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Hearing Date: To Be Determined  
Time: To Be Determined

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
In re:  
213 BOND STREET, INC.,

Chapter 11  
Case No. 16-45132(NHL)

Debtor.  
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**DEBTOR'S APPLICATION FOR AN ORDER, PURSUANT TO 11 U.S.C. §§105(a)  
AND 363(b), (f) AND (m) AND FED. R. BANKR. P. 6004, AUTHORIZING AND  
APPROVING SALE OF DEBTOR'S REAL PROPERTY, FREE AND CLEAR OF  
ALL LIENS, ENCUMBRANCES AND INTERESTS, SUBJECT TO HIGHER  
AND BETTER OFFERS, AND GRANTING RELATED RELIEF**

TO THE HONORABLE NANCY HERSHEY LORD,  
UNITED STATES BANKRUPTCY JUDGE:

213 Bond Street, Inc., the debtor and debtor-in-possession herein (the "Debtor"), as and for its application (the "Application") for entry of an Order, pursuant to §§105(a) and 363(b), (f) and (m) of title 11 of the United States Code (the "Bankruptcy Code"), Rule 6004 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules") and Local Bankruptcy Rule 6004-1, authorizing and approving the Debtor's proposed sale of its real property located at 213 Bond Street, Brooklyn, New York 11217, Block 405, Lot 7 (the "Property"), free and clear of all liens, encumbrances and interest, to 213 BS Holdings LLC (the "Purchaser"), for the purchase price of \$1,125,000, pursuant to the terms of a certain proposed Contract of Sale With Leaseback, a copy of

which is attached hereto as *Exhibit "A"* (the "Contract"), but subject to any higher or better offers, and granting related relief, respectfully represents and alleges as follows:

### **BACKGROUND**

1. On November 15, 2016 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") with this Court and an Order for Relief was simultaneously entered. As of the Petition Date, the Debtor was authorized to remain in possession of its property and operate its business as a debtor-in-possession pursuant to §§1107(a) and 1108 of the Bankruptcy Code. No trustee, custodian or receiver was appointed, and no committee of creditors was formed.

2. The Debtor is the fee owner of certain real property located at 213 Bond Street, Brooklyn, New York 11217, Block 405, Lot 7 (the "Property"). The Property consists of a 20' x 75' lot with a four (4) unit building situated thereon. The Property is presently encumbered by, at a minimum, a first mortgage lien held by JPMorgan Chase Bank, N.A. ("Chase") (approximately \$330,000)<sup>1</sup>, a second mortgage lien held by Wells Fargo Bank, N.A./ The U.S. Small Business Administration (approximately \$285,000), and a mezzanine lien/security interest held by Promover Capital LLC (in the principal amount of \$200,000) securing amounts which total approximately \$815,000. The Debtor also owes real estate taxes in connection with the Property which totaled approximately \$45,000 as of January 3, 2017.

3. On March 1, 2017, the Debtor filed its proposed First Amended Chapter 11 Plan of Reorganization (the "Plan"), and corresponding proposed Disclosure Statement. Briefly,

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<sup>1</sup> On January 5, 2016, Chase commenced an action in the Supreme Court of the State of New York, County of New York, titled *JPMorgan Chase Bank, N.A. v. 213 Bond Street, Inc., et al.*, Index No. 500077/2016, seeking to foreclose the first mortgage against the Property (the "Foreclosure Action"). The Debtor appeared in and contested the Foreclosure Action. As a result of the Debtor's chapter 11 filing, further proceedings in the Foreclosure Action (including the entry of any judgment of foreclosure and sale) were stayed.

the Plan provides for the full payment of all of the Debtor's pre and post-Petition Date obligations, with applicable interest, if any. The Plan further provides for Paolo Secondo's retention of his equity interests in the Debtor. The Plan is proposed to be implemented by way of a post-confirmation sale of the Property.

#### **THE PROPOSED SALE OF THE PROPERTY**

4. Both prior to and after the Petition Date, the Debtor, with the assistance of its professionals (including Friedman-Roth Realty Services LLC ("FRRS") which was retained as the Debtor's exclusive real estate broker pursuant to an Order of this Court), has been working to find a suitable purchaser for the Property in the hopes of obtaining a purchase offer which would generate sufficient funds to satisfy the liens and obligations against the Property and result in a distribution to unsecured creditors. As a result of those efforts, the Debtor was introduced to the Purchaser by FRRS and extensive arms-length negotiations with the assistance of independent counsel ensued as to mutually agreeable terms of a sale of the Property. The Debtor and the Proposed Purchaser subsequently entered into the Contract.

5. Without limiting the detail provided therein, the material terms of the Contract can be summarized as follows:

- (a) The Purchaser will pay the sum of \$1,125,000 in consideration of the Debtor's conveyance of its interests in the Property free and clear of all liens and encumbrances;
- (b) The Purchaser, as landlord, will leaseback the Property to the Debtor, as tenant, for a seven (7) year term subject to the terms of an agreed upon "Triple Net Lease", a copy of which is attached to and made part of the Contract as Exhibit "A";
- (c) The proposed sale for "all cash" and is not subject to any mortgage contingency;

- (d) The proposed sale is not subject to any conditions other than good and marketable title;
- (e) The Property is being sold “As Is”;
- (f) The Purchaser has remitted a good faith deposit in the amount of \$112,500.00 which is currently being held in escrow by the Debtor's counsel and will be applied to the amounts payable at closing; and
- (g) A brokerage commission equal to 5% of the purchase price, i.e., \$56,250, is proposed to be paid by the Debtor in connection with the sale.

6. The Debtor believes that the proceeds of the sale of the Property under the Contract will be sufficient to satisfy all of its pre and post-Petition Date obligations as provided for under the plan. Accordingly, the Debtor believes that the Purchaser's offer for the Property is fair and reasonable and that approval thereof would be appropriate under the circumstances. The Purchaser has no affiliation with the Debtor or any insider of the Debtor. Other than the Debtor and the Purchaser, no other individuals or entities stand to benefit from the proposed sale. There is no prejudicial connection or affiliation between the Debtor and the Purchaser and the proposed sale was fully and adequately negotiated with the assistance of independent counsel. Thus, the Debtor avers that the proposed sale of the Property to the Purchaser is at arms-length.

7. The Purchaser's \$1,125,000 offer for the Property remains subject to any higher or better offers. As such, simultaneously with its filing of this Application, the Debtor is filing a separate motion (the “Bid Procedures Motion”) with this Court seeking the entry of an Order, pursuant to Bankruptcy Rules 2002, 6004 and 9006 and Local Bankruptcy Rule 6004-1, establishing bidding and noticing procedures, and scheduling auction and hearing dates, in connection with the Debtor's proposed sale of the Property.

### **JURISDICTION AND VENUE**

8. This Court has jurisdiction over this case and this Motion pursuant to 28 U.S.C. §§157 and 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. §157(b). Venue is proper in this district pursuant to 28 U.S.C. §§1408 and 1409. The statutory predicates for the relief sought herein are §§105(a) and 363(b), (f) and (m) of the Bankruptcy Code and Bankruptcy Rule 6004.

### **RELIEF REQUESTED**

9. By this Motion, the Debtor seeks this Court's authorization and approval of its proposed sale of the Property to the Purchaser upon the terms of the Contract.

10. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that a debtor, "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate..." In order to approve the sale of estate property outside of the ordinary course of business, the bankruptcy judge must "find from the evidence presented before him at the hearing a good reason to grant such an application." Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.), 722 F. 2d 1063, 1071 (2d Cir. 1983); see also Stephens Indus. v. McClung, 789 F.2d 386, 390 (6<sup>th</sup> Cir. 1986) ("[B]ankruptcy court can authorize a sale of all of a Chapter 11 debtor's assets under § 363(b)(1) when a sound business purpose dictates such action."). "[T]he standards for allowance of a pre-confirmation sale pursuant to § 363(b)(1) are that the sale proponent must show not only that there is both a 'sound business purpose' why the sale should be allowed to take place outside of the ordinary course...but that the proponent must also make a strong showing that all of the requirements for any § 363(b)(1) sale are met." In re Industrial Valley Refrigeration and Air Conditioning Supplies, Inc., 77 B.R. 15, 21 (Bankr. E.D. Pa. 1987) (citations

omitted). “These elements are the provision of accurate and reasonable notice; a showing that the price to be paid is adequate, *i.e.*, fair and reasonable; and establishing that ‘good faith’, *i.e.*, the absence of any lucrative deals with insiders, is present.” Id. It is clear that a debtor’s showing of a sound business justification need not be unduly exhaustive but, rather, a debtor is “simply required to justify the proposed disposition with sound business reason.” In re Baldwin United Corp., 43 B.R. 888, 906 (Bankr. S.D.Ohio 1984).

11. The Debtor respectfully submits that the proposed sale of the Property under the terms of the Contract represents a sound exercise of business judgment by the Debtor and that consummation thereof would be in the best interests of the estate. As discussed above, both prior to and after the Petition Date, the Debtor has been actively soliciting offers for the Property. The Debtor believes that the amounts proposed to be paid under the Contract represent the reasonable value of the Property under the circumstances, including the current depressed state of the real estate market, the existence of the pending Foreclosure Action regarding the Property, the substantial mortgages and liens asserted against the Property and the continuing accrual of interest and other charges relating to said mortgages and liens.

12. The proposed sale represents the best possible means for the Debtor, its creditors (who are few in number and primarily hold secured and priority unsecured claims) and its estate to recover the value of the Property under the circumstances. In this regard, the proceeds of the sale of the Property will be utilized to satisfy all claims against the Debtor, with applicable interest, as provided for under the Plan. Thus, the Debtor respectfully requests that the Court approve the proposed sale of the Property to the Purchaser or such other bidder that may make a higher or better bid therefor at the auction.

13. With regard to any encumbrances against property proposed to be sold by a debtor, §363(f) of the Bankruptcy Code provides:

The [debtor-in-possession] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if -

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

14. The Debtor respectfully submits that the requirements of §363(f) are or will be satisfied as of the date that the sale of the Property closes. All liens, claims and encumbrances against the Property will be paid at closing or shall attach to the proceeds of the proposed sale.

15. Moreover, the Debtor requests that this Court find that the Purchaser (or any successful bidder) be afforded the protections provided by §363(m) of the Bankruptcy Code in connection with the proposed sale which provides, in pertinent part:

The reversal or modification on appeal of an authorization under subsection (b) . . . of this section of a sale . . . of property does not affect the validity of a sale. . . under such authorization to an entity that purchased . . . such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale. . . were stayed pending appeal.

Although the Bankruptcy Code does not define “good faith purchaser”, the Court of Appeals for the Second Circuit has stated that good faith is shown by the integrity of a purchaser’s conduct during the course of the sale proceedings. Licensing by Paolo v. Sinatra (In re Gucci), 126 F.3d 380, 390 (2d Cir. 1997). Respectfully, and as required by §363(m) of the Bankruptcy Code, the Debtor and the Purchaser have acted in good faith in negotiating the proposed sale.

**CONCLUSION**

16. Based upon the foregoing, it is respectfully requested that this Application be granted in its entirety along with such other and further relief as may be just and proper.

Dated: New York, New York  
June 26, 2017

**PICK & ZABICKI LLP**

Counsel to the Debtor

By: \_\_\_\_\_

Douglas J. Pick

369 Lexington Avenue, 12<sup>th</sup> Floor

New York, New York 10017

(212) 695-6000



**EXHIBIT “A” - PROPOSED CONTRACT  
OF SALE WITH LEASEBACK**

This **CONTRACT OF SALE** with Leaseback is dated the 21st day of June, 2017

Between

**213 BOND STREET INC.**, Debtor-in-Possession, a New York corporation, whose address is 213 Bond Street, Brooklyn, New York 11217 ("Seller") and **213 BS HOLDINGS LLC**, whose address is c/o Jeffrey Zwick & Associates, P.C., 266 Broadway, Suite 403, Brooklyn, New York 11211 ("Purchaser").

Seller and Purchaser hereby covenant and agree as follows:

**WITNESSETH:**

**WHEREAS**, Seller owns the premises known as and located at 213 Bond Street, Brooklyn, New York, and as more fully described in the detailed property description set forth in Schedule "A" and section 1.01, infra (the "Premises"), and had commenced a case under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") on November 15, 2016 as #16-45132 (NHL) (the "Bankruptcy Case") in the United States Bankruptcy Court for the Eastern District of New York (the "Bankruptcy Court");

**WHEREAS**, Purchaser desires to acquire the Premises on the terms and conditions set forth herein; and

**WHEREAS**, Seller desires to sell the Premises to Buyer upon the terms and conditions set forth herein.

**NOW THEREFORE**, in consideration of the Premises and of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, intending to be legally bound, the Parties hereby agree as follows:

**Schedule A  
DESCRIPTION OF PREMISES**

The land together with all buildings and improvements thereon is located at and known as **213 Bond Street, Brooklyn, New York 11217** and are more fully described in the detailed property description set forth in Schedule "A".

