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**Hearing Date: To Be Determined**  
**Time: To Be Determined**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:  
HAIMIL REALTY CORP.,

Chapter 11  
Case No. 14-11779 (MEW)

Debtor.

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**DEBTOR'S EMERGENCY MOTION FOR AN ORDER AUTHORIZING AND  
APPROVING SALE OF COMMERCIAL CONDOMINIUM UNIT OWNED BY THE  
DEBTOR, FREE AND CLEAR OF ALL LIENS, ENCUMBRANCES AND INTERESTS,  
ON A PRIVATE SALE BASIS AND GRANTING RELATED RELIEF**

TO THE HONORABLE MICHAEL E. WILES,  
UNITED STATES BANKRUPTCY JUDGE:

Haimil Realty Corp., the debtor and debtor-in-possession herein (the "Debtor"), as and for its emergency motion (the "Motion") for entry of an Order, pursuant to §§ 105(a), 363(b), (f) and (m) and 365(a) of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules") and Local Bankruptcy Rules 6004-1 and 6006-1, authorizing and approving the Debtor's proposed sale of its commercial condominium unit within the building located at 209 East 2<sup>nd</sup> Street, Unit 1, New York, New York (Block 384, Lot 1301) (the "Commercial Unit"), free and clear of all liens, encumbrances and interest, to Premier East 2<sup>nd</sup>, LLC (the "Proposed Purchaser") for the purchase price of \$2,700,000, on a private sale basis, pursuant to the terms of a certain Purchase Agreement, a copy of which is attached hereto as *Exhibit "A"* (the "Agreement"), and granting related relief, respectfully represents and alleges as follows:

## BACKGROUND

1. On June 11, 2014 (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 the Commercial Unit which is approximately 1,500 square feet in size (approximately 1,200 square feet of ground level retail space and approximately 300 square feet of basement space). The Commercial Unit is presently occupied by a retail commercial tenant (*i.e.*, DeGeest LLC d/b/a Wafels & Dinges) (the “Commercial Tenant”) pursuant to a written lease with the Debtor (the “Commercial Tenant Lease”) which runs through 2022 with a five (5) year renewal option. The base rent payable to the Debtor by the Commercial Tenant is currently \$11,536.47 per month, plus real estate taxes of \$539.13.

3. The Debtor and the Commercial Tenant have had multiple disputes and have been involved in protracted litigation over the course of the past several years. In this regard, the Debtor has asserted that the Commercial Tenant presently owes in excess of \$150,000 in water and sewer charges, violations and fines, amounts owed to contractors, among other things. The Debtor has further asserted that the Commercial Tenant has permitted New York City Environmental Control Board violations to be assessed and, thereafter, go un-remedied, against the Commercial Unit/the building and has filed several construction applications/permits with the New York City Department of Building which remain open, all in violation of the Commercial Tenant Lease. Each time the Debtor attempted to terminate the Commercial Tenant Lease on

account of the Commercial Tenant's defaults/violations, the Commercial Tenant would commenced an action against the Debtor seeking a "Yellowstone" injunction so as to stay such termination. The Debtor and the Commercial Tenant are presently engaged in litigation concerning the foregoing issues, among other things, including the eviction of the Commercial Tenant from the Commercial Unit and the recovery of the amounts owed by the Commercial Tenant to the Debtor.

4. The Commercial Unit is presently encumbered by: (a) a consolidated mortgage held by Dominion Financial Corp. ("Dominion") securing obligations totaling not more than \$3,000,000<sup>1</sup>; (b) real property taxes owed to the City of New York totaling \$29,277.30 as of April 3, 2017; (c) condominium common charges owed to 209 East 2<sup>nd</sup> Street Condominium (the "Condominium") totaling approximately \$29,143<sup>2</sup>; (d) a mechanic's lien asserted by Early Plumbing & Heating Inc. in the amount of \$2,400; (e) a judgment lien in favor of New York Commercial Real Estate LLC in the amount of \$28,411.53; and (f) a judgment lien in favor of Grubb & Ellis New York, Inc. in the amount of \$28,606.53. Additionally, the sum of \$25,000

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<sup>1</sup> On May 23, 2016, an Order was entered pursuant to which this Court determined, among other things, that "Dominion's proof of claim is allowed as a secured claim in the amount of \$2,608,526.05 as of February 16, 2016 (representing the principal balance of \$1,225,427.21 and accrued interest of \$1,383,098.84), which interest continu[ues] to accrue from and after February 16, 2016 to the date of payment at the contract rate (provided that the property that secured the claim has sufficient value to cover the interest accruals)", all of which is secured by Dominion's consolidated mortgage against the Commercial Unit (among other collateral). According to the Debtor's calculations, the principal and interest amounts owed to Dominion as of May 23, 2017 will total approximately \$2,980,787. However, Dominion has recently asserted that, in addition to the "allowed" principal and interest amount of its claim as previously determined by the Bankruptcy Court, it is entitled to recover "all of the costs and attorneys' fees due to Dominion's counsel" from the Debtor which purportedly total in excess of \$125,000. The Debtor has disputed that Dominion is entitled to payment of any of its attorneys' fees or litigation costs from the Debtor.

<sup>2</sup> The Debtor has identified certain potential disputes concerning its alleged common charges obligations which the Debtor is attempting to resolve informally with the Condominium. Additionally, any condominium charges are not secured by any liens against the Commercial Unit as no notice of lien has been filed by the condominium board pursuant to New York Real Property Law §339-z. The Debtor is nevertheless treating the common charges as an encumbrance against the Commercial Unit as such charges are typically paid at the closing on a sale of the subject condominium unit.

must be escrowed upon any sale of the Commercial Unit for the purposes of completing the renovations of Residential Unit required in order to obtain a permanent/full Certificate of Occupancy for the residential unit owned by the Debtor/the Building.<sup>3</sup> As such, the total of the debt obligations secured by or that are otherwise required to be paid with regard to the Commercial Unit are believed to presently total, at most, approximately \$3,143,000.

5. On January 17, 2017, an Order was entered pursuant to which, among other things, the Court directed that the Debtor “must confirm a chapter 11 plan of reorganization on or before April 28, 2017, failing which this case will be converted to a case under chapter 7”. By Order entered on April 3, 2017, the Debtor’s *First Amended Disclosure Statement in Connection With Chapter 11 Plan of Reorganization Proposed By the Debtor* (the “Disclosure Statement”) relating to its proposed *First Amended Chapter 11 Plan of Reorganization* (the “Plan”), each dated March 24, 2017, was approved by this Court. By Order entered on April 26, 2017, the Debtor’s time to confirm a chapter 11 plan was extended to May 23, 2017.

6. Briefly, 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 Menachem Haimovich’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 Commercial Unit and with the proceeds of certain “Exit Financing” to be obtained by the Debtor (the “Exit Financing”).

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<sup>3</sup> The current version of the approved amendment to the Offering Plan requires that the sum of \$225,000 be escrowed. However, said amount was based upon an architect’s certification of renovation plans submitted by the Debtor concerning the (top floor) residential unit which included the construction of a “pop up” on the roof of the building at a cost of \$200,000. The Debtor has opted to forego the construction of the pop-up and, thus, is in the process of submitting a revised certification for \$25,000 in renovations.

**THE PROPOSED SALE OF THE PROPERTY**

7. Certain amendments to the Offering Plan applicable the Commercial Unit required to be filed prior to any marketing or sale the Commercial Unit submitted by the Debtor were accepted for filing by the New York State Attorney General as of February 24, 2017. Upon said filing, the Debtor immediately began contacting real estate brokers and third-parties who had previously expressed an interest in acquiring the Commercial Unit concerning possible purchase offers. The Debtor initially accepted a \$3,300,000 purchase offer pursuant to a signed Letter of Intent submitted to the Debtor which offer the Debtor and his professionals considered to be well “above market”.

8. The Debtor and its professionals immediately began negotiating a contract of sale for the Commercial Unit with the proposed \$3,300,000 purchaser. However, during the course of the negotiations, the purchaser’s counsel raised certain issues and proposed certain conditions primarily concerning the need for an estoppel certificate from the Commercial Tenant (which cannot realistically be obtained given the ongoing litigation between the Debtor and the Commercial Tenant and related issues) and certain language in the applicable condominium Declaration concerning the permitted use of the Commercial Unit (specifically, the Declaration provides for the use of the Commercial Unit as a “...restaurant, unless the style and manner of operation of such restaurant is compatible with the surrounding neighborhood and takes into account that the balance of the Building is occupied by luxury residential condominiums...”). The proposed purchaser refused to move forward with the transaction unless the Debtor acquiesced to these conditions. Fearing material delay that might complicate the Debtor’s ability to confirm the Plan by the deadline imposed by the Court, among other reasons, the Debtor ultimately concluded that the proposed \$3,300,000 transaction should be abandoned in favor of pursuing a deal with a

potential purchaser whom, while offering less money, was willing to enter into a contract of sale with fewer conditions and thereby presenting fewer impediments to closing.

9. The Debtor subsequently engaged in discussions with the principal of the Proposed Purchaser (Yaron Jacobi of Premier Equities) who had previously been introduced to the Debtor by RPR Ventures, LLC, a licensed real estate broker, as a possible purchaser of the Commercial Unit. Given its prior interest in the Commercial Unit, the Proposed Purchaser was already familiar with the pending issues and litigation between the Debtor and the Commercial Tenant, as well as the size, condition, permitted use, etc..., of the Commercial Unit and had expressed that it was willing to take the Commercial Property "as is". The Proposed Purchaser submitted a written offer to the Debtor to purchase the Commercial Unit for the sum of \$3,000,000. However, following further due diligence by the Proposed Purchaser and negotiations with the Debtor, the Proposed Purchaser lowered its offer for the Commercial Unit to \$2,700,000. In consultation with its professionals, the Debtor determined that the Proposed Purchaser's reduced purchaser offer likely (or at least very nearly) represented the fair market value of the Commercial Unit under current market conditions and given the issues with, among other things, the Commercial Tenant and further determined that further efforts to market the Commercial Unit would not likely yield a significantly higher offer.

10. As such, and following extensive arms-length negotiations with the assistance of independent counsel, the Debtor and the Proposed Purchaser subsequently entered into the Agreement. Without limiting the detail provided therein, the material terms of the Agreement can be summarized as follows:

- (a) The Proposed Purchaser will pay the sum of \$2,700,000 in consideration of the Debtor's conveyance of its interests in the Commercial Unit free and clear of all liens and encumbrances at closing;

- (b) The proposed sale is for “all cash” and is not subject to any mortgage contingency (provided however that the Proposed Purchaser is not precluded from seeking financing to fund the payment of the purchase price);
- (c) The Proposed Purchaser will take the Property “as is” provided that it comports with Exhibit “B” to the Agreement and the Offering Plan;
- (d) The Debtor will assume and assign the Commercial Tenant Lease to the Proposed Purchaser at closing;
- (e) The Debtor will retain any all pre-closing claims against the Commercial Tenant for unpaid rent/additional rent;
- (f) The Proposed Purchaser has remitted a good faith deposit in the amount of \$270,000.00 which is currently being held in escrow by the Debtor’s special real estate counsel and will be applied to the purchase price at closing;
- (g) The Debtor will pay a 3% (*i.e.*, \$81,000) brokerage commission to RPR Ventures, LLC if the sale to the Proposed Purchaser is consummated;
- (h) The Agreement and the Debtor’s obligation to close thereunder shall not become effective unless and until each of the following conditions has been satisfied or waived by the Debtor:
  - (1) The entry of an Order by this Court confirming a chapter 11 plan proposed by the Debtor providing for the sale of the Commercial Unit;
  - (2) The entry of an Order by this Court authorizing the Debtor to enter into the Agreement and approving the sale of the Commercial Unit to the Proposed Purchaser as contemplated thereunder; and
  - (3) The entry of an Order by this Court authorizing the Debtor to obtain the Exit Financing and the funding of the proceeds thereof by the corresponding lender(s);
- (j) The closing shall take place within sixty (60) days of notice to the Proposed Purchaser of the satisfaction of the above-referenced conditions subject to a single, fifteen (15) day, “time of the essence” extension/adjournment at the request of either party; and
- (k) The Debtor shall include language in any proposed Order confirming a chapter 11 plan recognizing the deed conveying the Commercial Unit to the Proposed Purchaser as an instrument of transfer under, in connection

with or in furtherance of a confirmed chapter 11 plan which shall not be subject to tax under any law imposing a stamp tax, real estate transfer taxes, mortgage recording tax or similar tax, and, to the extent provided by 11 U.S.C. §1146(a), if any, shall not be subject to any state, local or federal law imposing sales tax. However, to the extent that any taxes or fees incurred or assessed in connection with the Agreement are due, such taxes and fees shall be paid by the Proposed Purchaser as provided for in the Agreement.

11. The Debtor believes that the \$2,700,000 purchase price proposed to be paid under the Agreement represents the fair and reasonable value of the Commercial Unit under the circumstances. Thus, the Debtor does not believe that further marketing efforts with regard to the Commercial Unit would result in a purchase offer that is higher or better than the Proposed Purchaser's \$2,700,000 offer. Additionally, given the pending May 23, 2017 deadline by which the Debtor must confirm a chapter 11 plan as well as the continuing accrual of mortgage interest owed to Dominion totaling in excess of \$24,000 per month, it is imperative that a sale of the Commercial Unit be immediately approved. Although the \$2,700,000 purchase price is not sufficient to satisfy all of the obligations secured by or that are otherwise required to be paid with regard to the Commercial Unit, the Debtor intends to use the proceeds of the Exit Financing to make up any shortfall.

12. Accordingly, the Debtor believes that the Proposed Purchaser's offer for the Commercial Unit is fair and reasonable and that approval thereof would be appropriate under the circumstances. The Proposed Purchaser has no affiliation with the Debtor or any insider of the Debtor. Other than the Debtor and the Proposed 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 Proposed Purchaser and the proposed sale was fully and adequately negotiated with the assistance of independent counsel. Thus, the Debtor avers that the proposed private sale of the



Commercial Unit to the Proposed Purchaser is at arms-length. Accordingly, the Debtor brings the instant Motion.

### **JURISDICTION AND VENUE**

14. 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) and 365(a) of the Bankruptcy Code, Bankruptcy Rules 2002, 6004 and 6006 and Local Bankruptcy Rules 6004-1 and 6006-1.

### **REQUEST FOR RELIEF**

15. The Debtor respectfully requests the entry of an Order authorizing the Debtor's proposed sale of the Commercial Unit to the Proposed Purchaser upon the terms of the Agreement.

16. 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).

17. Additionally, Bankruptcy Rule 6004(f)(1) makes it clear that private sales are permissible. Fed. R. Bankr. P. 6004(f)(1). ("All sales not in the ordinary course of business may be by private sale or by public auction.") Courts generally permit private sales when the debtor demonstrates that the sale is otherwise permissible under §363(b) of the Bankruptcy Code. *See, e.g.*, In re Condere Corp., 228 B.R. 615 (Bankr. S.D. Miss. 1998); In Wieboldt Stores, Inc., 92 B.R. 309 (N.D. Ill. 1988); Palermo v. Pritam Realty, Inc. (In re Pritam Realty, Inc.), 233 B.R. 619 (D.P.R. 1999).

18. Section 365 of the Bankruptcy Code authorizes a debtor to assume an unexpired lease provided that, among other things, any defaults under the subject lease have been cured. *See* 11 U.S.C. §365(a) and (b). The standard governing whether to approve a debtor's assumption of an unexpired lease is the business judgment test, which requires a showing that the proposed course of action will benefit the estate. Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1099 (2d Cir. 1993); Westbury Real Estate Ventures, Inc. v. Bradlees, Inc. (In re Bradlees Stores, Inc.), 194 B.R. 555, 558 n.1 (Bankr. S.D.N.Y. 1996)

(“In reviewing a debtor’s decision to assume or reject an executory contract, the court must examine the contract and circumstances and apply its best ‘business judgment’ to determine if the assumption or rejection would be beneficial or burdensome to the estate”); accord Sharon Steel Corp. v. National Gas Distrib. Corp., 872 F.2d 36, 39-40 (3d Cir. 1989) (debtor’s motion to reject executory contract is properly granted upon finding that rejection will benefit estate).

19. The Debtor respectfully submits that the proposed sale of the Commercial Unit, and the corresponding assumption and assignment of the Commercial Tenant Lease to the Proposed Purchaser on a private sale basis (as opposed to further efforts to solicit higher and better offers) 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, given the impending deadline for the Debtor to confirm a chapter 11 plan, it is imperative that a sale of the Commercial Unit be authorized immediately and the Debtor believes that the \$2,700,000 purchase price proposed to be paid under the Agreement represents the fair and reasonable value of the Commercial Unit under the circumstances. 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 Commercial Unit under the circumstances. In this regard, the proceeds of the sale of the Commercial Unit, coupled with the proceeds of the Exit Financing (the acquisition of which is a condition to closing on the sale of the Commercial Unit), will be utilized to satisfy all claims against the Debtor, with applicable interest.

20. Also, given the continuing accrual of administrative interests, professional fees, statutory fees, and other administrative expenses, coupled with the need to close quickly, the Debtor does not believe that seeking approval of bidding procedures and conducting an auction with regard to the Commercial Unit would result in any benefit to the Debtor's creditors or its estate. As such, a private sale is appropriate under the facts and circumstances. Moreover, there is no affiliation or connection between the Debtor or its insiders on one hand, and the Proposed Purchaser and its insiders on the other. Other than the parties to the Agreement, no individuals or entities stand to benefit from the proposed transactions. The proposed transactions do not provide for or contemplate any retention, employment or compensation of any of any insiders of the Debtor. Thus, the Debtor avers that the proposed transactions are proposed at arms-length.

21. Any liens, claims, encumbrances, and interests asserted in connection with the Commercial Unit will be transferred to and attach to the amounts payable to the Debtor under the Agreement, subject to the rights, claims, defenses, and objections, if any, of all interested parties with respect thereto. Accordingly, the Debtor submits that the requirements of § 363(f) have been satisfied.

22. 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.

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

24. Furthermore, the Debtor requests that this Court find that the Proposed Purchaser 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.

25. 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 Proposed Purchaser has acted in good faith in negotiating the proposed sale.

**CONCLUSION**

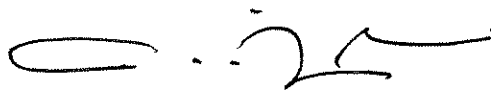
27. Based upon the foregoing, it is respectfully submitted that the proposed sale of the Commercial Unit to the Proposed Purchaser is appropriate and should be approved by this Court.

**WHEREFORE**, the Debtor respectfully requests that the Court grant the Motion in its entirety along with such other and further relief as may be just and proper.

Dated: New York, New York  
May 18, 2017

**PICK & ZABICKI LLP**  
Counsel to the Debtor

By:



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**EXHIBIT "A"**

THIS DOCUMENT IS A LEGALLY BINDING DOCUMENT AND SHOULD BE READ CAREFULLY BY EACH PROSPECTIVE PURCHASER AND SHOULD BE REVIEWED BY EACH PROSPECTIVE PURCHASER'S ATTORNEY BEFORE EXECUTING IT.

**PURCHASE AGREEMENT ("Agreement")  
209 EAST 2<sup>nd</sup> STREET CONDOMINIUM ("Condominium")**

Purchaser's Name: Premier East 2ND .LLC

EIN No.: \_\_\_\_\_

Address: c/o Premier Equities, 150 East 58<sup>th</sup> Street, 23<sup>rd</sup> Floor, New York, NY 10155

Telephone No.: (212) 421-3634

Unit Number: 1, including Storage Room # N/A, if applicable; Parking Space # N/A, if applicable; and Storage Bin # N/A (if applicable)

Percentage Interest in Common Elements: 11.37

Down Payment:

a) Down Payment (10%)	\$ <u>270,000.00</u>
b) Additional Down Payment (10%)	\$ _____

Balance Due at Closing \$ 2,430,000.00

Total Purchase Price \$ 2,700,000.00

Name(s) and manner in which title will be taken: \_\_\_\_\_



### Statement of Seller

Haimil Realty Corp., with an address c/o Menachem Haimovich at 209 East 2<sup>nd</sup> Street, Unit 7, New York, NY 10009, a New York corporation formed pursuant to the laws of the State of New York ("Sponsor" or "Seller"), has promulgated a Plan of Condominium Ownership of 209 East 2<sup>nd</sup> Street Condominium (the "Plan") pursuant to which the land with appurtenances and the Residential Units and the Commercial Unit (the "Units") constructed by Seller are declared to be a condominium under the provisions of Article 9-B of the Real Property Law of the State of New York on the terms and conditions more particularly set forth in the Plan.

### Statement of Purchaser

Purchaser acknowledges as follows:

I have received and read a copy of the Plan and all filed amendments thereto. Said Plan, includes the Declaration as made by the Seller and recorded in the Office of the Register of the City of New York, New York County, the Schedules, By-Laws and Rules and Regulations attached thereto, which are incorporated herein by reference and made a part of this Agreement with the same force and effect as if fully set forth herein.

AFTER DELIVERING AN EXECUTED AGREEMENT, TOGETHER WITH THE REQUIRED DEPOSIT, I WILL BE AFFORDED SEVEN (7) DAYS TO RESCIND THIS PURCHASE AGREEMENT AND HAVE THE FULL DEPOSIT REFUNDED TO ME PROMPTLY, PROVIDED THAT I HAVE NOT HAD AN OPPORTUNITY TO REVIEW THE OFFERING PLAN AND ANY FILED AMENDMENTS FOR AT LEAST THREE (3) BUSINESS DAYS PRIOR TO SUCH DELIVERY, SUCH RESCISSION MUST BE BY WRITTEN NOTICE, ADDRESSED TO SPONSOR, AND BE POSTMARKED OR HAND DELIVERED NO LATER THAN MIDNIGHT OF THE 7TH DAY SUBSEQUENT TO MY DELIVERING THE EXECUTED PURCHASE AGREEMENT. IF I HAVE HAD AN OPPORTUNITY TO REVIEW THE OFFERING PLAN AND ANY FILED AMENDMENTS FOR NOT LESS THAN THREE (3) BUSINESS DAYS PRIOR TO MY MAKING THE AFORESAID DELIVERY, I SHALL NOT BE PERMITTED THE AFOREMENTIONED SEVEN (7) DAY TIME PERIOD TO RESCIND THIS PURCHASE AGREEMENT.

The seven (7) day rescission period is (delete whichever is incorrect): not applicable.

Purchaser has been given an opportunity to examine the architectural plans for the above-numbered Unit and for the building in which it is located ("the Building").

Purchaser is desirous of purchasing the above-numbered Unit, located on the First Floor which also includes a Commercial Unit Pantry and additional space on the Cellar Floor, as applicable, and as designated in the Declaration as amended and on the floor plans filed or to be filed in the aforesaid Register's Office, together with an undivided interest in the Common Elements appurtenant thereto (the above-numbered Unit and the undivided interest being hereinafter collectively called the "Unit");

### Agreement Between Seller and Purchaser

For good and valuable consideration, receipt of which is hereby acknowledged, Seller and Purchaser mutually agree as follows:

1. **Payment for Unit.** Seller hereby agrees to sell and Purchaser hereby agrees to purchase the Unit for the Total Purchase Price stated above. The Down Payment stated above has been made on the signing of this Agreement, receipt of which by check, subject to collection, or by wire transfer of immediately available federal funds ("Acceptable Funds") pursuant to the wiring instructions attached hereto as Exhibit 1 and made a part hereof ("Wiring Instructions") is hereby acknowledged by Seller. If the check representing the Down Payment is returned for insufficient funds or for any other reason (i) such return shall be deemed a non-curable default by Purchaser and this Agreement shall automatically be deemed cancelled, and (ii) upon such cancellation Purchaser and Sponsor will be released and discharged of all further liability and obligations hereunder and under the Plan, and the Unit may be sold to another as though this Agreement had never been made and without any obligation to account to Purchaser for any of the proceeds of such sale. Notwithstanding anything herein to the contrary, whether or not the Seller has canceled this Agreement as provided above, if the Seller has not collected the proceeds of any check for any payments due under this Agreement, then the Seller may take such actions at law and in equity as may be required in order to collect such payments and any and all costs of collection, including, without limitation, all reasonable attorneys' fees and expenses actually incurred by the Seller in connection therewith. The Balance Due at Closing shall be payable at the closing of title, as hereinafter provided in Paragraph 2, by unendorsed certified or cashier's check of Purchaser drawn on a bank or trust company which is a member of the New York Clearing House Association or by Acceptable Funds to the order of Seller or as otherwise directed by Seller.

2. **Closing of Title.** The closing of title shall take place within sixty (60) days of notice to Purchaser of the satisfaction of all Bankruptcy Court Approval Conditions (as defined in Paragraph 13 of the Rider to this Agreement) at 10:00 a.m. at the office of Seller's attorneys, D'Agostino, Levine, Landesman & Lederman, LLP, 345 Seventh Avenue, 23<sup>rd</sup> Floor, New York, New York 10001 or at the office of Purchaser's lending institution or its counsel, provided that same are located in the State, City and Counties of New York or Suffolk (hereinafter called the "Scheduled Closing Date"). Prior to the Scheduled Closing Date, Seller and Purchaser shall each have the one-time right to adjourn the Scheduled Closing Date on not less than three (3) business days' prior written notice (the "Adjournment Notice") to the other party for a period up to, but not exceeding, fifteen (15) days from the Scheduled Closing Date, TIME BEING OF THE ESSENCE as to the delivery of the Adjournment Notice prior to the Scheduled Closing Date. The Adjournment Notice shall provide the new date (the "Adjourned Closing Date") and place for the adjourned Closing which shall be at 10:00 a.m. on the Adjourned Closing Date. The Adjourned Closing Date shall be TIME OF THE ESSENCE as to Seller and Purchaser. Hereinafter, the Scheduled Closing Date and the Adjourned Closing Date are collectively referred to as the "Closing Date". At Closing, Purchaser shall pay a travel fee in the amount of \$500.00 to Seller's counsel in the event the closing location is in Suffolk County, New York.

At the closing of title Seller shall deliver to Purchaser a bargain and sale deed, with covenant against grantor's acts, conveying the Unit to Purchaser, such deed to be in the form contained in Part II of the Plan, executed and acknowledged by Seller in form for recording.

Simultaneously with the delivery of the deed, Purchaser (i) shall cause the proceeds of any mortgage loan to be transferred to the Seller on account of the Total Purchase Price, (ii) shall execute and deliver to the mortgagee the note and mortgage, and any other documents required by the mortgagee, as well as any documents required by Seller and (iii) shall deliver the Balance Due at Closing.

Title to the Unit will close only after or concurrently with the occurrence of the events set forth in the Section of the Plan entitled "Terms of Sale".

3. **Power of Attorney to Board of Managers.** At the closing of title and simultaneously with the delivery to Purchaser of the deed conveying the Unit, Purchaser shall execute and acknowledge the power of attorney to the Board of Managers in the form contained in Part II of the Plan. Purchaser agrees to deliver such power of attorney to Seller at the closing of title for recording and to pay the recording fee.

4. **Binding Effect of Declaration, By-Laws, Plan, Rules and Regulations.** Purchaser hereby agrees to be bound by the Declaration, the By-Laws, the Rules and Regulations and the Plan.

5. **Condition of Title.** Seller agrees to convey to Purchaser title in fee simple to the Unit free and clear of all liens and encumbrances other than those set forth in the Plan, specifically in Part I thereof in the section titled "Terms of Sale," and Exhibits submitted in connection therewith (as well as other mortgages, if any, obtained by Purchaser).

Notwithstanding the above, the existence of unpaid taxes or liens of any kind at the time of title closing shall not constitute an objection to title, provided that Borders Title Agency, Inc., as agent for First American Title Insurance Company or Old Republic National Title Insurance Company shall be willing to insure against collection of same from the Unit herein described. The parties agree that the Seller may pay and discharge any liens and encumbrances upon the property, not provided for in the Plan or this Agreement, out of the monies to be paid by the Purchaser at the time of closing title.

6. **Expenses of Closing and Closing Adjustments.** Purchaser will pay the closing costs and expenses referred to in the Section of the Plan (as same may be amended to date) entitled "Unit Closing Costs and Adjustments," including, but not limited to, the amount of any credit for mortgage recording tax as set forth in such Section, payment for title insurance, if Purchaser elects or is required by a lender to obtain same, recording fees for recording the Deed, Power of Attorney and any Partial Release and/or UCC-3 Termination Statement for the Unit related to Sponsor's financing encumbering the Building and real estate taxes and costs associated with obtaining a mortgage loan but excluding NYS and NYC Real Property Transfer Taxes. A legal fee in the

amount of \$350.00 shall be paid by Purchaser to Sponsor's attorneys for each cancellation of a Purchase Agreement and/or release related thereto if prepared by such firm. Purchaser will also pay to the Board of Managers the sum equal to two months of Common Charges for the Unit being purchased as Purchaser's contribution to the Working Capital Fund of the Condominium. Except as otherwise provided in this Agreement, real estate taxes and Common Charges and expenses shall be adjusted between Seller and Purchaser as of midnight preceding the Closing Date in accordance with the provisions of the Plan. Any such expenses or adjustments payable to Seller in excess of \$500.00 will be paid by certified check or bank check drawn on a bank or trust company which is a member of the New York Clearing House Association or any successor organization or by wire transfer. The obligation of the Purchaser to pay the transfer taxes as stated above shall survive the Closing.

Notwithstanding anything herein to the contrary, one of Purchaser's costs of closing title to his or her Unit shall be the payment to the Title Company of the cost of fee title insurance, provided that Purchaser elects to obtain title insurance. Purchaser may elect to obtain title insurance and/or a title report from any title insurance company and/or abstract company (collectively, the "Title Company") licensed to do business in the State of New York.

**7. Agreement Subject to Mortgages.** Purchaser agrees that all terms and provisions of this Agreement are and shall be subject and subordinate to the lien of any building loan mortgage or development loan mortgage heretofore or hereafter made and any advances heretofore or hereafter made thereon and any payments or expenses already made or incurred or which may hereafter be made or incurred, pursuant to the terms thereof, or incidental thereto, or to protect the security thereof, to the full extent thereof without the execution of any further legal documents by Purchaser. This subordination shall apply whether such advances are voluntary or involuntary and whether made in accordance with the building loan schedule of payments or accelerated thereunder by virtue of lender's right to make advances before they become due in accordance with the schedule of payments. Notwithstanding anything to the contrary contained in this Paragraph 7, however, on the Closing Date the only mortgage to which the Unit will be subject will be to any other mortgage(s) obtained by Purchaser.

**7. Mortgage Financing Contingency.** THE PURCHASE OF THE UNIT WILL NOT BE CONDITIONED ON FINANCING AND THIS PARAGRAPH HAS BEEN INTENTIONALLY DELETED. Nothing herein shall prohibit Purchaser from financing the purchase of the Unit provided that same does not delay or impose obligations, other than those set forth in this Agreement, on Seller.

