any country or place where either Guarantor or such assets may be found.

11. Notices.

All notices, demands, requests, consents, approvals or other communications (collectively, "Notices") given under this Guaranty shall be in writing, and, any law or statute to the contrary notwithstanding, shall be effective for any purpose if sent by (a) registered or certified mail, return receipt requested, prepaid, or (b) a nationally-recognized overnight courier (with verification of delivery), addressed as follows:

If to Guarantor, to it at:

Jonathan Sherman
145 East 76th Street, Apt 8A

New York, New York 10021

If to Landlord, to it at:

ESRT 10 Union Square, L.L.C.
c/o ESRT Management, L.L.C.
111 West 33rd Street
New York, New York 10120
Attn: Leasing (10 Union Square)

and

Empire State Realty Trust, Inc.
111 West 33rd Street
New York, New York 10120
Attn: Lease Administration Department

with copies to:

Bleckner P.C.
350 Fifth Avenue, Suite 6440
New York, New York 10118

and

Empire State Realty Trust, Inc.
111 West 33rd Street
New York, New York 10120
Attn: Legal- Leasing

or at such other address as any party hereto shall designate in writing in accordance with the terms of this Paragraph 11. All Notices shall be deemed given or served (i) on the third (3rd) day after the date on which date such Notice has been mailed, as aforesaid or (ii) on the first (1st) Business Day after the date that it is sent by a nationally-recognized courier, as aforesaid. Notwithstanding the foregoing, any notice changing Landlord's address may be given to Guarantor by regular, first class U.S. mail.

12. Expenses. If Landlord shall take any measures to enforce Guarantor's obligations under this Guaranty or any part thereof, Guarantor agrees to pay on demand all of Landlord's costs in connection therewith, whether or not suit be brought including, without limitation, attorneys' fees and disbursements.

13. Miscellaneous Provisions.

(A) Nothing contained herein shall diminish any of Landlord's rights against Tenant under the terms of the Lease.

(B) All remedies afforded to Landlord by reason of this Guaranty are separate and cumulative remedies and no one remedy herein conferred upon or reserved to the Landlord, whether exercised or not, shall be deemed to be in exclusion of any other remedy available to Landlord under this Guaranty, the Lease, pursuant to law or in equity, whether the same currently exists or may hereafter exist and nothing contained in this Guaranty shall be deemed to limit or prejudice any other legal or equitable remedy which Landlord may otherwise have.

(C) No delay on the part of Landlord in exercising any right, power or privilege under this Guaranty, nor any failure to exercise the same, shall operate as a waiver of, or otherwise affect, any right, power or privilege of Landlord under this Guaranty, nor shall any single or partial exercise thereof preclude the further exercise of, or the exercise of any other, right, power or privilege of Landlord under this Guaranty.

(D) The liability of Guarantor hereunder shall be unconditional and shall not be in any manner affected by any indulgence whatsoever granted or consented to by the holder hereof, including, but not limited to any extension of time, renewal, waiver or other modification. Neither any waiver or modification of any provision of this Guaranty, nor any termination of this Guaranty, shall be effective unless in writing and signed by the party against which the waiver, modification or termination is sought to be enforced, nor shall any waiver be applicable except in the specific instance for which it is given.

(E) If any provision of this Guaranty or the application thereof to any person or circumstance shall to any extent be held void, unenforceable or invalid, then the remainder of this Guaranty or the application of such provision to persons or circumstances, other than those as to which it is held void, unenforceable or invalid, shall not be affected thereby and each provision of this Guaranty shall be valid and enforceable to the fullest extent permitted by law.

(F) The validity and enforcement of this Guaranty shall be governed by and construed in accordance with the laws of the State of New York without regard to conflicts of laws principles and such laws shall apply in any action or proceeding arising out of or under this Guaranty.

(G) The provisions of this Guaranty shall be binding upon and shall inure to the benefit of Landlord and Guarantor and their respective successors and assigns. All references in this Guaranty to Landlord and Tenant shall be deemed to mean Landlord's and Tenant's respective permitted successors and assigns.

(H) The existence herein of article and section headings or captions is for convenience only and no such headings or captions will be used for the purposes of interpreting or construing the meaning of any term or provision hereof.

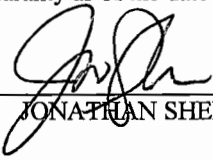
(I) This Guaranty sets forth the entire agreement and obligations of Guarantor to Landlord and supersedes any and all other understandings (whether oral or written) between them. Guarantor agrees that Guarantor shall, at any time and from time to time, within ten (10) days following written request by Landlord, execute, acknowledge and deliver to Landlord a statement certifying that this Guaranty is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating such modification). Guarantor agrees that such certificate may be relied on by anyone holding or proposing to acquire any interest in the Building from or through Landlord or by any mortgagee or prospective mortgagee of the Building or of any interest therein.

(J) Guarantor and Landlord each acknowledge and agree that this Guaranty has been freely negotiated and that in any dispute over the meaning, interpretation, validity or enforceability of this Guaranty or any of the terms, provisions, covenants or conditions hereof, there shall be no presumption whatsoever against either party by virtue of that party having drafted this Guaranty or any part thereof. If any words or phrases in this Guaranty (or in any prior draft thereof) shall have been stricken out or otherwise eliminated, whether or not any other words or phrases have been added, this Guaranty shall be construed as if the words or phrases so stricken out or otherwise eliminated were never included herein and no implication or inference shall be drawn from the fact that such words or phrases were so stricken out or otherwise eliminated.