Tax Map Designation:

**Block: 00405, Lot: Lot 0007**

( ☐ metes and bounds description attached hereto)

**Schedule B  
PERMITTED EXCEPTIONS**

1. Zoning regulations and ordinances which are not violated by any existing condition or present use thereof and which do not render title uninsurable.
2. Consents by the Seller or any former owner of the Premises for the erection of any structure or structures on, under or above any street or streets on which the Premises may abut.
3. Unpaid installments of real property taxes not due and payable on or before the Closing Date.
4. Deleted
5. Rights of utility companies to lay, maintain, install and repair pipes, lines, poles, conduits, cable boxes and related equipment on, over and under the Premises, provided that none of such rights imposes any monetary obligation on the owner of the Premises.
6. Minor encroachments of stoops, areas, cellar steps, trim cornices, lintels, window sills, awnings, canopies, ledges, fences, hedges, coping and retaining walls projecting from the Premises over any street or highway or over any adjoining property.
7. Revocability or lack of right to maintain vaults, coal chutes, excavations or sub-surface equipment beyond the line of the Premises.
8. Any state of facts that an accurate survey would disclose, provided that such facts do not render title unmarketable, nor prevent the current use and maintenance of the Premises and the improvements part thereof.

**Schedule C  
PURCHASE PRICE**

The Purchase Price shall be \$1,125,000.00, payable as more particularly set forth in Section 2 hereto.

**Schedule D  
MISCELLANEOUS**

1. Title insurer designated by the parties: To be determined by Purchaser.
2. Seller's tax identification number(s): 26-0269288
3. Purchaser's tax identification number(s): To be furnished prior to Closing
4. Scheduled time and date of Closing (§3.01): Within ten (10) business days of delivery of notice to Purchaser of an entry of an Order by the Bankruptcy Court approving this sale TIME BEING OF THE ESSENCE provided that the Bankruptcy Court has approved this Contract of

- Sale.
5. Place of Closing (§3.01): Pick & Zabicki LLP, 369 Lexington Avenue, 12<sup>th</sup> Floor, New York or offices of Purchaser's lender or its counsel.<sup>1</sup>
  6. Assessed valuation of Land: N/A
  7. Assessments on Land: N/A
  8. Maximum Amount which Seller must spend to cure violations, etc. (§7.02): \$25,000.00 plus any government imposed charges or fines on the property and any civil penalties, all with interest thereon.
  9. Maximum Expense of Seller to cure title defects, etc. (§13.02): Seller's legal and administrative expenses, plus the satisfaction of all liens, mortgages, claims, rights, interests, charges and encumbrances on or affecting the Premises, all of which shall be discharged at Closing.
  10. Broker, if any (§14.01): Friedman-Roth Realty Services LLC
  11. Party to pay broker's commission (§14.01): Seller, subject to Bankruptcy Court Order (however, Purchaser shall have no obligation therefor).
  12. Address for notices (§15.01):

If to Seller: 213 Bond Street, Inc.  
c/o Paolo Secondo, President  
213 Bond Street  
Brooklyn, NY 11217

with a copy to: Pick & Zabicki LLP  
369 Lexington Avenue, 12<sup>th</sup> Floor  
New York, NY 10017  
Attn: Douglas J. Pick, Esq.  
Email: [dpick@picklaw.net](mailto:dpick@picklaw.net)  
(212) 695-6000

If to Purchaser: 213 BS Holdings LLC  
c/o Jeffrey Zwick, Esq.  
Jeffrey Zwick & Associates, P.C.  
266 Broadway  
Brooklyn, NY 11211  
(718) 513-2050 ext. 123  
[Jeffrey@jzlegal.com](mailto:Jeffrey@jzlegal.com)

With a copy to: Jeffrey Zwick, Esq.  
Jeffrey Zwick & Associates, P.C.  
266 Broadway  
Brooklyn, NY 11211  
(718) 513-2050 ext. 123  
[Jeffrey@jzlegal.com](mailto:Jeffrey@jzlegal.com)

13. Limitation Date for actions based on Seller's surviving representations and other obligations:  
N/A
14. Transfer Taxes. Seller to pay all real estate transfer taxes, if any

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<sup>1</sup> This Contract is not conditioned on any mortgage financing.

15. Down payment. \$112,500.00.

### **Section 1. Sale and Leaseback of Premises and Acceptable Title**

§1.01. Seller shall sell to Purchaser, and Purchaser shall purchase from Seller, at the price and upon the terms and conditions set forth in this contract:

- (a) the parcel of land more particularly described in Schedule "A" above (the "Land");
- (b) any and all interest in all buildings and improvements situated on the Land (collectively, "Building");
- (c) all right, title and interest of Seller, if any, in and to the Land lying in the bed of any street or highway in front of or adjoining the Land to the center line thereof and to any unpaid award for any taking by condemnation or any damage to the Land by reason of a change of grade of any street or highway;
- (d) the appurtenances and all the estate and rights of Seller in and to the Land and Building; and
- (e) all right, title and interest of Seller, if any, in and to the fixtures, equipment and other personal property attached or appurtenant to the Premises (all of the foregoing being collectively, the "Premises").

The Premises is located at or known as: **213 Bond Street, Brooklyn, New York 11217**  
Tax Map Designation:  
**Block: 00405, Lot: 0007**

§1.02. Seller shall convey and Purchaser shall accept fee simple title by Bargain and Sale deed with Covenant's against Grantor's Acts to the Premises as Purchaser's title insurer shall be willing to approve and insure in accordance with its standard form policies approved by the New York State Department of Financial Services, and subject only to:

- (a) the matters set forth above in Schedule B (collectively, the "Permitted Exceptions"); and
- (b) Such other matters as (i) the title insurer specified in Schedule D herein (or if none is so specified, then any member of the New York Board of Title Underwriters) shall be willing, without special premium, to omit as exceptions to coverage in any Owner's Policy and Loan Policy of Title Insurance.

§1.03 Notwithstanding anything to the contrary contained herein, pursuant to sections 363(b) and (f) of the Bankruptcy Code, the Seller shall convey the premises to the Purchaser free and clear of all liens, mortgages, claims, rights, interests, charges and encumbrances on or affecting the Premises, if any exist, with such liens, claims and interests, if any, to attached to the proceeds of sale to the

same extent, priority, and validity and in the same amount as they existed as of the Closing Date, and subject to all claims and defenses of the Seller and its estate.

§1.04 Leaseback. Simultaneously with the close of escrow and transfer of title, Purchaser as Landlord and Seller as Tenant shall each execute and deliver a leaseback of the Building in the form attached as Exhibit "A" (the "Lease"). The parties agree that the leaseback of the Building constitutes an essential element of the consideration of this agreement. At Closing, Seller as Tenant under the Lease shall pay to Purchaser as Landlord all amounts due under the terms of the Lease which are to be paid on the execution and delivery thereof.

**Section 2. Purchase Price, Acceptable Funds, Existing Mortgages, Purchase Money Mortgage and Escrow of Downpayment**

§2.01. The purchase price ("Purchase Price") to be paid by Purchaser to Seller for the Premises is \$1,125,000.00 payable as follows:

- (a) On the signing of this Contract of Sale, by check or wire transfer, subject to collection, the receipt of which is hereby acknowledged by Seller:

\$112,500.00 (the "Cash Deposit") to Escrowee

and

- (c) At Closing by check or wire transfer, subject to adjustments as provided for herein, and subject to collection: \$1,012,500.00

§2.02. All monies payable under this contract, unless otherwise specified in this contract, shall be paid by

- (a) certified checks of Purchaser or any person making a purchase money loan to Purchaser drawn on any bank, savings bank, trust company or savings and loan association having a banking office in the State of New York or

- (b) official bank checks drawn by any such banking institution or by wire transfer of funds, payable to the order of Seller, except that uncertified checks of Purchaser payable to the order of Seller up to the amount of one-half of one percent of the Purchase Price shall be acceptable for sums payable to Seller at the Closing.

§2.03. (a) If the sum paid under paragraph (a) of Schedule C or any other sums paid on account of the Purchase Price prior to the Closing (collectively, "Downpayment") are paid by check or checks drawn to the order of and delivered to Seller's attorney ("Escrowee"), the Escrowee shall hold the proceeds thereof in escrow in a special bank account (or as otherwise agreed in writing by Seller, Purchaser and Escrowee) until the Closing or sooner termination of this contract and shall pay over or apply such proceeds in accordance with the terms of this section. Escrowee need not hold such proceeds in an interest-bearing account, but if any interest is earned thereon, such interest shall be paid to the same party entitled to the escrowed proceeds, and the party receiving such interest shall pay any income taxes thereon. The tax identification numbers of the parties are either set forth in Schedule D or shall be furnished to Escrowee upon request. At the Closing, such proceeds and the interest thereon, if any, shall be paid by Escrowee to Seller. If for any reason the Closing does not occur and either party makes a written demand upon Escrowee for payment of such amount, Escrowee shall give written notice to the other party of such demand. If Escrowee does not receive a

written objection from the other party to the proposed payment within 10 business days after the giving of such notice, Escrowee is hereby authorized to make such payment. If Escrowee does receive such written objection within such 10 day period or if for any other reason Escrowee in good faith shall elect not to make such payment, Escrowee shall continue to hold such amount until otherwise directed by written instructions from the parties to this contract or a final judgment of a court. However, Escrowee shall have the right at any time to deposit the escrowed proceeds and interest thereon, if any, with the clerk of the Supreme Court of the county in which the Premises is located. Escrowee shall give written notice of such deposit to Seller and Purchaser. Upon such deposit Escrowee shall be relieved and discharged of all further obligations and responsibilities hereunder.

(b) The parties acknowledge that Escrowee is acting solely as a stakeholder at their request and for their convenience, that Escrowee shall not be deemed to be the agent of either of the parties, and that Escrowee shall not be liable to either of the parties for any act or omission on its part unless taken or suffered in bad faith, in willful disregard of this contract or involving gross negligence. Seller and Purchaser shall jointly and severally indemnify and hold Escrowee harmless from and against all costs, claims and expenses, including reasonable attorneys' fees, incurred in connection with the performance of Escrowee's duties hereunder, except with respect to actions or omissions taken or suffered by Escrowee in bad faith, in willful disregard of this contract or involving gross negligence on the part of Escrowee.

(c) Escrowee has acknowledged agreement to these provisions by signing in the place indicated on the signature page of this contract.

### **Section 3. The Closing**

§3.01. Except as otherwise provided in this contract, the closing of title pursuant to this contract ("Closing") shall take place on the date and time of closing specified in Schedule D at 10:00 a.m. at Purchaser's lender, if any, or the offices of Pick & Zabicki LLP, 369 Lexington Avenue, 12<sup>th</sup> Floor, New York, New York 10017 if Purchaser has no lender (the actual date of the Closing being herein referred to as "Closing Date").

### **Section 4. Representations and Warranties of Seller**

Seller represents and warrants to Purchaser as follows, which are true and correct as of the date hereof and shall be true and correct as of Closing:

§4.01. Seller is the sole owner of the Premises.

§4.02. There are no pending, or in the best of Seller's knowledge, threatened, nor has Seller received notice of (a) condemnation or eminent domain proceedings, (b) litigation proceedings, other than Seller's pending Bankruptcy Case, and the foreclosure proceedings commenced by JPMorgan Chase Bank, N.A. filed 1/5/16 as Index No. 500077/16, or (c) employee or union claims, which would affect the Premises.

§4.03. Seller is a duly organized and validly existing corporation under the laws of the State of New York. Seller is in good standing, and upon the issuance of the Bankruptcy Court Order, Seller shall have the full capacity, right, power and authority to enter into this Agreement and to perform its obligations hereunder. The execution and delivery of this Contract has been duly authorized by all necessary and appropriate action of Seller.

§4.04. As of the date of this Agreement, Seller represents that it has no knowledge, of, nor has received any notice of, any special assessments against the Premises.

§4.05. There are no service or supply or management agreements affecting or relating to the Premises, and there shall be none as of Closing.

§4.06. Seller has no knowledge of the presence in or upon the Premises of any toxic or "Hazardous Substances" (as that term is defined in the Comprehensive Environmental Response Compensation and Liability Act, and the rules and regulations thereof), or pollutants, or underground storage tanks. Seller has no knowledge that any portion of the Premises has ever been used by a dry cleaner.

§4.07. There are no unrecorded instruments or agreements related to the Premises, (other than the Leases), or its operation, which will survive the Closing. This paragraph shall survive the Closing.

§4.08. No work has been done or will be done that might give rise to the filing of a notice of mechanic's lien against the Premises, and in the event any such indebtedness occurs or such mechanic's liens are filed, Seller will satisfy such indebtedness and remove any such mechanic's liens prior to Closing.