**8. Default by Purchaser.** If Purchaser shall fail to pay any portion of the Down Payment or the balance of the purchase price when due, fail to close title on the date, hour and place pursuant to Paragraph 2 hereof or fail to perform any of Purchaser's other obligations hereunder, such failure shall constitute a default by Purchaser. Seller shall notify Purchaser in writing, by overnight mail via a reputable overnight national courier service, of such default and advise Purchaser that he has three (3) business days from the overnight mailing date of such notice

within which to cure such default. TIME IS OF THE ESSENCE FOR PURCHASER TO CURE ANY DEFAULT UNDER THIS AGREEMENT WITHIN SUCH THREE (3) BUSINESS DAY PERIOD. If such default is not cured within three (3) business days from the overnight mailing date of such written notice, Seller has no obligation to extend the time to cure and may (but shall not be obligated to) elect to cancel the Agreement. If Purchaser has defaulted after said three (3) business day period and Sponsor elects to cancel the Agreement, Sponsor shall notify Purchaser in writing of said cancellation and the Down Payment and any other amounts paid by Purchaser for any special or custom work shall be paid over to Seller as and for liquidated damages and thereafter the Agreement shall become null and void. In the event that Seller shall elect so to cancel this Agreement, Seller shall certify to its attorneys, D'Agostino, Levine, Landesman & Lederman, LLP, that title has not closed because of Purchaser's default, that a notice to cure was delivered to Purchaser and Purchaser has failed to cure the default within three (3) business days from the overnight mailing date of such notice and that Seller has elected to cancel this Agreement by reason thereof, and D'Agostino, Levine, Landesman & Lederman, LLP shall thereupon, pursuant to Paragraph 16 hereunder, cause to have paid over to Seller as liquidated damages the Down Payment (and the actual cost incurred by Seller for any special work in the Unit ordered by Purchaser) and any interest earned thereon, and upon such payment being made each of the parties hereto shall be relieved of any further liabilities or obligations hereunder. If Sponsor instructs Escrow Agent to release the Down Payment, then Escrow Agent must give both the Purchaser and Sponsor prior written notice of not fewer than thirty (30) days before releasing the Down Payment. If the Escrow Agent has not received notice of objection to the release of the Down Payment prior to the expiration of the thirty (30) day period, the Down Payment shall be released and the Escrow Agent shall provide further written notice to both parties informing them of said release. If the Escrow Agent receives a written notice from either party objecting to the release of the Down Payment within said thirty (30) day period, the Escrow Agent shall continue to hold the Down Payment until otherwise directed pursuant to either (a) upon closing of title to the Unit, to Sponsor, pursuant to the terms and conditions set forth in this Agreement; (b) a subsequent writing signed by both Sponsor and Purchaser; or (c) a final, non-appealable order or judgment of a court. Notwithstanding the foregoing, the Escrow Agent shall have the right at any time to deposit the Down Payment contained in the Escrow Account with the clerk of New York County and shall give written notice to both parties of such deposit. Seller shall reimburse D'Agostino, Levine, Landesman & Lederman, LLP insofar as it is acting in its capacity as Escrow Agent for its reasonable cost and expenses, including attorney's fees and the fair value of legal services rendered by the Escrow Agent to itself incurred as a result of any dispute or litigation concerning the right to the Down Payment. Sponsor shall not seek the remedy of specific performance in connection with the Agreement as to which there has been a default by Purchaser. If this Agreement shall be canceled by Seller pursuant to the provisions of this Paragraph 9, Seller may sell the Unit to any third party and shall be under no obligation to account to Purchaser for any part of the proceeds of such sale. D'Agostino, Levine, Landesman & Lederman, LLP may rely upon the truth and accuracy of the facts contained in Seller's certification and the authority of the person or persons executing the same and shall have no liability as a result of such reliance.

9. **Agreement May Not Be Assigned; Advertising.** Purchaser shall have no right to assign this Agreement and any purported assignment of this Agreement in violation hereof shall be voidable at the option of Seller. Notwithstanding the foregoing, membership interests in the Purchaser may be transferred or otherwise conveyed prior to Closing provided that at the Closing Premier East 2ND, LLC shall remain the ultimate purchaser hereunder and Yaron Jacobi shall remain the managing member of Purchaser in control of the day-to-day operations of the Purchaser. Prior to the closing of title to the Unit, Purchaser shall not advertise or otherwise publicly publicize the availability of such Unit for sale.

10. **Notices.** Any notice to be given hereunder shall be in writing and sent by overnight mail via a reputable overnight national courier service or personal delivery to Purchaser at the address given above (with a copy to Mermel Associates PLLC, One Hollow Lane, Suite 303, Lake Success, New York 11042, Attn: Mark D. Mermel, Esq.) and to Seller at c/o Haimil Realty Corp., 209 East 2<sup>nd</sup> Street, Unit 7, New York, NY 10019, Attn: Menachem Haimovich (with a copy to D'Agostino, Levine, Landesman & Lederman, LLP, 345 Seventh Avenue, 23rd Floor, New York, New York 10001, Attn: Michael J. Levine, Esq.) or at such other address as either party may hereafter designate to the other in writing. All such notices and communications shall be deemed to have been received on the date of overnight mailing or personal delivery.

11. **No Representation.** Except as herein or in the Plan specifically set forth, Purchaser acknowledges that he has not relied upon any architect's plans, sales plans, selling brochures, advertisements, representations, warranties or statements of any nature, whether made by Seller, Seller's Counsel or Selling Agent or otherwise, including, but not limited to, any relating to the description or physical condition of the Building or the Unit, the size or the dimensions of the Unit or the rooms therein contained or any other physical characteristics thereof, the building services or amenities, the estimated Common Charges and expenses allocable to the Unit or the right to any income tax deduction on account of any real estate taxes and/or mortgage interest paid by Purchaser. Purchaser agrees that Seller shall have no liability or responsibility to Purchaser if the layout or dimensions of the Unit or any part thereof or of the Common Elements as shown on the floor plans or on the architectural plans and specifications for the Building are not accurate or correct, provided such layout or dimensions conform substantially to the floor plans and the architectural plans and specifications for the Building and the site as modified or supplemented in accordance with the Plan and that Purchaser will not be relieved from his obligations hereunder by reason of any minor inaccuracy or error. This provision shall survive the closing of title to the Unit.

12. **Recording of Deed and Power of Attorney.** At the closing of title, Purchaser will deliver the executed deed received from Seller and executed and acknowledged power of attorney to the representative of the title company, if any, or to Seller for recording in the Office of the Register of the City of New York, New York County. Such deed and power of attorney will be in the form set forth in the Plan.

13. **Binding Effect.** This Purchase Agreement shall not be effective or binding on Seller until a counterpart hereof is executed by Seller and delivered to Purchaser. Subject to the provisions hereof, this Purchase Agreement shall bind and inure to the benefit of the parties hereto, their heirs, personal representatives, successors and permitted assigns.

14. **Intentionally Omitted.**

15. **Monies to be Held in Trust; Escrow Agent and Escrow Account; Down Payment; Payment of Purchase Price; Notice of Closing.**

The required Down Payment pursuant to this Agreement will be ten percent (10%) of the Total Purchase Price for the Unit set forth in the Plan, as amended.

In accordance with section 71-a(3) of the Lien Law, Sponsor has appointed the law firm of D'Agostino, Levine, Landesman & Lederman, LLP, with an address at 345 Seventh Avenue, 23rd Floor, New York, NY 10001, telephone number (212) 564-9800, to serve as escrow agent ("Escrow Agent") for Sponsor and Purchaser to hold all Deposits, other than the deposit for a copy of the Offering Plan, received by it from Purchaser, either directly or through its agents or employees in trust (the "Deposit" or "Deposits"). An ESCROW RIDER is attached hereto as Exhibit H and incorporated by reference which includes provisions applicable to Purchaser's Down Payment.

Escrow Agent shall maintain the Escrow Account under its direct supervision and control.

A fiduciary relationship shall exist between Escrow Agent, and Purchaser, and Escrow Agent acknowledges its fiduciary and statutory obligations pursuant to GBL §§ 352(e)(2-b) and 352(h).

Escrow Agent may rely upon any paper or document which may be submitted to it in connection with its duties under this Agreement and which is believed by Escrow Agent to be genuine and to have been signed or presented by the proper party or parties and shall have no liability or responsibility with respect to the form, execution or validity thereof.

Sponsor agrees that it shall not interfere with Escrow Agent's performance of its fiduciary duties and statutory obligations as set forth in GBL §§ 352-(e)(2-b) and 352-(h) and the New York State Department of Law's regulations.

Sponsor shall obtain, or cause the Selling Agent under the Offering Plan to obtain, a completed and signed W-9 (Request for Taxpayer Identification Number and Certification) or Form W-8BEN (Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding), whichever may be applicable, from Purchaser and deliver such form to Escrow Agent together with the Deposit and this Purchase Agreement. Notwithstanding anything contained herein to the contrary, unless and until Purchaser has delivered to the Escrow Agent a

completed and originally-executed Form W-9 or Form W-8BEN, whichever may be applicable, the Down Payment will be deposited in a non-interest-bearing escrow account at the Bank.

Prior to release of the Deposit, Escrow Agent's fees and disbursements shall neither be paid by Sponsor from the Deposit nor deducted from the Deposit by any financial institution under any circumstance.

Sponsor agrees to defend, indemnify and hold Escrow Agent harmless from and against all costs, claims, expenses and damages incurred in connection with or arising out of Escrow Agent's responsibilities arising in connection with this Purchase Agreement or the performance or non-performance of Escrow Agent's duties under this Purchase Agreement, except with respect to actions or omissions taken or suffered by Escrow Agent in bad faith or in willful disregard of the obligations set forth in this Purchase Agreement or involving gross negligence of Escrow Agent. This indemnity includes, without limitation, disbursements and attorneys' fees either paid to retain attorneys or representing the hourly billing rates with respect to legal services rendered by Escrow Agent to itself.

As an alternative to depositing Down Payments in escrow as set forth above, Seller may post a bond or indemnity contract with a licensed surety company ensuring return of such monies, which bond or contract is to be delivered to Purchaser.

YOU, AS THE PURCHASER OF THIS UNIT, MAY REQUIRE THE RECIPIENT OR CONTRACTOR TO DEPOSIT THE INITIAL ADVANCE MADE BY YOU IN AN ESCROW ACCOUNT. IN LIEU OF SUCH DEPOSIT, THE RECIPIENT OR CONTRACTOR MAY POST A BOND OR CONTRACT OF INDEMNITY WITH YOU GUARANTEEING THE RETURN OF SUCH ADVANCE.

In the event of an uncured default by Purchaser in his obligations under the Agreement, no more than ten percent (10%) or of the Total Purchase Price plus any interest earned thereon, may be retained as liquidated damages. Seller agrees not to seek the remedy of specific performance in connection with the Agreement as to which there has been a default by Purchaser. No Down Payment or other monies shall be released pursuant to an uncured default by Purchaser prior to the First Unit Closing and/or the Consummation of the Plan.

The balance of the Total Purchase Price will not be payable until closing of title to the Unit.

**16. Equipment and Furnishings.** Seller will provide Purchaser only with the fixtures, equipment, hardware, appliances and furnishings referred to in the Plan, which are included in the purchase price of the Unit. Furnishings, equipment, appliances and decorations in any model unit or sales office not referred to in the Plan are excluded from this sale unless specifically included by a rider to this Purchase Agreement. The cost of any such items will be added to the purchase price of the Unit.

**17. Acceptance of Condition of Unit; Risk of Loss.**



(i) Purchaser shall accept title (without abatement in or credit against the purchase price or provision for escrow) notwithstanding that construction of (a) other Units or (c) any recreation facilities and/or amenities or (d) the landscaped areas or (e) other portions of the Common Elements have not been completed.

(ii) Prior to the closing of title to a Unit, no Purchaser shall be permitted to enter the Unit without the prior consent of Seller or the Selling Agent. Purchaser shall have the right to enter and inspect such Unit prior to the closing of title, but shall be obligated to make an inspection appointment with Seller or the Selling Agent. Under no circumstances shall Purchaser perform or cause to be performed any work in such Unit prior to the closing of title thereto.

(iii) Purchaser represents to Seller that he has examined the as built Floor Plans attached hereto as Exhibit B which are a description of the Unit Floor Plans shall be used by Sponsor to amend the Declaration of Condominium ("Declaration") and record amended Tax Lot drawings in the City Register, New York County. Purchaser hereby agrees that his execution of this Purchase Agreement shall constitute acceptance of the Unit and the Building and all fixtures, machinery, equipment, furnishings, appliances, installations and other personal property contained therein, if any, in their "as built" and "as is" condition on the Closing Date, subject to any other obligations of Seller under the terms of the Plan including, but not limited to, amending the Declaration and recording the amended Tax Lot drawings as aforesaid. For the avoidance of any doubt Purchaser hereby acknowledges and agrees that in accordance with the Eleventh Amendment ("Amendment") to the Offering Plan, the Unit is being offered as more specifically set forth on the floor plans of the Unit as Exhibit B thereof, which floor plans are incorporated herein by reference in this Agreement as Exhibit B. In connection therewith, prior or subsequent to the Closing, Sponsor shall amend the Declaration of Condominium ("Declaration") and record in the Office of the City Register, New York County, amended Tax Lot drawings for the Unit consistent with Exhibit B hereof.

Purchaser agrees to: (i) cooperate with Sponsor, as is reasonably necessary for Sponsor to amend the Declaration and record the amended Tax Lot drawings for the Unit consistent with Exhibit B hereof in the Office of the City Register, New York County and to promptly execute any and all necessary consents and applications and forms including, but not limited to, a power of attorney coupled with an interest and perform such other reasonable ministerial and non-ministerial requirements as and to the extent required to accomplish the aforesaid; and (ii) at the Closing and simultaneously with the delivery to Purchaser of the deed conveying the Unit to Purchaser, to execute, acknowledge and deliver to Sponsor the power of attorney substantially in the form annexed hereto as Exhibit B and made a part hereof.

(iv) The risk of loss from fire or other casualty with respect to the Unit shall remain with Seller until the closing of title for the Unit. Seller, at its sole discretion, reserves the right to either repair or restore such Unit whereupon Purchaser shall be obligated to close without an abatement in the purchase price, or not repair or restore and grant Purchaser the right to rescind the Agreement. Notwithstanding the above, in the event that Purchaser, or one claiming by or

through Purchaser, enters into possession of the Unit prior to the closing of title, then Purchaser shall bear the risk of loss or other casualty with respect to the Unit. Additionally, in the event that Purchaser, or one claiming by or through Purchaser, enters into possession of the Unit prior to the closing of title, Purchaser shall be solely responsible for any damage to, or loss or other condition in, the Unit and Seller shall not be obligated to repair any damages to the Unit or its appliances, fixtures and equipment. Accordingly, Purchaser, or one claiming by or through Purchaser, who takes possession of the Unit prior to the closing of title, should obtain insurance coverage for the Unit prior to taking possession, since, despite any loss, Purchaser will remain obligated to purchase the Unit under the terms of this Agreement, without any abatement in the purchase price. PURCHASER SHOULD CONSULT WITH AN ATTORNEY AND/OR INSURANCE AGENT AS TO HIS OR HER INSURANCE NEEDS.

18. **Possession of Unit Prior to Closing.** It is expressly understood and agreed that the Purchaser shall in no event take possession of the Unit prior to the time of the delivery of the deed and full compliance by the Purchaser with the terms of this Purchase Agreement, and should the Purchaser violate this provision, the Purchaser consents that the Seller shall have the right to remove him from the Unit as a squatter and intruder by summary proceedings. Upon the Purchaser's unauthorized possession, the Purchaser shall be deemed in default hereunder at the option of the Seller, and if the Seller so elects, the Seller may cancel this Agreement and the amount deposited hereunder shall belong to the Seller as liquidated damages deemed earned hereunder. It is further understood and agreed that the Seller will not be responsible for damage or loss to any property belonging to Purchaser whether same is delivered to the property before, on or after the closing of title herein.

19. **Limitation of Seller's Liability.** The Seller's liability under this Agreement for failure to complete and/or deliver title for any reasons whatsoever shall be limited to the return of the money deposited hereunder (with interest, if any), and upon the return of said money, this Agreement shall be null and void and the parties hereto released from any and all liability hereunder. In any event, the Seller shall not be required to bring any action or proceeding or otherwise incur any expense to render the title to the Unit marketable or to cure any objection to title.

20. **Definitions.** The term "Purchaser" shall be read as "Purchasers" if more than one person are purchasers, in which case their obligations shall be deemed joint and several. The terms used herein shall have the same meanings as ascribed thereto in the Plan.

21. **Gender.** The use of the masculine gender in this Agreement shall be deemed to refer to the feminine gender or to an entity whenever the context so requires.

22. **Other Agreements.** This Agreement supersedes any and all understandings and agreements between the parties and constitutes the entire agreement between them and no oral representations or statements shall be considered a part hereof.

23. **Amendment of Agreement.** This Agreement may not be amended, altered or discharged except by agreement in writing signed by the party sought to be charged therewith or by his, her or its duly authorized agent.

24. **Brokerage.** Purchaser represents and warrants to Seller that Purchaser has dealt with no broker(s) or sales agents in connection with this transaction other than Ryan Perkoski of RPR Ventures, LLC ("Broker"). Purchaser agrees that should any claim be made against Seller for commissions by any broker on account of any acts of Purchaser or Purchaser's representatives, other than Broker, Purchaser will indemnify and hold Seller free and harmless from and against any and all liabilities and expenses in connection therewith, including reasonable legal fees. Seller agrees to pay any commission or fee owing to the Broker pursuant to a separate agreement. Seller agrees that should any claim be made against Purchaser for commissions by any broker on account of any acts of Seller or Seller's representatives, other than Broker, Seller will indemnify and hold Purchaser free and harmless from and against any and all liabilities and expenses in connection therewith, including reasonable legal fees. Nothing in this Article shall be construed to be a third-party beneficiary contract. The provisions of this paragraph 25 shall survive the closing of title.

25. **Governing Law.** This Agreement shall be governed by and construed and interpreted in accordance with the law of the State of New York, notwithstanding the principles of Conflict of Laws.

26. **Jury Waiver.** Purchaser and Seller each hereby waives trial by jury in any action, proceeding, or counterclaim involving any matter whatsoever arising out of, or in any way connected with this Agreement or the relationship of the parties as Purchaser and Seller, or the right of Purchaser or Seller to any statutory relief or remedy.

27. **Costs of Enforcing and Defending Agreement.** Purchaser shall be obligated to reimburse Sponsor for any reasonable legal fees and disbursements actually incurred by Sponsor in defending Sponsor's rights under this Agreement, or in the event Purchaser defaults under this Agreement beyond any applicable grace period, in canceling this Agreement or otherwise enforcing either Seller's rights or Purchaser's obligations hereunder.

28. **Acceptance by Seller.** The submission of this Agreement to Purchaser does not create a binding obligation on the part of Sponsor. This Agreement shall not be binding on Purchaser or Sponsor until Purchaser has signed this Agreement and delivered the signed Agreement and the Down Payment to Sponsor, and a counterpart hereof executed by Sponsor has been delivered to Purchaser. Within thirty (30) days after delivery to Seller or its Agent by Purchaser of this Purchase Agreement, executed by Purchaser, together with the required Down Payment, Seller will either:

- (a) accept this Agreement and cause to be returned to Purchaser a fully executed counterpart thereof, or
- (b) reject this Agreement offer and refund the Down Payment tendered by Purchaser.

If Seller takes no action within said thirty (30) day period this Purchase Agreement shall be deemed null and void and Seller will return Purchaser's Down Payment within twenty (20) days.

Upon such refund being made, neither party shall have any further rights, obligations or liabilities hereunder with respect to the other. Prior to Sponsor's countersigning and returning this Agreement to Purchaser, and at any time thereafter, Purchaser agrees upon request to provide Sponsor with written information about Purchaser's employment, financial and rental/ownership history. Such information obtained prior to countersignature may be used to determine Purchaser's qualification to purchase and own the Unit, but does not constitute a reservation or binding obligation on either the applicant or Sponsor. Sponsor has the right, without incurring any liability, to reject this Agreement without cause or explanation to Purchaser. This Agreement may not be rejected due to Purchaser's sex, race, creed, color, national origin, ancestry, disability, marital status, or other ground proscribed by law.

29. **Transfer Tax Returns.** At closing, Purchaser and Seller will duly complete and sign before a Notary Public the transfer tax return required to be filed with the City of New York and the appropriate New York State form (TP-584 or its successor) required to be filed with the New York County Register's office. This transfer tax return and TP-584 form shall be delivered at closing to the representative of Purchaser's title insurance company (or, if none, to Seller's attorney) for filing with the proper governmental officer. Seller and Purchaser hereby acknowledge that the transaction contemplated hereunder shall be exempt from the payment of all real property transfer taxes by order of the Bankruptcy Court.

30. **Foreign Investment in Real Property Tax Act.** Pursuant to the Foreign Investment in Real Property Tax Act (FIRPTA), upon disposition of a United States real property interest by a foreign person on or after January 1, 1985, the purchaser of such real property interest must deduct and withhold a tax equal to ten percent (10%) of the purchase price unless the Seller furnishes a certificate that it is not a foreign entity or individual. Seller, a New York limited liability company, will furnish to Purchaser a non-foreign certification at closing, thereby complying with FIRPTA and relieving Purchaser from any withholding obligations.

31. **Intentionally Omitted.**

32. **Damage to Public Improvements, Amenities and Common Elements.** Purchaser shall repair and/or restore to their original condition and standards any public improvement, amenity or Common Element on the Property damaged by Purchaser or Purchaser's agents, employees, contractors or licensees. Upon failure of Purchaser to complete such repair and/or restoration work within thirty (30) days after written notice from Seller, then and in that event, Seller may complete same at the reasonable expense of Purchaser who shall reimburse Seller for the reasonable cost thereof immediately upon demand. This paragraph shall survive delivery of the deed at Closing.

33. **Waiver of Diplomatic or Sovereign Immunity and Consent to Jurisdiction.** If applicable, any Purchaser that is a foreign government, a resident representative of a foreign government or other person or entity otherwise entitled to the immunities from suit enjoyed by a foreign government (i.e., diplomatic or sovereign immunity) will be required at the time of closing of title to the Purchaser's Unit, to expressly waive any and all immunity from suit by Sponsor and/or the Board of Managers of the Condominium. Such Purchasers at closing will be required to execute a Waiver of Diplomatic or Sovereign Immunity and Consent to Jurisdiction form.

34. **Intentionally Omitted.**

35. **Purchaser's Representations.** Purchaser represents that Purchaser has full right and authority to execute this Agreement and perform Purchaser's obligations hereunder. If Purchaser is not a natural person, Purchaser agrees to deliver at Closing, such documents evidencing Purchaser's authority as may be required by Purchaser's title company. Purchaser further represents that the Down Payment represents Purchaser's own funds and that no other party (other than Purchaser or Seller, as provided herein) has any right or claim to all or any portion of the Down Payment.

Purchaser is not now, nor shall it be at any time prior to or at the Closing, an individual, corporation, partnership, joint venture, trust trustee, limited liability company, unincorporated organization, real estate investment trust or any other form of entity (collectively, a "Person") with whom a United States citizen, entity organized under the laws of the United States or its territories (collectively, a "U.S. Person"), is prohibited from transacting business of the type contemplated by this Agreement, whether such prohibition arises under United States law, regulation, executive orders and lists published by the Office of Foreign Assets Control, Department of the Treasury ("OFAC") (including those executive orders and lists published by OFAC with respect to Persons that have been designated by executive order or by the sanction regulations of OFAC as Persons with whom U.S. Persons may not transact business or must limit their interactions to types approved by OFAC or otherwise. Neither Purchaser nor any person who owns an interest in Purchaser is now nor shall be at any time prior to or at the Closing a Person with whom a U.S. Person, including a "financial institution" as defined in 31 U.S.C. 5312(a)(z), as periodically amended, is prohibited from transacting business of the type contemplated by this Agreement, whether such prohibition arises under United States law, regulation, executive orders and lists published by the OFAC or otherwise.

Purchaser has taken, and shall continue to take until the Closing, such measures as are required by applicable law to assure that the funds used to pay to Seller the Purchase Price are derived: (i) from transactions that do not violate United States law nor, to the extent such funds originate outside the United States, do not violate the laws of the jurisdiction in which they originated; and (ii) from permissible sources under United States law and to the extent such funds originate outside the United States, under the laws of the jurisdiction in which they originated. Purchaser is, and will at Closing be, in compliance with any and all applicable provisions of the USA PATRIOT Act of 2001, Pub. L. No. 107-56, the Bank Secrecy Act of 1970, as amended, 31

U.S.C. Section 5311 et. seq., the Trading with the Enemy Act, 50 U.S.C. App, Section I et. seq. seq., the International Emergency Economic Powers Act, 50 U.S.C. App. Section 1701 et. seq. seq., and the sanction regulations promulgated pursuant thereto by the OFAC, as well as laws relating to prevention and detection of money laundering in 18 U.S.C. Sections 1956 and 1957.

The provisions of this paragraph 38 shall survive the Closing of title to the Unit or termination of this Agreement.


36. **Survival.** The closing of title to the Unit and the delivery of the deed thereto shall be deemed full compliance by Seller with each and every term of this Agreement, except as to any item specifically listed and excepted therefrom. All representations under the Offering Plan, all obligations pursuant to the GBL, and such additional obligations under the Offering Plan which are to be performed subsequent to the closing date will survive delivery of the deed.

37. **Conflict with Plan.** Any conflict between the Plan and this Agreement will be resolved in favor of the Plan.

38. **Captions.** The captions in this Agreement are for convenience and reference only and in no way define, limit or describe the scope of this Agreement, or the intent of any provision hereof.

Dated: \_\_\_\_\_, New York  
May 15, 2017

Premier East 2nd, LLC

  
\_\_\_\_\_  
Unit J Purchaser

Accepted:  
HAIMIL REALTY CORP.

ESCROW AGENT:  
D'Agostino, Levine, Landesman & Lederman, LLP

By: \_\_\_\_\_  
Menachem Haimovich

By:   
\_\_\_\_\_, Partner

Dated: May \_\_, 2017

Dated: May 18, 2017

U.S.C. Section 5311 et. seq., the Trading with the Enemy Act, 50 U.S.C. App. Section 1 et. seq. seq., the International Emergency Economic Powers Act, 50 U.S.C. App. Section 1701 et. seq. seq., and the sanction regulations promulgated pursuant thereto by the OFAC, as well as laws relating to prevention and detection of money laundering in 18 U.S.C. Sections 1956 and 1957.

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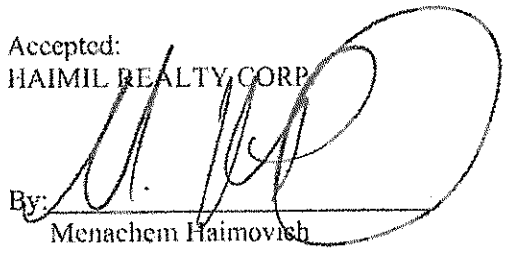
38. **Captions.** The captions in this Agreement are for convenience and reference only and in no way define, limit or describe the scope of this Agreement, or the intent of any provision hereof.

Dated: \_\_\_\_\_, New York  
May \_\_\_\_, 2017

Premier East 2nd, LLC

\_\_\_\_\_  
Unit 1 Purchaser

Accepted:  
HAIMIL REALTY CORP.

By:   
\_\_\_\_\_  
Menachem Haimovish

ESCROW AGENT:  
D'Agostino, Levine, Landesman & Lederman, LLP

By: \_\_\_\_\_  
\_\_\_\_\_, Partner

Dated: May 18, 2017

Dated: May \_\_\_\_, 2017

**RIDER TO PURCHASE AGREEMENT**

between

**HAJMIL REALTY CORP., as Seller**

and

**PREMIER EAST 2<sup>ND</sup>, LLC, as Purchaser**

**Premises:**

**Commercial Unit – Unit 1  
209 East 2<sup>nd</sup> Street Condominium  
209 East 2<sup>nd</sup> Street  
New York, New York 10009**

**Dated: May \_\_, 2017**

1. In the event of any conflict between this Rider and the provisions of the Purchase Agreement ("Purchase Agreement") to which this Rider is annexed, the provisions of this Rider shall be deemed to control. Any references to "the Agreement" or "this Agreement" in the Purchase Agreement shall be deemed to include the provisions set forth in this Rider.
2. It is expressly understood and agreed by Purchaser that this Purchase Agreement is not subject to financing any portion of the Purchase Price. Notwithstanding the aforesaid, in the event that Purchaser shall finance any portion of the Purchase Price, Seller shall, at no cost or expense to Seller, cooperate with the reasonable requests of Purchaser's lending institution, it being expressly understood and agreed that in no event shall Purchaser allege that Seller's cooperation, or lack thereof, has hindered or otherwise obstructed or prevented Purchaser from closing on the Closing Date.
3. This Purchase Agreement constitutes the entire Agreement between the parties hereto. Seller is not liable or bound in any manner, by express or implied warranties, guarantees, promises, statements or representations pertaining to the Unit, the condition thereof or any other matter whatsoever, made or furnished by any real estate broker, agent, employee, servant or other person representing or purporting to represent Seller, unless such warranties, guarantees, promises, statements or representations are expressly and specifically set forth herein or in the Plan.
4. The Purchaser agrees to issue and deliver upon the Closing Date separate checks (either certified or official bank), or by wire transfer of immediately available federal funds not in excess of the unpaid portion of the cash consideration, in such amounts and to such payees as may be directed by the Seller on at least two (2) days prior notice to Purchaser.



5. All notices, demands, receipts or other communications signed by the attorneys for the respective parties shall be deemed signed within the meaning of this paragraph without the signatures of the parties themselves.

6. It is expressly understood and agreed by the parties hereto that this Purchase Agreement shall not constitute an offer or create any rights in favor of Purchaser and shall in no way obligate or be binding upon Seller and this Purchase Agreement shall have no force or effect unless and until the same is fully executed by Seller and Purchaser and a fully executed counterpart hereof is delivered by Seller to Purchaser and the Down Payment has been collected.

7. No representation or undertaking on the part of the Seller shall survive the passage of title in the absence of express written agreement to the contrary other than those representations and undertaking expressly stated herein to survive Closing.

8. Seller has not made, does not make and is unwilling to make any representations as to the condition, income, expenses, leases, tenants, use, operation or any other matter or thing affecting or relating to the Unit or title thereto or the transactions contemplated hereby, except as may otherwise expressly be set forth herein or in the Plan. Purchaser hereby expressly acknowledges and represents that no such representations have been made except as provided herein or as provided in the Plan.

Without limiting the generality of the foregoing, but except as may otherwise be specifically provided in this Purchase Agreement, Purchaser has not relied on any representations or warranties, and Seller has not made any representations or warranties, in either case express or implied as to (i) the current or future real estate tax liability, assessment or valuation of the Unit; (ii) the potential qualification of the Unit for any and all benefits conferred by federal, state or municipal laws, whether for subsidies, special real estate tax treatment, insurance, mortgages, or any other benefits, whether similar or dissimilar to those enumerated; (iii) the compliance of the Unit, in its current or any future state with applicable zoning ordinances and the ability to obtain a variance in respect to any non-compliance, if any, with said zoning ordinances; (iv) the availability of any financing for the purchase, alteration, rehabilitation or operation of the Unit from any source, including but not limited to the state, city or federal government or any institutional lender; (v) the current or future use of the Unit, including but not limited to the use of the Units for commercial purposes; (vi) the current or future structural and physical condition of the Building or any other improvements to the Unit or its suitability for rehabilitation or renovation; (vii) the state of title to the Unit; and (viii) the presence or absence of violations of law or municipal ordinances, orders or requirements.

Purchaser has been given an opportunity to examine the Unit and the building in which it is located ("the Building") and the drawings for the build-out of the Unit as set forth in the Offering Plan. Purchaser agrees to take title to the Unit including, without limitation, the Building and any other improvements to the Unit, "as is" in its then present condition, reasonable wear and tear, casualty, natural deterioration between the date hereof and the Closing Date and subject to any changes (i) required by law or (ii) which do not materially and adversely affect the value of the Unit. Purchaser's obligation to close hereunder is conditioned upon the renewal of the existing Temporary Certificate of Occupancy for the Unit and the building in which the Unit is located (the "Building") and any further renewals thereof including the issuance of a permanent

certificate of occupancy for the building in which the Unit forms a part. This provision shall survive the closing.

Without limiting the foregoing provisions of this Paragraph, Purchaser represents that Purchaser is not relying upon any statement or representation, express or implied warranties, guaranties, promises, "set-ups" or information not embodied in this Purchase Agreement or the Plan, made by the Seller or by any real estate broker, agent, employee, servant or other person representing or purporting to represent Seller. The accuracy of Seller's representations, if any, and the performance of Seller's obligations under this Agreement are merely conditions to Purchaser's obligations to close hereunder, and, notwithstanding anything to the contrary contained herein, in no event shall Seller be liable in damages or otherwise if such representations are not accurate or such obligations have not been performed or be obligated to bring any action or proceeding, incur any expense or do any act to comply with its representations or obligations under this Purchase Agreement. Except as expressly stated herein, no representations or obligations of Seller contained in this Purchase Agreement shall survive the delivery of the deed hereunder.