(K) This Guaranty may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, and all of which shall constitute one and the same instrument. Facsimile signatures, electronic signatures and/or signatures delivered by e-mail in PDF format shall be considered to be fully binding and shall carry the same weight as original signatures when executing this Guaranty.

(L) In the event this Guaranty is executed after the original date of the Lease, Guarantor acknowledges, understands and agrees to the following: (i) this Guaranty was intended to be executed on or prior to the date of the Lease; (ii) dating this Guaranty after the Lease is not evidence that Landlord would have made the Lease without this Guaranty; (iii) this Guaranty remains supported by good and sufficient consideration; and (iv) the parties intended for this Guaranty to be dated on or prior to the date of the Lease but the delivery or logistics involved in getting Guarantor's signature hindered, but did not defeat, such intent.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first above written.

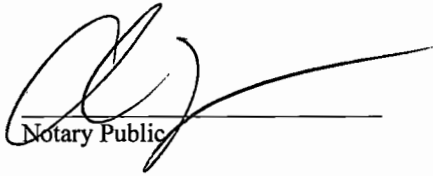


JONATHAN SHERMAN

UNIFORM FORM CERTIFICATE OF ACKNOWLEDGMENT
(Within New York State)

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

On the 14 day of October, in the year 2017, before me, the undersigned personally appeared Jonathan Sherman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Notary Public

DAVID FEINBERG
Notary Public, State of New York
No. 02FE6148584
Qualified in Nassau County
Commission Expires June 26, 2018

EXHIBIT H

GUARANTY

GUARANTY

THIS GUARANTY, dated as of the 20 day of ~~October~~ ^{November}, 2017 (this "Guaranty"), made by STICKY'S HOLDINGS LLC, a Delaware limited liability company, with an address at 21 Maiden Lane, New York, New York 10038 ("Guarantor"), to and in favor of ESRT 10 UNION SQUARE, L.L.C., having an address c/o ESRT Management, L.L.C., 111 West 33rd Street, New York, New York 10120 ("Landlord").

WITNESSETH:

WHEREAS, simultaneously herewith, Landlord has entered into an Agreement of Lease (the "Lease"), with Sticky Fingers V LLC ("Tenant") for a portion of the first (1st) floor in the building known as and by the street address of 10 Union Square, New York, New York, as more particularly described in the Lease (the "Premises"), which Premises are a portion of the condominium unit known as Unit No. Retail (the "Retail Unit") in the project known as the One Union Square East Condominium (the "Condominium"), which Condominium was established pursuant to a certain declaration of condominium, dated June 23, 1987, and recorded in the New York County Office of the Register of The City of New York on August 10, 1987 in Reel 1271, Page 2440, and which Retail Unit is also designated as Tax Lot 1003 in Block 870 of Section 3 of the Borough of Manhattan on the Tax Map of the Real Property Assessment Department of The City of New York;

WHEREAS, Guarantor, as the sole member of Tenant, will derive substantial benefit from the Lease; and

WHEREAS, Landlord would not have entered into the Lease unless Guarantor executed and delivered this Guaranty.

NOW, THEREFORE, in consideration of the execution and delivery of the Lease, the promises herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Guarantor, Guarantor covenants, agrees, represents and warrants to the Landlord as follows:

1. Capitalized Terms & Other Terms. Unless otherwise specifically defined herein, all capitalized terms used in this Guaranty shall have the same meanings ascribed to such terms in the Lease. As used in this Guaranty, words such as "hereby," "herein," "hereinafter," "hereof," "hereto" and "hereunder" are to be read as referring to this Guaranty as a whole and not merely the clause, sentence, paragraph, section or article in which such word appears. Whenever and wherever herein the singular number is used, this will also include the plural, and *vice versa* as the context may require. The use of the masculine or neuter form of any third person pronoun includes, as the case may be, the masculine, feminine or neuter genders as well.

2. Representations and Warranties.

(A) Guarantor represents and warrants to Landlord, that:

(i) Guarantor has full power, authority and legal right to cause this Guaranty to be signed and delivered, and to perform and observe the provisions of this Guaranty, including, without limitation, the payment of all moneys, if and when due, hereunder;

(ii) Guarantor, as of the date hereof, is not in violation of any decree, ruling, judgment, order or injunction applicable to it, nor any law, ordinance, rule or regulation of whatever nature, nor are there any actions, proceedings or investigations pending or threatened against or affecting Guarantor (or any basis therefor known to Guarantor) before or by any court, arbitrator, administrative agency or other governmental authority or entity, any of which, if adversely decided, would materially or adversely affect its ability to carry out any of the terms, covenants and conditions of this Guaranty.

