

Motion Sequence #002

Exhibit I



State of New York

Executive Chamber

No. 202.35

EXECUTIVE ORDER

Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York; and

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to continue;

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to issue any directive during a disaster emergency necessary to cope with the disaster, I hereby issue the following directives for the period from the date of this Executive Order through June 28, 2020:

- Executive Order 202.34, which extended the provisions of Executive Orders 202.3, 202.4, 202.5, 202.6, 202.7, 202.8, 202.10, 202.11, 202.13, 202.14, 202.28, and 202.31 which each closed or otherwise restricted public or private businesses or places of public accommodation, and Executive Order 202.32 as modified by Executive Order 202.33 which required postponement, cancellation, or restriction on size of all non-essential gatherings of more than ten individuals, and which together constitute New York On PAUSE, is hereby continued until and unless later amended or extended by a future Executive Order, provided, however:
 - That effective at 1:00 p.m. on May 29, 2020 that the reductions and restrictions on the in-person workforce at non-essential businesses or other entities shall no longer apply to Phase Two industries:
 - Professional Services, Administrative Support, Information Technology,
 - Real estate services, Building and Property Management, Leasing, Rental, and Sales Services,
 - Retail In-store Shopping, Rental, Repair, and Cleaning,
 - Barbershops and Hair Salon (limited services), and
 - Motor Vehicle Leasing, Rental, and Sales.
 - Businesses or entities in industries open in Phase Two must be operated subject to the guidance promulgated by the Department of Health.

- o As of May 29, 2020 the regions meeting the prescribed public health and safety metrics required for Phase Two reopening are: Finger Lakes, Central New York, Mohawk Valley, Southern Tier, and the North Country. Any additional regions which meet the criteria after such date will be deemed to be incorporated into this Executive Order without further revision and will be permitted to re-open Phase two industries, subject to the same terms and conditions.



GIVEN under my hand and the Privy Seal of the
 State in the City of Albany this
 twenty-ninth day of May in the year
 two thousand twenty.

BY THE GOVERNOR

Secretary to the Governor

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
DHG MANAGEMENT COMPANY LLC

Plaintiff

Motion Sequence #002

-against-

Index No. 654319/2020

FRENCH PARTNERS LLC and NEW YORK
FRENCH BUILDING CO-INVESTORS, LLC [n/k/a
New York French Soundview LLC], TENANTS-IN
COMMON

NOTICE OF MOTION

Defendants

-----X

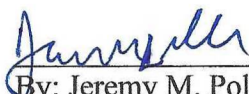
PLEASE TAKE NOTICE, that upon the annexed affirmation of Jeremy M. Poland, dated January 6, 2021, the annexed affidavit of Donna Vocaturo, sworn to on the 5th day of January 2021, the affidavit of Barry Zimmerman, sworn to on the 4th day of January, 2021, and upon all of the pleadings and proceedings had heretofore had herein the undersigned will move this Court at the Motion Submission Part, Room 130, at the Courthouse located at 60 Centre Street, New York, New York, on the 15th Day of January 2021, at 9:30 A.M., or as soon thereafter as counsel may be heard for an Order, pursuant to:

- (a) CPLR §3212 granting Defendants summary judgment on Plaintiff’s cause of action and dismissing same; and
- (b) CPLR §3212 granting Defendants summary judgment on their counterclaims, or, in the alternative;
- (c) Granting Defendants use and occupancy *pendente lite* during the pendency of this proceeding; and
- (d) Granting such other and further relief as this Court may seem just and proper along with the costs of this motion.

PLEASE TAKE FURTHER NOTICE, that answering papers, if any, are to be served in accordance with Section 2214(b) of the CPLR.

Dated: Nassau, New York
January 6, 2021

Horing Welikson Rosen & Digrugilliers, P.C.
Attorneys for the Defendants



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Motion Sequence #002

Exhibit J

2020 WL 7137817 (N.Y.Sup.), 2020 N.Y. Slip Op. 34017(U) (Trial Order)
Supreme Court of New York.
New York County

****1** 1140 BROADWAY LLC, Plaintiff,

v.

BOLD FOOD, LLC, KBFK Restaurant Corp., Defendants.

No. 652674/2020.
December 3, 2020.

Decision + Order on Motion

Present: Hon. Arlene P. Bluth, Justice.

MOTION DATE 11/24/2020

MOTION SEQ. NO. 001

***1** The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 were read on this motion to/for JUDGMENT - SUMMARY.

The motion by plaintiff for summary judgment is granted as to liability only.

Background

In this commercial landlord-tenant case, plaintiff (the landlord) moves for summary judgment. It claims that defendant Bold Food (the tenant) leased a portion of the twelfth floor at plaintiff's building in Manhattan as office space. Defendant KBFK entered into a good guy guarantee in connection with the lease, which expired in February 2022. Plaintiff contends that the tenant stopped paying rent in February 2020 and eventually vacated the space on June 30, 2020, five months later.

In opposition, defendants cite the ongoing pandemic as the reason the tenant stopped paying rent. They argue that performing under the contract was objectively impossible and therefore any default was excusable. Defendants also rely on the frustration of purpose doctrine to excuse the tenant's failure to pay rent. Defendant Bold Food observes that its primary services ****2** involve managing and consulting for a group of restaurants and the shutdown of restaurants renders its business model unprofitable. Defendants argue in the alternative that there must be an inquest to determine the precise amount plaintiff is due.

In reply, plaintiff argues that the impossibility and frustration of purpose defenses are inapplicable and fail as a matter of law. Plaintiff also insists that the guarantor must be held liable and that its damages are not disputed.

Discussion

To be entitled to the remedy of summary judgment, the moving party "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact from the case" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). The failure to make such a prima facie

showing requires denial of the motion, regardless of the sufficiency of any opposing papers (*id.*). When deciding a summary judgment motion, the court views the alleged facts in the light most favorable to the non-moving party (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 492, 955 NYS2d 589 [1st Dept 2012]).

Once a movant meets its initial burden, the burden shifts to the opponent, who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 560, 427 NYS2d 595 [1980]). The court's task in deciding a summary judgment motion is to determine whether there are bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505, 942 NYS2d 13 [2012]). If the court is unsure whether a triable issue of fact exists, or can reasonably conclude that fact is arguable, the motion must be denied (*Tronlone v Lac d'Amiante Du Quebec, Ltee*, 297 AD2d 528, 528-29, 747 NYS2d 79 [1st Dept 2002], **3 *aff'd* 99 NY2d 647, 760 NYS2d 96 [2003]).

*2 As an initial matter, the Court grants plaintiff's motion as to liability and rejects defendants' reliance on the doctrines of impossibility and frustration of purpose. The Court empathizes with the many business that have been adversely affected by the ongoing pandemic; here, both the landlord and the tenant have undoubtedly faced significant hardship.

The doctrine of frustration of purpose requires that "the frustrated purpose must be so completely the basis of the contract that, as both parties understood, without it, the transaction would have made little sense" (*Crown IT Services, Inc. v Koval-Olsen*, 11 AD3d 263, 265, 782 NYS2d 708 [1st Dept 2004]). "[T]his doctrine is a narrow one which does not apply unless the frustration is substantial" (*id.*). Here, the lease was for office space in a building and the tenant's business was devastated by a pandemic. That does not fit into the narrow doctrine of frustration of purpose. Simply put, defendants could no longer afford the rent because restaurants no longer needed the management help that the tenant provides.

This is not a case where the office space leased was destroyed or where a tenant rented a unique space for a specific purpose that can no longer serve that function (such as a factory that was condemned after the lease was signed or a agreeing to rent costumes for a specific play to be performed at a specific theater on specific dates but the theater burned down before the first rental date). To be clear, the Court takes no position on what circumstances might permit the implication of a frustration of purpose doctrine under a generic office lease. The Court merely concludes that it does not apply here, where the tenant rented office space, the tenant's industry experienced a precipitous downfall and the tenant to no longer be able pay the rent.

**4 Similarly, the Court finds that the impossibility doctrine does not compel the Court to deny the motion. "Impossibility excuses a party's performance only when the destruction of the subject matter of the contract or the means of performance makes performance objectively impossible. Moreover, the impossibility must be produced by an unanticipated event that could not have been foreseen or guarded against in the contract" (*Kel Kim Corp. v Cent. Markets, Inc.*, 70 NY2d 900, 902, 524 NYS2d 384 [1987]).

It is critical to point out that the tenant merely provided restaurants with consulting services. It was not shut down by any public health directives. In other words, the tenant was one step removed from the governor's public health orders relating to restaurants because their business assists restaurants.¹ It appears that restaurants no longer needed assistance with human resources, payroll or accounting, not because of anything plaintiff did (or failed to do). Sometimes that happens in business--an industry changes overnight.

And although restaurants were required to scale back certain operations (such as indoor dining) because of the pandemic, they were not fully shut down. Many food establishments decided to shut down because of the financial consequences from both the pandemic and the public health orders, but that does not mean there was a "destruction of the subject matter" contemplated in the contract at issue here, which was for office space on the twelfth floor of an office building. The Court is unable to find that the doctrine of impossibility has any application here.

****5 Summary**

*3 The undisputed fact is that the lease was for office space in a building and the tenant stopped making payments. Nothing in the lease provides a remedy for a situation like this. The landlord never agreed to make paying the rent contingent on the tenant being able to afford it. The Court declines to step in and unilaterally modify the parties' contract and tell the landlord that it should not be able to enforce the agreement it signed with a tenant.

And the parties included a safeguard: this landlord agreed to a good guy guaranty, thus lessening the guarantor's risk if the tenant went out of business so long as certain obligations were satisfied. The guarantor is only responsible for rent for the time the tenant is actually in possession and had the power to return the premises to the landlord. Here, the tenant waited five months to return the premises to the landlord -- yet the tenant and guarantor ask this Court to absolve them of their obligations. The Court declines to ignore a clear contractual provision designed to address the situation at issue here--where the tenant stops paying the rent and retains possession of the premises.

However, the Court finds that a hearing is required to assess the amount of damages plaintiff is due. Defendants argued that the security deposit has not been deducted from the damages requested although plaintiff explains in reply that any amount it is awarded should be deducted by the amount of the security deposit. This is an indication of the lack of proof as to plaintiff's actual damages. Plaintiff did not provide a ledger or any documentation demonstrating how it calculated the amount it seeks. While plaintiff attached the affidavit of its agent (NYSCEF Doc. No. 8), that does not show how it totaled the rent, additional rent, reasonable attorneys' fees, any damages or interest. In fact, Mr. DiFiore asks, in the alternative, that the Court refer this matter to a special referee to fix the amount of damages.

**6 To the extent that defendants argue that the ongoing pandemic should constitute a "casualty" that could entitle defendants to an abatement, that claim is denied. That portion of the lease refers to physical damage, not the failure of defendants' business to retain its clients.

Accordingly, it is hereby

ORDERED that the motion by plaintiff for summary judgment is granted as to liability only and there shall be a trial to determine the amount of damages due to plaintiff, and plaintiff is directed to file a note of issue on or before December 15, 2020.

12/3/2020

DATE

<<signature>>

ARLENE P. BLUTH, J.S.C.

Footnotes

- 1 To be clear, the Court takes no position on whether a restaurant could successfully rely on the doctrines of impossibility or frustration of purpose. That issue is not before the Court in this motion.

Motion Sequence #002

Exhibit H

THE FEIL ORGANIZATION

***** A R H *****

PAGE 1

FC/0900C JMC MGR FRENCH PART+NYC FRE DATES ARE FOR: 7/01/20-12/11/20
 DHG MANAGEMENT LLC, 09/07-03/23 WITH TBLALLX CODES: (SHOW CASH)
 SUITE 900 MUHAMAD AHMAD ALL TBLALLX CODES
 MO RNT 207,369.50
 FLAGS: DO SECURITY:\$ 0.00

12/16/20

*-indicates Manual Adjustment

SL	DATE	IN	A/R	DSC	INV/CK	TYPE	AMT.	BILLED	CASH	RECEIVED	RUNNING	BAL.	AGE~	INV DATE	LONG DESCRIPTION						
----- OPENING BALANCE -----												0.00									
7/01/20	SALE TX	377471	INV				149.99				149.99	72									
7/01/20	DEF RNT	377471	INV				680.27				830.26	72									
7/01/20	CLEANNG	377471	INV				1,690.00				2,520.26	72									
7/01/20	DEF RNT	377471	INV				2,721.08				5,241.34	72									
7/01/20	OPERAT.	377471	INV				13,848.43				19,089.77	72									
7/01/20	R/E TAX	377471	INV				36,596.54				55,686.31	72									
7/01/20	OPERAT.	377471	INV				50,153.84				105,840.15	72									
7/01/20	RENTCOM	377471	INV				53,240.00				159,080.15	72									
7/01/20	RENTCOM	377471	INV				207,369.50				366,449.65	72									
8/01/20	MTR ELE	379703*	DEB				4,066.38				370,516.03	41	08/01/20	3/4/20- 4/2/20- MTR ELEC							
8/01/20	MTR ELE	379850*	DEB				2,620.09				373,136.12	41	08/01/20	4/2/20-5/5/20 MTR ELEC							
8/01/20	SALE TX	385606	INV				149.99				373,286.11	41									
8/01/20	DEF RNT	385606	INV				680.27				373,966.38	41									
8/01/20	CLEANNG	385606	INV				1,690.00				375,656.38	41									
8/01/20	DEF RNT	385606	INV				2,721.08				378,377.46	41									
8/01/20	OPERAT.	385606	INV				13,848.43				392,225.89	41									
8/01/20	R/E TAX	385606	INV				36,596.54				428,822.43	41									
8/01/20	OPERAT.	385606	INV				50,153.84				478,976.27	41									
8/01/20	RENTCOM	385606	INV				53,240.00				532,216.27	41									
8/01/20	RENTCOM	385606	INV				207,369.50				739,585.77	41									
9/01/20	MTR ELE	387917*	DEB				2,741.25				742,327.02	10	09/01/20	5/5/20-6/4/20 MTR ELEC							
9/01/20	SALE TX	393512	INV				149.99				742,477.01	10									
9/01/20	DEF RNT	393512	INV				680.27				743,157.28	10									
9/01/20	CLEANNG	393512	INV				1,690.00				744,847.28	10									
9/01/20	DEF RNT	393512	INV				2,721.08				747,568.36	10									
9/01/20	OPERAT.	393512	INV				13,848.43				761,416.79	10									
9/01/20	R/E TAX	393512	INV				36,596.54				798,013.33	10									
9/01/20	OPERAT.	393512	INV				50,153.84				848,167.17	10									
9/01/20	RENTCOM	393512	INV				53,240.00				901,407.17	10									
9/01/20	RENTCOM	393512	INV				207,369.50				1108,776.67	106*									
9/11/20	**CASH*		CASH					931,595.00			177,181.67		09/11/20	CR#11B1QGC03C006091							
10/01/20	MTR ELE	396038	DEB				1,917.17				179,098.84	76*	10/01/20	6/4/20-7/2/20- MTR ELEC							
10/01/20	SALE TX	401053	INV				149.99				179,248.83	76*									
10/01/20	DEF RNT	401053	INV				680.27				179,929.10	76*									
10/01/20	CLEANNG	401053	INV				1,690.00				181,619.10	76*									
10/01/20	DEF RNT	401053	INV				2,721.08				184,340.18	76*									
10/01/20	OPERAT.	401053	INV				13,848.43				198,188.61	76*									

THE FEIL ORGANIZATION

***** A R H *****

PAGE 2

FC/0900C JMC MGR FRENCH PART+NYC FRE
DHG MANAGEMENT LLC, 09/07-03/23
SUITE 900 MUHAMAD AHMAD
MO RNT 207,369.50

DATES ARE FOR: 7/01/20-12/11/20
WITH TBLALLX CODES: (SHOW CASH)
ALL TBLALLX CODES

12/16/20

FLAGS: DO

SECURITY:\$ 0.00

*-indicates Manual Adjustment

SL DATE IN	A/R DSC	INV/CK	TYPE	AMT. BILLED	CASH RECEIVED	RUNNING BAL.	AGE~	INV DATE	LONG DESCRIPTION
10/01/20	R/E TAX	401053	INV	36,596.54		234,785.15	76*		
10/01/20	OPERAT.	401053	INV	50,153.84		284,938.99	76*		
10/01/20	RENTCOM	401053	INV	53,240.00		338,178.99	76*		
10/01/20	RENTCOM	401053	INV	207,369.50		545,548.49	76*		
11/01/20	SALE TX	01044	DEB	66.56		545,615.05	45*	11/01/20	WS# 46605235
11/01/20	RUBBISH	01044	DEB	750.00		546,365.05	45*	11/01/20	WS# 46605235
11/01/20	SALE TX	408174	INV	149.99		546,515.04	45*		
11/01/20	DEF RNT	408174	INV	680.27		547,195.31	45*		
11/01/20	CLEANNG	408174	INV	1,690.00		548,885.31	45*		
11/01/20	DEF RNT	408174	INV	2,721.08		551,606.39	45*		
11/01/20	OPERAT.	408174	INV	13,848.43		565,454.82	45*		
11/01/20	R/E TAX	408174	INV	36,596.54		602,051.36	45*		
11/01/20	OPERAT.	408174	INV	50,153.84		652,205.20	45*		
11/01/20	RENTCOM	408174	INV	53,240.00		705,445.20	45*		
11/01/20	RENTCOM	408174	INV	207,369.50		912,814.70	45*		
12/01/20	MTR ELE	410492	DEB	1,698.06		914,512.76	15*	12/01/20	7/2/20-8/3/20- MTR ELEC
12/01/20	MTR ELE	410518	DEB	20,815.79		935,328.55	15*	12/01/20	8/3/20-9/4/20- MTR ELEC
12/01/20	SALE TX	415732	INV	149.99		935,478.54	15*		
12/01/20	DEF RNT	415732	INV	680.27		936,158.81	15*		
12/01/20	CLEANNG	415732	INV	1,690.00		937,848.81	15*		
12/01/20	DEF RNT	415732	INV	2,721.08		940,569.89	15*		
12/01/20	OPERAT.	415732	INV	13,848.43		954,418.32	15*		
12/01/20	R/E TAX	415732	INV	36,596.54		991,014.86	15*		
12/01/20	RENTCOM	415732	INV	53,240.00		1044,254.86	15*		
12/01/20	OPERAT.	415732	INV	54,896.37		1099,151.23	15*		
12/01/20	RENTCOM	415732	INV	207,369.50		1306,520.73	15*		
12/11/20	R/E TAX	418132	CR	1,732.86-		1304,787.87	5*	12/11/20	2020/21 2ND HALF RET /BID
TENANT TOTAL:				2236,382.87	931,595.00	1304,787.87			

Motion Sequence #002

Exhibit F

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. NANCY M. BANNON PART IAS MOTION 42EFM

Justice

-----X

DHG MANAGEMENT COMPANY, LLC,

Plaintiff,

- v -

FRENCH PARTNERS LLC, NEW YORK FRENCH
BUILDING CO-INVESTORS, LLC, N/K/A NEW YORK
FRENCH SOUNDVIEW LLC,

Defendant.

-----X

INDEX NO. 654319/2020
MOTION DATE 10/21/2020
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25

were read on this motion to/for DISMISSAL.

In this action seeking damages for breach of a commercial lease, the defendant landlord moves, pre-answer, to dismiss the complaint pursuant to CPLR 3211(a)(1), a defense founded upon documentary evidence, and CPLR 3211(a)(7), failure to state a cause of action. The plaintiff tenant opposes the motion. The motion is granted in part.

The plaintiff asserts two causes of action, breach of contract and conversion. First, it alleges that the defendant breached the parties' lease in that it denied the plaintiff 24-hour, seven-day per week access to the leased premises for several months during the COVID-19 health emergency and government mandated closures. The plaintiff seeks \$1,000,000.00 in damages for that breach, and the return of the rent it paid for April, May and June of 2020. As a second cause of action, the plaintiff argues that the defendant converted the \$931,595.00 security deposit and seeks its return.

In support of the motion, the defendant alleges that the plaintiff was served with a Notice to Cure on August 5, 2020, which stated that the plaintiff was in breach of the lease by failing to pay \$739,585.77 in accrued rent and additional rent. According to the defendant, after crediting the security deposit, as of September 1, 2020, the plaintiff would have a balance due of

\$177,181.67. The documentary evidence on which the defendant relies is the subject lease, which, the defendant opines, only prohibits limits on access that are within the landlord's control, Governor Cuomo's Executive Order 202.8 from March 7, 2020, which required the closure of non-essential businesses, and the three rent checks for April, May and June, which the defendant claims were paid voluntarily and without any reservation of rights. The defendant also maintains that the plaintiff had full access to the premises throughout this period, which is all that is required of the landlord under the lease.

When assessing the adequacy of a pleading in the context of a motion to dismiss under CPLR 3211(a)(7), the court's role is "to determine whether [the] pleadings state a cause of action." 511 W. 232nd Owners Corp. v Jennifer Realty Co., 98 NY2d 144 (2002). To determine whether a claim adequately states a cause of action, the court must "liberally construe" it, accept the facts alleged in it as true, accord it "the benefit of every possible favorable inference" (id. at 152; see Romanello v Intesa Sanpaolo, S.p.A., 22 NY3d 881 [2013]; Simkin v Blank, 19 NY3d 46 [2012]), and determine only whether the facts, as alleged, fit within any cognizable legal theory. See Hurrell-Harring v State of New York, 15 NY3d 8 (2010); Leon v Martinez, 84 NY2d 83 (1994); Weil, Gotshal & Manges, LLP v Fashion Boutique of Short Hills, Inc., 10 AD3d 267 (1st Dept. 2004); CPLR 3026. Dismissal under CPLR 3211(a)(1) is warranted only when the documentary evidence submitted "resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff's claim." Fortis Financial Services, LLC v Fimat Futures USA, 290 AD2d at 383 (1st Dept. 2002); see Amsterdam Hospitality Group, LLC v Marshall-Alan Assoc., Inc., 120 AD3d 431 (1st Dept. 2014).

Given the very liberal standard for pleading, the court finds that the plaintiff sufficiently alleges a breach of contract cause of action. That is, the complaint alleges (1) the existence of a contract, (2) the plaintiff's performance under the contract, (3) the defendant's breach of that contract, and (4) resulting damages. See Harris v Seward Park Housing Corp., 79 AD3d 425 (1st Dept. 2010). The documentary evidence proffered by the defendant in support of the motion does not "conclusively dispose of the plaintiff's claim" (Fortis Financial Services, LLC v Fimat Futures USA, supra at 383), and thus does not warrant dismissal pursuant to CPLR 3211(a)(1). In particular, while the Governor's Executive Order may support a defense, in part, to the alleged breach, it does not alone resolve the issue.

However, the conversion cause of action must be dismissed pursuant to CPLR 3211(a)(7). "The existence of a valid and enforceable written contract governing a particular subject matter ordinarily precludes recovery in quasi contract for events arising out of the same subject matter." Clark-Fitzpatrick, Inc. v Long Is. R.R. Co., 70 NY2d 382, 388 (1987). "A simple breach of contract is not to be considered a tort unless a legal duty independent of the contract itself has been violated." Id. at 389; see Superior Officers Council Health & Welfare Fund v Empire HealthChoice Assur., Inc., 85 AD3d 680 (1st Dept. 2011). There is no allegation of commingling of the security deposit with personal funds, which could give rise to a conversion claim. See LeRoy v Sayers. 217 AD2d 63 (1st Dept. 1995). Indeed, the plaintiff merely speculates that the defendant has misapplied or intends to misapply the security deposit to the overdue rent balance. In any event, any improperly retained funds could be factored into a damages calculation or settlement, if any.

Therefore, even though the complaint may not be the most artfully drafted pleading, the plaintiff's breach of contract cause of action is not subject to dismissal at this juncture.

Accordingly, it is

ORDERED that the defendant's motion to dismiss the complaint is granted to the extent that the second cause of action of the complaint, alleging conversion, is dismissed pursuant to CPLR 3211(a)(7), and the motion is otherwise denied, and it is further

ORDERED that the defendant shall file an answer to the remaining cause of action of the complaint within 30 days, and it is further

ORDERED that the parties shall jointly contact the court on or before December 18, 2020, to schedule a telephonic preliminary conference, and it is further

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision and Order of the court.


 NANCY M. BANNON, J.S.C.
 HON. NANCY M. BANNON

10/21/2020
 DATE

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
		<input checked="" type="checkbox"/>	GRANTED IN PART
		<input type="checkbox"/>	OTHER

Motion Sequence #002

Exhibit G

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
DHG MANAGEMENT COMPANY LLC

Plaintiff

Index No. 654319/2020

-against-

**VERIFIED ANSWER &
COUNTERCLAIMS**

FRENCH PARTNERS LLC and NEW YORK
FRENCH BUILDING CO-INVESTORS, LLC [n/k/a
New York French Soundview LLC], TENANTS-IN
COMMON

Defendants

-----X
Defendants, FRENCH PARTNERS LLC and NEW YORK FRENCH BUILDING CO-
INVESTORS, LLC [n/k/a New York French Soundview LLC], TENANTS-IN COMMON, (the
“Defendants”), by their attorneys, HORING WELIKSON ROSEN & DIGRUGILLIERS PC,
answering the Plaintiff’s complaint, allege as follows:

1. Defendants deny the truth of the allegations contained in Paragraph 1 of Complaint.
2. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Complaint.
3. Defendants deny the allegation asserted in Paragraph 5 of the Complaint that Paragraph 66 of the Lease contains an “unusual” express warranty and refer the Court to the Lease for its content and meaning.
4. Paragraphs 6 and 7 of the Complaint assert conclusions of law to which Defendants neither admit nor deny the truth of the allegations set forth therein.
5. Defendants neither admit nor deny the truth of the allegations contained in Paragraph 8 of the Complaint and refer the Court to the Lease for its content and meaning and leave legal conclusions to the Court for ultimate determination.

6. Defendants neither admit nor deny the allegations contained in Paragraphs 9, 10 and 11 of the Complaint and refer the Court to the referenced Executive Orders for their terms and conditions.

7. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 12, 13 and 14 of the Complaint.

8. Defendants admit that Plaintiff paid rent for the months of April, May and June, 2020 as asserted in Paragraph 15 of the Complaint, but otherwise deny knowledge or information sufficient to form a belief as to the remaining allegations.

9. With respect to the allegations asserted in Paragraph 16 of the Complaint, Defendants refer the Court to the letter dated August 5, 2020 for its terms and conditions and except as so referred, Defendants deny each and every allegation set forth therein.

10. Defendants deny the truth of the allegations contained in Paragraph 17 of the Complaint.

11. With respect to the allegations asserted at Paragraphs 18, 19 and 20, Defendants do not interpose a response inasmuch as the Second Cause of Action was dismissed by Order of the Court dated October 21, 2020.

12. Defendants neither admit nor deny the footnotes contained in the Complaint as they are improperly interposed and additionally, assert conclusions of law to which no response is necessary.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

13. Plaintiff has failed to state a cause of action upon which relief can be based as Plaintiff has failed to allege Defendants took any affirmative action to deny access to the subject premises.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

14. Defendants have a defense based upon documentary evidence, ie. the Lease dated July 31, 2020.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

15. The voluntary payment doctrine bars Plaintiff's recovery of rents paid pursuant to the terms of the Lease for the months of April, May and June, 2020, without an express reservation of rights.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

16. Plaintiff's cause of action is barred by reason of the various Executive Orders issued by the Governor of the State of New York.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

17. By letter dated June 17, 2020, Plaintiff anticipatorily breached the Lease, thereby relieving the Defendants of any obligations thereunder.

AS AND FOR A FIRST COUNTERCLAIM

18. Plaintiff and Defendants entered into a written Lease dated July 31, 2007, as amended or modified (the "Lease") for the use and occupancy of Suites 900, 1000 and 2700 located in the building known as 551 Fifth Avenue, situated within the County of New York, City and State of New York (hereinafter referred to as the "subject premises").

19. Pursuant to the terms of the Lease Plaintiff is obligated to pay the monthly rent on or before the first day of each month without set off or deduction.

20. Plaintiff has failed and refused to pay rent which has become due pursuant to the terms of the Lease through November 30, 2020 in the sum of \$912,814.70.

21. Plaintiff's failure to pay rent which has come due pursuant to the terms of the Lease constitutes a breach thereof.

22. As a result of the foregoing, Defendants have incurred and will continue to incur damages in an amount to be determined by the Court, but no less than \$912,814.70.

AS AND FOR A SECOND COUNTERCLAIM

23. Defendants repeat and reallege the allegations contained in paragraphs 18 through 22 as if fully set forth at length herein.

24. The reasonable value of use and occupancy of the subject premises is at least the amount of rent set forth in the Lease and more specifically \$366,449.65.

25. Since July 1, 2020, Plaintiffs have failed and refused to pay rent to the Defendants for the use and occupation of the subject premises.

26. Although due demand has been made therefore, Plaintiff has failed to remit payment for the use and occupation of the subject premises thereby resulting in arrears totaling \$912,814.70.

27. Plaintiff continues to use and occupy the subject premises and conduct its business from the subject premises without compensating Defendants for such use and occupancy as required by the Lease.

28. Pursuant to Real Property Law Section 220, a “landlord may recover a reasonable compensation for the use and occupation of real property . . . under an agreement. . . and a parol lease or other agreement may be used as evidence of the amount to which [landlord] is entitled.”

29. Consequently, Plaintiff is liable to Defendants in the sum of \$912,814.70 through November 1, 2020 and an additional \$366,449.65 per month as it accrues, together with all Additional Rent due under the Lease.

AS AND FOR A THIRD COUNTERCLAIM

30. Defendants repeat and reallege the allegations contained in paragraphs 18 through 29 as if fully set forth at length herein.

31. Plaintiff is and continues to be, liable to Defendants for rent, additional rent, and other monetary obligations under the Lease (collectively, the "Monetary Obligations"), as same continue to accrue *pendente lite* in an amount to be determined by the Court.

32. Defendants are entitled to a Declaration that Plaintiff is, and continues to be, liable to Defendants for the Monetary Obligations, as same continue to accrue *pendente lite*, in an amount to be determined by this Court.

33. Defendants have no adequate remedy at law.

AS AND FOR A FOURTH COUNTERCLAIM

34. Defendants repeat and reallege the allegations contained in paragraphs 18 through 33 as if fully set forth at length herein.

35. Plaintiff has been unjustly enriched by virtue of its continuing to use, occupy, and enjoy the Premises without paying rent and additional rent while conducting its business in the subject premises.

36. Plaintiff has failed to remit rent and additional rent to Defendants while it simultaneously continues to occupy and conduct its business in the subject premises.

37. Plaintiff's enrichment from the use and enjoyment of the subject premises, without appropriately compensating Defendants, has been to the detriment of Defendants and at Defendants' expense.

38. Plaintiff has therefore retained the benefits relating to the subject premises without adequately compensating Defendants therefor.

39. It is against equity and good conscience to permit Plaintiff to retain the moneys that Defendants are entitled to and should have received in exchange for Plaintiff's use of the premises and benefits received therefrom.

40. As a result of the foregoing, Plaintiff has been unjustly enriched at the expense of Defendants.

41. Defendants are therefore entitled to a judgment in the amount of its monetary detriment caused by Plaintiff's unjust enrichment in an amount to be determined by the Court but not less than \$366,449.65 per month, together with all Monetary Obligations under the Lease.

AS AND FOR A FIFTH COUNTERCLAIM

42. Defendants repeat and reallege the allegations contained in paragraphs 18 through 41 as if fully set forth at length herein.

43. Pursuant to the Rider to Lease, Paragraphs 37 (C) and 62 (C), Plaintiff and Defendants agreed that for a limited time period Plaintiff would be relieved of a portion of its payment obligations under the Lease ("Free Rent").

44. For the 9th and 10th Floor Premises, the parties agreed as follows:

. . . that provided Tenant is not in default of any of the terms, covenants and conditions of the Lease beyond the expiration of any applicable notice and cure periods, for the twenty-four (24) month period commencing with the 9th and 10th Floor Premises Rent Commencement Date, Tenant shall receive an additional credit against Fixed Rent that Tenant shall be obligated to pay for the 9th and 10th Floor Premises, in the amount of \$31,162.08 per month.

45. For the 27th Floor Premises, the parties agreed as follows:

. . . that for the twenty-four (24) month period commencing with the 27th Floor Rent Commencement Date, provided Tenant is not in default of any of the terms, covenants and conditions of the Lease beyond the expiration of any applicable notice to cure period, Tenant shall receive an additional rent credit against Fixed Rent that Tenant shall be obligated to pay for the 27th Floor Premises in accordance with Exhibit "B" attached hereto in the amount of \$8,604.44 per month.

46. By virtue of Plaintiff's default in the payment of rent as required by the terms of the Lease, Plaintiff is not entitled to the benefit of the Free Rent.

47. By virtue of Plaintiff's default in the payment of rent as required by the terms of the Lease, Defendants are entitled to recover the amount of the Free Rent for which Plaintiff benefitted.

