

DELBELLO DONNELLAN WEINGARTEN
WISE & WIEDERKEHR, LLP
Attorneys for the Debtor
One North Lexington Avenue
White Plains, New York 10601
(914) 681-0200
Jonathan S. Pasternak
Erica Feynman Aisner

Hearing Date: August 23, 2016
Hearing Time: 10:00 A.M.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

In re:

IMPORTANT PROPERTIES, LLC,

Chapter 11
Case No. 15-22123 (RDD)

Debtor.

-----X

DEBTOR’S MOTION SEEKING ENTRY OF: (I) A SALE PROCEDURES ORDER (A) APPROVING BIDDING PROCEDURES, (B) SCHEDULING AN AUCTION AND SALE HEARING; AND (II) SALE APPROVAL ORDER (A) AUTHORIZING THE SALE OF ALL OF THE DEBTOR’S REAL PROPERTY FREE AND CLEAR OF ALL LIENS, CLAIMS INTEREST AND ENCUMBRANCES, (B) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF THE DEBTOR’S REAL PROPERTY LEASE IN CONNECTION WITH THE SALE AND (C) GRANTING THE SUCCESSFUL BIDDER GOOD FAITH STATUS

**TO: THE HONORABLE ROBERT D. DRAIN,
UNITED STATES BANKRUPTCY JUDGE:**

Important Properties, LLC, the above captioned debtor and debtor-in-possession ("Debtor"), by its attorneys, DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, hereby files this motion ("Motion") pursuant to sections 105(a) and 363(b), (f) and (m), 503 and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq., as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the "Bankruptcy Code"), Rules 2002(a)(2), 6004 and 9007 of the

Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rules 2014-1 and 6004-1 of the Local Rules for the United States Bankruptcy Court for the Southern District of New York (the “Local Rules”) and Administrative Guideline Order GM-331 for the United States Bankruptcy Court for the Southern District of New York, for entry of the following order:

Sale Procedures Order (substantially in the form annexed hereto as **Exhibit A**):

(i) establishing bidding procedures, annexed hereto as **Exhibit B**, to govern the sale (the “Sale”) of the Debtor’s real property and improvements thereon located at 8 Industrial Lane, New Rochelle, New York (the “Property”, as further defined in the Purchase and Sale Agreement (the “PSA”, annexed hereto as **Exhibit C**) dated July 6, 2016, between the Debtor as seller and 32 North Street Realty, LLC as purchaser (the “Purchaser”); (ii) scheduling an auction to sell the Property, subject to higher and better bids (the “Auction”); and (iii) scheduling a hearing to approve the Sale of the Property in accordance with the Auction (the “Sale Hearing”).

JURISDICTION AND VENUE

1. The Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of the Application is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).
2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.
3. This proceeding has been initiated pursuant to Bankruptcy Code §§ 105(a), 363(b), (f) and (m), 503, 507, Bankruptcy Rules 2002(a)(2), 6004 and 9007 and Local Rules 2014-1 and 6004-1.

Background

4. On January 28, 2015 (the “Filing Date”), the Debtor filed a voluntary petition for reorganization pursuant to Chapter 11 of the Bankruptcy Code. The Debtor has continued in possession of its property and the management of its business affairs as a debtor-in-possession pursuant to §§1107 and 1108 of the Bankruptcy Code.

5. No Official Committee of Unsecured Creditors has been appointed. No trustee or examiner has been appointed.

The Property

6. The Debtor currently owns a commercial property located at 8 Industrial Avenue, New Rochelle, New York (the “Property”). The Property consists of a commercially zoned building currently occupied by Peter Friend Motorcycles, LLC (the “Tenant”). The Tenant has recently entered into a “triple net” 5 year lease with the Debtor as landlord, with three (3) five (5) year extension options thereon (the “Lease”).

7. As the Court is aware, the first mortgage on the Property is held by an affiliate of the Tenant known as 32 North Street Realty, LLC, the Purchaser herein.

8. Pursuant to Stipulation and Order entered by this Court on December 23, 2015, the secured claim of the Purchaser was fixed at the Allowed amount, as of the Petition Date, of \$6,600,000.

9. Since the Purchaser has continuously received monthly adequate protection payments substantially equal to contract rate debt service, Purchaser is believed to be currently owed no more than \$6,600,000.

10. Upon information and belief, the real estate taxes on the Property are current, and there are no other secured claims or encumbrances claimed or asserted against the Property or

the Debtor.

Marketing Efforts

11. The Property has been extensively marketed over the past several years in various fashions and by several different real estate professionals. These marketing campaigns have been conducted both prior to the Filing Date and since.

12. Although the Debtor had previously received several informal offers to purchase the Property, due to the short term nature of the prior lease with the Tenant, i.e., a series of 2 year leases with the renewal being at the sole option of the Tenant, the offers received by the Debtor were far below what the Debtor believed the Property to be worth.

13. After extensive negotiations between counsel for both the Debtor and the Tenant, the Debtor has successfully procured, and the Court approved, a new 5 year, “triple net” lease with the Tenant with 3 -5 year renewal options, which both the Debtor and its professionals believe will result in a much higher and better sale price for the Property.

14. In addition, the Debtor recently obtained Court authorization to hire and retain AuctionAdvisors to conduct a marketing campaign which will culminate in an auction of the Property.

15. In order expeditiously bring this Chapter 11 case to a close and obtain the highest and best price for the Property, Debtor’s counsel began negotiating with the Purchaser’s counsel in connection with, *inter alia*, a consensual liquidating plan based upon a marketing, and auction sale process for the Property. Under this liquidating plan, the parties negotiated a scenario whereby the Purchaser would act as a stalking horse, which will set a “floor” in such amount that will permit, even if the Debtor receives no higher bids, confirmation of a liquidating

plan that will result in a distribution to all allowed creditors.¹

16. **The Purchase and Sale Agreement**

17. On July 6, 2016, after arms-length negotiations, the Debtor and the Purchaser executed the PSA. A copy of the PSA is attached hereto as **Exhibit C**. Subject to this Court's approval of higher and/or better offers through an auction process, the Debtor seeks approval to sell the Property (as defined in the PSA) to the Purchaser on the following terms and conditions:

A. The PSA²

Seller	Important Properties, LLC
Purchaser	32 North Street Realty, LLC
Purchase Price	\$6,500,000 in the form of a credit bid under Section 363(k) of the Bankruptcy Code
Deposit	None
Property	All of Seller's right, title and interest in and to the following, free and clear of all liens, claims, encumbrances and interests of any kind (including, without limitation, those of all federal, State and local taxing authorities): (a) The improved real property, located at 8 Industrial Lane, New Rochelle, New York together with all tangible personal property owned by the Debtor and located therein and intangible personal property related to the Property, and (b) The Lease.

¹ Even assuming the auction sale only results in the \$6,500,000 credit bid of Purchaser, after the closing on the sale of the Property, there would remain outstanding, at most, a \$100,000 unsecured claim in favor of the Purchaser. The other unsecured claims in the estate are approximately \$100,000. The Debtor's counsel is currently holding approximately \$387,000 in escrow funds which were turned over by the pre-petition State Court receiver. Accordingly, even under such unsuccessful auction scenario there would be sufficient funds in the estate to fund a liquidating plan with distribution to all allowed creditors.

² The following summary is qualified entirely by the terms of the PSA. To the extent there are any inconsistencies between the description of the PSA contained herein and the terms and conditions of the PSA, the terms of the PSA shall control.

- Excluded Property** Excluded property shall include the following which is property of the Seller's Bankruptcy estate, (f) all causes of action, including, without limitation, Seller's estate causes of action under Section 542 through 553 of the Bankruptcy Code; (g) all books and records of Seller; (h) accounts receivable, if any; and (i) funds on hand and on deposit in banks, including monies being held in escrow with Seller's counsel.
- Representations and Warranties; Covenants** The representations and warranties and covenants are customary for a transaction of this type, including, without limitation, representations and warranties regarding the authority to enter into the sale transaction and the agreement to abide by all laws with respect to the sale, litigation, material contracts, permits, environmental matter, ownership of Property, taxes and condition of the Property, the best efforts of the parties, notices and consents, access to information and the risk of loss.
- Bid Protections** \$30,000 expense reimbursement in the event Purchaser is not the successful bidder
- Closing Date** The closing shall take place on the earlier to occur of, ten (10) business days following receipt by Purchaser's counsel, via facsimile and email, a final and non-appealable sale approval order.

RELIEF REQUESTED

18. By this motion, the Debtor is seeking entry of the Sale Procedures Order, substantially in the form annexed hereto as **Exhibit A**.

BASIS FOR RELIEF

I. The Sale Procedures Order

A. The Proposed Bidding Procedures

19. The Sale of the Property pursuant to the PSA is subject to higher and/or better offers. In order to ensure that the highest and best offer is received for the Property, the Debtor has established the proposed Bidding Procedures to govern the submission of competing bids at an Auction. Accordingly, the Debtor seeks this Court's approval of the Bidding Procedures set

forth in **Exhibit B** and incorporated herein in their entirety.

20. The Bidding Procedures provide that bidders submit initial overbids in an amount of \$50,000, with each subsequent higher and better offer being in increments of not less than \$25,000.

21. The Debtor requests that the Court authorize Purchase to receive, in consideration of acting as a “stalking horse” herein an expense reimbursement of \$30,000 in the event that it is not the successful bidder at auction. Purchaser is not, however, requesting a “break-up” fee. It is submitted that the expenses reimbursement amount is reasonable and was necessary in order to procure the Purchaser’s offer.

22. All bids submitted for the purchase of the Debtor’s Property shall remain open, and all deposits held in the attorney escrow account of the Debtor’s counsel until the sale of the Property to the Successful Bidder is consummated. In the event that the Successful Bidder is unable to consummate on the sale of the Property, the next highest and/or best bidder (the “Backup Bidder”) will then be required to consummate on the sale of the Property.

B. Bidder Qualification

23. In order for a potential purchaser of the Property to qualify as a Bidder, the Debtor proposes that the purchaser’s Competing Bid must be received by **September 23, 2016 at 5:00 p.m.** (the “Bid Deadline”). To be considered a Qualified Competing Bid, each Competing Bid must comply with all of the following requirements:

- (a) it is in writing and is irrevocable through a closing of the sale of the Property;
- (b) it includes a duly authorized and executed purchase and sale agreement, substantially in the form of the PSA, as well as copies of such materials marked to show any amendments and modifications to the Purchase Agreement (the “Marked Agreement”) and a marked copy of the proposed order to approve the Sale by the Bankruptcy Court;

- (c) it provides for (i) a cash purchase price for the Property, expressed in U.S. Dollars, of not less than \$6,550,000;
- (d) it includes written evidence of a firm, irrevocable commitment for financing, or other evidence of ability to consummate the proposed transaction, that will allow the Debtor to make a reasonable determination as to the Bidder's financial and other capabilities to consummate the transaction contemplated by the Marked Agreement;
- (e) it is not conditioned on any contingencies, such as, without limitation: (i) the outcome of unperformed due diligence by the Bidder, and/or (ii) obtaining financing;
- (f) it includes an acknowledgement and representation that the Bidder: (i) has had an opportunity to conduct any and all required diligence regarding the Property prior to making its offer; (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its bid; (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Property or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Marked Agreement; and (iv) is not entitled to any expense reimbursement or break-up fee in connection with its bid;
- (g) it includes evidence, in form and substance reasonably satisfactory to the Debtor, of authorization and approval from the Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery, and closing of the Marked Agreement; and
- (h) it is accompanied by a good faith deposit in the form of a wire transfer (to a bank account specified by the Seller), certified check or such other form acceptable to the Seller, payable to the order of the Seller (or such other party as the Seller may determine) in an amount equal to 10% of the Competing Bid.

24. For the avoidance of doubt, and notwithstanding the foregoing, any overbid submitted by the Purchaser at any Auction on substantially the same terms as its initial offer (apart from any increase in price) shall be a Qualified Competing Bid.

25. The Debtor believes that this aforementioned proposed Bidding Procedures are fair and reasonable and will permit all parties truly interested in acquiring the Property an

opportunity to submit a bid that can be weighed or compared against the Purchaser's stalking horse offer.

C. The Proposed Bidding Procedures Are Adequate and Should Be Approved

26. In determining whether bidding procedures governing the sale of a debtor's Property are adequate, Court have consistently deferred to the debtor's business judgment for their specific industry. See, In re Integrated Resources, Inc., 147 B.R. 650, 656-57 (Bankr. S.D.N.Y. 1992)(holding that where overbid procedures are negotiated by the chapter 11 debtor, the business judgment rule applies and said procedures are "presumptively valid").