(iii) neither the execution and delivery of this Guaranty, nor the consummation of the transactions herein contemplated, nor compliance with the terms and provisions hereof, conflict or will conflict with or result in a breach of any of the terms, conditions or provisions of any order, writ, injunction or decree of any court or governmental authority, or of any agreement or instrument to which Guarantor is a party or by which

it is bound, or constitutes or will constitute a default thereunder or violate any law, ordinance, rule or regulation of whatever nature in effect as of the date hereof;

(iv) Guarantor is not and by the execution and delivery hereof shall not then become insolvent as defined under Section 101(32) of the United States Bankruptcy Code (11 U.S.C. §101(32)) nor under any foreign bankruptcy or insolvency law;

(v) this Guaranty constitutes a legal valid and binding obligation of Guarantor and is enforceable in accordance with its terms;

(vi) no authorization, approval, consent or permission (governmental or otherwise) of any court, agency, commission or other authority or entity is required for (x) the due execution and delivery of this Guaranty by Guarantor, (y) the performance or observance by Guarantor of any of the terms, covenants and conditions set forth in this Guaranty or (z) for the payment of any sums hereunder by Guarantor;

(vii) Guarantor owns all of the outstanding and issued capital stock (or other equity interests in any non-corporate tenant) of the Tenant or controls the Tenant;

(viii) Guarantor further represents and warrants that (x) Guarantor is not listed on the list maintained by the United States Department of the Treasury, Office of Foreign Assets Control (commonly known as the OFAC List) or otherwise qualifies as a terrorist, Specially Designated National and Blocked Person or a person with whom business by a United States citizen or resident is prohibited (each a "Prohibited Person"); (y) Guarantor is not in violation of any anti-money laundering or anti-terrorism statute, including, without limitation, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, U.S. Public Law 107-56 (commonly known as the USA PATRIOT Act), and the related regulations issued thereunder, including temporary regulations, and Executive Orders (including, without limitation, Executive Order 13224) issued in connection therewith, all as amended from time to time; and (z) Guarantor is not acting on behalf of a Prohibited Person;

(ix) Guarantor is not entitled to immunity from judicial proceedings and agrees that, in the event Landlord brings any suit, action or proceeding in New York or any other jurisdiction to enforce any obligation or liability of Guarantor arising, directly or indirectly, out of or relating to this Guaranty, no immunity from such suit, action or proceedings will be claimed by or on behalf of Guarantor;

(x) Guarantor is duly organized, validly existing and in good standing under the laws of the State of Delaware; and

(xi) all representations and warranties made to the Landlord herein are factually correct and there has been no omission of any fact which by its inclusion in any representation or warranty herein would materially alter the accuracy, truthfulness or meaning of any such representation or warranty.

(B) Each of the representations and warranties made by Guarantor herein is deemed to be material to inducing Landlord to enter into the Lease and to perform Landlord's obligations thereunder. Guarantor acknowledges that Landlord, by virtue of entering into the Lease and performing its obligations thereunder, has acted and changed, and shall hereafter act and change, its position in reliance on this Guaranty and Guarantor's representations and warranties made herein. Guarantor shall indemnify and hold Landlord harmless from and against all claims, damages, losses, risks, liabilities and costs (including fines, penalties and legal costs) arising from any misrepresentation in this Guaranty or Landlord's reliance thereon. Guarantor's indemnification obligations under this Paragraph 2 shall survive the expiration or sooner termination of the Term of the Lease.

3. Obligations Guaranteed.

(A) Guarantor hereby irrevocably, absolutely and unconditionally guarantees to the Landlord the full and timely payment and performance of all obligations of Tenant under the Lease (including, without limitation, Article 20 thereof). The aforesaid guaranty includes, without limitation, the full and prompt payment of all damages and expenses that may arise in connection with or as a consequence of the non-performance or non-observance of the terms, covenants and conditions of the Lease (including but not limited to interest, attorneys' fees, costs, disbursements and costs of collection) without requiring any notice of non-performance or non-observance or proof of notice or demand upon Tenant, all of which Guarantor hereby expressly waives.

(B) Each and every default in the payment of any of the Fixed Annual Rent, Additional Rent, interest, service charges, security deposits or other payments due under the Lease or in the performance of any other obligation to be performed or observed by Tenant pursuant to the Lease shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises.

(C) Guarantor acknowledges that its liability hereunder is primary and that Landlord, at Landlord's option, may join Guarantor in any action or proceeding commenced by Landlord against Tenant in connection with or based upon the Lease or any term, covenant or condition thereof, and recovery may be had against any Guarantor in such action or proceeding or in any independent action or proceeding against any Guarantor without Landlord first giving notice to, asserting, prosecuting, or exhausting any remedy or claim against Tenant and without having first to apply any security deposit under the Lease; it being expressly understood and agreed that Landlord shall have no obligation whatsoever to give notice to Guarantor of the occurrence of any default (or threatened default) under the terms and provisions of the Lease or of any circumstance that may give warning or expectation of a subsequent default; it being further agreed that under no circumstance shall Landlord be obligated to apprise Guarantor of any change in the financial condition or position of Tenant. Guarantor shall be solely responsible for keeping apprised of the financial position and condition of Tenant.

4. Guaranty Unconditional, Irrevocable, Absolute and Continuing.

(A) Guarantor acknowledges and agrees that (i) this Guaranty is an unconditional, irrevocable and absolute guaranty of payment and performance and not merely of collection and (ii) and the obligations under this Guaranty shall continue to accrue, and remain in full force and effect beyond the stated expiration date of the Lease, regardless of whether the Lease has been terminated or whether the Tenant is no longer in possession of the Premises for any other reason, until all of the Tenant's obligations under the Lease, including the payment of all Fixed Annual Rent, Additional Rent, interest, service charges, security deposits and other payments due under the Lease, have been satisfied in their entirety and all other sums due to the Landlord pursuant to this Guaranty have been indefeasibly paid in full.