48. Defendants are, therefore, entitled to a monetary judgment in an amount to be determined by the Court.

AS AND FOR A SIXTH COUNTERCLAIM

49. Defendants repeat and reallege the allegations contained in paragraphs 1 through 48 as if fully set forth at length herein.

50. As a result of Plaintiffs default under the Lease, Plaintiff is liable to Defendant for those attorneys' fees and costs incurred for the defense of the underlying proceeding and prosecution of the counterclaims asserted herein.

51. By reason of the foregoing, Defendants are entitled to a money judgment against Plaintiff for the reasonable legal fees, costs and expenses associated with this proceeding, in an amount to be determined by the Court.

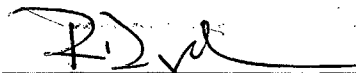
WHEREFORE, Defendants request dismissal of the underlying Complaint and judgment against the Plaintiff as follows:

1. On Defendants' First Counterclaim, a judgment in favor of Defendants and against Plaintiff for all arrears that came due through this date and those continuing to accrue through the final determination of this proceeding, in an amount to be determined by the Court;
2. On Defendants' Second Counterclaim, a judgment in favor of Defendants and against Plaintiff in the sum of \$912,814.70 through November 1, 2020 and an additional \$366,449.65 per month as it accrues, together with all additional rent due pursuant to the Lease;
3. On Defendants' Third Counterclaim, a declaratory judgment that Plaintiff is and continues to be, liable to Defendants for the Monetary Obligations, as same continue to accrue *pendente lite*, in an amount to be determined by this Court;

4. On Defendants' Fourth Counterclaim, judgment in the amount of its monetary detriment caused by Plaintiff's unjust enrichment in an amount to be determined by the Court but not less than \$366,449.65 per month, together with all Monetary Obligations pursuant to the Lease;
5. On Defendants' Fifth Counterclaim, a judgment in favor of Defendants and against Plaintiff for the Free Rent, in an amount to be determined by the Court;
6. On Defendants' Sixth Counterclaim, a judgment in favor of Defendants and against Plaintiff for Attorneys' Fees, costs and expenses in an amount to be determined by this Court, as same continue to accrue; and
7. For such other and further relief in favor of Defendants as this Court deems just and proper.

Dated: Nassau, New York
November 18, 2020

Horing Welikson Rosen & Digrugilliers PC
Attorneys for Defendants



By: Renee Digrugilliers, Esquire
11 Hillside Avenue
Williston Park, NY 11596
516 535-1700
rdigrugilliers@hwrpc.com

To: Horwitz & Zim Law Group PC
Attorneys for Plaintiff
260 Madison Avenue
16th Floor
New York, NY 10016
212 644-1857
ezim@hzlaw.com

VERIFICATION

Renee Digrugilliers, an attorney duly licensed to practice law in the Courts of the State of New York, affirms and states as follows:

Affiant is the attorney for the Defendants and as such is fully familiar with the facts of this matter.

Affiant has read the foregoing Verified Answer & Counterclaims and knows the contents thereof to be true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true.

This verification is made by the undersigned pursuant to CPLR §3020 (d)(3) as the Defendants named herein are not located in the County in which affiant maintains her office.

The grounds of my belief as to all matters not stated upon my own knowledge are based upon conversations with the Defendants and a review of Defendants books and records which are relevant to this proceeding.

Dated: Nassau, New York
November 18, 2020



Renee Digrugilliers

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

DHG MANAGEMENT COMPANY LLC

Plaintiff

Index No. L&T 65431/20

-against-

FRENCH PARTNERS LLC and NEW YORK
FRENCH BUILDING CO-INVESTORS, LLC [N/K/A
New York French Sundview LLC], TENANTS-IN
COMMON

Defendants

-----X

VERIFIED ANSWER & COUNTERCLAIMS

HORING WELIKSON ROSEN & DIGRUGILLIERS, P.C.
Attorneys for Petitioner
11 Hillside Avenue
Williston Park, New York 11596
(516) 535-1700

Motion Sequence #002

Exhibit E

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- x Index No.:
DHG MANAGEMENT COMPANY, LLC, : Date Filed:
:

Plaintiff, : SUMMONS
:

-against- : Venue is based on
: Plaintiff's Office at:

FRENCH PARTNERS LLC, and NEW YORK : 551 Fifth Avenue
FRENCH BUILDING CO-INVESTORS, LLC : New York, New York
[n/k/a New York French Soundview LLC], : 10176
TENANTS-IN-COMMON, :

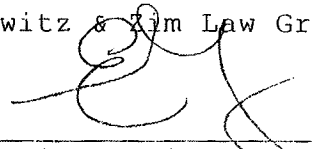
Defendants. :
----- X

To the above-named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your Answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiffs' attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

Dated: September 9, 2020
New York, New York

Horwitz & Zim Law Group, P.C.

By: 
Eric M. Zim, Esq.
Attorneys for Plaintiff
260 Madison Avenue, 16th Floor
New York, New York 10022
212-644-1857

Defendant address:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DHG MANAGEMENT COMPANY, LLC,

Plaintiff,

-against-

FRENCH PARTNERS LLC, and NEW YORK
FRENCH BUILDING CO-INVESTORS, LLC
[n/k/a New York French Soundview
LLC], TENANTS-IN-COMMON,

Defendants.

Index No. _____

COMPLAINT

DHG MANAGEMENT COMPANY, LLC ("DHG" or "Tenant"), for its Complaint against FRENCH PARTNERS LLC, and NEW YORK FRENCH BUILDING CO-INVESTORS, LLC [n/k/a New York French Soundview LLC], as tenants-in-common ("Landlord"), alleges:

D 1. This is an action for damages, and related relief, by reason of Landlord's breach of its express warranty, that "Landlord agrees that Tenant shall have twenty-four (24) hour seven (7) day a week access to the Demised Premises" (Original Lease § 66 -- the "Express Warranty"), in view of the restrictions imposed by the New York City and/or State governments in reaction to the COVID-19 pandemic.

THE PARTIES

D/C 2. DHG Management Company, LLC is limited liability company formed under the laws of New York, with an office at 551 Fifth Avenue, New York, New York 10176 (the "Building"), and is authorized to do business in New York State. It is the tenant

under a lease first made as of July 31, 2007 (the "Original Lease"), as amended on February 16, 2010 (altogether, the "Lease"). DHG has been occupying the 10th floor for its own business, and has subleased (with Landlord's consent) floors 9 and 27.

3. French Partners LLC, upon information and belief, is a limited liability company formed under Delaware law, with an office c/o Jeffrey Management Corp., Seven Penn Plaza, 11th Floor, New York, New York 10001 ("JMC"), and holds a tenancy-in-common position in the Landlord.

4. New York French Building Co-Investors, LLC, upon information and belief, is a limited liability company formed under New York law, is now known as New York French Soundview LLC, has an office c/o JMC, and holds the remaining tenancy-in-common position in Landlord.

The Lease

5. The Lease, in § 66, contains an unusual express warranty, and states that:

Landlord agrees that Tenant shall have twenty-four (24) hour seven (7) day a week access to the Demised Premises.

Legal conclusion 6. This is, by its terms, more than a promise by Landlord that it (-- Landlord) shall not, by its own actions, impair Tenant's access the Premises. Rather, this is a warranty against

the world,' i.e., that no one shall impair Tenant's access.¹

Legal
conclusion 7. Moreover, "access" should be construed pragmatically, to refer to Tenant's (and its subtenants') practical ability to use the Premises. As stated in Datatab, Inc. v. St. Paul Fire & Marine Ins. Co., 347 F.Supp. 36, 37 (S.D.N.Y. 1972):

"access" does not refer to the ability of a person physically to enter the computer room on the fifth floor, but rather contemplates the ability to utilize the equipment normally in the operation of its business.

Refer to cl 8. In view of Lease § 66, and the actual circumstances, Lease § 27 -- to which Landlord has pointed -- is irrelevant. Lease § 27 generally precludes a claim by the Tenant if that claim alleges that Landlord has breached a Landlord obligation to provide some service, where Landlord's failure to provide some such service is due to a 'force majeure' event.² As will be seen further herein,

¹ A typical limited clause, by contrast, provides only as follows:

Landlord shall provide access to the Premises on a seven day per week, twenty-four hour per day basis, subject to emergencies, Force Majeure Causes and Landlord's reasonable security measures for the Building.

² Thus, Lease § 27 provides:

This Lease and the obligation of Tenant to pay rent hereunder and perform all of the other covenants and agreements hereunder on part of Tenant to be performed shall in no wise be affected, impaired or excused because Owner 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 supplying

however, Tenant's claim here is not that Landlord has breached a covenant that it (i.e., Landlord) shall not impair Tenant's 'access'; rather, the claim here is that in § 66 Landlord granted a warranty even against third parties impairing Tenant's access, for any reason; and the 'force majeure' clause in Lease § 27 does not apply to excuse such third-party (i.e., here, governmental) interference.

THE GOVERNMENTAL IMPAIRMENT

Refer to 9. In March 2020, the coronavirus pandemic swept into the United States and into New York. On March 7, 2020, Governor Andrew M. Cuomo issued Executive Order No. 202, declaring a State disaster emergency for the entire State of New York as a result of COVID-19.

Refer to 10. On March 20, 2020, in response to the COVID-19 pandemic, New York State Governor Andrew M. Cuomo issued Executive Order No. 202.8 ("EO 202.8"), entitled "Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency." EO 202.8, among other things, mandated that with respect to all "non-

any equipment, fixtures, or other materials if Owner is prevented or delayed from so doing by reason of strike or labor troubles or any cause whatsoever including, but not limited to, 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 the conditions which have been or are affected. either directly or indirectly, by war or other emergency.

essential businesses" in New York State, "each employer [in the state] shall reduce the in-person workforce at any work locations by 100% no later than March 22 at 8 p.m." (the "Workforce Reduction Order").

Refer to 11. On April 26, 2020, Governor Cuomo announced a phased approach to reopening industries and businesses in the State, the City of New York, and specifically New York County. On June 22, 2020, New York County officially entered "Phase 2" of the staged reopening, at which time Tenant was permitted to access the Premises at 50% occupancy. The New York State Executive Orders allowing 50% occupancy also placed substantial other social distancing and hygiene restrictions on such access, including restrictions relating to physical distancing, gatherings in enclosed spaces, workplace activity, movement and commerce, the use of protective equipment, screening and testing, tracing and tracking of employee contacts, and the establishment of communications and safety plans.

THE IMPACT ON DHG AND ITS SUBTENANTS

DK1 12. Prior to March 20, 2020, approximately 90 persons worked each day in DHG's own space on the 10th Floor.

DK1 13. Since then, only one or two persons each day have been using that space.

DK 14. In addition, the subtenant on the 9th Floor is in substantial rent default, and has asserted that that default is attributable to the government restrictions noted above.

DK 15. Notwithstanding the foregoing, as part of an effort to negotiate with Landlord per a proposal made in June 2020, Tenant continued to pay its rent for April, May and June. Given Landlord's rejection of Tenant's proposal, Tenant is now seeking to recoup those payments, as part of its damages here.

LANDLORD'S THREAT LETTER

referred to letter otherwise
Very

16. By letter dated August 5, 2020, Landlord threatened to draw-down Tenant's security deposit, on account of what Landlord claims is unpaid rent owed in the amount of \$739,585.77. The deadline for that threatened draw-down has been extended to September 5, 2020. Tenant has notified Landlord that, however, if Landlord purports to draw upon Tenant's security, prior to a determination as to the amount of rent, if any, now owed by Tenant, i.e., net of Tenant's claim for breach of warranty under Lease § 66,³ then Landlord may be deemed to have thereby converted the security deposit, such that, inter alia, Landlord will be deemed to have forfeited any and all right to such security deposit.⁴

³ See generally, e.g., Ally Gargano/MCA Advertising, Inc. v. Cooke Properties, Inc., 1989 WL 126066 (S.D.N.Y.) at *25.

⁴ See, e.g., N.Y.Jur.2d, Landlord and Tenant, § 712.

Landlord has, however, not withdrawn its threat.

AS AND FOR
A FIRST CAUSE OF ACTION

17. By reason of the foregoing, the express warranty of Lease § 66 has been breached, causing damages to Tenant in an amount in excess of \$1 million, and expected to increase over time, to be further determined by the Court.

AS AND FOR
A SECOND CAUSE OF ACTION — DISMISSED BY 10/21 ORDER

18. The foregoing allegations are realleged.

19. Tenant has deposited with Landlord a letter of credit in the amount of \$931,595.00 as security.

20. Insofar as Landlord now purports to take any of that security, on account of the 'unpaid rent' as alleged in its August 5 threat letter, without a prior determination as to the (net) amount of any rent due, notwithstanding the breach of the Lease § 66 Express Warranty, and notwithstanding that Tenant is claiming damages therefor in excess of that amount, Landlord should be deemed to have converted that security, and the entire security deposit should be deemed forfeited, and returned to Tenant.

WHEREFORE, Landlord respectfully requests that a judgment be entered

a. awarding damages in favor of Tenant in the amount of at least \$1 million as of the date hereof, to be determined by the

8

Court as of the date of trial;

b. insofar as Landlord takes any of the security deposit without justification, directing Landlord to forfeit and return the security deposit, in full, to Tenant, and

c. granting Tenant such other and further relief as may be just and proper.

Dated: New York, New York
September 9, 2020

HORWITZ & ZIM LAW GROUP, P.C.

By: 

Eric M. Zim

Attorneys for Plaintiff
260 Madison Avenue, 16th Floor
New York, NY 10016
(212) 644-1857

Index No.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DHG MANAGEMENT COMPANY, LLC,

Plaintiff,

- against -

FRENCH PARTNERS LLC, and NEW YORK FRENCH
BUILDING CO INVESTORS, LLC [i/k/a New York French
Soundview LLC], TENANTS-IN-COMMON

Defendants

SUMMONS & COMPLAINT

HORWITZ & ZIMLAW GROUP P.C.

Attorneys for Plaintiff

260 Madison Avenue, 16 FL
New York, NY 10016
Telephone 212-644-1857
Facsimile 212-644-6553

Motion Sequence #002

Exhibit A

STANDARD FORM OF OFFICE LEASE
The Real Estate Board of New York, Inc.

Agreement of Lease, made as of this 31 day of July, 2007, between JEFFREY MANAGEMENT CORP. AS MANAGER FOR FRENCH PARTNERS LLC AND NEW YORK FRENCH BUILDING CO-INVESTORS, LLC, TENANTS-IN-COMMON, having an address at 7 Penn Plaza, Suite 618, New York, New York 10001

party of the first part, hereinafter referred to as OWNER, and DHG MANAGEMENT, LLC, a New York limited liability company, having an address at 500 West 37th Street, New York, New York 10018

party of the second part, hereinafter referred to as TENANT,

Witnesseth: Owner hereby leases to Tenant and Tenant hereby hires from Owner Suites 900, 1000, and 2700, as more fully indicated on the attached Exhibit "A" ("Demised Premises") in the building known as 551 Fifth Avenue ("Building") in the Borough of Manhattan, City of New York, for the term of Fifteen (15) Years Seven (7) Months

(or until such term shall sooner cease and expire as hereinafter provided) to commence on the 1st day of September two thousand and seven, and to end on the 31st day of March two thousand and twenty-three, both dates inclusive, at an annual rental rate of

SEE ATTACHED EXHIBIT "B" AND "B-1"

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 Owner or such other place as Owner may designate, without any set off or deduction whatsoever, except that Tenant shall pay the first monthly installment(s) on the execution hereof (unless this lease be a renewal).

In the event that, at the commencement of the term of this lease, or thereafter, Tenant shall be in default in the payment of rent to Owner pursuant to the terms of another lease with Owner or with Owner's predecessor in interest, Owner may at Owner's option and without notice to Tenant add the amount of such arrears to any monthly installment of rent payable hereunder and the same shall be payable to Owner as additional rent.

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

- Rent: 1. Tenant shall pay the rent as above and as hereinafter provided.
Occupancy: 2. Tenant shall use and occupy demised premises for

"GENERAL OFFICES"

and for no other purpose.

Tenant Alterations: 3. Tenant shall make no changes in or to the demised premises of any nature without Owner's prior written consent. Subject to the prior written consent of Owner, and to the provisions of this article, Tenant, at Tenant's expense, may make alterations, installations, additions or improvements which are non-structural and which do not affect utility services or plumbing and electrical lines, in or to the interior of the demised premises by using contractors or mechanics first approved in each instance by Owner. Tenant shall, before making any alterations, additions, installations or improvements, at its expense, obtain all permits, approvals and certificates required by any governmental or quasi-governmental bodies and (upon completion) certificates of final approval thereof and shall deliver promptly duplicates of all such permits, approvals and certificates to Owner and Tenant agrees to carry and will cause Tenant's contractors and sub-contractors to carry such workman's compensation, general liability, personal and property damage insurance as Owner may require. If any mechanic's lien is filed against the demised premises, or the building of which the same forms a part, 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 days thereafter, at Tenant's expense, by payment or filing the bond required by law. All fixtures and all paneling, partitions, railings and like installations, installed in the premises at any time, either by Tenant or by Owner on Tenant's behalf, shall, upon installation, become the property of Owner and shall remain upon and be surrendered with the demised premises unless Owner, by notice to Tenant no later than twenty days prior to the date fixed as the termination of this lease, elects to relinquish Owner's right thereto and to have them removed by Tenant, in which event the same shall be removed from the premises by Tenant prior to the expiration of the lease, at Tenant's expense. Nothing in this Article shall be construed to give Owner title to or to prevent Tenant's removal of trade fixtures, moveable office furniture and equipment, but upon removal of any such from the premises or upon removal of other installations as may be required by Owner, Tenant shall immediately and at its expense, repair and restore the premises to the condition existing prior to installation 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 premises after Tenant's removal shall be deemed abandoned and may, at the election of Owner, either be retained as Owner's property or may be removed from the premises by Owner, at Tenant's expense.

Maintenance and Repairs: 4. Tenant shall, throughout the term of this lease, take good care of the demised premises and the fixtures and appurtenances therein. Tenant shall be responsible for all damage or injury to the demised premises or any other part of the building and the systems and equipment thereof, whether requiring structural or nonstructural repairs caused by or resulting from carelessness, omission, neglect or improper conduct of Tenant, Tenant's subtenants, agents, employees, invitees or licensees, or which arise out of any work, labor, service or equipment done for or supplied to Tenant or any subtenant or arising out of the installation, use or operation of the property or equipment of Tenant or any subtenant. Tenant

shall also repair all damage to the building and the demised premises caused by the moving of Tenant's fixtures, furniture and equipment. Tenant shall promptly make, at Tenant's expense, all repairs in and to the demised premises for which Tenant is responsible, using only the contractor for the trade or trades in question selected from a list of at least two contractors provided and submitted by Owner. Any other repairs in or to the building or the facilities and systems thereof for which Tenant is responsible shall be performed by Owner at the Tenant's expense. Owner shall maintain in good working order and repair the exterior and the structural portions of the building, including the structural portions of its demised premises, and the public portions of the building interior and the building plumbing, electrical, heating and ventilating systems (to the extent such systems presently exist) serving the demised premises. Tenant agrees to give prompt notice of any defective condition in the premises for which Owner may be responsible hereunder. There shall be no allowance to Tenant for diminution of rental value and no liability on the part of Owner by reason of inconvenience, annoyance or injury to business arising from Owner or others making repairs, alterations, additions or improvements in or to any portion of the building or the demised premises or in and to the fixtures, appurtenances or equipment thereof. It is specifically agreed that Tenant shall not be entitled to any setoff or reduction of rent by reason of any failure of Owner to comply with the covenants of this or any other article of this Lease. Tenant agrees that Tenant's sole remedy at law in such instance will be by way of an action for damages for breach of contract. The provisions of this Article 4 shall not apply in the case of fire or other casualty which are dealt with in Article 9 hereof.

Window Cleaning: 5. Tenant will not clean, nor require, permit, suffer or allow any window in the demised premises to be cleaned from the outside in violation of Section 202 of the Labor Law or any 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.

Requirements of Law, Fire Insurance, Floor Loads: 6. Prior to the commencement of the lease term, 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, Insurance Services Office, or any similar body which shall impose any violation, order or duty upon Owner or Tenant with respect to the demised premises, whether or not arising out of Tenant's use or manner of use thereof, (including Tenant's permitted use) or, with respect to the building if arising out of Tenant's use or manner of use of the premises or the building (including the use permitted under the lease). Nothing herein shall require Tenant to make structural repairs or alterations unless Tenant has, by its manner of use of the demised premises or method of operation therein, violated any such laws, ordinances, orders, rules, regulations or requirements with respect thereto. Tenant may, after securing Owner to

* The Commencement Date for Suite 2700 shall be December 1, 2007.

Owner's satisfaction against all damages, interest, penalties and expenses, including, but not limited to, reasonable attorney's fees, by cash deposit or by surety bond in an amount and in a company satisfactory to Owner, contest and appeal any such laws, ordinances, orders, rules, regulations or requirements provided same is done with all reasonable promptness and provided such appeal shall not subject Owner to prosecution for a criminal offense or constitute a default under any lease or mortgage under which Owner may be obligated, or cause the demised premises or any part thereof to be condemned or vacated. 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 Owner with respect to the demised premises or the building of which the demised premises form a part, or which shall or might subject Owner to any liability or responsibility to any person or for property damage. Tenant shall not keep anything in the demised premises except as now or hereafter permitted by the Fire Department, Board of Fire Underwriters, Fire Insurance Rating Organization or other authority having jurisdiction, and then only in such manner and such quantity so as not to increase the rate for fire insurance applicable to the building, nor use the premises in a manner which will increase the insurance rate for the building or any property located therein over that in effect prior to the commencement of Tenant's occupancy. Tenant shall pay all costs, expenses, fines, penalties, or damages, which may be imposed upon Owner by reason of Tenant's failure to comply with the provisions of this article and if by reason of such failure the fire insurance rate shall, at the beginning of this lease or at any time thereafter, be higher than it otherwise would be, then Tenant shall reimburse Owner, as additional rent hereunder, for that portion of all fire insurance premiums thereafter paid by Owner which shall have been charged because of such failure by Tenant. In any action or proceeding wherein Owner and Tenant are parties, a schedule or "make-up" of rate for the building or demised premises issued by the New York Fire Insurance Exchange, or other body making fire insurance rates applicable to said premises shall be conclusive evidence of the facts therein stated and of the several items and charges in the fire insurance rates then applicable to said premises. Tenant shall not place a load upon 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. Owner reserves the right to 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 settings sufficient, in Owner's judgement, to absorb and prevent vibration, noise and annoyance.

Subordination: 7. This lease is subject and subordinate to all ground or underlying leases and to all mortgages which may now or hereafter affect such leases or the real property of which demised premises are a part and to all renewals, modifications, consolidations, replacements and extensions of any such underlying leases and mortgages. This clause shall be self-operative and no further instrument of subordination shall be required by any ground or underlying lessor or by any mortgagee, affecting any lease or the real property of which the demised premises are a part. In confirmation of such subordination, Tenant shall from time to time execute promptly any certificate that Owner may request.

Property Loss, Damage Reimbursement Indemnity: 8. Owner or its agents shall not be liable for any damage to property of Tenant or of others entrusted to employees of the building, nor for loss of or damage to any property of Tenant by theft or otherwise, nor for any injury or damage to persons or property resulting from any cause of whatsoever nature, unless caused by or due to the negligence of Owner, its agents, servants or employees. Owner or its agents will not be liable for any such damage caused by other tenants or persons in, upon or about said building or caused by operations in construction of any private, public or quasi public work. If at any time any windows of the demised premises are temporarily closed, darkened or bricked up (or permanently closed, darkened or bricked up, if required by law) for any reason whatsoever including, but not limited to Owner's own acts, Owner shall not be liable for any damage Tenant may sustain thereby and Tenant shall not be entitled to any compensation therefor nor abatement or diminution of rent nor shall the same release Tenant from its obligations hereunder nor constitute an eviction. Tenant shall indemnify and save harmless Owner against and from all liabilities, obligations, damages, penalties, claims, costs and expenses for which Owner shall not be reimbursed by insurance, including reasonable attorneys' fees, paid, suffered or incurred as a result of any breach by Tenant, Tenant's agents, contractors, employees, invitees, or licensees, of any covenant or condition of this lease, or the carelessness, negligence or improper conduct of the Tenant, Tenant's agents, contractors, employees, invitees or licensees. Tenant's liability under this lease extends to the acts and omissions of any sub-tenant, and any agent, contractor, employee, invitee or licensee of any sub-tenant. In case any action or proceeding is brought against Owner by reason of any such claim, Tenant, upon written notice from Owner, will, at Tenant's expense, resist or defend such action or proceeding by counsel approved by Owner in writing, such approval not to be unreasonably withheld.

Destruction, Fire and Other Casualty: 9. (a) If the demised premises or any part thereof shall be damaged by fire or other casualty, Tenant shall give immediate notice thereof to Owner 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 damages thereto shall be repaired by and at the expense of Owner and the rent and other items of additional rent, until such repair shall be substantially completed, shall be apportioned from the day following the casualty according to the part of the premises which is usable. (c) If the demised premises are totally damaged or rendered wholly unusable by fire or other casualty, then the rent and other items of additional rent as hereinafter expressly provided shall be proportionately paid up to the time of the casualty and thereafter shall cease until the date when the premises shall have been repaired and restored by Owner (or sooner reconquered in part by Tenant then rent shall be apportioned as provided in subsection (b) above), subject to Owner's right to elect not to restore the same as hereinafter provided. (d) If the demised premises are rendered wholly unusable or (whether or not the demised premises are damaged in whole or in part) if the building shall be so damaged that Owner shall decide to demolish it or to rebuild it, then, in any of such events, Owner may elect to terminate this lease by written notice to Tenant, given within 90 days after such fire or casualty, or 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 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 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 Owner shall serve a termination notice as provided for herein, Owner shall make the repairs and restorations under the conditions of (b) and (c) hereof, with all reasonable expedition, subject to delays due to adjustment of insurance claims, labor troubles and causes beyond Owner's control. After any such casualty, Tenant shall cooperate with Owner's restoration by removing from the 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 Owner that the premises are substantially ready for Tenant's occupancy. (e) Nothing contained hereinabove shall relieve Tenant from liability that may exist as a result of damage from fire or other casualty. Notwithstanding the foregoing, including Owner's obligation to restore under subparagraph (b) above, each party shall look first to any insurance in its favor before making any claim against the other party for recovery for loss or damage resulting from fire or other casualty, and to the extent that such insurance is in force and collectible and to the extent permitted by law, Owner and Tenant each hereby releases and waives all right of recovery with respect to subparagraphs (b), (d), and (e) above, against the other or any one claiming through or under each of them by way of subrogation or otherwise. The release and waiver herein referred to shall be deemed to include any loss or damage to the demised premises and/or to any personal property, equipment, trade fixtures, goods and merchandise located therein. The foregoing release and waiver shall be in force only if both releasors' insurance policies contain a clause providing that such a release or waiver shall not invalidate the insurance. If, and to the extent, that such waiver can be obtained only by the payment of additional premiums, then the party benefiting from the waiver shall pay such premium within ten days after written demand or shall be deemed to have agreed that the party obtaining insurance coverage shall be free of any further obligation under the provisions hereof with respect to waiver of subrogation. Tenant acknowledges that Owner 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 Owner will not be obligated to repair any damage thereto or replace the same. (f) Tenant hereby waives the provisions of Section 227 of the Real Property Law and agrees that the provisions of this article shall govern and control in lieu thereof.

Eminent Domain: 10. If the whole or any part of the demised premises shall be acquired or condemned by Eminent Domain for any public or quasi public use or purpose, then and in that event, the term of this lease shall cease and terminate from the date of title vesting in such proceeding and Tenant shall have no claim for the value of any unexpired term of said lease and assigns to Owner, Tenant's entire interest in any such award. Tenant shall have the right to make an independent claim to the condemning authority for the value of Tenant's moving expenses and personal property, trade fixtures and equipment, provided Tenant is entitled pursuant to the terms of the lease to remove such property, trade fixture and equipment at the end of the term and provided further such claim does not reduce Owner's award.

Assignment, Mortgage, Etc.: 11. Tenant, for itself, its heirs, distributees, executors, administrators, legal representative, successor and assigns, expressly covenants that it shall not assign, mortgage or encumber this agreement, nor underlet, or suffer or permit the demised premises or any part thereof to be used by others, without the prior written consent of Owner in each instance. Transfer of the majority of the stock of a corporate Tenant or the majority partnership interest of a partnership Tenant shall be deemed an assignment. If this lease be assigned, or if the demised premises or any part thereof be underlet or occupied by anybody other than Tenant, Owner may, after default by Tenant, collect rent from the assignee, under-tenant or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, underletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, under-tenant 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 Owner to an assignment or underletting shall not in any wise be construed to relieve Tenant from obtaining the express consent in writing of Owner to any further assignment or underletting.

Electric Current: 12. Rates and conditions in respect to submetering or rent inclusion, as the case may be, to be added in RIDER attached hereto. Tenant covenants and agrees that at all times its use of electric current shall not exceed the capacity of existing feeders to the building or the risers or wiring installation and Tenant may not use any electrical equipment which, in Owner's opinion, reasonably exercised, will overload such installations or interfere with the use thereof by other tenants of the building. The change at any time of the character of electric service shall in no wise make Owner liable or responsible in Tenant, for any loss, damages or expenses which Tenant may sustain.

Access to Premises: 13. Owner or Owner'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, replacements and improvements as Owner may deem necessary and reasonably desirable to the demised premises or to any other portion of the building of which Owner may elect to perform. Tenant shall permit Owner 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, floor, or ceiling. Owner may, during the progress of any work in the demised premises, take all necessary materials and equipment into said 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. Throughout the term hereof Owner shall have the right to enter the demised premises at reasonable hours for the purpose of showing the same to prospective purchasers or mortgagees of the building, and during the last six months of the term for the purpose of showing the

Rider to be added if necessary.

same to prospective tenants. If Tenant is not present to open and permit an entry into the demised premises, Owner or Owner'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 Owner or its agents liable therefor, nor in any event shall the obligations of Tenant hereunder be affected. If during the last month of the term Tenant shall have removed all or substantially all of Tenant's property therefrom Owner may immediately enter, alter, renovate or re-decorate the demised premises without limitation or abatement of rent, or incurring liability to Tenant for any compensation and such act shall have no effect on this lease or Tenant's obligations hereunder.

Vault, Vault Space, Area: 14. 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. Owner makes no representation as to the location of the property line of the building. All vaults and vault space and 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, Owner shall not be subject to any liability nor shall Tenant be entitled to any compensation or diminution or abatement of 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.

Occupancy: 15. Tenant will not at any time use or occupy the demised premises in violation of the certificate of occupancy issued for the building of which the demised premises are a part. Tenant has inspected the premises and accepts them as is, subject to the riders annexed hereto with respect to Owner's work, if any. In any event, Owner makes no representation as to the condition of the premises and Tenant agrees to accept the same subject to violations, whether or not of record.

Bankruptcy: 16. (a) Anything elsewhere in this lease to the contrary notwithstanding, this lease may be cancelled by Owner 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: (1) the commencement of a case in bankruptcy or under the laws of any state naming Tenant as the debtor; or (2) 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 premises demised but shall forthwith quit and surrender the premises. If this lease shall be assigned in accordance with its terms, the provisions of this Article 16 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 (a) hereof, Owner 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 such premises or any part thereof be re-let by the Owner 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 premises so re-let during the term of the re-letting. Nothing herein contained shall limit or prejudice the right of the Owner 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.

Default: 17. (1) If Tenant defaults in fulfilling any of the covenants of this lease other than the covenants for the payment of rent or additional rent; or if the demised premises become vacant or deserted; or if any execution or attachment shall be issued against Tenant or any of Tenant's property whereupon the demised premises shall be taken or occupied by someone other than Tenant; or if this lease be rejected under §253 of Title 11 of the U.S. Code (Bankruptcy code); or if Tenant shall fail to move into or take possession of the premises within thirty (30) days after the commencement of the term of this lease, then, in any one or more of such events, upon Owner serving a written fifteen (15) days notice upon Tenant specifying the nature of said default and upon the expiration of said fifteen (15) days, if Tenant shall have failed to comply with or remedy such default, or if the said default or omission complained of shall be of a nature that the same cannot be completely cured or remedied within said fifteen (15) day period, and if Tenant shall not have diligently commenced curing such default within such fifteen (15) day period, and shall not thereafter with reasonable diligence and in good faith, proceed to remedy or cure such default, then Owner may serve a written five (5) days' notice of cancellation of this lease upon Tenant, and upon the expiration of said five (5) days this lease and the term thereunder shall end and expire as fully and completely as if the expiration of such five (5) day period were the day herein definitely fixed for the end and expiration of this lease and the term thereof and Tenant shall then quit and surrender the demised premises to Owner but Tenant shall remain liable as hereinafter provided.