27. Furthermore, the purpose of bidding procedures is to solicit the highest and best bid, which would in turn best benefit the creditors. In re Financial News Network Inc., 980 F.2d 165 (2nd. Cir., 1992)(stating that the bankruptcy court's principal responsibility relating to bidding procedures that govern sale is to secure best possible bid for benefit of creditors).

28. Thus, courts deem appropriate those bidding procedures intended to maximize the value of the debtor's estate. See, e.g., Financial News, 980 F.2d at 170-71 (allowing bidder to supplement one of two bids for Chapter 11 debtor's Property after bidding was closed since the revision was consistent with both rules by which particular auction was being conducted and reasonable expectations of bidders); Integrated Resources, 147 B.R. at 656-57.

29. The Debtor believes that the Bidding Procedures proposed will additionally procure serious parties interested in acquiring the Property and will result in realizing the full value of the Property. The Debtor's Bidding Procedures are designed to facilitate a competitive bidding process in an expeditious manner, especially in light of the fact that the Debtor has significant time constraints to sell and close under the PSA. The Bidding Procedures will allow the Debtor to conduct the Auction in an open fashion that will encourage participation from those

bidders that demonstrate they are financially capable to consummate the transaction.

30. In addition, the Bidding Procedures provide for an “overbid” provision. For a Competing Bid to be considered, it must be in a cash amount of at least 6,550,000, which amount equals the aggregate amount of the Purchase Price plus \$50,000 in an initial overbid increment (the “Initial Minimum Overbid”).

31. The Initial Minimum Overbid is necessary not only to compensate the Debtor for the risk that it assumes in foregoing a known, willing and able purchaser for a new potential acquirer and additionally to ensure that there is an increase in the net proceeds to the estate. The Debtor believes that the Initial Minimum Overbid will enable competitive bidding and maximize the value of the Property, without a chilling effect.

32. The Debtor believes, in its business judgment that the Bidding Procedures are adequate and will result in maximizing the value of its Property and are therefore appropriate under the relevant standards governing auction proceedings.

D. The Proposed Form and Manner of Notice of Sale is Adequate

33. Bankruptcy Rule 2002(a) and (c) requires the Debtor to notify creditors of the proposed sale of the Property, including the date, time and place of the Auction, terms of the Sale, and the deadline for filing any objections.

34. The Debtor proposes to comply with these requirements by serving via first class mail within three (3) days of entry of the Sale Procedures Order copies of: (i) Sale Procedures Order; (ii) Bidding Procedures; and (iii) this Motion.

35. The Debtor proposes to serve the following parties: (i) the Office of the U.S. Trustee; (ii) counsel to the Purchaser; (iii) all taxing authorities including the City of New Rochelle; (iv) counsel to the Tenant; (v) all known creditors, whether disputed, unliquidated or

contingent, of the Debtor; (vii) all entities known or reasonably believed to have asserted a lien, claim, interest, or encumbrance in any of the Property, (viii) all potential buyers known by the Debtor as having previously expressed interest in acquiring any of the Property, and (ix) all parties that have requested notice pursuant to Bankruptcy Rule 2002.

36. The Debtor also proposes to advertise the foregoing through the Auctioneer as set forth below.

37. The Debtor submits that the foregoing notice fully complies with the requirements set forth in Bankruptcy Rule 2002 and 6004. Based upon the foregoing, the Debtor respectfully request that this Court approve the form and manner of the notice proposed above.

F. The Auction

38. If the Seller receives one or more Qualified Competing Bids in addition to the PSA, the Seller will, through its proposed auctioneer, Auction Advisors (“Auctioneer”), conduct the Auction to select the highest or best bid for the Property (the “Successful Bid”). The Auction, which shall be transcribed or recorded to the extent required under New York local practice, shall be held at 10:00 a.m. (prevailing Eastern time) on September 28, 2016 at 11:00 a.m. at the offices of at the offices of Debtor’s counsel, DelBello, Donnellan Weingarten Wise & Wiederkehr, LLP, One North Lexington Avenue, 11th Floor, White Plains, New York 10601, or such other location as shall be agreed by the Debtor and the Purchaser and timely communicated to all entities entitled to attend the Auction.

39. The Seller, in concert with the Auctioneer, will conduct the Auction in any manner and upon any terms and conditions satisfactory to the Court, permitted by the PSA, and consistent with the Bidding Procedures, that will achieve the maximum value for the Property.

Such terms and conditions may include, by way of example, one or more rounds of sealed or open bids from the Purchaser and any Bidder who submitted a Qualified Competing Bid. The initial bid at the Auction shall be the highest or otherwise best bid, as determined by the Debtor in its reasonable discretion, as among the Purchaser's bid and any Qualified Competing Bids, and such initial bid shall be announced to the Purchaser and any other Bidder submitting a Qualifying Competing Bid at the commencement of the Auction.

40. Any subsequent bidding for the Property at the Auction shall be in increments of at least Twenty-Five Thousand Dollars (\$25,000.00) or any other reasonable amount established by the Debtor at the Auction.

41. At the conclusion of the Auction, the Debtor shall submit the Successful Bid to the Court at the Sale Hearing, for entry of a Sale Approval Order. Any Bid that fails to comply with the Bidding Procedures or any other procedures established at the Auction may be refused.

42. If no Qualified Competing Bids are received, the Debtor and the Purchaser intend to seek immediate Court approval of the PSA without conducting an Auction.

43. Prior to the conclusion of the Auction, the Debtor, in concert with the Auctioneer, will (a) review and evaluate the Purchaser's bid and each Qualified Competing Bid, (b) identify the highest or otherwise best offer for the Property received at the Auction (such bid, the "Successful Bid" and the bidder making such bid, the "Successful Bidder") and (c) communicate to the Purchaser and the Qualified Competing Bidders the identity of the Successful Bidder and the details of the Successful Bid. The determination of the Successful Bid by the Purchaser shall be final, subject to approval by the Court.

44. The Debtor will sell the Property to the Successful Bidder pursuant to the terms of the Successful Bid upon the approval of such Successful Bid by the Court at the Sale Hearing.

45. For the avoidance of doubt, the Debtor shall not consider or support any bid (whether or not such bid is a Qualified Competing Bid) for any of the Property received after the close of the Auction.

46. If, following the entry of the Sale Approval Order, the Successful Bidder fails to consummate the Sale because of a breach or failure to perform on the part of the Successful Bidder, the highest or otherwise best bid (“Back-Up Bid”) will be deemed the new Successful Bid, and the Debtor will be authorized and directed to consummate the Sale with the bidder who submitted the Back-Up Bid without further order of the Court. In such case, the good faith deposit of the Successful Bidder shall be forfeited to the Debtor and the Debtor shall have the right to seek any and all other remedies and damages from the defaulting Successful Bidder to the extent permissible under the applicable purchase agreement and applicable law.

II. This Court Should Approve the Sale of the Debtor’s Property to the Successful Bidder

47. As set forth above, on July 6, 2016, the Debtor entered into the PSA with Purchaser which provides for a sale of all of the Debtor’s Property. The agreed Purchase Price is \$6,500,000.

48. Following the Auction, the Debtor will seek this Court’s approval of the sale of the Debtor’s Property free and clear of all liens, claims, interests and encumbrances to the Successful Bidder.

49. All of the sale proceeds will be held in escrow by Debtor’s counsel, with all liens, claims, interests and encumbrances, if any, to attach to the proceeds in accordance with Section 363(f) of the Bankruptcy Code, pending further Order of the Court.

50. The estimated claims of the Debtor’s estate are as follows:

- a) Administrative expenses (professional fees and expenses) of approximately \$125,000 (anticipated through closing) which does not include the Auctioneer's fee in the minimum amount of \$77,500 (which includes expense reimbursement) plus any additional commission due in connection with the sale;
- b) Secured claim of Purchaser in the allowed amount of \$6,600,000;
- c) General unsecured claims of \$100,000.

In light of the \$387,000 escrow funds being held by the Debtor, there are sufficient funds even at the initial Purchase Price to satisfy the secured claim in full, thereby satisfying the requirements of a sale under Section 363(f)(2) of the Bankruptcy Code.

51. Pursuant to Section 363 (b) and (f) of the Bankruptcy Code, the Debtor seeks entry of an order authorizing the sale, assignment and transfer the Property. Section 363(b)(1) of the Bankruptcy Code provides, in pertinent part, "The trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." §363 (f) of the Code states as follows:

(f) The trustee 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.

52. The conditions set forth in 11 U.S.C. §363(f) are in the disjunctive, which means that only one of the tests must be met. The Debtor believes that the Purchase Price for the sale of the Property in this manner is in the best interests of the estates and their creditors, for a variety of reasons, including the following: (i) the Debtor believes that an immediate sale of the Property is in the best interests of creditors and the estate at large; (ii) the Purchase Price is adequate and represents the minimum fair market value of the Property to be sold; and (iii) the sale proceeds will be used to satisfy the secured claim and, result in a distribution to unsecured creditors after payment of the Chapter 11 administrative expenses.

53. It is therefore submitted that Section 363(f) will be satisfied and an immediate sale of the Property is in the best interests of creditors and the estate and will prevent unnecessary, irreparable harm to the creditors and the estate.

54. In connection with this motion, the Debtor proposes to invite interested parties to make higher or better offers by way of conducting an auction of the Property in contemplation of sales free and clear of all liens, claims, interests and encumbrances, with all such liens, claims, interests and encumbrances to attach to the sale proceeds.

55. The Debtor seeks authority to conduct the Auction free and clear of all liens with the liens to attach to the proceeds of sale (i.e., gross proceeds, less expenses) pursuant to 11 U.S.C. §363(f). Since the Auction contemplated hereby is not in the ordinary course, its authorization requires notice and a hearing pursuant to Section 363(b) of the Code. Auction sales are specifically authorized under the Bankruptcy Code and F.R.B.P. Rule 6004(f) provides that, “All sales not in ordinary course of business may be by private sale or public auction.”

56. It is within the discretion of the Court to determine whether to approve or disapprove of a method for the disposition of property. In re Alves, 52 B.R. 353 (Bankr. D.R.I.

1985); See, generally, In re Stogsdill, 102 B.R. 587 (Bankr. W.D. Tex. 1989). As stated above, the Property constitutes substantially all of the Debtor's assets.

57. The Debtor respectfully submits that the PSA, subject to higher and better offers received at an Auction, will provide the greatest recovery for the Debtor's estate than would be provided by any other available alternative. In addition, the terms and conditions of the PSA will be tested in the market through an auction process, which will support the fairness and reasonableness of the consideration being received. Therefore, the Debtor requests that the Court authorize and approve the Sale of the Property.

B. Request for Assumption and Assignment of the Lease

57. In connection with and ancillary to the Sale, the debtor requests that it be authorized to assume and assign the Lease ("**Exhibit "D"** annexed hereto) to the Purchaser pursuant to Sections 365(a) and 363(b) of the Bankruptcy Code,.

58. There are no cure amounts or claims that would be due in connection with such assumption and assignment.

59. The assignment of the Lease to the purchaser is required under the PSA.

60. The Debtor therefore requests that it be permitted to assume and assign the Lease to the Purchaser in connection with the Sale.

C. Protections as a Good Faith Purchaser

61. Section 363(m) of the Bankruptcy Code protects a good-faith purchaser's interest in property purchased from a debtor notwithstanding that the sale conducted under Section 363(b) is later reversed or modified on appeal. *See Allstate Ins. Co. v. Hughes*, 174 B.R. 884, 888 (S.D.N.Y. 1994) ("Section 363(m) . . . provides that good faith transfers of property will not

be affected by the reversal or modification of an unstayed order, whether or not the transferee knew of the pendency of the appeal”).

62. The selection of the Successful Bidder will be the product of an arm’s-length, good-faith negotiation in a competitive purchasing process. Based on the record to be made at the Sale Hearing, the Debtor will request a finding that the Successful Bidder is a good-faith purchaser entitled to the protections of Section 363(m) of the Bankruptcy Code.

NOTICE

63. Notice of this Motion has been provided to (i) the Office of the U.S. Trustee; (ii) counsel to the secured creditor/ tenant/ purchaser; (iii) all taxing authorities; (iv) counsel to the Purchaser; (v) all known creditors of the Debtor; (vi) all entities known or reasonably believed to have asserted a lien, claim, interest, or encumbrance in any of the Property, (v) all potential buyers known by the Debtor as having previously expressed interest in acquiring any of the Property, (vi) the United States Trustee and (vii) all parties that have requested notice pursuant to Bankruptcy Rule 2002. The Debtor submits that said notice is adequate and proper.