Seller makes no warranty and has no knowledge with respect to the presence of Hazardous Materials (as hereinafter defined) on, above or beneath the land (or any parcel in proximity thereto) or in any water on or under the Unit. Purchaser's closing hereunder shall be deemed to constitute an express waiver of Purchaser's right to cause Seller to be joined in any action brought under any Environmental Laws (as hereinafter defined). The term "Hazardous Materials" shall mean (a) those substances included within the definitions of any one or more of the terms "hazardous materials", "hazardous wastes", "hazardous substances", "industrial wastes", and "toxic pollutants", as such terms are defined under the Environmental Laws, or any of them, (b) petroleum and petroleum products, including, without limitation, crude oil and any fractions thereof, (c) natural gas, synthetic gas and any mixtures thereof, (d) asbestos and/or any material which contains any hydrated mineral silicate, including, without limitation, chrysotile, amosite, crocidolite, tremolite, anthophyllite and/or actinolite, whether friable or non-friable, (e) polychlorinated biphenyl ("PCBs") or PCB-containing materials or fluids, (f) radon, (g) any other hazardous or radioactive substance, material, pollutant, contaminate or waste, and (h) any other substance with respect to which any Environmental Law or governmental authority requires environmental investigation, monitoring or remediation. The term "Environmental Laws" shall mean all federal, state and local laws, statutes, ordinances and regulations, now or hereafter in effect, in each case as amended or supplemented from time to time, including, without limitation, all applicable judicial or administrative orders, applicable consent decrees and binding judgments relating to the regulation and protection of human health, safety, the environment and natural resources (including, without limitation, ambient air, surface, water, groundwater, wetlands, land surface or subsurface strata, wildlife, aquatic species and vegetation, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §§ 9601, et seq.), the Hazardous Material Transportation Act, as amended (49 U.S.C. §§ 1801, et seq.), the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. §§ 36, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 6901, et seq.) ("RCRA"), the Toxic Substance Control Act, as amended (42 U.S.C. §§ 7401, et seq.), the Clean Air Act, as amended (42 U.S.C. §§ 7401, et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251, et seq.), the Occupational Safety and Health Act, as amended (29 U.S.C. §§ 651, et seq.), the Safe Drinking Water Act, as amended (42 U.S.C. §§ 300f,

et seq.), any state or local counterpart or equivalent of any of the foregoing, and any Federal state or local transfer of ownership notification or approval statutes.

9. Purchaser agrees that any and all non-public information about the Unit and the Building, whether provided by Seller or acquired by Purchaser's due diligence, will be held in the strictest confidence and that Purchaser will not directly or indirectly disclose or permit anyone to disclose the information to any person, firm or entity not involved in the transaction, except (i) as may be required by law or court order, or by governmental agency or authority (ii) to the extent such information is in the public domain, and (iii) to the extent Purchaser desires to disclose such information to Purchaser's counsel, accountants, architects, investors, contractors, agents, employees, other third-party representatives, including, but not limited to, any lender or prospective lender and its counsel and leasing or sales broker. Purchaser agrees that it shall not use any information about the Unit in a manner reasonably determined by Seller to be detrimental to the interest of Seller. Purchaser and Seller each agree not to disclose the monetary terms and conditions of this Purchase Agreement without the prior written consent of the other except that Purchaser, without Seller's consent, may disclose such information as permitted under clauses (i), (ii) and/or (iii) of the first sentence of this Section 9.

10. Notwithstanding anything to the contrary contained herein, if Seller willfully defaults in any of its obligations under this Purchase Agreement, then Purchaser's sole right and remedy shall be, on the terms and conditions set forth below, either:

- (1) To declare this Purchase Agreement canceled; or
- (2) To sue for specific performance (without a right of damages); provided, however, that Purchaser may sue for damages if the remedy of specific performance is not available due to intentional acts on the part of Seller.

If Purchaser elects to declare this Purchase Agreement canceled pursuant to this Section 10 Purchaser shall be entitled to a return of the Down Payment and his net title examination costs without issuance of a Title Insurance Policy.

11. (a) This Purchase Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of New York without giving application to the principles of Conflicts of Laws.

(b) Neither this Purchase Agreement nor any provision hereof may be waived, amended, discharged or terminated except by instrument in writing signed by the party against which the enforcement of such waiver, amendment, discharge or termination is sought and then only to the extent set forth in such instrument.

(c) It is understood and agreed that all understandings and agreements heretofore had between the parties hereto are merged in this Purchase Agreement which alone fully and completely express their agreement.

(d) Whenever the context shall require, the singular shall include the plural, the plural shall include the singular and words of any gender shall be deemed to include words of any other gender. As used herein, "Purchaser" shall mean each individual or other entity signing this Agreement both individually and collectively. If two or more persons or entities constitute

Purchaser hereunder, then they shall be jointly and severally liable for the obligations of Purchaser hereunder, and Seller and Escrow Agent may rely on, and all of such persons shall be bound by, any writing executed by any one or more of them.

(c) The terms "herein," "hereof" or "hereunder" or similar terms used in this Purchase Agreement refer to the entire Purchase Agreement and not to the particular provision in which the term is used unless the context otherwise requires.

(f) The captions in this Purchase Agreement are for convenience and reference only and in no way define, limit or describe, the scope of this Agreement or the intent of any provision hereof

(g) This Purchase Agreement shall be interpreted without the aid of any presumption against the party drafting or causing the drafting of the provision in question.

(h) This Purchase Agreement (including all exhibits annexed hereto), contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior understandings, if any, with respect thereto. This Purchase Agreement may not be modified, changed, supplemented or terminated, nor may any obligations hereunder be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein. The parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties hereto. The provisions of this Section shall survive the Closing.

(i) No waiver of any breach of any agreement or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof or of any other agreement or provision herein contained. No extension of time for performance of any obligations or acts shall be deemed an extension of the time for performance of any other obligations or acts.

(j) This Purchase Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and their permitted assigns.

(k) This Purchase Agreement shall not be binding upon either party until both parties have executed and delivered this Agreement to the other.

(l) Purchaser shall not record this Purchase Agreement without the prior written consent of Seller.

(m) Any payments required to be made by Purchaser under this Purchase Agreement to, on behalf or at the request of, Seller or Escrow Agent shall be made by unendorsed certified check, or bank check drawn on a member bank of the New York Clearing House Association (a "member bank"), subject to collection. Notwithstanding the foregoing, any payment made on account of the Purchase Price shall, at Seller's option, be made by wire transfer of federal funds to Seller from a member bank to a bank account designated by Seller prior to the date such payment shall be due. Any payment to Seller made by wire transfer shall not be deemed to have been made until received by Seller's bank and credited to Seller's account pursuant to a wire made by Purchaser in accordance with Seller's instructions delivered prior to Closing. The failure to credit Seller's account due to Bank error shall not be deemed a default hereunder by Purchaser.

(n) If there be any reference in this Purchase Agreement to a Purchaser's lender then any such reference shall not in any manner imply that financing is a condition to Purchaser's obligations under this Purchase Agreement.

(o) Purchaser and Seller each represent to the other that it has full power and authority to enter into this Purchase Agreement and to consummate the transactions contemplated hereby and neither the entering into of this Purchase Agreement nor the consummation of the transactions contemplated thereby will constitute a violation or breach by Purchaser or Seller, as applicable, of any agreement or other instrument to which Purchaser or Seller, as applicable, is a party or to which it is subject or by which any of its assets or property may be affected or any judgment, order, writ, injunction or decree issued against or imposed upon it or will result in a violation of any applicable law, order, rule or regulation of any governmental authority.

(p) This Purchase Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts shall together constitute but one and the same Agreement. This Purchase Agreement may be executed and delivered by facsimile transmission or digital electronic transmission in portable document format ("PDF transmission"), and the execution and delivery in such manner shall have the same force and effect as execution and delivery of original signatures.

12. (a) This Purchase Agreement is subject to that certain Lease Agreement dated March 1, 2012 between Sponsor, as landlord, (sometimes herein referred to as "Landlord") and DeGeest, LLC (d/b/a Wafels & Dinges), as tenant ("Tenant") and amendments thereto, if any (collectively, the "Lease") for the demised premises as more specifically described in the Lease. A true and accurate fully executed copy of the Lease is attached hereto as Exhibit A, is incorporated herein by this reference and made a part hereof (the "Lease"). The Tenant is in actual possession of the Unit. Seller represents that other than the Tenant under the Lease, Seller has no knowledge of any other tenant, subtenant, licensee or other occupant in the Unit. Seller represents that it is not currently holding a security deposit under the Lease (the "Security Deposit") and there are no other security deposits. The Lease is in full force and effect and has not been modified, amended or extended; no renewal or extension options or options for additional space have been granted to tenants, occupants or licensees, other than the renewal option in the Lease; no tenant, occupant or licensee has an option to purchase the Unit or a right of first refusal or right of first offer with respect to the sale of the Unit; the minimal annual rent (as defined in the Lease) is being collected on a current basis and there are no arrearages in minimal annual rent in excess of one month; the Tenant is not entitled to rental concessions or abatements for any period subsequent to the scheduled date of Closing, other than an abatement by reason of a casualty disclosed to Purchaser that occurred after the date of execution and delivery of this Agreement. Notwithstanding anything to the contrary contained herein Purchaser hereby acknowledges those certain actions entitled (i) Haimil Realty Corp.-v-Thomas DeGeest filed in New York County Supreme Court on 10/31/2013 # 654004/2013 seeking against guarantor of the Lease, amongst other things, collection of arrearages in additional rent as that term is defined in the Lease; (ii) DeGeest, LLC -v.- Haimil Realty Corp. et al. filed in New York County Supreme Court on 9/04/2013, #158065/2013 which is a "Yellowstone Action" by Tenant; (iii) Haimil Realty Corp. et al. filed in New York County Supreme Court on 12/10/2013, # 161370/2013 which is a "Yellowstone Action" by Tenant; and (iv) Haimil Realty Corp. v. DeGeest, LLC d/b/a Wafels & Dinges, L&T Index No. 52748/2017 (collectively, "Tenant Actions"). Seller shall indemnify and hold Purchaser harmless for any

claims of Tenant arising from the Tenant Actions for the period prior to the Closing, including, but not limited to reasonable legal fees and actual costs incurred in connection therewith. Seller's indemnification obligation hereunder shall survive the Closing.

(b) At Closing, Sponsor shall assign to Purchaser the Lease and a Guaranty of Lease and Purchaser shall assume Seller's obligations under the Lease in accordance with an Assignment and Assumption Agreement to be executed and delivered by Sponsor and Purchaser at the Closing in the form attached hereto as Exhibit C. To the extent in Seller's possession, at Closing Seller shall deliver to Purchaser (i) the original (or a true and correct copy of the original if not available) of the Lease and Guaranty, (ii) Tenant files and records, (but Purchaser hereby acknowledges that Landlord does not have originals or copies of, prior Landlord billing statements showing rent, real estate tax and insurance and (iii) keys to the Unit. The rent due under the Lease from Tenant to Seller shall be apportioned as of 11:59 PM of the date immediately preceding the Closing.

(c) Seller has not received any notice in writing from the Tenant that Seller is in default of any material obligations under the Lease, which default remains uncured. To Seller's actual knowledge, Seller has performed all of the Landlord's obligations under the Lease. No action or proceeding instituted against Seller by any tenant, occupant or licensee of all or part of the Unit is presently pending in any court or other tribunal, except the Tenant Actions or with respect to claims involving personal injury or property damage which are covered by insurance.

(d) Seller does not undertake or guarantee that the Lease will be in force or effect at the Closing, and Purchaser agrees that the removal of the Tenant, whether by summary proceedings or otherwise, prior to the Closing shall not give rise to any claim on the part of Purchaser for a reduction of the Purchase Price or affect this Agreement in any manner whatsoever. Further, Purchaser agrees that it shall not be deemed to be a title defect (and therefore not a Title Objection) or in any manner otherwise affect Purchaser's obligation to close title to the Unit pursuant to the terms and provisions of this Agreement if Tenant now or hereafter in possession of a part or portion of the Unit may holdover or be in default under the Lease. It is agreed and understood that no representation has been made and that no responsibilities have been assumed by Seller with respect to the continued occupancy of the Unit, or any part or portion thereof, by Tenant now in possession of the Unit.

(e) Seller hereby reserves its right to any rents or other sums due from Tenant under the Lease for any period prior to the Closing and not yet received as of the Closing ("Tenant Arrearages"). Purchaser, for a period of six (6) months after Closing, shall include Tenant Arrearages in its normal billing and shall use commercially reasonable efforts to pursue the collection thereof on behalf of Seller. "Commercially reasonable efforts" shall not include the commencement of litigation by Purchaser or the expenditure by Purchaser of any sums other than those expended in connection with its normal billing practices. Notwithstanding the foregoing, without affecting a Tenant's right to possession of the Unit, Seller shall have the right to continue that certain litigation, *Haimil Realty Corp. v. DeGeest, LLC d/b/a Watels & Dinges, L&T Index No. 52748/2017*, and bring claims for Tenant Arrearages or other sums owed to Seller from Tenant for periods prior to the Closing Date. Seller shall indemnify and hold Purchaser harmless for any claims of Tenant prior to the Closing, including, but not limited to, any outstanding litigation. Seller's indemnification obligation shall survive the Closing.

If Tenant Arrearages exist on the Closing, then the parties agree that the first monies received (whether by Purchaser or Seller) from such Tenant after the Closing shall be applied as follows: (i) first, to Tenant Charges for the month in which the Closing Date occurs, to be allocated between Seller and Purchaser in the manner more particularly set forth in this Agreement; (ii) second, to Purchaser on account of then due Tenant Charges for the months after the month in which the Closing occurs; and (iii) third, to Sponsor on account of then due Tenant Charges for the month preceding the month in which the Closing occurs. Purchaser or Seller, as applicable, agree to remit forthwith to the other the amount of such Tenant Charges to which the other is entitled, so collected, out of the monies received from Tenant, which monies shall be held in trust for the party entitled to receive same. At Closing, Seller shall deliver a certificate by Seller of a schedule of Tenant Arrearages upon which the reimbursement to Seller in accordance with this paragraph 12(e) shall be based. The provisions of this paragraph 12(e) shall survive the Closing.

(f) Purchaser shall receive a credit against the Purchase Price in the aggregate amount of any prepaid rent.

(g) Seller has retained no security deposit under the Lease. Seller hereby agrees to defend, indemnify and hold Purchaser harmless from all loss, liability, cost and expense, including, without limitation, reasonable attorneys' fees and costs, which Purchaser may sustain or incur in connection with a claim by Tenant any security deposit delivered by Tenant to Seller pursuant to the lease.

(h) Purchaser's obligation to close hereunder is conditioned on Purchaser receiving at least fifteen (15) days prior to the Closing, an executed estoppel certificate from the Tenant under the Lease in the form set forth in Exhibit D hereto, dated no earlier than forty-five (45) days prior to the Closing (the "Tenant Estoppel"). If Seller does not obtain the Tenant Estoppel from the Tenant by such time, Seller shall execute an estoppel certificate, in the form attached hereto as Exhibit E ("Landlord Estoppel Certificate").

(i) Seller shall deliver written notice to Tenant in substantially the form attached hereto as Exhibit F.

13. Purchaser acknowledges that it is aware that: (a) Seller is presently a debtor-in-possession in a chapter 11 bankruptcy case pending before the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") (Case No. 14-11779 (MEW)); and (b) Seller is seeking to confirm a proposed chapter 11 plan pursuant to 11 U.S.C. § 1129 which, if confirmed, will be funded by the proceeds of a sale of the Unit and certain financing required in order to fund the Chapter 11 Plan to the extent that the proceeds of the sale of the Unit are insufficient to do so (the "Exit Financing"). Accordingly, this Purchase Agreement and Seller's obligation to close hereunder shall not become effective unless and until each of the following conditions has been satisfied or waived by Seller (collectively, the "Bankruptcy Court Approval Conditions"):

(a) The entry of an Order by the Bankruptcy Court confirming a chapter 11 plan proposed by the Seller providing for the sale of the Property;

(b) The entry of an Order by the Bankruptcy Court authorizing the Debtor to enter into this Purchase Agreement and approving the sale of the Unit to Purchaser as contemplated thereunder; and

(c) The entry of an Order by the Bankruptcy Court authorizing Seller to obtain the Exit Financing and the funding of the proceeds thereof by the corresponding lender(s).

Seller shall file an application for an Order of the type referenced in subparagraph (b), above, with the Bankruptcy Court within five (5) business days after receipt of this Purchase Agreement signed by Purchaser and the tender of the Down Payment, and shall provide a copy thereof to Purchaser, and Purchaser and Seller shall cooperate and comply in good faith with any procedural requirements of the Bankruptcy Court in order to receive the Bankruptcy Court's approval of the sale. In the event that all Bankruptcy Court Approval Conditions are not satisfied or waived by Seller within one-hundred-eighty (180) days after Seller's receipt of this Purchase Agreement signed by Purchaser and the tender of the Down Payment and/or if the parties are otherwise prevented from closing by any act by the Bankruptcy Court or other governmental or judicial body or agency, this Purchase Agreement shall be null and void and Purchaser's sole remedy shall be the return of the Down Payment which Seller shall return to Purchaser in full without set-off or deduction.

14. Seller shall include language in any proposed Order confirming a chapter 11 plan submitted to the Bankruptcy Court recognizing the deed conveying the Unit to Purchaser as an instrument of transfer under, in connection with or in furtherance of a confirmed chapter 11 plan which shall not be subject to tax under any law imposing a stamp tax, real estate transfer taxes, mortgage recording tax or similar tax, and, to the extent provided by 11 U.S.C. §1146(a), if any, shall not be subject to any state, local or federal law imposing sales tax. However, to the extent that any taxes or fees incurred or assessed in connection with this Purchase Agreement are due, such taxes and fees shall be paid by Purchaser as provided for in this Purchase Agreement.

15. Seller represents, warrants and covenants to Purchaser as follows on the date hereof and on the date of the Closing:

(a) Seller is a limited liability company, validity existing and in good standing under the laws of the State of New York. The execution, delivery and performance of this Agreement by Seller has been duly authorized. Seller is not subject to any law, order, decree, restriction or agreement which prohibits or would be violated by this Agreement or the consummation of the transactions contemplated hereby. This Agreement and Seller's obligation to close hereunder shall not become effective unless and until satisfaction or waiver by Seller of the Bankruptcy Court Approval Conditions as more particularly set forth in paragraph 13 of this Rider to the Agreement.

(b) Seller is not, and will not be, a person or entity with whom Purchaser is restricted from doing business with under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107-56 (as amended, the "USA Patriot Act") and Executive Order Number 13224 on Terrorism Financing, effective September 24, 2001 and regulations promulgated pursuant thereto (as amended, collectively, "Anti-Terrorism Laws"), including without limitation persons and entities named on the Office of Foreign Asset Control Specially Designated Nationals and Blocked Persons List and Seller is not, directly or indirectly, acting for or on behalf of any such person or entity. Seller is not engaging in this transaction, directly or indirectly, in violation of any laws relating to drug trafficking, money laundering or predicate crimes to money laundering. None of



the funds of Seller have been or will be derived from any unlawful activity with the result that the transaction contemplated hereby is or will be in violation of applicable State or Federal laws. Seller has and will continue to implement procedures to ensure that the foregoing representations and warranties remain true and correct at all times prior to the Closing;

(c) There are no actions with reference to Seller or the Property pending or threatened, with any court or in any forum as of the date hereof other than the action entitled Haimil Realty Corp. v. DeGeest, LLC d/b/a Watels & Dinges, L&T Index No. 52748/2017 and those actions more specifically set forth in Exhibit G to this Agreement and incorporated herein by reference that are not covered by insurance and will have a material adverse effect on the Unit;

(d) There are no employees of Seller or any managing agent of the Unit whose employment Purchaser shall be obligated to retain from and after the Closing, or with respect to whom Purchaser shall be liable for severance or other payments. Neither Seller nor Seller's managing agent is a party to any collective bargaining agreement or union agreement with respect to the Property;

(e) Purchaser shall not be bound by any service contract pertaining to the Unit except for contracts entered into by the Condominium;

(f) As of the date hereof, Seller has received no written notice of pending, nor does Seller have knowledge of any threatened eminent domain, condemnation or similar actions or proceedings with respect to the Property or any part thereof;

(g) Neither the board of managers of the Condominium nor any person or entity has any option or right of any kind to acquire title to the Unit, including, but not limited to, a right of first refusal or right of first offer, in connection with any future sale or lease of the Unit by Purchaser.

(h) To the best of Seller's knowledge, there is no existing or contemplated special assessment by the Condominium with respect to the Unit, and Seller has not issued any written notice of any such proposed assessments.

(i) All brokerage and leasing commissions and other compensation and fees for the leasing or licensing of any space at the Unit (and any renewals, extensions or expansions thereof, whether or not options thereof have yet been exercised) have or will be paid in full by Seller prior to the Closing.

(j) The monthly common charges and monthly Real Estate Taxes for the Unit are \$591.69 and \$1,080.58, respectively. Purchaser shall not be responsible for any of Seller's arrears for Common Charges or Real Estate Taxes for the Unit.

(k) Each party shall deliver to the other party such instruments, agreements, certificates, resolutions and other documents reasonably requested by the other party or the Title Company as may be necessary in order to effectuate any of the provisions of this Agreement, or to consummate the transactions contemplated herein (including, but not limited to causing the Title Company to issue its title policy), which shall be executed and, if and to the extent required, acknowledged or sworn to or affirmed by Seller.

(l) Seller is the record title owner of the Unit and the Common Elements appurtenant thereto (collectively, the "Property").

(m) Seller shall not enter into any new leases or license agreements, or modify or, except by reason of a default by the Tenant terminate, any existing Lease without the prior written consent of Purchaser, which consent shall not be unreasonably withheld, conditioned or delayed and shall be deemed granted if not reasonably withheld with detailed reasons therefor within five (5) Business Days of Seller's delivery of written notice requesting Purchaser's consent. Seller shall continue to operate and manage the Unit in the manner that is consistent with its operation and management prior to the date of this Contract to the extent it is Seller's obligation to do so under the Lease.

(n) Seller has the absolute right to sell the Unit without the consent or right of first refusal of the board of managers of the Condominium.

(o) Seller is exempt from filing Real Property Income and Expense Statements with the New York City Department of Finance with respect to the Unit.

16. All notes or notices of violations of law or municipal ordinances, orders or requirements noted in or issued by the Departments of Housing and Building, Fire, Labor, Health or other State or Municipal Departments having jurisdiction, against or affecting the premises at the date of closing ("Violations") shall be complied with by the Seller and the Unit shall be conveyed free of the same; provided, however, that if the cost to the Seller to effect compliance with all of said municipal ordinances, orders or requirements, exceeds the sum of Ten Thousand (\$10,000.00) Dollars, Seller shall have the option to either effect compliance at such higher cost or give Purchaser a credit at Closing for the amount of the excess cost to cure such Violations. Seller shall furnish the Purchaser with an authorization to make the necessary searches.

17. Open liens for taxes, water charges, and sewer rents shall not be objections to title but the amount therefor, plus interest and penalties thereon, shall be paid by Seller at Closing provided that such liens for taxes, water charges, and sewer rents are not the obligation of Tenant pursuant to the Lease.

18. Purchaser shall have the right to structure the sale of the Unit as a forward or reverse exchange thereof for other real property of a like-kind to be designated by the electing party (including the ability to assign this Agreement to the individual principals of Purchaser as tenants-in-common, an entity established in order to effectuate such exchange including a qualified intermediary, an exchange accommodation title holder or one or more single member limited liability companies that are owned by any of the foregoing persons), with the result that the exchange shall qualify for non-recognition of gain or loss under Section 1031 of the Internal Revenue Code of 1986, as amended, the Treasury Regulations thereunder and IRS Revenue Procedure 2000-37. Seller shall execute any and all documents reasonably requested by Purchaser to effect such exchange, and otherwise assist and cooperate with Purchaser in effecting such exchange, provided that any additional reasonable costs and expenses incurred by Seller as a result of structuring such transaction as an exchange, as opposed to an outright sale, shall be borne by Purchaser.

19. PURCHASER AND SELLER EACH HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS AGREEMENT OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY PURCHASER AND SELLER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. SELLER OR PURCHASER, AS APPLICABLE, IS HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY PURCHASER OR SELLER, AS APPLICABLE. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE CLOSING OR EARLIER TERMINATION OF THIS AGREEMENT.

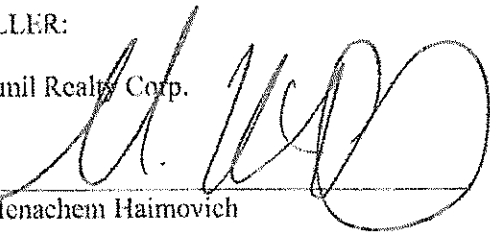
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SELLER:

Haimil Realty Corp.

By:

Menachem Haimovich



\_\_\_\_\_  
TAX IDENTIFICATION NUMBER

PURCHASER:

PREMIER EAST 2ND, LLC

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

\_\_\_\_\_  
TAX IDENTIFICATION NUMBER

SELLER:

Haimil Realty Corp.

By: \_\_\_\_\_  
Menachem Haimovich

\_\_\_\_\_  
TAX IDENTIFICATION NUMBER

PURCHASER:

PREMIER EAST 2ND, LLC

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

82-1575388  
TAX IDENTIFICATION NUMBER

EXHIBIT A  
Lease and Guaranty

A-1

**FILED: NEW YORK COUNTY CLERK 09/04/2013**

NYSCEF DOC. NO. 8

INDEX NO. 158065/2013

RECEIVED NYSCEF: 09/04/2013

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**AGREEMENT**

**FOR**

**STORE PREMISES LOCATED AT  
15 Avenue B  
NEW YORK NY 10009**

**BETWEEN**

**Haimil Realty Corp.**

**A NEW YORK CORPORATION  
WITH A BUSINESS ADDRESS OF  
209 East 2<sup>nd</sup> Street  
New York NY 10009**

**LANDLORD**

**and**

**DeGeest, LLC  
d/b/a Wafels & Dinges  
A NEW YORK LIMITED LIABILITY COMPANY  
WITH A BUSINESS ADDRESS OF  
c/o Thomas DeGeest  
229 East Second Street, Apt. 2A  
New York, NY 10009  
TENANT**

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**LEASED PREMISES:  
STREET LEVEL FLOOR,  
AND A PORTION OF BASEMENT SPACE  
OF PREMISES  
15 Avenue B  
NEW YORK, NEW YORK 10009**

**LEASE AGREEMENT**

THIS LEASE AGREEMENT (this "Lease"), dated effective the 1<sup>st</sup> day of March 2012, is made and entered into between Haimil Realty Corp., A NEW YORK CORPORATION ("Landlord"), and DeGeest, LLC (d/b/a Wafels & Dinges), a NEW YORK LIMITED LIABILITY COMPANY located at c/o Thomas DeGeest, 229 East Second Street, Apt. 2A, New York, NY 10009 ("Tenant").

**SECTION 1**  
**GRANT AND TERM**

**1.1 Leased Premises:**

In consideration of the rents and covenants set forth in this Lease, Landlord demises and leases to Tenant, and Tenant leases from Landlord, those certain premises (the "leased premises" or the "demised premises") located on the street level floor, and a portion of basement at 15 Avenue B, New York, New York contained within the building located at 209 East 2<sup>nd</sup> Street, New York, NY ("Building") as more fully described in the hatch marked floor plans annexed as Exhibit "D". The area defined as the leased premises extends to (but does not include) the exterior face of any exterior walls and to the center line of any walls which the leased premises shares with other premises. Landlord reserves the right to have access at all times to the basement of the premises for purposes of servicing the heating plant, electrical systems, or plumbing for the building (excluding the leased premises).

**1.1 No Rescission.**

<omitted>.

**1.2 Use of Additional Areas:**

Tenant and its agents, employees, and invitees shall have the non-exclusive right, in common with Landlord and others designated by Landlord, to use for their intended and normal purposes the adjacent common areas of the Building, walkways, and other areas and facilities, to the extent that they exist and are directly accessible from the demised premises, as may be designated from time to time by the Landlord for the common use of the tenants of the Building and their agents, employees and invitees, subject however to the terms and conditions of this Lease. Landlord reserves the right to alter the current size, composition and configuration of the common areas and to use the common areas for any use not inconsistent with Tenant's rights under



this Section 1.2. Any alterations must allow Tenant's uninterrupted use, and quiet enjoyment.

**1.3 Length of Term:**

The term of this Lease shall be for ten (10) years, beginning on the Commencement Date, as defined in Section 1.4. Should the Commencement Date occur on a day other than the first day of a month, then the term of this Lease shall extend to the last day of the last calendar month of the term. Tenant shall have one option to renew the lease as set forth in Section 20.

**1.4 Commencement of Rent and Term:**

The term of this Lease shall commence on March 1, 2012 ("Lease Commencement Date"). In the event that Tenant is not in default under this Lease beyond any grace and notice period, Tenant shall not be required to pay Fixed Rent until 180 days from the Commencement Date, as noted in Section 3.5.(d), to wit August 28, 2012, (hereinafter "the Rent Commencement Date") except that Tenant shall nevertheless be obligated, from and after the Lease Commencement Date of the term, to pay any Additional Rent hereunder.

**1.5 Holding Over:**

In the event Tenant remains in possession of the leased premises after the expiration of the term of this Lease or the termination of this Lease, Tenant's tenancy shall be a tenancy at sufferance and Tenant shall be liable to Landlord for a rent (determined on a daily basis based on the actual number of days in each month) equal to two (2) times the monthly base rent for the last month of the lease until such time as Landlord recovers possession of the leased premises. Such tenancy shall be subject to all the terms, covenants and conditions of this Lease, except that the monthly installment of minimum annual rent and additional rent shall be as provided in this Section. This Section does not create any right in Tenant to remain in possession of the leased premises beyond the expiration of the term or termination of this Lease.

**SECTION 2**  
**RENT**

**2.1 Minimum Annual Rent:**

Tenant covenants and agrees to pay Landlord minimum annual rent for the leased premises in accordance with the Rent Schedule attached to this Lease as Exhibit "A". The minimum annual rent shall be paid in equal monthly installments, in advance on or before the first day of each calendar month to Haimil Realty Corp., 209 East 2<sup>nd</sup> Street, Suite 7, New York, NY 10009 or at such other place designated by Landlord. The first month's rent (September 1, 2012) due hereunder shall be

payable in advance, as well as any partial month prior thereto, on the date of Tenant's execution of this Lease agreement. The minimum annual rent and any other additional rent or charges due to the Landlord shall be paid to Landlord without notice or demand and without any abatement, deduction or off-set except as expressly set forth herein.

## 2.2 Real Estate Taxes and Assessment.

(a) As used herein:

1. "Taxes" shall mean all real estate taxes, assessments, sewer and water rents, governmental levies, municipal taxes, county taxes or any other governmental charge, general or special, ordinary or extraordinary, unforeseen as well as foreseen, of any kind or nature whatsoever, which are or may be assessed, levied or imposed upon all or any part of the land, the building and the sidewalks, plazas or streets in front of or adjacent thereto, including without limitation any tax, excise or fee measured by or payable with respect to any rent, and levied against Landlord and/or the land and building, under the laws of the United States, the State of New York, or any political subdivision thereof, or by the City of New York, or any political subdivision thereof. If, due to a future change in the method of taxation or the taxing authority, a new or additional real estate tax, or a franchise, income, transit, profit or other tax or governmental imposition, however designated, shall be levied against Landlord, and/or the land and building for Tax Block 384 Lot 1301 in the borough of Manhattan, City of New York, in addition to, or in substitution in whole or in part for any tax which would constitute "Taxes", or in lieu of additional Taxes, such tax or imposition shall be deemed for the purposes hereof to be included within the term "Taxes".
2. "Tax Year" shall mean each period of twelve (12) months commencing on July 1, 2012 of each such period in which occurs any part of the term of this lease, or such other period of twelve (12) months occurring during the term of this lease as hereafter may be duly adopted as the fiscal year for real estate tax purposes of the City of New York.
3. "Base Tax" shall mean the Taxes for the twelve month period ending June 30, 2011-2012 (the "Base Tax Year") [which is the tax year prior to occupancy chosen by both parties in lieu of Landlord charging a higher initial minimum annual rent based on tax increase estimates].
4. "Tenant's Proportionate Share" shall mean: Fifty (50%) Percent. In the event of an assignment under Section 11, Tenant's Proportionate Share shall be one hundred (100%) percent.