§4.09. Seller has not transferred or agreed to transfer any development or air rights pertaining to the Premises, and has no knowledge of any such transfer or agreement to so transfer by any former owner of the Premises. This paragraph shall survive the Closing.

§4.10. Seller represents that no person, firm, corporation or other entity has any right or option to acquire the Premises, any portion thereof or any interest therein, other than as set forth in this Contract. This paragraph shall survive the Closing.

§4.11. Seller has not received written notice of any default or breach by the Seller under any of the covenants, conditions, restrictions, rights of way or easements affecting the Premises or any portion thereof. To the knowledge of Seller, no such default or breach now exists; no event has occurred and is continuing which with notice and/or the passage of time would constitute a default thereunder.

## **Section 5. Acknowledgments of Purchaser**

Purchaser acknowledges that:

§5.01. Purchaser has inspected the Premises, is fully familiar with the physical condition and state thereof, shall accept the Premises "**As Is**" and in its present condition, and subject to the existing leases of which copies were previously provided to the Purchaser, subject to reasonable use, wear, tear and natural deterioration between now and the Closing Date, without any reduction in the Purchase Price for any change in such condition by reason thereof subsequent to the date of this contract.

§5.02. Before entering into this contract, Purchaser has made such examination of the Premises, the existing leases, all zoning, regulations, codes and ordinances concerning the Premises, and all other matters affecting or relating to this transaction as Purchaser deemed necessary. In entering into this contract, Purchaser has not been induced by and has not relied upon any representations, warranties or statements, whether express or implied, made by Seller or any agent, employee or other representative of Seller or by any broker or any other person representing or purporting to represent



§9.03. No fixtures, equipment or personal property included in this sale shall be removed from the Premises unless the same are replaced with similar items of at least equal quality prior to the Closing.

§9.04. Seller shall not withdraw, settle or otherwise compromise any protest or reduction proceeding affecting real estate taxes assessed against the Premises for any fiscal period in which the Closing is to occur or any subsequent fiscal period without the prior written consent of Purchaser, which consent shall not be unreasonably withheld. Real estate tax refunds and credits received after the Closing Date which are attributable to the fiscal tax year during which the Closing Date occurs shall be apportioned between Seller and Purchaser, after deducting the expenses of collection thereof, which obligation shall survive the Closing.

§9.05. Seller shall allow Purchaser or Purchaser's representatives access to the Premises, upon reasonable prior notice at reasonable times.

#### **Section 10. Seller's Closing Obligations**

At the Closing, Seller shall deliver the following to Purchaser:

§10.01. A statutory form of bargain and sale deed with covenants against grantor's acts, containing the covenant required by Section 13 of the Lien Law, and properly executed in proper form for recording so as to convey the title required by this contract.

§10.02. To the extent they are then in Seller's possession and not posted at the Premises, certificates, licenses, permits, authorizations and approvals issued for or with respect to the Premises by governmental and quasi-governmental authorities having jurisdiction.

§10.03. Such affidavits as Purchaser's title company shall reasonably require in order to omit from its title insurance policy all exceptions for judgments, bankruptcies or other returns against persons or entities whose names are the same as or similar to Seller's name.

§10.04. Possession of the Premises "As Is" subject to the rights of the Tenant under the Lease.

§10.05. Any other documents required by this contract to be delivered by Seller.

§10.06. Checks to the order of the appropriate officers in payment of all applicable real property transfer taxes and copies of any required tax returns therefore executed by Seller and with Purchaser which checks shall be certified or official bank checks if required by the taxing authority.

§10.07. A duly executed copy of the Lease by Tenant thereunder all payments required therein to be made to Purchaser.

#### **Section 11. Purchaser's Closing Obligations**

At the Closing, Purchaser shall:

§11.01. Deliver to Seller payment of the portion of the Purchase Price payable at the Closing, as adjusted for apportionments under Section 12.

§11.02. Cause the deed to be recorded, duly complete all required real property transfer tax returns and cause all such returns to be delivered to the appropriate officers promptly after the Closing.

§11.03. Deliver any other documents required by this contract to be delivered by Purchaser including the Lease.

Seller, which are not expressly set forth in this contract, whether or not any such representations, warranties or statements were made in writing or orally.

#### **Section 6. Seller's Obligations as to Leases and Tenancies**

§6.01. Seller represents that there are no new leases or new tenancies or new occupancy agreements affecting the Premises as of the date hereof. Between the date of this Contract and the Closing, Seller shall not enter into any new lease, license, or occupancy agreement for any portion of the Premises, except however that Seller (or an entity of which Paolo Secondo is the sole member or shareholder as the case may be) shall enter into the Lease effective as of the Closing of title.

#### **Section 7. Responsibility for Violations**

§7.01. Except as provided in §2.01, §7.02 and §7.03, all notes or notices of violations of law or governmental ordinances, orders or requirements which were noted or issued prior to the Closing Date by any governmental department, agency or bureau having jurisdiction as to conditions affecting the Premises and all liens which have attached to the Premises prior to the Closing pursuant to the Administrative Code of the City of New York, if applicable, shall be removed or complied with by Seller. If such removal or compliance has not been completed prior to the Closing, Seller shall pay to Purchaser at the Closing the reasonably estimated unpaid cost to effect or complete such removal or compliance, and Purchaser shall be required to accept title to the Premises subject thereto.

§7.02. If the reasonably estimated aggregate cost to remove or comply with any violations which Seller is required to remove or comply with shall exceed \$10,000.00 (ten thousand dollars), Seller shall have the right to cancel this contract, in which event the sole liability of Seller shall be as set forth in §13.02, unless Purchaser elects to accept title to the Premises subject to all such violations, in which event Purchaser shall be entitled to a credit against the monies payable at the Closing.

§7.03. Subject to the other provisions with respect to violations elsewhere herein, regardless of whether a violation has been noted or issued prior to the date of this contract, Seller's failure to remove or fully comply with the following violations shall not be an objection to title:

(a) any violations of New York City Local Law 5 of 1973, as amended (relating to fire safety in office buildings), if applicable.

#### **Section 8. Destruction, Damage or Condemnation**

§8.01. The provisions of Section 5-1311 of the General Obligations Law shall apply to the sale and purchase provided for in this contract.

#### **Section 9. Covenants of Seller**

Seller covenants that between the date of this contract and the Closing:

§9.01. Seller shall not enter into, modify or amend any lease or executory contract concerning all or any portion of the Premises.

§9.02. Seller shall maintain in full force and effect until the Closing all existing insurance policies through the date of Closing.

## **Section 12. Apportionments**

§12.01. The following apportionments shall be made between the parties at the Closing as of the close of business on the day prior to the Closing Date:

- (a) Rent under the leaseback
- (b) real estate taxes and vault charges, if any, on the basis of the fiscal period for which assessed;
- (c) any other items listed in Schedule D.

If the Closing shall occur before a new tax rate is fixed, the apportionment of taxes at the Closing shall be upon the basis of the old tax rate for the preceding period applied to latest assessed valuation. Promptly after the new tax rate is fixed, the apportionment of taxes shall be recomputed. Any discrepancy resulting from such recomputation and any errors or omissions in computing apportionments at Closing shall be promptly corrected, which obligations shall survive the Closing.

## **Section 13. Objections to Title, Failure of Seller or Purchaser to Perform and Vendee's Lien**

§13.01. Purchaser shall promptly order an examination of title and shall cause a copy of the title report to be forwarded to Seller's attorney upon receipt. Seller shall be entitled to a reasonable adjournment or adjournments of the Closing for up to 60 days or until the expiration date of any written commitment of Purchaser's Institutional Lender delivered to Purchaser prior to the scheduled date of Closing, whichever occurs first, to remove any defects in or objections to title noted in such title report and any other defects or objections which may be disclosed on or prior to the Closing Date.

§13.02. If Seller shall be unable to convey title to the Premises at the Closing in accordance with the provisions of this contract despite having used good-faith efforts, Purchaser nevertheless, may elect to accept such title as Seller may be able to convey with a credit against the monies payable at the Closing equal to the reasonably estimated cost to cure the same (up to \$10,000.00), but without any other credit or liability on the part of Seller. If Purchaser shall not so elect, Purchaser may terminate this contract and the sole liability of Seller shall be to refund the Downpayment to Purchaser. Upon such refund, this contract shall be null and void and the parties hereto shall be relieved of all further obligations and liability other than any arising under Section 14. Except as expressly set forth herein, Seller shall not be required to bring any action or proceeding or to incur any expense in excess of \$10,000.00 to cure any title defect, but the foregoing shall not limit Seller's obligation to use good-faith efforts to attempt to obtain Bankruptcy Court approval of this Contract and Seller's payment for and discharge of all liens, mortgages, claims, rights, interests, charges and encumbrances on or affecting the Premises, and to pay all legal fees and administrative costs in connection with the Bankruptcy Case.

§13.03 Any unpaid taxes, assessments, together with the interest and penalties thereon to a date not less than two days following the Closing Date, and any other liens and encumbrances which Seller is obligated to pay and discharge or which are against corporations, estates or other persons in the chain of title, together with the cost of recording or filing any instruments necessary to discharge such liens and encumbrances of record, may be paid out of the proceeds of the monies payable at the Closing if Seller delivers to Purchaser on the Closing Date official bills for such taxes, assessments, interest and penalties and instruments in recordable form sufficient to discharge any other liens and encumbrances of record. Upon request made a reasonable time before the Closing, Purchaser shall provide at the Closing separate checks for the foregoing payable to the order of the holder of any such lien, charge or encumbrance and otherwise complying with §2.02.

§13.04. If Purchaser shall default in the performance of its obligation under this contract to purchase the Premises and provided Seller would have been ready, willing, and able to close, the sole remedy of Seller shall be to retain the Downpayment as liquidated damages for all losses, damages and expenses suffered by Seller, including without limitation the loss of its bargain.

§13.05. Purchaser shall have a vendee's lien against the Premises for the amount of the Downpayment, but such lien shall not continue after default by Purchaser under this contract.

#### **Section 14. Broker**

§14.01. If a broker is specified in Schedule D, Seller and Purchaser mutually represent and warrant that such broker is the only broker with whom they have dealt in connection with this contract and that neither Seller nor Purchaser knows of any other broker who has claimed or may have the right to claim a commission in connection with this transaction, unless otherwise indicated in Schedule D. The commission of such broker shall be paid pursuant to separate agreement by the party specified in Schedule D. If no broker is specified in Schedule D, the parties acknowledge that this contract was brought about by direct negotiation between Seller and Purchaser and that neither Seller nor Purchaser knows of any broker entitled to a commission in connection with this transaction. Unless otherwise provided in Schedule D, Seller and Purchaser shall indemnify and defend each other against any costs, claims or expenses, including attorneys' fees, arising out of the breach on their respective parts of any representations, warranties or agreements contained in this paragraph. The representations and obligations under this paragraph shall survive the Closing or, if the Closing does not occur, the termination of this contract.

#### **Section 15. Notices**

§15.01. All notices under this contract shall be in writing and shall be delivered personally or shall be sent by certified mail or reputable overnight courier (such as FedEx) with a copy simultaneously sent by email, addressed as set forth in Schedule D, or as Seller or Purchaser shall otherwise have given notice as herein provided.

#### **Section 16. Limitations on Survival of Representations, Warranties, Covenants and other Obligations**

§16.01. Except as otherwise provided in this contract, no representations, warranties, covenants or other obligations of Seller set forth in this contract shall survive the Closing, and no action base thereon shall be commenced after the Closing.

§16.02 The delivery of the deed by Seller, and the acceptance thereof by Purchaser, shall be deemed the full performance and discharge of every obligation on the part of Seller to be performed hereunder, except those obligations of Seller which are expressly stated in this contract to survive the Closing.

#### **Section 17. Miscellaneous Provisions**

§17.01. No permitted assignment of Purchaser's rights under this contract shall be effective against Seller unless and until an executed counterpart of the instrument of assignment shall have been delivered to Seller and Seller shall have been furnished with the name and address of the assignee. The term "Purchaser" shall be deemed to include the assignee under any such effective assignment. Purchaser may assign this contract to any entity formed by Purchaser.

§17.02. This contract embodies and constitutes the entire understanding between the parties with respect to the transaction contemplated herein, and all prior agreements, understandings, representations and statements, oral or written, are merged into this contract. Neither this contract nor any provision hereof may be waived, modified, amended, discharged or terminated except by an

instrument signed by the party against whom the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

§17.03. This contract shall be governed by, and construed in accordance with, the law of the State of New York.

§17.04. The captions in this contract are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this contract or any of the provisions hereof.

§17.05. This contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs or successors and permitted assigns.

§17.06. This contract shall not be binding or effective until properly executed and delivered by Seller and Purchaser.