(2) If the notice provided for in (1) hereof shall have been given, and the term shall expire as aforesaid; or if Tenant shall make default in the payment of the rent reserved herein or any item of additional rent herein mentioned or any part of either or in making any other payment herein required; then and in any of such events Owner may without notice, re-enter the demised premises either by force or otherwise, and dispossess Tenant by summary proceedings or otherwise, and the legal representative of Tenant or other occupant of demised premises and remove their effects and hold the premises as if this lease had not been made, and Tenant hereby waives

the service of notice of intention to re-enter or to institute legal proceedings to that end. If Tenant shall make default hereunder prior to the date fixed as the commencement of any renewal or extension of this lease, Owner may cancel and terminate such renewal or extension agreement by written notice.

Remedies of Owner and Waiver of Redemption: 18. In case of any such default, re-entry, expiration and/or disposal by summary proceedings or otherwise, (a) the rent shall become due thereupon and be paid up to the time of such re-entry, dispossession and/or expiration, (b) Owner may re-let the premises or any part or parts thereof, either in the name of Owner or otherwise, for a term or terms, which may at Owner'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 free rent or charge a higher rental than that in this lease, and/or (c) Tenant or the legal representatives of Tenant shall also pay Owner as liquidated damages for the failure of Tenant to observe and perform said Tenant's covenants herein contained, any deficiency between the rent hereby reserved and/or covenanted to be paid and the net amount, if any, of the rents collected 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. The failure of Owner to re-let the premises or any part or parts thereof shall not release or affect Tenant's liability for damages. In computing such liquidated damages there shall be added to the said deficiency such expenses as Owner may incur in connection with re-letting, such as legal expenses, reasonable attorneys' fees, brokerage, advertising and for keeping the demised premises in good order or for preparing the same for re-letting. Any such liquidated damages shall be paid in monthly installments by Tenant on the rent day specified in this lease and any suit brought to collect the amount of the deficiency for any month shall not prejudice in any way the rights of Owner to collect the deficiency for any subsequent month by a similar proceeding. Owner, in putting the demised premises in good order or preparing the same for re-rental may, at Owner's option, make such alterations, repairs, replacements, and/or decorations in the demised premises as Owner, in Owner's sole judgement, considers advisable and necessary for the purpose of re-letting the demised premises, and the making of such alterations, repairs, replacements, and/or decorations shall not operate or be construed to release Tenant from liability hereunder as aforesaid. Owner shall in no event be liable in any way whatsoever for failure to re-let the demised premises, or in the event that the demised premises are re-let, for failure to collect the rent thereof under such re-letting, and in no event shall Tenant be entitled to receive any excess, if any, of such net rents collected over the sums payable by Tenant to Owner hereunder. In the event of a breach or threatened breach by Tenant of any of the covenants or provisions hereof, Owner shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings and other remedies were not herein provided for. Mention in this lease of any particular remedy, shall not preclude Owner from any other remedy, in law or in equity. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed for any cause, or in the event of Owner obtaining possession of demised premises, by reason of the violation by Tenant of any of the covenants and conditions of this lease, or otherwise.

Fees and Expenses: 19. If Tenant shall default in the observance or performance of any term or covenant on Tenant's part to be observed or performed under or by virtue of any of the terms or provisions in any article of this lease, after notice if required and upon expiration of any applicable grace period if any, (except in an emergency), then, unless otherwise provided elsewhere in this lease, Owner may immediately or at any time thereafter and without notice perform the obligation of Tenant thereunder. If Owner, in connection with the foregoing or in connection with any default by Tenant in the covenant to pay rent hereunder, makes any expenditures or incurs any obligations for the payment of money, including but not limited to reasonable attorneys' fees, in instituting, prosecuting or defending any action or proceeding, and prevails in any such action or proceeding then Tenant will reimburse Owner for such sums so paid or obligations incurred with interest and costs. The foregoing expenses incurred by reason of Tenant's default shall be deemed to be additional rent hereunder and shall be paid by Tenant to Owner within ten (10) days of rendition of any bill or statement to Tenant therefor. If Tenant's lease term shall have expired at the time of making of such expenditures or incurring of such obligations, such sums shall be recoverable by Owner, as damages.

Building Alterations and Management: 20. Owner shall have the right at any time without incurring liability to Tenant therefor to change the arrangement and/or location of public entrances, passageways, doors, doorways, corridors, elevators, stairs, toilets or other public parts of the building and to change the name, number or designation by which the building may be known. There shall be no allowance to Tenant for diminution of rental value and no liability on the part of Owner by reason of inconvenience, annoyance or injury to business arising from Owner or other Tenants making any repairs in the building or any such alterations, additions and improvements. Furthermore, Tenant shall not have any claim against Owner by reason of Owner's imposition of such controls of the manner of access to the building by Tenant's social or business visitors as the Owner may deem necessary for the security of the building and its occupants.

No Representations: 21. Neither Owner nor Owner's agents 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 rents, leases, expenses of operation or any other matter or thing affecting or related to the premises except as herein expressly set forth and no rights, easements or licenses are acquired by Tenant by implication or otherwise except as expressly set forth in the provisions of this lease. Tenant has inspected the building and the demised premises and is thoroughly acquainted with their condition and 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 premises and the building of which the same form 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 Owner and Tenant and any executory agreement

* including

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.

End of Term: 22. Upon the expiration or other termination of the term of this lease, Tenant shall quit and surrender to Owner the demised premises, broom clean, in good order and condition, ordinary wear and damages which Tenant is not required to repair as provided elsewhere in this lease excepted, and Tenant shall remove all its property. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of this lease. If the last day of the term of this lease or any renewal thereof, falls on Sunday, this lease shall expire at noon on the preceding Saturday unless it be a legal holiday in which case it shall expire at noon on the preceding business day.

Quiet Enjoyment: 23. Owner covenants and agrees with Tenant that upon Tenant paying the 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 premises hereby demised, subject, nevertheless, to the terms and conditions of this lease including, but not limited to, Article 31 hereof and to the ground leases, underlying leases and mortgages hereinbefore mentioned.

Failure to Give Possession: 24. If Owner is unable to give possession of the demised premises on the date of the commencement of the term hereof, because of the holding-over or retention of possession of any tenant, undertenant or occupants or if the demised premises are located in a building being constructed, because such building has not been sufficiently completed to make the premises ready for occupancy or because of the fact that a certificate of occupancy has not been procured or for any other reason, Owner shall not be subject to any liability for failure to give possession on said date and the validity of the lease shall not be impaired under such circumstances, nor shall the same be construed in any wise to extend the term of this lease, but the rent payable hereunder shall be abated (provided Tenant is not responsible for Owner's inability to obtain possession or complete construction) until after Owner shall have given Tenant written notice that the Owner is able to deliver possession in condition required by this lease. If permission is given to Tenant to enter into the possession of the demised premises or to occupy premises other than the demised premises prior to the date specified as the commencement of the term of this lease, Tenant covenants and agrees that such possession and/or occupancy shall be deemed to be under all the terms, covenants, conditions and provisions of this lease except the obligation to pay the fixed annual rent set forth in the preamble to this lease. The provisions of this article are intended to constitute "an express provision to the contrary" within the meaning of Section 223-a of the New York Real Property Law.

No Waiver: 25. The failure of Owner 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 Rules or Regulations, set forth or hereafter adopted by Owner, 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 Owner of 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 Owner unless such waiver be in writing signed by Owner. No payment by Tenant or receipt by Owner 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 Owner may accept such check or payment without prejudice to Owner's right to recover the balance of such rent or pursue any other remedy in this lease provided. No act or thing done by Owner or Owner's agents during the term hereby demised shall be deemed an acceptance of a surrender of said premises, and no agreement to accept such surrender shall be valid unless in writing signed by Owner. No employee of Owner or Owner's agent shall have any power to accept the keys of said 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 premises.

Waiver of Trial by Jury: 26. It is mutually agreed by and between Owner and Tenant that the respective parties hereto shall and they hereby do waive trial by jury in any action proceeding or counterclaim brought by either of the parties hereto against the other (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 Owner and Tenant, Tenant's use of or occupancy of said premises, and any emergency statutory or any other statutory remedy. It is further mutually agreed that in the event Owner commences any proceeding or action for possession including a summary proceeding for possession of the premises, Tenant will not interpose any counterclaim of whatever nature or description in any such proceeding including a counterclaim under Article 4 except for statutory mandatory counterclaims.

Inability to Perform: 27. This Lease and the obligation of Tenant to pay rent hereunder and perform all of the other covenants and agreements hereunder on part of Tenant to be performed shall in no wise be affected, impaired or excused because Owner 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 Owner is prevented or delayed from so doing by reason of strike or labor troubles or any cause whatsoever including, but not limited to, 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 the conditions which have been or are affected, either directly or indirectly, by war or other emergency.

Bills and Notices: 28. Except as otherwise in this lease provided, a bill, statement, notice or communication which Owner may desire or be required to give to Tenant, shall be deemed sufficiently given or rendered if, in writing, delivered to Tenant personally or sent by registered or certified mail addressed to Tenant at the

building of which the demised premises form a part or at the last known residence address or business address of Tenant or left at any of the aforesaid premises addressed to Tenant, and the time of the rendition of such bill or statement and of the giving of such notice or communication shall be deemed to be the time when the same is delivered to Tenant, mailed, or left at the premises as herein provided. Any notice by Tenant to Owner must be served by registered or certified mail addressed to Owner at the address first hereinabove given or at such other address as Owner shall designate by written notice.

Services Provided by Owners: 29. As long as Tenant is not in default under any of the covenants of this lease beyond the applicable grace period provided in this lease for the curing of such defaults, Owner shall provide: (a) necessary elevator facilities on business days from 8 a.m. to 6 p.m. and have one elevator subject to call at all other times; (b) heat to the demised premises when and as required by law, on business days from 8 a.m. to 6 p.m.; (c) water for ordinary lavatory purposes, but if Tenant uses or consumes water for any other purposes or in unusual quantities (of which fact Owner shall be the sole judge), Owner may install a water meter at Tenant's expense which Tenant shall thereafter maintain at Tenant's expense in good working order and repair to register such water consumption and Tenant shall pay for water consumed as shown on said meter as additional rent as and when bills are rendered; (d) cleaning service for the demised premises on business days at Owner's expense provided that the same are kept in order by Tenant. ~~If, however, said premises are to be kept clean by Tenant, it shall be done at Tenant's sole expense, in a manner reasonably satisfactory to Owner and no one other than persons approved by Owner shall be permitted to enter said premises or the building of which they are a part for such purpose. Tenant shall pay Owner the cost of removal of any of Tenant's refuse and rubbish from the building; (e) If the demised premises are serviced by Owner's air conditioning/cooling and ventilating system, air conditioning/cooling will be furnished to tenant from May 15th through September 30th, on business days (Mondays through Fridays, holidays excepted) from 8:00 a.m. to 6:00 p.m., and ventilation will be furnished on business days during the aforesaid hours except when air conditioning/cooling is being furnished as aforesaid. If Tenant requires air conditioning/cooling or ventilation for more extended hours or on Saturdays, Sundays or on holidays, as defined under Owner's contract with Operating Engineers Local 94-94A, Owner will furnish the same at Tenant's expense.~~


RIDER to be added in respect to rates and conditions for such additional service: (f) Owner reserves the right to stop services of the heating, elevators, plumbing, air-conditioning, electric, power systems or cleaning or other services, if any, when necessary by reason of accident or for repairs, alterations, replacements or improvements necessary or desirable in the judgment of Owner for as long as may be reasonably required by reason thereof. If the building of which the demised premises are a part supplies manually operated elevator service, Owner at any time may substitute automatic control elevator service and proceed diligently with alterations necessary therefor without in any wise affecting this lease or the obligation of Tenant hereunder.

Captions: 30. The Captions are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this lease nor the intent of any provisions thereof.

Definitions: 31. The term "office", or "offices", wherever used in this lease, shall not be construed to mean premises used as a store or stores, for the sale or display, at any time, of goods, wares or merchandise, of any kind, or as a restaurant, shop, booth, bootblack or other stand, barber shop, or for other similar purposes or for manufacturing. The term "Owner" means a landlord or lessor, and as used in this lease means only the owner, or the mortgagee in possession, for the time being of the land and building (or the owner of a lease of the building or of the land and building) of which the demised premises form a part, so that in the event of any sale or sale of said land and building or of said lease, or in the event of a lease of said building, or of the land and building, the said Owner shall be and hereby is entirely released of all covenants and obligations of Owner hereunder, and it shall be deemed and construed without further agreement between the parties or their successors in interest, or between the parties and the purchaser, at any such sale, or the said lessee of the building, or of the land and building, that the purchaser or the lessee of the building has assumed and agreed to carry out any and all covenants and obligations of Owner, hereunder. The words "re-enter" and "re-entry" as used in this lease are not restricted to their technical legal meaning. The term "business days" as used in this lease shall exclude Saturdays, Sundays and all days as observed by the State or Federal Government as legal holidays and those designated as holidays by the applicable building service union employees service contract or by the applicable Operating Engineers contract with respect to HVAC service. Wherever it is expressly provided in this lease that consent shall not be unreasonably withheld, such consent shall not be unreasonably delayed.

Adjacent Excavation-Shoring: 32. 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, 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 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 Owner, or diminution or abatement of rent.

Rules and Regulations: 33. Tenant and Tenant's servants, employees, agents, visitors, and licensees shall observe faithfully, and comply strictly with, the Rules and Regulations and such other and further reasonable Rules and Regulations as Owner or Owner's agents may from time to time adopt. Notice of any additional rules or regulations shall be given in such manner as Owner may elect. In case Tenant disputes the reasonableness of any additional Rule or Regulation hereafter made or adopted by Owner or Owner'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 Owner within fifteen (15) days after the giving of notice thereof. Nothing

 Rider to be added if necessary.

* or transfer
** or transferee

INSERT TO PRINTED OFFICE LEASE

1. Landlord hereby represents to Tenant that as of the date hereof, there is no superior lease, and the only holder of a superior mortgage is Metropolitan Life Insurance Company (the "Existing Mortgagee"). Landlord shall use its commercially reasonable efforts to deliver to Tenant a subordination, non-disturbance and attornment agreement from the Existing Mortgagee, in form and content reasonably acceptable to Tenant, and same shall be executed simultaneously with the execution of this Lease.

Provided that the Tenant named herein, or its successor by merger or similar action, is the then Tenant hereunder or remains primarily obligated for all of Tenant's obligations under this Lease, Tenant's obligation to subordinate this Lease to any future superior leases and to any future mortgages which may affect the Land and/or the Building, shall be conditioned upon Landlord obtaining and delivering to Tenant a subordination, non-disturbance and attornment agreement (hereinafter referred to as an "SNDA") for the benefit of Tenant from the holder of each superior mortgage and from the lessor under each superior lease that becomes effective after the date of this Lease. Any such SNDA shall be in the standard form of the future superior lessor or future mortgagee, as the case may be and shall provide that as long as Tenant is not in default in the payment of Fixed Rent or additional rent or any other term, covenant or condition of this Lease, beyond any applicable notice and cure period, and provided Tenant attorns to such holder or lessor under the terms and provisions of this Lease: (A) its rights as Tenant hereunder shall not be affected or terminated, (B) its possession of the Demised Premises shall not be disturbed, (C) no action or proceeding shall be commenced to remove or evict Tenant and, (D) Tenant shall not be named as a party defendant.

If, in connection with obtaining financing or refinancing for the Building of which the Demised Premises form a part, or Landlord's estate and interest therein, a 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: (i) materially increase the obligations of Tenant hereunder, (ii) decrease or modify in any respect the rights of Tenant hereunder, (iii) modify any of the rent or other financial provisions of this Lease or other provisions relating thereto, (iv) decrease or modify the Term, or (v) materially diminish the obligations of Landlord.

2. Notwithstanding anything to the contrary set forth herein, if any portion of the Building or the Demised Premises is rendered partially or wholly unusable by fire or other casualty and the Landlord's restoration of the Building or the Demised Premises is not substantially completed within one hundred eighty (180) days from the date of the damage, then Tenant may, within ten (10) days after the expiration of said one hundred eighty (180) day period, cancel this Lease by giving thirty (30) days' written notice to the Landlord.

3. upon reasonable prior notice,
4. subject to the provisions of the Rider annexed hereto including, without limitation, Article 49 thereof,
- 4a. and Saturdays from 8:00am to 1:00pm
5. within five (5) days
6. 15

**RIDER TO LEASE DATED AS OF JULY _____, 2007
BETWEEN JEFFREY MANAGEMENT CORP., AS MANAGER FOR
FRENCH PARTNERS LLC AND NEW YORK FRENCH BUILDING
CO-INVESTORS, LLC, AS LANDLORD
AND DHG MANAGEMENT, LLC, AS TENANT**

37. A. 9th And 10th Floor Premises.

Tenant acknowledges and agrees that Suites 900 and 1000 (hereinafter referred to as the "9th and 10th Floor Premises") are currently occupied by Pace University (hereinafter referred to as "Pace"). Tenant acknowledges and agrees that this Lease is contingent upon the Landlord gaining vacant legal possession of the 9th and 10th Floor Premises. Landlord represents and warrants to Tenant that Landlord has entered into a lease termination agreement with Pace. Tenant agrees that the commencement date of the Lease for the 9th and 10th Floor Premises (hereinafter referred to as the "9th and 10th Floor Premises Commencement Date") shall be September 1, 2007 or the date that Landlord delivers the 9th and 10th Floor Premises to Tenant with Landlord's Work, as described in Article 1 of Exhibit "C" attached hereto, substantially completed, whichever is later: Landlord agrees however, that if Landlord fails to deliver the 9th and 10th Floor Premises on or before October 1, 2007 with the portion of the Landlord's Work required to be performed for the 9th and 10th Floor Premises substantially completed, then in that event Tenant shall have the right to an additional two (2) days of free Rent for every one (1) day Landlord is delayed in delivering the 9th and 10th Floor Premises beyond October 1, 2007.

B. Tenant agrees that the fixed annual rent ("Fixed Rent") Tenant shall be obligated to pay for the 9th and 10th Floor Premises is as more fully indicated on the attached Exhibit "B". Landlord and Tenant agree that the 9th and 10th Floor Premises Rent Commencement Date shall be the first (1st) day following the expiration of the ninety (90) day period following the 9th and 10th Floor Premises Commencement Date.

C. Landlord further agrees that provided Tenant is not in default of any of the terms, covenants and conditions of the Lease beyond the expiration of any applicable notice and cure periods, for the twenty-four (24) month period commencing with the 9th and 10th Floor Premises Rent Commencement Date, Tenant shall receive an additional credit against Fixed Rent that Tenant shall be obligated to pay for the 9th and 10th Floor Premises, in the amount of \$31,162.08 per month.

D. Landlord and Tenant agree that within thirty (30) days from the 9th and 10th Floor Premises Commencement Date the Landlord and Tenant shall enter into a non-recordable letter agreement verifying the 9th and 10th Floor Premises Commencement Date, the 9th and 10th Floor Premises Rent Commencement Date, and the Expiration Date of this Lease.

E. 9th and 10th Floor Operating Payments

(i) Tenant shall pay to Landlord as an Additional Charge to compensate Landlord for Tenant's Share of the increase over the first (1st) year of the Term of expenses paid or incurred by, or on behalf of, Landlord in respect of the operation, management, maintenance and/or repair of the Real Property for the 9th and 10th Floor Premises, in equal monthly installments together with Tenant's payment of monthly installments of Fixed Rent, the following amounts for the following periods (herein called the "9th and 10th Floor Premises Operating Payments"):

(a) Forty-Four Thousand Eight Hundred Seventy-Three and 40/100 (\$44,873.40) Dollars per annum, payable in equal monthly installments of Three Thousand Seven Hundred Thirty-Nine and 45/100 (\$3,739.45) Dollars, for the period from the first (1st) anniversary of the 9th and 10th Floor Premises Rent Commencement Date to and including the day immediately preceding the second (2nd) anniversary of the 9th and 10th Floor Premises Rent Commencement Date;

(b) Ninety Thousand Six Hundred Forty-Four and 27/100 (\$90,644.27) Dollars per annum, payable in equal monthly installments of Seven Thousand Five Hundred Fifty-Three and 69/100 (\$7,553.69) Dollars for the period from the second (2nd) anniversary of the 9th and 10th Floor Premises Rent Commencement Date to and including the day immediately preceding the third (3rd) anniversary of the 9th and 10th Floor Premises Rent Commencement Date;

(c) One Hundred Thirty-Seven Thousand Three Hundred Thirty and 55/100 (\$137,330.55) Dollars per annum, payable in equal monthly installments of Eleven Thousand Four Hundred Forty-Four and 21/100 (\$11,444.21) Dollars for the period from the third (3rd) anniversary of the 9th and 10th Floor Premises Rent Commencement Date to and including the day immediately preceding the fourth (4th) anniversary of the 9th and 10th Floor Premises Rent Commencement Date;

(d) One Hundred Eighty-Four Thousand Nine Hundred Fifty and 56/100 (\$184,950.56) Dollars per annum, payable in equal monthly installments of Fifteen Thousand Four Hundred Twelve and 55/100 (\$15,412.55) Dollars for the period from the fourth (4th) anniversary of the 9th and 10th Floor Premises Rent Commencement Date to and including the day immediately preceding the fifth (5th) anniversary of the 9th and 10th Floor Premises Rent Commencement Date;

(e) Two Hundred Thirty-Three Thousand Five Hundred Twenty-Two and 98/100 (\$233,522.98) Dollars per annum, payable in equal monthly installments of Nineteen Thousand Four Hundred Sixty and 25/100 (\$19,460.25) Dollars for the period from the fifth (5th) anniversary of the 9th and 10th Floor Premises Rent Commencement Date to and including the day immediately preceding the sixth (6th) anniversary of the 9th and 10th Floor Premises Rent Commencement Date;

(f) Two Hundred Eighty-Three Thousand Sixty-Six and 84/100 (\$283,066.84) Dollars per annum, payable in equal monthly installments of Twenty-Three Thousand Five Hundred Eighty-Eight and 90/100 (\$23,588.90) Dollars for the period from the sixth (6th) anniversary of the 9th and 10th Floor Premises Rent Commencement Date to and including the day immediately preceding the seventh (7th) anniversary of the 9th and 10th Floor Premises Rent Commencement Date;

(g) Three Hundred Thirty-Three Thousand Six Hundred One and 57/100 (\$333,601.57) Dollars per annum, payable in equal monthly installments of Twenty-Seven Thousand Eight Hundred and 13/100 (\$27,800.13) Dollars for the period from the seventh (7th) anniversary of the 9th and 10th Floor Premises Rent Commencement Date to and including the day immediately preceding the eighth (8th) anniversary of the 9th and 10th Floor Premises Rent Commencement Date;

(h) Three Hundred Eighty-Five Thousand One Hundred Forty-Seven and 00/100 (\$385,147.00) Dollars per annum, payable in equal monthly installments of Thirty-Two Thousand Ninety-Five and 58/100 (\$32,095.58) Dollars for the period from the eighth (8th) anniversary of the 9th and 10th Floor Premises Rent Commencement Date to and including the day immediately preceding the ninth (9th) anniversary of the 9th and 10th Floor Premises Rent Commencement Date;

(i) Four Hundred Thirty-Seven Thousand Seven Hundred Twenty-Three and 34/100 (\$437,723.34) Dollars per annum, payable in equal monthly installments of Thirty-Six Thousand Four Hundred Seventy-Six and 95/100 (\$36,476.95) Dollars for the period from ninth (9th) anniversary of the 9th and 10th Floor Premises Rent Commencement Date to and including the day immediately preceding the tenth (10th) anniversary of the 9th and 10th Floor Premises Rent Commencement Date;

(j) Four Hundred Ninety-One Thousand Three Hundred Fifty-One and 21/100 (\$491,351.21) Dollars per annum, payable in equal monthly installments of Forty Thousand Nine Hundred Forty-Five and 93/100 (\$40,945.93) Dollars for the period from the tenth (10th) anniversary of the 9th and 10th Floor Premises Rent Commencement

Date to and including the day immediately preceding the eleventh (11th) anniversary of the 9th and 10th Floor Premises Rent Commencement Date;

(k) Five Hundred Forty-Six Thousand Fifty-One and 63/100 (\$546,051.63) Dollars per annum, payable in equal monthly installments of Forty-Five Thousand Five Hundred Four and 30/100 (\$45,504.30) Dollars for the period from the eleventh (11th) anniversary of the 9th and 10th Floor Premises Rent Commencement Date to and including the day immediately preceding the twelfth (12th) anniversary of the 9th and 10th Floor Premises Rent Commencement Date;

(l) Six Hundred One Thousand Eight Hundred Forty-Six and 07/100 (\$601,846.07) Dollars per annum, payable in equal monthly installments of Fifty Thousand One Hundred Fifty-Three and 84/100 (\$50,153.84) Dollars for the period from the twelfth (12th) anniversary of the 9th and 10th Floor Premises Rent Commencement Date to and including the day immediately preceding the thirteenth (13th) anniversary of the 9th and 10th Floor Premises Rent Commencement Date;

(m) Six Hundred Fifty-Eight Thousand Seven Hundred Fifty-Six and 39/100 (\$658,756.39) Dollars per annum, payable in equal monthly installments of Fifty-Four Thousand Eight Hundred Ninety-Six and 37/100 (\$54,896.37) Dollars for the period from the thirteenth (13th) anniversary of the 9th and 10th Floor Premises Rent Commencement Date to and including the day immediately preceding the fourteenth (14th) anniversary of the 9th and 10th Floor Premises Rent Commencement Date;

(n) Seven Hundred Sixteen Thousand Eight Hundred Four and 92/100 (\$716,804.92) Dollars per annum, payable in equal monthly installments of Fifty-Nine Thousand Seven Hundred Thirty-Three and 74/100 (\$59,733.74) Dollars for the period from the fourteenth (14th) anniversary of the Commencement Date to and including the day immediately preceding the fifteenth (15th) anniversary of the 9th and 10th Floor Premises Rent Commencement Date; and

(o) Seven Hundred Seventy-Six Thousand Fourteen and 41/100 (\$776,014.41) Dollars per annum, payable in equal monthly installments of Sixty-Four Thousand Six Hundred Sixty-Seven and 87/100 (\$64,667.87) Dollars for the period from the fifteenth (15th) anniversary of the 9th and 10th Floor Premises Rent Commencement Date to and including ~~May 31, 2023~~.

March

38. Real Estate Taxes.

A. Tenant covenants and agrees to pay, in the manner hereinafter provided, as additional rent, without set-off or deduction, 11.74 percent of any increase in any of the items included within "Real Estate Taxes", as hereinafter defined, over and above an amount equal to the amount payable by Landlord for any of the same for the fiscal year commencing July 1, 2007 and ending June 30, 2008 (hereinafter referred to as "Base Tax Year") for each and every such fiscal year or portion thereof thereafter during the term of this Lease. "Real Estate Taxes" shall be defined as including the following items: (a) real estate taxes, and (b) assessments (including, without limitation, assessments for public improvements or benefits whether or not commenced or completed during the term of this Lease) and (c) any tax assessments levied, assessed or imposed against such land and/or Building or the rents or profits therefrom to the extent that the same shall be in lieu of all or any portion of any item hereinabove set forth. If, by virtue of any application or proceeding brought by or in behalf of Landlord, there shall be a reduction of the assessed valuation of the land and/or Building for any fiscal year which affects the Real Estate Taxes, or part thereof, for which additional rent has been paid by Tenant pursuant to this Article, such additional rent payment shall be recomputed on the basis of any such reduction and Landlord will credit against the next accruing installments of rent due under this Lease after receipt by Landlord of a tax refund of any sums paid by Tenant in excess of the recomputed amounts, less a sum equal to the percentage hereinabove set forth, of all costs, expenses and fees, including, but not limited to, reasonable attorneys' fees incurred by Landlord in connection with the such application or proceeding.

B. The term "Tax Payment Due", as used herein, shall mean the day that Landlord must pay the Real Estate Taxes to the taxing authorities without interest or penalty. The term "Tax Period", as used herein, shall mean a period commencing the first day after a Tax Payment Date and continuing through and including the next occurring Tax Payment Date. On the first day of each month during the Tax Period and on the day immediately preceding the Tax Payment Date, Tenant shall pay to Landlord, in equal monthly installments, that amount equal to Tenant's share of Real Estate Taxes due on the next occurring Tax Payment Date. In the event Tenant's share of Real Estate Taxes is unknown at the commencement of a Tax Period, Landlord shall estimate same, based on the previous year's Real Estate Taxes for the Building, which amount shall be appropriately adjusted when the actual amount of Tenant's share of Real Estate Taxes becomes known. If it becomes necessary to adjust the regular payments during a Tax Period, Landlord agrees to give Tenant not less than thirty (30) days notice of such adjustment, which notice shall include appropriate copies of documentation serving as the basis for such adjustment including, without limitation, tax bills.

C. Any amount payable under this Article shall be billed by Landlord to Tenant as additional rent and shall be due and payable within fifteen (15) days after Landlord renders a bill therefor to Tenant. Bills for any items included in Real Estate Taxes issued by the governmental authority having jurisdiction shall be sufficient evidence of the amount of Real Estate Taxes for the purposes of the calculation of the amount of additional rent to be paid by Tenant pursuant to this Article. Any additional rent payable pursuant to this Article for any partial fiscal or calendar year, as the case may be, at the commencement or at the expiration of the term hereof, shall be adjusted in proportion to the number of days in such partial fiscal or calendar year during which this Lease is in effect. The obligation of Tenant with respect to any additional rent pursuant to this Article applicable to the last fiscal or calendar year and/or partial fiscal or calendar year of the term of this Lease shall survive the expiration of the term of this Lease for a period not to exceed two (2) years. Subject to the immediately preceding sentence, the failure of Landlord to render bills for Real Estate Taxes under the provisions of this Article shall not prejudice the right of Landlord to thereafter render said bill or bills for such fiscal or calendar year or any subsequent fiscal or calendar years.

39. Electric

A. Supplementing Article 12 hereof, Landlord agrees that it will install prior to the 9th and 10th Floor Premises Commencement Date and the 27th Floor Premises Commencement Date, at Landlord's sole cost and expense, a meter or meters to measure the electricity consumed by Tenant's light fixtures, office and other equipment in the Demised Premises including, but not limited to, the air-conditioning and compressor equipment servicing the Demised Premises that provide air-conditioning for the Demised Premises.

B. The above electric shall be supplied by Landlord to the Demised Premises on a submetered basis and Tenant shall pay to Landlord in respect thereof, as additional rent, the sum of (i) an amount determined by multiplying the consumption of KW hours and KW demand consumed by the Tenant within the Demised Premises as recorded on the submeter or submeters servicing the Demised Premises by the same utility Service Classification under which the Landlord purchases electricity at the consumption level for which Tenant qualifies, and (ii) Landlord's administrative charge of six (6%) percent of the amount referred to in (i) above, for overhead and supervision.

C. Where more than one meter measures such electric to Tenant, the electric service rendered through each meter shall be aggregated and billed together in accordance with the provisions hereinabove set forth. Bills for the electric consumption shall be rendered to Tenant at such time as Landlord may elect. Tenant shall pay the amount of the charge for electric as set forth on said bills within fifteen (15) days after rendition of such bill. Tenant shall have, at its own cost and expense, the right to have its representative present at the time of meter readings to verify same. Landlord shall, upon Tenant's request, furnish Tenant with copies of the underlying bills that Landlord receives from the public utility.

D. Tenant shall not make alterations or additions to the electric equipment, and/or appliances other than general office lighting and business machines without first obtaining written consent from the Landlord in each instance, which Landlord shall not unreasonably withhold or delay provided same are consistent with the capacity of the risers servicing the Demised Premises. Landlord shall not in any way 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 provided such loss or damage is not attributable to the negligence or wrongful action of Landlord. Tenant covenants and agrees that at all times its use of electric current shall never exceed the capacity of existing feeders to the building or the risers or wiring installation. Landlord represents and warrants that at all times during the term of this Lease: (i) there shall be available to Tenant electrical capacity of not less than six (6) watts per rentable square foot, exclusive of any capacity necessary for the operation of the air-conditioning equipment servicing the Demised Premises; and (ii) the existing feeders, risers and wiring installation shall be sufficient to accommodate such capacity. Any riser or risers necessary to supply Tenant's electricity requirements in excess of six (6) watts per rentable square foot, upon written request of Tenant, will be installed by Landlord, at the sole cost and expense of Tenant, if, in Landlord's sole judgment reasonably exercised, the same are necessary and will not 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.