(B) To the fullest extent permitted by law, the obligations of Guarantor hereunder shall be valid and enforceable under all circumstances whatsoever and in furtherance but not in limitation thereof, Guarantor's liability shall in no way be affected, modified, diminished, released, impaired or terminated by any state of facts or the happening from time to time of any event, including any one or more of the following whether or not with notice to or the consent of Guarantor, and Guarantor waives any defense to the payment of any sum or the performance of any other obligation under this Guaranty, based or predicated in whole or in part upon any of the following:

(i) the invalidity, illegality or unenforceability of, or any defect in this Guaranty or the Lease or any respective part thereof;

(ii) the release or discharge of Tenant from the performance or observance of any of the terms, covenants or conditions contained in the Lease pursuant to the terms thereof, by operation of law, by reason of any of the events described in Paragraph 4(B)(vii) hereof, or otherwise;

(iii) any change in the relationship between Guarantor and Tenant;

(iv) any consent, approval, waiver or other action, inaction or omission under or concerning the Lease, including without limitation, any action which Landlord may take or fail to take against Tenant by reason of any waiver of, or failure to enforce, any of the rights or remedies reserved to Landlord in the Lease, or allowed at law or in equity or otherwise;

(v) any negotiations, compromises, settlements, dealings or transactions occurring between Landlord and Tenant;

(vi) the default or failure of Guarantor to perform any of its obligations set forth in this Guaranty;

(vii) any bankruptcy, insolvency, reorganization, arrangement, assignment for the benefit of creditors, receivership or trusteeship affecting Tenant, the liquidation or dissolution of Tenant, the marshaling of assets and liabilities of Tenant, or readjustment of debts in respect of Tenant in its capacity as a debtor or obligor; or other similar events or proceedings affecting Tenant or any allegation or contest of the validity of this Guaranty or the Lease in any such proceeding; it being the intent and purpose of this Guaranty that Guarantor shall and does hereby waive all rights and benefits which might accrue to Guarantor by reason of any such proceedings;

(viii) the release, substitution or replacement, whether or not in accordance with the terms of the Lease, of any property subject thereto or any re-delivery, repossession, surrender or destruction of any such property, in whole or in part;

(ix) any failure of or refusal by Landlord to mitigate damages (including the failure or refusal to re-let the Premises or any portion thereof and/or any failure to collect rent under any such re-letting) resulting from any default by Tenant under the Lease or the termination thereof;

(x) any amendments or other modifications of the Lease, including without limitation, any increases in the Rental, any extensions of the Term of the Lease, and any additions of any space to the premises demised under the Lease as of the date of this Guaranty and/or the lawful termination of the Lease by Landlord;

(xi) the assignment of the Lease by Tenant or any direct or indirect successor to Tenant under the Lease and/or the subletting of all or any portion of the Premises and/or the actual or purported assignment of any of the obligations, covenants and agreements contained in this Guaranty;

(xii) any alterations, repairs, replacements and/or decorations in the Premises as Landlord, in Landlord's sole judgment, considers advisable and necessary for the purpose of re-letting the Premises; and

(xiii) any other circumstance or condition that may result in a discharge, limitation or reduction of liability of a surety or guarantor (including, without limitation, any present or future law or order of any government (*de jure* or *de facto*) or of any agency thereof purporting to reduce the rent under, amend or otherwise affect the Lease).

(C) If after receipt of any payment hereunder applied (or intended to be applied) to the payment of, all or any part of any sums guaranteed hereunder, Landlord is compelled to surrender such payment or proceeds to any person because such payment or application of proceeds is or may be avoided, invalidated, declared fraudulent, set aside, determined to be void or voidable as a preference, fraudulent conveyance, impermissible set off or a diversion of trust funds, then the obligations or part thereof intended to be satisfied shall be reinstated and continue and this Guaranty shall continue in full force as if such payment or proceeds had not been received by Landlord, notwithstanding any revocation thereof or the cancellation of the Lease, any note or other instrument evidencing any obligation of Tenant or otherwise; and Guarantor shall be liable to pay to Landlord, and hereby does indemnify Landlord and hold Landlord harmless for, the amount of such payment or proceeds so surrendered and all expenses (including all reasonable attorneys' fees, court costs and expenses attributable thereto) incurred by Landlord in the defense of any claim made against Landlord that any payment or proceeds received by Landlord in respect of all or any part of such sums guaranteed hereunder must be surrendered, unless Tenant pays to Landlord the amount which Landlord is compelled to surrender and such payment is not similarly subject to being avoided, invalidated, declared fraudulent, set aside, determined to be void or voidable as a preference, fraudulent conveyance, impermissible set off or a diversion of trust funds and Landlord is not compelled to surrender the amount of Tenant's payment. Landlord shall not be required to litigate or otherwise dispute its obligation to surrender such payments if, in good faith and on the advice of counsel, Landlord believes that such obligation exists. The provisions of this Paragraph 4.C shall survive the termination of this Guaranty, and any satisfaction and discharge of Tenant by virtue of any payment, court order or any federal or state law.

(D) Guarantor's obligations hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including, without limitation, any claim of waiver, release, surrender, attention, settlement or compromise, and shall not be subject to, and Guarantor hereby irrevocably waives, any defense or set-off, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of Guarantor's obligations hereunder or otherwise.