§17.07. As used in this contract, the masculine shall include the feminine and neuter, the singular shall include the plural and the plural shall include the singular, as the context may require.

§17.08. If the provisions of any schedule or rider to this contract are inconsistent with the provisions of this contract, the provisions of such schedule or rider shall prevail.

#### **Section 18. Bankruptcy Provisions**

§18.01. This Contract is subject to the approval, by way of the entry of an appropriate Order, by the United States Bankruptcy Court for the Eastern District of New York in connection with Seller's pending chapter 11 bankruptcy case (Case No. 16-45132 (NHL)). Seller shall file an application (the "Sale Application") for such approval to the Bankruptcy Court within fifteen(15) days after receipt of this Contract signed by Purchaser and the tender of the Deposit under §2.01 of this Contract. Seller shall cooperate and comply in good faith with any procedural requirements of the Bankruptcy Court in order to receive the Court's approval of the sale. Seller counsel shall keep Purchaser counsel apprised of all filings and developments in the bankruptcy case. In the event this Contract is not approved by the Bankruptcy Court and/or if the parties are otherwise prevented from closing by any act by the Court or other governmental or judicial body or agency, this Contract shall be null and void and Seller shall return to Purchaser the entire amount of Purchaser's downpayment and deposit without set-off or deduction.

§18.02. Purchaser acknowledges and understands that the Seller will seek Court approval of the terms and conditions of this Contract through a hearing ("Sale Hearing") on the Sale Motion, and, consistent with Bankruptcy Code section 363, such approval will be sought by the Seller subject to any higher or better offers that may be tendered to the Seller at the Sale Hearing. In seeking higher or better offers, if this Agreement is transferred or signed or accepted by an entity or an individual other than Purchaser, or if the Bankruptcy Court approves the sale of the Premises to a person other than Purchaser (a "Higher Sale"), then Purchaser shall be entitled to receive from the proceeds of any such Higher Sale at the time of closing thereof, a "Termination Fee" of \$50,000.00. Seller acknowledges and agrees that the Termination Fee is fair compensation, does not constitute a penalty, and without which Purchaser would not have agreed to enter into this Contract.

§18.03. The terms and conditions of sale to govern the bidding at the Sale Hearing shall provide that in order to be considered by the Court and admissible on the date of the Sale Hearing, any competing offer ("Competing Offer") must satisfy the following terms and conditions: (i) a Competing Offer shall provide for a Purchase Price of at least \$75,000.00 more than the Purchase Price as provided for in this Contract; (ii) the Competing Offer shall be on the same terms and conditions of this

Contract; (iii) a higher and better Competing Offeror must at the Sale Hearing sign an agreement agreeing to be bound by the terms and conditions of this Contract; (iv) the Competing Offer shall not be contingent upon the receipt of financing necessary to its consummation, and the Competing Offeror shall have demonstrated evidence of its ability to conclude the transaction upon the terms and conditions of this Contract, without delay; (v) the Competing Offer shall not be conditioned upon the outcome of unperformed due diligence by the Competing Offeror; (vi) the Competing Offeror shall provide, at or before the Sale Hearing, a certified check made payable to Pick & Zabicki, LLP as Attorneys for the Seller, in the sum of \$112,500.00 as a downpayment; and (vii) in the case of any subsequent competing offer ("Subsequent Competing Offer") received from any party, which may, include, without limitation, Purchaser, (after a prior competing bid has been received) which satisfies the conditions set forth above, such Competing Offer shall provide for an aggregate consideration at least \$25,000.00 in excess of that provided by the prior better offer and shall otherwise comply with all conditions of the Agreement (i.e., each incremental bid must be not less than \$25,000 in excess of the Competing Offer, and not less than \$25,000 in excess of each bid following the first Competing Offer).

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the date first above written.

"PURCHASER":  
213 BS HOLDINGS LLC

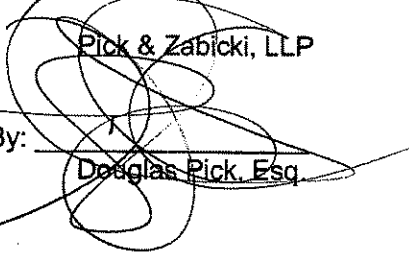
By:   
Its: **Member**

Receipt by Escrowee

"SELLER":  
213 BOND STREET INC.

By:   
Paolo Secondo  
President

The undersigned Escrowee hereby acknowledges receipt of, by check subject to collection, to be held in escrow pursuant to §2.03.

  
By: **Douglas Pick, Esq.**  
Pick & Zabicki, LLP

**RIDER ATTACHED TO AND MADE A PART OF CONTRACT BETWEEN**  
**213 BOND STREET, INC., ("Seller") and, ("Purchaser"),** concerning the Premises located at or known as: 213 Bond Street, New York 11217. Tax Map Designation: **Block: 00405, Lot: 0007** ("Premises").

1. The Purchaser shall take the Premises subject to the following:
  - a.) Any state of facts an accurate survey may show, provided such facts do not render title unmarketable or prevent the current use and maintenance of the Premises.
  - b.) Covenants, restrictions, utility easements and recorded consents of record as of the date hereof, provided they do not prohibit the current use or erection or maintenance of the structures now on the Premises, do not provide for reverter in the event of violation, do not impose any monetary obligations on an owner of the Premises, do not impose any rent regulations.
  - c.) Party wall and party wall agreements of record as of the date hereof, if any, provided same have not been violated.
  - d.) Possible lack of right to maintain vault area under and coal chutes in the sidewalk.
  - e.) Rights, if any acquired by any utility company to maintain and operate lines, wires, cables, poles and distribution boxes in, over and upon said Premises.
  - f.) *De minimis* variations between description herein and tax map description.
2. Subject to Schedule "D" the existence of mortgages, liens or encumbrances shall not be objections to title, provided that properly executed instruments in recordable form necessary to satisfy same are delivered to the Purchaser at the closing of title together with recording and filing fees, if any, and such mortgage, liens or encumbrances may be paid out of the cash consideration paid by the Purchaser and the title company omits. In the event the aggregate reasonable cost of complying with violations shall exceed the sum of \$10,000.00, Seller shall have the option of complying with such violation(s) or refusing to comply therewith. In the event the seller refuses to comply therewith, Purchaser shall have the option of taking title subject to such violations and receiving an abatement of the purchase price for the reasonable cost of complying with such violations, such abatement, however, not to exceed the sum of \$10,000.00, in the aggregate.
3. Unpaid liens for taxes and assessments shall not be objections to title, but the amount thereof, plus interest and penalties thereon shall be deducted from the consideration to be paid hereunder, and allowed to the Purchaser, subject to the provisions for apportionment of taxes contained herein and title company omits same.
4. The Seller has not made and does not make any representations as to the physical condition, income, expense, operation or any other matter or thing affecting or related to the aforesaid Premises, except as herein specifically set forth, and the Purchaser hereby expressly acknowledges that no such representations have been made. Purchaser has examined and investigated to its full satisfaction the nature and condition of the real property hereby agreed to be sold and agrees to accept the same "AS IS". Purchaser, in executing this agreement and in undertaking to perform and in performing the same, does not rely upon any statements, representations or information by whomsoever made, whether verbal or written statements, representations by real estate brokers' "set-ups" or information pertaining to the above Premises furnished by any real estate broker, agent, employee, servant or other person unless the same are specifically set forth herein. This contract sets forth the entire agreement of the parties hereto. The acceptance and delivery of the deed of conveyance at the time of closing of

title shall be deemed to be full performance and discharge of any and all of the obligations on the part of the seller to be performed on his part pursuant to the terms and provisions of the contract, except as to those obligations which are specifically stated to survive the delivery of the deed.

5. If, for any reason whatsoever, the Seller shall be unable to convey a marketable title upon the terms and conditions herein set forth, the Seller, at its option, shall be entitled to reasonable adjournments for the purpose of curing any defects in title or effecting compliance with any of the commitments of the Seller, and if the Seller (who is under no obligation to bring any action or proceeding or otherwise incur any expense whatsoever to cure such defect except as set forth herein) is unable to cure such defect within an adjournment period, or if no adjournment is requested by the Seller, the Purchaser shall, at his election, have the right to purchase the property subject to such defect and pay the full consideration thereof without any claim on the part of the Purchaser for abatement, or the Purchaser shall have the right to rescind this contract, upon which rescission pursuant to this paragraph, the sole liability of the Seller will be to refund to the Purchaser the amount paid on account of the purchase price and upon such refund this contract shall be null and void. Seller will not suffer or permit any liens to be created between this date and closing except as may be permitted hereunder. Seller's rights to adjourn are subject to the "Outside Closing Date" (as hereinafter defined).
6. The parties mutually agree that all right, title and interest of the Seller in and to any and all personal property which may be in or upon the Premises appurtenant to or used in connection with the operation thereof and owned by the Seller, shall be deemed transferred or conveyed to the Purchaser under the deed of conveyance to be delivered, but that no part of the purchase price shall be deemed to have been paid by the Purchaser for same.
7. The Purchaser, at least twenty (20) days prior to the closing of title, shall furnish to Seller's attorney a written notice of any objections to title by delivery of the title report. Receipt by Seller's attorney of a copy of the title report shall satisfy Purchaser's obligations hereunder.
8. The acceptance of the deed by the Purchaser and execution of the Lease of the premises to the Seller, along with any required monies paid to Purchaser, shall be deemed full compliance by the Seller of all the terms, covenants and conditions of this agreement on the part of the Seller to be performed, and no claims against the Seller shall survive the closing of title except as otherwise expressly stated herein. Notwithstanding anything which may be deemed to the contrary, the Lease as executed and delivered shall survive Closing.
9. If the payment made on account of the purchase price at the time of execution of this contract be by check, and if said check shall fail of collection in due course, Seller, at its option, may declare this contract null and void. Seller may also assess a bounce fee of \$25.00.
10. If any provision of this Rider shall conflict with any printed provision of this Agreement, the provision of the Rider shall control.
11. Any and all of the subject provisions contained in this contract may be omitted by the Seller in the deed to be delivered hereunder, but all such provisions as omitted shall survive the delivery of said deed or deeds.
12. Notwithstanding anything to the contrary contained herein, the parties agree that any changes or additions on the within Contract may be initialed by the respective attorneys for the parties with the same force and effect as if initialed by the parties.

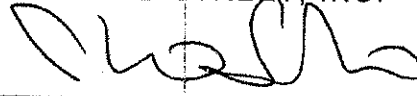


13. It is agreed that no party, other than Seller and the named Purchaser, shall be liable hereunder as disclosed or undisclosed principal.
14. Seller represents that any covenants or restrictions to which Purchaser takes title shall not provide for forfeiture or reverter, in the event of violation thereof, nor shall they impose any restriction on alteration or demolition of any improvements on the Premises, nor impose any monetary obligations on an owner of the Premises.
15. Seller will supply appropriate non-foreign affidavit pursuant to Section 1445 of the Internal Revenue Code as Amended, sufficient to provide an exemption under Subdivision (b) thereof, or if Seller is a foreign person under the terms of such Code, to comply with the provisions thereof.
16. Purchaser shall have reasonable access at reasonable times to the Premises during the term of this Contract.
17. Any and all notices herein shall be made through the respective attorneys representing the Seller and Purchaser.

"PURCHASER":  
213 BS HOLDINGS LLC

By:   
Name: Eli Liberman  
Its: Member

"SELLER":  
213 BOND STREET, INC.

By:   
Paolo Secondo  
President

**EXHIBIT “A” - TRIPLE NET LEASE**

### TRIPLE NET LEASE

Agreement of Lease, made as of this 21<sup>st</sup> day of June, 2017, between **213 BS Holdings LLC**, a New York company, with its address at c/o Jeffrey Zwick & Associates, P.C., 266 Broadway, Suite 403, Brooklyn, New York 11211, as landlord (hereinafter referred to as "Landlord"), and **213 Bond Street Inc.** with its address at 213 Bond Street Brooklyn, New York 11217, as tenant (hereinafter referred to as, "Tenant").

### WITNESSETH:

Landlord hereby leases to Tenant and Tenant, hereby hires from Landlord the entire building known as 213 Bond Street, Brooklyn, New York 11217 (hereinafter referred to as the "Building"), being a space of approximately \_\_\_\_ square feet (hereinafter referred to as the "Demised Premises" or "Premises"), as set forth in Schedule "A" hereto, for the term of seven (7) years, to commence on the 1<sup>st</sup> day of August, 2017 (or on such later date that the Bankruptcy Court for the Eastern District of New York approves the sale of the Demised Premises ) and to end on the 31<sup>st</sup> day of July, 2024 (the "Expiration Date"), both dates inclusive, at the rental rates more fully set forth herein which Tenant agrees to pay to Landlord.