E. Landlord reserves the right to terminate the furnishing of electricity to the Demised Premises on a submetered basis at any time, upon thirty (30) days' written notice to Tenant, in which event, Tenant may make application, at its own cost and expense, directly to the utility company servicing the building for Tenant's entire separate supply of electric current and Landlord shall permit its wires and conduits to the extent available and safely capable to be used for such purpose. Landlord upon the expiration of the aforesaid thirty (30) day period and such longer time as shall be reasonable to enable Tenant to install the wiring necessary to enable Tenant to purchase electricity directly from the public utility serving the building may discontinue furnishing the electric current, in which event, Tenant's liability for the portion of the rent attributable to electricity being furnished by Landlord shall terminate as of the date of discontinuance of the supplying of electric current, but this lease shall otherwise remain in full force and effect. Landlord shall bear the expense in converting the Demised Premises.

40. Cleaning Contractor

A. Landlord agrees to provide cleaning services to the Building in accordance with the Cleaning Specifications attached hereto and marked Exhibit "D".

B. If Landlord discontinues furnishing cleaning services to Tenant pursuant to the terms of the Lease Tenant covenants and agrees to use only the contractor then employed by Landlord to provide cleaning services in the Building or contractor or contractors approved in advance for any waxing, polishing, and other maintenance work of the Demised Premises and of Tenant's personal property therein, provided that the prices charged by such contractor(s) are comparable to the prices charged by other reputable contractors for the same work. Tenant covenants and agrees that it shall not employ any other cleaning or other maintenance contractor nor any individual, not employ any other cleaning or other maintenance contractor nor any individual, firm or organization for such purpose without Landlord's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed. If Landlord and Tenant cannot agree on whether the prices being charged by the contractor designated by Landlord are comparable to those charged by other reputable contractors, Landlord and Tenant shall each obtain two (2) bona fide bids for such work from reputable contractors in New York City, and the average of the four (4) bids obtained shall be the standard of comparison. In the event Landlord discontinues furnishing cleaning services as aforesaid, any substitute performance shall be at the sole cost and expense of Landlord.

41. Not An Offer

The submission of this Lease to Tenant shall not be construed as an offer, nor shall the Tenant have any rights with respect thereto unless and until Landlord shall, or shall cause its managing agent to, execute a copy of this Lease and deliver same to Tenant.

42. Indemnification, Insurance

A. Tenant covenants and agrees to indemnify and save harmless, Landlord and any fee Landlord and any mortgagee and any lessor under any ground or underlying Lease, and their respective contractors, agents and employees, licensees and invitees, from and against any and all liability (statutory or otherwise), claims, suits, demands, damages, judgments, costs, interest and expenses (including, but not limited to reasonable counsel fees and disbursements incurred in the defense of any action or proceeding), to which they may be subject or which they may suffer by reason of, or by reason of any claim for, any injury to, or death of, any person or persons (including, without limitation, Landlord, its agents, contractors, employees, licensees and invitees) or damage to property (including any loss of use thereof) or otherwise arising from or in connection with the occupancy or use of or from any work, installation or thing whatsoever done in, at or about the Demised Premises by or on behalf of Tenant during the term of this Lease or arising from any condition of the Demised Premises caused by Tenant or any of Tenant's officers, directors, agents, contractors, employees, subtenants, licensees or invitees, or resulting from any default by Tenant in the performance of Tenant's obligations under this Lease or from any act, omission or negligence of Tenant or any of Tenant's officers, directors, agents, contractors, employees, subtenants, licensees or invitees.

B. Tenant shall maintain at its own cost and expense during the term of the Lease primary and non-contributory insurance with a company or companies acceptable to Landlord and eligible to do business in New York State insuring Tenant as follows:

(a) Commercial General Liability Insurance covering the Demised Premises on an occurrence basis against all claims for personal injury, bodily injury, death and property damage, including contractual liability covering the indemnification provisions in this Lease. Such insurance shall be for such limits that are reasonably required by Landlord from time to time but not less than a combined single limit of Two Million Dollars (\$2,000,000.00). Such policy shall name the Landlord and any ground lessor, managing agent or mortgagee of the Building, as additional named insureds and shall provide (i) that the same may not be canceled or terminated without the insurance carrier first endeavoring to give at least thirty (30) days written notice to Landlord and such additional named insureds by the insurance company issuing such policy and (ii) that no act or omission to act of Tenant shall invalidate such insurance as to Landlord and such additional named insureds to the extent same is available;

(b) Workers' Compensation and Employers' Liability Insurance for an amount of not less than Five Hundred Thousand Dollars (\$500,000.00), both in accordance with the laws of The State of New York;

(c) "All Risks" or "Special Form" insurance in an amount adequate to cover the full replacement cost of all equipment, installations, fixtures and contents of the Demised Premises in the event of loss and any such policy shall contain a provision requiring the insurance carriers to waive their rights of subrogation against Landlord;

(d) In the event a motor vehicle is to be used by Tenant in connection with its business operation from the Demised Premises, Comprehensive Automobile Liability Insurance coverage with limits of not less than Three Million Dollars (\$3,000,000.00) combined single limit coverage against bodily injury liability and property damage liability arising out of the use by or on behalf of Tenant, its agents and employees in connection with this Lease, of any owned, non-owned or hired motor vehicles. This policy shall name the Landlord and any ground lessor, managing agent or mortgagee of the Building as additional named insureds; and

(e) When required by Landlord, such other insurance against other insurable hazards and in such amounts as may from time to time be commonly and customarily insured against in Class A office buildings in New York City. Limits of insurance required to be maintained under commercial general liability and auto liability may be obtained through the use of excess/umbrella policies.

C. All policies shall provide, inter alia, (i) that same may not be canceled or terminated without the insurance carrier first endeavoring to give at least thirty (30) days written notice to Landlord and such additional named insureds (when applicable) by the insurance company issuing such policy, and (ii) that no such act or omission to act of Tenant shall invalidate such insurance as to Landlord and such additional named insureds to the extent the same is available.

D. Tenant shall, on or before the date hereof, furnish Landlord with Certificates showing that all insurance required by this Article is being maintained as required herein. Upon renewal of any such insurance that expires before the expiration of this Lease, Landlord shall be provided with renewal certificates or binders within fifteen (15) days of such expiration, together with evidence of the payment of the premiums thereon. Certificates of insurance evidencing coverage set forth in subparagraphs (a) and (d) hereof shall designate Landlord as an additional named insured. Receipt of each Certificate of Insurance or other documentation of insurance or copies of policies by the Landlord or by any of its representatives which indicate less coverage than required herein will not constitute a waiver of Tenant's obligation to fulfill said insurance requirements.

E. Nothing contained in these insurance requirements is to be construed in any way to limit the extent of Tenant's responsibility, liability or payment of damages resulting from its operations under the Lease.

F. Tenant shall be responsible for its own deductibles and self-insurance retentions and such costs shall not be the responsibility or liability of the Landlord.

G. Should Tenant engage a contractor or consultant the same insurance requirements will apply under this Lease to each contractor or consultant.

H. Tenant shall give prompt notice to Landlord in case of fire or accident in the Demised Premises.

43. Financing For The Building

If, in connection with obtaining financing or refinancing for the Building, a banking, insurance or other institutional 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 (except, perhaps, to the extent that Tenant may be required to give notices of any defaults by Landlord to such lender and/or permit the curing of such defaults by such lender together with the granting of such additional time for such curing as may be required for such lender to get possession of the said Building) or materially adversely affect the leasehold interest hereby created. In no event shall a requirement that the consent of any such lender be given for any modification of this Lease be deemed to materially adversely affect the leasehold interest hereby created.

44. Tenant's Personal Property

Tenant understands and agrees that Landlord will not be obligated to carry insurance of any kind on any personal property in the Demised Premises (regardless of whether such property shall be owned by Tenant and including, but not limited to, Tenant's goods, supplies, furnishings, furniture, fixtures, equipment, improvements, betterments, installations or appurtenances). Tenant hereby waives any and all right of recovery which it might otherwise have against Landlord, any fee Landlord or mortgagee and their respective officers, directors, agents, contractors, servants and employees for loss or damage to such property or any part thereof, to the same extent that Tenant's insurer's rights of subrogation

would be waived if insurance coverage with waiver of subrogation provisions were being maintained by Tenant upon all of such property. The provisions of this Article shall also apply to each permitted assignee, if any, and each permitted subtenant, if any, at any time occupying the Demised Premises or any part thereof.

As respects the Demised Premises, Landlord's insurance shall contain a provision requiring the insurance carrier(s) to waive the right of subrogation against the Tenant.

45. Infestation

If, as a result of Tenant's acts, the Demised Premises be, or become, infested with vermin, Tenant shall, at Tenant's expense, cause to be exterminated from time to time to the satisfaction of Landlord, and shall employ such exterminator and such exterminating company or companies as shall be approved by Landlord.

46. Installations

Tenant acknowledges and agrees that upon completion of the initial work, if any, required by Landlord pursuant to this Lease, and upon Tenant's occupancy of the Demised Premises, Landlord shall have no obligation, liability or responsibility of any nature with respect to any installations made by it, nor shall Landlord at any time have any obligation, liability or responsibility of any nature with respect to any installations at any time made in the Demised Premises by or for Tenant or existing in the Demised Premises on the Commencement Date, and Tenant agrees to maintain and/or replace, if necessary, all of the same. As used in this Article the term "installations" shall include, without limitation, carpeting and/or other floor covering materials.

47. Limitation of Landlord's Liability

Tenant agrees that, notwithstanding any contrary provisions of this Lease, Tenant shall look only to the Landlord's estate and property in the Building for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) requiring the payment of money by Landlord hereunder, and no other property or assets of the 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 or occupancy of the Demised Premises.

48. Late Charges, Etc.

All sums whatsoever not included within rent or additional rent and payable by Tenant under this Lease shall constitute additional rent and shall be payable without set-off or deduction, whether or not so specified elsewhere in this Lease. All sums in arrears under this Lease will bear interest at the then prime rate of interest of Citibank, N.A. (Or its successor) plus two (2) points chargeable to individuals in New York State for ninety (90) day commercial loans, from their respective due dates until received by Landlord, but the foregoing shall in no way limit any claim for damages or any other rights and remedies available to Landlord for any breach or default by Tenant. Tenant's obligations under this Lease will survive the expiration or sooner termination of the term for two (2) years.

49. As Is

A. Tenant has examined and inspected the 9th and 10th Floor Premises and the 27th Floor Premises and Tenant agrees to accept said premises in their condition existing on their respective commencement dates and understands and agrees that no materials whatever are to be furnished by Landlord and no work whatever is to be performed by Landlord in connection therewith except Landlord, at its sole cost and expense, shall perform the work as more fully indicated on the attached Exhibit "C" ("Landlord's Work").

B. Tenant acknowledges that in connection with Article 8 of the Landlord's Work, attached as the Exhibit "C", that Landlord agrees to use its commercially reasonable

efforts to complete the replacement of the exterior windows in the Demised Premises on or about March 1, 2008. Landlord represents that the replacement of such exterior windows shall be completed by October 1, 2008.

50. Tenant Alterations, Improvements

A. Notwithstanding anything set forth to the contrary in Article 3 above, if Tenant makes any changes, improvements or alterations in or to the Demised Premises, the same shall be performed at Tenant's sole cost and expense. Tenant covenants and agrees that all of the same shall be done in a good and workmanlike manner. Prior to the commencement of any structural alterations, Tenant shall submit to Landlord, for Landlord's approval, plans and specifications (to be prepared by and at the expense of Tenant) of any proposed structural alterations, in detail reasonably satisfactory to Landlord. Tenant shall not commence to make such proposed structural alterations, or any non-structural alterations costing in excess of \$200,000.00 without the prior written approval of Landlord, such approval not be unreasonably withheld, conditioned or delayed, and no amendments or additions to such plans and specifications shall be made without the prior written consent of Landlord, such consent not to be unreasonably withheld, conditioned or delayed. In the event Landlord fails to respond to any request for consent within fourteen (14) days, such consent shall be deemed given. Tenant further agrees to strictly comply with all of the provisions of this Lease. With respect to any alterations which, pursuant to the provisions of this Article 50, do not require the Landlord's approval, Tenant shall provide notice to Landlord prior to the performance of such alterations. The standards of quality, utility and appearance of the proposed changes, improvements and alterations shall conform to the then Building standards and Tenant agrees that Tenant will strictly conform to such standards. Tenant hereby covenants and agrees that any changes, improvements and alterations will be made with the least possible disturbance to the structural and mechanical parts of the Building and Tenant further covenants and agrees that Tenant will at Tenant's own cost and expense, leave all structural and mechanical parts of the Building, which shall or may be affected by such changes, improvements and alterations, in good and workmanlike operating condition. Tenant covenants and agrees that such changes, improvements and alterations will be made with the least possible disturbance to the occupants of other parts of the Building. Tenant, in making such changes, improvements and alterations, shall and will, at Tenant's own cost and expense, promptly comply with all rules and regulations of all public authorities having jurisdiction over the Demised Premises with reference to such changes, improvements and alterations, whether ordinary or extraordinary, structural or otherwise, foreseen or unforeseen, and will not call upon Landlord for any expenses connected therewith and will reimburse Landlord for any expenses incurred on account of failure by Tenant to comply with any requirement of law, rules and regulations of all public authorities having jurisdiction over the Demised Premises with reference to such changes, improvements and alterations, whether ordinary or extraordinary, structural or otherwise, foreseen or unforeseen, and will not call upon Landlord for any expenses connected therewith and will reimburse Landlord for any expenses incurred on account of failure by Tenant to reimburse Landlord for any expenses incurred on account of failure by Tenant to comply with any requirement of law, rules and regulations, and of any public, federal, state or local authority, whether involving structural changes or not. Tenant acknowledges that it understands that there are general tenant guidelines for the Building covering construction, maintenance, repair or other work. Tenant agrees that all repairs, renovations, alterations, installations, additions and improvements and other activities within the scope of the general tenant guidelines for the Building (including, without limitation, electrical and communications systems and asbestos fireproofing) effected by or on behalf of Tenant in the Demised Premises shall be conducted in accordance with and pursuant to the aforesaid tenant guidelines, as well as any applicable governmental requirements and regulations. Tenant agrees that it is its responsibility to ensure that Tenant and those working for Tenant comply with the aforesaid tenant guidelines as well as any other applicable governmental requirements and regulations. Tenant acknowledges that it is aware that the aforesaid tenant guidelines are available for its reference and use in the Building manager's office.

B. Tenant shall promptly pay and discharge all cost and expenses of such changes, improvements and alterations, and shall not do or fail to do any act which shall or

may render the Building liable to any mechanic's liens or other lien or charge or chattel mortgage or conditional bill of sale or title retention agreement, and if any such lien or liens or other charge or chattel mortgage or conditional bill of sale or title retention agreement be filed against the Building, or against such changes, improvements and alterations, or any part thereof, Tenant will, at Tenant's sole cost and expense, promptly remove the same of record, by bonding, payment or otherwise within thirty (30) days after the filing of any such lien or liens or other charge or chattel mortgage or conditional bill of sale or title retention agreement and notice of such filing to Tenant by Landlord or otherwise; or in default thereof, Landlord may cause such lien or liens or other charge or chattel mortgage or conditional bill of sale or title retention agreement to be removed of record by payment or bond or otherwise, as Landlord may elect, and Tenant will reimburse Landlord for all costs and expenses incidental to the removal of any such lien or liens or other charges or chattel mortgage or conditional bill of sale or the retention agreement incurred by Landlord. Tenant covenants and agrees to indemnify and save harmless Landlord of and from all claims, counsel fees, loss, damage and expenses whatsoever by reason of any liens, charges, chattel mortgages, conditional bills of sale, title retention agreements or payments of any kind whatsoever that may be incurred or become chargeable against Landlord, or the Demised Premises or the Building, or said changes, improvements and alterations, or any part thereof, by reason of any work done or to be done by or for Tenant or materials furnished or to be furnished to or upon the Demised Premises in connection with such changes, improvements and alterations.

C. Tenant shall perform or cause the performance of alterations in and to the Demised Premises to prepare same for Tenant's initial occupancy thereof ("Tenant's Initial Alterations"). All alterations to be performed by Tenant shall be of a quality and standard equivalent to the reasonable standards for construction set by Landlord, from time to time, for the Building. Tenant shall submit to Landlord complete and detailed architectural, mechanical and engineering plans and specifications showing Tenant's Initial Alterations, which plans and specifications shall be prepared by Tenant, at Tenant's own cost and expense. Tenant's plans and specifications shall be submitted to Landlord for Landlord's approval. Landlord shall advise Tenant, within five (5) days following its receipt of Tenant's plans and specifications, whether the plans and specifications are unconditionally approved, conditionally approved or disapproved. In the event Landlord fails to respond within such five (5) day period, Landlord's approval of the plans and specifications shall be deemed given. If the plans and specifications are conditionally approved or disapproved, Landlord shall set forth in reasonable detail the deficiencies in the plans and specifications and Tenant shall cause such deficiencies to be corrected and resubmitted to Landlord within five (5) days. Landlord shall again have five (5) days to respond after which time, Landlord's approval of the plans and specifications shall be deemed given. The plans and specifications, as approved by Landlord, are hereinafter referred to as the "Final Plans" and shall be deemed an authorization by Landlord for Tenant to proceed with Tenant's Initial Alterations, which shall be performed in accordance with the provisions of Article 3 hereof. The approval of the final plans and specifications by Landlord shall not be deemed to create any liability on the part of Landlord with respect to the design or specifications set forth in the Final Plans.

(i) Landlord agrees to reimburse Tenant for the cost of Tenant's Initial Alterations, as approved by Landlord in connection with the 9th and 10th Floor Premises and the 27th Floor Premises to the extent of the lesser of (i) \$2,018,960.00 or (ii) the actual cost to Tenant for Tenant's Alterations, inclusive of the cost of architectural, engineering design or other consulting fees which fees to not exceed \$60,000 in the aggregate ("Landlord's Contribution").

(ii) Provided this Lease is in full force and effect and Tenant is not in default hereunder beyond any applicable notice and grace period, Landlord shall disburse from time to time as Tenant's Initial Alterations progress, but not more often than once in any month up to ninety (90%) percent of Landlord's Contribution, in the aggregate, upon receipt of a request therefor from Tenant and the submission of Tenant of the following:

(aa) A certificate signed by Tenant and Tenant's architect dated not more than ten (10) days prior to such request setting forth (a) that the sum then requested

is justly due to contractors, subcontractors, materialmen, engineers, architects and other persons who have rendered services or furnished materials in connection with Tenant's 9th and 10th Floor Premises Initial Alterations and that all sums due to such parties other than the amount of the then pending disbursement have been paid, (b) a brief description of such services and material and the amounts paid to each of such persons in respect thereof and (c) that the work described in the certificate has been completed in accordance with the Final Plans.

(bb) Lien waivers from Tenant's general contractor with respect to all work done or supplies furnished as set forth in the certificate requesting the then current disbursement or an opinion of counsel or other evidence reasonably satisfactory to Landlord to the effect that there has not been filed with respect to the Premises or the Building or any part thereof or any improvement thereon, any vendor's, mechanic's, laborer's, materialmen's or other like liens arising out of Tenant's Initial Alterations which has not been discharged of record.

(cc) Paid receipts or such other proof of payment as Landlord shall reasonably require for all work done in connection with Tenant's Initial Alterations; and

(dd) Proof reasonably satisfactory to Landlord that Tenant has complied with all of the conditions set forth in Article 3 of the Lease.

Landlord shall disburse the balance of Landlord's Contribution upon receipt of all of the foregoing plus (a) all approvals and certificates required by any governmental or quasi-governmental entity having jurisdiction, (b) a certificate from Tenant and Tenant's architect certifying that Tenant has paid for all costs incurred in connection with Tenant's Initial Alterations and (c) a lien waiver executed by the general contractor employed by the Tenant in connection with Tenant's Initial Alterations. Tenant shall pay for all costs incurred in connection with Tenant's Initial Alterations in excess of Landlord's Contribution.

D. Tenant hereby covenants and agrees to indemnify and save harmless Landlord of and from all claims, counsel fees, loss, damage and expenses whatsoever by reason of any injury or damage, to any person or property occurring prior to the completion of such changes, improvements and alterations or occurring after such completion, in all events as a result of anything done or omitted in connection therewith or arising out of any fine, penalty or imposition or out of any other matter or thing connected with any work done or to be done or materials furnished or to be furnished in connection with such changes, improvements and alterations. At any and all times during the period of such changes, improvements and alterations, Landlord shall be entitled to have a representative or representatives on the site to inspect such changes, improvements and alterations and such representative or representatives shall have free and unrestricted access to any and every part of the Demised Premises.

Tenant agrees that it will not, either directly or indirectly, use any contractors and/or labor and/or materials if the use of such contractors and/or labor and/or materials would or will create any difficulty with other contractors, subcontractors and/or labor then engaged by Tenant or Landlord or others in the construction, maintenance and operation of the Building or any part thereof. Any changes, improvements or alterations shall comply with all laws and ordinances, and all rules, orders and regulations of all governmental authorities and of all insurance bodies, at any time duly issued or in force, applicable to the Demised Premises or any part thereof. Tenant shall, at Tenant's sole cost and expense, provide, maintain and keep in force for the benefit of Landlord and Landlord's managing agent, during any period in which Tenant is making any changes, improvements and alterations in and to the Demised Premises or any part thereof, such protective liability and property damage insurance as Landlord shall deem appropriate.

51. Intentionally Deleted.

52. Broker(s)

Each party represents and warrants to the other that the only agent or broker with whom either party has dealt in connection with this Lease and/or the Demised Premises and/or the Building is Cushman and Wakefield, Inc. and Jeffrey Management Corp. whose fees, if any, Landlord agrees to pay and that this Lease was not brought about or procured through the use, negotiation and/or instrumentality of any other agent or broker. Each party covenants and agrees to pay, indemnify and hold the other harmless from and against any and all claims for commissions and other compensation made by any agent or agents and/or any broker or brokers other than Cushman and Wakefield, Inc. and Jeffrey Management Corp., together with all costs and expenses incurred by either party in resisting such claims (including, without limitation, reasonable attorneys' fees).

53. Air Conditioning System

A. Pursuant to Article 4 of Exhibit "B", Landlord's Work, Landlord shall be furnishing and installing new HVAC units to service the Demised Premises. Landlord shall assign to Tenant all warranties and guaranties issued by the manufacturer upon the delivery of the units. Tenant agrees that Tenant shall be responsible for the maintenance, repair and/or replacement of said units throughout the term of the Lease. Tenant shall be liable and be required to repair any damage to such air conditioning system caused by the acts or omissions of Tenant, its officers, agents, servants, employees, licensees or invitees.

B. Tenant agrees at all times to cooperate fully with Landlord and to abide by all the regulations and requirements which Landlord may prescribe for the proper functioning and protection of said air conditioning system and Tenant agrees that Landlord, throughout the term of this Lease, shall have free and unrestricted access to any and all air conditioning facilities in the Demised Premises.

C. Landlord reserves the right to interrupt, curtail or suspend the services required to be furnished by Landlord under this Article when the necessity therefor arises by reason of accident, emergency, mechanical breakdown, or when required by any law, order or regulations of any federal, state, county or municipal authority, or for any other cause beyond the reasonable control of Landlord. Landlord shall use due diligence to complete all required repairs or other necessary work as quickly as possible so that Tenant's inconvenience resulting therefrom may be for as short a period of time as circumstances will permit, except that nothing shall be construed so as to require Landlord to employ overtime help. No diminution or abatement of rent or additional rent or other compensation or claim of constructive eviction shall or will be claimed by Tenant as a result therefrom, not shall this Lease or any of the obligations of Tenant be affected or reduced by reason of such interruption, curtailment or suspension.

D. The Annual Rent does not reflect or include any charge to Tenant for the furnishing of any electricity to provide air conditioning or, condenser water, as the case may be to the air-cooled and water-cooled Building standard air conditioning units serving the Premises during periods other than the hours and days set forth in Article 29 above ("Overtime Periods"). Accordingly, if Landlord shall furnish such electricity to provide air conditioning or condenser water, as the case may be, to the air-cooled and water-cooled Building standard air conditioning units serving the Premises ~~or perimeter heating to the Premises~~ at the request of Tenant during Overtime Periods, Tenant shall pay Landlord additional rent for such services at the standard rates then fixed by Landlord for the Building, or if no such rates are then fixed, at reasonable rates. As of the date on which this Lease is executed and unconditionally delivered by Landlord and Tenant, the charge for furnishing electricity to provide air conditioning or condenser water during Overtime Periods is One Hundred Dollars (\$100.00) per hour. Landlord shall not be required to furnish any such services during any Overtime Periods unless Landlord has received advance notice from Tenant requesting such services prior to 2:00 P.M. of the day upon which such services are requested or by 2:00 P.M. of the last preceding Business Day if such Overtime Periods are to occur on a day other than a Business Day. If Tenant fails to give Landlord such advance notice, then, failure by Landlord to furnish or distribute any

such services during such Overtime Periods shall not constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution of Rental, or relieve Tenant from any of its obligations under this Lease, or impose any liability upon Landlord or its agents by reason of inconvenience or annoyance to Tenant, or injury to or interruption of Tenant's business or otherwise. If more than one tenant utilizing the same system as Tenant requests the same Overtime Periods for the same service as Tenant, the charge to Tenant shall be adjusted pro rata.

E. In addition, Landlord and Tenant ^{doors} agree that the use of the freight elevator service during periods other than the hours and ~~days~~ ^{days} set forth in Article 25 above, shall be paid by Tenant at the standard rates fixed by Landlord for the Building for the use of such freight elevator service at that time. Landlord agrees however that Tenant shall be permitted to use the freight elevator service on a first come first serve basis during the hours stated in Article 29 above at no charge to Tenant. 29

54. Assignment, Subletting

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 sublet, or suffer or permit the demised premises or any part thereof to be used by others, other than in accordance with this Article 54. If this Lease be assigned, or if the demised premises or any part thereof be sublet or occupied by anybody other than Tenant, Landlord may, after default by Tenant which default has not been cured within any applicable grace period, collect rent from the assignee, subtenant or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, subtenant 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 subletting shall not in any wise be construed to relieve Tenant from obtaining the express consent in writing of Landlord to any further assignment or subletting. Possession or occupancy of the demised premises by one or more subsidiaries or affiliates of Tenant shall not be deemed or construed to be a sublease hereunder and Tenant shall be permitted to allow, subject to the terms and conditions of the Lease (but without having to obtain Landlord's consent thereto), Tenant's subsidiaries or affiliates to occupy the demised premises. Any sublease or assignment to any such subsidiary or affiliate shall also be permitted without Landlord's consent. Anything to the contrary contained in this Lease notwithstanding, Landlord's written consent for a subletting or assignment shall not be required in connection with a Permitted Assignment (as hereinafter defined), and shall otherwise not be unreasonably withheld, conditioned or delayed, provided:

(i) Any proposed sublease or assignment must be submitted to Landlord at least thirty (30) days before the commencement date thereof;

(ii) The sublease must provide that the same is subject to all of the terms and conditions of this Lease and the sublease must provide that in the event of cancellation or termination of this Lease for any reason whatsoever or of the surrender of this Lease whether voluntary, involuntary or by operation of law, prior to the expiration date of such sublease, including extensions and renewals granted thereunder, the proposed subtenant agrees to make full and complete attornment to Landlord for the balance of the term of the sublease, at the option of Landlord at any time during the proposed subtenant's occupancy of all or any portion of the demised premises, which attornment shall be evidenced by an agreement in form, scope and substance reasonably satisfactory to Landlord, which the proposed subtenant agrees to execute and deliver at any time within ten (10) days after request of Landlord, its successors and assigns, and the proposed subtenant waives the provisions of any law now or hereafter in effect which may give the proposed subtenant any right of election to terminate the sublease or to surrender possession of the demised premises in the event of any proceeding brought by Landlord under this Lease to terminate this Lease;

(iii) The subtenant or assignee must use the Demised Premises in

accordance with Article 2 above, and may not use the Demised Premises for any of the following prohibited uses: an employment and/or a messenger and/or photographic and/or reproduction service, a retail operation at the demised premises, and/or, the sale of foodstuffs or edibles, and/or a mailing address or telephone answering service, and/or such other businesses, professionals or activities as to which Landlord has in writing granted another tenant in the Building a restrictive covenant prohibiting such uses in the Building;

(iv) No subletting shall relieve Tenant of its obligations or liabilities hereunder or shall be deemed a consent to a further subletting;

(v) Tenant shall not be in default of any of the monetary or material non-monetary terms and conditions of this Lease at the time of any notice or request for consent under the terms of this Article and at the effective date of such subletting or assignment;

(vi) Tenant shall pay as additional rent the reasonable cost of Landlord's attorneys' fees in connection with such subletting or assignment;

(vii) The subtenant or assignee shall not be a then existing tenant or occupant of the Building;

(viii) Tenant agrees to not advertise any subletting at a rental rate less than currently being charged by Landlord for comparable space in the Building for a comparable term, at the time of such subletting;

(ix) In the case of a proposed subletting of one (1) floor or more of the demised premises as herein provided, if Landlord shall give its consent to any such sublease, Tenant shall, in consideration therefor, pay to Landlord (except in the case of a "Permitted Assignment," as defined hereafter), as additional rent, fifty (50%) percent of any and all rents, additional charges or other consideration payable under the sublease to Tenant by the subtenant which is in excess of the rent and additional rent accruing under this Lease during the term of the sublease, attributable to that portion of the Demised Premises of one (1) floor or more being sublet, (including, but not limited to, sums paid for the sale or rental of Tenant's fixtures, leasehold improvements, equipment, furniture or other personal property), after deducting all expenses incurred by Tenant in connection with such subletting including, without limitation, brokerage and legal fees, concessions, and tenant improvement allowances. The sums payable under this subdivision (ix) shall be paid to Landlord as and when paid by the subtenant to Tenant; and

(x) The listing of any name other than that of Tenant, whether on the doors of the demised premises or the Building directory, or otherwise shall not operate to vest any right or interest in this Lease or in the demised premises, nor shall it be deemed to be the consent of Landlord to any assignment or transfer of this Lease or to any sublease of the demised premises or to the use or occupancy thereof by others.

Landlord shall respond to any request for consent in accordance with this Section 54(A) within twenty (20) days. In the event Landlord fails to so respond within such twenty (20) day period, such approval shall be deemed given.

B. Anything to the contrary hereinbefore contained notwithstanding, should Tenant desire to sublet the entire demised premises, one (1) full floor of the Demised Premises or two (2) full floors of the Demised Premises, in all instances for the remainder of the Term, or assign the Lease to a third party as herein provided, it shall give written notice of its intention to do so to Landlord at least thirty (30) days before the commencement date of such proposed subletting or assignment, and Landlord may, at any time within fifteen (15) days after receipt of such notice from Tenant, cancel this Lease (in the case of a sublet of one (1) floor or more only as to that portion of the Demised Premises proposed to be sublet) by giving Tenant written notice of such intention of Landlord, in which event such cancellation of this Lease or that portion of the Lease attributable to the proposed sublet space being cancelled, shall become effective thirty (30) days after its receipt by Tenant with the same force and effect as if said cancellation date

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full floor or two full floors

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were the date originally set forth as the expiration date of this Lease. In connection with Landlord's option to cancel this Lease, Tenant covenants and agrees to pay, indemnify and hold Landlord harmless from and against any and all claims for commissions and other compensation made by any agent or agents and/or any broker or brokers, together with all costs and expenses incurred by Landlord in resisting such claims (including, without limitation, reasonable attorneys' fees). The provisions of this Section 54(B) shall not apply to a sublet or assignment to an affiliate of Tenant, nor shall this Section 54(B) apply to an assignment or sublease resulting from a merger of or by Tenant or an acquisition of or by Tenant or other similar corporate transaction (collectively, a "Permitted Assignment").

C. Anything to the contrary hereinbefore contained notwithstanding, in the event that Tenant has given Landlord written notice as provided in subparagraph B hereof, that Tenant desires to sublet the entire demised premises one (1) full floor of the Demised Premises or two (2) full floors of the Demised Premises, or assign the Lease to a third party, as the case may be, and in the further event that Landlord has not elected to cancel this Lease in accordance with the terms of subparagraph B hereof, Tenant understands and agrees that, unless a sublease or assignment and assumption of lease has been duly executed and delivered within sixty (60) days from the date that Landlord elects not to cancel this Lease, as provided in subparagraph B hereof, then, Tenant covenants and agrees that the provisions of subparagraph B hereof shall be applicable and the procedure therein set forth shall be required to be followed with respect to any such further subletting or assignment of lease as if the original and/or any prior written notice by Landlord of its intention to sublet or assign has not been given.

55. Notices

The period at the end of Article 28 shall be deemed to be changed to a comma, and the following language added to the end of Article 28:

"Further, notwithstanding anything to the contrary contained herein, either party may send notice to the other by nationally recognized overnight nationally recognized overnight express service, prepaid by the sender, and delivery shall be deemed to have been made the next business day after deposit with such carrier."

Prior to the Commencement Date, notices to Tenant shall be sent to 500 West 37th Street, New York, New York 10018.

Copies of any notices sent to Tenant shall also be sent to: Katsky Korins LLP, 605 Third Avenue, New York, New York 10158, Attention: Roy Korins, Esq. Notices may be given by attorneys for either party on behalf of such party.