- (b) Tenant shall pay Tenant's Proportionate Share of the amount of all Taxes for the Premises (which amount is hereinafter called the "Tax Payment"). Should this lease commence or terminate prior to the expiration of a Tax Year, such Tax Payment shall be prorated to, and shall be payable on, or as and when ascertained after, the Commencement Date or the Expiration Date as the case may be.
- (c) Tenant's obligation to pay such additional rent and Landlord's obligation to refund pursuant to Paragraph d below, as the case may be, shall survive the termination of this lease. If the Taxes for any Tax Year subsequent to the Base Tax Year, or an installment thereof, shall be reduced before such Taxes, or such installment, shall be paid, the amount of Landlord's reasonable costs and expenses of obtaining such reduction (but not exceeding the amount of such reduction) shall be added to and be deemed part of the Taxes for such Tax Year. Payment of additional rent for any Tax Payment due from Tenant shall be made as and subject to the conditions hereinafter provided in this Article.
- (d) Only Landlord shall be eligible to institute proceedings to contest the Taxes or reduce the assessed valuation of the land and building. Landlord shall be under no obligation to contest the Taxes or the assessed valuation of the land and the building for any Tax Year or to refrain from contesting the same, and may settle any such contest on such terms as Landlord in its sole judgment considers proper. If Landlord shall receive a refund for any Tax Year for which a Tax Payment shall have been made by Tenant pursuant to Paragraph b above, Landlord shall repay to Tenant, with reasonable promptness Tenant's Proportionate Share of such refund after deducting from such refund the reasonable costs and expenses (including experts' and attorneys' fees) of obtaining such refund. If the assessment for the Base Tax Year shall be reduced from the amount originally imposed after Landlord shall have rendered a comparative statement (as provided in Paragraph (e) below) to Tenant with respect to a Tax Year, the amount of the Tax Payment shall be adjusted in accordance with such change and Tenant, on Landlord's demand, shall pay any increase in additional rent resulting from such adjustment.
- (e) At any time, at Landlord's election, during or prior to a Tax Year after the Taxes for such Tax Year become known Landlord may, or else after the end of each Tax Year, Landlord shall render to Tenant a comparative statement showing the amount of the Base Tax, the amount of the Taxes for such Tax Year and the Tax Payment, if any, due from Tenant for such Tax Year, indicating thereon in reasonable detail the computation of such Tax Payment. The Tax Payment shown on such comparative statement shall be payable on or before the date Landlord's corresponding tax payment (currently due semi-annually) is then due. Once a year, or as many times a

years that Landlord received a bill from the taxing authorities, Landlord will furnish Tenant with a reproduced copy of the bill or receipted bill for the taxes for the current or next preceding Tax Year. Tenant shall pay the amount of the Tax Payment shown on such comparative statement (or the balance of a proportionate installment thereof, if only an installment is involved) concurrently with the installment of fixed rent then or next due, or if such statement shall be rendered at or after the termination of this lease within ten (10) days after such rendition. Whenever so requested by Tenant, but not more often than once a year, unless there are any changes thereto, Landlord will furnish Tenant with a reproduced copy of the bill (or receipted bill) for the Taxes for the current or next preceding Tax Year.

- (f) Landlord's failure during the lease term to prepare and deliver any tax statements or bills, or Landlord's failure to make a demand under this Article or under any other provision of this lease shall not in any way be deemed to be a waiver of, or cause Landlord to forfeit or surrender, its rights to collect any items of additional rent which may have become due pursuant to this Article during the term of this lease. Tenant's liability for the additional rent due under this Article shall survive the expiration or sooner termination of this lease.
- (g) In no event shall any adjustment of Tax Payments hereunder result in a decrease in the fixed rent or additional rent payable pursuant to any other provision of this lease, it being agreed that the payment of additional rent under this Article is an obligation supplemental to Tenant's obligation to pay fixed rent.

### 2.3 Payment:

Prior to the Commencement Date and prior to the first day of each calendar year in which the term falls in whole or in part, Landlord shall estimate the amount that may be due from Tenant under Sections 2.2, 2.3, and 2.4, for the calendar year in which the Commencement Date falls (as to the initial estimate) or the upcoming calendar year (as to subsequent estimates), Landlord shall provide Tenant a copy of the above monthly estimate with a copy of the tax bill, and Tenant shall pay one twelfth (1/12) thereof monthly in advance and without notice or demand, on or before the first day of each month, together with Tenant's monthly payment of minimum annual rent. After the end of each calendar year and after the expiration of the term of this Lease, Landlord shall furnish Tenant a statement of the actual amount owed by Tenant under Sections 2.2, 2.3, and 2.4, for the prior calendar year. Any delay or failure of Landlord in computing or billing for additional rent shall not constitute a waiver of or impair the continuing obligation of Tenant to pay such additional rent. Unless Landlord receives a written objection from Tenant within sixty (60) days after Landlord's delivery of any statement from Landlord showing amounts owed by Tenant under this Section 2, the amounts on the statement shall be deemed accepted as final and correct by Tenant. If Tenant

disputes the accuracy of Landlord's statement, Tenant shall still pay the amount shown owing when due, subject to Tenant's right to a refund of any sum collected by Landlord in error.

**2.4 Additional Rent:**

All sums due from Tenant to Landlord under the terms of this Lease in addition to the minimum annual rent, whether or not such sum is herein described as additional rent, shall constitute additional rent and shall be due and payable upon demand, unless otherwise expressly provided herein. Additional rent shall be payable during the period from the Lease Commence Date through the Rent Commencement Date.

**2.5 Metered Boiler BTU Fee:**

Tenant must provide heat to the demised premises in the event the outside temperature falls below 36 degrees Fahrenheit. The Tenant is responsible for maintaining heat to prevent the water pipes from bursting. Tenant shall be held liable for all damages created by its negligence.

**SECTION 3**  
**USE AND OPERATION**

**3.1 Use of Premises:**

(a) **Use Restrictions:** Tenant shall use the leased premises solely for the purpose of operating a café selling waffles with toppings as well as light food and beverages all done with electrical equipment and no exhaust hood, and all other legal purposes related to operating the business, including but not limited to retail merchandise and for no other purpose or use. Landlord shall have the sole and absolute discretion, which may be unreasonably withheld, as to its approval or disapproval of any food item being sold on the Premises. Subject to local zoning, City ordinances and Building regulations of the Board of Managers, and the quiet enjoyment of the occupants of the Building, Tenant shall have 24 hour per day, 7 day per week, 52 weeks per year access to the demised premises to operate its business. Tenant will not use or permit the use of the leased premises for any other business or purpose. Tenant agrees to conduct its business in the leased premises under the name "*Wafels & Dinges*" and under no other name or trade name without the prior written consent of Landlord, which consent shall not be unreasonably withheld. It is Tenant's responsibility to insure that its use and business comply with all applicable governmental requirements, restrictions and regulations. Landlord makes no representations or warranties concerning the suitability of the leased premises for Tenant's use or business.

(b) **No Adult Uses:** Without intending to limit the generality of the foregoing paragraph, Tenant shall not use the leased premises or advertise that the leased premises is used for (i) an adult bookstore or cinema or other establishment which sells,

offers for sale or displays materials of a sexually explicit nature; or (ii) a "topless", "nude", or "semi-nude" bar, club or restaurant or other similar establishment.

(c) Without limiting the restriction that the Premises may only be used for the purposes specified in paragraph 3.1(a) hereof, Tenant shall not use, or suffer or permit anyone to use, the Premises or any part thereof, for any of the following: (a) the manufacture, storage, possession or sale of any illegal drugs or narcotics, (b) any gambling or gaming activities, (c) the offices or activities of any department or bureau of the United States Government, any state or municipality within the United States or any foreign government, or any political subdivision of any of them, (d) the offices or activities of an employment or travel agency, or any brokerage activities, (e) any bank or banking activities, (f) the offices or activities of any charitable or religious organization or union, (g) <omitted>, (h) the rendition of medical, dental or other diagnostic or therapeutic services, (i) the conduct of an auction (public and private), (j) any "fire", "going out of business", "lost our lease", "liquidation" or similar sales or any bankruptcy and sheriff or receiver sales, or as a so-called "discount store", (k) the making of photographic reproductions and/or offset printing for sale to the public, or (l) storage (other than storage in connection with the operation of Tenant's business complying with the permitted uses hereunder).

(d) All uses subject to the Rules and Regulations issued by the Board of Managers of the 209 East 2<sup>nd</sup> Street Condominium. ("Board of Managers")

### 3.2 Operation of Business:

Tenant shall keep open and continuously and actively operate and conduct the business referenced in Section 3.1(a) in the entire leased premises during the entire term of this Lease. Tenant shall conduct Tenant's business at all times in a first class, high grade manner consistent with reputable business standards and practices. Tenant shall conduct its business in the leased premises during the regular days and hours as is customary for Tenant's type of business in the New York City area. No auction, fire, bankruptcy, moving, lost lease, going out of business or similar sales shall be conducted or advertised as being conducted within or from the leased premises.

### 3.3 Tenant's Compliance with Laws/Regulations:

Throughout the term of this Lease, the Tenant will execute and comply with, at the Tenant's own cost and expense, all laws, rules, order, ordinances and regulations at any time issued or in force, applicable to the demised premises, or to the then occupation thereof, of the City, State and Federal Governments, and of each and every department, bureau and official thereof, and of the New York Board of Fire Underwriters, and of each corporation, official, body or organization hereafter possessing any of the authority or exercising any of the functions now possessed or exercised by any of the above mentioned corporations, officials, bodies or organizations, and that issued by the Board of Managers, it being the intention of the parties that, except as expressly provided herein, the Tenant shall and does hereby

assume the entire responsibility of executing and complying with the said laws, rules, orders, ordinances and regulations, whether the work required be ordinary, structural or otherwise as relates to its business.

**3.4 Licenses/Permits:**

In the event that any license, permit, certificate or authorizations shall be required by any municipal agency incidental to the nature of the occupancy by the Tenant of the demised premises to operate its business, it shall be the obligation of the Tenant to procure and furnish such license, permit, certificate or authorization.

**3.5. Condition of Demised Premises:**

(a) Tenant expressly acknowledges that it has inspected the Demised Premises and is fully familiar with the physical condition thereof. Tenant agrees to accept the Demised Premises in its "as is" condition as of the Lease Commencement Date. Tenant acknowledges that Owner shall have no obligation to do any work in or to the Demised Premises in order to make them suitable and ready for occupancy and use by Tenant, other than those items listed in Section 5.4 and Exhibit "B".

(b) The acceptance of possession of the Demised Premises by Tenant shall be conclusive evidence as against Tenant that, at the time such possession was so taken, the Demised Premises and the Building were in good and satisfactory condition, subject to latent defects and the other terms of this Lease.

(c) Tenant agrees that it will, subject to the conditions and requirements set forth in Section 5 of this Lease, at Tenant's sole cost and expense, effect all such alterations, additions, decorations and improvements in and to the Demised Premises ("Initial Alteration Work").

(d) In exchange for performing the Initial Alteration Work in the leased premises, Tenant will receive a rent abatement equal to 180 days of fixed rent. Tenant acknowledges that it shall obtain Owner's prior written consent, which shall not be unreasonably withheld, for the Initial Alteration Work in the Demised Premises. Upon the expiration of the Lease or Tenant's vacatur prior thereto, Tenant shall leave the Demised Premises in good working order and condition. In the event that Tenant removes any of its trade fixtures from the Demised Premises, Tenant shall remove the same in a workmanlike manner and repair, at its own cost and expense, any damage to the Demised Premises caused by Tenant's removal of the same. Tenant shall leave all finishes in the Demised Premises clean and undamaged.

(e) Tenant represents that it will submit to Owner for its approval, which shall not unreasonably be withheld, a complete set of plans and specifications for its Initial Alteration Work, and a set to Owner's counsel, as listed in Section 16. Such submission shall also state the name of Tenant's general contractor. Upon receipt, Owner will review Tenant's plans and specifications and return them to Tenant with any

changes that are required for its approval to be forthcoming within ten (10) days. In that event, Tenant shall revise the plans to incorporate such changes as are required for Owner's approval and shall promptly resubmit such revised plans and specifications to Owner. Such plan approval process shall continue until Owner has approved a complete set of plans and specifications for the Initial Alteration Work.

**SECTION 4**  
**SECURITY DEPOSIT**

**4.1 Security Deposit:**

Tenant agrees to deposit, as security for the faithful performance and observance by Tenant of the terms, provisions and conditions of this Lease, a total sum equal to three month's current rent, as adjusted. At the execution of the lease, Tenant shall deposit Thirty thousand seven hundred fifty (\$30,750.00) Dollars on the day of agreement signing. In the event that Tenant defaults with respect to any of the terms, provisions and conditions of this Lease, including but not limited to, the payment of rent and Additional Rent, or in the event of a non-monetary default after expiration of the applicable cure period, upon notice Owner may use, apply or retain the whole or any part of the security so deposited to the extent required for the payment of any rent and Additional Rent or any other sum which Owner may expend or may be required to expend by reason of Tenant's default with respect of any of the terms, covenants and conditions of this Lease including, but not limited to, any damages or deficiency in the re-letting of the Demised Premises, whether such damages or deficiency accrued before or after summary proceedings or other re-entry by Owner. In the event that Owner uses, applies or retains the whole or any portion of the security as base Rent for any given month then Tenant shall replenish all or any portion of the security that was used, applied or retained on or before the last day of the month to which it was applied. In the event that Tenant fails to timely replenish the security, Owner may terminate this Lease upon ten (10) days prior written notice. Other than in year one of the Lease, each time there is an escalation in the Fixed Rent. Tenant shall pay additional security so that the security always equal at least three months of Rent. This additional security shall be deemed Additional Rent. Owner shall not be required to maintain the security deposit in an interest bearing account. In the event that Tenant shall fully and faithfully comply with all the terms, provisions, covenants and conditions of this lease, the security shall be returned to Tenant after the date fixed as the end of the Lease and after delivery of entire possession of the demised premises to Owner. In the event of a sale of the land and building or leasing of the Building, of which the demised premises form a part, Owner shall have the right to transfer the security to the vendee or lessee and Owner shall thereupon be released by Tenant from all liability for the return of such security, and Tenant agrees to look to the new Owner solely for the return of said security, provided that the new Owner assumes Owner's obligations to Tenant under Paragraph 4.1 and the Lease, and it is agreed that the provisions hereof shall apply to every transfer or assignment made of the security to a new Owner. Tenant covenants that it will not assign or encumber or attempt to assign or encumber the monies deposited



herein as security under this Lease and that neither Owner nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance. It is expressly understood and agreed that the issuance of a warrant and the re-entering of the Premises by Owner for any default on the part of Tenant prior to the expiration of the Term shall not be deemed such a termination of this Lease as to entitle Tenant to recovery of the security; and security shall be retained and remain in the possession of Owner until the end of the Term, unless otherwise applied by Owner pursuant to the remaining provisions of this Lease.

#### 4.2 Tenant's Option to Terminate

Upon Landlord's receipt of funds representing Tenant's total security deposit, and Tenant is not in default, Tenant may terminate this lease upon one hundred eighty (180) days prior written notice to Landlord and must be current on Rent and Additional Rent through the entire 180 day period. In the event that Tenant terminates the lease in accordance with this provision, Tenant will forfeit the entire security deposit to Landlord who may draw down on it immediately and apply it in any manner it deems appropriate. In the event that Tenant timely serves notice, and properly pays Landlord Rent and Additional Rent, and the funds clear, the Lease shall be deemed terminated as though it had expired and the Guarantor shall be released from the Guaranty. However the Tenant and Guarantor's obligation to pay the prorated taxes, as they are determined shall be a continued obligation until the City of New York issues a final tax bill, in addition to water, heat or other charges assessed but not yet billed as Additional Rent for the demised Premises.

### SECTION 5 ALTERATIONS, ADDITIONS AND IMPROVEMENTS

#### 5.1 Alterations by Tenant:

Tenant shall not make or cause to be made any alterations, additions or improvements to the leased premises ("Tenant's Changes") without obtaining Landlord's prior written consent, which Landlord shall not unreasonably withhold as to customary interior non-structural alterations or the installation of equipment and trade fixtures required by Tenant's business that do not adversely affect the structure of leased premises or the electrical, air conditioning, heating, plumbing, life safety or other systems serving the leased premises except landlord consents to the alterations submitted with this lease. Landlord's consent for other alterations, additions or improvements may be withheld or conditioned in its sole discretion. In granting its consent to any Tenant's Changes, Landlord may impose such conditions (as to guarantee of completion, payment, restoration and otherwise including, the requirement of Tenant and/or its contractor(s) and subcontractor(s) to post a bond to insure the completion of Tenant's Changes) as Landlord may require. In no event shall Landlord be required to consent to any Tenant's Change which would physically affect any part of the building outside of the leased premises or would adversely affect the proper

functioning of the mechanical, electrical, plumbing, sanitary or other service systems of the building. In connection with any alterations, additions or improvements, Tenant shall give Landlord prior written notice and execute such agreements as Landlord may reasonably require to govern the terms and conditions under which the work is to take place and shall provide such plans, drawings, documents, specifications and other information reasonably requested by Landlord for such work prior to the commencement of the work. Landlord shall also have the right to approve the contractor and subcontractors performing any such work. Tenant shall, upon the request of Landlord, furnish Landlord with documentation as to the cost of any alterations, additions or improvements. At the time Tenant requests Landlord's written consent to any of Tenant's Changes, Tenant shall deliver to Landlord, and a set to Landlord's counsel, detailed plans and specifications therefore ("Tenant's Plans"). Tenant shall pay to Landlord any fees or expenses incurred by Landlord in connection with Landlord's submitting Tenant's Plans, if it so chooses, to an architect or engineer selected by Landlord for review or examination and/or for supervision during performance of Tenant's Changes upon ten (10) days prior notice from Landlord. Any professional fees, up to \$3,000.00, incurred by Landlord in reviewing Tenant's Plans shall be deemed Additional Rent. Tenant's Plans shall be subject to Landlord's written approval, which approval shall not be unreasonably withheld. Tenant's Plans must include complete, finished, detailed architectural plans and drawings (in 1/8" scale) including all dimensions and specifications for Tenant's Changes. Tenant's Plans shall conform to the then existing physical conditions of the building, the filed plans and requirements of law, public authorities and insurance underwriters boards. Tenant shall employ reputable engineers for the building to prepare, at Tenant's expense, the mechanical, electrical, structural and plumbing plans and specifications required to complete the design of the demised premises or any parts thereof for occupancy. Upon Landlord's written approval of Tenant's Plans, Tenant, at its expense, shall cause Tenant's Plans (including said mechanical plans and specifications) to be filed with the governmental agencies having jurisdiction thereof, in order to obtain and Tenant shall obtain, all governmental permits and authorizations which may be required in connection with the performance of Tenant's Changes. Landlord's approval of any plans or specifications does not relieve Tenant from the responsibility for the legal sufficiency and technical competency thereof. Tenant before commencement of any Tenant's Changes shall:

1. Obtain the necessary consents, authorizations and licenses from all federal, state and/or municipal authorities having jurisdiction over such work, if same is required;
2. Furnish to Landlord a certificate or certificates of Worker's Compensations Insurance covering all persons who will perform Tenant's Changes for Tenant or any contractor, subcontractor or other person;
3. In the event Tenant anticipates structural changes to the demised Premises, then Tenant shall furnish to Landlord an original Policy of Public Liability Insurance (or

certificate thereof) covering Landlord with limits of not less than One Million (\$1,000,000.00) Dollars per occurrence, and Two Million (\$2,000,000.00) Dollars annual aggregate (the "primary limits"), covering bodily injury, including death, and property damage, and an original Umbrella Liability Policy with limits of not less than two Million (\$2,000,000.00) Dollars in excess of primary limits of property and liability coverage per occurrence or accident for injuries or damages to person and property, in each instance issued by reputable and independent insurers permitted to do business in the State of New York, and rated in Best's Insurance Guide, or any successor thereto (or if there be none, an organization having a national reputation) as having a general policyholder rating of "A" ("A rated"). The Umbrella shall only be in place so long as the work contemplated hereunder has not been certified or approved by the architect of record or the Department of Building. Subject to Landlord's approval which shall not be unreasonably withheld or delayed, the Tenant may meet its insurance obligations under this paragraph with a commercially reasonable combination of primary insurance and excess liability insurance coverage(s) provided the insurer(s) in each instance is A rated. Such policy shall be maintained at all times during the progress of Tenant's Changes and until completion thereof, and shall provide that no cancellation shall be effective unless ten (10) days prior written notice has been given to Landlord.

Tenant agrees to indemnify and save Landlord harmless from and against any and all bills for labor performed and equipment, fixtures and materials furnished to Tenant and applicable sales taxes thereon as required by New York law and from and against any and all liens, bills or claims therefore or against the demised premises or the building, as a result of Tenant's changes.

Tenant, at its expense, shall cause any Tenant's Changes consented to by Landlord to be performed in compliance with all applicable requirements of any kind or nature including, without limitation, all statutes, ordinances, health, building or electrical codes, or rules and regulations of governmental bodies having jurisdiction over the leased premises or the building of which it forms a part.

If the performance of Tenant's Changes shall cause the Building or Landlord to install upgrades to its utilities or the Building's use and occupancy by virtue of Tenant obtaining its permits from the Department of Buildings, then Tenant shall be responsible for the costs (including but not limited to architects, engineers, expeditors, filing fees and improvements) for any upgrades to the Building incurred by Landlord or the Building. The costs shall be considered Additional Rent and due at the time the costs are incurred by Landlord. In addition to provide for the Cross Easement in Section 21, Tenant's fresh air makeup required for its basement use will also flow to the Building's basement.

If the performance of Tenant's Changes shall interfere with the comfort and/or convenience of other tenants in the building or shall cause damage to or otherwise interfere with the occupancy of adjacent buildings, Tenant shall upon Landlord's demand remedy or remove the condition or conditions complained of.

Tenant further covenants and agrees to indemnify and save Landlord harmless from and against any and all claims, losses, damages, costs, expenses, suits and demands whatsoever made or asserted against Landlord by reason of foregoing. Tenant further agrees that any debris or rubbish from Tenant's initial or subsequent installations shall be removed through the front entrance of the demised premises. Tenant agrees to utilize reputable, licensed contractors and subcontractors for the performance of Tenant's changes. All alterations, additions or improvements excluding, however, Tenant's movable furniture, decorations, trade fixtures and equipment not attached to the leased premises shall become the property of Landlord upon the expiration or termination of this Lease, without compensation or credit to Tenant, except as Landlord may otherwise agree in writing at the time notice of or approval for such alteration, decoration, addition, or improvement is given or sought. Tenant shall not remove, alter or modify any alterations, additions, or improvements without the prior written consent of the Landlord. Upon the expiration or termination of this Lease, Landlord shall have the option of requiring Tenant to remove some or all of any alterations, additions and improvements, and restore the leased premises at Tenant's sole cost including the repair of any damage to the leased premises caused thereby.

Promptly after the completion of any Tenant's Changes, Tenant shall deliver to Landlord a) final lien waivers from any and all contractors, subcontractor and material persons providing work, labor and material for Tenant's Changes, b) an itemized statement, showing the total actual cost of such Tenant's Changes incurred to the date of such completion, classified by building trades, together with the cost of professional services (architectural and engineering) and governmental permits incurred in connection therewith, and shall procure, at Tenant's own expense (to be shown, if any, on said itemized statement), c) all such approvals and signoffs of any open permits by governmental authorities, if any, of the completed Tenant's Changes as may be required by any applicable law or ordinance or any applicable rule or regulation of governmental authorities, d) all such insurance organization' approvals, if any, as may be required or customary in connection therewith, and shall, on demand, deliver photocopies thereof to Landlord, and "as built" drawings of the Tenant's Changes.

**Tenant shall, at its sole cost, install:**

1. Storefront with windows and entrance doors.
2. HVAC system.
3. ADA bathroom.
4. Soundproof ceiling. Tenant may not use recessed lights in the soundproofed ceiling portions, not have exposed structural walls.
5. Install smoke detectors and any other mechanical upgrades that are required to integrate with the central fire monitoring station for the Building as a result of Tenant's proposed work.
6. Landlord, at Tenant's expense (at costs incurred by Landlord), shall cut an opening in the floor for the proposed stairs to basement, install steelwork and stairs to basement from Premises as well as new masonry demising walls for the corridor,

cellar bathroom and prep area as per Tenant's layout dated 12.23.2011 on Basement Plan of D+DS Design Architect. As shown on Exhibit E, attached hereto.

**Tenant may, at its sole cost, install**

7. Custom awning.
8. a second entrance door to the demised premises on 2<sup>nd</sup> Street so long as its location does not interfere with the Building's handicap entrance(s).

**Tenant may, at its sole cost, obtain**

9. a sidewalk café permit so long as its use does not interfere with the Building's handicap entrance(s)

All tenant's improvements are subject to landlord's written consent which shall not be unreasonably withheld, conditioned or delayed, as asset forth above.

## **5.2 Construction Liens:**

Tenant shall have no power or authority to subject the leased premises or any portion thereof to any mechanics', construction or other liens. The interest of the Landlord in the leased premises is not subject to liens for improvements made by or on behalf of Tenant.

Tenant shall promptly pay all contractors, subcontractors, materialmen, and laborers so as to prevent any liens from attaching to the leased premises (or Tenant's interest in the leased premises). If any lien is made or filed against the Building (or Tenant's interest in the leased premises), arising out of any labor or material furnished or alleged to have been furnished to, for or on behalf of Tenant, Tenant shall, at Tenant's sole cost and expense, discharge or bond such lien within thirty (30) days after written request by Landlord. If such lien is not discharged, bonded or transferred within such thirty (30) day period, Landlord may at any time thereafter, at its option, discharge such lien, without inquiry as to the validity of such lien or the true amount, if any, owed in connection therewith, and any costs and expenses (including reasonable attorneys' fees, costs and disbursements) incurred by Landlord in connection therewith shall be paid by Tenant to Landlord within five (5) days of receipt by Tenant of an invoice from Landlord.

## **5.3 Signs:**

Tenant shall not place or permit to be placed or maintained on any exterior door, or wall of the leased premises (above the height of the premises) or on any window of the leased premises or on any other place visible from outside the leased premises any sign, awnings, lettering, canopy, or advertising matter without obtaining Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed. Landlord

shall have control over the color, style, size, character and material of all such items and may prohibit or require the removal of any items deemed by Landlord to be offensive, in bad taste, or inconsistent with the character of the Building, approval or disapproval to be provided in 10 days or it is waived.

Tenant shall maintain any sign, and any other improvements approved by Landlord (a) in excellent condition and repair at all times and, (b) in accordance with all relevant laws, regulations, codes and other governmental requirements. Upon the expiration or termination of this Lease, Tenant, at Landlord's request, shall remove Tenant's sign and repair any damage caused by the sign or its removal.

**5.4 Alterations and Additions by Landlord:**

Landlord reserves the right to make any renovations, alterations, additions or improvements to the Building, including but not limited to the right to construct additions to the Building and the right to make major improvements and renovations to the Building and the right to improve, alter, modify or relocate the common areas to the extent it does not interfere with the Tenant's uninterrupted use and quiet enjoyment. Landlord further reserves the right to install, maintain, use, repair and replace pipes, ducts, conduits, lines, vents and wires through the leased premises serving other areas of the Building or necessary or desirable for the operation of the Building and to make such other installations within the leased premises that Landlord deems necessary or desirable, so long as such installations do not materially interfere with Tenant's use of the leased premises. Tenant waives all claims for any inconvenience, annoyance or loss arising from such renovations, alterations, additions, improvements or other work that Landlord deems advisable so long as the work is conducted in a reasonable manner designed to minimize, to the extent practical, the adverse effect on Tenant's use of the leased premises. Tenant agrees to cooperate with Landlord in the carrying out of any such renovations, alterations, additions, improvements, or other work.

Landlord shall perform those items listed on Exhibit "B" ("Landlord's Work") after the Lease Commencement date, and such Landlord's Work will not materially delay or hinder Tenant's work outlined in Section 5.

**SECTION 6**  
**MAINTENANCE AND REPAIR**

**6.1 Responsibilities of Landlord:**

(a) Landlord shall maintain the foundations and roof of the leased premises and Building, and the structural soundness of the concrete floors and exterior walls of the leased premises (excluding exterior doors, entrances, glass and windows) in good repair and condition, exclusive of any work required as a result of any act, omission or negligence of Tenant or its employees, agents, customers, contractors, invitees or licensees which shall be the responsibility of Tenant. Landlord shall not be required to commence any repairs until after written notice from Tenant that a repair is necessary.

The notice shall set forth the repair needed and, if the repair is of a nature requiring Landlord's immediate attention, a statement to that effect. The provisions of this Section 6.1 shall not apply in the case of damage or destruction by fire or other casualty or any taking or condemnation, which are controlled by other Sections of this Lease.

(b) If Owner allows Tenant to erect on the outside of the Building awnings, a sign or signs, or a hoist, lift or sidewalk elevator for the exclusive use of Tenant, Tenant shall maintain such exterior installations in good appearance and shall cause the same to be operated in a good and workmanlike manner and shall make all repairs thereto necessary to keep same in good order and condition, at Tenant's own cost and expense, and shall cause the same to be covered by the insurance provided for hereafter in Paragraph 7. Tenant shall, throughout the term of the lease, take good care of the demised premises and the fixture and appurtenances therein, and the sidewalks adjacent thereto (as more fully described below), 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 elsewhere in this lease, there shall be no allowance to the Tenant for the diminution of rental value and no liability on the part of Owner by reason of inconvenience, annoyance or injury to business arising from Owner, Tenant or others making or failing to make any repairs, alterations, additions or improvements in or to any portion of the building including the erection or operation of any crane, derrick or sidewalk shed, or in or to the demised premises or the fixtures, appurtenances or equipment thereof. It is specifically agreed that Tenant shall be not entitled to any set off or reduction of rent by reason of any failure of Owner to comply with the covenants of this or any other article of this lease. Tenant agrees that Tenant's sole remedy at law in such instance will be an action for injunctive relief. The provisions of this Paragraph 6.1 (b) with respect to the making of repairs shall not apply in the case of fire or other Casualty which are dealt with elsewhere in the within lease agreement.

(c) 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 Rule of the Board of Standards and Appeals, or of any other Board or body having or asserting jurisdiction.

## 6.2 Responsibilities of Tenant:

(a) General Maintenance and Repair Obligations. Except only for those portions of the leased premises which are the responsibility of Landlord pursuant to Section 6.1 above, Tenant shall at all times maintain the entire leased premises and its component parts and systems and the leasehold improvements that make up a part of the leased premises in good order, appearance, condition and repair (including any restoration or replacements necessary to maintain a good working order and condition). In addition Tenant shall, during the entire term, perform all janitorial and cleaning

services within the leased premises in order to keep the leased premises, at all times, in a neat, clean, sanitary, attractive and orderly condition.