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:

A. August 1, 2017 is referred to herein as the "Rent Commencement Date." From and after the Rent Commencement Date, Tenant shall pay to Landlord:

(i) Fixed Minimum Rent from September 1, 2017 through August 31, 2018, \$66,000.00 per annum payable in equal monthly installments of \$5,500.00.

(ii) Fixed Minimum Rent from September 1, 2018 through August 31, 2019, \$67,980.00 per annum payable in equal monthly installments of \$5,665.00;

(iii) Fixed Minimum Rent from September 1, 2019 through August 31, 2020, \$70,020.00 per annum payable in equal monthly installments of \$5,835.00;

(iv) Fixed Minimum Rent from September 1, 2020 through August 31, 2021, \$72,120.00 per annum payable in equal monthly installments of \$6,010.00;

(v) Fixed Minimum Rent from September 1, 2021 through August 31, 2022, \$74,280.00 per annum payable in equal monthly installments of \$6,190.00;

(vi) Fixed Minimum Rent from September 1, 2022 through August 31, 2023, \$76,512.00 per annum payable in equal monthly installments of \$6,376.00;

(vii) Fixed Minimum Rent from September 1, 2023 through August 31, 2024, \$78,804.00 per annum payable in equal monthly installments of \$6,567.00; and

(viii) Additional Rent as set more fully set forth herein.

Upon the execution of this Lease, Tenant shall pay to Landlord: (a) the sum of \$5,500.00 (or the pro-rata portion for the month thereof if full access to the Premises is provided after September 1, 2017) (i.e. if full access is provided on September 1, 2017 then the rent for the month of September 2017 would be \$5,500.00) representing the Fixed Minimum Rent owed under this Lease for the month of September, 2017; and (b) the sum of \$16,500.00 representing the Security Deposit as more fully provided for under Section 34 of this Lease.

B. (i) All costs, charges, expenses and adjustments of rent which Tenant assumes, agrees or is obligated to pay to Landlord or others pursuant to this Lease or any other agreement shall be deemed Additional Rent, and in the event of nonpayment thereof, Landlord shall have all the rights and remedies as is provided for herein or by applicable law in case of non-payment of rent.

(ii) Tenant covenants to pay the Fixed Minimum Rent, Additional Rent and adjustments of rent on the first day of each month during the term, or when otherwise due, and 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 the payment. All sums due and payable as rent and additional rent shall, if not paid by the tenth (10<sup>th</sup>) day after the respective due date, bear interest at the rate of 5% per annum. No further interest shall be payable upon such interest.

**Use: 2.** So long as Tenant is not in default of this Lease, Tenant shall be allowed to rent/sublease space to third-parties. However, in no event shall such reent/sublease extend past the Maturity Date hereunder. Tenant shall have access to the building twenty four hours a day, seven days a week,

A. Tenant hereby represents and warrants and covenants and agrees that:

- (i) Tenant shall, at Tenant's sole cost and expense, keep the Demised Premises (including the exterior and interior portions of all windows, doors and all other glass) in a neat and clean condition. If the Demised Premises or any portion thereof become infested with vermin, Tenant shall cause the same to be exterminated from time to time so as to eliminate such condition to the satisfaction of Landlord.
- (ii) Tenant agrees that nothing shall be done or permitted by Tenant to be kept or transacted in the Demised Premises which would impair or interfere with any of the Building services including heating, cleaning or other services of the Building or the use and enjoyment by any tenant in the Building. Tenant agrees not to conduct its business or allow any invitees, licensees or subtenants to conduct any business which would impair or interfere with the use and enjoyment by any other Tenant at the Premises in any manner whatsoever. There shall not be installed by Tenant any ventilating, air conditioning, electrical or other equipment of any kind without the prior

written consent of Landlord. No toxic, inflammable, combustible or explosive object or material shall be brought into the Demised Premises or the Building by Tenant or any occupant of the Demised Premises.

- (iii) "Tenant represents it shall not use the premises for nor engage in any illegal sale of goods or engage in any illegal or pornographic activities, nor permit any subtenant to engage in same. Tenant agrees to reimburse landlord as additional rent the cost of any and all reasonable legal fees, fines or penalties incurred or imposed as a result of tenant's breach of this representation whether arising prior to or during the term of this lease."

B. Tenant further covenants and agrees with Landlord, that neither Tenant nor anyone using or occupying any portion of the Demised Premises by, through or under Tenant shall:

- (i) conduct or permit any fire, bankruptcy, auction, or "going out of business" sale in the Demised Premises without obtaining Landlord's, written consent, or utilize any unethical method of business operation;
- (ii) perform any act, or carry on any practice, that may damage, mar, or deface the Demised Premises or any other part of the Building;
- (iii) use the plumbing facilities for any purpose other than that for which they were constructed, or dispose of any garbage, grease or other foreign substance therein, whether through the utilization of so-called "disposal" or similar units, or otherwise;
- (iv) permit window cleaning or other maintenance and janitorial services in and for the Demised Premises to be performed, except in accordance with the provisions of this Lease and all governmental laws and ordinances;
- (v) place a load on any floor in the Demised Premises exceeding the floor load per square foot that such floor was designed to carry and that is allowed by law, or install, operate or maintain therein any heavy item of equipment exceeding any such load;
- (vi) take or suffer or permit any licensee, concessionaire or subtenant to take any action that would knowingly violate Landlord's contracts, if any, affecting the Building;
- (vii) adversely interfere with the business of other tenants or any customer or other person(s) lawfully in and upon the Building;
- (viii) cause any adverse impairment or reduction of the good will or reputation of the Demised Premises and the Building; and
- (ix) subject any fixture in or on the Demised Premises and affixed permanently to the realty, to any mortgages, liens, conditional sales agreements, security interests, chattel mortgages, financing statements, pledges or encumbrances of any kind whatsoever.

G. Except as expressly provided herein, no awnings or other projections shall be

attached to the outside walls of the Building except in accordance with the provisions of this Lease and all governmental laws and ordinances.

H. In the event Landlord's cost to insure the Premises increases due to the nature of Tenant's use thereof. Tenant shall pay said additional costs upon demand.

**Alterations: 3.**

A. Tenant agrees, if necessary, to install its own heating, ventilation and air conditioning systems. Said installation and the maintenance of any existing and/or newly installed systems shall be at the sole cost of Tenant and subject to the terms of this Lease.

B. Tenant shall make no structural alterations in or to the Demised Premises and/or the Building without Landlord's prior written consent. Subject to the prior written consent of Landlord, 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 by Landlord.

C. Tenant shall obtain Landlord's written approval of the plans and specifications for the work to be done, which shall include a scheduled completion date, and Tenant shall not proceed with such work until it obtains Landlord's written approval of such work, plans and specifications. Landlord's approval of the plans and specifications shall not be deemed a representation that the Alteration is in compliance with Legal Requirements. If any Mortgagee shall not approve such Alteration, Landlord shall have the right to withhold its consent to such Alteration.

D. All such work, alterations, decorations, installations, additions or improvements

(i) shall be done at Tenant's sole expense and

(ii) shall comply with all applicable laws, rules, orders, permits, authorizations, governmental requirements, and orders, rules and regulations of the National Board of Fire Underwriters, New York Board of Fire Underwriters and other bodies hereafter exercising similar functions, and

(iii) shall be made promptly and in a good workmanlike manner using prime quality materials.

E. Prior to commencing any structural work pursuant to the provisions herein, Tenant shall furnish to Landlord, and obtain Landlord's prior written consent to:

(i) Plans and specifications (to be prepared by and at the expense of Tenant), in detail, of such proposed alterations, decorations, installations, additions or improvements;

(ii) A certificate evidencing that Tenant (or Tenant's contractors) has (have) procured and paid for workmen's compensation insurance covering all persons employed in

connection with the work who might assert claims for death or bodily injury against mortgagee, Overlandlord, if any, Landlord, Tenant, the Land or Building;

(iii) Such additional personal injury and property damage insurance (over and above the insurance required to be carried by Tenant pursuant to the provisions of this Lease) as Landlord may reasonably require in connection with the work to be done by Tenant;

F. If in connection with any Alterations Tenant shall hire the services of any contractor or construction manager, Tenant shall enter into an agreement with such party which shall provide that such contractor or construction manager, as well as all subcontractors, materialmen and suppliers hired in connection therewith (all foregoing known collectively as the "Contractors"), shall upon receiving any payment respecting such Alterations deliver to Tenant a duly executed waiver of mechanic's lien evidencing payment in full for the cost of work, labor and/or services theretofore furnished, which shall name the Landlord and Tenant as the beneficiaries thereof, and which shall be in a form reasonably acceptable to Landlord ("Lien Waivers"). Prior to the commencement of any Alterations, a form of the Lien Waivers to be given by each such Contractor must be approved by Landlord.

G. All Alterations shall be performed by Tenant in a good and workmanlike manner. Such permits, authorizations or consents as may be required by any applicable law, rule, order or requirement of any governmental authority having jurisdiction thereover, all of which shall be obtained at Tenant's expense; provided however that no plans, specifications or applications shall be filed by Tenant with any governmental authority without first obtaining Landlord's written consent.

H. In no event shall any material or equipment be incorporated in or to the Demised Premises in connection with any Alteration, decoration, installation, addition or improvement which is subject to any lien encumbrances, chattel mortgage, security interest, charge of any kind whatsoever or is subject to any conditional sale or other similar or dissimilar title retention agreement. Any mechanics' or materialmen's lien filed against the Building, Demised Premises or Landlord's interest therein, for work claimed to have been done for, or materials claimed to have been furnished to Tenant shall be discharged by Tenant within twenty (20) days thereafter, at Tenant's expense, by filing the bond required by law or otherwise. The Tenant herein shall indemnify and save Landlord harmless against and from all costs, liabilities, suits, penalties, claims and demands, including reasonable counsel fees resulting therefrom. If Tenant fails to comply with the foregoing provisions, Landlord shall have the option of discharging or bonding any such lien, charge or order and the Tenant named herein agrees to reimburse Landlord for Landlord's reasonable expenses (as Additional Rental). All materialmen, contractors, artisans, mechanics, laborers and other persons now or hereafter contracted with Tenant for the furnishing of any labor, services, materials, supplies or equipment with respect of any portion of the premises of which hereof until the end of the demised term are hereby charged with notice that they must look exclusively to Tenant to obtain payment for same.

I. Landlord shall not be liable for any failure or diminution of any Building facilities or services, including, but not limited to the heating and ventilating system, electrical system or the plumbing system caused by alterations, installations, additions or improvements by Tenant, and Tenant shall correct any such faulty installation and repair

and damage caused thereby. Upon Tenant's failure to make such corrections and repairs, Landlord may make such corrections and repairs and charge Tenant for the cost thereof. Such sum due Landlord shall either be deducted from the security deposited pursuant to this section or be deemed additional rent and shall be paid by Tenant within ten (10) days after written notice to Tenant of the amount thereof. Landlord shall not supply or furnish air conditioning to the Demised Premises, Tenant, throughout the term shall be responsible to maintain, repair, and/or add replace the units.

J. Where furnished by or at the expense of Tenant (except where same is a replacement of an item theretofore furnished and paid for by Landlord or against which Tenant has received a credit), all movable property, furniture, equipment, furnishings and trade fixtures, other than those affixed to the realty so that they cannot be removed without material damage, shall remain the property of Tenant, and may be removed by Tenant prior to the expiration of the term of this Lease.

K. Except as expressly provided in this Lease to the contrary, all alterations, installations, additions or improvements upon the Demised Premises, made by either party, including, but not limited to, all paneling, decorations, partitions, railings, mezzanine floors, galleries and the like, affixed to the realty, unless Landlord elects otherwise (which election shall be made by giving a notice pursuant to the expiration or other termination of this Lease) shall become the property of Landlord and shall remain upon, and be surrendered with, said Demised Premises, as a part thereof, at the end of the term, as the case may be.

L. If Tenant fails to comply with any provision of this Article in any material respect, after ten (10) days written notice (except no notice shall be required in an emergency) Landlord, in addition to any other remedy herein provided including, but not limited to, termination of this Lease, may require Tenant to cease all work being performed by, or on behalf of Tenant, and Landlord may deny access to the Demised Premises to any person performing work or supplying materials in the Demised Premises.