56. Tenant's Estoppel Certificate

Tenant shall, within twenty (20) days of any request in person or by mail, furnish to Landlord or its designee a written statement, duly acknowledged, indicating whether the Landlord is in compliance with the terms of this Lease and has performed all of its obligations hereunder, and, if Tenant claims that Landlord is in default, the specific nature of the default. Tenant shall also acknowledge (i) the dates to which all items of rent, additional rent and other charges have been paid under the Lease, (ii) the amounts, if any of rents prepaid under the Lease, (iii) the commencement and expiration dates of the Lease, (iv) the amount, if any, being held by Landlord as security for Tenant's obligations under this Lease and (v) any other and further matters and things regarding the Lease, and Tenant's use and occupancy of the demised premises as Landlord may reasonably request.

57. Security (Letter of Credit)

A. In lieu of the cash security deposit provided for in Article 34 hereof, Tenant may at any time as otherwise provided herein, maintain in effect at all times during the term

hereof, an irrevocable letter of credit, in form and substance reasonably satisfactory to Landlord in the amount of the security required pursuant to this Lease issued by a banking corporation reasonably satisfactory to Landlord and having its principal place of business or a duly licensed branch or agency in the State of New York. Such letter of credit shall have an expiration date no earlier than the first anniversary of the date of issuance thereof and shall be automatically renewable from year to year unless terminated by the issuer thereof by notice to Landlord given not less than 45 days prior to the expiration thereof. Except as otherwise provided herein, Tenant shall, throughout the term of this Lease deliver to Landlord, in the event of the termination of any such letter of credit, replacement letters of credit in lieu thereof (each such letter of credit and such extensions or replacements thereof, as the case may be, is hereinafter referred to as a "Security Letter") no later than 45 days prior to the expiration date of the preceding Security Letter. The term of each such Security Letter shall be not less than one year and shall be automatically renewable from year to year as aforesaid. If Tenant shall fail to obtain any replacement of a Security Letter within that time limits set forth in this Section 57A, Landlord may draw down the full amount of the existing Security Letter and retain the same as security hereunder.

B. In the event Tenant defaults in respect to any of the terms, provisions, covenants and conditions of this Lease and such default continues beyond the expiration of any applicable notice and cure period, including, but not limited to, the payment of 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 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, provisions, covenants and conditions of this Lease, including but not limited to, any damages or deficiency accrued before or after summary proceedings or other re-entry by Landlord. To insure that Landlord may utilize the security represented by the Security Letter in the manner, for the purpose, and to the extent provided in this Article 57, each Security Letter shall provide that the full amount thereof may be drawn down by Landlord upon the presentation to the issuing bank of Landlord's draft drawn on the issuing bank without accompanying memoranda or statement of beneficiary.

C. In the event that Tenant defaults in respect of any of the terms, provisions, covenants and conditions of the Lease beyond the expiration of any applicable notice and cure period, and Landlord utilizes all or any part of the security represented by the Security Letter but does not terminate this Lease as provided in Article 57 hereof, Landlord may, in addition to exercising its rights as provided in Section 57(B) hereof, retain the unapplied and unused balance of the principal amount of the Security Letter as security for the faithful performance and observance by Tenant thereafter of the terms, provisions and conditions of this Lease, and may use, apply, or retain the whole or any part of said balance to the extent required for payment of rent, additional rent, or any other sum as to which Tenant is in default or for any sum which Landlord may expend or be required to expend by reason of Tenant's default in respect of any of the terms, covenants, and conditions of this Lease. In the event Landlord applies or retains any portion or all of the security delivered hereunder, Tenant shall forthwith restore the amount so applied or retained so that at all times the amount deposited shall be not less than the security required by Article 34.

D. In the event that Tenant shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this Lease, the security shall be returned to Tenant within five (5) days after the date fixed as the end of the Lease and after delivery of entire possession of the Demised Premises to Landlord. In the event of a sale of the Building or leasing of the Building, Landlord shall have the right to transfer any interest it may have in the Security Letter to the vendee or lessee and Landlord shall thereupon be released by Tenant from all liability for the return of such Security Letter, provided such vendee or lessee assumes any responsibilities of Landlord with respect to such Security Letter, and Tenant agrees to look solely to the new Landlord for the return of said Security Letter; and it is agreed that the provisions hereof shall apply to every transfer or assignment made of the Security Letter to a new Landlord. Tenant further covenants that it will not assign or encumber or attempt to assign or encumber the monies deposited herein as security 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 of a sale of the Building Landlord shall have the right to require Tenant to deliver a replacement Security Letter naming the new Landlord as beneficiary and, if Tenant shall fail to timely deliver the same, to draw down the existing Security letter and retain the proceeds as security hereunder until a replacement Security Letter is delivered.

E. Supplementing Article 34 hereof, upon Landlord using, applying or retaining the whole or any part of a cash security deposit, Tenant agrees forthwith upon demand to restore said security to the original sums deposited.

F. Landlord agrees that commencing on 1st anniversary of the 9th and 10th Floor Premises Commencement Date and provided Tenant is not then in default of any of the terms, covenants and conditions of this Lease, Tenant shall be permitted to reduce the letter of credit or cash deposit that Landlord is then holding to the amount of \$1,381,595.00, pursuant to all of the terms and conditions stated in this Article.

Landlord agrees that commencing on 2nd anniversary of the 9th and 10th Floor Rent Commencement Date and provided Tenant is not then in default of any of the terms, covenants and conditions of this Lease, Tenant shall be permitted to reduce the letter of credit or cash deposit that Landlord is then holding to the amount of \$1,331,595.00, pursuant to all of the terms and conditions stated in this Article.

Landlord agrees that commencing on 3rd anniversary of the 9th and 10th Floor Rent Commencement Date and provided Tenant is not then in default of any of the terms, covenants and conditions of this Lease, Tenant shall be permitted to reduce the letter of credit or cash deposit that Landlord is then holding to ~~\$1,281,595.00~~, pursuant to all the terms and conditions stated in this Article. 1,291,595.00

Landlord agrees that commencing on 4th anniversary of the 9th and 10th Floor Rent Commencement Date and provided Tenant is not then in default of any of the terms, covenants and conditions of this Lease, Tenant shall be permitted to reduce the letter of credit or cash deposit that Landlord is then holding to ~~\$1,231,595.00~~, pursuant to all the terms and conditions stated in this Article. 1,251,595

Landlord agrees that commencing on 5th anniversary of the 9th and 10th Floor Rent Commencement Date and provided Tenant is not then in default of any of the terms, covenants and conditions of this Lease, Tenant shall be permitted to reduce the letter of credit or cash deposit that Landlord is then holding to ~~\$1,181,595.00~~, pursuant to all the terms and conditions stated in this Article. 1,211,595

Landlord agrees that commencing on 6th anniversary of the 9th and 10th Floor Rent Commencement Date and provided Tenant is not then in default of any of the terms, covenants and conditions of this Lease, Tenant shall be permitted to reduce the letter of credit or cash deposit that Landlord is then holding to ~~\$1,131,595.00~~, pursuant to all the terms and conditions stated in this Article. 1,171,595

Landlord agrees that commencing on 7th anniversary of the 9th and 10th Floor Rent Commencement Date and provided Tenant is not then in default of any of the terms, covenants and conditions of this Lease, Tenant shall be permitted to reduce the letter of credit or cash deposit that Landlord is then holding to ~~\$1,081,595.00~~, pursuant to all the terms and conditions stated in this Article. 1,131,595

Landlord agrees that commencing on 8th anniversary of the 9th and 10th Floor Rent Commencement Date and provided Tenant is not then in default of any of the terms, covenants and conditions of this Lease, Tenant shall be permitted to reduce the letter of credit or cash deposit that Landlord is then holding to ~~\$1,031,595.00~~, pursuant to all the terms and conditions stated in this Article. 1,091,595

Landlord agrees that commencing on 9th anniversary of the 9th and 10th Floor Rent Commencement Date and provided Tenant is not then in default of any of the terms,

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covenants and conditions of this Lease, Tenant shall be permitted to reduce the letter of credit or cash deposit that Landlord is then holding to ~~\$984,595.00~~, pursuant to all the terms and conditions stated in this Article. 1,051,595

Landlord agrees that commencing on 10th anniversary of the 9th and 10th Floor Rent Commencement Date and provided Tenant is not then in default of any of the terms, covenants and conditions of this Lease, Tenant shall be permitted to reduce the letter of credit or cash deposit that Landlord is then holding to ~~\$934,595.00~~, pursuant to all the terms and conditions stated in this Article. 1,011,595

Landlord agrees that commencing on 11th anniversary of the 9th and 10th Floor Rent Commencement Date and provided Tenant is not then in default of any of the terms, covenants and conditions of this Lease, Tenant shall be permitted to reduce the letter of credit or cash deposit that Landlord is then holding to ~~\$884,595.00~~, pursuant to all the terms and conditions stated in this Article. 971,595

Landlord agrees that commencing on 12th anniversary of the 9th and 10th Floor Rent Commencement Date and provided Tenant is not then in default of any of the terms, covenants and conditions of this Lease, Tenant shall be permitted to reduce the letter of credit or cash deposit that Landlord is then holding to ~~\$834,595.00~~, pursuant to all the terms and conditions stated in this Article. 931,595

Landlord agrees that commencing on 13th anniversary of the 9th and 10th Floor Rent Commencement Date and provided Tenant is not then in default of any of the terms, covenants and conditions of this Lease, Tenant shall be permitted to reduce the letter of credit or cash deposit that Landlord is then holding to ~~\$784,595.00~~, pursuant to all the terms and conditions stated in this Article. 891,595

Landlord agrees that commencing on 14th anniversary of the 9th and 19th Floor Rent Commencement Date and provided Tenant is not then in default of any of the terms, covenants and conditions of this Lease, Tenant shall be permitted to reduce the letter of credit or cash deposit that Landlord is then holding to ~~\$734,595.00~~, pursuant to all the terms and conditions stated in this Article. 851,595

58. End of Term

If the date of the expiration of the term of this Lease or any sooner termination of this Lease shall fall on a day which is not a business day, then Tenant's obligations herein shall be performed on or prior to the immediately preceding business day. In the event Tenant remains in possession of the demised premises after the termination of this Lease without the execution of a new Lease, Tenant, at the option of Landlord, shall be deemed to be occupying the demised premises as a tenant from month to month, at a monthly rental equal to two (2) times the annual rental rate and additional rent (which additional rent, under the terms of this Lease, shall be deemed to be all sums of money, other than the annual rental rate, which become due and payable from Tenant to Landlord hereunder), payable during the last month of the term, subject to all of the other terms of this Lease insofar as the same are applicable to month-to-month tenancy. Tenant's obligations under this Article shall survive the termination of this Lease.

59. Labor Relations

Tenant shall not employ, or permit the employment of, any contractor or laborer, or permit any materials to be delivered to or used in the Building, if, in Landlord's reasonable judgment, such employment, delivery or use will interfere or cause any conflict or disharmony with other contractors or laborers engaged in the construction, maintenance or operation of the Building by Landlord, Tenant or others, or the use and enjoyment of the Building by other tenants or occupants. In the event of such interference, conflict or disharmony, on Landlord's request, Tenant shall cause all contractors or laborers causing such interference or conflict to leave the Building immediately. Tenant shall indemnify and hold harmless Landlord from and against any and all claims, liabilities, damages and expenses (including, without limitation, reasonable attorneys' fees) arising as a result of or

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in connection with Tenant's failure to comply with its obligations under this Section.

60. Landlord's Consent

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

61. Summary Proceedings

The provisions of Article 17 shall not be applicable to any nonpayment summary proceeding commenced against the Tenant in which event any preliminary notice requirements shall be governed by Real Property Actions and Proceedings Law § 711(2).

62. 27th Floor Premises.

A. Tenant acknowledges and agrees that the Suite 2700 (hereinafter referred to as the "27th Floor Premises") is currently occupied by Butzel Long f/k/a Hollyer Brady, pursuant to Lease scheduled to expire October 31, 2007. Tenant acknowledges and agrees that this Lease is contingent upon the Landlord gaining vacant legal possession of the 27th Floor Premises. Tenant agrees that the commencement date of the Lease for the 27th Floor Premises (hereinafter referred to as the "27th Floor Premises Commencement Date") shall be December 1, 2007 or the date that Landlord delivers the 27th Floor Premises to Tenant with Landlord's Work, as described in Article 1 of Exhibit "C" attached hereto, substantially completed, whichever is later. Landlord agrees however, that if Landlord fails to deliver the 27th Floor Premises on or before February 1, 2008 with the portion of the Landlord's Work required to be performed for the 27th Floor Premises substantially completed, then in that event Tenant shall have the right to an additional two (2) days of free Rent for every one (1) day Landlord is delayed in delivering the 27th Floor Premises beyond February 1, 2008.

Tenant agrees that the fixed annual rent ("Fixed Rent") the Tenant shall be obligated to pay for the 27th Floor Premises shall be as more fully indicated on the attached Exhibit "B-1".

B. Landlord and Tenant agree that the 27th Floor Premises Rent Commencement Date shall be the first (1st) day following the expiration of the ninety (90) day period following the 27th Floor Premises Commencement Date.

C. Landlord further agrees that for the twenty-four (24) month period commencing with the 27th Floor Rent Commencement Date, provided Tenant is not in default of any of the terms, covenants and conditions of the Lease beyond the expiration of any applicable notice and cure period, Tenant shall receive an additional credit against Fixed Rent that Tenant shall be obligated to pay for the 27th Floor Premises in accordance with Exhibit "B" attached hereto in the amount of \$8,604.44 per month.

D. Landlord and Tenant agree that within thirty (30) days from the 27th Floor Premises Commencement Date, Landlord and Tenant shall enter into a non-recordable letter agreement verifying the 27th Floor Premises Commencement Date, the 27th Floor Premises Rent Commencement Date, and the Expiration Date of this Lease.

E. 27th Floor Operating Payments

Tenant shall pay to Landlord as an Additional Charge to compensate Landlord for Tenant's Share of the increase over the first (1st) year of the Term of expenses paid or incurred by, or on behalf of, Landlord in respect of the operation,

management, maintenance and/or repair of the Real Property for the 27th Floor Premises, in equal monthly installments together with Tenant's payment of monthly installments of Fixed Rent, the following amounts for the following periods (herein called the "27th Floor Operating Payments"):

- (a) Twelve Thousand Three Hundred Ninety and 40/100 (\$12,390.40) Dollars per annum, payable in equal monthly installments of One Thousand Thirty-Two and 53/100 (\$1,032.53) Dollars, for the period from the first (1st) anniversary of the 27th Floor Premises Rent Commencement Date to and including the day immediately preceding the second (2nd) anniversary of the 27th Floor Premises Rent Commencement Date;
- (b) Twenty-Five Thousand Twenty-Eight and 61/100 (\$25,028.61) Dollars per annum, payable in equal monthly installments of Two Thousand Eighty-Five and 72/100 (\$2,085.72) Dollars for the period from the second (2nd) anniversary of the 27th Floor Premises Rent Commencement Date to and including the day immediately preceding the third (3rd) anniversary of the 27th Floor Premises Rent Commencement Date;
- (c) Thirty-Seven Thousand Nine Hundred Nineteen and 58/100 (\$37,919.58) Dollars per annum, payable in equal monthly installments of Three Thousand One Hundred Fifty-Nine and 97/100 (\$3,159.97) Dollars for the period from the third (3rd) anniversary of the 27th Floor Premises Rent Commencement Date to and including the day immediately preceding the fourth (4th) anniversary of the 27th Floor Premises Rent Commencement Date;
- (d) Fifty-One Thousand Sixty-Eight and 37/100 (\$51,068.37) Dollars per annum, payable in equal monthly installments of Four Thousand Two Hundred Fifty-Five and 70/100 (\$4,255.70) Dollars for the period from the fourth (4th) anniversary of the 27th Floor Premises Rent Commencement Date to and including the day immediately preceding the fifth (5th) anniversary of the 27th Floor Premises Rent Commencement Date;
- (e) Sixty-Four thousand Four Hundred Eighty and 14/100 (\$64,480.14) Dollars per annum, payable in equal monthly installments of Five Thousand Three Hundred Seventy-Three and 34/100 (\$5,373.34) Dollars for the period from the fifth (5th) anniversary of the 27th Floor Premises Rent Commencement Date to and including the day immediately preceding the sixth (6th) anniversary of the 27th Floor Premises Rent Commencement Date;
- (f) Seventy-Eight Thousand One Hundred Sixty and 14/100 (\$78,160.14) Dollars per annum, payable in equal monthly installments of Six Thousand Five Hundred Thirteen and 35/100 (\$6,513.35) Dollars for the period from the sixth (6th) anniversary of the 27th Floor Premises Rent Commencement Date to and including the day immediately preceding the seventh (7th) anniversary of the 27th Floor Premises Rent Commencement Date;
- (g) Ninety-Two Thousand One Hundred Thirteen and 74/100 (\$92,113.74) Dollars per annum, payable in equal monthly installments of Seven Thousand Six Hundred Seventy-Six and 15/100 (\$7,676.15) Dollars for the period from the seventh (7th) anniversary of the 27th Floor Premises Rent Commencement Date to and including the day immediately preceding the eighth (8th) anniversary of the 27th Floor Premises Rent Commencement Date;
- (h) One Hundred Six Thousand Three Hundred Forty-Six and 42/100 (\$106,346.42) Dollars per annum, payable in equal monthly installments of Eight Thousand Eight Hundred Sixty-Two and 20/100 (\$8,862.20) Dollars for the period from the eighth (8th) anniversary of the 27th Floor Premises Rent Commencement Date to and including the day immediately preceding the ninth (9th) anniversary of the 27th Floor Premises Rent Commencement Date;
- (i) One Hundred Twenty Thousand Eight Hundred Sixty-Three and 75/100 (\$120,863.75) Dollars per annum, payable in equal monthly installments of Ten Thousand Seventy-One and 98/100 (\$10,071.98) Dollars for the period from ninth (9th)

anniversary of the 27th Floor Premises Rent Commencement Date to and including the day immediately preceding the tenth (10th) anniversary of the 27th Floor Premises Rent Commencement Date;

(j) One Hundred Thirty-Five Thousand Six Hundred Seventy-One and 42/100 (\$135,671.42) Dollars per annum, payable in equal monthly installments of Eleven Thousand Three Hundred Five and 95/100 (\$11,305.95) Dollars for the period from the tenth (10th) anniversary of the 27th Floor Premises Rent Commencement Date to and including the day immediately preceding the eleventh (11th) anniversary of the 27th Floor Premises Rent Commencement Date;

(k) One Hundred Fifty Thousand Seven Hundred Seventy-Five and 25/100 (\$150,775.25) Dollars per annum, payable in equal monthly installments of Twelve Thousand Five Hundred Sixty-Four and 60/100 (\$12,564.60) Dollars for the period from the eleventh (11th) anniversary of the 27th Floor Premises Rent Commencement Date to and including the day immediately preceding the twelfth (12th) anniversary of the 27th Floor Premises Rent Commencement Date;

(l) One Hundred Sixty-Six Thousand One Hundred Eighty-One and 16/100 (\$166,181.16) Dollars per annum, payable in equal monthly installments of Thirteen Thousand Eight Hundred Forty-Eight and 43/100 (\$13,848.43) Dollars for the period from the twelfth (12th) anniversary of the 27th Floor Premises Rent Commencement Date to and including the day immediately preceding the thirteenth (13th) anniversary of the 27th Floor Premises Rent Commencement Date;

(m) One Hundred Eighty-One Thousand Eight Hundred Ninety-Five and 18/100 (\$181,895.18) Dollars per annum, payable in equal monthly installments of Fifteen Thousand One Hundred Fifty-Seven and 93/100 (\$15,157.93) Dollars for the period from the thirteenth (13th) anniversary of the 27th Floor Premises Rent Commencement Date to and including the day immediately preceding the fourteenth (14th) anniversary of the 27th Floor Premises Rent Commencement Date;

(n) One Hundred Ninety-Seven Thousand Nine Hundred Twenty-Three and 48/100 (\$197,923.48) Dollars per annum, payable in equal monthly installments of Sixteen Thousand Four Hundred Ninety-Three and 62/100 (\$16,493.62) Dollars for the period from the fourteenth (14th) anniversary of the Commencement Date to and including the day immediately preceding the fifteenth (15th) anniversary of the 27th Floor Premises Commencement Date; and

(o) Two Hundred Fourteen Thousand Two Hundred Seventy-Two and 35/100 (\$214,272.35) Dollars per annum, payable in equal monthly installments of Seventeen Thousand Eight Hundred Fifty-Six and 03/100 (\$17,856.03) Dollars for the period from the fifteenth (15th) anniversary of the 27th Floor Premises Rent Commencement Date to and including the day immediately preceding the expiration of one hundred ninety-first (191st) month of the 27th Floor Premises Rent Commencement Date.

63. Guaranty.

The Guaranty, attached hereto and marked Exhibit "E" is incorporated into and made a part of the Lease.

64. Cooperation

Landlord and Tenant acknowledge and agree that during the ninety (90) day period following the 9th and 10th Floor Premises Commencement Date and the 27th Floor Premises Commencement Date, that Landlord will be performing a substantial part of Landlord's Work as defined herein. Landlord and Tenant acknowledge and agree that each party will perform their work as required in the Lease during the aforementioned ninety (90) day periods. The parties hereto agree to cooperate with each other so as not to materially interfere with each other's work. Landlord agrees that if Landlord's Work materially interferes with Tenant's Initial Alterations to the extent where in the reasonable

opinion of Tenant's general contractor that Tenant's Initial Alterations shall be substantially delayed, then in that event, the Landlord shall agree to reasonably adjust the schedule of Landlord's Work so as to accommodate the progress of Tenant's Initial Alterations without penalty to Tenant.

65. Renewal Option

A. Provided Tenant is not then in default of any of the terms, covenants and conditions of the Lease hereunder beyond any applicable notice or cure period, Landlord hereby grants to Tenant the right, privilege and option to extend this Lease for a period of five (5) years from the date of expiration hereof upon the same terms and conditions as herein contained, except that (x) the Fixed Rent then payable by the Tenant for the first year of the Renewal Term shall be at the higher of ninety-five (95%) percent of the fair market rent or the then escalated Fixed Rent payable by Tenant during the last year of the initial term of the Lease for said first five (5) year renewal and (y) the Base Tax Year shall be the then-current Tax Year on the date on which the extension term commences, upon notice given in writing to Landlord of Tenant's intention to exercise said option given at least two hundred seventy (270) days prior to the expiration of the term hereof. Landlord and Tenant agree that there shall be no obligation for Landlord to provide any Landlord's Work during the renewal period and Tenant shall accept the Demised Premises in its as is condition.

B. In the event Landlord and Tenant cannot agree on the fair market rent, then at any time before the date occurring one hundred eighty (180) days prior to the expiration of the term, and provided Tenant is not in default of any of the terms, covenants and conditions of this Lease beyond any applicable notice or cure periods, Tenant may initiate the arbitration process provided for herein by giving notice of that effect to Landlord and, if Tenant so initiates the arbitration process, such notice shall specify the name of the person that is made to act as an arbitrator on its behalf. Within thirty (30) days after receipt of such notice of the designation of Tenant's arbitrator, Landlord shall give notice to Tenant specifying the name and address of the person designated to act as an arbitrator on its behalf. If Landlord fails to notify Tenant of the appointment of its arbitrator within the time above specified, then Tenant shall provide an additional notice to Landlord requiring Landlord's appointment of an arbitrator within twenty (20) days after Landlord's receipt thereof. If Landlord fails to notify Tenant of the appointment of its arbitrator within the time specified by the second notice, the appointment of the second arbitrator shall be made in the same manner as hereinafter provided for the appointment of a third arbitrator in a case where the two arbitrators appointed hereunder and the parties are unable to agree upon such appointment. The two arbitrators so chosen shall meet within ten (10) days after the second arbitrator is appointed, and if, within sixty (60) days after the second arbitrator is appointed, the two arbitrators shall not agree upon a determination of the fair market rent for the entire Demised Premises then being leased to Tenant, they shall together appoint a third arbitrator. In the event of their being unable to agree upon such appointment within ninety (90) days after the appointment of the second arbitrator, the third arbitrator shall be selected by the parties themselves, if they can agree thereon within a further period of fifteen (15) days. If the parties do not so agree, then either party, on behalf of both and on notice to the other, may request such appointment by the American Arbitration Association (or any organization successor thereto) in accordance with its rules then prevailing or if the American Arbitration Association (or such successor organization) shall fail to appoint said third arbitrator within fifteen (15) days after such request is made, then either party may apply, on notice to the other, to the Supreme Court, New York County, New York (or any other court having jurisdiction and exercising functions similar to those now exercised by said Court) for the appointment of such third arbitrator. The majority of the arbitrators shall determine the fair market rent for the entire Demised Premises then being leased to Tenant and render a written certified report of their determination to both Landlord and Tenant within sixty (60) days of the appointments of the third arbitrator, if such third arbitrator is appointed pursuant to this subparagraph (f), but in no event shall the fixed annual rent with respect to the Demised Premises be less than the Annual Rent that Tenant was obligated to pay during the last year of the initial term of the Leases.

Each party shall pay the fees and expenses of the one of the two original arbitrators appointed by or for such party, and the fees and expenses of the third arbitrator and all other expenses (not including the attorneys fees, witness fees and similar expenses of the parties which shall be borne separately by each of the parties) of the arbitration shall be borne by the parties equally.

Each of the arbitrators selected as herein provided shall have at least ten (10) years experience in the leasing and renting of office space on behalf of Landlords in Midtown Manhattan.

C. In the event the Tenant initiates the aforesaid arbitration process and as of the expiration of the extended term the amount that the fair market rent has not yet been determined, Tenant shall pay the amount reasonably determined by Landlord to be the higher of the (i) escalated Annual Rent; or (ii) ninety-five (95%) percent of the fair market rent for the entire Demised Premises that Tenant is then leasing and when the determination has actually been made as to the Annual Rent due for the renewal term, the appropriate retroactive adjustment shall be made, if necessary as of the commencement of the renewal term.

D. The termination of this Lease during this original extended term shall also terminate and render void all of the Tenant's options or elections under this Article 65, whether or not the same has been exercised and nothing contained in this Article 65 shall prevent Landlord from exercising any action granted to or reserved by Landlord in this Lease to terminate this Lease.

66. Access

Landlord agrees that Tenant shall have twenty-four (24) hour seven (7) day a week access to the Demised Premises.

EXHIBIT "A"

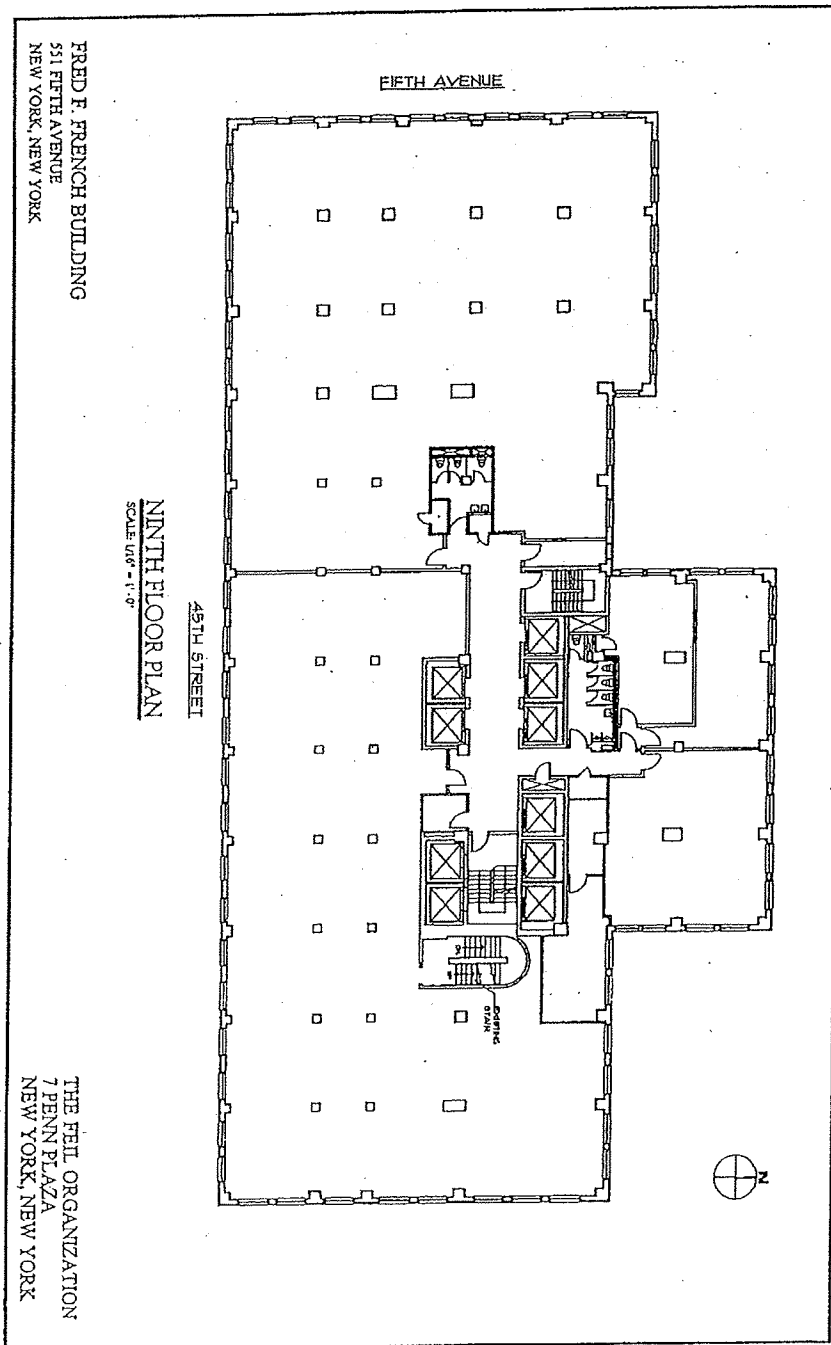


EXHIBIT "A"
continued

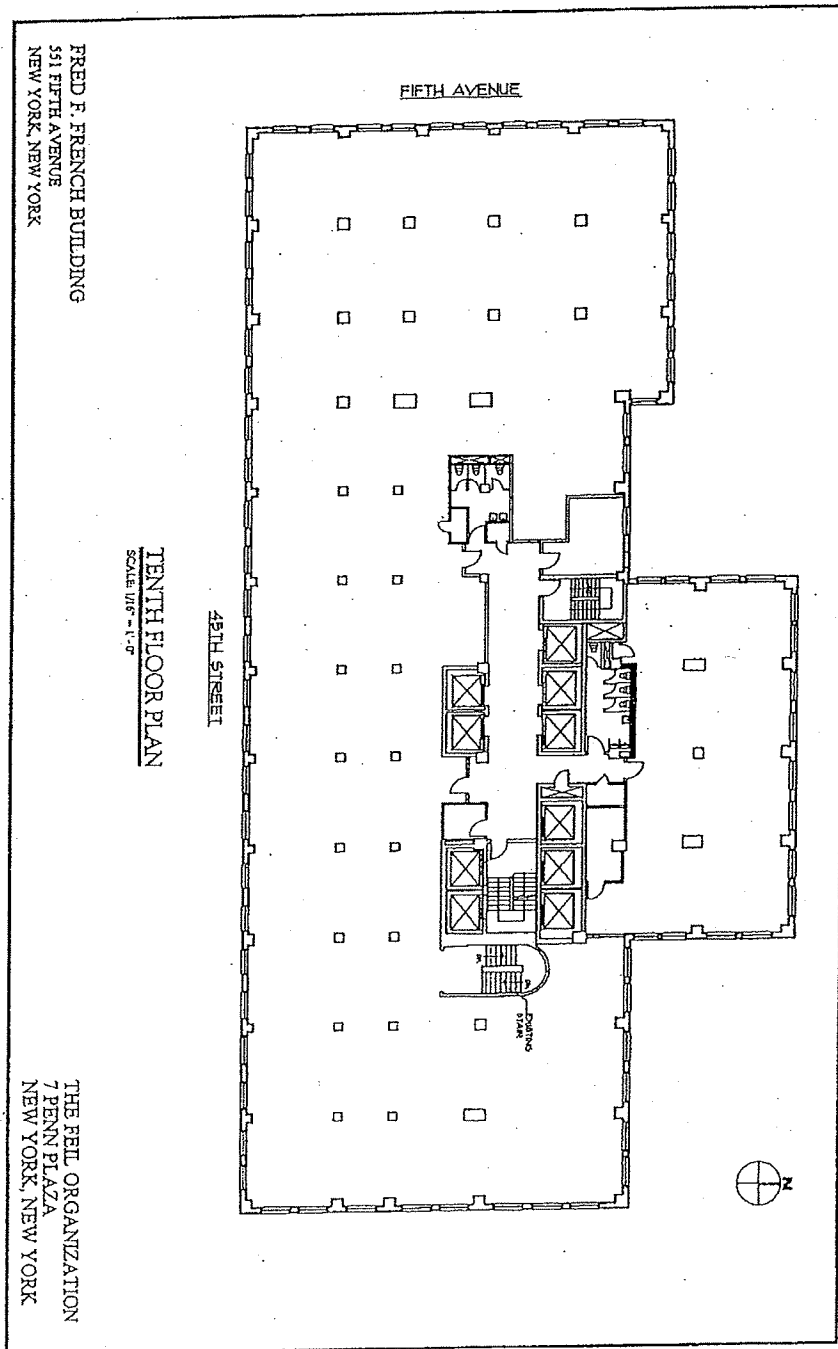
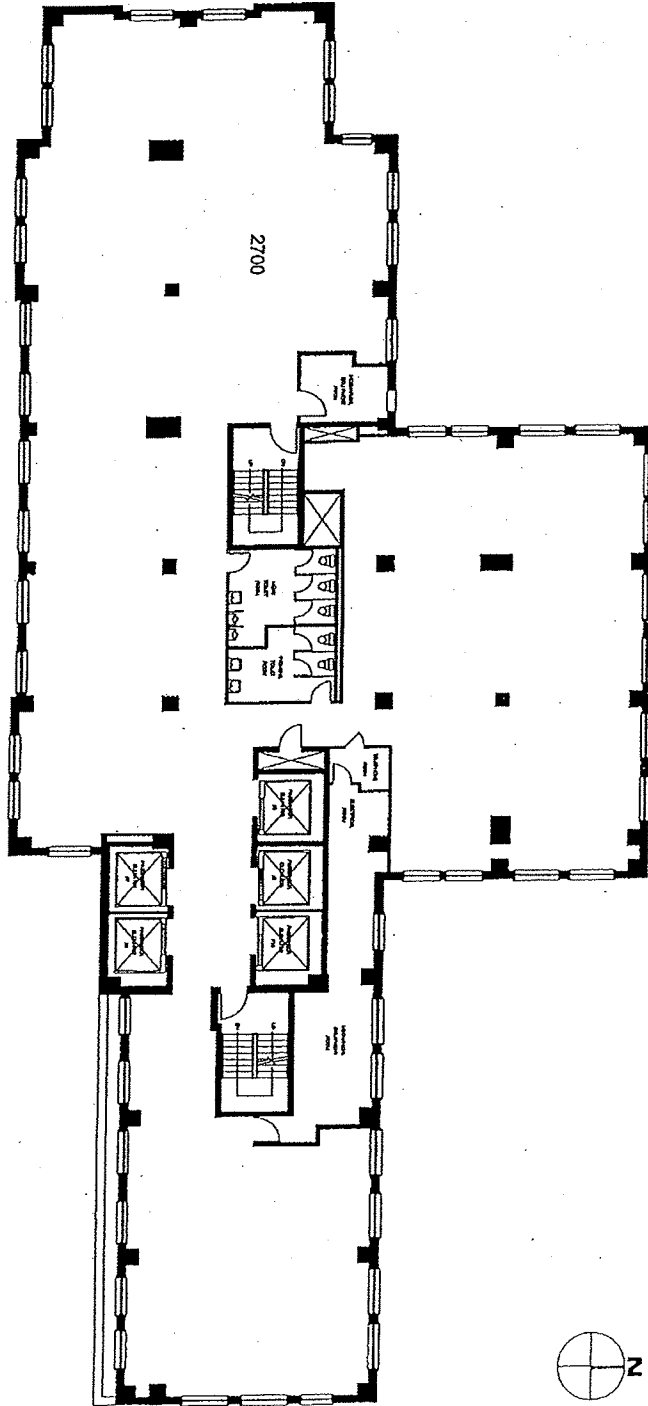