NO PRIOR REQUEST

64. No prior Motion for the relief requested herein has been made to this or any other Court.

CONCLUSION

65. For all of the foregoing reasons, the Debtor respectfully requests entry of (i) the Sale Procedures Order, substantially in the form annexed hereto as Exhibit A, and (ii) after the Auction and a Sale Hearing, entry of the Sale Approval Order, substantially in the form annexed hereto as Exhibit D.

66. **WHEREFORE**, the Debtor respectfully requests that the Court grant all of the relief requested herein, together with such other and further relief as is just and proper under the circumstances.

Dated: White Plains, New York
August 1, 2016

DELBELLO DONNELLAN WEINGARTEN
WISE & WIEDERKEHR, LLP
Attorneys for the Debtor
One North Lexington Avenue
White Plains, New York 10601
(914) 681-0200

By: /s/ Jonathan S. Pasternak
Jonathan S. Pasternak
Erica Feynman Aisner

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

In re:

IMPORTANT PROPERTIES, LLC,

Chapter 11

Case No. 15-22123(RDD)

Debtor.

-----X

**ORDER (I) APPROVING BIDDING PROCEDURES, (II) APPROVING A
BREAK-UP FEE TO STALKING HORSE OFFEROR, AND (III)
SCHEDULING AN AUCTION AND SALE HEARING**

Upon the motion (the “Motion”) of Important Properties, LLC, the above captioned debtor and debtor-in-possession in the above-captioned Chapter 11 case (the “Debtor”), by its attorneys, DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, seeking entry of an Order (i) establishing bidding procedures, annexed hereto as Exhibit A to govern the sale (the “Sale”) of substantially all of the Debtor’s real and personal property (the “Property”), as further defined in the Purchase and Sale Agreement (the “PSA”, annexed to the Motion as Exhibit C), dated July 6, 2016 between the Debtor and 32 North Street Realty, LLC (the “Purchaser”); (ii) approving the Expense Reimbursement (as defined in the PSA); (iii) scheduling an auction to sell the Property, subject to higher and better bids (the “Auction”); and (iv) scheduling a hearing to approve the Sale of the Property in accordance with the Auction (the “Sale Hearing”), and a hearing having been held to consider the Motion on August 23, 2016, and it appearing that all objections, if any, having either been resolved, withdrawn or overruled, and good and sufficient cause having been shown, it is hereby

ORDERED, that the relief requested in the Motion is granted, as set forth herein by the provisions of this Order. All objections to the relief requested in Part I of the Motion that have not been withdrawn, waived, or settled as announced to the Court at the hearing on this Motion or by stipulation filed with the Court, are overruled; and it is further

ORDERED, that the Debtor is authorized to conduct an auction for the sale of the Property in accordance with the Bidding Procedures annexed hereto as Exhibit A, which Bidding Procedures are hereby approved; and it is further

ORDERED, that the deadline for submitting bids to become Qualified Bids is September 23, 2016, at the offices of Debtor's counsel, DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, One North Lexington Avenue, White Plains, New York 10601, Attn: Jonathan S. Pasternak, Esq. and Erica Feynman Aisner, Esq. and Debtor's counsel shall promptly provide copies of such Qualified Bids to Purchaser's counsel; and it is further

ORDERED, that if any Qualified Bids are received in accordance with the Bidding Procedures, the Debtor, through AuctionAdvisors, will conduct an Auction commencing on September 28, 2016 at 10:00 a.m., the offices of Debtor's counsel, DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, One North Lexington Avenue, 11th Floor, White Plains, New York 10601; and it is further

ORDERED, that the Expense Reimbursement in the amount of \$30,000 to the Purchaser is hereby approved, effective immediately, and shall be payable as set forth in the PSA; and it is further

ORDERED, that a hearing shall be held before the Honorable Robert D. Drain, United States Bankruptcy Judge, at the United States Bankruptcy Courthouse, 300 Quarropas Street, White Plains, New York 10601, Courtroom 118, on October __, 2016 at 10:00 a.m. or as soon

thereafter as counsel may be heard (the "Sale Hearing"), to confirm the results of the Auction, authorize the sale of the Property, based upon the results of the Auction, and grant such other related relief as may be deemed necessary or proper by the Court; and it is further

ORDERED, that counsel to the Debtor shall file with the Bankruptcy Court a report of Qualified Bids no later than September 26, 2016 at 5:00 p.m., which report shall indicate, inter alia, whether the Debtor intends to go forward with the Auction; and it is further

ORDERED, that objections to the relief to be considered at the Sale Hearing shall be filed by September __, 2016 at 5:00 p.m. with the Bankruptcy Court at the Court's website <https://ecf.nysb.uscourts.gov/cgi-bin/login.pl> (password and log in required), with a copy delivered directly to Chambers and served upon counsel to the Debtor, DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, One North Lexington Avenue, White Plains, New York 10601, Attn: Jonathan S. Pasternak, Esq. and Erica Feynman Aisner, Esq.; and it is further

ORDERED, that, notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED, that to the extent that this Order is inconsistent with any prior order or pleading with respect to the proposed sale transaction, the terms of this Order shall govern; and it is further;

ORDERED, that the Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Order; and it is further

ORDERED, that (a) the Debtor shall serve this Order along with the Bidding Procedures upon: (i) the Office of the U.S. Trustee; (ii) all taxing authorities; (iii) counsel to the Purchaser; (iv) all counterparties to each of the Debtor's executory contracts and/or leases; (vi) all known

creditors of the Debtor; (vii) all entities known or reasonably believed to have asserted a lien, claim, interest, or encumbrance in any of the Property, (viii) all potential buyers known by the Debtor as having previously expressed interest in acquiring any of the Property, and (ix) all parties that have requested notice pursuant to Bankruptcy Rule 2002 within three (3) business days of entry of this Order.

Dated: White Plains, New York
August __, 2016

HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

Bidding Procedures

Set forth below are the bidding procedures (the “Bidding Procedures”) to be employed with respect to the transactions contemplated by the Purchase and Sale Agreement between Important Properties, LLC (the “Seller”) and 32 North Street Realty LLC (the “Buyer”), dated as July 6, 2016 (the “Purchase Agreement”), concerning the sale of the Property (defined below).

Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Purchase Agreement. In the event of any inconsistency between the provisions of these Bidding Procedures and the provisions of the Purchase Agreement, the Purchase Agreement shall control. Any person or entity interested in the specific terms of the Sale (defined below) should refer to the Purchase Agreement, a copy of which is available from counsel to the Seller, DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, One North Lexington Avenue, 11th Floor, White Plains, New York 10601, Attention: Jonathan S. Pasternak, Esq., Telephone: (914) 681-0200, Facsimile: (914) 684-0288, email: jpasternak@ddw-law.com.

The Seller has determined that: (A) the transactions contemplated by the Purchase Agreement (such transactions being referred to collectively as the “Sale”) shall be subject to competitive bidding as set forth in these Bidding Procedures; (B) the transfer of the Seller’s rights, title and interests in and to the Property (as defined below) shall be subject to approval by the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) pursuant to Sections 363 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended (the “Bankruptcy Code”); and (C) the Sale shall be subject to such other closing conditions and other terms and conditions as are set forth in the Purchase Agreement.

Bidding Process

These Bidding Procedures describe, among other things, the Property available for sale, the manner in which prospective bidders may gain access to or continue to have access to due diligence materials concerning the Property, the manner in which bids become Qualified Competing Bids (as defined below), the receipt and negotiation of bids received, the conduct of any Auction (as defined below), the ultimate selection of the Successful Bidder (as defined below), and the Bankruptcy Court’s approval thereof (collectively, the “Bidding Process”).

Assets To Be Sold

The improved real property located at 8 Industrial Avenue, New Rochelle, New York (as more specifically defined in the Purchase Agreement).

Notice And Solicitation Of Bids

Within one (1) Business Day following the entry of the Bidding Procedures Order or as soon as reasonably practicable thereafter, the Seller may provide notice, in form and substance satisfactory to the Buyer, of the Sale, the Bidding Procedures, the time and place of the Auction (as defined below), the time and place of the Sale Hearing (as defined below), and the objection deadline for the Sale Hearing to potential bidders who may wish to participate in the Bidding Process by submitting higher and better offers (“Competing Bids”) to purchase the Property.

Any person or entity other than the Buyer that desires to submit a Competing Bid (a “Bidder”) must do so in writing, provided that such Competing Bid satisfies all of the requirements for Qualified

Competing Bids (as set forth below) and is received by the Seller and its counsel at the following address by **September 23, 2016 not later than 5:00 p.m. (ET)** (the “Bid Deadline”) (unless the Seller and the Buyer agree to an extension): Seller’s counsel: DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, Attention: Jonathan S. Pasternak, Esq., One North Lexington Avenue, 11th Floor, White Plains, NY 10601. Upon receipt, the Seller shall promptly provide copies of all Competing Bids to the Buyer.

Qualified Competing Bids

To be considered a qualified Competing Bid (a “Qualified Competing Bid”), each Competing Bid must be received by the Bid Deadline and must comply with all of the following requirements:

- (a) it is in writing and is irrevocable through a closing of the sale of the Property;
- (b) it includes a duly authorized and executed asset purchase agreement substantially in the form of the Purchase Agreement together with all exhibits thereto, as well as copies of such materials marked to show any amendments and modifications to the Purchase Agreement (the “Marked Agreement”);
- (c) it provides for (i) a cash purchase price for the Property, expressed in U.S. Dollars, of not less than \$6,550,000;
- (d) it includes written evidence of a firm, irrevocable commitment for financing, or other evidence of ability to consummate the proposed transaction, that will allow the Seller to make a reasonable determination as to the Bidder’s financial and other capabilities to consummate the transaction contemplated by the Marked Agreement;
- (e) it is not conditioned on any contingencies, such as, without limitation: (i) the outcome of unperformed due diligence by the Bidder, and/or (ii) obtaining financing;
- (f) it includes an acknowledgement and representation that the Bidder: (i) has had an opportunity to conduct any and all required diligence regarding the Property prior to making its offer; (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its bid; (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Property or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Marked Agreement; and (iv) is not entitled to any expense reimbursement or break-up fee in connection with its bid; and
- (g) it is accompanied by a good faith deposit in the form of a wire transfer (to a bank account specified by the Seller), certified check or such other form acceptable to the Seller, payable to the order of the Seller (or such other party as the Seller may determine) in an amount equal to ten (10%) percent of the Competing Bid.

For the avoidance of doubt, and notwithstanding the foregoing, any overbid submitted by the Buyer at any Auction on substantially the same terms as its initial offer (apart from any increase in price) shall be a Qualified Competing Bid.

Auction

If the Seller receives one or more Qualified Competing Bids in addition to the Purchase Agreement, the Seller, through Auction Advisors, will conduct an auction (the "Auction") of the Property to select the highest or best bid for the Property (the "Successful Bid"). The Auction, which shall be transcribed or recorded to the extent required under New York local practice, shall be held at **10:00 a.m. (prevailing Eastern time) on September 28, 2016**, at the offices of DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, One North Lexington Avenue, 11th Floor, White Plains, NY , or such other location as shall be timely communicated to all entities entitled to attend the Auction.

The Seller may conduct the Auction in any manner and upon any terms and conditions satisfactory to the Court, permitted by the Purchase Agreement, and consistent with these Bidding Procedures, that will achieve the maximum value for the Property. Such terms and conditions may include, by way of example, one or more rounds of sealed or open bids from the Buyer and any Bidder who submitted a Qualified Competing Bid. The initial bid at the Auction shall be the highest or otherwise best bid, as determined by the Seller in its reasonable discretion, as among the Buyer's bid and any Qualified Competing Bids, and such initial bid shall be announced to the Buyer and any other Bidder submitting a Qualifying Competing Bid at the commencement of the Auction. Any subsequent bidding for the Property at the Auction shall be in increments of at least Twenty-Five Thousand Dollars (\$25,000.00) or any higher reasonable amount established by the Seller at the Auction.

At the conclusion of the Auction, the Seller shall submit the Successful Bid to the Court at the Sale Hearing (as defined below), for entry of a Sale Approval Order. Any Bid that fails to comply with the Bidding Procedures or any other procedures established at the Auction may be refused.

If no Qualified Competing Bids are received, the Seller and the Buyer intend to seek immediate Court approval of the Purchase Agreement without conducting an Auction.

Selection Of Successful Bid

Prior to the conclusion of the Auction, the Seller will (a) review and evaluate the Buyer's bid and each Qualified Competing Bid, (b) identify the highest or otherwise best offer for the Property received at the Auction (such bid, the "Successful Bid" and the bidder making such bid, the "Successful Bidder") and (c) communicate to the Buyer and the Qualified Competing Bidders the identity of the Successful Bidder and the details of the Successful Bid. The determination of the Successful Bid by the Seller shall be final, subject to approval by the Bankruptcy Court.