(b) Specific Maintenance Obligations:

- 1) Rubbish Removal: Tenant shall, at its own cost and expense, store, dispose of and remove from the demised premises all of its garbage, refuse and waste matter (collectively, "Refuse") in an orderly and sanitary manner which prevents the emanation of any odor or effluent, and in compliance with the rules reasonably established by Owner from time to time and those of all governmental agencies having jurisdiction. Without limiting the generality of the foregoing, all Refuse shall be kept in airtight containers, and removed from the Premises via the route designated by Owner in heavy duty plastic bags to the loading dock area at the Building designated by Owner, at least once a day during hours designated by Owner. In removing Refuse from the Premises and the Building, Tenant shall use closed containers of such a nature that in the process of such removal no Refuse shall spill or flow from such containers. No Refuse shall be removed from the Premises more than four (4) hours before the scheduled pick-up of Refuse by the carting company, and all Refuse containing organic or wet matter shall be stored in a refrigerated space within the Premises until such time as it is removed to the loading dock. All refuse shall be placed on Avenue B. Tenant will arrange for the removal of such Refuse by a carting company accepted by Owner and shall pay for the cost thereof directly to such carting company.
2. Extermination: Tenant, at its own cost and expense, shall keep the Premises free from vermin, pests, insects, rodents or anything of like objectionable nature, and shall employ only such exterminating contractors as are reasonably approved by Owner. Without limiting the foregoing, Tenant shall, at a minimum, have the Premises exterminated at least twice per calendar month. In the event of Tenant's failure to keep the Premises free from vermin or have the Premises exterminated at least twice per month, Owner may, after three (3) days' notice to Tenant and at Tenant's expense, take all necessary or proper measures to exterminate any and all vermin from the Premises.
- 3) Violations: In the event there are any notices of violation issued or process served upon the Landlord by any municipal agency or department relating to the premises, including but not limited to dirty sidewalks or rubbish accumulation, Tenant shall, upon ten (10) days notice, pay Landlord any fees, including reasonable attorneys'



fees, fines or penalties which the Landlord may be obligated to pay as a result of such action by such municipal authorities, but only to the extent that said summons are issued due to violations caused by Tenant.

- 4) **Fire Extinguishers:** Tenant is required to install requisite fire extinguishers as required by law within the demised premises. Such fire extinguisher must meet the requirements of the New York City Fire Department.
- 5) **Floor Load:** Tenant shall not place a load upon any floor or roof of the Premises in excess of the load per square foot which such floor was designed to carry and which is allowed by law. All such equipment and machines shall be placed and maintained by Tenant, at its sole expense, in such a manner and with sufficient foundations and mounts so as to adequately support the weight and load of same and so as to prevent any vibration or noise from emanating from the Premises or exceeding noise levels which shall be a violation of any governmental law, rule or regulation, or which shall be objectionable to Owner or any other tenant or constitute a nuisance to any other tenant or nearby building.
- 6) **Tenant's Responsibility for Sidewalk Maintenance:** Tenant shall be responsible to maintain the sidewalk immediately adjacent to the demised premises and shall be further responsible to keep the same free from dirt, ice, snow or other debris of any kind or nature. In the event that the sidewalk immediately adjacent to the Premises is damaged and/or requires repair apart from structural. In the event that Tenant, its agents, employees, invitees, guests and/or patrons damage and/or cause need for repair to the sidewalk adjacent to the Premises, Tenant shall at its sole cost and expense, repair the sidewalk.
- 7) **Use of Wash Closets/Plumbing Fixtures:** The water and wash closets and other plumbing fixtures shall not be used for any purposes other than those for which they were designed or constructed, and no sweepings, rubbish, rags, acids or other substances shall be thrown or deposited therein. Tenant further agrees to install and maintain a grease trap in the demised premises in order to preclude the flow or leakage of grease into the sewer. All damages resulting from any misuse of the fixtures shall be repaired at the expense of the Tenant who, or whose servants, employees, agents, visitors or licensees shall have caused the same. Tenant to install a commercial grinder for all toilet connections to the Buildings sewer lines.

- 8) **Noise:** No loud or excessive noise is permitted to emanate from the premises, including, but not limited to, music or the playing of musical instruments, recordings, radio or television which, in the judgment of Landlord, might disturb other Tenants in the Building. Nothing shall be done or permitted in the demised premises by Tenant which would impair or interfere with the use or enjoyment by any other Tenant of any other space in the building. The Tenant or its employees, agents and or assigns shall not throw anything out of the doors, windows or skylights or down the passageways.
- 9) **Odors:** Tenant will install at its own cost and expense, reasonable control devices or procedures to eliminate any odors emitted from the business conducted by Tenant at the demised premises. In the event Tenant fails or inadequately installs odor controlling devices and such condition is not remedied, or commencement of said remedial efforts with reasonable diligence and in good faith with ten (10) days after written notice, Landlord may, at its discretion, either (a) cure such condition and thereafter add the cost and expense incurred by Landlord therefore to the next monthly rental to become due and Tenant shall pay said amount as additional rent; or (b) treat such failure on the part of Tenant to eliminate such odors as a material default hereunder entitling Landlord to any of its remedies pursuant to the terms of this lease. Landlord shall have the right upon reasonable advance notice to enter the demised premises at any time to inspect the same and ascertain whether they are clean and free of odors. The material, size and location of such control devices or procedures to eliminate such odors, shall be subject to Landlord's prior written approval. Such work shall not be commenced until plans and specifications therefore have been submitted to and approved by Landlord.
- 10) **Sprinkler Systems:** If the New York Board of Fire Underwriters or the Insurance Services Office or any bureau department or official of the Federal, State or City government require the installation of a sprinkler system by reason of Tenant's business, or the location of partitions, trade fixtures or other contents of the demised premises, or for any other reason, the Tenant shall pay one hundred (100%) percent of the entire cost for the adjustment or changes required by Tenant of said system currently installed as it pertains to Tenant's specific space. Thereafter, Tenant shall pay one hundred (100%) percent of the costs for maintenance and sprinkler supervisory services, if any for the demised premises.

- 11) **Flammable Materials:** Tenant shall comply with any and all governmental rules and regulations including but not limited to the laws and ordinances of the Buildings Department and Fire Department especially as they pertain to the use and storage of flammable or combustible materials which Tenant uses in the conduct of its business. Tenant shall not store or permit to be placed on or within the demised premises or any combustible or flammable material not used in the ordinary course of its business.
- 12) **Heat and Hot Water:** Tenant will be responsible to provide its own heat and hot water in the demised premises and shall pay for all water meter charges to the utility provider for its usage to the Landlord based on Tenant's usage as measured by a separate water meter for the demised premises. Landlord shall pay for the installation of a sub-meter for water. Tenant must provide heat to the premises in the event the outside temperature falls below 36 degrees Fahrenheit. The Tenant is responsible for maintaining heat to prevent the water pipes from bursting. Tenant shall be held liable for all damages created by his negligence. If Landlord makes any repairs due to the failure to maintain heat to the demised premises, the cost to repair all damages will be paid by the Landlord and then billed to the Tenant as Additional Rent and must be paid in the next monthly billing. The Landlord shall not be responsible to provide any heat risers or radiators for the premises nor shall the Landlord be responsible for the adequacy of heat.  
Notwithstanding the above, if Tenant desires to use the Building's boiler to provide heat to the demised premises, then Tenant shall pay for the installation and maintenance of a BTU meter to be installed by the Landlord. The monthly BTU meter usage shall be paid as Additional Rent as set forth in Section 2.5.
- 13) **Maintenance of Interior,** Tenant shall, at its own expense, keep and maintain the entire interior of the Premises in clean and orderly condition at all times. Tenant shall install and at all times maintain and repair, at its sole cost and expense, in good and working order all ventilating equipment and systems, grease and/or effluent equipment and systems, plumbing and sanitary equipment and systems, and fire prevention and suppression systems as may be required by law, code, rule or regulation of any governmental authority or agency having jurisdiction based upon Tenant's use of the Premises, as well as any related duct work, piping, connections and vertical risers, if any. Tenant shall not permit any food, waste, or other foreign substances to be thrown or draw into the plumbing or sanitary lines; and Tenant shall install and maintain appropriate filters, grease traps and waste lines to prevent accumulation of

grease in all conduits used to exhaust fumes and vapors resulting from the preparation of food and beverages. Tenant shall not suffer, allow or permit any offensive or obnoxious vibration, noise, odor or other undesirable effect to emanate from the Premises.

14). <omitted>.

15). No Appearance of Interest by Owner. Tenant covenants that at no time shall it conduct its business in the Premises in any manner which would or is likely to express, imply or cause to be expressed or implied that Owner maintains any interest in or control over Tenant and/or the operation of the business conducted by Tenant in the Premises.

c) Failure of Tenant to Conduct Repairs: If Tenant refuses or neglects to properly complete any repair or maintenance required by Tenant hereunder to the reasonable satisfaction of Landlord within ten (10) days after written demand (or such additional time as may be necessary given the nature of the repair or maintenance required), Landlord may, at its option but Landlord shall have no obligation to, complete such repair or maintenance without liability to Tenant for any loss or damage that may accrue to Tenant's merchandise, fixtures, or other property, or to Tenant's business by reason thereof. Tenant shall reimburse Landlord for its cost for such repair or maintenance, within ten (10) days after presentation of a bill therefor.

(d) Surrender of Leased Premises: Upon the expiration of the term or termination of this Lease, Tenant shall surrender and deliver the leased premises to Landlord vacant, broom clean, free of all occupants and undamaged other than ordinary wear and tear. Concurrently with such surrender, Tenant shall deliver to Landlord keys for or combinations to all locks, safes and vaults in or serving the leased premises. Notwithstanding, no act or thing done by Owner or Owner's agents during the term hereby demised shall be deemed an acceptance of a surrender of the demised premises and no agreement to accept such surrender shall be valid unless in writing signed by Landlord. No employee of Owner or Owner's agent shall have any power to accept the keys of the leased premises prior to the expiration date of the lease, and the delivery of keys to any agent or employee shall not operate as a termination of the lease or a surrender of the leased premises without Landlord's consent.

## SECTION 7

### 7.1 Insurance to be Provided by Tenant:

Tenant shall maintain during the entire term of this Lease, the following:

- (a) property insurance, insuring Landlord as an additional insured and loss payee and Tenant, as their interests may appear, against loss or damage by fire and other risks from time to time included under

"all risks" policies, in the amount of the full replacement cost of all leasehold improvements that constitute a part of the leased premises as of the Commencement Date and all subsequent alterations, additions, decorations, and improvements to the leased premises and all furniture, trade fixtures, equipment, merchandise and all other items of Tenant's property in the leased premises;

- (b) comprehensive general liability insurance, including public liability and property damage, insuring Landlord as an additional insured and loss payee and Tenant as their interests may appear, against claims for bodily injury, death or property damage occurring on, in or about the leased premises, including without limitation the sidewalk in front of the leased premises and any adjacent area. Such insurance shall have limits of liability of not less than One Million (\$1,000,000.00) Dollars per occurrence, and Two Million (\$2,000,000.00) Dollars in the annual aggregate (the "primary limits"), covering bodily injury, including death, and property damage, fire damage and legal cost coverage (subject to reasonable increases from time to time upon written request from Landlord) and shall include broad form contractual liability insurance coverage insuring Tenant's indemnity obligations under this Lease. Such insurance in each instance issued by reputable and independent insurers permitted to do business in the State of New York, and rated in Best's Insurance Guide, or any successor thereto (or if there be none, an organization having a national reputation) as having a general policyholder rating of "A" ( "A rated"), shall be written on an occurrence basis and cover Tenant as the named insured and Landlord (and any affiliates of Landlord as may be designated by Landlord from time to time including but not limited to any managing agent ) as additional insureds; Tenant's Failure to deliver to Landlord an insurance certificate identifying Landlord as an additional insured under the aforementioned insurance policy, and which confirms the existence of its coverage, shall constitute a pre-condition to the Tenant's assumption of possession. Subject to Landlord's approval which shall not be unreasonably withheld or delayed, the Tenant may meet its insurance obligations under this paragraph with a commercially reasonable combination of primary insurance and excess liability insurance coverage(s) provided the insurer(s) in each instance is A rated.
- (c) insurance against loss or damage to plate glass in or on the leased premises ("plate glass"), in lieu of which Tenant shall be deemed self insured and bear all risk of loss to plate glass; and

- (d) such other Insurance, including but not limited to Dram Shop Insurance if applicable, in such amounts and against such other insurable risks as Landlord may from time to time require which at the time are commonly obtained in the case of property similar to the leased premises.
- (e) "All Risk" Property Insurance covering in an amount adequate to cover the cost of replacement of all of Tenant's decorations, contents, fixtures, personal property, inventory and other moveable or non-movable property of Tenant, time element coverage including extra expense to cover Tenant's loss of use as a result of a loss sustained by a peril covered under the policy, and for Business Interruption.

With respect to naming Landlord as an additional insured, Tenant shall name Haimil Realty Corp., located at 209 East 2<sup>nd</sup> Street, Suite 7, New York, NY 10009, the Board of Managers of the 209 East 2<sup>nd</sup> Street Condominium, as well as 209 East 2<sup>nd</sup> Street Condominium, each having a mailing address at 209 East 2<sup>nd</sup> Street, New York, NY 10009 as additional insured on each of the above-referenced policies.

#### **7.2 General Insurance Requirements:**

Each policy of insurance required to be carried by Tenant shall be issued by reputable and independent insurers permitted to do business in the State of New York, and rated in Best's Insurance Guide, or any successor thereto (or if there be none, an organization having a national reputation) as having a general policyholder rating of "A". Tenant shall exercise its best efforts to obtain a policy of insurance that shall contain an agreement by the insurer that it will not cancel or fail to renew or amend such policy or reduce the coverage thereunder except after thirty (30) days' prior written notice to Landlord and that any loss otherwise payable thereunder shall be payable notwithstanding any act, omission or negligence of Tenant which might, absent such agreement, result in a forfeiture of all or a part of such insurance payment. Any deductible amounts under any insurance policies shall be subject to Landlord's prior written approval.

On or prior to the Commencement Date, Tenant shall deliver to Landlord certificates of the insurers, evidencing all of the insurance which is required to be maintained by Tenant hereunder together with evidence of the payment of all premiums therefor, and Tenant shall, within thirty (30) days prior to the expiration of any such insurance, deliver other certificates of the insurers evidencing the renewal or replacement of such insurance together with evidence of the payment of all premiums therefor. Should Tenant fail to maintain or renew any insurance provided for in this Section, or to pay the premium therefor, or to deliver to Landlord any of such certificates, then Landlord, at its option, but without obligation to do so, may, upon five (5) business days' notice to Tenant, procure such insurance, and any sums so

expended by shall be additional rent hereunder and shall be paid by Tenant to Landlord within ten (10) days after demand therefor.

**7.3 Mutual Waiver of Subrogation:**

Landlord and Tenant each waive claims arising in any manner in its (the "Injured Party's") favor against the other party for loss or damage to property located within or constituting a part or all of the leased premises to the extent that such loss or damage is covered by the Injured Party's insurance or the insurance the Injured Party is required to carry under this Lease. The benefits of this waiver also apply to each party's principals, partners, directors, officers, employees, shareholders and agents. The foregoing is intended to restrict each party to recovery for loss or damage against insurance carriers to the extent of such coverage, and waive fully any right or claim which may give rise to a right of subrogation in any insurance carrier. Landlord and Tenant agree to have all fire and extended coverage and property damage insurance which may be carried by them endorsed to provide that the foregoing waiver will not affect the validity of any such insurance or the right of the insured to recover thereunder. The foregoing mutual waiver of claims giving rise to a right of subrogation shall not operate in any manner that invalidates insurance coverage or the right to recover under any insurance policies.

**7.4 Increase in Insurance Premium:**

Tenant agrees that it will not keep, use, sell or offer for sale in or upon the leased premises any article which may be prohibited by the standard form of fire and extended risk insurance policy. Tenant agrees to pay any increase in premiums for fire and extended coverage insurance which may be carried by Landlord on the leased premises or the Building, resulting from Tenant's particular use of the leased premises or the type of merchandise sold by Tenant in the leased premises. A schedule issued by the organization formulating the insurance rate, showing the various components of such rate, shall be conclusive evidence of the items and charges which make up the casualty insurance rate on the leased premises. At Landlord's option, Tenant agrees to promptly make, at Tenant's cost, any repairs, alterations, changes and improvements to equipment in the leased premises or the leased premises itself required by the company issuing Landlord's fire insurance so as to avoid the cancellation of, or an increase in premiums for said insurance. Amounts payable by Tenant under this Section 7.4 shall be paid with the next installment of minimum annual rent following delivery of a bill by Landlord. Additionally, Tenant shall pay any increase in premiums for any insurance coverage of the building carried by Landlord which results from Tenant's use of the leased premises.



**7.5 Indemnification of Landlord:**

Except only to the extent directly resulting from the negligence or tortious conduct of Landlord or its agents acting within the scope of their authority, Tenant shall indemnify, defend, protect and hold Landlord harmless from and against any and all demands, claims, proceedings, actions or causes of action, losses, damages, liabilities, fines, penalties, costs and expenses (including attorneys fees and costs, including but not limited to those incurred in connection with any administrative proceedings) arising from or in connection with, or occasioned wholly or in part by (i) Tenant's use or occupancy of the leased premises; (ii) any act, omission, or negligence of Tenant or its principals, agents, contractors, employees, servants, licensees, or invitees; or (iii) any violation of this Lease or failure to comply with any of its terms or covenants by Tenant. This Section 7.5 shall survive the termination of this Lease and the expiration of the term of this Lease for one year.

**7.6 Compliance with Landlord's Request:**

Tenant shall, at Tenant's sole cost and expense and promptly following request therefor by Landlord, comply with any and all requirements and/or requests of Landlord's insurer or insurers relating to the operation of Tenant's business at the premises demised hereunder or the occupancy thereof by Tenant, including but not limited to the performance of any work required thereby within the demised premises.

**SECTION 8**  
**DAMAGE OR DESTRUCTION**

8.1 (a) If the demised premises or any part thereof shall be damaged by fire or other casualty, Tenant shall give immediate notice thereof to owner and this lease shall continue in full force and effect except as hereinafter set forth. (b) If the demised premises are partially damaged or rendered partially unusable by fire or other casualty, damages thereto shall be repaired by and at the expense of Owner and the rent and other items of additional rent, until such repair shall be substantially completed, shall be apportioned from the day following the casualty according to the part of the premises which is usable. (c) If the demised premises are totally damaged or rendered wholly unusable by fire or other casualty, then the rent and other items of additional rent as hereinafter and there forth shall cease until the date when the premises shall have been repaired and restored by Owner (or, if sooner reoccupied in part by Tenant, then rent shall be apportioned as provided in subsection (b) above) subject to Owner's right to elect not to restore the same as hereinafter provided. (d) If the demised premises are rendered wholly unusable or (whether or not the demised premises are damaged in whole or in part) if the building shall be so damaged that Owner shall decide to demolish



it or to rebuild it, then, in any of such events, Owner may elect to terminate this lease by written notice to Tenant given within 90 days after such fire or casualty or 30 days after adjustment of the insurance claim for such fire or casualty, whichever is sooner, specifying a date for the expiration of the lease, which date shall not be more than 60 days after the giving of such notice, and upon the date specified in such notice the term of this lease shall expire as fully and completely as if such date were the date set forth above for the termination of this lease and Tenant shall forthwith quit, surrender and vacate the premises without prejudice however, to Owner's right and remedies against Tenant under the lease provisions in effect prior to such termination, and any rent owing shall be paid up to such date and any payments of rent made by Tenant which were on account of any period subsequent to such date shall be returned to Tenant. Unless Owner shall serve a termination notice as provided for herein, Owner shall make the repairs and restorations under the conditions of (b) and (c) hereof, with all reasonable expedition subject to delays due to adjustment of insurance claims, labor troubles and causes beyond Owner's control. After any such casualty, Tenant shall cooperate with Owner's restoration by removing from the premises as promptly as reasonably possible, all of Tenant's salvageable inventory and movable equipment, furniture and other property. Tenant's liability for rent shall resume five (5) days after written notice from Owner that the premises are substantially ready for Tenant's occupancy to allow Tenant to commence Alterations by Tenant. (e) Nothing contained herein above shall relieve Tenant from liability that may exist as a result of damage from fire or other casualty. Notwithstanding the foregoing, including Owner's obligation to restore under subparagraph (b) above, each party shall look first to any insurance in its favor before making any claim against the other party for recovery for loss or damage resulting from fire or other casualty, and to the extent that such insurance is in force and collectible and to the extent permitted by law. Owner and Tenant each hereby releases and waives all right of recovery with respect to subparagraphs (b), (d) and (e) above, against the other or any one claiming through or under each of them by way of subrogation or otherwise. The release and waiver herein referred to shall be deemed to include any loss or damage to the demised premises and/or to any personal property, equipment, trade fixtures, goods and merchandise located therein. The foregoing release and waiver shall be in force only if both releasors' insurance policies contain a clause providing that such a release or waiver shall not invalidate the insurance. Tenant acknowledges that Owner will not carry insurance on Tenant's furniture and/or furnishings or any fixtures or equipment, improvements, or appurtenances removable by Tenant and agrees that Owner will not be obligated to repair any damage thereto or replace the same. (f) Tenant hereby waives the provisions of Section 227 of the Real Property Law and agrees that the provisions of this article shall govern and control in lieu thereof.

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**SECTION 9**  
**UTILITIES**

**9.1 General Provisions:**

Tenant shall be solely responsible to make application for, provide for and promptly pay all charges and assessments for water, gas, electricity, heat and air-conditioning, sewer, storm water, trash removal, pay television, and any other utility used or consumed in or at the leased premises. If Landlord supplies any utility used or consumed in the leased premises, Tenant agrees to pay Landlord for such utility as additional rent. Tenant shall be responsible for the cost of any necessary sub-meters to measure utility usage at the leased premises. Landlord, however, has no obligation to provide any utility service to the leased premises, and Landlord shall not be liable for nor shall rent abate in the event of an interruption or failure in the supply of any such utilities to the leased premises. Tenant shall pay timely and fully charges levied by the Public Utility or Private Company servicing the Premises, and hereby indemnifies and agrees to hold Owner harmless from and against any and all claims, costs and expenses in connection therewith. Tenant's failure or inability to obtain service shall not relieve Tenant from its obligations under this Lease and shall not constitute a basis for a set-off or abatement against any monies due Owner under this Lease. Utility services, as used herein, shall mean any element affecting the generation, transmission, and/or distribution or redistribution of water, gas, electricity, heat and air conditioning including but not limited to services which facilitate the distribution of service.

**9.2 (a) Electricity:**

General Conditions: Landlord shall not be liable to Tenant for any loss or damage or expense which Tenant may sustain or incur if either the quantity or character of electrical service is changed or is no longer available or suitable for Tenant's requirements. Tenant covenants and agrees that at all times its use of electric current shall never exceed the capacity of existing feeders to the building or the risers or wiring installation. Tenant agrees not to connect any additional electrical equipment to the building electrical distribution system, other than lamps, typewriters and other small office machines which consume comparable amounts of electricity, without Landlord prior written consent, which consent shall not be unreasonably withheld, except that Tenant shall be permitted to use electrical equipment associated with a restaurant provided that the installation of the same shall not overload the electrical capability of the premises and the installation and use of this machinery shall not create excessive noise or vibrations or in any way impair the floor load capacity of the premises. Any riser or risers to supply Tenant's electrical requirements will be installed at the sole cost and expense of Tenant, if, in Landlord's sole judgment, the same are necessary and will not cause permanent damage or injury to the building or demised premises or cause or create a dangerous or hazardous condition or entail excessive or unreasonable alterations, repairs or expense or interfere with or disturb other tenants or occupants.

Tenant is required to provide its own electric meter, at its own expense. In the event that a meter presently exists which serves the leased premises, Tenant will be permitted to utilize the meter provided that the Tenant, at all times, maintains and repairs said meter at Tenant's sole cost and expense.

Tenant shall at its sole cost and expense, undertake all necessary measures to obtain electricity in the leased premises, including but not limited to, submitting an application directly to the public utility responsible for furnishing electricity for the Tenant's entire separate supply of electric current and Landlord shall permit its wires and conduits to the extent available and safely capable, to be used for such purpose. Any meters, risers or other equipment or connections necessary to enable Tenant to obtain electric current directly from such utility shall be installed at Tenant's sole cost and expense. Rigid conduit only will be allowed. Tenant shall be responsible to pay all costs and charges incurred by Tenant additionally for the consumption of electricity to the demised premises.

**SECTION 10**  
**ATTORNMEN/T/SUBORDINATION/ESTOPPEL**

**10.1 Attornment:**

Without limiting the generality of other provisions herein, Tenant shall, in the event any proceedings are brought for the foreclosure of any mortgage covering the leased premises or in the event a deed is given in lieu of foreclosure recognize the purchaser at the foreclosure sale or grantee in lieu of foreclosure as the Landlord under this lease. In the event any master lessor under a master lease exercises its rights thereunder and terminates Landlord's rights as master lessee thereunder, Tenant shall recognize the master lessor as Landlord hereunder.

Any such successor Landlord shall not be bound by: (i) any payment of minimum annual rent or additional rent made more than one month in advance of its due date; (ii) Landlord's obligations with respect to any security or other deposit unless such deposit was delivered to the successor Landlord; (iii) any offsets, claims or defenses which Tenant may have against a prior Landlord; (iv) any amendment, modification, or termination of this Lease without such successor Landlord's consent after the successor Landlord's name is given to Tenant unless the amendment, modification, or termination is specifically authorized by this Lease and does not require Landlord's prior agreement or consent; (v) any notice given by Tenant to a prior Landlord; and (vi) any liability for any breach, act or omission of a prior Landlord.

**10.2 Subordination:**

This lease is subject and subordinate to all ground or underlying leases and to all mortgages which may now or hereafter affect such leases or the real property of which demised premises are a part and to all renewals, modifications, consolidations,

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

**10.3 Estoppel Certificates:**

Tenant, at any time, and from time to time, upon at least ten (10) days prior notice by Owner, shall execute, acknowledge and deliver to Owner, and/or to any other person, firm or corporation specified by Owner, a statement certifying that this lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications), stating the dates which the rent and additional rent have been paid, and stating whether or not there exists any defaults by Owner under this lease, and, if so, specifying each such default.

**SECTION 11**  
**ASSIGNMENT AND SUBLETTING**

**11.1 Landlord's Consent Required:**

Tenant, for itself, its heirs, distributees, executors, administrators, legal representatives, successors and assigns expressly covenants that it shall not assign, mortgage or encumber this agreement, nor underlet, or suffer or permit the demised premises or any part thereof to be used by others, without the prior written consent of Owner, which consent shall not be unreasonably withheld in each instance. Any such assignment or sublease without the Landlord's consent shall be void. Transfer of the majority of the interest of a corporate tenant or the majority partnership interest of a partnership tenant shall be deemed an assignment. Tenant may transfer this lease to a related entity, the majority of interest which is owned by Tenant's current members, below,

Tenant warrants the current Members of the limited liability company are as follows:

(1) Thomas DeGeest	96.25 %
(2) Rossana Figurea	2.50 %
(3) Jeroen Deschrijver	<u>1.25%</u>
	100.00 %

If this lease be assigned, or if the demised premises or any part thereof be underlet or occupied by anybody other than Tenant, Owner may, after default by Tenant, collect rent from the assignee, under-tenant or occupant and apply the net

amount collected to the rent herein reserved, but no such assignment, underletting, occupancy or collection shall be deemed a waiver of the covenant, or the acceptance of the assignee, undertenant or occupant as tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained. The consent by Owner to an assignment or underletting shall not in any wise be construed to relieve Tenant from obtaining the express consent in writing of Owner to any further assignment or underletting.

**11.2 Continuing Liability of Assignor/Sublettor:**

Notwithstanding any permitted assignment or subletting in accordance with the conditions of this Paragraph, Tenant and Guarantor shall, at all times, remain directly, primarily and fully responsible and liable for the payment of the rent herein specified and for compliance with all of its other obligations under the terms, provisions and covenants of this Lease except as otherwise provided in the assignment. Upon the occurrence of a default or breach of this Lease by the Tenant, if the demised premises or any part thereof are then assigned or sublet, Landlord, in addition to any other remedies herein provided or provided by law, may, at its option, collect directly from any such assignee or subtenant all rents or other sums becoming due to Tenant from such assignee or subtenant as a result of such assigning or subletting, and apply such rents or other sums against any sums due to Landlord from Tenant hereunder, and no such collection shall be construed to constitute a novation or release of Tenant from the further performance of Tenant's obligations hereunder.

**11.3 Procedure for Assignment/Subletting:**

If Tenant shall, at any time or times during the term of this Lease, desire to assign this Lease or sublet all or part of the demised premises, and Tenant is not in default, or having been in default two times in the past 12 months, Tenant shall give notice thereof to Landlord, which notice shall be accompanied by (i) a conformed or photostatic copy of the proposed assignment or sublease, the effective or commencement date of which shall be at least thirty (30) days after the giving of such notice, (ii) a statement setting forth in reasonable detail the identity of the proposed assignee or subtenant, the nature of its business and its proposed use of the demised premises and (iii) current financial and credit information with respect to the proposed assignee or subtenant including, without limitation, its most recent financial report (if any) and a bank reference.

Landlord's consent to a proposed assignment shall not be unreasonably withheld or delayed, provided that the following conditions are complied with:

- (a) Tenant shall have given Landlord notice and accompanying information in accordance with this Paragraph 11;

- (b) The proposed assignee is a reputable person of good character with sufficient financial worth considering the responsibility involved, and Landlord has been furnished with reasonable proof thereof;
- (c) The assignment shall occur only in conjunction with a bona fide sale of all of the assets of tenant or any successor tenant;
- (d) Each form of assignment shall include an assignment of all of Tenant's rights and interest under this Lease, including all of its right to the security, if any, deposited hereunder, and an assumption by the assignee of all of Tenant's obligations under this Lease, and shall be duly executed by both the assignor and assignee thereunder; and
- (e) No assignment shall be valid, and no assignee shall take possession of the demised premises or any part thereof, until an executed counterpart of such assignment has been delivered to Landlord.
- (f) The consent by the Landlord to any one assignment or sublease shall not be construed to release the Tenant from the obligation of obtaining the written consent of the Landlord to any further assignment or sublease.
- (g) The assignee shall deposit with the Landlord one (1) month of the then existing monthly rent, in addition to the security that Landlord is then holding at the time, as an additional security deposit.
- (h) The principal or principals of the assignee shall execute a "Guaranty of Lease" similar to the Guaranty of Lease annexed hereto.
- (i) Tenant shall pay Landlord \$2,000.00 for its legal fees in reviewing and preparing the assignment.
- (j) Landlord may increase the rent up to 20% upon assignment
- (k) Landlord may reasonably increase the security deposit upon assignment to new assignee.

**11.4 Fees and Excess Rents:**

If Landlord grants its written consent to any proposed assignment or sublease, Tenant agrees to pay to Landlord all fees incurred in connection with the proposed assignment or sublease, including but not limited to, a reasonable transfer fee and all of Landlord's reasonable attorneys' fees to process and approve the assignment or sublease as well as to prepare or review the form of such assignment or sublease, which shall be prepared or approved by Landlord.

**SECTION 12**  
**WASTE AND NUISANCE/GOVERNMENTAL REQUIREMENTS**

**12.1 Waste and Nuisance:**

Tenant shall not commit or allow to exist or be committed any waste upon the leased premises or any nuisance or other act or thing (including, without limitation, noise, odors and/or vibrations) which may disturb the quiet enjoyment of any other tenant in the Building or the occupants or owners of the properties adjoining the Building.

**12.2 Governmental Requirements:**

Tenant shall comply and cause the leased premises, and all alterations, additions, and improvements to the leased premises to comply with all laws, orders, rules, regulations, ordinances, directives and other requirements of all county, municipal, state and federal governments and of their administrative departments, agencies, bureaus and officials and other applicable governmental authorities, now in force, or which may hereafter be in force.

**SECTION 13**  
**TAKINGS**

**13.1 Total Taking:**

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 all rent and other sums due hereunder shall be paid up to that date and Tenant shall have no claim for the value of any unexpired term of said lease. Tenant shall have the right to make an independent claim to the condemning authority for the value of Tenant's moving expenses and personal property, trade fixtures and equipment, provided Tenant is entitled pursuant to the terms of the lease to remove such property, trade fixtures and equipment at the end of the term and provided further such claim does not reduce Owner's award.