EXHIBIT "A"
continued



O-20: 551 Fifth Avenue - Floor 27

EXHIBIT "B"
9th and 10th Floor Premises

Term		Monthly	Annual Rent
09/01/07	- 08/31/12	\$186,972.50	\$2,243,670.00
09/01/12	- 08/31/17	\$197,171.00	\$2,366,052.00
09/01/17	- 03/31/23	\$207,369.50	\$2,488,434.00

**EXHIBIT "B-1"
27th Floor Premises**

Term			Monthly	Annual Rent
12/01/07	-	11/30/12	\$51,626.67	\$619,520.00
12/01/12	-	11/30/17	\$52,433.33	\$629,200.00
12/01/17	-	03/31/23	\$53,240.00	\$638,880.00

EXHIBIT "C"

Landlord's Work

Tenant: DHG Management, LLC
Premises: Ninth (9th), Tenth (10th) and Twenty-seventh (27th) Floors
Building: 551 5th Avenue

Except as otherwise specifically provided, Landlord shall, at its sole cost and expense, furnish and install the following Building Standard items, materials and finishes:

1. **Demolition:** Demolish the entire ninth (9th), tenth (10th) floors (but not the interior staircase that connects the 9th and 10th floor) and twenty-seventh (27th) floor, including bathrooms and HVAC equipment. Landlord shall deliver the Premises, clean and free from any debris and provide the Tenant with an ACP-5, allowing the Tenant to begin construction. Landlord agrees however that Tenant shall have the right until August 15, 2007 to notify Landlord of Tenant's desire to have the interior staircase connecting the 9th and 10th floors removed ("10th Floor Interior Staircase"). In the event Tenant provides such written notice to Landlord, then Landlord agrees to remove the 10th Floor Interior Staircase at no extra cost to Tenant. Tenant agrees, however, that the 9th and 10th Floor Premises Commencement Date shall not be delayed as a result of the failure to have removed the 10th Floor Interior Staircase. Provided Landlord has substantially completed Landlord's Work, as specified in this Article 1, (exclusive of the removal of the 10th Floor Interior Staircase) the 9th and 10th Floor Commencement Date shall be the date Landlord delivers the 9th and 10th Floor Premises to Tenant.
2. **Restrooms:** New restrooms shall be installed on the ninth (9th), tenth (10th) and twenty-seventh (27th) floors, totaling six (6) in all. One (1) unisex ADA compliant restroom shall be constructed on the tenth (10th) and twenty-seventh (27th) floors, totaling two (2) in all. Tenant shall have the right to select colors from building standard choices. Tenant shall also have the right to upgrade finishes at Tenant's cost, provided such additional upgraded finishes do not delay the scheduled completion of Landlord's Work.
3. **Sprinkler:** The ninth (9th), tenth (10th) and twenty-seventh (27th) floors have an existing sprinkler system. Landlord agrees to extend the sprinkler system loop throughout the 9th and 10th Floor Premises. (Landlord shall have no obligation with regard to the location or installation or distribution of any sprinkler heads).
4. **HVAC:**
 - (a) Landlord shall provide a total of six (6) new HVAC units to the 9th and 10th floors, not to exceed 120 tons;
 - (b) Landlord shall provide two (2) new HVAC units to the 27th floor, not to exceed 30 tons;
 - (c) Duct distribution is not included.

Simultaneously with the execution of this Lease, Landlord agrees to provide Tenant with plans indicating the proposed layout of the new HVAC units indicating the placement of the new HVAC units. Tenant will have fifteen (15) days from receipt of such plans to comment on the size and location of the units. If Landlord and Tenant cannot

agree on the size and location of the units within said fifteen (15) days, Tenant agrees that the final decision on the size and location of the HVAC units shall be made by the Landlord's engineer, Goldman Copeland Associates. Tenant agrees that any units being installed on the side of the Building where the air conditioning is water cooled will also be units that will have to be water cooled. Tenant understands and agrees that in no event will any HVAC units be located on the 5th Avenue or 45th Street facades of the Building.

5. Life Safety System:

- (a) The Building has an approved Class E fire alarm system;
 - (b) Landlord shall make available fire alarm system modes and points for Tenant strobes and related Class E connections. Tenant, at Tenant's expense, shall provide all points within the Premises, tie-ins and software reprogramming. All fire and safety systems, including alarms, speakers, communications, etc. shall be in full service and available to all floors of the Building. Landlord shall install strobes and fire detection system in restrooms;
 - (c) Fireproofing, if any, of any exposed structural steel as a required by the Building Code. However, Tenant shall be responsible for reapplication of fireproofing, as required, due to Tenant Improvements.
6. **Electric:** Tenant's electricity shall be sub-metered. All costs associated with sub-metering in the Premises shall be borne by the Landlord. Electric shall be delivered to the Premises at one (1) disconnect switch per floor.
7. **Flooring:** Patch concrete floor throughout the Premises.
8. **Windows:** Replace exterior windows to the Premises. Landlord agrees to use its commercially reasonable efforts to have the new exterior windows installed on or about March 1, 2008. Landlord represents that it shall complete the installation of said exterior windows by October 1, 2008. Tenant to select interior window color from standard colors provided, and agrees such selection shall be made within fifteen (15) days of the colors being presented to Tenant. Landlord agrees that any exterior windows that are currently located in the Demised Premises which are cracked will be repaired by Landlord and Landlord further agrees that any damage incurred to the windows as a result of Landlord's demolition as part of Landlord's Work, shall be promptly repaired by Landlord, at its sole cost and expense.
9. **Certificate of Occupancy Use:** Landlord shall have the 9th floor Certificate of Occupancy Use changed to reflect an office use.
10. **Stairs:** Landlord shall remove the existing internal stair located between the 8th and 9th floors and close opening.
11. **Building Emergency Generator:** For so long as Landlord maintains a Building Back-up Generator ("Back-Up Generator"), Landlord agrees that Tenant shall have the right to connect to the Back-Up Generator for the sole purpose of having an "emergency back up" for Tenant's reservation system. The electrical capacity that the Landlord will make available to Tenant for the generator shall be no more than 10 kilowatts. Landlord makes no representation as to the capacity or condition of the Back-Up Generator. Tenant covenants and agrees that Landlord shall have no liability for the failure of the Back-Up Generator. Tenant waives any and all claims against the Landlord as a result of any damage to the reservation system or if for any reason whatsoever, the reservation system is lost by the Tenant even if the Back-Up Generator continues to work. Tenant further agrees to indemnify Landlord and hold Landlord harmless for any damages incurred as

a result of allowing Tenant to connect to the Back-Up Generator. The connection to the Back-Up Generator shall be performed by a contractor designated by Landlord and the type, size, location and method of connection to the Back-Up Generator shall be subject to Landlord's prior written approval. Tenant acknowledges and agrees that the connection of the Back-Up Generator is an accommodation to Tenant.

EXHIBIT "D"

Cleaning SpecificationsA. GENERAL CLEANING NIGHTLY - Monday through Friday (excluding union holidays, lunch rooms, dining rooms, kitchens, storage rooms, air-conditioning rooms and private bathrooms)

1. Empty all wastepaper baskets
2. Empty and wash clean all ashtrays
3. Wash and clean all water fountains
4. Remove all normal waste material to a designated area and remove from premises
5. All waste and rubbish to be secured in bags, to be supplied by Tenant
6. Sweep and dust with dust-treated cloths all office furniture and window sills
7. Wipe all glass desks and table tops
8. Wipe and polish all private entrance glass
9. All cleaning materials and equipment shall be stored in areas designated by building office

However, Tenant shall pay to Landlord the cost of removal of any Tenant's extraordinary refuse or rubbish, including boxes, computer print-outs, furniture, magazines, books, etc.

B. LAVATORIES - Nightly

1. Sweep and mop floors
2. Wash with detergent all basins, urinals and bowls
3. Wash both sides of toilet seats with detergent
4. Wash and disinfect all bowls and urinals
5. Fill soap dispensers (soap to be supplied by Landlord)
6. Fill towel dispensers and toilet tissue dispensers (towels and toilet tissue to be supplied by Landlord)
7. Empty all wastepaper cans and receptacles
8. Wash and wipe clean all wastepaper cans and receptacles
9. Once a week dust all door louvers and bi-weekly dust all ventilating louvers

C. WINDOW CLEANING - Four times yearly

1. All windows to be cleaned inside and outside

D. PERIODIC CLEANING - Office Area

1. Remove all fingerprints from metal partitions and other surfaces when

needed

E. PERIODIC CLEANING - Lavatories

1. Machine scrub flooring monthly
2. Wash all partitions, tile walls and enamel surfaces with proper disinfectant when needed

ADDITIONS TO CLEANING SPECIFICATIONS

GENERAL CLEANING - Nightly

1. Vacuum carpets twice per week, moving movable light furniture other than desks, file cabinets
2. Damp mop ceramic tile in entrance foyer
3. Keep locker and slop sink rooms adjacent to lavatories in demised premises in a clean and orderly condition

LAVATORIES - (other than private lavatories)

1. Wash with disinfectant all basins, urinals and bowls (nightly)
2. Wash both sides of toilet seats with disinfectant (nightly)
3. Empty and clean paper towel and sanitary disposal receptacles (nightly)
4. Wash and polish all mirrors, shelves, brightwork, etc. and wash with disinfectant all flushometers, piping, toilet seat hinges (nightly)
5. Dust all partitions, tile walls, dispensers and receptacles (nightly)

PERIODIC CLEANING

1. Wipe clean all aluminum, chrome, stainless steel and other metal work (bi-monthly)
2. Elevator, stairway, office and utility doors on all floors are to be checked for general cleanliness as necessary, removing fingerprints, smudges and other marks
3. Remove all fingermarks, smudges and other marks from metal partitions and other surfaces monthly
4. On multiple tenancy floors, all stone, ceramic tile, marble and terrazzo flooring in the elevator foyers and corridors to be washed monthly. Vinyl, asphalt tile, rubber, etc. will be washed, or machine scrubbed, waxed and polished monthly
5. Monthly washing or tiled/linoleum floors in the demised premises and adjacent common areas
6. Clean all interior glass and partition glass no less than once a month
7. On multiple tenancy floors, all marble walls, elevator, stairway, office and utility doors are to be washed as necessary, using clear water or cleanser
8. On multiple tenancy floors, dust and clean electric fixtures and any other fittings in public corridors as are necessary

9. Upon completion of the nightly chores, all lights shall be turned off; windows closed, doors locked and offices left in a neat, orderly condition

DAY SERVICES - Public Areas

1. Police entire lobby area
2. Police elevator cabs
3. Fill toilet tissue dispensers on floors occupied by Tenant
4. Sweep sidewalks, weather permitting; remove snow when necessary
5. Set out rubber mats on rainy days; keep in clean condition
6. Keep frames and entrance doors to the building in clean condition
7. Exterior metal work, marble, etc. of building entrances to be kept in clean condition at all times
8. Properly maintain exterior of building at the ground level

DAY MATRON

1. Police ladies' restrooms and lavatories, keeping them in clean condition;
2. Fill toilet tissue dispensers and towel and soap dispensers, materials to be furnished by Landlord
3. Fill sanitary napkin dispensers, product to be furnished by landlord

EXHIBIT "E"

Guaranty

In consideration of, and as an inducement to JEFFREY MANAGEMENT CORP. AS MANAGER FOR FRENCH PARTNERS LLC AND NEW YORK FRENCH BUILDING CO-INVESTORS, LLC ("Landlord") to enter into that certain lease of even date herewith (the "Lease") with DHG MANAGEMENT, LLC, a New York limited liability company ("Tenant") for Suites 900, 1000 and 2700 of the building known as 551 Fifth Avenue, New York, New York 10176, and in further consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the undersigned DENIHAN OWNERSHIP COMPANY, LLC or if more than one, any and all of them jointly and severally ("Guarantor"), hereby guarantees, absolutely and unconditionally, to Landlord the full and prompt payment and complete performance when due of all terms, covenants, conditions and agreements to be performed and observed by Tenant under the Lease and any and all amendments, modifications and other instruments relating thereto, whether now or hereafter existing entered into by the Tenant, and the full and prompt payment of all damages (whether by acceleration or otherwise), costs and expenses which shall at any time be recoverable by Landlord from Tenant by virtue of the lease and any amendments, modifications and other instruments relating thereto entered into by the Tenant (hereinafter called "Liabilities of Tenant"); and Guarantor hereby covenants and agrees to and with Landlord, its successors and assigns, that if Tenant, its successors and assigns, shall default at any time in the payment of Rent (as defined in the Lease), additional rent or any other sums or charges payable by Tenant under the Lease as provided for herein or in the performance of any of the terms, covenants, provisions or conditions contained in the Lease as provided for herein, and such default continues beyond the applicable notice and grace period, Guarantor will forthwith pay to Landlord, its successors and assigns, such Rent, additional rent and other sums and charges and will forthwith faithfully perform and fulfill all of such terms, covenants, conditions and provisions of the Lease and will forthwith pay to Landlord all damages that may arise in consequence of any such default by Tenant.

Guarantor agrees that, with or without notice or demand, Guarantor will reimburse Landlord, to the extent that such reimbursement is not made by Tenant, for all expenses (including reasonable attorney's fees and disbursements) incurred by Landlord in connection with any default by Tenant under the Lease or any default by Guarantor under this guaranty.

All moneys available to Landlord for application in payment or reduction of the Liabilities to Tenant may be applied by Landlord, in such manner and in such amounts and at such time or times as it may see fit, to the payment or reduction of such of the Liabilities of Tenant as Landlord may elect.

This Guaranty shall be a continuing guaranty, and the liability of the Guarantor hereunder shall in no way be affected, modified or diminished by reason that any security for the liabilities of Tenant is exchanged, surrendered or released or the Lease or any other obligation of Tenant or any other party or parties with respect to Tenant's obligation is changed, altered, renewed, extended, continued, surrendered, compromised, waived or released in whole or in part except as provided for herein, or that any default with respect thereto is waived, whether or not notice thereof is given to Guarantor, and it is understood and agreed that Landlord may fail to set off and may release, in whole or in part, any credit on its books in favor of Tenant named herein, and may extend further credit in any manner whatsoever to Tenant named herein, and generally deal with Tenant named herein or any such security as Landlord may see fit; and Guarantor shall remain bound under this Guaranty notwithstanding any such exchange, surrender, release, change, alteration, renewal, extension, continuance, compromise, waiver, inaction, extension of further credit or other dealing.

Guarantor hereby expressly waives (a) notice of acceptance of this Guaranty and all notice of the creation, extension or accrual or any obligations hereunder; (b) presentment and demand for payment of any of the Liabilities of Tenant; (c) protest and notice of

dishonor or default to Guarantor or to any other party with respect to any of the Liabilities of Tenant; (d) all other notice to which Guarantor might otherwise be entitled; and (e) any demand for payment under this Guaranty; and Guarantor hereby expressly agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall not be terminated, affected or impaired by reason of the assertion or the failure to assert by Landlord against Tenant, or Tenant's successors and assigns, of any of the rights or remedies reserved to Landlord pursuant to the provisions of the Lease.

This is an absolute unconditional guaranty of payment and not of collection and Guarantor further waives any right to require that any action be brought against Tenant or any other person or entity to require that resort be had to any security or to any balance of any deposit account or credit on the books of Landlord in favor of Tenant or any other person or entity. Successive recoveries may be had hereunder. No invalidity, irregularity or unenforceability of all or any part of the Lease shall affect, impair or be a defense to this Guaranty and this Guaranty shall constitute a primary obligation of the undersigned.

Each reference herein to Landlord shall be deemed to include its successors and assigns, in whose favor the provisions of this Guaranty shall also inure. Each reference herein to Guarantor shall be deemed to include the heirs, distributees, executors, administrators, legal representatives, successors and assigns of Guarantor, all of whom shall be bound by the provisions of this Guaranty.

No delay on the part of Landlord in exercising any rights hereunder or failure to exercise the same shall operate as a waiver of such rights; no notice to or demand on Guarantor shall be deemed to be a waiver of the obligation of Guarantor or of the right of Landlord to take further action without notice or demand as provided herein; nor in any event shall any modification or waiver of the provisions of this Guaranty nor any termination hereof be effective unless in writing signed by Landlord, nor shall any waiver be applicable except in the specific instance for which given. Notwithstanding anything to the contrary in this Guaranty, if Landlord shall have received notice that one or more individuals comprising Guarantor shall no longer be stockholders of Tenant and if thereafter, Landlord and Tenant shall execute and deliver amendment(s) of Lease, then each such individual who shall no longer be a stockholder shall not be liable hereunder to the extent and only to the extent of any additional obligations set forth in such amendment(s) to be performed by Tenant under the Lease. Further, in the event of the death of any individual comprising Guarantor, the estate of such individual shall be released from all liability hereunder at such time as another stockholder of Tenant having a net worth not less than that of the decedent, as evidenced by financial statements satisfactory to Landlord, executes and delivers a Guaranty of the Lease in the form of this Guaranty.

This Guaranty is, and shall be deemed to be, a contract entered into under and pursuant to the laws of the State of New York and shall be in all respects governed, construed, applied and enforced in accordance with the laws of the State of New York. In any action or proceeding arising out of this Guaranty, Guarantor agrees to submit to personal jurisdiction in the State of New York; and waives any objection that it may have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead the same; and authorizes the service of process by registered or certified mail sent to its address set forth below it signature.

This Guaranty may be executed in one or more counterparts, each of which counterparts shall be an original.

All of Landlord's rights, and remedies under the Lease or under this Guaranty are intended to be distinct, separate and cumulative and no such right and remedy therein or herein mentioned is intended to be in exclusion of or a waiver of any of the others.

As a further inducement to Landlord to accept the Lease and in consideration thereof, Landlord and Guarantor hereby waive trial by jury in any action, proceeding or counterclaim brought by or against Guarantor on any matter whatsoever, whether in contract or tort, arising out of or in any way connected with this guaranty or Tenant's

obligations under its lease.

Guarantor hereby waives the right to interpose any defense based upon any claims of laches or set-off or counterclaim of any nature or description, any objection based on forum non conveniens or venue, and any claim for consequential, punitive or special damages.

This Guaranty shall not be affected by any assignment of the Lease by Tenant.

IN WITNESS WHEREOF, the undersigned has executed this Guaranty as of the ___ day of July, 2007.

By: [Signature]

Name: BLOOMER D. BARRETT

Address: _____

Tax I.D. Number: _____

State of New York
County of _____ } ss.:

On the 30th day of July in the year 2007 before me, the undersigned, personally appeared Brooke Barrett, 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.

[Signature: Heather Connolly]
Notary Public

HEATHER CONNOLLY
NOTARY PUBLIC-STATE OF NEW YORK
No. 01CO6145513
Qualified in New York County
My Commission Expires May 08, 2010

obligations under its lease.

Guarantor hereby waives the right to interpose any defense based upon any claims of laches or set-off or counterclaim of any nature or description, any objection based on forum non conveniens or venue, and any claim for consequential, punitive or special damages.

This Guaranty shall not be affected by any assignment of the Lease by Tenant.

IN WITNESS WHEREOF, the undersigned has executed this Guaranty as of the ___ day of July, 2007.

By: BROOKE D BARRETT Co-CEO/Member

Name: [Signature]

Address: 500 West 37th St., New York, NY 10018

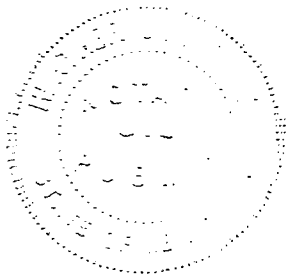
Tax I.D. Number: 13-4090797

State of New York
County of _____ } ss.:

On the 30th day of July in the year 2007 before me, the undersigned, personally appeared Brooke Barrett, 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.

Heather Connolly
Notary Public

HEATHER CONNOLLY
NOTARY PUBLIC-STATE OF NEW YORK
No. 01CO6145513
Qualified in New York County
My Commission Expires May 05, 2010



in this lease contained shall be construed to impose upon Owner 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 Owner shall not be liable to Tenant for violation of the same by any other tenant, its servants, employees, agents, visitors or licensees.

Security: 34. Tenant has deposited with Owner the sum of \$1,431,595.00 as security for the faithful performance and observance by Tenant of the terms, provisions and conditions of this lease; 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 rent and additional rent, Owner may use, apply or retain the whole or any part of the security so deposited to the extent required for the payment of any rent and additional rent or any other sum as to which Tenant is in default or for any sum which Owner 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 re-letting of the premises, whether such damages or deficiency accrued before or after summary proceedings or other re-entry by Owner. In the event that Tenant shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this lease, the security shall be returned to Tenant after the date fixed as the end of the Lease and after delivery of entire possession of the demised premises to Owner. In the event of a sale of the land and building or leasing of the building, of which the demised premises form a part, Owner shall have the right to transfer the security to the vendee or lessee and Owner shall thereupon be released by Tenant from all liability for the return of such security; and Tenant agrees to look to the new Owner solely for the return of said security, and it is agreed that the provisions hereof shall apply to every transfer or assignment made of the security to

a new Owner. Tenant further covenants that it will not assign or encumber or attempt to assign or encumber the monies deposited herein as security and that neither Owner nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

Estoppel Certificate: 35. Tenant, at any time, and from time to time, upon at least 10 days' prior notice by Owner, shall execute, acknowledge and deliver to Owner, and/or to any other person, firm or corporation specified by Owner, a statement certifying that this Lease 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 the modifications), stating the dates to which the rent and additional rent have been paid, and stating whether or not there exists any default by Owner under this Lease, and, if so, specifying each such default.

Successors and Assigns: 36. The covenants, conditions and agreements contained in this lease shall bind and inure to the benefit of Owner 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 Owner'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 Owner in the event of any default by Owner hereunder, and no other property or assets of such Owner (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 Owner and Tenant hereunder, or Tenant's use and occupancy of the demised premises.

Space to be filled in or deleted.

SEE RIDER ARTICLE 37 THROUGH 66 ATTACHED HERETO AND MADE A PART HEREOF.

In Witness Whereof, Owner and Tenant have respectively signed and sealed this lease as of the day and year first above written. JEFFREY MANAGEMENT CORP., AS MANAGER FOR FRENCH HATPERS LLC AND NEW YORK FRENCH BUILDING CO-INVESTORS, LLC, TENANTS-IN-COMMON

Witness for Owner:

Witness for Tenant:

By DHG MANAGEMENT, LLC

ACKNOWLEDGEMENTS

CORPORATE OWNER STATE OF NEW YORK, County of On this day of 19 before me personally came to me known, who being by me duly sworn, did depose and say that he resides in of the corporation described in and which executed the foregoing instrument, as OWNER; that he knows the seal of said corporation; the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

CORPORATE TENANT STATE OF NEW YORK, County of On this day of 19 before me personally came to me known, who being by me duly sworn, did depose and say that he resides in of the corporation described in and which executed the foregoing instrument, as TENANT; that he knows the seal of said corporation; the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

INDIVIDUAL OWNER STATE OF NEW YORK, County of On this day of 19 before me personally came to be known and known to me to be the individual described in and who, as OWNER, executed the foregoing instrument and acknowledged to me that he executed the same.

INDIVIDUAL TENANT STATE OF NEW YORK, County of On this day of 19 before me personally came to be known and known to me to be the individual described in and who, as TENANT, executed the foregoing instrument and acknowledged to me that he executed the same.

GUARANTY

FOR VALUE RECEIVED, and in consideration for, and as an inducement to Owner making the within lease with Tenant, the undersigned guarantees to Owner, Owner's estate and assigns, the full performance and observance of all the covenants, conditions and agreements, therein provided to be performed and observed by Tenant, including the "Rules and Regulations" as therein provided, without requiring any notice of non-payment, non-performance, or non-observance, or proof, or notice, or demand, whereby to charge the undersigned therefor, all of which the undersigned hereby expressly waives and expressly agrees that the validity of this agreement and the obligations of the guarantor hereunder shall in no wise be terminated, affected or impaired by reason of the assertion by Owner against Tenant of any of the rights or remedies reserved to Owner pursuant to the provisions of the within lease. The undersigned further covenants and agrees that this guaranty shall remain and continue in full force and effect as to any renewal, modification or extension of this lease and during any period when Tenant is occupying the premises as a "statutory tenant." As a further inducement to Owner to make this lease and in consideration thereof, Owner and the undersigned covenant and agree that in any action or proceeding brought by either Owner or the undersigned against the other on any matters whatsoever arising out of, under, or by virtue of the terms of this lease or of this guarantee that Owner and the undersigned shall and do hereby waive trial by jury.

Dated: 19

Guarantor
Witness

Guarantor's Residence

Business Address

Firm Name

STATE OF NEW YORK) ss.:

COUNTY OF)

On this day of 19 before me personally came

to me known and known to me to be the individual described in, and who executed the foregoing Guaranty and acknowledged to me that he executed the same.

Notary

IMPORTANT - PLEASE READ

RULES AND REGULATIONS ATTACHED TO AND MADE A PART OF THIS LEASE IN ACCORDANCE WITH ARTICLE 33.

- 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 or egress from the demised premises and for delivery of merchandise and equipment in a prompt and efficient manner using elevators and passageways designated for such delivery by Owner.
2. 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, rubbish, rags, acids or other substances shall be deposited therein, and the expense of any breakage, stoppage, or damage resulting from the violation of this rule shall be borne by the Tenant who, or whose clerks, agents, employees or visitors, shall have caused it.
3. No carpet, rug or other article shall be hung or shaken out of any window of the building and no Tenant shall sweep or throw or permit to be swept or thrown from the demised premises any dirt or other substances into any of the corridors or halls, elevators, or out of the doors or windows or stairways of the building and 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 Owner or other occupants of the building by reason of noise, odors, and/or vibrations, or interfere in any way with other Tenants or those having business therein, nor shall any bicycles, vehicles, animals, fish, or birds be kept in or about the building.
4. No awnings or other projections shall be attached to the outside walls of the building without the prior written consent of Owner.
5. No sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed by any Tenant on any part of the outside of the demised premises or the building or on the inside of the demised premise if the same is visible from the outside of the premises without the prior written consent of Owner, except that the name of Tenant may appear on the entrance door of the premises.
6. No Tenant shall mark, paint, drill into, or in any way deface any part of the demised premises or the building of which they form a part.
7. No additional locks or bolts of any kind shall be placed upon any of the doors or windows by any Tenant, nor shall any changes be made in existing locks or mechanism thereof.
8. Freight, furniture, business equipment, merchandise and bulky matter of any description shall be delivered to and removed from the premises only on the freight elevators and through the service entrances and corridors, and only during hours

- and in a manner approved by Owner. Owner reserves the right to inspect all freight to be brought into the building and to exclude from the building all freight which violates any of these Rules and Regulations of the lease or which these Rules and Regulations are a part.
9. Canvassing, soliciting and peddling in the building is prohibited and each Tenant shall cooperate to prevent the same.
10. Owner reserves the right to exclude from the building all persons who do not present a pass to the building signed by Owner.
11. Owner shall have the right to prohibit any advertising by any Tenant which in Owner's opinion, tends to impair the reputation of the building or its desirability as a building for offices, and upon written notice from Owner, Tenant shall refrain from or discontinue such advertising.
12. Tenant shall not bring or permit to be brought or kept in or on the demised premises, any inflammable, combustible, explosive, or hazardous fluid, material, chemical or substance, 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.
13. If the building contains central air conditioning and ventilation, Tenant agrees to keep all windows closed at all times and to abide by all rules and regulations issued by Owner with respect to such services.
14. Tenant shall not move any safe, heavy machinery, heavy equipment, bulky matter, or fixtures into or out of the building without Owner's prior written consent.
15. Refuse and Trash. (1) Compliance by Tenant. 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.
16. Tenant shall not move any safe, heavy machinery, heavy equipment, bulky matter, or fixtures into or out of the building without Owner's prior written consent.
17. Tenant shall cooperate with Owner in obtaining maximum effectiveness of the cooling system by lowering and closing venetian blinds and/or drapes and curtains when the sun's rays fall directly on the windows of the demised premises.
18. Tenant shall not move any safe, heavy machinery, heavy equipment, bulky matter, or fixtures into or out of the building without Owner's prior written consent.
19. Tenant shall cooperate with Owner in obtaining maximum effectiveness of the cooling system by lowering and closing venetian blinds and/or drapes and curtains when the sun's rays fall directly on the windows of the demised premises.
20. Tenant shall not move any safe, heavy machinery, heavy equipment, bulky matter, or fixtures into or out of the building without Owner's prior written consent.
21. Tenant shall cooperate with Owner in obtaining maximum effectiveness of the cooling system by lowering and closing venetian blinds and/or drapes and curtains when the sun's rays fall directly on the windows of the demised premises.

Address
Premises
STANDARD FORM OF
Office Lease
The Real Estate Board of New York, Inc.
© Copyright 1994. All Rights Reserved.
Reproduction in whole or in part prohibited.