The Seller will sell the Property to the Successful Bidder pursuant to the terms of the Successful Bid upon the approval of such Successful Bid by the Bankruptcy Court at the Sale Hearing. For the avoidance of doubt, the Seller shall not consider or support any bid (whether or not such bid is a Qualified Competing Bid) for any of the Property received after the close of the Auction.

If, following the entry of the Sale Approval Order, the Successful Bidder fails to consummate the Sale because of a breach or failure to perform on the part of the Successful Bidder, the highest or otherwise best bid ("Back-Up Bid") will be deemed the new Successful Bidder and legally obligated and bound to consummate the transaction, and the Seller will be authorized, but not required, to consummate the Sale with the bidder who submitted the Back-Up Bid without further order of the Court. In such case, the good faith deposit of the Successful Bidder shall be forfeited to the Seller and the Seller shall have the right to seek any and all other remedies and damages from the defaulting Successful Bidder to the extent permissible under the applicable purchase agreement and applicable law.

Bid deposits for any unsuccessful bidder will be returned within three (3) business days of conclusion of the Auction, except in the case of the Back-Up Bidder, if any, whose deposit shall be released 3 days after closing in the event it is not deemed the new Successful Bidder.

Sale Hearing

A hearing to approve the sale of the Property to the Buyer or other Successful Bidder will be held on October __, 2016 at 10:00 a.m. before the United States Bankruptcy Court for the Southern District of New York, located at 300 Quarropas Street, Courtroom 118, White Plains, NY 10601 (the "Sale Hearing").

If no Qualified Competing Bids are timely submitted and no objections to the proposed sale are timely received, the Court may enter the Sale Approval Order without holding a Sale Hearing. If timely objections to the proposed transaction are received, then the Seller will seek Court approval at a Sale Hearing. Closing of a sale of the Property is expressly conditioned upon entry of the Sale Approval Order as described in the Purchase Agreement and Sale Motion.

Free Of Any And All Liens, Claims, Interests, and Encumbrances

All of the rights, title, and interests of the Seller in and to the Property, or any portion thereof, to be acquired will be sold, conveyed, transferred, and assigned free and clear of all Liens, Claims, Interests, and Encumbrances pursuant to Sections 363 and 365 of the Bankruptcy Code, such Liens, Claims, Interests, and Encumbrances to attach to the net proceeds of the sale of such Property. The Debtor's non-residential real property lease for the rental of the Property shall be assumed by the Debtor and assigned to the Purchaser at closing.

LEASE (Outparcel - Standalone)

8 Industrial Lane, New Rochelle, New York

KEY PROVISIONS SUMMARY

Lease Date:	The date this Lease is executed by the last to sign of Landlord and Tenant as shown on the signature page(s) attached hereto.	
Landlord:	Important Properties, LLC, a New York limited liability company	
Tenant:	Peter Friend Motorcycles, LLC, a New York limited liability company	
Premises:	That certain parcel of property designated as Section 2, Block 550, Lot 116, known by the street address of 8 Industrial Lane, New Rochelle, New York, with the Premises being described on <u>Exhibit A</u> .	
Notice Addresses	<u>Landlord:</u>	<u>Tenant:</u>
	Important Properties, LLC 620 Esplanade Pelham Manor, New York 10803 Attn:	Peter Friend Motorcycles, LLC P.O. Box 8046 Pelham, New York 10803 Attn: Cooper Friend
	<u>With a copy to:</u> DelBello Donnellan Weingarten Wise & Wiederkehr, LLP One North Lexington Avenue 11 th Floor White Plains, New York 1060 Attn: Jonathan Pasternak, Esq.	<u>With a copy to:</u> Westerman Ball Ederer Miller Zucker & Sharfstein, LLP 1201 RXR Plaza Uniondale, New York 11556 Attn: Thomas A. Draghi, Esq.
Rent Payment Address:	Important Properties, LLC 620 Esplanade Pelham Manor, New York 10803	
Lease Commencement Date:	The date of this Lease	
Rent Commencement Date:	The Lease Commencement Date	
Expiration Date:	The last day of the calendar month five (5) years after the Lease Commencement Date (<u>Section 3.1</u>)	
Lease Term:	<u>Initial Term:</u> Five (5) years (<u>Section 3.1</u>) <u>Renewal Term(s):</u> Three (3) terms of five (5) years each (<u>Section 3.2</u>)	

CF

Minimum Rent:	<i>Year(s)</i>	<i>Minimum Annual Rent</i>	<i>Minimum Monthly Rent</i>
		1	\$458,773.98
	2	\$470,243.33	\$39,186.94
	3	\$481,999.41	\$40,166.62
	4	\$494,049.40	\$41,170.78
	5	\$506,400.63	\$42,200.05
	(1 st Renewal Term)		
	6	\$519,060.65	\$43,255.05
	7	\$532,037.17	\$44,336.43
	8	\$545,338.09	\$45,444.84
	9	\$558,971.55	\$46,580.96
	10	\$572,945.84	\$47,745.49
	(2 nd Renewal Term)		
	11	\$587,269.48	\$48,939.12
	12	\$601,951.22	\$50,162.60
	13	\$617,000.00	\$51,416.67
	14	\$632,425.00	\$52,702.08
	15	\$648,235.62	\$54,019.64
	(3 rd Renewal Term)		
	16	\$664,441.51	\$55,370.13
	17	\$681,052.55	\$56,754.38
	18	\$698,078.87	\$58,173.24
	19	\$715,530.84	\$59,627.57
	20	\$733,419.11	\$61,118.26
Permitted Use:	Any lawful retail use. (Section 8.1)		
Broker(s):	None (Section 33)		
Exhibits:	Exhibit A – Premises Legal Description		

TABLE OF CONTENTS

	<u>Page</u>
1. Key Provisions Summary; Enumeration of Exhibits; Consent	1
2. Premises	1
3. Lease Term; Options to Extend.	1
4. Intentionally Omitted.	2
5. Intentionally Omitted.	2
6. Minimum Rent.	2
7. Taxes.	2
8. Use; Exclusive; Go Dark.	4
9. Compliance with Laws.	4
10. Right of First Refusal.	4
11. Maintenance & Liens.	4
12. Intentionally Omitted.	5
13. Utilities.	5
14. Intentionally Omitted.	6
15. Satellite Dish. Error! Bookmark not defined.	6
16. Ownership of Leasehold Improvements.	6
17. Signage.	6
18. Alterations.	6
19. Assignment and Subletting.	7
20. Indemnification.	8
21. Insurance.	9
22. Default by Tenant.	9
23. Default by Landlord.	10
24. Damage by Fire or Other Casualty.	11
25. Condemnation/Eminent Domain.	12
26. Intentionally Omitted.	12
27. Intentionally Omitted.	12
28. Subordination, Non-Disturbance, and Attornment.	12
29. Estoppel Certificate.	13
30. Access to Premises.	13
31. Holding Over.	13
32. Quiet Enjoyment.	13
33. Brokerage Commissions.	14
34. Notices.	14
35. Force Majeure.	14
36. Additional Terms.	15
37. Waiver of Jury Trial.	18

cf

LEASE

THIS LEASE (this "**Lease**") is made and entered into and is effective as of the Lease Date by and between Landlord and Tenant.

Recitals

- A. Landlord is the owner of the Premises.
- B. Landlord desires to lease the Premises to Tenant, and Tenant desires to take and lease the Premises from Landlord.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties mutually covenant and agree as follows:

1. Key Provisions Summary; Enumeration of Exhibits; Consent.

References in the body of this Lease to a portion of the Key Provisions Summary shall be deemed and construed to incorporate all the terms provided under each such referenced portion of the Key Provisions Summary. References in the Key Provisions Summary to a portion of the body of this Lease (e.g., Section references in the right-hand column of the Key Provisions Summary) shall be deemed and construed to incorporate all the terms provided under each such referenced portion of the body of the Lease. Notwithstanding the foregoing, if there is any inconsistency between the Key Provisions Summary and another portion of this Lease, the terms of the Key Provisions Summary shall control. The Exhibits enumerated in the Key Provisions Summary and attached to this Lease are incorporated in this Lease by reference and are to be construed as a part of this Lease. Each party shall perform all obligations on its part as set forth in any Exhibit. Except where expressly provided otherwise in this Lease, any consent or approval required under this Lease shall not be unreasonably withheld, delayed, or conditioned. Whenever this Lease grants either party the right to take action, exercise discretion, establish rules and regulations, or make an allocation or other determination, such party shall act reasonably and in good faith and take no action which might result in the frustration of the other party's reasonable expectations concerning the benefits to be enjoyed under this Lease. If a party withholds its consent or approval, such party shall, upon request, promptly deliver to the other a written statement specifying in detail the reason or reasons why such consent or approval was withheld or refused.

2. Premises.

2.1 Premises. Subject to the terms of this Lease, Landlord hereby leases, rents, and demises to Tenant, and Tenant hereby takes and leases from Landlord, the Premises.

2.2 Parking. Landlord shall not object to or interfere with Tenant's control and regulation of any parking spaces within the Premises, which Landlord acknowledges are for the exclusive use of Tenant and Tenant's employees, customers, contractors and other invitees. In no event shall Tenant enter into any agreement with third parties permitting such third parties to park at the Premises which agreement does not terminate at least ninety (90) days prior to the end of the Lease Term.

3. Lease Term; Options to Extend.

3.1 Lease Commencement Date; Rent Commencement Date. This Lease shall be for the Lease Term and shall commence on the Lease Commencement Date and shall end at 11:59 p.m. on the

Expiration Date (unless the Lease Term is extended as provided in Section 3.2, in which case the Lease Term shall expire at 11:59 p.m. on the last day of the then current Renewal Term). Tenant's rental obligations under this Lease shall commence as of the Rent Commencement Date. If the term of this Lease is extended pursuant to Section 3.2, the term "Lease Term" shall include each and every exercised Renewal Term.

3.2 Option(s) to Extend. Tenant may renew this Lease for the number of Renewal Term(s) set forth in the Key Provisions Summary if Tenant gives written notice of renewal to Landlord at least six (6) months prior to the end of the then-current Lease Term. Each Renewal Term shall be subject to the same terms and conditions as the Initial Term (except for Minimum Rent which shall be at the applicable amount set forth in the Key Provisions Summary). If Tenant fails to give notice of the exercise of any renewal option within the foregoing required notice period, Tenant's right to exercise such renewal option shall nevertheless continue until thirty (30) days after Landlord has given Tenant notice of Tenant's failure to exercise such renewal option (in which event Tenant may exercise such renewal option at any time until the expiration of such thirty (30) day period) unless Tenant sends notice to Landlord that it does not intend to exercise such renewal option. The parties intend to avoid forfeiture of Tenant's rights to extend the term of this Lease under any of the renewal options because of Tenant's inadvertent failure to give timely notice.

4. **Intentionally Omitted.**

5. **Intentionally Omitted.**

6. **Minimum Rent.**

Beginning as of the Rent Commencement Date, and during the Lease Term, Tenant shall pay to Landlord the Minimum Rent. Minimum Monthly Rent shall be payable in advance not later than the first day of each calendar month of the Lease Term; provided, however, that if the Rent Commencement Date falls on a day other than the first day of a calendar month, the Minimum Monthly Rent for such month shall be a prorated portion of the Minimum Monthly Rent based upon a thirty (30) day month. All rent payments shall be mailed or delivered to Landlord's office at the address set forth in the Key Provisions Summary (or to such other address that Landlord may give on thirty (30) days' prior written notice thereof to Tenant).

7. **Taxes.**

7.1 Payment by Tenant. Tenant shall pay and discharge, prior to delinquency, all real estate taxes and assessments, general and special, water taxes and all other impositions, ordinary and extraordinary of every kind and nature, which during the Lease Term may be levied or assessed against the Premises, or Tenant's fixtures during the Lease Term (collectively, "Taxes"); provided, however, that Tenant shall not be required to pay: (i) any inheritance, estate, succession, transfer, gross receipts, revenue, margin, franchise, corporation, net income or profit tax or capital levy imposed upon Landlord; or (ii) any special assessments which are levied or assessed by a special assessment district which is formed, directly or indirectly, by Landlord and/or others for the purpose of constructing or acquiring on-site or off-site improvements to or for the Premises, or any portion thereof. Tenant shall provide Landlord with written evidence of payment of all Taxes within five (5) days of payment.