**13.2 Partial Taking:**

If any part of the leased premises shall be taken or condemned by eminent domain (or by voluntary conveyance under threat of eminent domain), and in the event that such partial taking or condemnation renders the leased premises unsuitable for the business of Tenant, then Landlord and Tenant shall each have the right to terminate this Lease by notice to the other within sixty (60) days after the date of title vesting. In the

event of a partial taking or condemnation which does not render the leased premises unsuitable for the business of Tenant, then Landlord shall promptly restore the leased premises (excluding Tenant's equipment, trade fixtures and leasehold alterations, additions, decorations and improvements made by Tenant) and the building of which the leased premises forms a part to a condition comparable to its condition at the time of the taking or condemnation less the portion lost in the taking or condemnation so that the portion of the building not so taken serves as a complete architectural unit. Landlord shall not be required to spend for such restoration an amount in excess of the respective amounts received by Landlord as damages for the taking of such part of the leased premises and of the building of which the same forms a part. As used herein, the amount "received by Landlord" shall mean that portion of the award or damages in condemnation (or proceeds from a sale in lieu thereof) received by Landlord from the condemning authority which is free and clear of all prior claims by the holders of any mortgages or deeds of trust or any ground or underlying leases, after the payment of all expenses related to the condemnation or taking. In the event the taking or condemnation does not render the leased premises unsuitable for Tenant's business, this Lease shall continue in full force and effect except that the minimum annual rent shall be reduced in proportion to the portion of the leased premises lost in the taking or condemnation and Tenant's proportionate share shall be appropriately adjusted. If more than twenty (20%) percent of the floor area of the building in which the leased premises is located or the parcel of land on which the Building is located shall be taken or condemned (whether or not the leased premises shall be affected), Landlord shall have the right to terminate this Lease by ninety (90) days notice to Tenant given within sixty (60) days of the date of title vesting in such proceeding.

**13.3 Landlord's Damages:**

In the event of any condemnation or taking, whether whole or partial, regardless of whether or the extent to which the leased premises is affected, Tenant shall not be entitled to any part of the award, damages or proceeds paid, for such condemnation or taking (or sale in lieu thereof) and Landlord is to receive the full amount of such award or damages. Tenant assigns to Landlord any right or claim which Tenant may otherwise have to the award, damages or proceeds, and Tenant expressly waives any right or claim to any part thereof subject to Tenant's apportioned tenancy.

**13.4 Tenant's Damages:**

Although all damages in the event of any condemnation belong to Landlord (including, without limitation, damages awarded as compensation for the leasehold estate or the rights created by this lease or the fee of the leased premises), Tenant shall have the right, if permitted by applicable law, to make a claim against the condemning authority for a separate award for Tenant's moving expenses, fixtures installed and paid for by Tenant without reimbursement or credit from Landlord, and business dislocation damages, provided that such claim and recovery does not have the effect of reducing the award payable to Landlord. Tenant shall have no claim against Landlord in



connection with any taking or condemnation. Each party agrees to execute and deliver to the other within fifteen (15) days of written request therefor, all instruments that may be required to effectuate or confirm the provisions of this Section 13.

**SECTION 14**  
**DEFAULT**

**14.1 Events of Default by Tenant:**

If Tenant defaults in fulfilling any of the covenants of this lease other than the covenants for the payment of rent or additional rent; or if the demised premises become vacant or deserted; or if any execution or attachment shall be issued against Tenant or any Tenant's property whereupon the demised premises shall be taken or occupied by someone other than Tenant; or if this lease be rejected under Section 365 of Title 11 of the U.S. Code of (Bankruptcy Code); or if Tenant shall fail to move into or take possession of the premises within thirty (30) days after the commencement of the term of this lease, of which fact Owner shall be the sole judge; then, in any one or more of such events, upon Owner 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, 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 Owner may serve a written five (5) days notice of cancellation of this lease upon Tenant, and upon the expiration of said five (5) days, this lease and the term thereunder shall end and expire as fully and completely as if the expiration of such five (5) day period were the day therein definitely fixed for the end and expiration of this lease and the term thereof and Tenant shall then quit and surrender the demised premises to Owner but Tenant shall remain liable as hereinafter provided.

If the notice provided for in (1) hereof shall have been given, and the term shall expire as aforesaid; or if Tenant shall make default in the payment of the rent reserved herein or any item of additional rent herein mentioned or any part of either or in making any other payment herein required; then and in any of such events Owner may dispossess Tenant by summary proceedings or other lawful process, 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.

**14.2 Remedies of the Landlord:**

In case of any such default, 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 re-entry, dispossession and/or expiration. (b) Owner may re-let the premises or any part or parts thereof, either in the name of Owner or

otherwise, for a term or terms, which may at Owner's option be less than or exceed the period which would otherwise have constituted the balance of the term of this lease and may grant concessions or free rent or charge a higher rental than that in this lease, and/or (c) Tenant or the legal representatives of Tenant shall also pay Owner as liquidated damages for the failure of Tenant to observe and perform said Tenant's covenants herein contained, any deficiency between the rent hereby reserved and/or covenanted to be paid and the net amount, if any, of the rents collected on account of the 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 the lease. The failure of Owner to re-let the premises or any part or parts thereof shall not release or affect Tenant's liability for damages. In computing such liquidated damages there shall be added to the said deficiency such expenses as Owner may incur in connection with re-letting, such as legal expenses, reasonable attorneys' fees, brokerage fees, advertising fees and for keeping the demised premises in good order or for preparing the same for re-letting. Any such liquidated damages shall be paid in monthly installments by Tenant on the rent day specified in this lease. Owner, in putting the demised premises in good order or preparing the same for re-rental may, at Owner's option, make such alterations, repairs, replacements, and/or decorations in the demised premises as Owner, in Owner's sole judgment, considers advisable and necessary for the purpose of re-letting the demised premises, and the making such alterations, repairs, replacements, and/or decorations shall not operate or be construed to release Tenant from liability. Owner shall in no event be liable in any way whatsoever for failure to re-let, for failure to collect the rent thereof under such re-letting, and in no event shall Tenant be entitled to receive any excess, if any, of such net rent collected over the sums payable by Tenant to Owner hereunder. In the event of a breach or threatened breach by Tenant or any of the covenants or provisions hereof, Owner shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings and other remedies were not herein provided for. Mention in this lease of any particular remedy, shall not preclude Owner from any other remedy, in law or in equity. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws.

In the computation of such liquidated damages, all such fixed annual rent and additional rent payable hereunder after the date of termination shall be discounted from the date installments of fixed annual rent and additional rent would be due hereunder if this Lease had not been terminated to the date of payment at the rate of four percent (4%) per annum. In the event that the Premises are relet after the date of such termination and the date of collection of the aforesaid liquidated damages, Owner agrees that on the date which would otherwise have been the normal expiration of this Lease (the "Normal Expiration Date") but for the termination of this Lease pursuant to its terms, Owner shall pay to Tenant a sum equal to the amount received by Owner in reletting the Premises from the date of termination of this Lease and the Normal Expiration Date, less any and all expenses of any type, kind or nature incurred by Owner in connection with the reletting of the Premises, provided, however, that such payment shall in no event exceed the amount of liquidated damages actually paid by Tenant as aforesaid. The foregoing, however, shall not imply any obligation of Owner to

relet the Premises, nor shall it constitute Owner as Tenant's agent with respect to any reletting of such Premises hereunder. Nothing contained herein shall, however, limit or prejudice the right of Owner to prove for and obtain as liquidated damages by reason of any such termination any amount equal to the maximum allowed by any statute, rule or law in effect at such time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater than, equal to, or less than the amount described above.

**14.3 No Termination/Waiver:**

No entry or taking possession of the leased premises by Landlord shall be construed as an election by Landlord to terminate this Lease; termination shall only take place as provided in Paragraph 14.2. Notwithstanding any such taking of possession without termination, Landlord may at all times thereafter, elect to terminate this Lease in the manner provided in Paragraph 14.2 for such previous event of default. In the event Landlord exercises its right to accelerate sums due under this Lease, Landlord may still at any time thereafter prior to Tenant paying such amount exercise its rights under Paragraph 14.2 to terminate this Lease or under Paragraph 14.2 to terminate Tenant's right to possession, for such prior event of default. Pursuit of any remedy provided by this Lease shall not constitute a forfeiture or waiver of any rents, or other monies due to Landlord hereunder or of any damages to Landlord by reason of any event of default or of the pursuit of any other remedies. Landlord's acceptance of rents or monies following any event of default, with or without knowledge of such event of default, shall not be construed as Landlord's waiver of such event of default. No payment by Tenant or receipt by Landlord of an amount less than the full amount then due hereunder shall be deemed to be other than on account to be applied toward the amounts due in the order that such amounts became due (or in such other order as Landlord may elect) and no endorsement or statement on any check or in any letter accompanying any check or payment shall be deemed to create an accord and satisfaction and Landlord may cash such check or accept such payment without affecting Landlord's right to recover the entire amount remaining due hereunder. Forbearance by Landlord to enforce one or more of the remedies provided by this Lease upon an event of default shall not be deemed to constitute a waiver of that or any future event of default or of Landlord's right to enforce any term, condition or covenant of this Lease. The waiver of Landlord of any breach of any term, condition or covenant of this Lease shall not be a waiver of any subsequent breach of the same or any other term, condition or covenant of this Lease. The consent or approval by Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent similar act by Tenant.

**14.4 Rent:**

If Landlord terminates this Lease or ends Tenant's right to possess the leased premises because of an event of default, Landlord may hold Tenant liable for rent, additional rent, and other amounts accrued to the date this Lease is terminated or

Tenant's right to possession is ended. Tenant shall, in addition, also be liable for the rents, additional rent and other sums that otherwise would have been payable by Tenant during the remainder of the term, together with Landlord's damages and the expenses provided for in Paragraph 14.2, reduced by any sums Landlord receives during the term of this Lease by relating the leased premises.

**14.5 Counterclaims/Rent Independent:**

If Landlord commences any proceedings for non-payment of rent (minimum annual rent or additional rent) or for recovery of possession of the leased premises, Tenant will not interpose any counterclaim of any nature in such proceedings or seek to consolidate such proceeding with any other proceedings. This shall not, however, be construed as a waiver of Tenant's right to assert such claims in a separate action brought by Tenant. The covenants to pay minimum annual rent and additional rent hereunder are independent from the other covenants and agreements of the parties and Tenant shall not, for any reason, withhold or reduce its payments of minimum annual rent and additional rent required hereunder.

**14.6 Administrative Fees/Payments:**

In the event any payment due Landlord under this Lease shall not be paid within ten (10) days of the due date, Tenant agrees to pay to Landlord the sum of five (5%) percent of the amount due for such delinquent payment. In the event security is drawn down as provided herein, and Tenant fails to timely replenish by the end of the month drawn, upon notice, then Tenant agrees to pay to Landlord the sum of Five (5%) percent (an additional two (2%) percent) of the amount due for such delinquent payment. In the event that any check, bank draft or other instrument given to Landlord for any payment under this Lease shall be dishonored for any reason whatsoever not attributable to Landlord (i) Landlord shall be entitled to make an administrative charge to Tenant of Fifty (\$50.00) Dollars per event, (ii) Tenant shall replace such check with a cashier's check within 24 hours of notice (oral or written) to Tenant by Landlord of the dishonor, and (iii) Landlord shall have the right to elect that the next six (6) subsequent monthly installments of minimum annual rent and additional rent be paid by cashier's checks. In the event that it shall be necessary for Landlord to give more than one (1) written notice to Tenant for any violation of this Lease or a Rule, Tenant shall be obligated to pay Landlord Fifty Dollars (\$50.00) for each such notice. Nothing in this Paragraph (14.6) shall diminish or effect Landlord's rights or remedies under Paragraph (14.2) or otherwise be deemed to waive the payment of rent, additional rent, or any other sums payable by Tenant when due under the terms of this Lease.

**14.7 Quarterly Payments/Cashiers Checks/Additional Deposit:**

If Tenant fails on two or more occasions during any twelve month period of the term of this Lease to pay any monthly installments of minimum annual or additional rent within ten (10) days of the date when due or if two (2) or more checks of Tenant given

for the payment of rent or additional rent are returned as a result of insufficient funds, Landlord may require, at any time thereafter, by giving written notice to Tenant one or more of the following: (i) that minimum annual rent or additional rent or both be paid quarterly in advance instead of monthly in advance; (ii) that all future rental and other payments must be made by cash, cashier's check, or money order, and that the delivery of Tenant's personal or corporate check will no longer constitute a proper payment of rent as required by this Lease; and (iii) that the Security Deposit be increased by an amount equal to one (1) month of minimum annual rent at the then current rate, such sum to be deposited with Landlord within ten (10) days of the written notice.

#### 14.8 Conditional Limitation

In the event that Tenant defaults in fulfilling the covenant to make timely payment of the minimum annual rent or Additional Rent in any month, it being understood that rent is due in advance on the first day of each month, then on the fourth such default, Owner may send Tenant five (5) days notice in writing specifying a default in the payment of rent and upon expiration of said five (5) day. If Tenant shall have failed to make payment of the Fixed Rent or Additional Rent and thereby remedy the default, then Owner may send to Tenant a written fifteen (15) days notice of cancellation of this Lease, and upon expiration of said fifteen (15) days, this Lease and the term hereof shall end and fully expire as completely as if the expiration of such fifteen (15) 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 leased premises to Owner. The inclusion of the provisions of this Article in this Lease represents a significant inducement for Owner to enter into this Lease.

#### SECTION 15 ACCESS BY LANDLORD

Upon notice, Landlord and Landlord's agents shall have the right to enter the leased premises (i) to determine whether Tenant is complying with the terms of this Lease, (ii) to examine the leased premises, (iii) in connection with the exercise of any rights or remedies provided by law or under this Lease, (iv) in any situation that appears to be an emergency where such situation makes entry necessary or desirable for Landlord, (v) to show the leased premises to prospective purchasers, tenants, or mortgagees, and (vi) to make such installations, repairs, alterations, improvements or additions and to do such maintenance as Landlord deems necessary or desirable. Tenant or its agents need not be personally present for Landlord to enter the leased premises. During the six (6) months prior to the expiration of the term of the Lease, Landlord may exhibit the premises to prospective tenants for the leased premises, and place upon the premises "For Rent" signs. If, during the last thirty (30) days of the term of this Lease, Tenant shall have removed all or substantially all of its property from and no longer is conducting business in the leased premises, Landlord may enter the leased premises and begin to remodel, alter, and renovate the leased premises for future tenants; such activities shall not affect the sums due or Tenant's obligations hereunder or require any compensation to Tenant. Nothing in this Section shall be deemed to

construed to impose upon Landlord any obligation, responsibility or liability whatsoever, for the care, maintenance or repair of the leased premises, or any part thereof, such obligations being governed by Section 6.1 of this Lease.

**SECTION 16**  
**NOTICE**

**16.1 Notice to Landlord:**

Any notice by Tenant to Landlord shall be in writing and served (i) by hand delivery; (ii) by certified or registered mail return receipt requested postage prepaid, or (iii) by nationally recognized overnight carrier addressed to Landlord at the following address or at such other address as Landlord may designate by written notice to Tenant in accordance with this Section 16.

**Notice to Landlord:** Haimil Realty Corp.  
209 East 2<sup>nd</sup> Street  
Seventh Floor  
New York, NY 10009  
ATTENTION: Manny Haimovich

**With a copy to:** Marc E. Verzani, Esq.  
500 5<sup>th</sup> Avenue, Suite 1610  
New York, NY 10110  
212.725.8900

**Notice to Tenant:** DeGeest, LLC.  
d/b/a Wafels and Dinges  
15 Avenue B  
New York, NY 1009

**With a copy to:** Thomas DeGeest  
By email: ThomasDeGeest@gmail.com

**With a copy to:** Gino Damasco, Esq.  
156 West 22<sup>nd</sup> Street  
Suite 2  
New York, NY 10011  
212.352.9248

Any notice by Landlord to Tenant shall be in writing and served (i) by hand delivery, (ii) by nationally recognized overnight carrier, or (iii) by certified or registered mail return receipt requested, or emailed with proof of email delivery, addressed to

Tenant at the following address or at such other address as Tenant may designate by written notice to Landlord in accordance with this Section 16.

**16.3 Notice Given:**

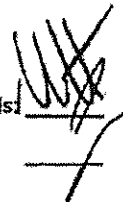
Notice given in accordance with this Section shall be deemed to be given and received on the earlier of (i) the day actually received; (ii) the day of hand delivery or email, if by hand delivery or email; (iii) three (3) days after being deposited in the U.S. mail in accordance with this Section; (iv) the next business day after being delivered for next day delivery to a nationally recognized overnight carrier; or (v) the date upon which the return receipt is signed or delivery is refused or the notice is designated non-deliverable by the postal authorities.

**16.4 After Hours Emergency Number:**

In the event the parties need to contact each other in an emergency situation, each may, at any time, contact the following authorized representative of the other:

Name: Manny Haimovitch  
Title: President  
Telephone No.: (917) 445-9014

Name: Thomas DeGeest  
Title: Managing Member  
Telephone No.: 201-723-0073

Handwritten initials, possibly 'MD' or 'TH', written over a horizontal line.

**SECTION 17**  
**ENVIRONMENTAL LAWS**

**17.1 Compliance/Indemnity:**

Tenant shall at all times comply and cause the leased premises and its activities in and use of the leased premises to comply with all Environmental Laws (as defined below). Tenant shall not allow any substance regulated by any Environmental Law to be used, stored or placed within the leased premises without Landlord's prior written consent, which can be withheld or conditioned in Landlord's sole discretion. Tenant shall indemnify, defend, protect and hold Landlord harmless from and against any and all demands, claims, proceedings, actions or causes of action, losses, damages, liabilities, fines, costs (including, but not limited to, investigation and remediation costs), or expenses (including, but not limited to, attorneys' fees and costs, including but not limited to those incurred in connection with any administrative, appellate or bankruptcy proceedings) arising from or in connection with, or occasioned wholly or in part by, the application of any Environmental Law to the acts or omissions (occurring at any time) of the Tenant or its principals, agents, contractors, employees, servants, subtenants, assignees, licensees or invitees regardless of whether or not such acts or omissions occurred in the leased premises, or elsewhere. Notwithstanding the foregoing, Tenant, at its sole cost and expense, may challenge any determination, violation or accusation relating to the application of any Environmental Law to Tenant's use of the Premises.

**17.2 Definition:**

For the purpose of this Section, Environmental Laws shall mean any and all federal, state, regional or local statutory or common laws relating to pollution or protection of the environment and any related regulations, rules, orders, directives or other requirements. Environmental Laws include (by way of example and not as a limitation) any common law of nuisance or trespass and any law, regulation, rule, order or directive relating to emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances or wastes into the environment (including without limitation, ambient air, surface water, ground water, land surface or subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, presence, transportation, or handling of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances, wastes or other substances deemed hazardous or potentially hazardous to persons or the environment.

**17.3 Limited Use:**

If Tenant's business is of a nature that necessarily results in the use of any substance regulated by any Environmental Law (a "Hazardous Substance") in the ordinary conduct of such business, the foregoing provisions shall not prohibit the transportation to and from, and use, storage, maintenance and handling within the



leased premises of the Hazardous Substances customarily used in the business expressly permitted to be undertaken in the leased premises, provided: (a) Tenant provides written notice to Landlord of the amount and type of Hazardous Substances to be used prior to any Hazardous Substance being brought upon the leased premises or Building; (b) such Hazardous Substances shall be used and maintained only in such quantities as are reasonably necessary for such permitted use of the leased premises and the ordinary course of Tenant's business therein, strictly in accordance with applicable Environmental Laws, highest prevailing standards, and the manufacturers' instructions therefor; (c) such Hazardous Substances shall not be disposed of, released or discharged in the Building, and shall be transported to and from the leased premises in compliance with all applicable Environmental Laws, and any applicable Rules; (d) if any applicable law, Rule or Landlord's trash removal contractor requires that any such Hazardous Substances be disposed of separately from ordinary trash, Tenant shall make arrangements at Tenant's expense for such disposal directly with a qualified and licensed disposal company at a lawful disposal site (subject to scheduling and approval by Landlord), and (e) any remaining such Hazardous Substances shall be completely, properly and lawfully removed by Tenant at Tenant's expense from the Building upon expiration or earlier termination of this Lease.

**17.4 Environmental Audits:**

Upon reasonable notice, Landlord shall have the right to, from time to time, have an audit and inspection of the leased premises and Tenant's business being conducted therein performed by a qualified third party to confirm that the leased premises (including Tenant's business being conducted therein) is in compliance with all Environmental Laws.

**17.5 Survival:**

This Section 17 shall survive the termination of this Lease and the expiration of the term of this Lease.

**SECTION 18**  
**MISCELLANEOUS**

**18.1 Entire Agreement:**

This Lease contains the entire agreement between Landlord and Tenant concerning the leased premises, and all prior negotiations, communications, arrangements, understandings, and representations, either oral or written, between them are superseded by this Lease and shall not survive the execution of this Lease. No subsequent alteration, amendment, change, or addition to this Lease shall be binding upon Landlord or Tenant unless in writing and signed by both parties, Landlord and Tenant.

**18.2 Force Majeure:**

In the event that Landlord shall be delayed or hindered in or prevented from the performance of any act required hereunder or in connection herewith by reason of strikes, lock-outs, labor troubles, adverse weather conditions, inability to procure materials, services, or financing, failure of power, restrictive governmental laws, regulations or controls, riots, insurrection, hostilities, civil commotion, war-like operations, or other reason beyond Landlord's reasonable control, then Landlord's performance hereunder shall be excused for the period of such delay without setoff or diminution in rent to Tenant.

**18.3 Captions and Section Numbers:**

The captions and section numbers appearing in this Lease are inserted as a matter of convenience and shall not be viewed as defining or limiting the scope or intent of any Section of this Lease.

**18.4 Interpretation:**

Words of any gender used in this Lease shall be construed to include all genders and words in the singular number shall be construed to include the plural, where the context so requires. The words "herein", "hereof" and "hereunder" when used in this Lease shall be construed to refer to this Lease in its entirety and not to any particular Section or provision of this Lease.

**18.5 Limitation of Owner's Liability. TENANT AGREES TO LOOK SOLELY TO OWNER'S ESTATE AND IT'S INTEREST IN THE BUILDING (AND THE LAND THEREUNDER) AND THE PREMISES, FOR THE SATISFACTION OF ANY RIGHT OR REMEDY OF TENANT FOR THE COLLECTION OF A JUDGMENT (OR OTHER JUDICIAL PROCESS) REQUIRING THE PAYMENT OF MONEY BY OWNER, IN THE EVENT OF ANY LIABILITY BY OWNER, AND NO OTHER PROPERTY OR ASSETS OF OWNER SHALL BE SUBJECT TO LEVY, EXECUTION OR OTHER ENFORCEMENT PROCEDURE FOR THE SATISFACTION OF TENANT'S REMEDIES UNDER OR WITH RESPECT TO THIS LEASE, THE RELATIONSHIP OF OWNER AND TENANT HEREUNDER, OR TENANT'S USE AND OCCUPANCY OF THE PREMISES OR ANY OTHER LIABILITY OF OWNER TO TENANT (EXCEPT FOR NEGLIGENCE, IN WHICH CASE TENANT MAY ALSO LOOK TO THE PROCEEDS OF ANY INSURANCE CARRIED BY OWNER AND NOT PAYABLE UNDER INSURANCE TO BE MAINTAINED BY TENANT PURSUANT TO THE TERMS HEREOF). IN NO EVENT SHALL OWNER BE LIABLE TO TENANT FOR CONSEQUENTIAL OR PUNITIVE DAMAGES OR LOST PROFITS.**

**18.6 Brokers Commissions:**

The Tenant warrants and represents to landlord that it had no dealings with any brokers or agents in connection with this lease, other than Grubb & Ellis, who brought

about this transaction. Tenant met once with Ken Brandman, who claimed to be Landlord's exclusive broker. Landlord shall be responsible for any and all fees and commissions due said broker pursuant to a separate agreement with Grubb & Ellis. The parties covenant and agree to hold each other harmless and indemnify each other from and against any and all costs, expenses or liability for any compensation, commissions, fees and charges claimed with respect to this lease or the negotiation thereof. The obligation of Tenant contained in this Article shall survive the expiration or earlier termination of this lease.

The party who breaches this warranty agrees to defend and indemnify the other against, and hold it harmless from all demands, claims, liabilities and costs (including, without limitation, attorneys' fees) arising from any claim for brokerage commissions or finder's fees arising out of the actual or alleged acts or commitments or said breaching party.

**18.7 Attorneys Fees:**

In any litigation arising out of this Lease, Landlord shall be entitled to recover reasonable attorney's fees and costs including, but not limited to, fees and costs in anticipation of litigation, in preparation for litigation, at the trial and each appellate level as well as in the course of any arbitration or administrative proceeding.

**18.8 Partial Invalidity:**

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

**18.9 No Option:**

The submission of this Lease for examination does not constitute a reservation of or option for the leased premises and this Lease becomes effective only upon execution and delivery thereof by both Landlord and Tenant.

**18.10 Recording:**

Tenant shall not record this Lease or any memorandum thereof without the written consent of Landlord. Any such recordation will, at Landlord's option, result in the immediate termination of this Lease without notice or opportunity to cure.

**18.11 Liability of Landlord:**

Without limiting the generality of paragraph 18.5 above, Tenant expressly acknowledges and agrees that Tenant's sole recourse against Landlord (including its partners, shareholders, members, officers and directors) for claims arising out of this Lease, Tenant's occupancy or use of the leased premises, or the landlord-tenant relationship shall be limited to Landlord's interest in the demised premises, it being intended that there be no personal liability on the part of Landlord hereunder and that no other assets of Landlord (or its partners, shareholders, members, officers, and directors) shall be subject to levy, execution or other legal process for the enforcement or satisfaction of any remedy of Tenant hereunder. This exculpation of personal liability is unconditional and without exception of any kind. This Section shall not be construed to prevent Tenant from seeking injunctive or other equitable relief.

**18.12 Notice of Certain Events to Landlord:**

Tenant shall give immediate notice to Landlord of (i) any fire or accidents in the leased premises or in the building of which the leased premises are a part; (ii) any defects in the leased premises; (iii) any notice received by Tenant of any violation of law, rule, directive or regulation relating to the leased premises or Tenant's operation of its business in the leased premises; (iv) any notice relative to any actual, purported or suspected violation of any Environmental Law; and (v) any notice received by Tenant of any governmental action or contemplated, planned or proposed action that could affect (directly or indirectly) the leased premises or the Building.

**18.13 Waiver of Jury Trial:**

The undersigned parties hereby waive trial by jury in any proceeding based upon or arising out of Tenant's use of the leased premises, this Lease or the landlord-tenant relationship created by this Lease.

**18.14 Survival of Obligations:**

All obligations of Tenant not fully performed and complied with at the expiration or termination of this Lease shall survive such expiration or termination until fully and irrevocably performed and complied with.

**18.16 Confidentiality:**

Tenant agrees to keep the financial and other terms of this Lease confidential and not to disclose, divulge or disseminate the terms of this Lease beyond those individuals whose knowledge of the terms of this Lease is reasonably necessary or desirable in connection with the operation of Tenant's business.

**18.16 Successors:**

This Lease shall bind the parties hereto and their several respective heirs, executors, administrators, successors in interest, and assigns. Nothing contained in this Lease shall restrict Landlord's right to assign or encumber this Lease. In the event Landlord assigns or transfers its interest in this Lease and the leased premises, the purchaser or transferee shall become the Landlord hereunder and Landlord shall be released from all duties, obligations and liabilities under this Lease after such assignment or transfer. Each successor Landlord hereunder shall be bound by this Lease only during their respective periods of ownership of the demised premises.

**18.17 Air Rights:**

Reserved to the Landlord, and not included as part of the demised premises herein, are the air rights related to the subject building in question.

**18.18 Access to Premises:**

Without incurring any liability to Tenant, Landlord may upon twenty four hour prior notice to Tenant which may be verbal, enter the demised premises and open the same, whether or not Tenant shall be present, upon demand of any receiver, trustee, assignee for the benefit of creditors, sheriff, marshal or court officer entitled to, or reasonably purporting to be entitled to, such access for the purpose of taking possession of, or removing, Tenant's property or for any other lawful purpose (but this provision and any action by Landlord hereunder shall not be deemed a recognition by Landlord that the person or official making such demand has any right or interest in or to this lease, or in or to the premises), or upon demand of any representative of the fire, police, building, sanitation or other department of the city, state or federal governments.

**18.19 Receipt of Monies:**

No receipt of monies by Landlord from Tenant, after any reentry or after the cancellation or termination of this lease in any lawful manner, shall reinstate the lease; and after the service of notice to terminate this lease, or after the commencement of any action, proceeding or other remedy, Landlord may demand, receive and collect any monies due, and apply them on account of Tenant's obligations under this lease but without in any respect affecting such notice, action, proceeding or remedy, except that if a money judgment is being sought in any such action or proceeding, the amount of such judgment shall be reduced by such payment.

**18.20 Application of Arrearages:**

If Tenant is in arrears in the payment of fixed rent or additional rent, Tenant waives its right, if any, to designate the items in arrears against which any payments made by Tenant are to be credited and Landlord may apply any of such payments to any such items in arrears as Landlord, in its sole discretion, shall determine, irrespective

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of any designation or request by Tenant as to the items against which any such payments shall be credited.

**18.21 Acceptance of Payment:**

No payment by Tenant nor receipt by Landlord of a lesser amount than may be required to be paid hereunder shall be deemed to be other than on account of any such payment, nor shall any endorsement or statement on any check or any letter accompanying any check tendered as payment 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 payment due or pursue any other remedy in this lease provided.

**18.22 Reasonableness of Consent:**

If in this lease it is provided that Landlord's consent or approval as to any matter will not be unreasonably withheld, and it is established by a court or body having final jurisdiction thereover that Landlord has been unreasonable, the only effect of such finding shall be that Landlord shall be deemed to have given its consent or approval, but Landlord shall not be liable to Tenant in any respect for money damages by reason of withholding its consent. Notwithstanding any provision of this lease to the contrary, the successful party in a proceeding challenging the reasonableness of Landlord's consent or approval shall be entitled to its reasonable costs and attorneys fees in that proceeding from the party against whom a decision is rendered.

**18.23 Miscellaneous Additional Rent:**

Tenant hereby agrees to pay, as additional rent, all reasonable attorney's fees and disbursements (and all other court costs or expenses of legal proceedings) which Landlord may incur or pay out by reason of, or in connection with:

- (a) any action or proceeding by Landlord to terminate this lease which is brought in good faith in accordance with the terms of the Lease.
- (b) any other action or proceeding by Landlord against Tenant (including but not limited to, any arbitration proceeding);
- (c) any default by Tenant in the observance or performance of any obligation under this lease (including, but not limited to, matters involving: payment of rent and additional rent);

Tenant's obligations under this Paragraph shall survive the expiration of the term hereof or any other termination of this lease. This Paragraph is intended to supplement (and not to limit) other provisions of this lease pertaining to indemnities and/or attorneys' fees.

**18.24 Expiration Date:**

If the Expiration Date or the date of sooner termination of this lease shall fall on a day which is not a business day, then Tenant's obligations under Articles 3 and 22 hereof shall be performed on or prior to the immediately preceding business day.

**18.25 New York Law to Govern:**

The laws of the State of New York shall govern and control the validity, interpretation, performance and enforcement of this lease. Tenant, by its signature appearing below, hereby consents and agrees that this Lease shall be governed by the laws of the State of New York, consents to the jurisdiction of the Courts of the State of New York and waives its right to a trial by jury.