#### **Repairs: 4.**

A. Tenant shall maintain and repair the public portions of the Building, both exterior and interior, including, without limitation, the roof and structural portions thereof, the sidewalks appurtenant thereto, and the plumbing, heating, and electrical systems serving the demised premises (other than the electrical wiring and fixtures and the plumbing, heating, ventilation and air-conditioning equipment, if any, within the Demised Premises and which exclusively serve the Demised Premises). Tenant shall, throughout the term of this lease, take good care of the Demised Premises and the fixtures and appurtenances therein (excluding any fixtures therein which do not exclusively serve the demised premises), and the sidewalks adjacent thereto (to the extent the repair of same is necessitated solely by the negligence or willful acts of Tenants), and at its sole cost and expense, make all non-structural repairs thereto as and when needed to preserve them in good working order and condition, reasonable wear and tear, obsolescence and damage from the elements, fire or other casualty, excepted. Except as specifically provided in this lease, there shall be no allowance to the Tenant for the diminution of rental value and no liability on the part of Landlord by reason of inconvenience, annoyance or injury to



business arising from Landlord, Tenant or others making or failing to make any repairs, alterations, additions or improvements in or to any portion of the Building or the Demised Premises or in and to the fixtures, appurtenances or equipment thereof. Tenant agrees to make any repairs required herein as quickly as reasonably possible under the circumstances .

B. Tenant agrees that it shall make and pay for the following repairs, restorations and replacements (hereinafter collectively referred to as "Repairs") to the Demised Premises, the Building and the building systems, whether structural or non-structural, ordinary or extraordinary, or foreseen or unforeseen at this time:

- (i) Repairs or maintenance attributable to any act or omission of Tenant or persons within Tenant's control or of a subtenant or assignee of Tenant;
- (ii) Repairs to or maintenance of all fixtures, equipment, appurtenances and alterations installed by or at the expense of Tenant;
- (iii) Repairs to or maintenance of the fixtures; equipment and appurtenances hereafter installed by or at the expense of Landlord; and
- (iv) Non-structural portions of the store front, all plate glass and entrance doors, if any, in and to the Demised Premises.

C. All repairs or maintenance performed by Tenant in the Demised Premises shall be subject to the following conditions:

- (i) Tenant shall comply with all Fire Insurance regulations of the governmental authorities, and of the Fire Insurance Rating Organization having jurisdiction thereof, and the local Board of Fire Underwriters, or any similar body;
- (ii) Tenant shall not do any act or make any contract which may create or be the foundation for any lien or other encumbrances upon any interest of Landlord in any portion of the premises of which the Demised Premises form a part. If, because of any act or omission (or alleged act or omission) of Tenant, any mechanic's lien or other lien, charge or order for the payment of money shall be filed against Landlord or any portion of the premises of which the Demised Premises form a part (whether or not such lien, charge or order is valid or enforceable as such), Tenant shall, at Tenant's own cost and expense, cause same to be discharged of record or bonded within ten (10) days after notice to Tenant of the filing thereof; and the Tenant shall indemnify and save harmless Landlord against and from all costs, liabilities, suits, penalties, claims and demands, including reasonable counsel fees resulting therefrom;
- (iii) If Tenant fails to comply with the foregoing provisions, Landlord shall have the option of discharging or bonding any such lien, charge or order and the Tenant agrees to reimburse Landlord for Landlord's reasonable expenses (as additional rent) promptly upon demand. All materialmen, contractors, artisans, mechanics, laborers and other persons now or hereafter contracting with Tenant for the furnishing of any labor, services, materials, supplies or equipment with respect to any portion of the premises of which the Demised

Premises form a part at any time from the date hereof until the end of the demised term are hereby charged with notice that they must look exclusively to Tenant to obtain payment for same. In the event a lien is placed upon the Premises, the individual executing the Lease (whether on behalf of a corporate tenant or not), hereby personally guarantees the obligation of Tenant hereunder and waives any notice or demand for payment or collection from Tenant;

(iv) Landlord shall not be liable for any failure or diminution of any Building facilities or services, including, but not limited to the heating and ventilating system, electrical system or the plumbing system caused by repairs by Tenant and Tenant shall correct any such faulty installation and repair any damage caused thereby. Upon Tenant's failure to make such corrections and repairs, Landlord may make such corrections and repairs and charge Tenant for the cost thereof. Such sum due Landlord shall be deemed additional rent and shall be paid by Tenant within ten (10) days after written notice to Tenant of the amount thereof;

(v) Tenant shall be solely responsible for insuring that Tenant's use of the Demised Premises and the Demised Premises complies with the requirements of the The Americans With Disabilities Act of 1990 (the "ADA"), and any other governmental requirements regarding accessibility to individuals as such individuals are defined in the ADA or the other applicable law.

D. In any case where Tenant is required to make repairs or perform any work pursuant to this Article and such repairs or work affects the Building systems or areas outside of the Demised Premises, Landlord upon notice to Tenant, except in an emergency where no notice is required, may elect to make such repairs or to perform such work for and on behalf of Tenant, but at Tenant's sole cost and expense. In such event, Tenant shall reimburse Landlord as additional rent for the reasonable cost of such repairs and/or work within ten days after Landlord shall furnish a statement to Tenant of the amount thereof.

E. Any repairs to be made by Tenant may be performed by any reputable contractor or mechanic (collectively "Contractor") selected by Tenant, provided the Contractor's performance of the repairs would not result in any labor discord in the Building.

F. Landlord shall not unreasonably withhold its consent to any repairs which Tenant proposes to make which have no adverse effect on the operating systems and facilities of the Building, of which the Demised Premises form a part.

**Window Cleaning and Rubbish Removal:** 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 New York State 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. The entire Demised Premises, including the vestibule, public hallways, and corridors, if any, and any glass windows, are to be kept clean by Tenant, at its sole cost and expense, in a manner satisfactory to Landlord. Tenant agrees that it will not permit the accumulation of any rubbish or garbage and shall promptly remove the same and such independently contract for the removal of all rubbish, refuse, garbage and waste from the Demised Premises. The removal of such rubbish, refuse, garbage and waste shall be

subject to such rules and regulations as, in the judgment of Landlord, are necessary. Tenant further agrees not to permit the accumulation of any rubbish or garbage in, on or about any part of the Demised Premises.

**Requirements of Law, Fire Insurance:** 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 orders, rules and regulations of the New York Board of Fire Underwriters or the Insurance Services Office, or any similar body which shall impose any violation, order or duty upon Landlord or Tenant with respect to the Demised Premises, and with respect to the portion of the sidewalk adjacent to the Demised Premises. Except as may be provided herein, 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 shall not do or permit any act or thing to be done in or to the Demised Premises which is contrary to law, or which will invalidate or be in conflict with public liability, fire or other policies of insurance at any time carried by or for the benefit of Landlord. Tenant shall pay all costs, expenses, fines, penalties or damages, which may be imposed upon Landlord by reason of Tenant's failure to comply with the provisions of this article: If the fire insurance rate shall, at the beginning of the lease or at any time thereafter, be higher than it otherwise would be, then Tenant shall reimburse Landlord, as additional rent hereunder, for that portion of all fire insurance premiums thereafter paid by Landlord which shall have been charged because of such failure by Tenant, comply with the terms of this article. In any action or proceeding wherein Landlord and Tenant are parties, a schedule or "make-up" of rate for the Building or Demised Premises issued by a 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 rate then applicable to said premises.

**Subordination:** 7. A. This lease and all subleases are subject and subordinate to all ground or underlying leases, superior leases (the Landlord under such Superior Lease is hereinafter referred to a "Superior Lessor") and to all mortgages, superior mortgages (the mortgagee under a Superior Mortgage is hereinafter referred to as a "Superior Mortgagor"), which may now or hereafter affect such leases or the real property of which Demised Premises are a part and to all modifications, consolidations, replacements and extensions of any such underlying leases and mortgages. Tenant agrees that it shall execute and return to Landlord, within seven (7) days of Landlord's request therefor, any estoppel certificates or subordination non-disturbance and attornment agreement which may be requested by any lender or superior mortgagee of landlord.

B. In addition to the foregoing, this Lease, and all rights of Tenant hereunder, are, and shall be, subject and subordinate in all respects to:

- (i) all ground leases, overriding leases and underlying leases of the Building, and/or the Land, now or hereafter existing;
- (ii) all mortgages that may now or hereafter affect the Building, the Land and/or any of said leases, whether or not such mortgages shall also cover other lands and/or buildings;

- (iii) each and every advance made, or hereafter to be made, under such mortgages;
- (iv) all renewals, modifications, replacements and extensions of such leases and such mortgages; and
- (v) all spreaders and consolidations of such mortgages.

C. This Article 7 shall be self-operative, and no further instrumentation of subordination shall be required. In confirmation of such subordination, Tenant, its heirs, successors, or assigns shall promptly execute and deliver any such instrument that Landlord, the lessor of any such lease, the holder of any such mortgage, or any of their respective successors in interest may reasonably request to evidence such subordination.

D. In the event of any act or omission of Landlord that would give Tenant the right, immediately or after a lapse of a period of time, to cancel or terminate this lease, or to claim a partial or total eviction, Tenant shall not exercise such right:

- (i) until it has given written notice of such act or omission to the holder of each superior mortgage and the lessor of each superior lease whose name and address shall previously have been furnished to Tenant in writing; and
- (ii) unless such act or omission shall be one that is not capable of being remedied by Landlord or by such holder or lessor within a reasonable period of time, until a reasonable period for remedying such act or omission shall have elapsed following the giving of such notice and following the time when such holder or lessor shall have become entitled under such superior mortgage or superior lease, as the case may be, to remedy the same (which reasonable period shall in no event be less than the period to which Landlord would be entitled under this lease or otherwise, after similar notice, to effect such remedy), provided that such holder or lessor shall give Tenant prompt written notice of its intention to remedy such act or omission and shall commence and continue to do so with due diligence.
- (iii) At the Tenant's request, the Landlord will have the mortgagee or holder of such first deed of trust ("Mortgagee") execute a non-disturbance agreement in favor of the Tenant (in a form reasonably satisfactory to Tenant) to provide that in the event such mortgage or deed of trust shall be foreclosed, this Lease shall not terminate so long as the Tenant continues to pay the rent provided for in this Lease and otherwise complies with the terms and provisions hereof.

**Tenant's Liability Insurance, Property Loss, Damage, Indemnity: 8.** A. Landlord or its agents shall not be liable for any damage to property of Tenant or Tenant's invitee or licensee or of others entrusted to the employees of the Building, nor for loss of or damage to any property of Tenant or Tenant's invitee or licensee by theft or otherwise, nor for any injury or damage to persons or property resulting from any cause of any nature whatsoever. Landlord shall not be responsible for any items kept at the Premises nor shall Landlord in any way be liable for the theft of or damage to any such items left or kept at the Premises. Landlord 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 Tenant agrees at Tenant's sole cost and expense, to maintain general public liability insurance in standard form in favor of Landlord and Tenant as Tenant's sole cost and expense against claims for bodily injury or death or property damage occurring in or upon the Demised Premises, effective from the date Tenant enters into possession and during the term of this lease. Such insurance shall be in an amount and with carriers as set forth below. Such policy or policies (or certificate(s) thereof) shall be delivered to the Landlord and name Landlord as additional insured. On Tenant's default in obtaining or delivering any such policy or policies or failure to pay the charges therefor, Landlord may secure or pay the charges for any such policy or policies and charge the Tenant as additional rent therefor. Tenant shall indemnify and save harmless Landlord against and from all liabilities, obligations, damages, penalties, claims, costs and expenses for which Landlord 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 on condition of this lease, or the carelessness, negligence or improper conduct of the Tenant, Tenant's agents, contractors, employees, invitees or licensees.

B. Tenant shall comply with all insurance requirements relating to or affecting the Demised Premises. If the insurance premiums applicable to the Demised Premises or Building exceed the rate that would have been applicable for the permitted uses as a result of any failure by Tenant to comply with insurance requirements, or as a result of or in connection with the use to which the Demised Premises are put by Tenant, Tenant shall reimburse Landlord for the excess. The reimbursement shall be made within ten (10) days after Landlord renders a bill therefor. For the purposes of this Section, any fine or schedule of a Fire Insurance Rating Organization having jurisdiction over the Demised Premises or Building shall be deemed to be conclusive.

C. Tenant covenants and agrees to indemnify and save Landlord harmless from and against any and all claims arising during the term of this Lease for damages or injuries to persons or property or loss of life in, upon or about the Demised Premises or on the sidewalks adjoining the Demised Premises arising from Tenant's use or occupancy of the Demised Premises.

D. Tenant covenants to provide on or before the commencement date of the term hereof and to keep in force during the term hereof for the benefit of Landlord and Tenant a comprehensive policy of liability insurance protecting Landlord and Tenant against any liability whatsoever occasioned by accident on or about the Demised Premises or any appurtenances thereto. Such policy is to be written by good and solvent insurance companies reasonably satisfactory to Landlord and the limits of liability thereunder shall not be less than the amount of One Million (\$1,000,000.00) Dollars combined single limit covering injury, death and property damage and Three Million (\$3,000,000.00) in the aggregate. Such insurance may be carried under a blanket policy covering the Demised Premises and other locations of Tenant, if any. Prior to the time such insurance is first required to be carried by Tenant, and thereafter, at least fifteen (15) days prior to the expiration of any such policy, Tenant agrees to deliver to Landlord either a duplicate original of the aforesaid policy or a certificate evidencing such insurance provided said certificate contains an endorsement that such insurance may not be canceled except upon thirty (30) days notice to Landlord, together with evidence of payment for the policy.