7.2 Proration of Taxes. During the first and last years of the Lease Term, all Taxes which shall become payable during each of the calendar, fiscal, tax, or assessment years, as applicable, shall be ratably adjusted on a per diem basis between Landlord and Tenant in accordance with the respective portions of such calendar, fiscal, tax, or assessment year. If any Taxes are due in installments, Tenant shall be obligated to pay only those installments that are due and payable during the Lease Term.

CF

7.3 Severability of Parcels. The Premises are assessed as a separate parcel for tax purposes. Tenant shall advise the local taxing authority to send property tax invoices directly to Tenant. However, if Landlord inadvertently receives a property tax invoice, Landlord shall immediately forward such invoice to Tenant. If Landlord fails to forward a property tax invoice to Tenant immediately, and such failure causes Tenant to incur penalties, fines, or interest charges for late payment of property taxes, then Landlord shall reimburse Tenant for such penalties, fines, or interest charges within ten (10) business days after receipt of invoice therefor accompanied by reasonable supporting documentation. In no event shall Landlord be liable for any penalties, fines or interest charges for failure of Tenant to pay Taxes if Tenant has timely received the invoices for such Taxes.

7.4 Tenant's Right to Contest Taxes. Tenant shall have the right to contest Taxes, either in its own name or in the name of Landlord; provided that any such contest undertaken by Tenant shall be at Tenant's sole cost and expense, and that, if there is an imminent forfeiture of title to the Premises or any portion thereof due to such contest, Tenant shall either pay any contested amount or post a bond or other security sufficient to forestall such forfeiture. Within ten (10) days after either party to this Lease receives notice of valuation from the relevant appraisal district and/or any other applicable Governmental Authority with respect to the Premises ("**Appraisal Notice**"), such party shall deliver a copy of such Appraisal Notice to the other party. Within fifteen (15) days after Tenant receives a copy of the Appraisal Notice from Landlord or a Governmental Authority, Tenant may deliver to Landlord a written request to contest the amount or validity of the Appraisal Notice. Landlord shall have no obligation to contest the amount or validity of the relevant Appraisal Notice, but if Landlord fails to institute such a protest within fifteen (15) days after receiving Tenant's request, then Tenant shall be free to contest the amount or validity of the relevant Appraisal Notice at Tenant's sole cost, and Landlord shall reasonably cooperate with Tenant in that contest.

7.5 Tax Abatements. If Tenant applies for and receives any real estate tax credit, rebate, refund, reduction, or other adjustment ("**Tax Credit**") with respect to the Premises, then at all times during the Lease Term, such Tax Credit shall be allocated to and used by Tenant exclusively, and shall not be shared with Landlord. If Landlord receives any Tax Credit with respect to the Premises, and such Tax Credit is allocable to the Lease Term (or any part thereof), Landlord shall deliver to Tenant its pro-rata share of such Tax Credit within fifteen (15) days after Landlord's receipt of such Tax Credit. The provisions of this **Section 7.5** shall survive the expiration or sooner termination of this Lease.

7.6 Personal Property Taxes. Tenant shall pay, or cause to be paid, before delinquency, any and all taxes which are levied or assessed and/or which become payable during the Lease Term upon all or any part of Tenant's leasehold improvements, equipment, furniture, fixtures, and other personal property located in the Premises. If statements for real property taxes are sent to Landlord rather than to Tenant, and if any or all of Tenant's leasehold improvements, equipment, furniture, fixtures, and other personal property shall be assessed and taxed with the real property, Tenant shall pay to Landlord such taxes within thirty (30) days after delivery to Tenant by Landlord of (i) a statement in writing setting forth in reasonable detail the amount of such taxes applicable to Tenant's property, and (ii) a copy of the tax bill.

7.7 Licenses. Tenant shall be liable for, and shall pay throughout the Lease Term, all license and excise fees and occupation taxes covering the business conducted on the Premises. If any Governmental Authority levies a tax directly and explicitly on rents payable under this Lease or rents accruing from use of the Premises or a tax in any form against Landlord because of, or measured by, income derived from the leasing or rental of the Premises in lieu of all ad valorem real estate taxes, such tax shall be paid by Tenant, either directly or through Landlord. It is understood and agreed, however, that Tenant shall not be liable to pay any municipal, county, state, or federal income, revenue, margin, business, occupation, or franchise taxes of Landlord, or any municipal, county, state, or federal estate, succession, inheritance, or transfer taxes of Landlord.

8. Use; Go Dark.

8.1 Permitted Use. Tenant may use the Premises only for the Permitted Use; provided however, that in no event shall the Premises be used for the following: (i) a pawn shop; (ii) an adult entertainment facility; (iii) any bookstore (other than a Barnes & Noble or other nationally recognized book store), theater, amusement facility and/or facility selling or primarily displaying books, magazines, literature, or videotapes containing Adult Material ("**Adult Material**") is defined as any printed and/or pictorial work that appeals to a prurient interest in sex, is patently offensive according to contemporary community standards, and has no serious literary, artistic, political, or scientific value, and any printed and/or pictorial work rated X, XX, XXX (or of a rating assigned to works containing material more sexually explicit than XXX)); or (iv) any massage parlor.

8.2 Go Dark. Tenant may cease operating at the Premises if Tenant continues to pay Minimum Rent and continues to abide by the other terms of this Lease.

9. Compliance with Laws.

9.1 Tenant's Compliance. The term "**Governmental Regulations**" means all federal, state, county, or municipal laws, ordinances, rules, regulations, directives, orders, and/or requirements now in force or which may hereafter be in force. During the Lease Term, Tenant shall, at its sole cost and expense, comply promptly with Governmental Regulations applicable to Tenant's use of the Premises. Tenant shall not be responsible for any and all violations of Governmental Regulations caused at any time by Landlord or by Landlord's affiliates, officers, employees, agents, contractors or licensees.

10. Right of First Refusal.

Other than the anticipated sale by Landlord in its pending bankruptcy court proceeding, if during the Lease Term Landlord receives a bona fide offer (the "**Offer**") from an independent third party to purchase the Premises or any portion thereof, which Offer Landlord is willing to accept, Landlord shall cause the terms and provisions of the Offer to be reduced to a writing and shall deliver a true, correct, and complete copy thereof to Tenant. Thereafter, Tenant shall have the right to purchase the Premises upon the same terms and conditions as contained in the Offer, provided Tenant shall so indicate its intention to Landlord in writing within thirty (30) days after the date of Tenant's receipt of the Offer from Landlord. Upon timely acceptance of the Offer by Tenant, closing of the sale shall take place within the time period provided in the Offer, or, if no time period is provided, within sixty (60) days after the acceptance of the Offer by Tenant. If within said thirty (30) day period Tenant does not elect to purchase the Premises, Landlord may proceed to sell said real property to the original offeror upon the terms and conditions contained in the Offer, subject to the leasehold estate created pursuant to the terms of this Lease, within the time period set for closing in the Offer, or if no time period is provided, within sixty (60) days after delivery of the Offer to Tenant. If such sale does not close within such time, Tenant's right to notice of subsequent Offers and to elect to purchase the Premises on such terms shall remain in full force and effect. If such sale does close within such time, Tenant's right under this **Section 10** shall terminate as of the closing under the Offer. Tenant's right under this **Section 10** shall survive any conveyance of the Premises as a result of other than a bona fide written offer from an independent third party.

11. Maintenance & Liens.

11.1 Maintenance by Tenant. Except as otherwise set forth in this Lease or required due to the gross negligence or willful misconduct of Landlord, its agents, contractors or employees, Tenant shall, at all times during the Lease Term, and at its sole cost and expense, (i) keep and maintain the Premises in

good order and repair (exclusive of ordinary wear and tear, damage due to casualty other than as provided in Section 24 below, and damage due to condemnation other than as provided in Section 25 below), and make all necessary structural repairs (including, but not limited to, all roof repairs and replacements) and (ii) make any additions or alterations to the Premises that may be required by applicable Governmental Regulations arising out of or resulting from Tenant's use of the Premises.

11.2 Tenant Liens. Tenant will not permit the Premises to become subject to any mechanics', laborers' or materialmen's lien on account of labor or material furnished to Tenant or claimed to have been furnished to Tenant in connection with work of any character performed or claimed to have been performed on the Premises by or at the direction or sufferance of Tenant; provided, however, if Tenant bonds such lien and causes it to be discharged of record, Tenant shall have the right to contest in good faith and with reasonable diligence the validity of any such lien or claimed lien and on final determination of the lien or claim for lien, Tenant will within thirty (30) days from receipt of notice from Landlord pay any judgment rendered with all proper costs and charges, and will, at its own expense, have the lien released and any judgment satisfied.

11.3 Landlord Liens. Landlord will not permit the Premises to become subject to any mechanics', laborers', or materialmen's lien on account of labor or material furnished to Landlord or claimed to have been furnished to Landlord in connection with work of any character performed or claimed to have been performed on the Premises by or at the direction or sufferance of Landlord; provided, however, Landlord shall have the right to contest in good faith and with reasonable diligence the validity of any such lien or claimed lien and on final determination of the lien or claim for lien, Landlord will immediately pay any judgment rendered with all proper costs and charges, and will, at its own expense, have the lien released and any judgment satisfied.

11.4 Intentionally Omitted

12. Intentionally Omitted.

13. Utilities.

During the Lease Term, Tenant shall be solely responsible for and shall promptly pay all charges and expenses for all utilities used or consumed on the Premises. It is understood that the use by Tenant of the Premises may require that the parties enter into contracts or agreements with local, county, state, or other governmental agencies or bodies or with public utilities with reference to storm sewer, sanitary sewer, gas, water, electric, telephone or other utility lines or connections, stormwater management or easement agreements. Landlord shall execute such written contracts, agreements, easement agreements, and consents as are reasonably required for Tenant's use of the Premises. Notwithstanding anything in this Section 13 to the contrary, Tenant shall be entitled, at no cost, to the use of any and all utility capacity allocable to the Premises and heretofore reserved by or assigned to Landlord. Landlord shall execute all such written contracts, agreements, easement agreements, and consents as are reasonably required for Tenant's use of such capacity. In addition, in the event any utility interruption that is caused by the gross negligence or willful act of Landlord or Landlord's employees, contractors, subcontractors or agents, lasts for more than two (2) consecutive Business Days, and provided Tenant shall have given written notice of such interruption to Landlord, then to the extent that Tenant cannot and does not use all or any portion of the Premises for the purposes allowed in this Lease due to such interruption, Minimum Rent shall abate during the period following the second Business Day of such interruption until such utility service is restored.

CP

14. **Intentionally Omitted.**

15. **Satellite Dish.** Tenant shall have the exclusive right to install, maintain, and operate, subject to applicable Governmental Regulations, a satellite dish (the "**Satellite Dish**") on the Building or elsewhere on the Premises. The Satellite Dish is and shall remain the property of Tenant or its successors or assigns. The Satellite Dish shall not be deemed a fixture pursuant to this Lease or by operation of law. Upon termination of this Lease, Tenant shall remove said Satellite Dish and promptly repair any damage to the Building or Premises caused by such removal.

16. **Ownership of Leasehold Improvements.**

Tenant shall own any leasehold improvements made to the Premises until the expiration or earlier termination of this Lease, and Tenant alone shall be entitled to deduct all depreciation on Tenant's income tax return for the leasehold improvements. Tenant shall not, however, remove the leasehold improvements from the Premises, exclusive of Tenant's trade fixtures, signs and all other personal and/or proprietary property (collectively, "**Tenant's Trade Fixtures**"), or destroy any part thereof. At the expiration of the Lease Term, the leasehold improvements (and such of Tenant's Trade Fixtures as Tenant elects not to remove), without the payment of compensation or consideration of any kind to Tenant, shall become Landlord's sole property, free and clear of any and all claims of Tenant. At the expiration of the Lease Term, Tenant, if requested in writing by Landlord, shall execute any and all documents necessary to evidence that title to the leasehold improvements (and such of Tenant's Trade Fixtures as Tenant elects not to remove) is in Landlord and to extinguish and remove any cloud on the title to the Premises and/or the leasehold improvements (and such of Tenant's Trade Fixtures as Tenant elects not to remove) created by Tenant.

17. **Signage.**

17.1 **Exterior Signage.** Tenant shall, in a timely manner, submit its proposed signage to the applicable Governmental Authority for approval. If Tenant obtains such approval, Tenant shall have the right, at its own expense, to: (i) install the maximum amount of signage allowed under applicable Governmental Regulations (which may include any combination of monument, pylon and exterior building and roof top signage as determined by Tenant); and (ii) display promotional banners at the Premises from time to time.

Tenant may change the name, logo, or coloring of Tenant's signage without any further consent on the part of Landlord if such changes comply with applicable Governmental Regulations. Landlord hereby acknowledges that Tenant's current signage at the Building is acceptable to Landlord.