**18.26 Execution Requirements:**

a) If Tenant is a corporation, each person executing this lease on behalf of Tenant hereby covenants, represents and warrants that Tenant is a duly incorporated or duly qualified (if foreign) corporation and is authorized to do business in the State of New York (a copy of evidence thereof to be supplied to Landlord upon request); and that each person executing this lease on behalf of Tenant is an officer of Tenant and that he is duly authorized to execute, acknowledge and deliver this lease to Landlord a copy of a resolution to that effect to be supplied to Landlord upon request). Tenant shall have within thirty (30) days from the execution of this lease to form a corporation and shall supply Landlord with proof of said corporation within said thirty (30) days.

b) If Tenant is a partnership (or is comprised of 2 or more persons, individually, or as joint venturers or as copartners of a partnership) or if Tenant's interest in this lease shall be assigned to a partnership (or to 2 or more persons, individually, or as joint venturer or as copartners of a partnership) pursuant to Articles 11 and 41 (any such partnership and such persons are referred to in this Paragraph as "Partnership Tenant"), the following provisions of this Paragraph shall apply to such Partnership Tenant: (i) the liability of each of the parties comprising Partnership Tenant shall be joint and several, and (ii) each of the parties comprising Partnership Tenant hereby consents in advance to, and agrees to be bound by, any modifications, termination, discharge or surrender of this lease which may hereafter be made and by any notices, demands, requests or other communications which may hereafter be given, by Partnership Tenant or by any of the parties comprising Partnership Tenant, and (iii) any bills, statements, notices, demands, requests or other communications given or rendered to Partnership Tenant or to any of the parties comprising Partnership Tenant shall be deemed given or rendered to Partnership Tenant and to all such parties and shall be binding upon Partnership Tenant and all parties, and (iv) if Partnership Tenant shall admit new partners, all such new partners shall, by their admission to Partnership Tenant, be deemed to have assumed performance of all of the terms, covenants and conditions of

this lease on Tenant's part to be observed and performed, and (v) Partnership Tenant shall give prompt notice to Landlord of the admission of any such new partners, and upon demand of Landlord, shall cause each such new partner to execute and deliver to Landlord an agreement in form satisfactory to Landlord, wherein each such new partner shall assume performance of all of the terms, covenants and conditions of this lease on Tenant's part to be observed and performed (but neither Landlord's failure to request any such agreement nor the failure of any such new partner to execute or deliver any such agreement to Landlord shall vitiate the provisions of subdivision (iv) of this Paragraph).

**18.27 Guaranty:**

Notwithstanding anything contained herein to the contrary, each member of the Tenant shall jointly and severally guarantee certain of the obligations of Tenant under this Lease and shall deliver to Owner upon the execution of this Lease a fully executed and notarized original guaranty in the form annexed hereto as "Exhibit C" and made part hereof (the "Guaranty").

**18.29 Definitions:**

For the purposes of this lease and all agreements supplemental to this lease and all communications with respect thereto, unless the context otherwise requires:

(a) The term "fixed rent" shall mean rent at the annual rental rate or rates provided for in the granting clause appearing at the beginning of this lease.

(b) The term "additional rent" shall mean all sums of money, other than fixed rent, and which become due and payable from Tenant to Landlord hereunder, and Landlord shall have the same remedies therefore as for a default in payment of fixed rent.

(c) The term "rent" and "rents" shall mean and include fixed rent and/or additional rent hereunder.

(d) The terms "Commencement Date" and "Expiration Date" shall mean the dates fixed in this lease, or to be determined pursuant to the provisions of this lease, respectively, as the beginning and the end of the term for which the demised premises are hereby leased.

(e) The terms "include", "including" and "such as" shall each be construed as if followed by the phrase "without limitation".

(f) The term "obligations of this lease", and words of like import, shall mean the covenants to pay rent and additional rent under this lease and all of the other covenants and conditions contained in this lease. Any provision in this lease that one party or the



other or both shall do or not do or shall cause or permit or not cause or permit a particular act, condition, or circumstance shall be deemed to mean that such party so covenants or both parties so covenant, as the case may be.

(g) The term "Tenant's obligations hereunder", and words of like import, and the term "Landlord's obligations hereunder", and words of like import, shall mean the obligations of this lease which are to be performed or observed by Tenant, or by Landlord, as the case may be. Reference to "performance" of either party's obligations under this lease shall be construed as "performance and observance".

(h) Reference to Tenant being or not being "in default hereunder", or words of like import, shall mean that Tenant is in default in the performance of one or more of Tenant's obligations hereunder, or that Tenant is not in default in the performance of any of Tenant's obligations hereunder, or that a condition of the character described in Article 16(a) has occurred and continues or has not occurred or does not continue, as the case may be.

(i) References to Landlord as having "no liability to Tenant" or being "without liability to Tenant", shall mean that Tenant is not entitled to terminate this lease, or to claim actual or constructive eviction, partial or total, or to receive any abatement or diminution of rent, or to be relieved in any manner of any of its other obligations hereunder, or to be compensated for loss or injury suffered or to enforce any other kind of liability whatsoever against Landlord under or with respect to this lease or with respect to Tenant's use or occupancy of the demised premises.

(j) The term "laws and/or requirements of public authorities" and words of like import shall mean laws and ordinances of any or all of the Federal, state, city, county and borough governments and rules, regulations, orders and/or directives of any or all departments, subdivisions, bureaus, agencies or offices thereof, or of any other governmental, public or quasi-public authorities, having jurisdiction in the premises, and/or the direction of any public officer pursuant to law.

(k) The term "requirements of insurance bodies" and words of like import shall mean rules, regulations, orders and other requirements of the New York Board of Fire Underwriters and/or the New York Fire Insurance Rating Organization and/or any other similar body performing the same or similar functions and having jurisdiction of cognizance of the building and/or the demised premises.

(l) The term "repair" shall be deemed to include restoration and replacement as may be necessary to achieve and/or maintain good working order and condition.

(m) Reference to "termination of this lease" includes expiration or earlier termination of the term of this lease or cancellation of this lease pursuant to any of the provisions of this lease or to law. Upon a termination of this lease, the term and estate granted by this lease shall end at noon of the date of termination as if such date were

the date of expiration of the term of this lease and neither party shall have any further obligation or liability to the other after such termination (i) except as shall be expressly provided for in this lease, or (ii) except for such obligation as by its nature or under the circumstances can only be, or by the provisions of this lease, may be, performed after such termination, and, in any event, unless expressly otherwise provided in this lease, any liability for a payment which shall have accrued to or with respect to any period ending at the time of termination shall survive the termination of this lease.

(n) The term "in full force and effect" when herein used in reference to this lease as a condition to the existence or exercise of a right on the part of Tenant shall be construed in each instance as including the further condition that at the time in question no default on the part of Tenant exists, and no event has occurred which has continued to exist for such period of time (after the notice, if any, required by this lease), as would entitle Landlord to terminate this lease or to dispossess Tenant.

(o) The term "Tenant" shall mean Tenant herein named or any assignee or other successor in interest (immediate or remote) of Tenant herein named, while such Tenant or such assignee or other successor in interest, as the case may be, is in possession of the demised premises as owner of the Tenant's estate and interest granted by this lease and also, if Tenant is not an individual or a corporation, all of the persons, firms and corporations then comprising Tenant.

(p) Words and phrases used in the singular shall be deemed to include the plural and vice versa, and nouns and pronouns used in any particular gender shall be deemed to include any other gender. The terms "person" and "persons" as used in this lease, shall be deemed to include natural persons, firms, corporations, associations and any other private or public entities.

(q) The words "herein," "hereof," "hereto," "hereunder" and similar words shall be interpreted as being references to this Lease as a whole and not merely the clause, paragraph, section, subsection or article in which such word appears. The term "demised premises" is used interchangeably with the term "Premises". The term "rent" shall be deemed to include both fixed annual rent and additional rent. The words "shall" and "will" are interchangeable, each imposing a mandatory obligation upon the party to whom such verb applies. The word "control" and the variations thereof used in this Lease shall have the meanings ascribed to them under the Securities Act of 1933, as amended, and the regulations promulgated under it. The word "conduct" as used in this Lease shall include, without limitation, plumbing, cabling, wiring, tubing, kitchen exhaust ducts, and heating, ventilating and air conditioning ducts. Wherever appropriate in this lease, personal pronouns shall be deemed to include the other genders and the singular or plural of any defined term or other word shall, as the context may require, be deemed to include, as the case may be, either the singular or the plural. All article, paragraph, section, subsection and clause references set forth herein shall, unless the context otherwise specifically requires, be deemed references to the articles, paragraphs, sections, subsections and clauses of this Lease. Wherever herein Tenant or Owner is

required to comply with laws, orders and regulations of any governmental authority having or asserting jurisdiction over the demised premises or the building, such laws, orders and regulations shall include, as and where applicable to the demised premises or the building, as the case may be: the ADA, Local Law 5/1973, Local Laws 16/1984, and 16/1987, Local Law 58/1987, Local Law 76/1985 and Local Law 80/1985, as each may be amended and any successor statutes of like or similar import.

(r) All references in this lease to numbered Articles, lettered Paragraphs, Sections, Subdivisions and lettered Exhibits are references to Articles, Paragraphs, Sections and Subdivisions of this lease, and Exhibits annexed to (and thereby made part of) this lease, as the case may be, unless expressly otherwise designated in the context.

**18.30 Non Binding Effect:**

It is understood and agreed that the submission of this lease by the attorney for the Landlord shall not, in any way, constitute an offer by the owner of the building in which the demised premises is located to lease any space within the building. This lease shall not be binding, in any way, upon the owner unless and until the same has been fully executed by them.

**19. Liquor License**

a. Tenant's anticipated liquor license may not violate the Offering Plan at any time.

From the Fifth Amendment to Condominium Offering Plan:  
Section 2. Restrictions:

...(ix) [The Premises may never be used primarily] as a bar, nightclub, cabaret, lounge, discotheque or dance club, or (x) restaurant, unless the style and manner of operation of such restaurant is compatible with the surrounding neighborhood and takes into account the balance of the Building is occupied by luxury residential condominiums.

b. Tenant's right to sell alcoholic beverages in any licensed sidewalk café abutting the Premises (as well as the outside sidewalk café permit, if any) may be revoked by Landlord if, in Landlord's sole discretion, the Building unit owners complain of the noise or condition.

c. Tenant may only sell alcoholic beverages with the purchase of food.



d. Tenant, in accordance with all laws and local zoning, may only sell alcoholic beverages between the hours of:

Monday - Thursday	10:00 AM-11:00 PM
Friday	10:00 AM-11:00 PM
Saturday	10:00 AM-11:00 PM
Sunday	12:00 PM-11:00 PM

Notwithstanding the time limits above, the Tenant may sell alcoholic beverages inside the Premises until midnight.

20. Renewal Option

Provided this Lease is in effect and Tenant has not sublet or assigned the Lease, is not in default hereunder, either at the time of the exercise of this option or at the time of the commencement of the Renewal Term, Tenant shall have the option to renew the Term (the "Renewal Option") for the Renewal Period (defined below) (the "Renewal Term") upon the same terms as in this Lease (including items of Additional Rent and escalations), except that (i) the Rent during the Renewal Term shall be determined as provided in Exhibit A, and (ii) Tenant shall have no right to renew the term of this Lease for any period beyond the five year Renewal Term.

Tenant shall exercise its option with respect to the Renewal Term, if at all, by giving written notice to Landlord on a day between 18 months and 6 months prior to the expiration of the initial Term. The failure by Tenant to duly give notice of its exercise of its right to renew the Term shall be deemed a waiver of such right. Upon Landlord's receipt of such notice from Tenant, this Lease, subject to the provisions of this Article, shall be automatically extended for the Renewal Term of five years with the same force and effect as if the Renewal Term had been originally included in the Term. The Rent during the Renewal Term shall be as set forth in Exhibit A.

21. Cross Easement

Landlord grants to Tenant an easement during a fire or emergency to use the building's basement staircase leading to the residential entry.

Tenant grants to Landlord an easement during a fire or emergency to use the Tenant's basement staircase leading to the premises entry.

22. Landlord's Contractor

Landlord's contractor shall have the right to accept any bid for work contemplated by Tenant under Section 5. Tenant shall provide Landlord copies of the bid and Landlord,

within 10 days shall either match the bid price or shall have waived its option to bid on the work.

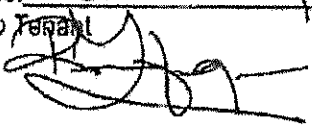
23. Lease:

This Lease consists of:

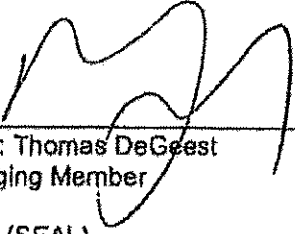
- (i) the cover sheet,
- (ii) pages 1 through 55;
- (iii) the following exhibits:
  - Exhibit A: Rent Schedule
  - Exhibit B: Landlord's Work
  - Exhibit C: Good Guy Guaranty
  - Exhibit D: Cross-Hatched floor plan for leased premises.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease on the dates indicated below, effective as provided in Section


WITNESSES:

Name: Rossanna Figuera  
As to Tenant  


TENANT:  
DeGeest, LLC  
A New York Limited Liability Company

By:   
Name: Thomas DeGeest  
Title: Managing Member  
Date: \_\_\_\_\_  
(SEAL)

LANDLORD:  
Haimil Realty Corp.  
A New York Corporation

Name: Anastasia Vaghin  
As to Landlord  



By:   
Name: Manny Haimovich  
Title: PRESIDENT  
Date: March 1, 2012  
(SEAL)

EXHIBIT "A"

RENT RIDER TO STORE LEASE DATED March 1, 2012 BY AND BETWEEN  
HAIMIL REALTY CORP. AS LANDLORD AND DEGEEST, LLC AS TENANT FOR  
PREMISES LOCATED AT 15 AVENUE B, NEW YORK, N. Y. 10009.

Initial Rent \$10,250.00 per month

Start Date	Annual 2/15/12	Percent Increases	Monthly Rent	Annual Rent
Year 1	2012	3%	\$10,250.00	\$123,000.00
Year 2	2013	3%	\$10,557.50	\$126,690.00
Year 3	2014	3%	\$10,874.23	\$130,490.70
Year 4	2015	3%	\$11,200.45	\$134,405.42
Year 5	2016	3%	\$11,536.47	\$138,437.58
Year 6	2017	3%	\$11,882.56	\$142,590.71
Year 7	2018	3%	\$12,239.04	\$146,868.43
Year 8	2019	3%	\$12,606.21	\$151,274.48
Year 9	2020	3%	\$12,984.39	\$155,812.71
Year 10	2021	3%	\$13,373.92	\$160,487.09
Option Years				
Year 1	2022	10%	\$14,711.32	\$176,535.80
Year 2	2023	3%	\$15,152.66	\$181,831.87
Year 3	2024	3%	\$15,607.24	\$187,286.83
Year 4	2025	3%	\$16,075.45	\$192,905.49
Year 5	2026	3%	\$16,557.72	\$198,692.59

Option Years exercised in accordance with Section 20

Haimil Realty Corp.

BY: 

PRESIDENT  
LANDLORD

BY: 

TENANT

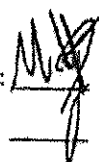
**EXHIBIT "B"**

**LANDLORD WORK RIDER TO STORE LEASE DATED March 1, 2012 BY  
AND BETWEEN HAIMIL REALTY CORP. AS LANDLORD AND DEGEEST, LLC. AS  
TENANT FOR PREMISES LOCATED AT 15 AVENUE B, NEW YORK, N. Y. 10009.**

1. Tenant accepts existing plumbing.
2. Tenant accepts existing sprinkler head locations.
3. Landlord to install missing sidewalk on 2nd Street as per approved  
Department of Building plans already on file and install a handicap ramp to  
access the residential occupants of the Building.
4. Tenant accepts existing location of electrical service with 200 Amp. 3 Phase  
breaker panel
5. Landlord to install finish concrete floor after Tenant installs its plumbing and  
drains.
6. Landlord to deliver to Tenant an ACP-5 certificate # 96814 dated 7/25/2006.
7. As per Section 5.1, Landlord, at Tenant's expense (at costs incurred by  
Landlord), shall cut an opening in the floor for the proposed stairs to  
basement, install steelwork and stairs to basement from Premises as well  
as new masonry demising walls for the corridor, cellar bathroom and prep  
area as per Tenant's layout dated 12.23.2011 on Basement Plan of D+DS  
Design Architect. As shown on Exhibit E, attached hereto.

15 Ave B-DeGeest, LLC

Initials:

Handwritten initials and signature in black ink, appearing to be 'MAG' or similar, written over a horizontal line.

**EXHIBIT "C"**

**GUARANTY RIDER TO STORE LEASE DATED March 1, 2012 BY AND  
BETWEEN HAIMIL REALTY CORP. AS LANDLORD AND DEGEEST, LLC. AS  
TENANT FOR PREMISES LOCATED AT 15 AVENUE B, NEW YORK, N. Y. 10009.**

See attached.

15 Ave B-DeGeest, LLC

Initials: 



**GUARANTY**  
**TO STORE LEASE DATED March 1, 2012**  
**BY AND BETWEEN HAIMIL REALTY CORP. (AS "LANDLORD")**  
**AND DEGEEST, LLC (AS "TENANT")**  
**FOR PREMISES LOCATED AT 15 AVENUE B, NEW YORK, NY 10009**

This Guaranty made as of this 2 day of February, 2012, Thomas DeGeest, an individual residing at 229 East 2<sup>nd</sup> Street, Apartment 2A, New York NY 10009, whose social security number is 096-86-4812 and Belgo Waffle, Inc., 229 East 2<sup>nd</sup> Street, Apartment 2A, New York NY 10009 (hereinafter collectively referred to as "Guarantor") to and for the benefit of HAIMIL REALTY CORP. ("Landlord").

**W I T N E S S E T H :**

WHEREAS, HAIMIL REALTY CORP. , Landlord, is the owner of the land and building located at 15 Avenue B, New York, New York ("Building"); and

WHEREAS, by a certain agreement of lease dated of even date ("Lease") between Landlord, as landlord, and DeGeest, LLC D/B/A Wafels & Dinges ("Tenant"), as tenant, Landlord leased to Tenant first (ground) floor, and part of the basement, in the Building (the "Premises") of the Building; and

WHEREAS, Guarantor desires to give this Guaranty to Landlord in order to induce Landlord to execute the Lease;

NOW, THEREFORE, for good and valuable consideration and as inducement to Landlord to enter into the Lease with Tenant:

1. Guarantor hereby unconditionally and absolutely guarantees and assumes to and for the benefit of Landlord the full and prompt payment when due of the rent (however characterized) and other sums and charges payable by Tenant under the Lease as same may be modified, extended or renewed, and further hereby unconditionally and absolutely guarantees and assumes the full and timely performance and observance of all covenants, terms, conditions and agreements therein provided to be performed and observed by Tenant, and Guarantor hereby covenants and agrees to and with Landlord that if default shall at any time be made by Tenant, its successors and assigns, under the Lease, or if Tenant, its successors and assigns, should default in the performance and observance of any of the covenants, terms, conditions or agreements contained in the Lease, Guarantor will forthwith upon demand therefore pay such rent and other sums and charges, and any arrears thereof, to Landlord and will forthwith faithfully perform and fulfill all such terms, covenants, conditions and agreements, and will forthwith pay to Landlord, all damages, costs and expenses that may arise in consequence of any default by Tenant, its successors and assigns, under the Lease, including without limitation, all reasonable attorney's fees and disbursements

15 Ave B-DeGeest, LLC

Initials: 

incurred by Landlord or caused by any such default and/or the enforcement of this Guaranty; successive recoveries may be had hereunder.

2. This Guaranty is an absolute and unconditional guaranty of payment only. It shall be enforceable against Guarantor without the necessity of any suit or proceedings on Landlord's part of any kind or nature whatsoever against Tenant, its successors and assigns, and without the necessity of any notice of nonpayment, nonperformance or nonobservance or any notice of acceptance of this Guaranty and without need for demand for payment under this Guaranty or of any other notice or demand to which Guarantor might otherwise be entitled, all of which Guarantor hereby expressly waives; and Guarantor hereby expressly agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall in no wise be terminated, affected, diminished or impaired by reason of the assertion or the failure to assert by Landlord against Tenant, or against Tenant's successors and assigns, of any of the rights or remedies reserved to Landlord pursuant to the provisions of the Lease or allowed at law or in equity or by relief of Tenant from any of Tenant's obligations under the Lease or otherwise by (a) the release or discharge of Tenant in any creditors' proceedings, receivership, bankruptcy or otherwise proceedings, (b) the impairment, limitation or modification of the liability of Tenant or the estate of Tenant in bankruptcy, or of any remedy for the enforcement of Tenant's said liability under the Lease resulting from the operation of any present or future provisions of the bankruptcy laws or from the decision in any court, or (c) the rejection or disaffirmance of the Lease in any such proceedings. If any payment from the Tenant or anyone else is applied to the Lease and is thereafter set aside, recovered, rescinded, or required to be returned for any reason (including as a preference in the bankruptcy of Tenant or any other person), the obligations under the Lease to which such payment was applied shall for purposes of this Guaranty be deemed to have continued in existence notwithstanding such application and this Guaranty shall be enforceable as to such obligations as fully as if such applications had never been made.

3. Guarantor hereby covenants and agrees to and with Landlord, its successors and assigns, that Guarantor may be joined in any action against Tenant in connection with the Lease and the recovery may be had against Guarantor in such action or in any independent action against Guarantor without Landlord, its successors or assigns, first pursuing or exhausting any remedy for claim against Tenant, its successors or assigns.

4. Guarantor hereby waives all right to trial by jury in any action or proceedings hereinafter instituted by Landlord to which Guarantor may be a party.

5. In the event that this Guaranty shall be held ineffective or unenforceable by any court of competent jurisdiction, Guarantor shall be deemed to be a tenant under the Lease with the same force and effect as if Guarantor were expressly named as a joint tenant therein with joint and several liability.

15 Ave B-DeGeest, LLC

Initials: 

6. Any notice, demand or request by Landlord shall be in writing, whether or not required and without any implied obligation hereunder to give such notice, and shall be deemed to have been duly given or made when same is mailed by certified mail or registered mail, return receipt requested, addressed to the party constituting Guarantor at such party's address hereinabove set forth.

7. This Guaranty shall be construed in accordance with and governed by the laws of the State of New York. Guarantor hereby agrees that in the event of a dispute arising hereunder or under the Lease, Guarantor consents to personal jurisdiction in the State of New York, and designates that venue be placed in New York County. The Guarantor further designates Tenant as the agent for service of process within the State of New York and that service shall be effective if given in accordance with Paragraph 6, above.

8. This instrument shall inure to the benefit of Landlord and Landlord's successors and assigns, and shall be binding upon and enforceable against Guarantor and Guarantor's successors and assigns.

9. This Guaranty shall remain and continue in full force and effect and shall not be discharged in whole or in part notwithstanding (whether prior or subsequent to the execution hereof) any alteration, renewal, extension, modification, amendment or assignment of or subletting, concession, franchising, licensing or permitting under the Lease. The undersigned hereby waives notice of any of the forgoing, and agrees that the liability of the undersigned hereunder shall be based upon the obligations of Tenant set forth in the Lease as the same may be altered, renewed, extended, modified, amended or assigned. For the purpose of this Guaranty and the obligations and liabilities of the undersigned hereunder, "Tenant" shall be deemed to include any and all concessionaires, licensees, franchisees, department operations, assignees, subtenants, permittees or others, directly or indirectly operating or conducting a business in or from the Premises, as fully as if any of the same were the named Tenant under the Lease.

10. If this Guaranty is signed by two or more parties, then the liability of said Guarantors shall be joint and several.

11. Provided the Tenant is not in default of its obligations under the Lease, then the undersigned's liability under this Guaranty shall terminate (except as hereafter provided) upon the later to occur of all of the following: (a) the expiration of one hundred eighty (180) days following Tenant's written notice to Landlord of the date on which Tenant shall vacate and surrender the Demised Premises, (b) the surrender and vacation of the Demised Premises by Tenant in accordance with the terms of the Lease, including, but not limited to, free and clear of all liens, free and clear of all personal and business property in which secured parties or others (other than Landlord) have any superior rights to the Landlord, and free and clear of all rights by any occupant, subtenant, licensee or others, (c) the delivery to Landlord of all keys, magnetic access cards, alarm access codes and similar items to fully enjoy occupancy to the Demised

**SECURITY DEPOSIT RECEIPT**

**TO STORE LEASE DATED March 1, 2012  
BY AND BETWEEN HAIMIL REALTY CORP. (AS "LANDLORD")  
AND DEGEEST, LLC (AS "TENANT")  
FOR PREMISES LOCATED AT 15 AVENUE B, NEW YORK, NY 10009**

Landlord acknowledges this day receipt of \$ 10,250 from Tenant to be applied towards First Month's Rent for the Store lease dated March 1, 2012 located at 15 Avenue B, New York, NY 10009.

Dated: March \_\_ 2012  
New York, NY

**LANDLORD:**  
Haimil Realty Corp.

By: 

Name: Manny Haimovich  
Title: PRESIDENT

**SECURITY DEPOSIT RECEIPT**

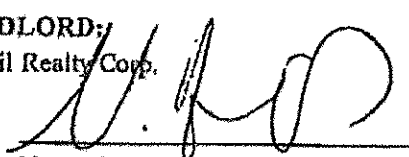
**TO STORE LEASE DATED March 1, 2012  
BY AND BETWEEN HAIMIL REALTY CORP. (AS "LANDLORD")  
AND DEGEEST, LLC (AS "TENANT")  
FOR PREMISES LOCATED AT 15 AVENUE B, NEW YORK, NY 10009**

Landlord acknowledges this day receipt of \$ 30,750 from Tenant to be applied towards Security Deposit for the Store lease dated March 1, 2012 located at 15 Avenue B, New York, NY 10009.

Dated: March \_\_ 2012  
New York, NY

**LANDLORD:**  
Haimil Realty Corp.

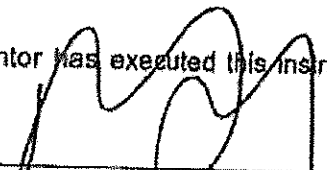
By:

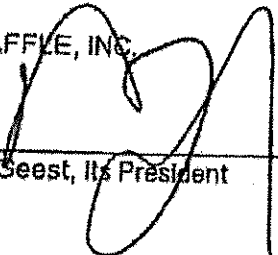


Name: Manny Haimovich  
Title: PRESIDENT

Premises, (d) that Tenant's right to possession of the Demised Premises shall expire absolutely and irrevocably as of the expiration date of such notice, and (e) the full payment of all Rent and Additional Rent up to date all of the foregoing have been completed. Notwithstanding such vacancy and surrender, Tenant shall continue to be liable under the terms of this Lease for the remainder of the term thereof, and no acceptance by Landlord of any surrender or vacancy under this Guaranty shall be deemed to modify, release, satisfy or otherwise relieve Tenant of any liability whatsoever under the Lease. The undersigned understands and agrees that in the event of Tenant's early termination of possession of the Demised Premises the Security Deposit held by Landlord pursuant to the terms of this Lease shall not be applied to Rent or Additional Rent due, or any other liability to Landlord through the date Tenant vacates the Demised Premises, and will not reduce the undersigned's liability, if any, as provided for in this Guaranty.

IN WITNESS WHEREOF, Guarantor has executed this instrument the day and year first above written.

  
\_\_\_\_\_  
Thomas DeGeest, individually

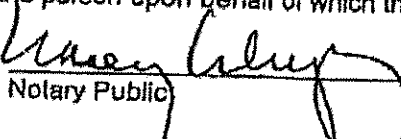
BELGO WAFFLE, INC.  
  