(E) Any suit or proceedings brought against Guarantor to collect any amounts specified in Article 6 of the Lease for any month or months shall not prejudice in any way the rights of Landlord to collect any such amounts for any subsequent month or months in any similar suit or proceeding.

5. Waivers.

(A) Guarantor hereby waives notice of the acceptance of this Guaranty and presentment and demand for payment, notice of non-payment, notice of dishonor, protest, notice of protest, non-performance, non-observance and any other notice or demand to which such Guarantor might otherwise be entitled. This Guaranty shall become effective immediately upon delivery of an executed counterpart hereof to Landlord.

(B) AS FURTHER INDUCEMENT TO LANDLORD TO ENTER INTO THE LEASE, AND IN CONSIDERATION THEREOF, GUARANTOR HEREBY WAIVES TRIAL BY JURY OF ANY AND ALL ISSUES ARISING IN ANY ACTION OR PROCEEDING BETWEEN THE PARTIES, UPON, UNDER OR IN CONNECTION WITH THIS GUARANTY AND/OR THE LEASE. GUARANTOR ALSO AGREES THAT IT WILL BE CONCLUSIVELY BOUND BY THE JUDGMENT IN ANY SUCH ACTION BY LANDLORD AGAINST TENANT (WHEREVER BROUGHT) AS IF GUARANTOR WERE A PARTY TO SUCH ACTION, EVEN THOUGH GUARANTOR IS NOT JOINED AS A PARTY IN SUCH ACTION AND EVEN THOUGH GUARANTOR HAS NO NOTICE OF SUCH ACTION PRIOR TO THE ENTRY OF JUDGMENT.

(C) Guarantor acknowledges that Guarantor has no right or interest in or to any security posted by Tenant under the Lease and the same may be retained and/or applied in Landlord's sole discretion. Guarantor waives any and all defenses, claims, counterclaims, affirmative defenses, and other causes of action with regard to such security. For example, and without limiting the foregoing, in any action or proceeding brought by Landlord against Guarantor for the payment of Rental, Guarantor agrees that it shall be responsible for the full amount of any security held by Landlord.

(D) Nothing herein contained in this Guaranty is intended or shall be construed to give to Guarantor any right of subrogation under the Lease or any right to participate in any way therein or in Landlord's right, title and interest in the Lease. Notwithstanding any payments made under this Guaranty, all rights of subrogation and participation are expressly waived and released by Guarantor. Guarantor shall have no right of subrogation to the rights of Landlord against Tenant by reason of any payments or acts of performance by Guarantor in compliance with the obligations of Guarantor hereunder. Guarantor hereby waives any right to enforce any remedy which Guarantor now or hereafter shall have against Tenant by reason of any one of more payments or acts of performance in compliance with the obligations of Guarantor hereunder. Guarantor hereby subordinates any liability or indebtedness of Tenant now or hereafter held by Guarantor or any affiliate of Guarantor to the obligations of Tenant to Landlord under the Lease.

6. Restrictions on Guarantor. Guarantor agrees not to dispose of any, all or substantially all of its property, business or assets remaining after the execution and delivery of this Guaranty without receiving fair consideration.

7. Submission to Jurisdiction. Guarantor hereby irrevocably:

(A) submits to the jurisdiction of the state courts of the State of New York and to the jurisdiction of the United States District Court for the Southern District of New York, for the purposes of each and every suit, action or other proceeding arising out of or based upon this Guaranty or the subject matter hereof brought by Landlord, it being expressly understood and agreed that this consent to jurisdiction shall be self-

operative and no further instrument or action, other than service of process in one of the manners specified in this Guaranty or as otherwise permitted by such law, shall be necessary in order to confer jurisdiction upon such Guarantor in any such court; and

(B) waives, and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding brought in any such court, any claim that such Guarantor is not subject personally to the jurisdiction of the above-named courts, that such Guarantor's property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court, and further agrees to waive, to the fullest extent permitted under applicable law, the benefit of any defense that would hinder, fetter or delay the levy, execution or collection of any amount to which Landlord is entitled pursuant to the final judgment of any court having jurisdiction.

8. Further Instruments. Guarantor shall, from time to time, upon request by Landlord, execute, acknowledge, deliver and file all further instruments necessary or desirable to make effective or confirm the provisions of this Guaranty.

9. Consent to Service of Process. Guarantor hereby consents to service of process by certified or registered mail or nationally-recognized overnight courier to Guarantor's address as set forth herein, as provided in Paragraph 11 hereof or in any other manner permitted by law. Guarantor agrees that service in the foregoing manner shall be deemed, in every respect, effective service of process upon Guarantor and be taken and held to be valid personal service upon, and personal delivery to, Guarantor. Guarantor agrees that Guarantor's submission to jurisdiction and consent to service of process by mail and overnight courier is made for the express benefit of Landlord.

10. Enforcement of Judgement. Final judgment against Guarantor in any such action, suit or proceeding shall be conclusive, and may be enforced in other jurisdictions:

(A) by suit, action or proceeding on the judgment, a certified or true copy of which shall be conclusive evidence of the fact and of the amount of any indebtedness or liability of Guarantor therein described; or

(B) in any other manner provided by or pursuant to the laws of such other jurisdiction; provided, however, that Landlord may at its option bring suit, or institute other judicial proceedings against Guarantor or any of Guarantor's assets in any state or federal court of the United States or of any country or place where either Guarantor or such assets may be found.