Dated
Rent Per Year
Rent Per Month
Term From To
Drawn by
Checked by
Entered by
Approved by

Motion Sequence #002

Exhibit D

**JEFFREY MANAGEMENT CORP. AS MANAGER
FOR FRENCH PARTNERS, LLC, NEW YORK
FRENCH SOUNDVIEW LLC AND NEW YORK
551 FIFTH AVENUE CO-INVESTORS LLC
AS TENANTS IN COMMON**

Seven Penn Plaza
11th Floor
New York, NY 10001
212.563.6557
212.563.6657 Fax

August 5, 2020

**VIA OVERNIGHT DELIVERY AND
E-MAIL: MUHAMAD.AHMAD@DENIHAN.COM**

DHG Management LLC
551 Fifth Avenue
Suites 900,1000 and 2700
New York, NY 10176

Re: DHG Management LLC - 551 Fifth Avenue – Suites 900, 1000 and 2700
New York, New York 10176

Dear Tenant:

This letter shall serve to advise you that you are currently indebted to the Landlord in the sum of \$739,585.77 representing rent and additional rent which has come due through August 1, 2020 under the Lease dated the 31st day of July, 2007, as set forth on Exhibit "A" annexed hereto.

In accordance with Paragraph 71(1) you are hereby afforded until August 22, 2020, a date which is at least fifteen (15) days from the date of receipt of this letter, to make payment of the aforementioned sum which represents rent and additional rent due through August 1, 2020.

In the event payment is not received by August 22, 2020, the Landlord will avail itself of its right to invoke Paragraphs 34 and 57(B) of the Lease to the extent it provides that the "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 rent and additional rent or any other sum as to which Tenant is in default."

Very truly yours,

**JEFFREY MANAGEMENT CORP. AS
MANAGER FOR FRENCH PARTNERS, LLC,
NEW YORK FRENCH SOUNDVIEW LLC AND
NEW YORK 551 FIFTH AVENUE CO-
INVESTORS LLC AS TENANTS IN COMMON**

By: 
Jeffrey J. Feil, President

cc: Roy Korins, Esquire - Katsky Korins LLP - 605 Third Avenue, New York, NY 10158
Richard L. Claman, Esq. – Stempel Bennett Claman & Hochberg, P.C. – 675 Third Avenue,
New York, NY 10017
Renee Digrugilliers, Esq. (via e-mail: rdigrugilliers@hwrpc.com)

EXHIBIT "A"

M

***** A R H *****

DISPLAYS A TENANT'S DUMPAR INFO BY DATE..SKIPS C/AC RECS IN THE SELECTED PERIOD

SECURITY:\$ 0.00
 FC/0900C JMC MGR FRENCH PART+NYC FRE DATES ARE FOR: 7/01/20- 8/31/20
 DHG MANAGEMENT LLC, 09/07-03/23 WITH TBLALLX CODES: (SHOW CASH)
 SUITE 900 MUHAMAD AHMAD ALL TBLALLX CODES
 FLAGS: YES MO RNT 207,369.50

SL DATE IN A/R DSC INV/CK TYPE AMT. BILLED CASH RECEIVED RUNNING BAL. AGE

SL	DATE	IN	A/R	DSC	INV/CK	TYPE	AMT. BILLED	CASH RECEIVED	RUNNING BAL.	AGE
----- OPENING BALANCE -----									0.00	
A.	7/01/20	SALE TX	377471		INV		149.99		149.99	35*
B.	7/01/20	DEF RNT	377471		INV		680.27		830.26	35*
C.	7/01/20	CLEANNG	377471		INV		1,690.00		2,520.26	35*
D.	7/01/20	DEF RNT	377471		INV		2,721.08		5,241.34	35*
E.	7/01/20	OPERAT.	377471		INV		13,848.43		19,089.77	35*
F.	7/01/20	R/E TAX	377471		INV		36,596.54		55,686.31	35*
G.	7/01/20	OPERAT.	377471		INV		50,153.84		105,840.15	35*
H.	7/01/20	RENTCOM	377471		INV		53,240.00		159,080.15	35*
I.	7/01/20	RENTCOM	377471		INV		207,369.50		366,449.65	35*
J.	8/01/20	MTR ELE	379703		DEB		4,066.38		370,516.03	4*

ENTER SELECTION CODE:
 CR:NXT PGE F3:RESELECT F5:HARDCOPY F8:NOTES F4:TOTALS F6:LONG DESC.

J

***** A R H *****

DISPLAYS A TENANT'S DUMPAR INFO BY DATE. SKIPS C/AC RECS IN THE SELECTED PERIOD

SECURITY:\$ 0.00

FC/0900C JMC MGR FRENCH PART+NYC FRE DATES ARE FOR: 7/01/20- 8/31/20
DHG MANAGEMENT LLC, 09/07-03/23 WITH TBLALLX CODES: (SHOW CASH)
SUITE 900 MUHAMAD AHMAD ALL TBLALLX CODES
FLAGS: YES MO RNT 207,369.50

SL	DATE IN	A/R	DSC	INV/CK	TYPE	AMT.	BILLED	CASH RECEIVED	RUNNING BAL.	AGE
A.	8/01/20	MTR	ELE	379850	DEB	2,620.09			373,136.12	4*
B.	8/01/20	SALE	TX	385606	INV	149.99			373,286.11	4*
C.	8/01/20	DEF	RNT	385606	INV	680.27			373,966.38	4*
D.	8/01/20	CLEANNG		385606	INV	1,690.00			375,656.38	4*
E.	8/01/20	DEF	RNT	385606	INV	2,721.08			378,377.46	4*
F.	8/01/20	OPERAT.		385606	INV	13,848.43			392,225.89	4*
G.	8/01/20	R/E	TAX	385606	INV	36,596.54			428,822.43	4*
H.	8/01/20	OPERAT.		385606	INV	50,153.84			478,976.27	4*
I.	8/01/20	RENTCOM		385606	INV	53,240.00			532,216.27	4*
J.	8/01/20	RENTCOM		385606	INV	207,369.50			739,585.77	4*

ENTER SELECTION CODE:

CR:NXT PGE F7:PREV PGE F3:RESELECT F5:HARDCOPY F8:NOTES F4:TOTALS F6:LONG DESC.

5

***** A R H *****

DISPLAYS A TENANT'S DUMPAR INFO BY DATE..SKIPS C/AC RECS IN THE SELECTED PERIOD

SECURITY:\$ 0.00

FC/0900C JMC MGR FRENCH PART+NYC FRE
DHG MANAGEMENT LLC, 09/07-03/23
SUITE 900 MUHAMAD AHMAD
FLAGS: YES MO RNT 207,369.50

DATES ARE FOR: 7/01/20- 8/31/20
WITH TBLALLX CODES: (SHOW CASH)
ALL TBLALLX CODES

SL DATE IN A/R DSC INV/CK TYPE AMT. BILLED CASH RECEIVED RUNNING BAL. AGE

TENANT TOTAL: 739,585.77 0.00 739,585.77

ENTER SELECTION CODE:

NO MORE A/R F7:PREV PGE F3:RESELECT F5:HARDCOPY F8:NOTES

F6:LONG DESC.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
DHG MANAGEMENT COMPANY LLC

Plaintiff

Motion Sequence #002

-against-

Index No. 654319/2020

FRENCH PARTNERS LLC and NEW YORK
FRENCH BUILDING CO-INVESTORS, LLC [n/k/a
New York French Soundview LLC], TENANTS-IN
COMMON

AFFIDAVIT IN
SUPPORT

Defendants

-----X

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

BARRY ZIMMERMAN, being duly sworn, deposes and says:

1. I am the property manager employed by Jeffrey Management Corp., to manage the subject building on behalf of French Partners LLC and New York French Building Co-Investors, LLC n/k/a New York French Soundview LLC as tenants-in-common and as such am fully familiar with the facts of this matter.

2. I have been the property manager of the subject building for 18 years. As part of my responsibilities, I oversee the day-to-day operations of the subject building

3. I have reviewed various pleadings in this lawsuit and am aware that the Plaintiff is claiming that they were denied access to the subject building. I can unequivocally state that is simply untrue. Plaintiff's access has remained unfettered throughout their tenancy, including during the pandemic, and they were never denied access.

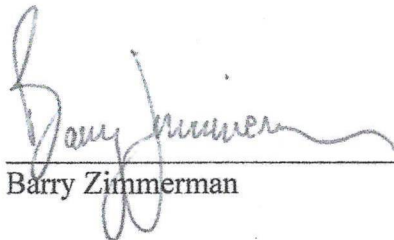
4. Defendants took no actions to subvert any tenant's accessibility to the subject building. While the Executive Orders issued by Governor Cuomo may have limited the number of

employees any business could have present at a given time, Defendants did not limit accessibility. The Plaintiff, and its employees, were able to enter the subject building as it always had. There were no additional security protocols or procedures put in place because of the Executive Orders that would have impeded access to the building. Significantly, Plaintiff is the only tenant in the subject building claiming it was denied access.

5. If the Plaintiff elected to not enter the subject premises, that is a decision they made and was not because the Defendants impeded their access.

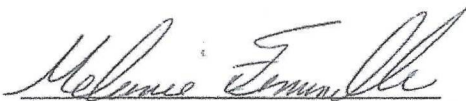
6. Based upon the foregoing and the arguments set forth in counsel's accompanying affirmation, the Defendants' motion should be granted.

WHEREFORE, it is respectfully requested that the Defendants' motion should be granted in its entirety along with such other and further relief as to this Court may seem just and proper.



Barry Zimmerman

Sworn to before me on this
4 day of JAN 2021.



Notary Public

MELANIE L. FEMINELLA
Notary Public, State of New York
No. 01FE6056647
Qualified in Queens County
Commission Expires March 26, 2023

Motion Sequence #002

Exhibit B

FIRST AMENDMENT TO LEASE

I. PARTIES AND DATE.

This First Amendment to Lease ("Amendment") dated February 16, 2010 shall be effective as of February 16, 2010 ("Effective Date"), is by and between **Jeffrey Management Corp. as Manager for French Partners LLC and New York French Building Co-Investors LLC, Tenants-In-Common** ("Landlord"), and **DHG Management, LLC** ("Tenant").

II. RECITALS.

Landlord and Tenant are parties to a lease dated July 31, 2007 (the "Lease"). The Lease is for premises known as Suites 900, 1000 and 2700 ("Premises") located at 551 Fifth Avenue, New York, New York 10176 ("Building").

III. MODIFICATIONS.

Landlord and Tenant each desire to modify the Lease in the manner provided in Exhibit "A" for Suites 900 and 1000 and Exhibit "B" for Suite 2700" which Modifications shall be deemed effective only upon the execution and delivery of (i) this Amendment by both Landlord and Tenant and (ii) the Guaranty provided for therein. Exhibits A and B (including the Schedules attached thereto) is made a part hereof by this reference herein.

IV. GENERAL.

A. **EFFECT OF AMENDMENT.** Except to the extent the Lease Modification is modified by this Amendment, the remaining terms and provisions of the Lease shall remain unmodified and in full force and effect. In the event of conflict between the terms of the Lease and the terms of this Amendment, the terms of this Amendment shall prevail.

B. **ENTIRE AGREEMENT.** This Amendment embodies the entire understanding between Landlord and Tenant with respect to its subject matter and can be changed only by an instrument in writing signed by Landlord and Tenant.

C. **COUNTERPARTS.** If this Amendment is executed in counterparts, each counterpart shall be deemed an original.

D. **DEFINED TERMS.** All words commencing with initial capital letters in this Amendment (including Exhibits A and B hereto) and not defined in this Amendment, but defined in the Lease, shall have the same meaning in this Amendment as in the Lease.

E. **AUTHORITY.** Each individual executing this Amendment for the Tenant represents that he or she is duly authorized to execute and deliver this Amendment and that this Amendment is binding upon Tenant in accordance with its terms.

F. RIGHTS PERSONAL TO TENANT. The provisions indicated on Exhibits A and B shall be personal to Tenant and the rights contained therein shall automatically cease and terminate in the event of any assignment of the Lease or subletting of the Premises permitted under Articles 11 and 54 of the Lease except Landlord acknowledges and agrees that Tenant is currently looking to sublease the twenty-seventh (27th) floor of the Premises and provided any such subletting occurs in accordance with the terms, covenants and conditions of Articles 11 and 54, then this First Amendment of Lease will remain in full force and effect; otherwise, the Amendment shall be binding upon and inure to the benefit of Landlord and Tenant and to their respective legal representatives, successors and assigns.

G. DEFAULTS. The provisions of this Amendment shall be deemed canceled in the event of any monetary or material non-monetary default beyond any applicable cure period by Tenant under the Lease and/or this Amendment and/or by the guarantor under the Guaranty to be delivered under Exhibits A and B hereto. In such event or in the event that the Lease is terminated by reason of an Event of Default, all modifications to Tenant's monetary obligations as set forth in this Amendment shall be immediately null and void, and Tenant shall, within ten (10) days of demand therefor, pay to Landlord all amounts which would have been payable had this Amendment not been executed or delivered.

H. CONFIDENTIALITY. Tenant hereby acknowledges that a material consideration for Landlord entering into this Amendment is Tenant's agreement that the terms and provisions of this Amendment shall be kept strictly confidential, but may be revealed by Tenant to its accountants and lawyers to the extent any of them need to understand the same in the performance of their services, but only after informing them of the confidential nature thereof. In the event Tenant breaches this covenant, all modifications to Tenant's monetary obligations as set forth in this Amendment shall be immediately null and void, and Tenant shall promptly pay to Landlord all amounts which would have been payable by Tenant as if this Amendment had not been executed and delivered.

I. RELEASE.

In consideration of Landlord's agreement set forth in this Amendment, Tenant represents that Landlord has not failed to perform, and is not in any respect in default in the performance of, any of its obligations under the Lease, and Tenant irrevocably and unconditionally releases and discharges Landlord and Landlord's officers, directors, members, managers, employees, agents and representatives (collectively, "Landlord Parties") from any and all claims, actions, causes of action, rights, demands, debts, obligations, damages, liabilities, judgments or losses of any kind whatsoever that Tenant has or may have against Landlord and/or any and all Landlord Parties arising out of or connected with any acts or omissions on the part of Landlord and/or any and all Landlord Parties occurring on or before the date of this Amendment including, without limitation, matters related to the negotiation and execution of the Lease, the administration of the Lease, and the leasing, operation, management or promotion of the Premises.

It is understood by Tenant that if the facts or law with respect to which the foregoing release is given hereafter turn out to be other than or different from the facts or law in that connection not known to be or believed by Tenant to be true, then Tenant expressly assumes the risk of the facts or law turning out to be so different, and agrees that the foregoing release shall

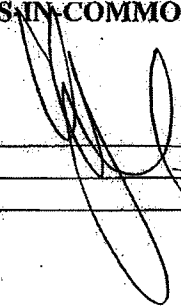
be in all respects effective and not subject to termination or rescission based upon such differences in fact or law.

J. GUARANTY.

By executing in the appropriate place below, the Guarantor, **Denihan Ownership Company, LLC**, confirms their obligations to the Landlord under the Guaranty dated July 30, 2007 with regard to this First Amendment to Lease.

LANDLORD
JEFFREY MANAGEMENT CORP. AS
MANAGER FOR FRENCH PARTNERS
LLC AND NEW YORK FRENCH
BUILDING CO-INVESTORS LLC,
TENANTS IN COMMON


TENANT
DHG Management, LLC

By: 
Name: Jeffrey J. Feil
Title: President

By: 
Name: PATRICK DENIHAN
Title: CO-CEO

AGREED AND ACCEPTED
WITH REGARD TO ARTICLE J. ABOVE

DENIHAN OWNERSHIP COMPANY, LLC

By: 
Name: PATRICK DENIHAN
Title: MEMBER

MODIFICATIONS

EXHIBIT A

SUITES 900 AND 1000

Landlord and Tenant hereby agree that the Lease shall be modified and/or supplemented as follows:

- A. Abatement of Annual Rent. Except as otherwise provided herein, Landlord and Tenant agree that for the period commencing January 1, 2010 and continuing through December 31, 2010 ("Suites 900 and 1000 Annual Rent Abatement Period"), the Annual Rent payable by Tenant under the Lease for Suites 900 and 1000 **only** shall be reduced by Thirty-Three Thousand Three Hundred Thirty-Three and 33/100 (\$33,333.33) Dollars per month (the "Suites 900 and 1000 Monthly Abatement Amount"), i.e., from \$186,972.50 per month to \$153,639.17 per month for the period January 1, 2010 through December 31, 2010 during the Annual Rent Abatement Period ("Suites 900 and 1000 Reduced Rent"). Tenant acknowledges that the total amount of Annual Rent to be abated under this Exhibit A of this Amendment equals Four Hundred Thousand and 00/100 Dollars (\$400,000.00) (the "Suites 900 and 1000 Total Abatement Amount").

In no event shall the granting of this Suites 900 and 1000 Annual Rent Abatement Period modify the Term of the Lease; accordingly, the expiration date of the Term of the Lease remains March 31, 2023 ("Expiration Date").

In addition to paying Suites 900 and 1000 Reduced Rent during the Suites 900 and 1000 Annual Rent Abatement Period in accordance herewith, Tenant shall continue to pay Additional Rent when due under the Lease, including, but not limited to, Tenant's Tax Payments, operating payments and submetered electric charges.

During the Suites 900 and 1000 Annual Rent Abatement Period, Tenant shall pay the monthly installments of Suites 900 and 1000 Reduced Rent in advance by the 1st day of each month.

From and after January 1, 2011, Tenant shall pay Annual Rent in accordance with the requirements of the Lease.

- B. Repayment of Reduced Rent. Commencing January 1, 2011 Landlord and Tenant agree that Tenant shall commence reimbursing Landlord for the Suites 900 and 1000 Reduced Rent, as additional rent, in the amount of \$2,721.08 per month for the period January 1, 2011 through March 31, 2023 ("Suites 900 and 1000 Repayment Period"). Tenant agrees that in the event of a monetary or a material non-monetary default beyond any applicable cure period by Tenant during the aforementioned Suites 900 and 1000 Repayment Period, Tenant shall pay within ten (10) days of demand thereof the total amount of the Suites 900 and 1000 Reduced Rent still due and owing and the Suite 2700 Reduced Rent, as described in Exhibit B, still due and owing.
- C. Modification of Article 57. Landlord and Tenant agree Article 57 Security shall be modified so that paragraph F shall be deleted and replaced with the following:

"F. Landlord agrees that commencing on December 1, 2010 and provided Tenant is not then in default of any of the terms, covenants and conditions of this Lease, Tenant shall be permitted to reduce the letter of credit or cash deposit that Landlord is then holding to \$1,291,595.00, pursuant to all the terms and conditions stated in this Article.

Landlord agrees that commencing on December 1, 2011 and provided Tenant is not then in default of any of the terms, covenants and conditions of this Lease, Tenant shall be permitted to reduce the letter of credit or cash deposit that Landlord is then holding to \$1,251,595.00, pursuant to all the terms and conditions stated in this Article.

Landlord agrees that commencing on December 1, 2012 and provided Tenant is not then in default of any of the terms, covenants and conditions of this Lease, Tenant shall be permitted to reduce the letter of credit or cash deposit that Landlord is then holding to \$1,211,595.00, pursuant to all the terms and conditions stated in this Article.

Landlord agrees that commencing on December 1, 2013 and provided Tenant is not then in default of any of the terms, covenants and conditions of this Lease, Tenant shall be permitted to reduce the letter of credit or cash deposit that Landlord is then holding to \$1,171,595.00, pursuant to all the terms and conditions stated in this Article.

Landlord agrees that commencing on December 1, 2014 and provided Tenant is not then in default of any of the terms, covenants and conditions of this Lease, Tenant shall be permitted to reduce the letter of credit or cash deposit that Landlord is then holding to \$1,131,595.00, pursuant to all the terms and conditions stated in this Article.

Landlord agrees that commencing on December 1, 2015 and provided Tenant is not then in default of any of the terms, covenants and conditions of this Lease, Tenant shall be permitted to reduce the letter of credit or cash deposit that Landlord is then holding to \$1,091,595.00, pursuant to all the terms and conditions stated in this Article.

Landlord agrees that commencing on December 1, 2016 and provided Tenant is not then in default of any of the terms, covenants and conditions of this Lease, Tenant shall be

permitted to reduce the letter of credit or cash deposit that Landlord is then holding to \$1,051,595.00, pursuant to all the terms and conditions stated in this Article.

Landlord agrees that commencing on December 1, 2017 and provided Tenant is not then in default of any of the terms, covenants and conditions of this Lease, Tenant shall be permitted to reduce the letter of credit or cash deposit that Landlord is then holding to \$1,011,595.00, pursuant to all the terms and conditions stated in this Article.

Landlord agrees that commencing on December 1, 2018 and provided Tenant is not then in default of any of the terms, covenants and conditions of this Lease, Tenant shall be permitted to reduce the letter of credit or cash deposit that Landlord is then holding to \$971,595.00, pursuant to all the terms and conditions stated in this Article.

Landlord agrees that commencing on December 1, 2019 and provided Tenant is not then in default of any of the terms, covenants and conditions of this Lease, Tenant shall be permitted to reduce the letter of credit or cash deposit that Landlord is then holding to \$931,595.00, pursuant to all the terms and conditions stated in this Article.

Landlord agrees that commencing on December 1, 2020 and provided Tenant is not then in default of any of the terms, covenants and conditions of this Lease, Tenant shall be permitted to reduce the letter of credit or cash deposit that Landlord is then holding to \$891,595.00, pursuant to all the terms and conditions stated in this Article.

Landlord agrees that commencing on December 1, 2021 and provided Tenant is not then in default of any of the terms, covenants and conditions of this Lease, Tenant shall be permitted to reduce the letter of credit or cash deposit that Landlord is then holding to \$851,595.00, pursuant to all the terms and conditions stated in this Article."

MODIFICATIONSEXHIBIT BSUITE 2700

Landlord and Tenant hereby agree that the Lease shall be modified and/or supplemented as follows:

- A. Abatement of Annual Rent. Except as otherwise provided herein, Landlord and Tenant agree that for the period commencing January 1, 2010 and continuing through December 31, 2010 ("Suite 2700 Annual Rent Abatement Period"), the Annual Rent payable by Tenant under the Lease for Suite 2700 only shall be reduced by Eight Thousand Three Hundred Thirty-Three and 33/100 (\$8,333.33) Dollars per month (the "Monthly Abatement Amount"), i.e., from \$51,626.67 per month to \$43,292.34 per month for the period January 1, 2010 through December 31, ~~(2011)~~ during the Suite 2700 Annual Rent Abatement Period ("Suite 2700 Reduced Rent"). Tenant acknowledges that the total amount of Annual Rent to be abated under this Exhibit B of this Amendment equals One Hundred Thousand and 00/100 (\$100,000.00) (the "Suite 2700 Total Abatement Amount").

2010
O.K. to Change
M.A. - DHG

In no event shall the granting of this Suite 2700 Annual Rent Abatement Period modify the Term of the Lease; accordingly, the expiration date of the Term of the Lease remains March 31, 2023 ("Expiration Date").

In addition to paying Suite 2700 Reduced Rent during the Suite 2700 Annual Rent Abatement Period in accordance herewith, Tenant shall continue to pay Additional Rent when due under the Lease, including, but not limited to, Tenant's Tax Payments, operating payments, and submetered electric charges.

During the Suite 2700 Annual Rent Abatement Period, Tenant shall pay the monthly installments of Suite 2700 Reduced Rent in advance by the 1st day of each month.

From and after January 1, 2011, Tenant shall pay Annual Rent in accordance with the requirements of the Lease.

Repayment of Reduced Rent. Commencing January 1, 2011 Landlord and Tenant agree that Tenant shall commence reimbursing Landlord for the Suite 2700 Reduced Rent, as additional rent, in the amount of \$680.27 per month for the period January 1, 2011 through March 31, 2023 ("Suite 2700 Repayment Period"). Tenant agrees that in the event of a monetary or a material non-monetary default beyond any applicable cure period by Tenant during the aforementioned Suite 2700 Repayment Period, Tenant shall pay within ten (10) days of demand thereof the total amount of the Suite 2700 Reduced Rent still due and owing and the Suite 900 and 1000 Reduced Rent as described in Exhibit A, still due and owing.

Motion Sequence #002

Exhibit C

Feil 3000:11 9/10/2020

ORIGINAL DOCUMENT PRINTED ON CHEMICAL REACTIVE PAPER WITH MICROPRINTED BORDER

DHG Management Co LLC
Denjhan Hospitality Group
551 Fifth Avenue
New York, NY 10178

www.affinia.com
20200408055506_nonpo.csv

VENDOR
JEFMA

DATE
04/22/2020

CHECK NO. 1090716

*****\$370,322.30

Check is void after 90 days from issuance date

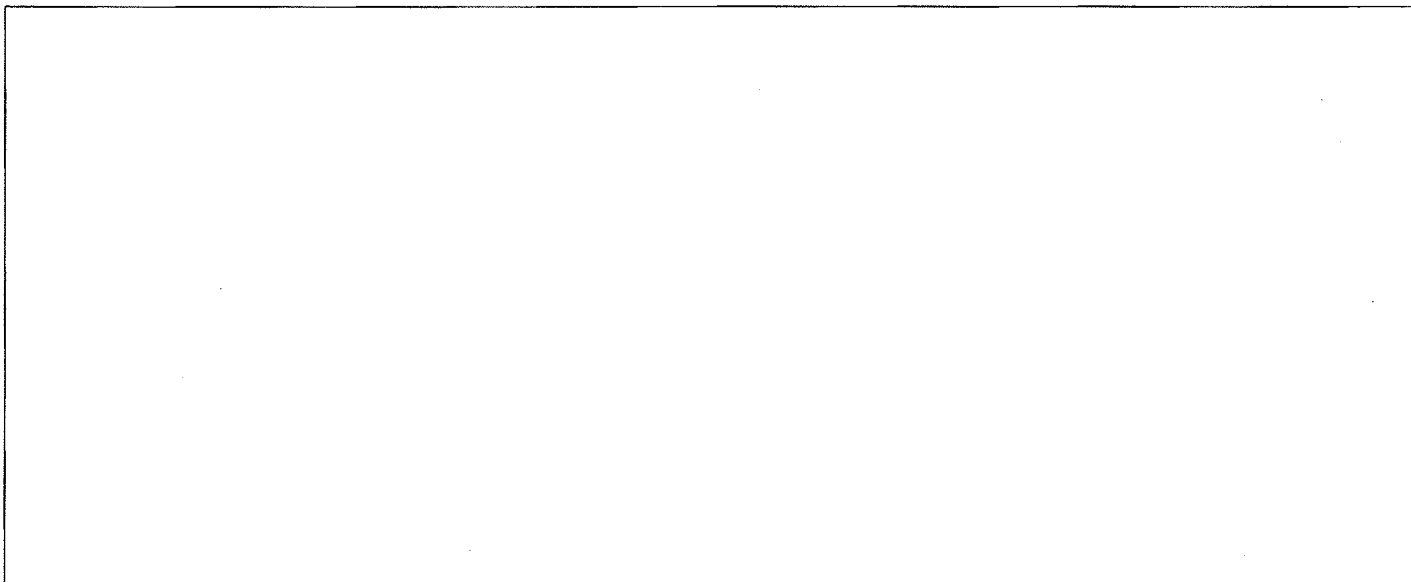
AMOUNT Three Hundred Seventy Thousand Three Hundred Twenty-Two and 30/100 US Dollars

PAY TO THE ORDER OF Jeffrey Management Corp.
P. O. Box 303
Emerson, NJ 07630

Roy Collier
Authorized Signatures
Not valid over \$10,000 without two signatures

DOCUMENT INCLUDES A HIDDEN VOID. DO NOT CASH IF THE VOID IS VISIBLE. DOCUMENT ALSO CONTAINS HEAT-SENSITIVE INK. TOUCH HERE - RFID IMAGE DISAPPEARS WITH HEAT.

⑈ 1090716 ⑆ ⑆ 021000021 ⑆ 230905625 ⑆



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PropCode	
ProjectName	FEIL
Status	Completed

1

Feil 3000:11 9/10/2020

ORIGINAL DOCUMENT PRINTED ON CHEMICAL REACTIVE PAPER WITH MICROPUNCHED BORDER

DHG Management Co LLC
Denihan Hospitality Group
551 Fifth Avenue
New York, NY 10176

JP Morgan Chase Bank, N.A.
New York, NY

CHECK NO. 1090846

VENDOR JEFMA DATE 05/13/2020 *****\$370,024.64

www.affinia.com

20200313055506 nonpa.csv

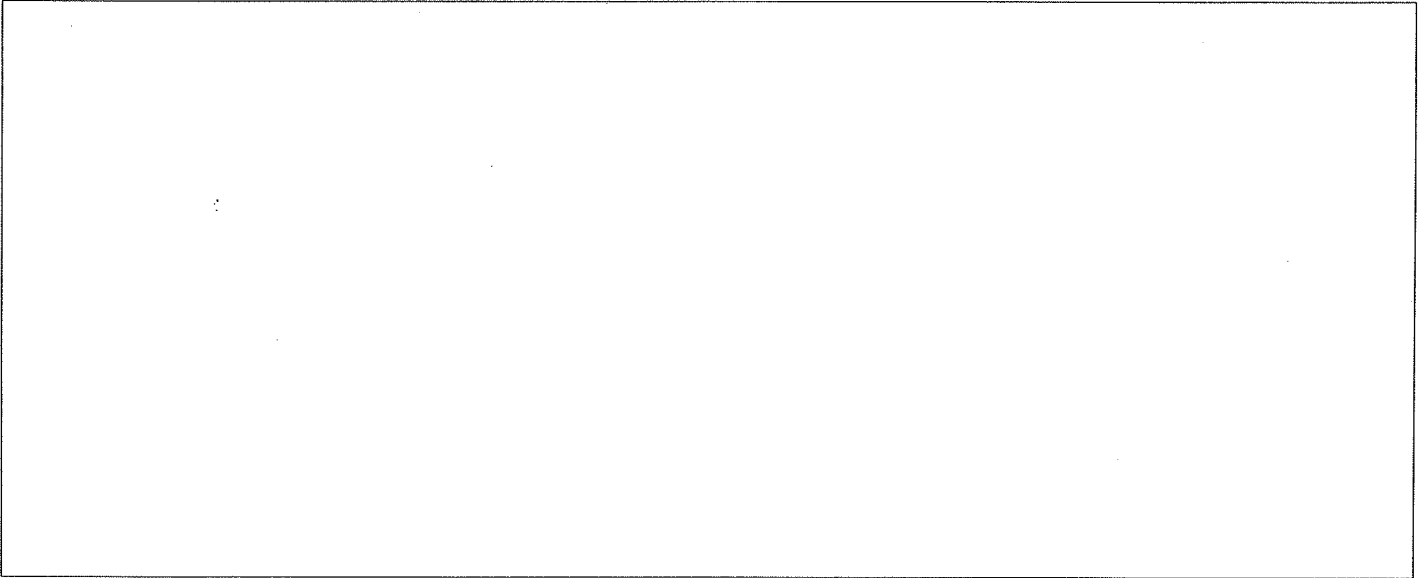
AMOUNT Three Hundred Seventy Thousand Twenty-Four and 64/100 US Dollars

PAY TO THE ORDER OF Jeffrey Management Corp
P. O. Box 303
Emerson, NJ 07630

Authorized Signatures
Not valid over \$10,000 without two signatures

DOCUMENT INCLUDES A HIDDEN WORD. DO NOT CASH IF THE WORD VOID IS VISIBLE. DOCUMENT ALSO CONTAINS HEAT-SENSITIVE INK. TOUCH HERE. RED IMAGE DISAPPEARS WITH HEAT.

⑈ 1090846 ⑆ 021000021 ⑆ 230905625 ⑈



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PropCode	
ProjectName	FEIL
Status	Completed

2

Feil 3001:13 9/10/2020

ORIGINAL DOCUMENT PRINTED ON CHEMICAL REACTIVE PAPER WITH MICROPRINTED BORDER

DHG Management Co LLC
Denihan Hospitality Group
551 Fifth Avenue
New York, NY 10176
www.affinia.com

JP Morgan Chase Bank, N.A.
New York, NY

CHECK NO. 1091078

VENDOR DATE
JEFMA 06/03/2020 *****\$362,595.70

Check is void after 90 days from issuance date

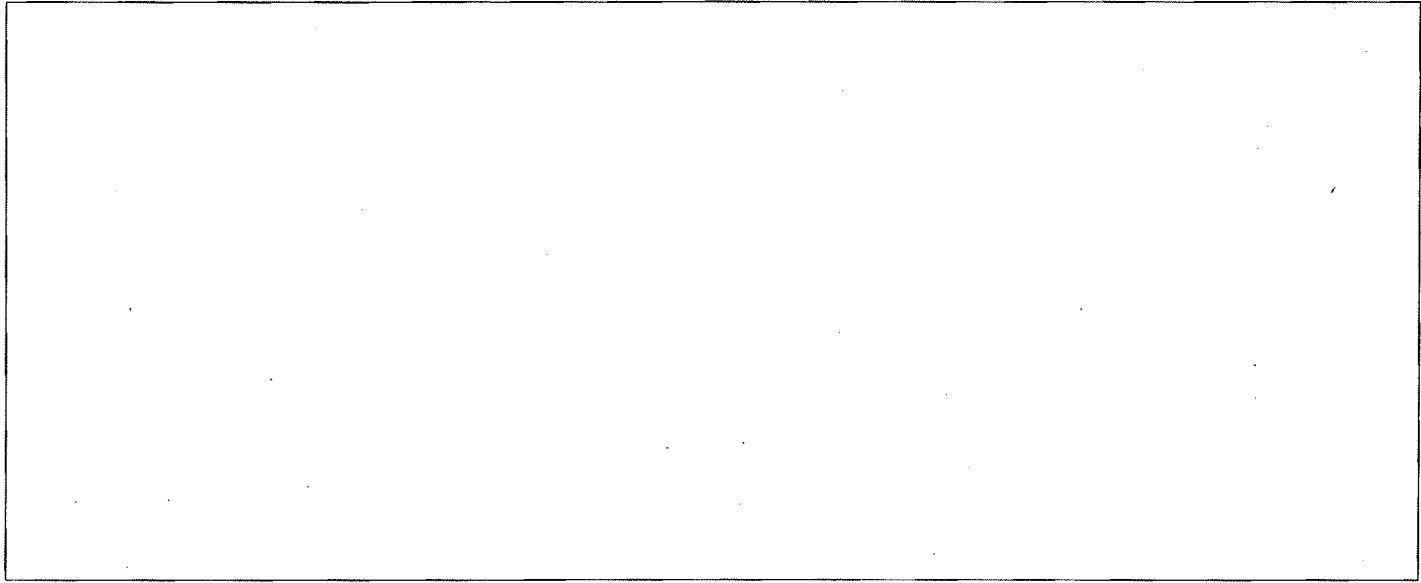
AMOUNT Three Hundred Sixty-Two Thousand Five Hundred Ninety-Five and 70/100----- US Dollars

PAY TO THE ORDER OF Jeffrey Management Corp.
P. O. Box 303
Emerson, NJ 07630

Authorized Signatures
** Not valid over \$10,000 without two signatures **

DOCUMENT INCLUDES A HIDDEN WORD. DO NOT CASH IF THE WORD VOID IS VISIBLE. DOCUMENT ALSO CONTAINS HEAT-SENSITIVE INK. TOUCH THE HEAT-RED IMAGE DISAPPEARS WITH HEAT.

1091078 021000021 230905625



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STATUS	Completed
Run Date	6/8/2020 2:44:21 PM
Batch	3001
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PropCode	
ProjectName	FEIL
Status	Completed

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
DHG MANAGEMENT COMPANY LLC

Plaintiff

Motion Sequence #002

-against-

Index No. 654319/2020

FRENCH PARTNERS LLC and NEW YORK
FRENCH BUILDING CO-INVESTORS, LLC [n/k/a
New York French Soundview LLC], TENANTS-IN
COMMON

**AFFIDAVIT IN
SUPPORT**

Defendants

-----X

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

Donna Vocaturo, being duly sworn, deposes and states:

1. I am an agent for Jeffrey Management Corp., as manager for French Partners LLC and French Building Co-Investors LLC *nka* New York French Soundview LLC, as Tenants-in-Common, and as such is fully familiar with the facts of this matter.

2. I have been an agent for Defendants for approximately 15 years. My job duties entail overseeing the lease signing process; collection and application of rents to the accounts of our tenants; commencing legal proceedings against tenants; and addressing most substantive issues that may arise between the owners and its tenants.

3. I have reviewed the Summons and Complaint which is the basis of this motion and am fully familiar with the allegations set forth therein. This affidavit is made in support of the underlying motion seeking summary judgment dismissing the Plaintiff's cause of action and granting judgment in favor of the Defendants on their first, second, fourth, and sixth

counterclaims, or, in the alternative granting Defendants use and occupancy during the pendency of this proceeding.

4. Attached hereto in support of the underlying motion as Exhibit A is a copy of the Lease dated July 31, 2007 entered into by the Plaintiff and Defendants. I am familiar with this Lease and the signatures contained therein as it is my job to review all commercial leases after they have been executed by the tenant and before they are executed by the landlord. Upon receipt of all leases, this Lease included, I review all pages to ensure changes have been initialed by the respective tenant; all riders; guarantees and the like have all been signed/completed by the respective tenant and all documents referenced in the lease are attached thereto. I then enter all essential provisions of the Lease into our computer system and forward the Lease to one of the principals of the corporation for signature, in this instance, as in most, Mr. Jeffrey Feil.

5. This Lease was made and executed in the normal course of our business. It is an essential part of our business to create documents such as this Lease, and the Lease was signed by the Landlord and entered into our system at or about the time same was executed by the Tenant. A copy of this Lease has been maintained in the Plaintiff's file located in our offices at 7 Penn Plaza, New York, NY 10001 and it is from the Plaintiff's file that I retrieved a copy to be included in support of this motion.

6. Additionally, attached hereto in support of the underlying motion as Exhibit B is the "First Amendment to Lease" dated February 16, 2010. I am familiar with this Lease Amendment, as in the normal course of Defendants' business and as part of the normal duties of my position, I reviewed the Amendment to Lease to ensure that same was signed by the Tenant in all the appropriate places and any changes were initialed. I then entered the specific essential

provisions of the Lease Amendment into our computer system and forwarded same to Mr. Jeffrey Feil, who then executed the Lease Amendment.

7. This Lease Amendment dated February 16, 2010 contains an agreement to abate a portion of Plaintiff's rent until January 1, 2011, at which time Plaintiff was required to commence reimbursement of the abated rent by making monthly payments of as follows:

- a. As per Paragraphs B and C of Exhibit A annexed to the Lease Amendment, Plaintiff was to pay, as additional rent for suites 900 and 1000, the sum of \$2721.08 each month for the period January 1, 2011 through March 31, 2023; and
- b. As per Paragraph A of Exhibit B annexed to the Lease Amendment, Plaintiff was to pay, as additional rent for suite 2700, the sum of \$680.27 per month for the period January 1, 2011 through March 31, 2023.

These payments, which were deemed additional rent by the terms of the Amendment, is identified on the rent ledger (see Exhibit H) as "def rent" (standing for deferred rent).

8. This First Amendment to Lease was made and executed in the normal course of our business. It is an essential part of our business to create documents such as this First Amendment to Lease. The First Amendment to Lease was signed by the Landlord and entered into our system at or about the time same was executed by the Tenant. A copy of this First Amendment to Lease has been maintained in the Plaintiff's file located in our offices at 7 Penn Plaza, New York, NY 10001 and it is from the Plaintiff's file that I retrieved a copy to be included in support of this motion.

9. As set forth in counsel's affirmation Plaintiff paid the rent in full, for the months of April, May and June, 2020 (during the pandemic), as each month's rent accrued, by check made

payable to the Landlord. These checks, copies of which are attached hereto as Exhibit C, do not contain any notation that they were being paid "under protest" or with any reservation of rights.

10. The attached copies of Plaintiff's checks are true and accurate representations of payments made by Plaintiff to Defendants for rents which came due pursuant to the terms of the Lease and which were credited to Plaintiff's account within a reasonable time after each check was tendered, as demonstrated on the rent ledger, a copy of which is attached hereto as Exhibit H.

11. As part of my responsibility in addressing issues relating to commercial tenants renting space from the Defendants, I am often required to review rent ledgers of individual tenants. I am, therefore, familiar with the process of entering charges on the tenant's accounts as well as payments made and, therefore, interpreting the information on this document.

12. In general, at the inception of the Lease, the basic charges for rent and additional rent are entered into the computer system by the Lease Administrator. Any one-time charges, as they accrue, are also entered into the computer system by the Lease Administrator or the bookkeeper. All payments are made through our "lock box" processing center and all payments which come through that system are uploaded by the bookkeeper to our computer system. The attached rent ledger (Exhibit H) is generated from the entries made into that system.

13. It is part of Defendants' regular course of business to make the entries which appear on the within rent ledger. The entries which appear on this ledger were made at or about the same time the charges accrued and/or any payments are made. I retrieved a copy of this rent ledger from a data base maintained in our computer system at Defendants office located at 7 Penn Plaza, New York, NY 10001 to be included in support of this motion.

14. As is demonstrated on the rent ledger, and not disputed by Plaintiff, no rent nor additional rent was paid by Plaintiff for the months of July and August, 2020. Therefore, and as a result of Plaintiff's failure to pay the monthly rent as required by the Lease, a default letter, dated August 5, 2020, was sent by Defendants to Plaintiff affording them until August 22, 2020 to tender payment, a copy of which is attached hereto as Exhibit D.

15. I am familiar with the August 5, 2020 default letter as I am made aware when a tenant defaults in the payment of rent, including this Plaintiff and, therefore, have reviewed the contents of same.

16. It is part of the regular course of business of Defendants to serve such default notice, as the one addressed to Plaintiff and attached as Exhibit D, when a tenant has failed to pay rent, and, therefore, it was in the regular course of business that the August 5, 2020 letter was sent by Defendants to Plaintiff.

17. Plaintiff failed to make any payment of the outstanding rent for the months of July and August, 2020 after receipt of the default letter and, therefore, in accordance with the August 5, 2020 letter and the Lease entered into between the parties, Defendants exercised their right to withdraw the security deposit in order to cure the default. The application of the security deposit to the rent arrears appears on the rent ledger (Exhibit H).

18. In accordance with Paragraph 57 (B) of the Lease, upon notice of default to Plaintiff, Defendants had the right to withdraw the security deposit and apply same to the outstanding rent.

19. As such, the Plaintiff is currently indebted to the Defendants in the amount of \$1,304,787.87, pursuant to the ledger (Exhibit H) and calculated as follows:

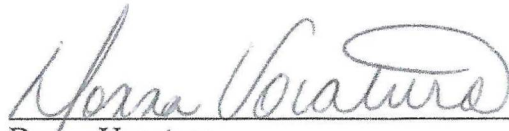
Plaintiff owed \$1,108,776.67 through September 30, 2020.

Defendants accessed \$931,595.00 from the Letter of Credit as allowed pursuant to paragraph 57(B) of the Lease leaving a balance of \$177,181.67.

Thereafter, there came due \$1,127,606.20 in rent and additional rent for the months of October, November, and December.


20. Based upon the foregoing and the arguments set forth in counsel's accompanying affirmation, the within motion should be granted.

WHEREFORE, it is respectfully requested that the within motion be granted in its entirety and that this Court grant such other and further relief as to this Court may seem just and proper.



Donna Vocaturo

Sworn to before me this
4th day of January, 2021



Notary Public

JEREMY MARC POLAND
NOTARY PUBLIC, State of New York
No. 02P06397429
Qualified in Suffolk County
Commission Expires 09/03/2023

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
DHG MANAGEMENT COMPANY LLC

Plaintiff

Motion Sequence #002

-against-

Index No. 654319/2020

FRENCH PARTNERS LLC and NEW YORK
FRENCH BUILDING CO-INVESTORS, LLC [n/k/a
New York French Soundview LLC], TENANTS-IN
COMMON

**AFFIRMATION IN
SUPPORT**

Defendants

-----X

Jeremy M. Poland, an attorney licensed to practice law in the Courts of the State of New York, affirms and states under the penalties of perjury.

1. Affiant is an associate of Horing Welikson Rosen & Digrugilliers PC, attorneys for the Defendants and, as such, am fully familiar with the facts of this matter.

2. Affiant makes this affirmation in support of Defendants' underlying motion seeking summary judgment in this proceeding and dismissing Plaintiff's remaining cause of action (which this Court found was inartfully plead) and granting summary judgment to the Defendants on their counterclaims.

PROCEDURAL AND FACTUAL HISTORY

3. Defendants are the owners/lessors of the building known as 551 Fifth Avenue located in the County of New York, City and State of New York (hereafter the "building").

4. Plaintiff leases Suites 900, 1000 and 2700 in the building (hereafter the "subject premises"), pursuant to a written lease agreement dated the 31st day of July, 2007 (hereafter the "Lease), a copy of which is annexed hereto as **Exhibit A**.

5. Paragraph 2 of the Lease (page 1 of Exhibit A) specifies the use of the subject premises as “general offices.”

6. Paragraphs 37(c) and 62 (c) of the Rider to Lease (pages 6 and 24 of Exhibit A) set forth the agreed upon rent to be paid for the subject premises, in addition to which, Plaintiff is also obligated to pay, as additional rent, real estate taxes (Paragraph 38 of the Rider to Lease; page 8 of Exhibit A); electric charges (Paragraph 39 of the Rider to Lease; page 9 of Exhibit A); cleaning charges (Paragraph 40 of the Rider to Lease, page 10 of Exhibit A); 27th floor operating payments (Paragraph 62[E] of the Rider to Lease; page 24 of Exhibit A); and the deferred rent provided for in the First Amendment to Lease dated February 16, 2020. A copy of which is annexed hereto as **Exhibit B**.

7. On February 16, 2010, prior to the COVID-19 pandemic, Defendants agreed to defer a portion of Plaintiff’s rent to be paid back in equal monthly installments commencing January 1, 2011 through and including March, 2023, which installments would be deemed “additional rent” (Paragraph B on page 5 of Exhibit B and bottom of page 7 of Exhibit B).

8. Plaintiff paid all monthly rent due through June 30, 2020 (when occupancy restrictions were relaxed), without any reservation of rights (*see copies of checks for the months of April, May and June, 2020 annexed hereto as Exhibit C*) and then, as of July 1, 2020, ceased paying rent and/or additional rent as required by the terms of the Lease.

9. Allegedly, Plaintiff ceased to pay rent because it claimed that Defendants had breached Paragraph 66 of the Lease which provides that “Landlord agrees that Tenant shall have twenty-four (24) seven (7) day a week access to the Demised Premises.”

10. In accordance with Paragraph 17(1) (page 3 of Exhibit A) of the Lease, Defendants served upon Plaintiff a notice requiring them to cure the default in the payment of rent and

additional rent which accrued as of August 1, 2020 in the sum of \$739,585.77 by August 22, 2020 (**Exhibit D**).

11. Plaintiff failed to remit payment of \$739,585.77 by August 22, 2020 as required by the default notice. As Plaintiff did not seek a stay of Defendants' enforcement of the Lease, Defendants thereafter, exercised their right under the terms of the Lease, and more particularly Paragraphs 34 and 57(B), by drawing down the security deposit and applying same to the rent and additional rent due through August and part of September, 2020.

12. Rather than remitting payment of the then outstanding balance of rent, Plaintiff commenced the instant action via service of a Summons and Complaint (**Exhibit E**).

13. Defendants thereafter brought a motion to dismiss Plaintiff's causes of action before this Court. This Court granted the motion in relation to the Plaintiff's second cause of action and denied the motion in relation to the Plaintiff's first cause of action, which the Court noted has been inartfully plead. A copy of this Court's Decision + Order on Motion is annexed hereto as **Exhibit F**.

14. Thereafter, Defendants filed an Answer to this proceeding (**Exhibit G**).

15. Said Answer alleged five affirmative defenses sounding in Plaintiff's failure to set forth a cause of action, upon documentary evidence, the voluntary payment doctrine, action is barred by executive Orders issued by the Governor of the State of New York, and Plaintiff's anticipatory breach of the Lease.

16. Additionally, the Answer sets forth six counterclaims.

17. The Counterclaims include, breach of contract, reasonable value for use and occupancy, a claim for ongoing monetary obligations, unjust enrichment, a claim for rent

previously waived, and attorneys' fees and costs. Defendants have failed to serve a reply to the counterclaims.

18. Through December 31, 2020, Plaintiff is indebted to Defendants for all rent and additional rent which have become due pursuant to the terms of the Lease, which after application of the security deposit, leaves a balance due in the sum of \$1,304,787.87 (Exhibit H, page 2 of Exhibit H).

ARGUMENT

POINT I

DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT PURSUANT TO CPLR 3212

19. A motion for summary judgment should be granted when the movant has made a prima facie showing of entitlement to judgment as a matter of law and the party opposing said motion fails to provide evidence in admissible form sufficient to show the existence of a material issue of fact (*Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 508 N.Y.S.2d 923 [1st Dept. 1986]).

20. As is set forth in more detail below, Defendants are entitled to summary judgment in this proceeding.

A. Defendant Did Not Breach the Lease

21. The crux of Plaintiff's inartfully pled remaining cause of action is that Plaintiff was unable to access the subject premises and as such the Defendants were in breach of Paragraph 66 of the Lease. Notably as Plaintiff paid rent through June 30, 2020 and only failed to pay rent commencing on July 1, 2020, Plaintiff's access claim must relate to actions that occurred post July 1, 2020, notably, after the Government restrictions had been materially lifted.

22. Initially, it bears noting that Plaintiff does not allege that Defendants denied Plaintiff access to the subject premises; nor limited Plaintiff's access to the subject premises; or otherwise

interfered with Plaintiff's access to the subject premises at any time throughout the tenancy, including but not limited to during the pandemic. The only conclusion that can be drawn from the foregoing is that, Plaintiff has acknowledged Defendants have not interfered or otherwise limited their access to the subject premises at any time, during which Plaintiff has not paid its rent, and, therefore, have fulfilled their obligation set forth in Paragraph 66 of the Lease.

23. Further as set forth in the attached affidavit of David Kuna, the Defendants' property manager, the Defendants never interfered with the Plaintiff's access to the subject premises as the building was open and available for access twenty-four hours a day, seven days a week as required by the Lease. Plaintiff allegedly did not access the subject premises, basing its decision not to do so on Governor Cuomo's Executive Order 202.8, issued March 20, 2020, which reduced a business' workforce by 100% effective March 22, 2020. This Order in no way required Defendant to shut down the building and, in fact, the building remained open and continues to remain open 24 hours per day 7 days per week in accordance with the Lease as evidenced by Plaintiff paying the rent through June 30, 2020 without reservation of rights or under protest.

24. The Complaint asserts that Paragraph 66 of the Lease entered into between the parties, which states, "Landlord agrees that Tenant shall have twenty-four (24) hour seven (7) day a week access to the Demised Premises, is an "express warranty" (*see Complaint* ¶1; page 2 of Exhibit E) and, then transmogrifies Article 66 to mean that Defendants warranted "that *no one* shall impair Tenant's access" (*see Complaint* ¶6; pages 3-4 of Exhibit E) and that the "Landlord granted a warranty even against third parties impairing Tenant's access, for any reason, . . .," including the government (*Complaint* ¶8; pages 4-5 of Exhibit E). Significantly,

the Lease does not say what Plaintiff wishes it said. The Lease plainly states that the Plaintiff shall have access and the Plaintiff always had access.

25. Plaintiff goes on to allege, that as a result of Governor Cuomo's Executive Order 202.8 Defendants have somehow breached the "express warranty" of 24-hour/7-day per week access to the subject premises as contained in Paragraph 66 of the Lease.

26. As stated by the Court of Appeals in the matter of *Farrell Lines Inc v City of New York*, 30 NY2d 76, 330 NYS2d 358 (1972), "a lease like any other contract, is to be interpreted in light of the purposes sought to be attained by the parties . . . An agreement of lease possesses no peculiar sanctity requiring the application of rules of construction different from those applicable to an ordinary contract . . . rules of construction of contracts require, whenever possible, that an agreement should be given a fair and reasonable interpretation . . ." (citations omitted). Plaintiff's interpretation of Paragraph 66 is neither fair nor reasonable and, in fact, borders on absurd.

27. Nothing set forth in Paragraph 66 indicates that the Defendants are themselves guaranteeing anything other than what is in *their* control, i.e., that *they* would not impede Plaintiff's access to the subject premises. To now interpret that paragraph to state that the Defendants can be found to have breached the terms of the Lease (entitling the Plaintiff to stop paying all rent) based upon an Executive Order which issued as a result of a state of emergency and which limited workforce, not access to a building, would place an unreasonable and undue burden on Defendants. Again, it merits repeating that Plaintiff in fact paid its rent through June 30, 2020 without protest and they only stopped paying its rent after the restrictions were lifted.

28. The Complaint asserts bare legal conclusions and inherently incredible factual claims, wherein it alleges, that pursuant to Paragraph 66 of the Lease, Defendants "granted a

warranty even against third parties impairing Tenant's access for any reason and that Paragraph 66 is a "warranty against all the world, ie., that no one shall impair Tenant's access." Nothing in the Lease supports such a warranty and such an interpretation should not be given any credence. In essence, Plaintiff is unilaterally determining that there has been a breach of the Lease when the Defendants have engaged in no action to breach the Lease.

29. "The Court should endeavor to give construction most equitable to both parties, and not construction which would give one of them an unreasonable advantage over the other." *Rose v. Schumer*, 280 A.D. 966, 116 N.Y.S.2d 505 [1st Dept. 1952]. Certainly, the Plaintiff's interpretation would give the Plaintiff an unreasonable advantage, ie. not paying over \$1,000,000.00 in rent, as they are claiming breach of the Lease without the Defendants having engaged in any conduct to lead to that breach.

30. Further the Court's aim is to arrive at a construction that will give a "practical interpretation of the expressions of the parties to the end that there will be a 'realization of [their] reasonable expectations.'" *Tantleff v. Truscelli*, 110 A.D.2d 240, 493 N.Y.S.2d 979 [2nd Dept. 1985]. The "reasonable expectation" of the parties, was that *Defendants* would not do anything to interfere with Plaintiff's ability to **access** its offices. As the uncontroverted facts demonstrate, Defendants have not interfered with that expectation.

31. "The lease, like any other contract, should be construed in such a manner as to effectuate the intent of the parties and as to produce a reasonable result." *Omath Holding Company v. The City of New York*, 149 A.D.2d 179, 545 N.Y.S.2d 557 [1st Dept. 1989].

32. There is nothing practical or reasonable about the Plaintiff's interpretation. Plaintiff is asking this Court to hold the Defendants responsible for all contingencies, including a global pandemic. Requiring an employer to reduce its workforce by 100% based on an Executive

Order which was in response to a health risk level not seen for over one hundred years, is not a reasonable expectation and holding the Defendants liable for breach of contract based on such a health risk is not a reasonable result.

33. In fact, Plaintiff's interpretation of Paragraph 66 of the Lease would be an absurd result which should flatly be rejected by this Court. As stated, in, "*Reape v. New York News, Inc.*, 122 A.D.2d 29, 504 N.Y.S.2d 469 [2nd Dept. 1986, ". . . where a particular interpretation would lead to an absurd result, the courts can reject such a construction in favor of one which would better accord with the reasonable expectations of the parties."

34. In order for Plaintiff's interpretation to stand, this Court would have to stretch the allowable interpretation of the language in the Lease to a preposterous level.

35. The only reasonable interpretation is that the Defendants are required to allow access to the subject premises twenty-four hours a day, seven days a week. Access which was never thwarted. Again, not to belabor the point, but Plaintiff paid all rent through June 30, 2020 and did not stop paying rent until after the restrictions were lifted. It would be an unreasonable interpretation of the Lease to find that there is an express guaranty that would make the Defendants liable for all unknown contingencies. As such, the Defendants have not breached the Lease and, therefore, summary judgment on Plaintiff's remaining cause of action should be granted.

B. Defendants are entitled to summary judgment on those rents voluntarily paid in April, May and June 2020

36. Plaintiff asserts in its First Cause of Action that it is seeking damages "in an amount in excess of \$1 million." It would appear that included in this claim, is Plaintiff's request to "recoup" those sums paid by Plaintiff for rent due in the months of April, May and June, 2020

(see Paragraph 15 of Complaint; page 7 of Exhibit E). As set forth below, there is no basis in fact or law for this claim.

37. There can be no dispute that when Plaintiff made the payments for April, May and June, it did not notify Defendants it was reserving its right to, at a later date, dispute these monies were due and owing or that payment was made as a result of fraud or mistake of law or fact, as such, its claim is barred under the *voluntary payment doctrine* (See *Dillon v U-A Columbia Cablevision of Westchester Inc.*, 100 NY2d 525, 760 NYS2d 726 [2003]). Further, the courts have held that the onus is on the party that receives what it believes is an improper demand for money to “take its position at the time of the demand and litigate the issue before, rather than after, payment is made” (*Beltway 7 & Properties Ltd v Blackrock Realty Advisers Inc.*, 167 AD3d 100, 90 NYS3d 3 [1st Dept. 2018] citing *Gimbel Brothers v Brook Shopping Centers*, 118 AD2d 532, 499 NYS2d 435 [2nd Dept 1986]).

38. As set forth in *Overbay, LLC v. Berkman, Henoch, Peterson, Peddy, & Fenchel, P.C.*, 185 A.D.3d 187, 128 N.Y.S.3d 56 [2nd Dept. 2020] “There is a presumption that payments are voluntary (see 82 N.Y. Jur 2d, Payment and Tender, § 82). Additionally, in order for a protest of payment to be characterized as appropriate, it must be in writing and made at the time of payment (see *Neuner v. Newburgh City School Dist.*, 92 A.D.2d 888, 459 N.Y.S.2d 874).” Plaintiff’s checks, voluntarily tendered, without any reservation of rights (see Exhibit C), demonstrates, as a matter of law, that Plaintiff is not entitled to the recoupment of these funds. Therefore, any claim that these payments should be included in Plaintiff’s claim for damages in its First Cause of Action, should be dismissed and, therefore, summary judgment on this issue should be granted in favor of the Defendants.

C. Even if Defendants are not entitled to summary judgment in toto they are entitled to summary judgment on the extent of liability.

39. Plaintiff's entire claim is based on Executive Order 202.8 which reduced the work force of a non-essential business by 100%. However, there is a substantial flaw to their claim.

40. Executive Order 202.35 issued May 29, 2020 (annexed here to as **Exhibit I**), lifted work force restrictions for non-essential businesses as soon as the region in which the businesses are located entered Phase 2 of New York State's re-opening plan. Specifically, it states (page 1 of Exhibit J):

That effective at 1:00 p.m. on May 29, 2020 that the reductions and restrictions on the in-person workforce at non-essential businesses or other entities shall no longer apply to Phase Two industries: ...

As Plaintiff admits in paragraph 11 of the Complaint (page 6 of Exhibit E), New York City entered Phase 2 as of June 22, 2020 and Plaintiff's industry was part of Phase 2. That means, plaintiff was able to resume having its full work force in the subject premises without government restriction as of that date.

41. Therefore, even if this Court does not grant Defendants' summary judgment on the Plaintiff's remaining cause of action, and to reiterate that cause of action is based on a wholly unreasonable and absurd interpretation of the Lease, this Court should limit any liability to damages that occurred between March 22, 2020 and June 21, 2020 (but only in the event that this Court totally rejects the Voluntary Payment Doctrine) since as of June 22, 2020 there is no Executive Order in place keeping the Plaintiff from using the subject premises as intended and, in fact, all restrictions on the workforce were suspended.

POINT II**A. Defendants are entitled to Default Judgment on their Counterclaims.**

42. Defendants interposed counterclaims in their Answer (see Exhibit G) when it was filed and served through the New York State Court Electronic Filing System ("NYSCEF") on November 18, 2020. As Plaintiff's time to serve a reply to the counterclaims has now expired, the claims interposed therein should be deemed admitted and Defendant should be entitled to a judgment on default.

POINT III**DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT ON THEIR COUNTERCLAIMS****A. Defendants are entitled to summary judgment on their first two counterclaims for breach of contract and the reasonable value of use and occupancy.**

43. As set forth above, the Defendants are the owner/lessors of the subject building and the parties entered into the Lease which provided for, among other things, the monthly payment of rent and additional rent (see Exhibit A and the Defendants' affidavit attached hereto).

44. Prior to and during the pendency of this proceeding, Plaintiff has continued to maintain possession of the subject premises, but has failed to pay its monetary obligations under the Lease (see Exhibit H and Defendants' affidavit attached hereto).

45. As such, Plaintiff is in breach of the Lease and indebted to the Defendants in the amount of \$1,304,787.87 (see affidavit of Donna Vocaturo attached hereto). In *1140 Broadway LLC v. Bold Food, KBFK Restaurant Corp.*, 2020 WL 7137817 (N.Y.Sup.), 2020 N.Y. Slip Op. 34017(U) (Trial Order), the Court found that a tenant's inability to pay rent is not a defense for failure to pay rent as the lease did not make the requirement of payment of rent contingent on the tenant being able to afford to pay the rent (see top of page 3 of **Exhibit J** annexed hereto).

46. Further, the Defendants are entitled to all owed use and occupancy under Real Property Law §220 which states a “landlord may recover reasonable compensation for the use and occupation of real property... under an agreement... and a parol lease or other agreement may be used as evidence of the amount to which [landlord] is entitled.”

47. The parties have a written Lease agreement which provides for the amount of rent to be charged. In this instance, the amount set forth therein should be used to determine the reasonable compensation for the use and occupancy of the subject premises. (see *Andejo Corp. v. South Street Seaport Limited Partnership*, 35 A.D.3d 174, 825 N.Y.S.2d 50 [1st Dept. 2006].

48. As there is no dispute that Plaintiff retains possession of the leased space and rent has not been paid, after deducting the security deposit which has already been applied to rent, there can be no dispute that Plaintiff is currently indebted to Plaintiff for the sum of \$1,304,787.87 through December 31, 2020.

D. Defendants are entitled to summary judgment on their fourth counterclaim for unjust enrichment.

49. “To state a claim for unjust enrichment, a plaintiff must allege that: ‘(1) the [defendant] was enriched, (2) at [plaintiff’s] expense, and (3) that it is against equity and good conscience to permit the [defendant] to retain what is sought to be recovered’ (*Georgia Malone & Co., Inc. v. Rieder*, 19 N.Y.3d 511, 516, 950 N.Y.S.2d 333 [2012] [internal quotation marks omitted]).” *Schroeder v. Pinterest*, 133 A.D.3d 12, 26, 17 N.Y.S.3d, 678, 690 [1st Dept. 2015].

50. Here, Plaintiff was enriched by continuing to reap the benefits of use of the subject premises, but has failed to pay the ongoing rent and additional rent which is at the expense of the Defendants. Further, upon information and belief, Plaintiff has sublet a portion of the premises and, upon information and belief is collecting rents from its subtenants. It would be inequitable and against good conscience not to grant Defendants summary judgment on its claim.

E. Defendants are entitled to summary judgment on their sixth counterclaim for legal fees

51. Pursuant to paragraph 19 of the Lease (see page 3 of Exhibit A), should Defendants prevail in this proceeding Plaintiff will be liable to Defendants for all costs and fees associated with this proceeding, including attorneys' fees.

52. As argued in detail above, Defendants are entitled to summary judgment on Plaintiff's cause of action and on Defendants' first, second, and fourth counterclaims. Therefore, Defendants would be entitled to summary judgment on their sixth cause of action seeking fees in an amount to be determined by this Court.

POINT IV

If Defendants are not entitled to Summary Judgment they are entitled to ongoing use and occupancy.

53. Defendants third counterclaim seeks the payment of use and occupancy *pendente lite*.

54. If this Court were to deny the within motion for summary judgment, use and occupancy should be ordered to be paid retroactively to July 1, 2020 (as Plaintiff paid all rent due through June 30, 2020) as there is no Executive Order in place keeping the Plaintiff from using the subject premises as intended and in fact, all restrictions on the workforce were suspended as of June 22, 2020, when New York City entered Phase 2 of the state re-opening plan (see EO 202.35 issued May 29, 2020 attached here to as Exhibit I) and, therefore, Plaintiff is and has been free, for some time, to use and occupy the premises for the purposes it was intended. As set forth in the affidavit of David Kuna, attached hereto, the Plaintiff has possession of the subject premise through their own use and the use of Plaintiff's subtenants.

55. It is well within this Court's discretion to order use and occupancy *pendente lite* during this proceeding. *862 Second Avenue LLC, v. 2 Dag Hammarskjold Plaza Condominium*, 185 A.D.3d 421, 124 N.Y.S.3d 783 [1st Dept. 2020]. Further, the amount to be paid does not

require a hearing as the amounts set forth in the Lease (Exhibit A) can be used. *Andejo Corp.*, *supra*.

56. Plaintiff's reasoning behind its claim for breach of contract has no bearing on Plaintiff's request for the payment of use and occupancy and there is no basis in law or fact why Plaintiff should not be paying rent to Defendants.

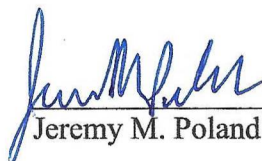
57. It is requested, therefore, that should this Court not grant Defendants' motion for summary judgment an Order be issued requiring the Plaintiff to pay use and occupancy *pendente lite* by the 10th of each month, retroactive to July 1, 2020, in the amount set forth in the monthly statement sent to Plaintiff.

CONCLUSION

58. For the reasons set forth above, Defendants are entitled to an Order granting summary judgment in their favor as to the Plaintiff's cause of action and as to Defendants' first, second, fourth, and sixth counterclaims or, in the alternative, an Order granting use and occupancy *pendente lite*.

WHEREFORE, it is respectfully requested that the within motion be granted in its' entirety and for such other and further relief as to this Court may seem just and proper.

Dated: Nassau, New York
January 6, 2021



Jeremy M. Poland