\_\_\_\_\_  
Thomas DeGeest, Its President

STATE OF NEW YORK

COUNTY OF NEW YORK

)  
) ss.:  
)

On the 7 day of March ~~February~~ in the year 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared Thomas DeGeest, 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 executed the same in his individual and corporate capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

NANCY RODRIGUEZ  
Notary Public State of New York  
No. 31-4503053  
Qualified in New York County  
Commission Expires July 31, 2013

19 Ave B-DeGeest, LLC

Initials:   
\_\_\_\_\_

**EXHIBIT "D"**

**LAYOUT OF DEMISED PREMISES TO STORE LEASE DATED  
March 1, 2012 BY AND BETWEEN HAIMIL REALTY CORP. AS LANDLORD AND  
DEGEEST, LLC. AS TENANT FOR PREMISES LOCATED AT 15 AVENUE B, NEW  
YORK, N. Y. 10009.**

See attached

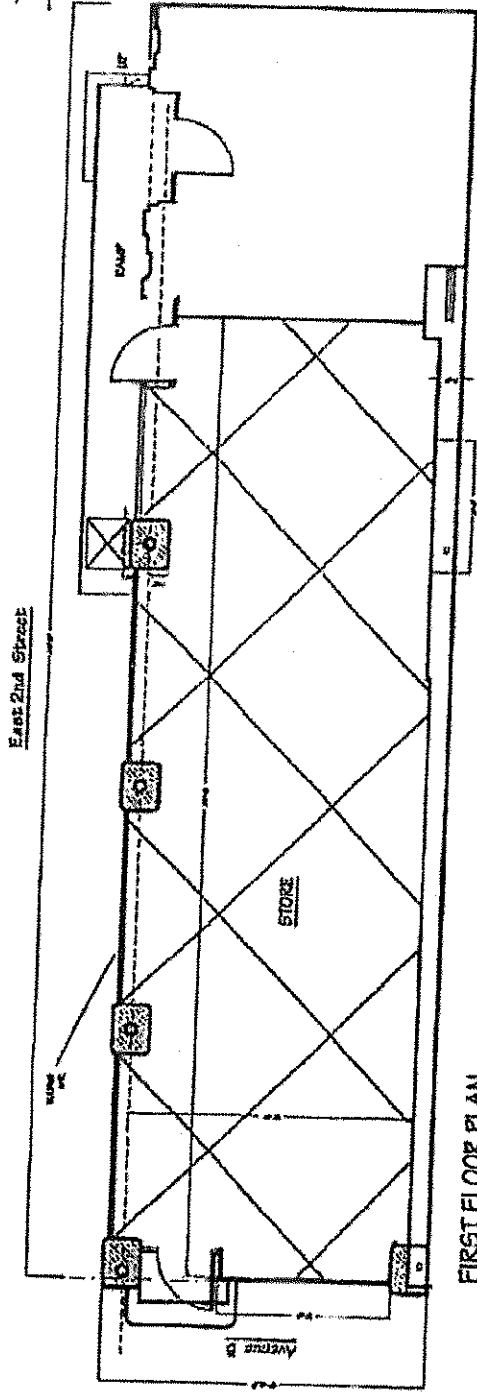
15 Ave B-DeGeest, LLC

Initials: \_\_\_\_\_

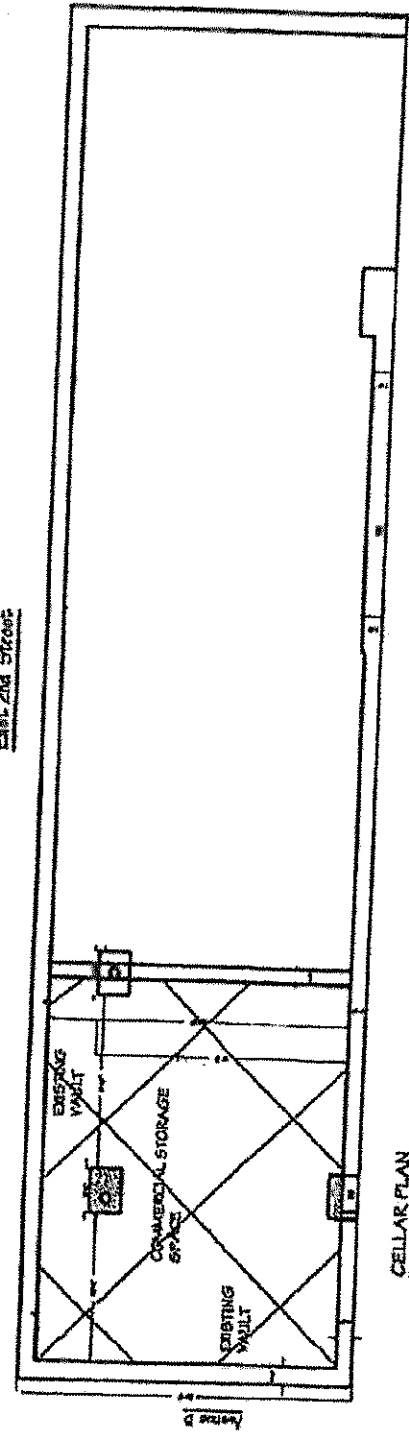


*[Handwritten initials]*  
Initials:

15 Ave B-DeGess, LLC



**FIRST FLOOR PLAN**  
N.T.S.



**CELLAR PLAN**  
N.T.S.



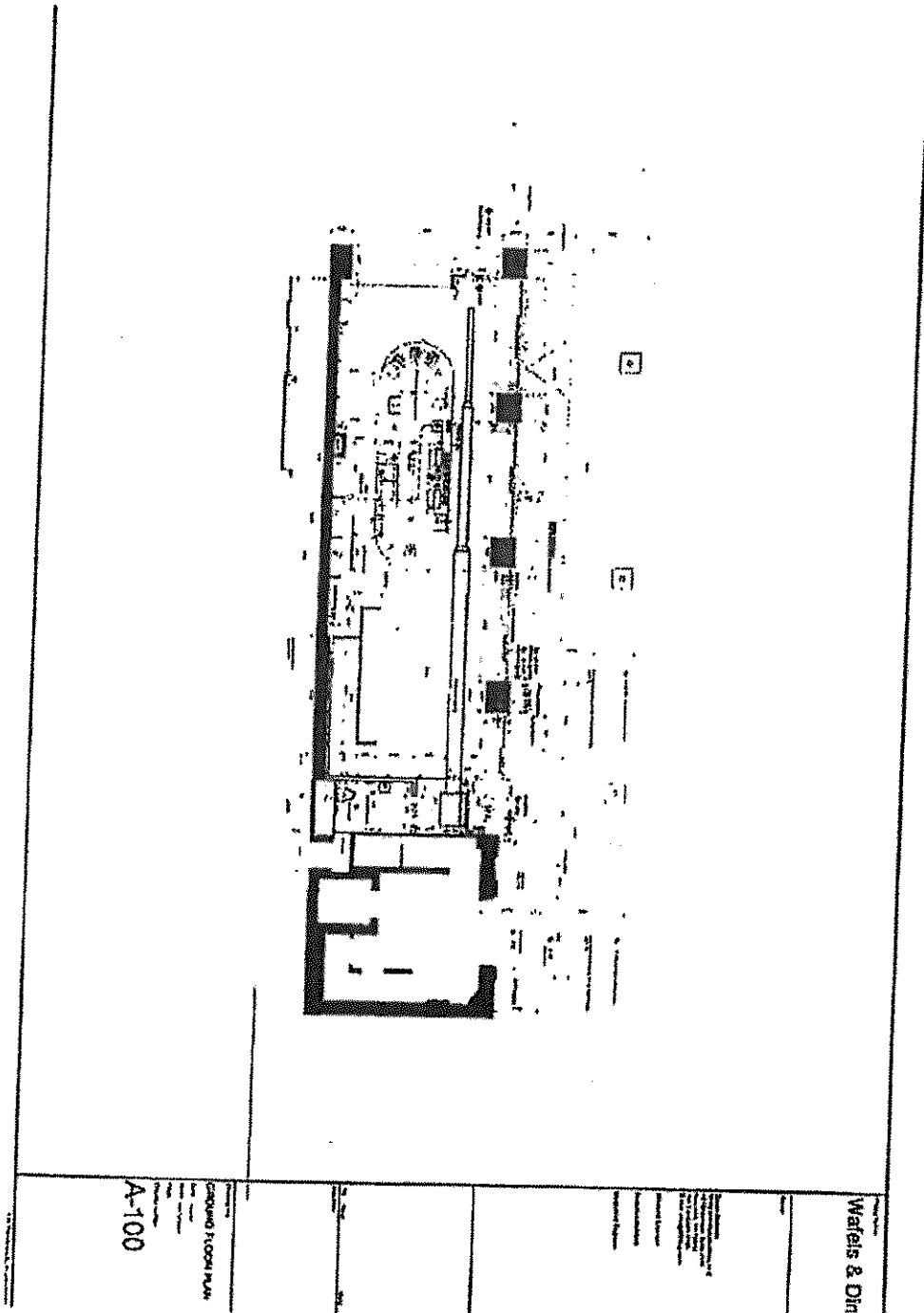
**EXHIBIT "E"**

**TENANT'S PROPOSED LAYOUT DATED 12.23.2011 from D + DS DESIGN  
ARCHITECT OF DEMISED PREMISES TO STORE LEASE DATED March 1, 2012 BY  
AND BETWEEN HAIMIL REALTY CORP. AS LANDLORD AND DEGEEST, LLC. AS  
TENANT FOR PREMISES LOCATED AT 15 AVENUE B, NEW YORK, N. Y. 10009.**

See attached

15 Ave B-DeGeest, LLC

Initials: 



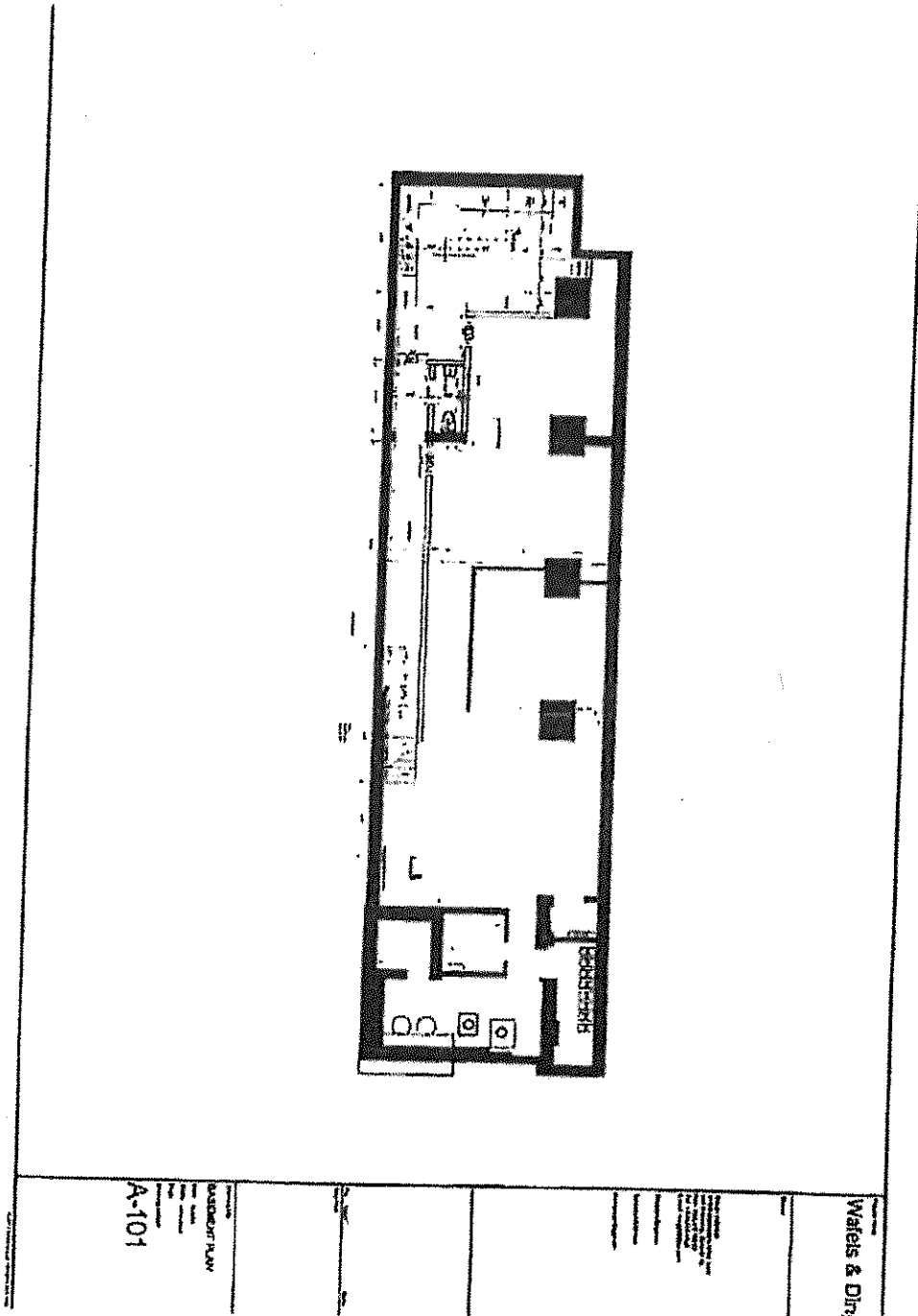
A-100

CONCRETE FLOOR PLAN

Walters & Dinger:

Initials:

15 Ave B-DeGeest, LLC



A-101

BASEMENT PLAN

Walters & Dinger:

Initials:

15 Ave B-OeGeest, LLC

EXHIBIT B

Floor Plan

B-1

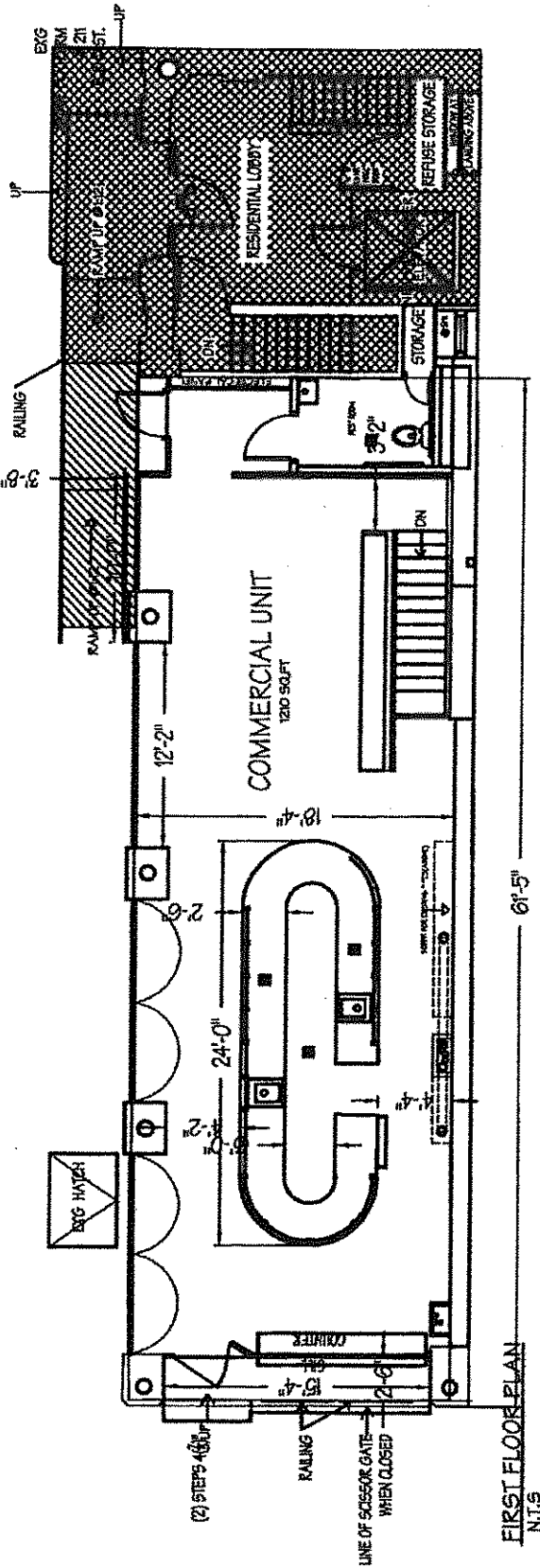


**SYMBOLS**

- COMMERCIAL UNIT
- GENERAL COMMON ELEMENT
- RESIDENTIAL LIMITED COMMON ELEMENT
- FLOOR DRAIN

COMMERCIAL UNIT	120 SQ.FT
RESIDENTIAL LIMITED COMMON ELEMENT	245 SQ.FT

East 2nd Street  
 118.202



D-23

EXHIBIT C

ASSIGNMENT AND ASSUMPTION OF LEASE

THIS ASSIGNMENT AND ASSUMPTION OF LEASE (this "Assignment"), is made and entered into this \_\_\_ day of \_\_\_\_, 2017, between HAIMIL REALTY CORP., a New York corporation, having an office at 209 East 2<sup>nd</sup> Street, New York, NY 10009 ("Assignor") and \_\_\_\_\_, having an office at \_\_\_\_\_ ("Assignee").

WITNESSETH:

Assignor, for Ten Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby assigns to Assignee, all of Assignor's right, title and interest in, to and under that certain Lease Agreement, between Assignor, as landlord and DEGREEST, LLC d/b/a Wafels & Dinges ("Tenant"), as tenant, dated effective on May 1, 2012, and all guaranties thereof (collectively, the "Lease"). Notwithstanding the aforesaid, Assignor hereby reserves its right to any rents or other sums due from Tenant under the Lease for any period prior to the Closing and not yet received as of the Closing ("Tenant Arrearages") and in connection therewith, without affecting a Tenant's right to possession of the Unit, Assignor shall have the right to continue that certain litigation, Haimil Realty Corp. v. DeGeest, LLC d/b/a Wafels & Dinges, L&T Index No. 52748/2017, and bring claims for Tenant Arrearages or other sums owed to Seller from Tenant for periods prior to the Closing Date.

Assignee hereby expressly assumes all of the obligations imposed upon Assignor under the Lease which accrue from and after the date hereof.

Assignee hereby agrees to defend, indemnify and hold Assignor harmless from all loss, liability, cost and expense, including, without limitation, reasonable attorneys' fees and costs, which Assignor may sustain or incur in connection with obligations under the Lease first arising and accruing from and after the date hereof.

Assignor hereby agrees to defend, indemnify and hold Assignee harmless from all loss, liability, cost and expense, including, without limitation, reasonable attorneys' fees and costs, which Assignee may sustain or incur in connection with obligations under the Lease arising prior to the date hereof. Assignor further agrees to defend, indemnify and hold Purchaser harmless from all loss, liability, cost and expense, including, without limitation, reasonable attorneys' fees and costs, which Purchaser may sustain or incur in connection with a claim by Tenant for any security deposit delivered by Tenant to Assignor pursuant to the Lease.

This Assignment shall inure to the benefit of the parties hereto and their respective successors and assigns.

This Agreement may not be modified, revoked or amended other than in writing.

This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York without application of the principles of conflicts of law.

C-1

This Assignment may be executed in any number of counterparts, each of which shall constitute an original, but all of which, taken together, shall constitute but one and the same instrument.

**[SIGNATURE PAGE TO FOLLOW]**

C-2



IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment  
as of the date first above written.

**ASSIGNOR:**

HAIMIL REALTY CORP.

By: \_\_\_\_\_  
Name:  
Title:

**ASSIGNEE:**

PREMIER EAST 2ND, LLC

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT D

TENANT ESTOPPEL

D-1

TENANT'S ESTOPPEL CERTIFICATE

LENDER

PREMISES: Commercial Unit I consisting of the Street Level Floor and a portion  
of the Basement Space  
209 East 2<sup>nd</sup> Street  
New York, New York 10009

TENANT: DeGeest, LLC d/b/a Wafels & Dinges  
15 Avenue B  
New York, NY 10009

LEASE DATED: March 1, 2012

LANDLORD: Haimil Realty Corp.

As of the date hereof, the undersigned Tenant does hereby certify to the Lender and  
as follows:

1. The Lease is in full force and effect, is binding upon the Tenant and has not been assigned, modified, supplemented or amended except as set forth above, and the Tenant has received no notice of assignment, pledge or hypothecation of the Lease or the rents payable thereunder. A true and complete copy of the Lease is annexed hereto as Exhibit "A".
2. The expiration date of the term of the Lease is \_\_\_\_\_ and there is one renewal option in the Lease.
3. All rents or other charges due as of the date hereof under the Lease have been paid and no rent under the Lease has been prepaid for any period beyond \_\_\_\_\_, 2017. The Tenant's monthly rental payment is \$ \_\_\_\_\_ plus \$ \_\_\_\_\_ for additional rent and the Landlord is holding a security deposit in the amount of \$ \_\_\_\_\_.
4. The Tenant is in possession of the Premises consisting of approximately \_\_\_\_\_ square feet and all improvements required to be performed by the Landlord under the Lease have been completed to the Tenant's satisfaction.
5. The Tenant has no charge, defense, lien, claim or offset against the Landlord, the enforcement of the Lease by the Landlord or against any rentals or other charges due or to become due under the Lease.
6. The Landlord has performed all of its obligations under the Lease, including the making of all repairs required to be made by the Landlord, and there is no default by the Landlord under the Lease.
7. The Tenant has no claim against the Landlord by reason of any restriction, encumbrance or defect in title of the Premises or any other matter.

D-2

8. The Tenant is not in default and has not received or sent any notice wherein it is claimed that a default exists under the Lease and the Tenant has no knowledge of any event that with the giving of notice, the passage of time, or both, would constitute a default under the Lease.

9. There is no indebtedness due the Tenant from the Landlord under the Lease arising from or related to the Lease or the Premises.

10. The Lease is and shall be subject to and subordinate to any and all mortgages which are or may be placed upon the Premises at any time, including but not limited to a mortgage in favor of or held by the Lender and to any renewals, replacements, additions, extensions, modifications, consolidations and spreaders of any of the foregoing. This provision shall be self-operative and no further instrument of subordination shall be required. In confirmation of said subordination the Tenant shall, at the Tenant's sole cost and expense, promptly execute any instrument that the Landlord or the Lender or any of their respective successors in interest may request to evidence such subordination.

11. This certificate is made with the understanding that the Lender will rely upon the representations and provisions contained herein.

Dated: \_\_\_\_\_, 2017

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT E  
LANDLORD ESTOPPEL

E-1

LANDLORD ESTOPPEL CERTIFICATE

LENDER:

PREMISES: Commercial Unit 1 consisting of the Street Level Floor and a portion  
of the Basement Space  
209 East 2nd Street  
New York, New York 10009

TENANT: DeGeest, LLC d/b/a Wafels & Dinges  
15 Avenue B  
New York, NY 10009

LEASE DATED: March 1, 2012

LANDLORD: Haimil Realty Corp.

Ladies and Gentlemen:

The undersigned is the Landlord (as defined below) under the Lease. Landlord certifies to \_\_\_\_\_, the prospective purchaser of the Premises ("Purchaser"), as follows:

The undersigned hereby certifies that to its knowledge, as of the date hereof following information concerning the Lease is true and correct:

Landlord: \_\_\_\_\_ ("Landlord")

Tenant: \_\_\_\_\_ ("Tenant")

Premises: Commercial Unit 1 consisting of the Street Level Floor and a portion of the  
Basement Space, 209 East 2<sup>nd</sup> Street, New York, New York 10009  
("Premises")

Commencement Date: \_\_\_\_\_

Expiration Date of Term: \_\_\_\_\_

Monthly Fixed Rent under the Lease: \_\_\_\_\_

Renewal Options: \_\_\_\_\_

The Lease represents the entire agreement between Landlord and Tenant and has not been modified or amended, except as indicated above.

The Lease (as modified as indicated above) is presently in full force and effect in accordance with its terms, except: \_\_\_\_\_

All minimum annual rent (as opposed to additional) payable under the Lease as of the date of this letter has been paid in full, except: \_\_\_\_\_

To the best of Landlord's knowledge, Landlord is not in default of its obligations under the Lease, and no event has occurred which, with the giving of notice or the passage of time, or both, would constitute a default by Landlord thereunder.

Landlord and Tenant are engaged in the following litigation: (i) Haimil Realty Corp.-v-Thomas DeGeest filed in New York County Supreme Court on 10/31/2013 # 654004/2013 seeking against guarantor of the Lease, amongst other things, collection of arrearages in additional rent as that term is defined in the Lease; (ii) DeGeest, LLC -v.- Haimil Realty Corp. et al. filed in New York County Supreme Court on 9/04/2013, #158065/2013 which is a "Yellowstone Action" by Tenant; (iii) Haimil Realty Corp. et al. filed in New York County Supreme Court on 12/10/2013, # 161370/2013 which is a "Yellowstone Action" by Tenant; and (iv) Haimil Realty Corp. v. DeGeest, L.L.C d/b/a Watels & Dingas, L&T Index No. 52748/2017.

This estoppel certificate is binding on Landlord and its successors and assigns and may be relied upon by Purchaser and any lender providing financing to the Purchaser.

Dated: \_\_\_\_\_, 2017

HAIMIL REALTY CORP.

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

Name:

Title:

EXHIBIT F  
TENANT NOTICE

F-1



**TENANT NOTICE**

HAIMIL REALTY CORP.  
209 East 2<sup>nd</sup> Street  
New York, New York 10009

\_\_\_\_\_, 2017

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
DeGeest, LLC d/b/a Wafels & Dinges  
15 Avenue B  
New York, NY 10009

Thomas DeGeest by email:  
ThomasDeGeest@gmail.com

Re: Street Level Floor and a portion of the Basement Space, 15 Avenue B, New York, NY

Dear Tenant:

This is to inform you that HAIMIL REALTY CORP. has this day sold the captioned property to \_\_\_\_\_, having an address at \_\_\_\_\_, New York, New York, and has transferred to it your lease and prepaid rents, if any, and other matters relating to your tenancy at the captioned premises.

After the date hereof, you should pay all rent and other amounts, and direct all notices and requests regarding your tenancy at the captioned property to \_\_\_\_\_ at the following address:

\_\_\_\_\_  
New York, New York

This letter constitutes notice of transfer.

Very truly yours,

HAIMIL REALTY CORP

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT G  
LITIGATION

G-I

NYSCEF - Supreme & Court of Claims

**Case Search Results**

**YOU SEARCHED ON**

Business/Organization Name: **Haimil Realty**

[Modify Search](#) | [New Search](#)

Sort By: Claim/Index #

By: [New](#) | [Old](#) | [All](#)

<a href="#">155187/2012</a> 08/06/2012	Full Participation Recorded Disposed	Grubb & Ellis New York, Inc. - v. - Haimil Realty Corp.	New York County Supreme Court Contract (Non-Commercial)	<a href="#">File</a> <a href="#">Docum</a>
<a href="#">158065/2013</a> 09/04/2013	Full Participation Recorded Stayed	Degeest, LLC - v. - Haimil Realty Corp. et al	New York County Supreme Court Real Property -Other	<a href="#">File</a> <a href="#">Docum</a>
<a href="#">161370/2013</a> 12/10/2013	Full Participation Recorded Active	DeGeest, LLC - v. - Haimil Realty Corp. et al	New York County Supreme Court Contract (Non-Commercial)	<a href="#">File</a> <a href="#">Docum</a>
<a href="#">651522/2013</a> 04/28/2013	Full Participation Recorded Disposed	Haimil Realty Corp. - v. - Ken Jacobs et al	New York County Supreme Court Commercial (General)	<a href="#">File</a> <a href="#">Docum</a>
<a href="#">654004/2013</a> 10/31/2013	Full Participation Recorded Disposed	Haimil Realty Corp. - v. - Thomas DeGeest	New York County Supreme Court Commercial (General)	<a href="#">File</a> <a href="#">Docum</a>
<a href="#">850084/2012</a> 08/29/2012	Partial Participation Recorded Disposed	Dominion Financial Corporation - v. - Haimil Realty Corp. et al	New York County Supreme Court Foreclosure (non-residential mortgage)	<a href="#">File</a> <a href="#">Docum</a>

EXHIBIT H  
ESCROW AGREEMENT

G-1

**ESCROW RIDER**  
**PURCHASE AGREEMENT FOR COMMERCIAL UNIT, UNIT 1**

In accordance with section 71-a(3) of the Lien Law, Sponsor has appointed the law firm of D'Agostino, Levine, Landesman & Lederman, LLP, with an address at 345 Seventh Avenue, 23rd Floor, New York, NY 10001, telephone number (212) 564-9800, to serve as escrow agent ("Escrow Agent") for Sponsor and Purchaser to hold all Deposits, other than the deposit for a copy of the Offering Plan, received by it from Purchasers, either directly or through its agents or employees in trust (the "Deposit" or "Deposits"). Escrow Agent has designated the following partners to serve as signatories: John D'Agostino, Esq., Michael J. Levine, Esq., Wayne R. Landesman, Esq., Bruce H. Lederman, Esq., Bettina Miraglia, Esq. and Jose M. Rivera, Esq. All designated signatories are admitted to practice law in the State of New York. Neither the Escrow Agent nor any authorized signatories on the account are the Sponsor, Selling Agent, Managing Agent, or any principal thereof, or have any beneficial interest in any of the foregoing.

The Escrow Agent has established the escrow account at HSBC Bank, located at 452 Fifth Avenue, New York, NY 10018 (the "Bank"), a bank authorized to do business in the State of New York. The escrow account is entitled D'Agostino, Levine, Landesman & Lederman, LLP Escrow Account for 209 East 2<sup>nd</sup> Street Condominium ("Escrow Account"). Purchaser is further advised that a Purchaser's funds are insured by the Federal Deposit Insurance Corporation ("FDIC") up to \$250,000.00 in the aggregate per account type per insured bank. If a Purchaser makes a Down Payment in excess of \$250,000.00 for the purchase of a Unit, such Down Payment will not be federally insured in excess of \$250,000.00. Additionally, if Purchaser has an additional account at the Escrow Bank, the aggregate of Purchaser's funds at the Escrow Bank, including funds in the additional account and the Down Payment, may not be insured in excess of \$250,000.00. Therefore, if a Purchaser has an additional account at the Escrow Bank, then a Purchaser's Down Payment, including a Down Payment that is less than \$250,000.00, may not be insured in part or in its entirety. Furthermore, while the Down Payment is in the non-interest bearing checking account portion of the Master Escrow Account, the Down Payment may not be fully federally insured, even if the Down Payment does not exceed \$250,000.00. Purchaser should consult with the FDIC website and with their attorneys to determine which part, if any, of their funds are insured by the FDIC. Escrow Agent makes no guarantee of the solvency of the Bank. If the FDIC insurance limits change in any manner in the future, Escrow Agent will have no obligation to make any changes to the Escrow Account.

All Deposits remitted to Escrow Agent shall be in the form certified or official checks, personal checks subject to collection, money orders, or, subject to Sponsor's prior written approval, wire transfers, and shall be made payable to, or endorsed by the Purchaser to, the order of D'Agostino, Levine, Landesman & Lederman, LLP, as Escrow Agent.

All Deposits, except for advances made for upgrades, extras, or custom work received in connection with the Purchase Agreement, are and shall continue to be the Purchaser's money, and may not be comingled with any other money or pledged or hypothecated by Sponsor, as per GBL §352-h.

The interest rate for all Deposits made into the Escrow Account shall be the prevailing rate for such accounts, which is currently approximately 0.05% for deposits of \$99,999.99 or less and approximately 0.15% for deposits of \$100,000.00 or more. Interest shall begin to accrue as of the date the deposit of the Down Payment clears and is posted by the Bank to the Escrow Account. Absent Purchaser's default, all interest earned thereon shall be paid to or credited to the Purchaser at Closing. Prior to the release of the Deposits, no fees of any kind from the principal or any interest earned thereon may be deducted from the Escrow Account, and the Sponsor shall bear all administrative costs associated with the maintenance of the Escrow Account.

Within five (5) business days after the Purchase Agreement is executed by all necessary parties and tendered to Escrow Agent along with the Deposits, the Escrow Agent shall sign the Purchase Agreement and place the Deposits into the Escrow Account. Within ten (10) business days of the placing the Deposits in the Escrow Account, Escrow Agent shall provide written notice to Purchaser and Sponsor, confirming the Deposits. The notice shall provide the account number and the initial interest rate to be earned on the Deposit. Any Deposits made for upgrades, extras, or custom work shall be initially deposited into the Escrow Account, and released in accordance with the terms of the Purchase Agreement between Purchaser and Sponsor.

The Escrow Agent is obligated to send notice to the Purchaser once the Deposits are placed in the Escrow Account. If the Purchaser does not receive notice of such deposit within fifteen (15) business days after tender of the fully-executed Purchase Agreement and Deposits to Escrow Agent, the Purchaser may cancel the Purchase Agreement within ninety (90) days after tender of the fully-executed Purchase Agreement and Deposits to Escrow Agent. Complaints concerning the failure to honor such cancellation requests may be referred to the New York State Department of Law, Real Estate Finance Bureau, 120 Broadway, 23rd Floor, New York, NY 10271. Rescission shall not be afforded where proof satisfactory to the Attorney General is submitted establishing that the Deposits were timely placed in the Escrow Account in accordance with the New York State Department of Law's regulations concerning Deposits and requisite notice was timely mailed to the Purchaser.

Under no circumstances shall Sponsor seek or accept release of the Deposit of a defaulting Purchaser until after consummation of the Plan, as evidenced by the acceptance of a post-closing amendment by the New York State Department of Law. Consummation of the Plan does not relieve the Sponsor of its obligations pursuant to GBL §§ 352-e (2-b) and 352-h.

The Escrow Agent shall release the Deposit if so directed:

(a) pursuant to the terms and conditions set forth in the Purchase Agreement upon closing of title to the Unit; or

(b) in a subsequent writing signed by both Sponsor and Purchaser; or

(c) by a final, non-appealable order or judgment of a court.

If the Escrow Agent is not directed to release the Deposit pursuant to paragraphs (a) through (c) above, and the Escrow Agent receives a request by either party to release the Deposit, then the Escrow Agent must give both the Purchaser and Sponsor prior written notice of not fewer than thirty (30) days before releasing the Deposit. If the Escrow Agent has not received a notice of objection to the release of the Deposit prior to the expiration of the thirty (30) day period, the Deposit shall be released and the Escrow Agent shall provide further written notice to both parties informing them of said release. If the Escrow Agent receives a written notice from either party objecting to the release of the Deposit within said thirty (30) day period, the Escrow Agent shall continue to hold the Deposit until otherwise directed pursuant to paragraphs (a) through (c) above. Notwithstanding the foregoing, the Escrow Agent shall have the right at any time to deposit the Deposit contained in the Escrow Account with the clerk of the county where the unit is located and shall give written notice to both parties of such deposit.

The Sponsor shall not object to the release of the Deposit to:

(a) a Purchaser who timely rescinds in accordance with an offer of rescission contained in the Plan or an Amendment to the Plan; or

(b) all Purchasers after an Amendment abandoning the Plan is accepted for filing by the Department of Law.

The Department of Law may perform random reviews and audits of any records involving the Escrow Account to determine compliance with all applicable statutes and regulations.

Any provision in the Escrow Rider or separate agreement, whether oral or in writing, by which a Purchaser purports to waive or indemnify any obligation of the Escrow Agent holding any Deposit in trust is absolutely void. The provisions of the Attorney General's regulations and GBL §§ 352-e(2-b) and 352-h concerning escrow trust funds shall prevail over any conflicting or inconsistent provisions in the Purchase Agreement, Plan, or any amendment thereto.

Dated: \_\_\_\_\_, 2016  
Purchaser of Unit 1

Accepted:

SPONSOR/SELLER:

HAIMIL REALTY CORP.

By: 

Name: Menachem Haimovich  
Title: President

ESCROW AGENT:

D'Agostino, Levine,  
Landesman & Lederman, LLP


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

Dated: MAY 18, 2017

Dated: \_\_\_\_\_, 20\_\_



Premier East 2<sup>ND</sup>, LLC, Purchaser of Unit 1

By:   
Name: Yaron Jacobi  
Title: Managing Member

Dated: May 15<sup>th</sup>, 2017

Accepted:

SPONSOR/SELLER:

HAIMIL REALTY CORP.

By: \_\_\_\_\_  
Name: Menachem Haimovich  
Title: President

Dated: \_\_\_\_\_, 20\_\_

ESCROW AGENT:

D'Agostino, Levine,  
Landesman & Lederman, LLP

By:   
Partner

Dated: MAY 18 2017