17.2 **Interior Signage.** Tenant shall have the right, at its sole cost and expense, to erect and maintain within the interior of the Building all signs and advertising matter customary or appropriate in the conduct of Tenant's business, including the use of interior marquee-type signage which is placed in the windows and is visible from the outside of the Premises. Tenant may replace the signage within the marquee from time to time without Landlord's consent.

18. **Alterations.**

Tenant shall have the right, at its own expense, and without Landlord's prior written consent, to make non-structural alterations to the interior of the Building and any alterations required on the part of Tenant to satisfy its maintenance, repair, and replacement obligations. Tenant shall procure all permits or approvals required by the applicable Governmental Authority for any alteration. All alterations (except Tenant's Trade Fixtures) shall become a part of the Premises. Landlord shall fully cooperate with Tenant, including executing and delivering upon Tenant's request, such instrument or instruments, or applications, agreements as may be required in connection with Tenant's performing the alterations contemplated herein. In the event Tenant

CP

wishes to make any alterations which are structural in nature, before making such structural alterations, Tenant shall first obtain Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, and which consent Landlord shall provide to Tenant within ten (10) days from Tenant's written request thereof.

19. Assignment and Subletting.

19.1 Tenant shall have the right to assign this Lease or sublet the whole or any part of the Premises (collectively, "**Transfer**") upon the prior consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

19.2 Leasehold Mortgage.

(a) Tenant shall at all times and from time to time have the right to encumber by mortgage, deed of trust, or security agreement (the "**Mortgage**") Tenant's leasehold estate in the Premises, together with Tenant's rights and interests in all buildings, fixtures, equipment, and improvements situated thereon, and all rents, issues, profits, revenues, and other income to be derived by Tenant therefrom, to secure such loans from time to time made by any person, firm or corporation ("**Mortgagee**") to Tenant; provided, however, that such Mortgage shall in no event encumber Landlord's fee title and interest in the Premises and provided further that the maturity date of the loan secured by such Mortgage shall occur at least thirty (30) days prior to the expiration of the Lease Term.

(b) Landlord shall deliver notice of any default by Tenant under this Lease to Mortgagee provided Mortgagee shall have notified Landlord in writing of the existence of the Mortgage under this Lease and the address to which notices should be delivered, and no notice of default shall be deemed effective against a Mortgagee who has notified Landlord of the existence of its encumbrance until it is so delivered. Mortgagee shall have the right to correct or cure any such default within the same period of time after receipt of such notice as is given to Tenant herein to correct or cure defaults. Landlord will accept Mortgagee's performance of any covenant, condition, or agreement on Tenant's part to be performed under this Lease with the same force and effect as though performed by Tenant if, at the time of such performance, Mortgagee delivers to Landlord evidence of its interest in this Lease. Notwithstanding any provisions of this Lease under which Landlord may declare a default and terminate or cancel this Lease or any of Tenant's rights or interests under this Lease, no notice of default given by Landlord to Tenant or other action by Landlord to declare a default (other than notice of a default that can be corrected or cured by the payment of money or of a default that is within Mortgagee's power to correct or cure within the time permitted under this Lease) shall be effective to terminate this Lease if and so long as Mortgagee shall promptly commence the enforcement of and diligently pursue all rights and remedies legally available to it to correct or cure all defaults that are within Mortgagee's power to correct or cure and, with respect to defaults that are not within Mortgagee's power to correct or cure, if Mortgagee shall promptly commence the enforcement of and diligently pursue all rights and remedies legally available to it to acquire the leasehold estate under this Lease, and upon acquisition thereof, performs all of the covenants and provisions on Tenant's part to be performed during the Lease Term. If this Lease terminates because of a Tenant Default, or because of a disaffirmance of this Lease by a receiver, liquidator, or trustee for Tenant's property, or by any department of the city, state, or federal government that has taken possession of Tenant's business or property because of Tenant's insolvency or alleged insolvency and if, at the time of such termination, the Mortgage constitutes a first lien upon Tenant's leasehold estate, Landlord shall give notice thereof to Mortgagee and upon Mortgagee's request made within sixty (60) days after delivery of such notice to Mortgagee, and, upon payment to Landlord of all rent and other monies due and payable by Tenant under this Lease immediately prior to the termination of this Lease, as well as all sums that would have become payable under this Lease by Tenant to Landlord to the date of execution and delivery of the new lease as provided below, had this Lease not been terminated, together with reasonable attorneys' fees and ex-

penses in connection therewith and in connection with the removal of Tenant from the Premises, and the curing of all defaults under this Lease that are within Mortgagee's power to cure, and the performance of all of the covenants and provisions under this Lease that are within Mortgagee's power to perform up to the date of the execution and delivery of the new lease as provided below, giving credit, however, for any net income actually collected by Landlord from the Premises, Landlord shall enter into a new lease of the Premises with Mortgagee for the remainder of the Lease Term, at the same rent and on the same terms and conditions as contained in this Lease and dated as of the date of termination of this Lease. Mortgagee's estate, as tenant under the new lease, shall have priority equal to Tenant's estate under this Lease (that is, there shall be no charge, lien, or burden upon the Premises prior to or superior to the estate granted by such new lease that was not prior to or superior to Tenant's estate under this Lease as of the date immediately preceding the date this Lease went into default, except, however, any charge, lien or burden that should not have been permitted and/or should have been discharged by Tenant under the terms of this Lease). Nothing to the contrary contained in this Lease shall be deemed to impose any obligation upon Landlord to deliver physical possession of the Premises to Mortgagee. Mortgagee shall pay all expenses of Landlord, including reasonable attorneys' fees, incident to the execution and delivery of such new lease.

(c) Mortgagee or any purchaser in foreclosure proceedings, including any business entity formed by Mortgagee or the holder of the note or other obligations secured by the Mortgage, may become the legal owner and holder of this Lease, equipment, fixtures and other property assigned as additional security for such Mortgage, by foreclosure of the Mortgage or as a result of assignment or conveyance in lieu of foreclosure.

(d) Tenant shall, promptly upon receipt of any notice of default under or acceleration of the maturity of the Mortgage, deliver a copy thereof to Landlord.

20. Indemnification.

20.1 Mutual Indemnification. Subject to the waiver of subrogation provisions in Section 21 below, Tenant shall indemnify, hold harmless, pay, and reimburse Landlord from and for any and all losses, damages, liability, or expenses (including reasonable attorneys' fees, court costs, and expert witness fees) actually incurred by Landlord, arising from loss of life, personal injury and/or property damage, caused by or resulting from, in whole or in part, any negligent act or omission or intentional misconduct of Tenant, its agents, employees, or contractors, in connection with Tenant's use or occupancy of the Premises. Subject to the waiver of subrogation provisions in Section 21 below, Landlord shall indemnify, hold harmless, pay, and reimburse Tenant from and for any and all losses, damages, liability, or expenses (including reasonable attorneys' fees, court costs, and expert witness fees) actually incurred by Tenant, arising from loss of life, personal injury and/or property damage, caused by or resulting from, in whole or in part, any grossly negligent act or omission or intentional misconduct of Landlord, its agents, employees, or contractors, in connection with the Premises.

20.2 Concurrent Negligence. Notwithstanding the provisions of Section 20.1 above, in the event of the concurrent negligence or intentional misconduct of Tenant, its agents, employees, or contractors on the one hand and that of Landlord, its agents, employees, or contractors on the other hand, a party's (the "Indemnifying Party") obligation to indemnify the other as set forth in this Section 20 shall be limited to the extent of the Indemnifying Party's negligence and/or intentional misconduct, and that of its agents, employees, or contractors, including the Indemnifying Party's proportionate share of reasonable costs, attorneys' fees, court costs, expert witness fees, and other expenses incurred in connection with any claim, action, or proceeding brought with respect to such injury or damage.

20.3 Survival. The obligations of Tenant and Landlord under this Section 20 shall survive the expiration or earlier termination of this Lease.

21. Insurance.

21.1 Property Insurance. During the Lease Term, Tenant shall maintain, Commercial Property insurance ("**CP Insurance**") that insures the Premises and Tenant's betterments in and about the Premises against loss or damage due to fire, lightning, windstorm, hail, explosion, riot, riot attending, strike, civil commotion, aircraft, vehicles, smoke and other risks from time to time in an amount equal to at least one hundred percent (100%) of the full replacement value of Tenant's betterments in and about the Premises.

21.2 Liability Insurance. During the Lease Term, Landlord and Tenant shall maintain: (i) Commercial General Liability insurance ("**CGL Insurance**") with limits of liability not less than \$1,000,000 per occurrence with a general aggregate of not less than \$2,000,000 covering liability arising from operations at the Premises; and (ii) Umbrella Liability insurance ("**Umbrella Liability Insurance**") with limits of liability of not less than \$5,000,000 per occurrence that applies on a "following form" basis and is in excess of the underlying CGL Insurance limits of liability, with the Umbrella Liability Insurance policy listing the CGL Insurance on its schedule of underlying insurance (collectively, "**Liability Insurance**").

21.3 Additional Insureds. With respect to CP Insurance, CGL Insurance and Umbrella Liability Insurance, Tenant shall include Landlord as an additional insured with respect to Tenant's negligence for any claims arising out of Tenant's operations in or upon the Premises, and Landlord shall name Tenant, its employees, officers, directors, subsidiaries, affiliates, partners, or sublessees, as additional insureds with respect to Landlord's negligence for any claims arising out of operations of the Landlord or Landlord's agents or contractors in or upon the Premises. In addition, the CP Insurance, CGL Insurance and the Umbrella Liability Insurance: (i) must be endorsed to be primary and non-contributory, rather than excess, with respect to each party's additional insured status; (ii) endorsed to provide cross-liability coverage if they do not contain a standard ISO separation of insureds provision; (iii) shall not contain any endorsement or provision that states the limits of the policy will not stack, pyramid or be addition to any other limits provided by that insurer, and (iv) have no cross suits exclusion, or any similar exclusion that excludes coverage for claims brought by an additional insured under the policy against another insured under the policy.

21.4 Rating Requirements. All insurance policies required by this Section 21: (i) must be issued by insurance companies having an "A" rating or better by Standard and Poor's, and if not rated by Standard & Poor's, then a rating of "A-" by A.M. Best Company, and (ii) may be satisfied by a primary policy or combination of primary and umbrella policies. The insurance provisions set forth in this Section 21 set forth the minimum amounts and scopes of coverage to be maintained by Landlord and Tenant and are not to be construed in any way as a limitation on each party's liability under this Lease.

21.5 Certificates of Insurance. Each party shall furnish certificates of insurance to the other party evidencing all of the above-described insurance policies prior to or upon execution of this Lease and annually thereafter, but not later than ten (10) business days after the expiration of each policy. Each party shall give the other party not less than thirty (30) days prior written notice of cancellation or non-renewal.

22. Default by Tenant.

22.1 Failure to Perform. The occurrence of any one or more of the following events shall constitute a default of this Lease by Tenant (a "**Tenant Default**"): (a) the failure by Tenant to make any payment of Minimum Rent as and when due where such failure continues for more than ten (10) days; (b) the failure by Tenant to observe or perform any of the covenants, conditions, or provisions of this Lease to be

CP

observed or performed by Tenant, other than as described in subsection (a) above, where such failure continues for more than thirty (30) days after Tenant's receipt of written notice of default from Landlord (provided, that if the cure of such Tenant Default reasonably requires more than thirty (30) days to complete, then Tenant shall not be in default if Tenant shall promptly commence the cure of such Tenant Default and diligently pursues such cure to completion); and (c) the making by Tenant of any general assignment or general arrangement for the benefit of creditors, the filing by or against Tenant of a petition to have Tenant adjudged bankrupt or a petition reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is controverted by Tenant within sixty (60) days of filing), or the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged in thirty (30) days after appointment of said trustee or receiver, or the filing of a petition for the appointment of the same, whichever shall first occur.