Tenant's failure to provide and keep in force the aforementioned insurance shall be regarded as a material default hereunder entitling Landlord to exercise any or all of the remedies as provided in, this Lease in the, event of Tenant's default.

**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 Landlord and this lease shall continue in full force and effect except as hereinafter set forth:

(b) If the Demised Premises are partially damaged or rendered partially unusable by fire or other casualty, the damages thereto shall be repaired by and at the expense of Landlord, provided landlord receives sufficient sums from its insurance company to repair same, and unless said damage is due to Tenant's negligence;

(c) If the Demised Premises are totally damaged or rendered wholly unusable by fire or other casualty, then the rent shall be proportionately paid up to the time of the casualty and thenceforth shall cease until the date when the Demised Premises shall have been repaired and restored by Landlord, subject to Landlord's right to elect not to restore the same as hereinafter provided;

(d) If the Demised Premises are rendered wholly unusable, whether or not the Demised Premises are damaged in whole or in part or if the Building shall be so damaged that Landlord shall decide to demolish it or not to rebuild it, or, if there is any damage to the Demised Premises within the last 2 years of the initial term wherein the cost of repairs exceeds \$250,000.00 then, in any of such events, Landlord may elect to terminate this lease by written notice to Tenant given within 90 days after such fire or casualty 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 Landlord shall serve a termination notice as provided for herein, Landlord 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 Landlord's control if, the Landlord, the lessor of a superior lease or any mortgagee of a superior mortgage to which this lease is subordinate shall be unable to collect insurance proceeds (including rent insurance proceeds) applicable to such damage because of some action or inaction on the part of Tenant, its subtenant, assignee or its agents. After any such casualty, Tenant shall cooperate with Landlord's restoration by removing from the premises as promptly as reasonably possible, all of Tenant's salvageable inventory and movable equipment, furniture, and other property. Tenant's liability for rent shall resume thirty (30) days after written notice from Landlord that the premises are substantially ready for Tenant's occupancy.

(e) 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, Landlord and Tenant each hereby releases and waives all right of recovery against the other or any one claiming through or under each of them by way of subrogation or otherwise. 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 and also, provided that such a policy can be obtained without additional premiums;

(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.

**Subletting: 11.** Tenant shall be permitted to sublet any portions and/or floors of the Demised Premises, in accordance with the terms hereof, provided Tenant supplies Landlord with a copy of any lease or sublease entered into.

**Attornment: 12.** Tenant agrees that if by reason of default on the part of Landlord herein, under any mortgage affecting Landlord's interest as mortgagor, or a superior lease, the lessor of a superior lease or the mortgagee ("Successor Landlord") shall enter into and become possessed of the real property of which Demised Premises form a part, or any part or parts of such real property, either through possession or foreclosure action or proceedings, or new mortgage, then if this Lease is in full force and effect at such time, Tenant shall attorn to the Successor Landlord as its landlord. In the event Tenant defaults hereunder, which default is not cured within ten (10) days written notice thereof any subtenant shall attorn to Landlord and upon receipt of written notice that Tenant is in default, such subtenant shall thereafter commence paying rents to Landlord.

**Electric Current: 13.** 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 Landlord'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 Landlord liable or responsible to Tenant, for any loss, damages or expenses which Tenant may sustain.

**Access to Premises: 14.** Landlord shall be allowed to enter the premises without consent of tenant in any case of emergency. Landlord may elect to perform in the premises, following Tenant's failure, within twenty (20) days after notice to Tenant, to make repairs or, perform any work which Tenant is obligated to perform under this lease, or for the purpose of complying with laws, regulations and other directions of governmental authorities. Throughout the term hereof Landlord shall have the right to enter the Demised Premises at reasonable hours for the purpose of showing the same to prospective purchasers of mortgagees of the Building, and during the last six months of the term or upon and event of

an uncured default for the purpose of showing the same to prospective tenants and may, during said period, place upon the premises the usual notice "To Let" and "For Sale" which notices Tenant shall permit to remain thereon without molestation. If during the last month of the term Tenant shall have removed all or substantially all of Tenant's property therefrom, Landlord may immediately enter, alter, renovate or redecorate 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. Landlord shall have the right at any time, without the same constituting an eviction and without incurring liability to Tenant therefor to change the arrangement of or alter in any way the 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.

**Default:** 15. (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 for a period in excess of thirty (30) days; 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 is rejected under Section 365 of Title 11 of the U.S. Code (Bankruptcy Code); then, in any one or more of such events, upon Landlord serving a written ten (10) days notice upon Tenant specifying the nature of said default and upon the expiration of said ten (10) days, if Tenant shall have failed to comply with or remedy such default to the satisfaction of Landlord, 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 ten (10) day period, and if Tenant shall not have diligently commenced curing such default within such ten (10) day period, and shall not thereafter with reasonable diligence and in good faith proceed to remedy or cure such default, then Landlord may serve a written ten (10) days notice of cancellation of this lease upon Tenant, and upon the expiration of said ten (10) days, this lease and the term hereunder shall end and expire as fully and completely as if the expiration of such ten (10) 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 Landlord 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 Landlord 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.

**Curing Tenant's Default Additional Rent** 16. Except with respect to a failure to pay the Fixed Rent or Additional Rent, if Tenant shall default in the performance of any covenant, agreement, term, provision or condition herein contained, Landlord, without thereby waiving such default, may perform the same for the account and at the expense of Tenant, without notice in a case of emergency and in any other case if such default continues after ten (10) days from the date of the giving of Landlord to Tenant written notice of intention so to do. Bills for any reasonable expense incurred by Landlord in connection with any such



performance by Landlord for the account of Tenant, as well as bills for any property, material, labor or services provided or caused to be provided, furnished or rendered by Landlord to Tenant may be sent by Landlord to Tenant monthly, or immediately, at Landlord's option, and shall be due and payable by Tenant within five (5) days after the same is sent to Tenant by Landlord, and the amounts thereof shall be deemed to be additional rent under this Lease.

**Remedies of Landlord and Waiver of Redemption: 17.** In case of any default after expiration of the notice and grace period provided for herein, re-entry, expiration and/or dispossession by summary proceedings or otherwise, (a) the rent, and additional rent shall become due thereupon and be paid up to the time of such reentry, dispossession and/or expiration; (b) Landlord may relet the premises or any part or parts thereof, either in the name of Landlord or otherwise, for a term or terms, which may at Landlord's option be less than or exceed the period which would otherwise have constituted the balance of the term of this lease and may grant concessions or 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 Landlord 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 subsequent 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.

**Fees and Expenses: 18.** 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, then, unless otherwise provided elsewhere in this lease, Landlord may, upon ten (10) days written notice (except in the event of an emergency or where required by law; provided, however, in either such case Landlord shall give such notice, if any, as is reasonably practicable under the circumstances), perform the obligations of Tenant hereunder, provided that Tenant has not performed or in good faith begun to perform such obligation within such ten (10) day period and thereafter diligently completes such obligation, immediately or at any time thereafter and without notice perform the obligation of Tenant thereunder, and if Landlord, in connection therewith 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 attorney's fees, in instituting, prosecuting or defending any actions or proceeding, such sums so paid or obligations incurred with interest and costs shall be deemed to be additional rent hereunder and shall be paid by Tenant to Landlord within five (5) days of rendition of any bill or statement to Tenant therefor, and 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 Landlord as damages.

**No Representations by Landlord: 20** Neither Landlord nor Landlord'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, the existence or substance of the Certificate of Occupancy for the Building, if any, the existence or status of any violations or liens against the Building, the permissible or authorized purposes for which the Building and/or the Demised Premises may be used, or any other matter or thing affecting or related to the Building and/or the Demised Premises except

as herein expressly set forth and no rights, easements or licenses are acquired by Tenant by implication or otherwise except as expressly set forth in the provisions of this lease. Tenant has inspected the Building 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. Tenant has been provided with an opportunity to conduct any and all "due diligence" which, in its discretion, it deems necessary including, but not limited to, the inspection of any records maintained by and/or consultation with governmental agencies (e.g., the Dept. of Buildings, the Environmental Control Board, the New York Fire Department, etc...), architects, builders, and the like with regard to the Building and the Demised Premises and/or existing leases. Tenant agrees that neither Landlord nor any broker, Landlord's agent, employee, or representative of Landlord nor any other party has made, and Tenant does not rely on, any representations, warranties or promises with respect to the Building, the Land, the Demised Premises or this Lease, except as herein expressly set forth in the provisions of this Lease. All understandings and agreements heretofore made between the parties hereto are merged in this contract, which alone fully and completely expresses the agreement between Landlord and Tenant and any executory agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of it in whole or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought.

**End of Term: 21.** Upon the expiration or other termination of the term of this lease, Tenant shall quit and surrender to Landlord the Demised Premises, broom clean, in good order and condition, ordinary wear, acts of God, and damage by fire or other cause for which Tenant is not responsible under this Lease excepted, and Tenant shall remove all its property. Upon the expiration or other termination of the term of this lease, Landlord shall advise Tenant of any improvements to be removed from the Demised Premises or construction to be dismantled and Tenant will comply at its own cost and expense. 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, 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. All sub tenanted space shall be delivered in the same condition.

**Quiet Enjoyment: 22.** Landlord 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.

A. Tenant agrees that it will perform all of its work required or permitted hereunder and conduct its business in the Demised Premises throughout the term of this Lease in such a manner so as not to interfere with the Landlord's operation of the Building or other tenants' use and enjoyment of their premises.

**Construction by Tenant: 23.** Any and all construction to be conducted at the Premises by

Tenant shall be in accordance with all applicable laws, rules and regulations and Tenant shall acquire all necessary permits at its own cost and expense.

**No Waiver: 24.** The failure of Landlord to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this lease or of any of the Rules or Regulations set forth or hereafter adopted by Landlord, shall not prevent a subsequent act which would have originally constituted a violation from having all the force and effect of an original violation. The receipt by Landlord of rent with knowledge of the breach of any covenant of this lease shall not be deemed a waiver of such breach and no provision of this lease shall be deemed to have been waived by Landlord unless such waiver be in writing signed by Landlord. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement of any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy in this lease provided. No act or thing done by Landlord or Landlord's agents during the term hereby demised shall be deemed an acceptance of a surrender of said premises and no agreement to accept such surrender shall be valid unless in writing signed by Landlord. No employee of Landlord or Landlord's agent shall have any power to accept the keys of 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: 25.** It is mutually agreed by and between Landlord and Tenant that the respective parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other (except for personal injury or property damage) on any matters whatsoever arising out of or in any way connected with this lease, the relationship of Landlord and Tenant, Tenant's use of or occupancy of said premises, and any emergency, statutory or any other statutory remedy. It is further mutually agreed that in the event Landlord commences any summary proceeding for possession of the premises, Tenant will not interpose any counterclaim other than a counterclaim which would be waived if not then asserted of whatever nature or description in any such proceeding.

**Inability to Perform: 26.** Except as may otherwise be provided in this lease, 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 way be affected, impaired or excused because Landlord is unable to fulfill any of its obligations under this lease or to supply or is delayed in supplying any service expressly or impliedly to be supplied or is unable to make, or is delayed in making any repair, additions, alterations or decorations or is unable to supply or is delayed in supplying any equipment or fixtures if Landlord is prevented or delayed from so doing by reason of strike or labor troubles, government preemption in connection with a National Emergency 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 of supply and demand which have been or are affected by war or other emergency, or when, in the judgment of Landlord, temporary interruption of such services is necessary by reason of accident, mechanical breakdown, or to make repairs, alterations or improvements.

**Bills and Notices: 27.** Unless as otherwise in this lease provided, a bill, statement, notice or communication which Landlord 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 five (5) business days after the date of mailing of the same in the manner hereinabove required. Notices to Landlord shall also be deemed given five (5) business days after the date the same are mailed in accordance with the following sentence. The time when the same is delivered to Tenant, mailed, or left at the premises as herein provided. Any notice by Tenant to Landlord must be served by registered or certified mail addressed to Landlord at the address first hereinabove given or at such other address as Landlord shall designate by written notice.

**Water Charges: 28.** Tenant agrees that it shall cause to be installed, at its own expense, a meter to separately bill all of Tenant's water consumption at the Demised Premises. Tenant agrees to pay all water bills in a timely manner and agrees that Landlord shall have no liability with regard to same.

**Taxes: 29.** A. For the purposes of this Lease:

(1) Within 15 days upon presentment of bill(s) from New York City Tenant shall pay as Additional Rent for each Tax Year 100% of all taxes including all real estate, assessments, water charges, sewer, rents, vault charges and any other taxes and governmental charges, general or special, ordinary or extra-ordinary foreseen or unforeseen imposed upon or relating to, or a lien against the Demised Premises (the "Tenant's Tax Payment").