11. Notices.

All notices, demands, requests, consents, approvals or other communications (collectively, "Notices") given under this Guaranty shall be in writing, and, any law or statute to the contrary notwithstanding, shall be effective for any purpose if sent by (a) registered or certified mail, return receipt requested, prepaid, or (b) a nationally-recognized overnight courier (with verification of delivery), addressed as follows:

If to Guarantor, to it at:
Sticky's Holdings LLC
21 Maiden Lane
New York, New York 10038
Attention: Jonathan Sherman

If to Landlord, to it at:

ESRT 10 Union Square, L.L.C.
c/o ESRT Management, L.L.C.
111 West 33rd Street
New York, New York 10120
Attn: Leasing (10 Union Square)

and

Empire State Realty Trust, Inc.
111 West 33rd Street
New York, New York 10120
Attn: Lease Administration Department

with copies to:

Bleckner P.C.
350 Fifth Avenue, Suite 6440
New York, New York 10118

and

Empire State Realty Trust, Inc.
111 West 33rd Street
New York, New York 10120
Attn: Legal- Leasing

or at such other address as any party hereto shall designate in writing in accordance with the terms of this Paragraph 11. All Notices shall be deemed given or served (i) on the third (3rd) day after the date on which date such Notice has been mailed, as aforesaid or (ii) on the first (1st) Business Day after the date that it is sent by a nationally-recognized courier, as aforesaid. Notwithstanding the foregoing, any notice changing Landlord's address may be given to Guarantor by regular, first class U.S. mail.

12. Expenses. If Landlord shall take any measures to enforce Guarantor's obligations under this Guaranty or any part thereof, Guarantor agrees to pay on demand all of Landlord's costs in connection therewith, whether or not suit be brought including, without limitation, attorneys' fees and disbursements.

13. Miscellaneous Provisions.

(A) Nothing contained herein shall diminish any of Landlord's rights against Tenant under the terms of the Lease.

(B) All remedies afforded to Landlord by reason of this Guaranty are separate and cumulative remedies and no one remedy herein conferred upon or reserved to the Landlord, whether exercised or not, shall be deemed to be in exclusion of any other remedy available to Landlord under this Guaranty, the Lease, pursuant to law or in equity, whether the same currently exists or may hereafter exist and nothing contained in this Guaranty shall be deemed to limit or prejudice any other legal or equitable remedy which Landlord may otherwise have.

(C) No delay on the part of Landlord in exercising any right, power or privilege under this Guaranty, nor any failure to exercise the same, shall operate as a waiver of, or otherwise affect, any right, power or privilege of Landlord under this Guaranty, nor shall any single or partial exercise thereof preclude the further exercise of, or the exercise of any other, right, power or privilege of Landlord under this Guaranty.

(D) The liability of Guarantor hereunder shall be unconditional and shall not be in any manner affected by any indulgence whatsoever granted or consented to by the holder hereof, including, but not limited to any extension of time, renewal, waiver or other modification. Neither any waiver or modification of any provision of this Guaranty, nor any termination of this Guaranty, shall be effective unless in writing and signed by the party against which the waiver, modification or termination is sought to be enforced, nor shall any waiver be applicable except in the specific instance for which it is given.

(E) If any provision of this Guaranty or the application thereof to any person or circumstance shall to any extent be held void, unenforceable or invalid, then the remainder of this Guaranty or the

application of such provision to persons or circumstances, other than those as to which it is held void, unenforceable or invalid, shall not be affected thereby and each provision of this Guaranty shall be valid and enforceable to the fullest extent permitted by law.

(F) The validity and enforcement of this Guaranty shall be governed by and construed in accordance with the laws of the State of New York without regard to conflicts of laws principles and such laws shall apply in any action or proceeding arising out of or under this Guaranty.

(G) The provisions of this Guaranty shall be binding upon and shall inure to the benefit of Landlord and Guarantor and their respective successors and assigns. All references in this Guaranty to Landlord and Tenant shall be deemed to mean Landlord's and Tenant's respective permitted successors and assigns.

(H) The existence herein of article and section headings or captions is for convenience only and no such headings or captions will be used for the purposes of interpreting or construing the meaning of any term or provision hereof.

(I) This Guaranty sets forth the entire agreement and obligations of Guarantor to Landlord and supersedes any and all other understandings (whether oral or written) between them. Guarantor agrees that Guarantor shall, at any time and from time to time, within ten (10) days following written request by Landlord, execute, acknowledge and deliver to Landlord a statement certifying that this Guaranty is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating such modification). Guarantor agrees that such certificate may be relied on by anyone holding or proposing to acquire any interest in the Building from or through Landlord or by any mortgagee or prospective mortgagee of the Building or of any interest therein.

(J) Guarantor and Landlord each acknowledge and agree that this Guaranty has been freely negotiated and that in any dispute over the meaning, interpretation, validity or enforceability of this Guaranty or any of the terms, provisions, covenants or conditions hereof, there shall be no presumption whatsoever against either party by virtue of that party having drafted this Guaranty or any part thereof. If any words or phrases in this Guaranty (or in any prior draft thereof) shall have been stricken out or otherwise eliminated, whether or not any other words or phrases have been added, this Guaranty shall be construed as if the words or phrases so stricken out or otherwise eliminated were never included herein and no implication or inference shall be drawn from the fact that such words or phrases were so stricken out or otherwise eliminated.


(K) This Guaranty may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, and all of which shall constitute one and the same instrument. Facsimile signatures, electronic signatures and/or signatures delivered by e-mail in PDF format shall be considered to be fully binding and shall carry the same weight as original signatures when executing this Guaranty.

(L) In the event this Guaranty is executed after the original date of the Lease, Guarantor acknowledges, understands and agrees to the following: (i) this Guaranty was intended to be executed on or prior to the date of the Lease; (ii) dating this Guaranty after the Lease is not evidence that Landlord would have made the Lease without this Guaranty; (iii) this Guaranty remains supported by good and sufficient consideration; and (iv) the parties intended for this Guaranty to be dated on or prior to the date of the Lease but the delivery or logistics involved in getting Guarantor's signature hindered, but did not defeat, such intent.

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IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first above written.


STICKY'S HOLDINGS LLC


 Name: Jonathan Sherman
 Title: CEO

UNIFORM FORM CERTIFICATE OF ACKNOWLEDGMENT
(Within New York State)

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

On the 31 day of October, in the year 2017, before me, the undersigned personally appeared Jonathan Sherman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


 Notary Public

DAVID FEINBERG
 Notary Public, State of New York
 No. 02FE6148584
 Qualified in Nassau County
 Commission Expires June 26, 2018

SCHEDULE A

RULES AND REGULATIONS

1. The sidewalks, entrances, driveways, passages, courts, elevators, vestibules, stairways, corridors or halls shall not be obstructed or encumbered by any tenant or used for any purpose other than for ingress to and egress from the Demised Premises and for delivery of merchandise and equipment in a prompt and efficient manner using elevators and passageways designed for such delivery by Landlord. There shall not be used in any space, or in the public hall of the Building and/or the Retail Unit, either by any tenant or by jobbers, or others in the delivery or receipt of merchandise, any hand trucks except those equipped with rubber tires and safeguards.
2. No animals, birds, bicycles or vehicles shall be brought into or kept in the Demised Premises.
3. Smoking or carrying lighted cigars, pipes or cigarettes in the elevators or common areas of the Building and/or the Retail Unit is prohibited.
4. If the Demised Premises are situated on the ground floor of the Building, Tenant thereof shall further, at Tenant's expense, keep the sidewalks and curb in front of said Demised Premises clean.
5. The water and wash closets and plumbing fixtures shall not be used for any purposes other than those for which they were designed or constructed, and no sweepings, rags, ink, chemicals or other unsuitable substances shall be thrown therein.
6. At the termination of this Lease, Tenant shall deliver to Landlord all keys for any portion of the Demised Premises or Building. Before leaving the Demised Premises at any time, Tenant shall close all windows and close and lock all doors.
7. Tenant shall not use, keep or permit to be used or kept, any foul or noxious gas or substance in the Demised Premises, or permit or suffer the Demised Premises to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the Building, the Retail Unit, or other neighborhood buildings by reason of noise, odors and/or vibrations, or interfere in any way with other tenants or those having business therein. Landlord agrees that the mere use of the Demised Premises for the Permitted Use, absent other factors, shall not constitute a violation of this Building Rule 7.
8. No advertising of any kind by Tenant shall refer to the Building or the Retail Unit, unless first approved in writing by Landlord, except to identify the address of the Demised Premises and the Building or the Retail Unit. Canvassing, soliciting and peddling in the Building and the Retail Unit are prohibited, and Tenant shall cooperate so as to prevent same.

9. Tenant shall not in any way deface any part of the Demised Premises, the Retail Unit, or the Building of which they form a part. No boring, cutting or stringing of wires shall be permitted, except with the prior written consent of Landlord (which consent shall not be unreasonably withheld, conditioned or delayed, but which work shall be in compliance with the applicable provisions of the Lease), and as Landlord may direct. Tenant shall not lay linoleum, or other similar floor covering, so that the same shall come in direct contact with the floor of the Demised Premises, and, if linoleum or other similar floor covering is desired to be used, an interlining of builder's deadening felt shall be first affixed to the floor, by a paste or other material, soluble in water, the use of cement or other similar adhesive material being expressly prohibited.
10. Freight, furniture, business equipment, merchandise and bulky matter of any description shall be delivered to and removed from the Demised Premises only on the freight elevators and through the service entrances and corridors, and only during hours and in a manner approved by Landlord. Landlord reserves the right to inspect all freight to be brought into the Building and/or the Retail Unit and to exclude from the Building and/or the Retail Unit all freight which violates any of these Rules and Regulations or the Lease of which these Rules and Regulations are a part.
11. Except where there is direct public access to the Demised Premises from the Tenant's storefront, Landlord reserves the right to exclude from the Building and/or the Retail Unit between the hours of 6 P.M. and 8 A.M., and at all hours on Sundays and holidays, all persons who do not present a pass to the Retail Unit signed by Landlord. Landlord will furnish passes to persons for whom Tenant requests same in writing. Tenant shall be responsible for all persons for whom it requests such pass, and shall be liable to Landlord for all acts of such person.
12. Landlord shall have the right to prohibit any advertising by Tenant which, in Landlord's reasonable opinion, tends to impair the reputation of Landlord, the Retail Unit, or the Building's desirability as a Building for stores or offices in any material respect, and upon such written notice from Landlord, Tenant shall refrain from or discontinue such advertising.
13. Tenant shall not bring or permit to be brought or kept in or on the Demised Premises, any inflammable, combustible, or explosive, or hazardous fluid, material, chemical or substance (other than, solely with respect to use and storage, ordinary cleaning and office supplies in ordinary quantities, which shall be used and stored in accordance with all applicable laws, orders, rules and regulations with respect thereto, as well as the manufacturer's directions), or cause or permit any odors of cooking or other processes, or any unusual or other objectionable odors, to permeate in or emanate from the Demised Premises.
14. Tenant shall not place a load on any floor of the Demised Premises exceeding the floor load per square foot area which it was designed to carry and which is allowed by law. Landlord reserves the right to reasonably prescribe the weight and position of all safes,

business machines and mechanical equipment. Such installations shall be placed and maintained by Tenant at Tenant's expense in a setting sufficient in Landlord's reasonable judgment to absorb and prevent vibration, noise and annoyance.

15. Refuse and Trash – Tenant covenants and agrees, at its sole cost and expense, to comply with all present and future laws, orders and regulations of all state, federal, municipal and local governments, departments, commissions and boards regarding the collection, sorting, separation and recycling of waste products, garbage, refuse and trash. Tenant shall pay all costs, expenses, fines, penalties or damages that may be imposed on Landlord or Tenant by reason of Tenant's failure to comply with the provisions of this Building Rule 15, and, at Tenant's sole cost and expense, shall indemnify, defend and hold Landlord harmless (including reasonable legal fees and expenses) from and against any actions, claims and suits arising from such non-compliance, utilizing counsel reasonably satisfactory to Landlord. Tenant shall not throw anything out of doors, windows or skylights or into hallways, stairways or elevators, not place food or objects on outside windows.
16. No space in the Building shall be used for manufacturing, for the storage of merchandise, or for the sale of merchandise, goods or property of any kind at auction or otherwise.
17. Tenant shall not place any signs, displays, stands, equipment, merchandise, food or beverages of any kind whatsoever in the common areas of the Building or on the sidewalk in front of the Building or utilize such sidewalk for any purpose whatsoever, except for ingress or egress to and from the Premises, and Tenant agrees to keep the sidewalk in front of the Premises and the street to a distance of eighteen (18) inches from the curb, free of snow, ice and rubbish.

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re STICKY’S HOLDINGS LLC ,et al. Reorganized Debtors.)))))	Chapter 11 Case No. 24-10856 (JKS) (Jointly Administered)
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ORDER GRANTING MOTION OF ESRT 10 UNION SQUARE LLC

Upon the Motion dated April 21, 2025 (the “Motion”), by ESRT 10 Union Square LLC (the “Landlord”): (I) to Compel Immediate Payment of Post-Confirmation Rent and Grant Relief from the Automatic Stay/Plan Injunction to Permit Landlord to Setoff such Amount Against the Security Deposit and Assert Claim against Administrative Claim Reserve; (II) Compel Immediate Rejection and Surrender of Assumed Lease and Permit Clean-Up Free of Premises Free of any Third-Party Liability; and (III) for Waiver of the Stay of Enforcement of any Order under Fed. R. Bankr. P. 4001(a)(3); and the Court finding that (a) it has jurisdiction over the matters raised in the Motion pursuant to 27 U.S.C. §§ 157 and 1334; this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and (c) upon the record herein after due deliberation thereon good and sufficient cause exists for the granting of the relief as set forth herein. Therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Lease is hereby rejected, and the Premises are hereby deemed surrendered to Landlord effective as of the date of this Order.

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number are as follows: Sticky’s Holdings LLC (3586); Sticky Fingers LLC (3212); Sticky Fingers II LLC (7125); Sticky Fingers III LLC (3914); Sticky Fingers IV LLC (9412); Sticky Fingers V LLC (1465); Sticky Fingers VI LLC (0578); Sticky’s BK I LLC (0423); Sticky’s NJ I LLC (5162); Sticky Fingers VII LLC (1491); Sticky’s NJ II LLC (6642); Sticky Fingers IX LLC (5036); Sticky’s NJ III LLC (7036); Sticky Fingers VIII LLC (0080); Sticky NJ IV LLC (6341); Sticky’s WC 1 LLC (0427); Sticky’s Franchise LLC (5232); Sticky’s PA GK I LLC (7496); Stickys Corporate LLC (5719); and Sticky’s IP LLC (4569). The Debtors’ mailing address is 21 Maiden Lane, New York, NY 10038 (collectively, the “Reorganized Debtors”)

3. Landlord is authorized to setoff all post-confirmation obligations owed under the Assumed Lease, including its reasonable attorney's fees and costs, and rejection and other administrative damages against the Security Deposit.

4. The automatic stay is lifted to permit Landlord to immediately re-take possession and control of the Premises and abandon, dispose of or take any other action with respect to any fixtures, furniture, and equipment or other property remaining at the Premise without liability to the Debtors, their estates or any third parties.

5. The stay of enforcement of this Order under Federal Rule of Bankruptcy Procedure 4001(3) is waived.

6. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.