22.2 Remedies in Default. On the occurrence of a Tenant Default and after any applicable notice and cure period, and subject to terms and conditions provided in this Lease, Landlord may, as Landlord's sole and exclusive remedies: (a) perform, on Tenant's behalf, any unperformed covenant or obligation under this Lease constituting such Tenant Default (after giving Tenant written notice of Landlord's intention to do so except in the case of emergency which threatens life or where there is imminent danger to property), in which event Tenant shall reimburse Landlord for all expenses reasonably incurred by Landlord in doing so, plus interest at the Default Rate, which expenses and interest shall be payable by Tenant within thirty (30) days after written demand therefor by Landlord; and/or (b) terminate this Lease and collect liquidated damages from Tenant in an amount equal to (i) the sum of all amounts due under this Lease to the date of termination, plus (ii) the aggregate Minimum Rent remaining over the unexpired portion of the Lease Term, plus the reasonable cost to Landlord for any repairs and other costs of re-letting (such as broker's commissions and the cost of advertising), all reduced to present value using a discount rate equal to the interest rate of a governmental security having a maturity closest to the then current expiration of the Lease Term, less (iii) the aggregate fair net rental value of the Premises over the remaining portion of the Lease Term (provided, however, a reasonable period of time, not to exceed eighteen (18) months, may be considered as a leasing period by which the Premises would not be leased and therefor no income would be realized for such period) reduced to present value, plus (iv) Landlord's costs and expenses incurred in the enforcement of this Lease including reasonable attorneys' fees actually incurred; and/or (c) such other remedies available to Landlord at law or in equity.

22.3 Mitigation of Damages. Notwithstanding anything to the contrary set forth in this Lease, Landlord shall use its commercial reasonable good faith efforts to mitigate its damages resulting from a Tenant Default (as required by applicable Governmental Regulations or otherwise). Any costs or damages set forth in this Lease shall not include costs normally paid by a new tenant and in no event shall include costs beyond restoring the Premises to a "warm, lit" shell.

22.4 Lien Waiver. LANDLORD HEREBY WAIVES AND DISCLAIMS ALL STATUTORY AND CONTRACTUAL LIEN RIGHTS IN TENANT'S FURNITURE, FIXTURES, TRADE FIXTURES, EQUIPMENT, MERCHANDISE, AND OTHER PERSONAL PROPERTY NOW OR HEREAFTER PLACED AT THE PREMISES.

23. Default by Landlord.

23.1 Failure to Perform. Landlord's failure to perform or observe any of its obligations under this Lease after a period of thirty (30) days or the additional time, if any, that is reasonably necessary to promptly and diligently cure the failure after receiving notice from Tenant, or Landlord's breach of any of its representations, warranties or covenants is a "**Landlord Default**". The notice from Tenant shall give in rea-

sonable detail the nature and extent of the failure and identify the Lease provisions containing the obligations. After Tenant receives notice of a mortgagee's name and address and request for notice upon Landlord Default, Tenant shall provide the notice required by this Section 23.1 to the mortgagee at the same time Tenant gives notice to Landlord. If Landlord commits a Landlord Default, in addition to any remedies available under law, Tenant may, without being obligated and without waiving the Landlord Default, cure the Landlord Default. Landlord shall pay Tenant, upon demand, all costs, expenses, and disbursements incurred by Tenant to cure the Landlord Default, including costs and reasonable attorneys' fees. If such payment is not rendered within thirty (30) days of demand, Tenant may deduct all such costs and expenses from the rent next coming due. If Tenant elects not to cure the Landlord Default, Tenant shall have the right to terminate this Lease upon written notice to Landlord after the expiration of any applicable cure period (in which event the parties shall have no further rights or liabilities under this Lease (except for any that expressly survive termination of this Lease)). The provisions of this Section 23 shall survive the expiration or sooner termination of this Lease.

23.2 Remedies. It is understood and agreed that Tenant's exercise of any right or remedy due to a Landlord Default shall not be deemed a waiver of or to alter, affect, or prejudice any right or remedy which Tenant may have under this Lease or at law or in equity. Neither the payment of Minimum Rent or any other acts or omissions of Tenant at any time or times after the happening of any event authorizing the cancellation or termination of this Lease, or other remedy, shall operate as a waiver of any past or future violation, breach, or failure to keep or perform any covenant, agreement, term, or condition of this Lease or to deprive Tenant of its right to cancel or terminate this Lease, or pursue other available remedies, upon the written notice provided for in this Section 23 at any time that cause for cancellation or termination may exist, or be construed so as at any time to stop Tenant from promptly exercising any other option, right, or remedy that it may have under any term or provision of this Lease, at law, or in equity.

23.3 Landlord Bankruptcy Proceeding. If the obligations of Landlord are not performed during the pendency of a bankruptcy or insolvency proceeding involving Landlord as the debtor, or following the rejection of this Lease in accordance with Section 365 of the United States Bankruptcy Code, then notwithstanding any provision of this Lease to the contrary, Tenant shall have the right to set off against Rent next due and owing under this Lease (a) any and all damages caused by such non-performance of Landlord's obligations under this Lease by Landlord, debtor-in-possession, or the bankruptcy trustee, and (b) any and all damages caused by the non-performance of Landlord's obligations under this Lease following any rejection of this Lease in accordance with Section 365 of the United States Bankruptcy Code.

24. Damage by Fire or Other Casualty.

24.1 Tenant to Repair Premises. Subject to Section 24.2 below, if during the Lease Term the Premises shall be damaged or destroyed by fire or other casualty, Tenant shall repair or restore the Premises. The work of repair or restoration, which shall be completed with due diligence, shall be commenced within a reasonable time after the damage or loss occurs. Minimum Rent shall equitably abate while the Premises are being repaired or restored.

24.2 Damage at the End of Lease. If, during the last two (2) years of the Initial Term or during any Renewal Term, any part of the Premises shall be damaged by fire or other casualty, then Tenant shall have the option, to be exercised within sixty (60) days after such event, to either (i) repair or restore the Premises as provided above, or (ii) terminate this Lease by notice to Landlord, which termination shall be deemed to be effective as of the date of the casualty (in which event the parties shall have no further rights or liabilities under this Lease except for any that expressly survive termination of this Lease). If Tenant terminates this Lease pursuant to this Section 24.2, Tenant shall surrender possession of the Premises to Landlord in its then current condition and assign all proceeds of insurance to Landlord.

CPK

25. Condemnation/Eminent Domain.

25.1 Termination of Lease. If (i) ingress or egress to the Premises, or (ii) all or any portion of the Premises shall be acquired for any public or quasi-public use through taking by condemnation, eminent domain or any like proceeding, or purchase in lieu thereof (a "**Taking**"), such that Tenant reasonably determines that the Premises cannot, at reasonable cost, continue to be operated for its then current use, with sufficient parking for such use, then the Lease Term shall cease and terminate as of the date the condemning authority takes title or possession, whichever first occurs, and all rentals shall be paid up to that date.

25.2 Continuation of Lease. If there is a Taking and this Lease is not terminated as provided in Section 25.1 above, this Lease shall remain in full force and effect, but with an equitable reduction or abatement of Minimum Rent.

25.3 Apportionment of Award. If there occurs a Taking, whether whole or partial, Landlord and Tenant shall be entitled to receive and retain such separate awards and portions of lump sum awards as may be allocated to their respective interests in any condemnation proceedings, or as may be otherwise agreed, taking into consideration the fact that Landlord's interest in the Premises is limited to the Premises, as encumbered by this Lease, a reversionary interest in the leasehold improvements (exclusive of Tenant's Trade Fixtures) upon the expiration of the Lease Term, and the right to receive rent under this Lease. If the Premises shall be restored as provided in this Section 25, Tenant shall first be entitled to recover the costs and expenses incurred in such restoration out of any such award. Thereafter, if the condemning authority does not make separate awards and the parties are unable to agree as to amounts that are to be allocated to the respective interests of Landlord and Tenant, then each party shall select an independent M.A.I. real estate appraiser (an "**Appraiser**"). Each Appraiser shall separately determine the amount of the condemnation award that is to be allocated to the interests of Landlord and Tenant. If the percentages of the total award each Appraiser allocates to Landlord and Tenant (a) are within ten percent (10%) of each other, the two (2) allocations shall be averaged and such average shall be the final allocation of the award, or (b) are not within ten percent (10%) of each other, the two Appraisers shall then select a third Appraiser who shall independently allocate the award between Landlord and Tenant, and the middle of such three (3) allocations shall be the final allocation of the award. Each party shall bear the cost of its Appraiser as well as one-half the cost of the third Appraiser.

25.4 Early Transfer of Possession by Tenant. Tenant may continue to occupy the Premises until the condemning authority takes physical possession. However, at any time following notice of intended Taking, or within the time limit specified for delivering possession, Tenant may, by written notice to Landlord, elect to deliver possession of the Premises to Landlord before the actual Taking. Tenant's right to apportionment of or compensation from the award shall then accrue as of the date that Tenant so delivers possession.

26. Intentionally Omitted.

27. Intentionally Omitted.

28. Subordination, Non-Disturbance, and Attornment.

This Lease is subject and subordinate to the lien of all mortgages or deeds of trust which may now or hereafter affect or encumber all or any portion of the Premises and to all renewals, modifications, consolidations, replacements and extensions thereof; provided, however, that the foregoing provision shall only be applicable with respect to those future mortgages or deeds of trust to which Tenant has been provided a Subordination, Non-Disturbance and Attornment Agreement ("**SNDA**") in form reasonably acceptable to Tenant

and further providing generally that the mortgagee, trustee, or any purchaser at the foreclosure of the mortgage or deed of trust will not disturb Tenant's possession of the Premises and that Tenant will attorn to such mortgagee, trustee, or purchaser at foreclosure as Landlord under the terms and conditions of this Lease upon receiving written notice that such party has succeeded to the interest of Landlord under this Lease. In confirmation of such subordination, Tenant shall join with any such mortgagee or trustee and execute promptly (and, in any event, within thirty (30) days after receipt of a written request therefor) an SNDA. Tenant's obligation to join with any mortgagee or trustee in the execution of an SNDA shall be applicable with respect to all present and future mortgages or deeds of trust to which Landlord requests Tenant's execution of an SNDA.

29. Estoppel Certificate.

Landlord and Tenant shall, within thirty (30) days after written request therefor from the other, execute and deliver to such persons as the requesting party shall request, 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 so modified), stating the dates which rent and other charges payable under this Lease have been paid, stating the commencement and termination dates of the current term of this Lease and stating whatever options to extend there may be in this Lease, stating that Landlord or Tenant, as applicable, is not in default under this Lease to the best of such party's knowledge (or if Landlord or Tenant, as applicable, have alleged a default, stating the nature of such alleged default), and further stating such other matters relating to this Lease as the requesting party shall reasonably require.

30. Access to Premises.

Landlord, its agents, servants, or employees may enter the Premises at reasonable times during Tenant's business hours with reasonable advance notice to Tenant (or an authorized employee of Tenant at the Premises), and at any time if an emergency (which threatens life or where there is imminent danger to property), to do the following: inspect the Premises and show the Premises to prospective lenders or purchasers and, during the one hundred eighty (180) days immediately prior to the expiration of this Lease, to prospective tenants, but only if all such showings are accompanied by a representative of Tenant if so requested by Tenant; provided, however, that all such entries shall cause the least practical interference to Tenant's business and Tenant's use of the Premises. If Landlord's entry materially and substantially interferes with the conduct of Tenant's business and/or causes damage to Tenant's property, then in such event the Minimum Rent and any sums due and payable by Tenant under this Lease, shall abate in proportion to the extent of the interference and Landlord shall be liable for any damage to Tenant's property.

31. Holding Over.

If Tenant holds over without Landlord's written consent, Tenant shall pay Minimum Monthly Rent equal to one hundred fifty percent (150%) of the then applicable Minimum Monthly Rent. Possession by Tenant after the expiration of this Lease shall not be construed to extend the Lease Term. The remedy set forth in this Section 31 shall be Landlord's exclusive remedy with respect to a holdover by Tenant and shall be in lieu of all other remedies that may be allowed by applicable Governmental Regulations for a holdover by Tenant.

32. Quiet Enjoyment.

During the Lease Term, Landlord shall, provided Tenant pays all Minimum Rent and performs the terms and conditions of this Lease as and when required, take all necessary steps to secure to Tenant and to maintain for the benefit of Tenant the quiet and peaceful possession and enjoyment of the Premises and all rights appurtenant thereto, without disturbance, hindrance, or molestation by Landlord or any other person

claiming title to the Premises or any part thereof, and Landlord warrants and forever shall defend Tenant's interest under this Lease against the claims of any and all persons.

33. Brokerage Commissions.

Landlord and Tenant warrant and represent that they have not dealt with any real estate broker or agent in connection with this Lease. Each party represents that it has not dealt with any other person that would create any liability for the payment of a commission by the other party. The party breaching the foregoing representation shall indemnify, defend, hold harmless, pay, and reimburse the non-breaching party from and for any claims, damages, or other liability arising out of or resulting from such breach. The provisions of this Section 33 shall survive the expiration or sooner termination of this Lease.

34. Notices.

34.1 Written Notice; Delivery Methods. Each party giving or making any notice, request, demand, consent, approval, or other communication (each, a "**Notice**" (but sometimes "**notice**")) pursuant to this Lease shall: (i) give the Notice in writing; (ii) cause the Notice to be signed by an authorized representative of the sending party (the sending party's attorney is authorized to sign and send a Notice on behalf of the sending party); and (iii) use one of the following methods of delivery, each of which for purposes of this Lease is a writing: (a) personal delivery; (b) Registered or Certified Mail, in each case, return receipt requested and postage prepaid; or (c) nationally recognized overnight courier, with all fees prepaid.

34.2 Addresses. Each party giving a Notice shall address the Notice to the appropriate person at the receiving party (the "**Addressee**") at the addresses listed in the Notice Addresses section of the Key Provisions Summary or to another Addressee or at another address as designated by a party in a Notice pursuant to this Section 34.

34.3 Effectiveness of a Notice. Except as provided elsewhere in this Lease, a Notice is effective only if (A) the party giving the Notice has complied with Sections 34.1 and 34.2 above and (B) the Notice is deemed to have been received by the Addressee as provided below. A Notice is deemed to have been received by the Addressee as follows: (i) if a Notice is delivered in person, or sent by Registered or Certified Mail, or nationally recognized overnight courier, upon receipt by the Addressee as indicated by the date on the signed receipt, or if refused, on the next business day from when such Notice was sent; and (ii) if the Addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver the Notice.

34.4 Delivery Time of Notice. Notwithstanding the foregoing, if any Notice is received after 5:00 p.m. on a Business Day where the Addressee is located, or on a day that is not a Business Day where the Addressee is located, then the Notice is deemed received at 9:00 a.m. on the next Business Day where the Addressee is located.

35. Force Majeure.

35.1 Definition. "**Force Majeure Event**" means any act or event, whether foreseen or unforeseen, that meets all three of the following tests: (a) the act or event prevents a party (the "**Non-Performing Party**"), in whole or in part, from (i) performing its obligations under this Lease, or (ii) satisfying any conditions to the obligations of the other party (the "**Performing Party**") under this Lease; (b) the act or event is beyond the reasonable control of and not the fault of the Non-Performing Party; and (c) the Non-Performing Party has been unable to avoid or overcome the act or event by the exercise of due dili-

gence. In furtherance of the definition of *Force Majeure* Event and not in limitation of that definition, each of the following acts or events is an example of an act or event that could be a *Force Majeure* Event if the act or event meets each of the above requirements of this Section 35.1: accident, fire, act of God, act of a public enemy, injunction, riot, strike, lockout, insurrection, war, terrorist attack, court order, requisition or order of governmental body or authority, and inability to procure labor or materials from normally available sources. Notwithstanding the preceding definition of a *Force Majeure* Event, a *Force Majeure* Event excludes economic hardship, changes in market conditions, and insufficiency of funds.

35.2 Suspension of Performance. If a *Force Majeure* Event occurs, the Non-Performing Party is excused from (i) whatever performance is prevented by the *Force Majeure* Event to the extent prevented, and (ii) satisfying whatever conditions precedent to the Performing Party's obligations that cannot be satisfied, but only to the extent they cannot be satisfied due to the *Force Majeure* Event. Notwithstanding the preceding sentence, a *Force Majeure* Event does not excuse any obligation by either the Performing Party or the Non-Performing Party to make any payment required under this Lease.

35.3 Resumption of Performance. When a *Force Majeure* Event no longer prevents the Non-Performing Party from (i) resuming performance of its obligations under this Lease, or (ii) satisfying the conditions precedent to the Performing Party's obligations, it shall immediately give the Performing Party written notice to that effect and shall resume performance under this Lease no later than five (5) business days after the notice is delivered.

35.4 Exclusive Remedy. The relief offered by this *Force Majeure* provision is the exclusive remedy available to the Non-Performing Party with respect to a *Force Majeure* Event. In addition, the liability of either party for an event that arose before the occurrence of the *Force Majeure* Event is not excused as a result of such occurrence.

36. Additional Terms.

36.1 Default Rate of Interest. The "**Default Rate**" of interest shall be the lesser of six percent (6%) per annum or the rate per annum equal to the then current prime interest rate published in The Wall Street Journal in its "Money Rates" section.

36.2 Successors or Assigns. The terms, conditions, covenants, and agreements of this Lease extend to and are binding upon Landlord, Tenant, and their respective heirs, administrators, executors, legal representatives and permitted successors, subtenants, and assigns, if any, and upon any person or entity coming into ownership or possession of any interest in the Premises by operation of law or otherwise. Without limiting the effect of the preceding sentence, the covenants (if any) contained in Section 10 are for the purpose of protecting the value and desirability of the Premises and leasehold granted to Tenant hereunder and shall run with title to the Premises, and shall be binding upon Landlord and Landlord's successors and assigns, including, without limitation, all tenants of any such property.

36.3 Severability. If any term, covenant, or condition of this Lease or the application thereof to any person or circumstance is, to any extent, invalid, illegal, or unenforceable, the remainder of this Lease, or the application of such term, covenant, or condition to parties or circumstances other than those to which it is held invalid, illegal, or unenforceable, is not affected thereby and each term, covenant, and condition of this Lease remains valid and enforceable to the fullest extent permitted by law, but only if the essential terms and conditions of this Lease for each party remain valid, binding, and enforceable.

36.4 Memorandum of Lease. Neither Landlord nor Tenant shall permit, allow or cause this Lease, or any amendment to this Lease, to be recorded in any public registry or office of register of deeds;

provided, however, at the request of either party, Landlord and Tenant shall execute a recordable memorandum of this Lease setting forth the names and addresses of the parties, a reference to this Lease with its date of execution, specific legal descriptions of the Premises, the actual Lease Commencement Date, the term of this Lease and any Renewal Term(s) provided for, Landlord's covenants (if any) under Section 10, which memorandum may be recorded by Tenant at Tenant's expense or by Landlord at Landlord's expense in the appropriate public records of the jurisdiction in which the Premises are situated.

36.5 Waiver. The parties may waive any provision of this Lease only by a writing executed by the party or parties against whom the waiver is sought to be enforced. No failure or delay in exercising any right or remedy or in requiring the satisfaction of any condition under this Lease, and no act, omission, or course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition. A waiver once given is not to be construed as a waiver on any future occasion or against any other person or entity.

36.6 Amendment. The parties may amend this Lease only by a written agreement of the parties that identifies itself as an amendment to this Lease.

36.7 Headings/Captions. The descriptive headings/captions of the sections and subsections of this Lease are for convenience only, do not constitute a part of this Lease, and do not affect this Lease's construction or interpretation. The words "herein", "hereof", and "hereto" when used in this Lease refer to this Lease in its entirety and not solely to any specific sentence, paragraph, or section.

36.8 Choice of Law. The laws of the state, commonwealth, or jurisdiction where the Premises are located (without giving effect to its conflict of laws principles) govern all matters arising out of or relating to this Lease and the transactions it contemplates, including, without limitation, its interpretation, construction, performance, and enforcement.

36.9 Acceptance of Keys. The acceptance of keys to the Premises by Landlord, its agents, employees, contractors, or any other person on Landlord's behalf shall not be deemed or constitute an early termination of this Lease unless such early termination is evidenced in writing and signed by Landlord.

36.10 Authority to Execute. Tenant represents and warrants that this Lease has been duly authorized, executed, and delivered by and on behalf of Tenant and constitutes the valid, binding, and enforceable agreement of Tenant in accordance with the terms of this Lease. Landlord represents and warrants that this Lease has been duly authorized, executed, and delivered by and on behalf of Landlord, and constitutes the valid, binding and enforceable agreement of Landlord in accordance with the terms of this Lease.

36.11 No Construction Against Drafting Party. Landlord and Tenant acknowledge that each of them and their respective counsel have had an opportunity to review this Lease and that this Lease shall not be construed for or against either party merely because such party prepared or drafted this Lease or any particular provision thereof.

36.12 Counterparts. The parties may execute this Lease in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile is as effective as executing and delivering this Lease in the presence of the other parties to this Lease. This Lease is effective upon delivery of one executed counterpart from each party to the other parties. In proving this Lease, a party must produce or account only for the executed counterpart of the party to be charged. Any party delivering an executed counterpart of this Lease by facsimile shall also deliver a

manually executed counterpart of this Lease, but the failure to do so does not affect the validity, enforceability, or binding effect of this Lease.

36.13 Merger/Prior Agreements. THIS LEASE CONSTITUTES THE FINAL AGREEMENT BETWEEN THE PARTIES. IT IS THE COMPLETE AND EXCLUSIVE EXPRESSION OF THE PARTIES' AGREEMENT ON THE MATTERS CONTAINED IN THIS LEASE. ALL PRIOR AND CONTEMPORANEOUS NEGOTIATIONS AND AGREEMENTS BETWEEN THE PARTIES ON THE MATTERS CONTAINED IN THIS LEASE ARE EXPRESSLY MERGED INTO AND SUPERSEDED BY THIS LEASE. THE PROVISIONS OF THIS LEASE MAY NOT BE EXPLAINED, SUPPLEMENTED, OR QUALIFIED THROUGH EVIDENCE OF TRADE USAGE OR A PRIOR COURSE OF DEALINGS. IN ENTERING INTO THIS LEASE, THE PARTIES HAVE NOT RELIED UPON ANY STATEMENT, REPRESENTATION, WARRANTY, OR AGREEMENT OF THE OTHER PARTY EXCEPT FOR THOSE EXPRESSLY CONTAINED IN THIS LEASE. THERE IS NO CONDITION PRECEDENT TO THE EFFECTIVENESS OF THIS LEASE OTHER THAN THOSE EXPRESSLY STATED IN THIS LEASE.

36.14 Acceptance. The submission of this Lease to Landlord by Tenant or to Tenant by Landlord does not constitute an offer to lease. This Lease shall become effective only upon the execution and delivery thereof by both Landlord and Tenant.

36.15 Damages. Notwithstanding anything set forth in this Lease to the contrary, neither party shall be liable to the other for any special, indirect, punitive, or consequential damages.

36.16 Business Days. Time is of the essence in this Lease. "**Business Day**" (or "**business day**") means, as to any party, any day that is not a Saturday, Sunday, or other day on which national banks are authorized or required to close in the state, commonwealth, or jurisdiction where the Premises are located. If the last day of any time period under this Lease, or the last day for performance of any obligation, or for giving any notice, or for taking any other action under this Lease falls on a day that is not a Business Day, then the last day of such time period shall be extended to the first day thereafter that is a Business Day.

36.17 Attorneys' Fees. In the event of any litigation related to this Lease, whether to enforce its terms, recover for default, or otherwise, if either party receives a judgment, settlement, or award in its favor (the "**Receiving Party**") against the other party (the "**Paying Party**") in such litigation, the Paying Party will pay upon demand all of the Receiving Party's costs, charges, and expenses (including but not limited to reasonable attorneys' fees, court costs, and expert witness fees) arising out of such litigation (including the costs of any appeal related thereto); provided, however, that if prior to commencement of a trial in the litigation the Paying Party offers to pay an amount equal to or in excess of such judgment, settlement, or award, the Receiving Party shall not be entitled to any such fees, costs, charges, or expenses.

36.18 Intentionally Omitted.

36.19 Third-Party Beneficiaries. This Lease does not and is not intended to confer any rights or remedies upon any person or legal entity other than the signatories. Landlord, its successors and assigns, shall look solely to the assets, if any, of Tenant for the satisfaction of any claim arising from or under this Lease and shall not seek to impose any personal liability on any shareholder, officer, director, member or employee of Tenant or any of its affiliates.

36.20 Survival. The provisions of this Lease that would require that they survive the termination of the Lease in whole or part to give them full effect will survive the termination of this Lease in whole or part for any reason, regardless of the date, cause, or manner of such termination. In addition, all

rights of action arising from or related to this Lease that accrue during the term of the Lease, and any remedies for such claims, both legal and equitable, will survive termination.

37. **Waiver of Jury Trial.**

EACH PARTY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY TO THE EXTENT PERMITTED BY LAW IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS IT CONTEMPLATES. THIS WAIVER APPLIES TO ANY ACTION OR OTHER LEGAL PROCEEDING, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. EACH PARTY ACKNOWLEDGES THAT IT HAS RECEIVED THE ADVICE OF COMPETENT COUNSEL.



IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the dates set forth below.

Landlord:

IMPORTANT PROPERTIES, LLC

By: Denise Meskunas


Print Name: Denise Meskunas

Title: 4/25/16 Managing Member

Date: _____

Tenant:

PETER FRIEND MOTORCYCLES, LLC

By: 

Print Name: Cooper F. Friend

Title: Managing Member

Date: 4.25.16