(2) If Landlord shall receive a refund of Taxes for any Tax Year in respect of which Tenant shall have made a Tenant's Tax Payment, Landlord shall either pay to Tenant, or permit Tenant to credit against subsequent payments under this Paragraph Tenant's Proportionate Share of the net refund (i.e. after deduction of Landlord's costs and expenses incurred in connection therewith, including without limitation, attorney's fees), but not to exceed Tenant's Tax Payment paid for such Tax Year. Nothing herein shall obligate Landlord to file any application or institute any proceedings seeking a reduction in Taxes or assessed valuation or to permit Tenant to do so.

**Utilities and Meters: 30.** A. Tenant understands and agrees that Landlord has made no representation with regard to the supply of any utilities whatsoever at the Premises. It shall be the sole obligation of Tenant to ensure that all utilities including, but not limited to, water, heat, electricity and gas is furnished to the Demised Premises.

B. Landlord makes no representation as to the adequacy or sufficiency of the heating system. If the heat is inadequate, Tenant shall, at its sole cost and expense, install such additional heating equipment (subject to the terms of the Lease) as Tenant deems desirable.

C. Interruption or curtailment of any service supplied by Landlord shall not constitute an

actual, constructive or partial eviction, or entitle Tenant to any compensation or abatement of rent. In no event shall Tenant in any way interfere with or tie in to any electrical feeders, risers or other electrical installations within the Building of which the Demised Premises form a part without the Landlord's prior written consent.

D. Landlord reserves the right to temporarily suspend, delay or stop any of the services to be furnished and provided by Landlord whenever necessary by reason of fire, storm, explosion, strike, lockout, labor dispute, casualty or accident, lack or failure of sources of supply of labor, fuel supply, acts of God or the public enemy, riots, interferences by civil or military authorities in compliance with the laws of the United States of America, or with the laws, orders, rules and regulations of any governmental authority, or by reason of any other cause beyond Landlord's control or for emergency for inspection, cleaning, repairs, replacements, or alterations in Landlord's reasonable judgment necessary to be made.

**Plumbing: 31.** Tenant agrees not to use the plumbing for any purpose other than that for which it was constructed and agrees further not to permit any food, waste or other foreign substance to be thrown or drawn into the pipes. Tenant agrees to maintain the plumbing that it installs in good order, repair and condition and to repair any damage resulting from any violation of this Article. Tenant further agrees to make any repairs to all plumbing in the Building if the damage results from Tenant's improper use of such plumbing.

**Sprinklers: 32.** If required by law, Tenant, at its own cost and expense, shall install a sprinkler system for the Demised Premises.

**Cleaning: 33.** Tenant shall at Tenant's expense, keep Demised Premises clean and in order, to the satisfaction to Landlord, and Tenant shall, at Tenant's own expense, make all repairs and replacements to the sidewalks and curbs adjacent thereto, and keep said sidewalks and curbs free from snow, ice, dirt and rubbish. Tenant agrees that it shall be liable for any and all occurrences which result from Tenant's, negligence or improperly keeping the curbs and sidewalks adjacent to the Premises free from snow, ice; dirt and rubbish.

**Security: 34. A.** As security for the faithful performance and observance by Tenant of the terms, provisions and conditions of this Lease, Tenant shall deposit with Landlord the sum of \$16,500.00 (the "Security Deposit"). Tenant agrees that, in the event that Tenant defaults in respect of any of the terms, provisions and conditions of this Lease (including, without limitation, the payment of the Fixed Minimum Rent and additional rent), Landlord may apply the whole or any part of the security (and interest, if any) to the extent required for the payment of any Fixed Minimum Rent, additional rent, or any other sum as to which Tenant is in default, or for any sum that Landlord may expend or may be required to expend by reason of Tenant's default, in respect of any of the terms, covenants and conditions of this Lease (including any damages or deficiency accrued before or after summary proceedings or other re-entry by Landlord).

B. In the event of a sale of the Building of which the Demised Premises form a part, Landlord shall have the right to transfer the security then held by Landlord to the vendee or lessee and Landlord shall thereupon be released by Tenant from all liability for the return of such security. In such event, Tenant agrees to look solely to the new Landlord for the return of said security. It is agreed that the provisions hereof shall apply to every transfer or

assignment made of the security to a new Landlord.

**Miscellaneous: 35.** A. Tenant will not permit any odor, fumes or vapors to permeate in or emanate from the Demised Premises into any portion of the Building or outside the Building. Tenant shall cure forthwith the condition so as to eliminate such odor, vapor or fume. In the event such condition is not so remedied, Landlord may, at its discretion, cure such condition and thereafter add the cost and expense incurred by Landlord therefor to the next monthly rental to become due and Tenant shall pay said amount as additional rent.

B. With respect to any provision of this Lease which provides, in effect, that Landlord shall not unreasonably withhold or unreasonably delay any consent or any approval, Tenant in no event shall be entitled to make, nor shall Tenant make, any claim, and Tenant hereby waives any claim, for money damages; not shall Tenant claim any money damages by way of set-off, counterclaim or defense, based upon claim or assertion by Tenant that Landlord has unreasonably withheld or unreasonably delayed any consent or approval; but Tenant's sole remedy shall be an action or proceeding to enforce any such provision, or for specific performance, injunction or declaratory judgment.

C. Tenant covenants and agrees at its sole cost and expense, to indemnify, protect and save Landlord; harmless against and from any and all loss, cost or expense including reasonable attorneys fees which may at any time be imposed upon, incurred by or asserted or awarded against Landlord or its mortgagee, if any, arising from, out of, attributable to or by reason of any hazardous material including without limitation asbestos, hazardous or toxic wastes and substances as defined by governmental law, rules and regulations, located on or about the Demised Premises subsequent to the commencement date of the lease agreement. Tenant shall under no circumstances use, store, sell or permit on or about the Demised Premises any Hazardous Materials.

D. In the event a check submitted by Tenant is dishonored for any reason whatsoever, Landlord in its sole discretion may require all payments thereafter by Tenant to Landlord to be by certified or bank check. Landlord may refuse to accept a check that is not a certified or bank check and such non certified or bank check submitted to Landlord shall not be deemed payment tendered to Landlord.

E. Should Tenant remain in possession of the Demised Premises after the expiration or sooner termination of the Lease Term without the execution of a new lease, such holding over, in the absence of a written agreement to the contrary, shall be deemed, if Landlord so elects, to have created and be construed to be a tenancy from month-to-month terminable on thirty (30) days notice by either party to the other, at a monthly rental equal to six (6) times the sum of (A) the monthly installment of Fixed Minimum Rent payable during the last month of the Lease Term and (B) one-twelfth (1/12th) of the Tenant's Tax Payment payable for the last Lease Year of the Lease Term, all subject to all the other terms and obligations of this Lease insofar as the same are applicable to a month-to-month tenancy.

**Exculpatory Clause: 36** A. If the Landlord or any successor in interest be an individual, joint venture, tenancy in common, co-partnership, unincorporated association, or other unincorporated aggregate of individuals (all of which are referred to below individually and collectively, as an "unincorporated landlord"), then anything elsewhere to the contrary

notwithstanding, Tenant shall look solely to the estate and property of such unincorporated landlord in the Land and Building of which the leased premises are a part, for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) requiring the payment of money by Landlord in the event of any default or breach by Landlord with respect to any of the terms, covenants and conditions of the Lease to be observed and/or performed by Landlord, and other property or assets of such unincorporated landlord shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies:

**Captions: 37.** 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 provision thereof.

**Definitions: 38.** The term "Landlord" as used in this lease means only the Landlord, or the mortgagee in possession, for the time being of the land and Building (or the Landlord 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 sales 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 Landlord shall be and hereby is entirely freed and relieved of all covenants and obligations of Landlord hereunder arising and accruing after such sale, 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 Landlord 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 designated as holidays.

**Broker: 39.** Landlord and Tenant acknowledge that they have not been assisted by any real estate broker in connection with this Lease except Friedman-Roth Realty Services LLC. Landlord and Tenant each warrant and represent to the other that, to the best of its knowledge, no brokers have brought about this Lease and each party agrees to indemnify and hold the other party harmless against any liability or claims should said warranty and representation not be true and correct. No commission shall be due Broker by Landlord.

**Plate Glass:40.** Tenant, at its own costs and expense, shall replace all damaged or broken plate glass or other glass in or about the Demised Premises from any cause whatsoever. Tenant shall keep such glass insured for the benefit of the Landlord and shall submit said insurance policy and evidence of payment of premiums therefor to the Landlord upon demand. Such policy shall contain an endorsement that such insurance may not be cancelled except upon ten (10) days' written notice to Landlord

**Estoppel Certificate: 41.** Tenant and/or Landlord, at any time, and from time to time, upon at least 5 business days' prior notice to the other shall execute, acknowledge and deliver to the other and/or to any other person, firm or corporation specified by Landlord and/or Tenant, 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 which the rent and additional rent have been paid,

and stating whether or not there exists any defaults under this lease, and, if so, specifying each default.

**Lease Not Binding Until Executed:** 42. Submission by Landlord of the within Lease for execution by Tenant, shall confer no rights nor impose any obligations on either party unless and until both Landlord and Tenant shall have executed this Lease and duplicate originals thereof shall have been delivered to the respective parties.

**Successors and Assigns:** 43. The covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective heirs, distributees, executors, administrators, successors, and except as otherwise provided in this lease, their assigns.

**Entire Agreement:** 44. No earlier statement or prior written matter shall have any force or effect. Tenant agrees that it is not relying on any representations or agreements other than those contained in this Lease. This agreement shall not be modified or canceled except by writing subscribed by all parties.

**Triple Net Lease:** 45. This Lease is intended to be, and shall be construed as, an absolute, "triple" net lease, whereby the annual Rent shall be a completely net return to Landlord throughout the term of this Lease; Tenant shall indemnify and hold harmless Landlord from and against any and all expenses, costs, liabilities, obligations and charges whatsoever which shall arise or be incurred or shall become due during the term of this Lease with respect to or in connection with the Demised Premises and the use, operation, management, maintenance and repair thereof, except as many be specifically set forth in this Lease.

**Assignments of Leases and Rents:** 46. Annexed hereto as *Exhibit "A"* are copies of all leases currently in effect for the Building. Upon the execution of this Lease, Landlord hereby assigns to the Tenant: All current and future rents, income, security or similar deposits, together with, all current and future rights, title and interests of Landlord, if any, in, to and under any and all existing and future leases, subleases, lettings, licenses, and all other agreements affecting or covering the Demised Premises (except for this lease only) or any portion thereof now or hereafter existing, until such time as Tenant defaults hereunder, and fails to cure such default whereupon Landlord shall then have the right to collect all rents.

**Authority and Representation.** 47. Landlord and Tenant represent that this Lease is a valid and binding agreement of Landlord enforceable in accordance with its terms. In entering into this Agreement, Landlord has complied with all relevant obligations, whether imposed by an agreement, arrangement or understanding or by statutes, ordinance, rules, and regulations of the State of New York, and the City of New York and any other relevant jurisdiction (the "Obligations"). Landlord's execution, delivery and performance of this Agreement does not and will not conflict with, violate or constitute a breach of or default of any Obligation or under the provisions of any indenture, agreement or other instrument to which Landlord is a party or by which Landlord may be bound or the provisions of any federal, state or local law, rule or regulation or any order, writ, judgment, injunction, decree, determination or award of any court, governmental agency or instrumentality having applicability to Landlord or by which Landlord may be bound or result in the creation of any lien, charge, encumbrance or claim upon any of the



property of Landlord or the Premises pursuant to the terms of any indenture, contract, mortgage, lien, trust, agreement or other instrument, order, judgment or decree to which Landlord is or will be a party, or which are, purport to be, or will be binding upon Landlord, its property or assets. Resolutions of the Board of Directors and of the Shareholders, authorizing the execution of this Agreement will evidence Landlord's compliance with this Section

**Title Matters: 48.** Landlord will make best efforts to comply with all reasonable requests of the title company to enable Tenant to acquire title insurance in connection with its rights under this Agreement.

**Severability: 49.** If any provision of this Agreement or application to any party or circumstances is determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

**In Witness Whereof,** Landlord and Tenant have respectively signed and sealed this Lease as of the day and year first above written.

Witness for Landlord:

213 BS Holdings LLC - Landlord

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Witness for Tenant:

213 Bond Street, Inc. - Tenant

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Paolo Secondo, President

**ACKNOWLEDGEMENT**

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

On May \_\_\_\_\_, 2017, before me, the undersigned, a notary public in and for said State, personally appeared \_\_\_\_\_, President of \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his capacity as President of \_\_\_\_\_, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC