



**A. INTRODUCTION**

Pursuant to Section 1125 of Title 11 of the United States Code (the "Bankruptcy Code"), Fairytale Day Care, Inc., the debtor and debtor-in possession (the "Debtor") provides this First Amended Disclosure Statement ("Disclosure Statement") to all of its known creditors and other parties in interest in order to provide information deemed by the Debtor to be material and necessary to enable such creditors and parties in interest to make a reasonable informed decision in the exercise of their rights to vote on and participate in the Plan of Reorganization proposed by the Debtor (the "Plan"). The proposed Plan is annexed hereto as **Exhibit "A"**.

The information contained in this Disclosure Statement is based on the representations made by the Debtor in its Petition and Schedules and all other documents provided to counsel for the Debtor and are believed to be accurate. It has not been subjected to a certified audit or independent review. Therefore, no representation or warranty is made as to its accuracy or completeness. However, the Debtor has reasonably endeavored to obtain and supply all material information. The Office of the United States Trustee has not yet reviewed and approved the Disclosure Statement. The Bankruptcy Court will conduct a hearing on the approval of the Disclosure Statement.

**THE BANKRUPTCY COURT HAS SET AT \_\_\_\_\_ ON \_\_\_\_\_ AS  
THE DATE AND TIME OF THE HEARING FOR FINAL APPROVAL OF THE  
DISCLOSURE STATEMENT AND CONFIRMATION OF THE PLAN AND  
OBJECTIONS THERETO, WHICH HEARING WILL BE HELD IN THE UNITED  
STATES BANKRUPTCY COURT, EASTERN DISTRICT OF NEW YORK, 271 CADMAN  
PLAZA EAST, BROOKLYN, NEW YORK 11201-1800. CREDITORS OF AND  
HOLDERS OF INTERESTS IN THE DEBTOR MAY ATTEND SUCH HEARING.**

THE BANKRUPTCY COURT HAS FIXED \_\_\_\_\_ AS THE DATE AND TIME BY WHICH ALL WRITTEN OBJECTIONS TO CONFIRMATION OF THE PLAN AND/OR THE DISCLOSURE STATEMENT SHALL BE FILED WITH THE BANKRUPTCY COURT AND SERVED SO AS TO BE RECEIVED BY SAID DATE UPON THE ATTORNEYS FOR THE DEBTOR AND THE UNITED STATES TRUSTEE.

A BALLOT ACCOMPANIES THIS DISCLOSURE STATEMENT FOR YOUR USE IN VOTING ON THE PLAN. IN ORDER TO BE CONFIRMED, THE PLAN MUST BE ACCEPTED BY A MAJORITY IN NUMBER AND TWO-THIRDS IN AMOUNT OF THOSE VOTING IN EACH CLASS IMPAIRED UNDER THE PLAN, EXCEPT TO THE EXTENT THAT THE PLAN MAY BE CONFIRMED NOTWITHSTANDING THE FAILURE TO OBTAIN SUCH ACCEPTANCE IN ACCORDANCE WITH SECTION 1129(b) OF THE BANKRUPTCY CODE.

YOU ARE URGED TO REVIEW THE PLAN, THIS DISCLOSURE STATEMENT, AND THE BALLOT WITH COUNSEL OF YOUR CHOICE. HOLDERS OF CLAIMS WHICH ARE IMPAIRED UNDER THE PLAN MAY VOTE TO ACCEPT OR REJECT THE PLAN BY COMPLETING, MAILING AND/OR FAXING THE ENCLOSED BALLOT SO AS TO BE RECEIVED ON OR BEFORE \_\_\_\_\_ TO DEBTOR'S ATTORNEYS, AT THE ADDRESS, FAX NUMBER, AND/OR E-MAIL ADDRESS SET FORTH BELOW:

Law Offices of Alla Kachan, P.C.  
3099 Coney Island Avenue, 3<sup>rd</sup> Floor  
Brooklyn, NY 11235  
Tel.: (718) 513-3145  
Fax: (347) 342-3156  
e-mail: [alla@kachanlaw.com](mailto:alla@kachanlaw.com)

**THE DEBTOR RECOMMENDS AND REQUESTS YOUR ACCEPTANCE OF THE PLAN.**

Other than the information set forth in this Disclosure Statement, the Debtor has not authorized any person or entity to make representations concerning the Debtor, its business, their future income, the value of the Debtor's assets, or the amounts to be distributed under the Plan. Any representations or inducements made to secure your acceptance of the Plan which is other than as contained in this Disclosure Statement should not be relied upon by you in determining whether to accept or reject the Plan.

**B. DEBTOR'S BACKGROUND**

**(i) Description of the Debtor and History of Debtor's Business**

The Debtor is a corporation formed under the laws of the State of New York. Since April, 2011, the Debtor has been operating Fairytale Day Care, Inc., currently located at 99-13/17 63rd Road, Rego Park, NY 11374 (collectively, the "Property").

**(ii) Debtor's Insiders**

**The sole insiders of the Debtor as defined by § 101(31) of the Bankruptcy Code are:** Maria Isakova ("Ms. Iskatova") as the President, and George Borok ("Mr. Borok") as the secretary, and are the two sole shareholders of the Debtor, holding a ninety percent (90%) interest and ten percent (10%) interest, respectively. Ms. Iskatova is currently a debtor in her own Chapter 7 Bankruptcy case. As a result, her Chapter 7 Trustee, David J. Doyaga, Sr. ("Chapter 7 Trustee") holds title to her shares in the Debtor. The wages paid to Ms. Isakova for the two year period prior to the Petition Date were \$144,575.17 and approximately \$34,661.48 respectively since the Petition Date. The wages paid to Mr. Borok for the two year period prior to the Petition Date is \$26,997.91 and approximately \$17,258.54 respectively since the Petition Date.

### **Management of the Debtor Before and During the Bankruptcy**

During the two (2) years prior to the date on which the bankruptcy petition was filed, and during the pendency of the Debtor's chapter 11 case, Ms. Isakova and Mr. Borak, were the sole officers and directors, of the Debtor. Post petition, Ms. Isakova and Mr. Borak, continued to be the sole officers and directors of the Debtor. Subject to the consent of her Chapter 7 Trustee, Ms. Isakova will continue in the management of the business and her compensation will remain \$4,000.00 as approved by the court on March 9, 2016 and Mr. Borak will continue in the management of the business and his compensation will remain \$3,000.00 as approved by the court on March 9, 2016.

#### **(iii) Events Leading to Chapter 11 Filing**

The Debtor is a Day Care located at 99-13/17 63rd Road, Rego Park, NY 11374.

The filing of the instant Chapter 11 proceeding by Fairytale Day Care, Inc. were brought about by a long standing dispute and litigation between Fairytale Day Care, Inc. and the landlords of the premises where the day care is located. The parties were engaged in landlord/tenant litigation (the "Landlord /Tenant Action") in Queens County for a protracted period of time, which precipitated the filing.

### **C. HISTORY**

The Debtor commenced this proceeding by filing a voluntary petition in the United States Bankruptcy Court for the Eastern District of New York under Chapter 11 of the Bankruptcy Code, on May 29, 2015 (the "Petition Date").

On July 13, 2015 the Debtor filed a motion seeking the retention of Alla Kachan, Esq. as bankruptcy counsel for the Debtor.

The Objection of the U.S. Trustee to the Debtor's Application to Employ Law Offices of

Alla Kachan, P.C, as counsel to the Debtor was filed on July 22, 2016 that was resolved by filing of Affirmation in Opposition to the Objection of the US Trustee to the debtor's application to retain the Law Offices Of Alla Kachan, P.C., as attorney for the Debtor.

By an Order of the Court dated June 13, 2016, Alla Kachan's retention was approved on behalf of the Debtor.

On July 13, 2015 the Debtor filed a motion seeking the retention of Wisdom Professional Services Inc. as bankruptcy accountant for the Debtor.

The supplemental affidavit of Michael Shtarkman, in support of that application was filed on August 4, 2015.

By an Order of the Court dated February 12, 2016, Wisdom Professional Services Inc. retention was approved on behalf of the Debtor.

Pursuant to Section 341 of the Bankruptcy Code, a meeting of creditors was held on July 17, 2015.

An order setting forth the last day to file proofs of claim was entered on July 21, 2015, scheduling the claims bar date as November 30, 2015.

On January 3, 2014, Maria Isakova, one of the two principal of the Debtor, filed her voluntary petition for Chapter 13 bankruptcy relief.

Upon motion of Maria Isakova, the Chapter 13 Case was converted to one under Title 11, Chapter 11, U.S.C. pursuant to order of the Court dated and entered June 6, 2016.

On August 13, 2015 the Chapter 11 Case was converted to one under Title 11, Chapter 7, U.S.C. As noted above, the Chapter 7 Trustee was appointed and qualified as Trustee.

On August 14, 2015, the Landlords filed proofs of claim against the Debtor.

On August 18 2015, the Landlords filed a motion (the "365(d)(3) Motion") seeking

allowance of certain postpetition claims arising under the leases with the Debtor and further seeking an order directing Debtor to comply with alleged lease obligations.

On September 15, 2015, the Debtor objected to the 365(d)(3) Motion.

On September 16, 2015, the Court held an initial hearing on the 365(d)(3) Motion and gave the Debtor and the Landlords an opportunity to mediate the disputes between them.

On October 26, 2015, the Debtor and Landlords entered into a first stipulation addressing certain issues of dispute in the 365(d)(3) Motion.

On November 12, 2015, the Landlord's filed in the Isakova chapter 7 case proofs of claim based on Ms. Isakova's guaranties of the Fairytale Day Care leases.

On November 19, 2015, this Court entered an order appointing Bruce Weiner, Esq. as mediator concerning the 365(d)(3) Motion.

On December 7, 2015, the Landlords filed a motion (the "365(d)(4) Motion") seeking to deem the leases with Fairytale rejected.

On December 16, 2015, December 22, 2015, and January 7, 2016, the Debtor and the Landlords met in mediations sessions.

On January 8, 2016, the Debtor filed opposition to the 365(d)(4) Motion.

On January 25, 2016, this Court entered a second stipulation and order between the Debtor and Landlords partially resolving certain additional issues in the 365(d)(3) Motion.

On February 26, 2016, the Debtor and the Landlord's executed a memorandum of understanding subject to the execution of a a definitive settlement agreement and replacement leases for the Property.

On March 8, 2016, this Court entered a third stipulation and order between the Debtor and Landlords partially resolving certain additional issues in the 365(d)(3) Motion.

On April 13, 2016, this Court entered a fourth stipulation and order between the Debtor and Landlords partially resolving certain additional issues in the 365(d)(3) Motion.

On or about June 10, 2016, the Debtor and Landlords executed, subject to final Court approval, a global settlement agreement (the "Global Stipulation") and replacement leases for the Property ("Replacement Leases"), which once approved by the Court, and subject to confirmation of a chapter 11 plan acceptable in form to the Landlords and the Debtor's compliance with such chapter 11 plan, resolve the 365(d)(3) Motion, the 365(d)(4) Motion, and all the proofs of claim asserted by the Landlords in the Isakova chapter 7 case and in this chapter 11 case.

The Chapter 7 Trustee is holding in an attorney escrow account approximately \$114,000.00 turned over to the Trustee from the Chapter 11 case (the "Isakova Account"). The Chapter 7 Trustee has agreed to consent to this Plan and Disclosure Statement being filed and approved and confirmed by the Court as part of a global settlement wherein all claims and Administrative expenses in the Chapter 7 will be paid in full including the claims of New York State entities which have been reduced as per a court approved settlement). Upon the payment of all Claims and Administrative expenses in full, the Trustee will abandon Ms. Iskatova's interest in the Debtor, either by motion or by filing a final report, which does not administer that asset.

#### **D. PROJECTED RECOVERY OF AVOIDABLE TRANSFERS**

The Debtor does not intend to pursue any preference, fraudulent conveyance, or other avoidance actions.

#### **E. PLAN FUNDING**



The entity's reorganization plan is to utilize funds earned from its thriving operation of the business to fund a Global Stipulation resolving all motions and issues in dispute and enter into new leases for the premises located at 99-13 and 99-17 63<sup>rd</sup>. Please see Exhibit "F".  
Projected 5 year Profit and Loss Statement.

**F. CLASSIFICATION, AMOUNT AND NUMBER OF CLAIMS**

The Plan divides all Claims and Interests into the following Classes, plus Administrative, Priority Tax Claims and Statutory Fees.

**1. Administrative Claims**

Administrative claims consist of the Debtor's duly retained professionals and any other administrative expenses allowed under Section 503 of the Bankruptcy Code.

Administrative Claims will include the fees and expenses of the Debtor's Counsel, Alla Kachan, Esq., in the approximate amount of \$10,000.00 (through confirmation, exclusive of the pre-petition retainer received prior to the Petition Date in the amount of \$5,000.00 from the Debtor).

Wisdom Professional Services Inc. asserts a claim for the fees and expenses as accountants for the Debtor, in the approximate amount of \$5,000.00. Wisdom Professional Services Inc. has not received an initial retainer fee prior to filing.

The claims of Debtor's professionals shall be subject to final fees applications pursuant to Bankruptcy Code Section 330 and orders of the Court approving the fees and expenses as sought by this application. The Debtor estimates that the total administrative fees paid to professionals will equal to **\$15,000.00**.

**2. Priority Claims**

**Class I - Priority Tax Claims:**

- (i) Unsecured Priority claim of New York State Department of Labor with a priority claim in the amount of \$20,149.39;
- (ii) Unsecured Priority claim of New York State Department of Taxation and Finance in the amount of \$333.86 comprising base taxes and accumulated interest;
- (iii) Unsecured Priority claim of NYC Department of finance in the amount of \$2,687.04 comprising base taxes and accumulated interest;
- (iv) Unsecured Priority claim of Internal Revenue Service in the amount of \$48,501.46 comprising base taxes and accumulated interest.

3. In addition to Administrative, Priority, and general unsecured claims, there exist **statutory fees** due and payable by the Debtor to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6) and any applicable interest thereon shall be paid in cash by the Effective Date. United States Trustee fees and any applicable interest thereon shall continue to be paid by the Debtor until the earlier of Debtor's case being closed by entry of a final decree, converted, or dismissed.

4. **Class II** consists of the claims of general unsecured creditors in the Debtor's case totaling approximately \$12,449.41:

Penalties assessed New York State Department of Taxation and Finance is \$2,585.42;

Penalties assessed Internal Revenue Service is \$7,400.93;

ConEdison is \$2,463.06.

5. **Class III** consists of the two claims for pre petition rent, filed by Ilya Mitelman, on behalf of the Landlord of the Property, in the amount of \$105,154.41 and \$115,000.00. As per the Global Stipulation, the Class III claims are deemed allowed and are not disputed by the

Debtor.

6. Maria Isakova and George Borok, the **Class IV** interest holders.

## **G. REQUIREMENTS FOR CONFIRMATION OF THE PLAN**

### **1. Confirmation Hearing**

The Bankruptcy Court has set \_\_\_\_\_ as the date and time for a hearing to determine whether the Plan has been accepted by the requisite number of Creditors and whether the other requirements for confirmation of the Plan have been satisfied. Each Creditor will receive notice of the Confirmation Hearing.

### **2. Requirements for Confirmation**

In order to confirm the Plan, Section 1129 of the Bankruptcy Code requires the Court to make a series of determinations concerning the Plan, including that:

- a. the Plan classifies Claims and Interests in a permissible manner;
- b. the Plan complies with the technical requirements of Chapter 11 of the Bankruptcy Code;
- c. the proponent of the Plan (here the Debtor) has proposed the Plan in good faith;
- d. the Plan proponent's disclosures concerning the Plan have been adequate and have included information concerning all payments and distributions to be made in connection with the Plan.

The Debtor believes that all of these conditions have been met or will be met by the time of the Confirmation Hearing, and the Debtor will seek a determination of the Court to this effect at the Confirmation Hearing.

### **3. Acceptances Necessary for Confirmation**

The Bankruptcy Code requires that the Plan be accepted by requisite votes of Creditors, except to the extent that "cram down" is available under Section 1129(b) of the Bankruptcy Code. The Bankruptcy Code requires that the Plan be feasible. Because the funds required for The Plan shall be provided from revenue derived from the business, the Debtor anticipates increasing its business volume by promoting special events in addition to the daily operations, enhancing Debtor's ability to make regular payments required under this Plan.

The Bankruptcy Code also requires that the Plan place each Creditor's Claim in a class with other Claims which are substantially similar. The Debtor believes that the classification system in the Plan meets the Bankruptcy Code's standard. Although the Court must independently conclude that the Plan's classification system is legally authorized, any Creditor who believes that the Plan has improperly classified any group of Claims may object to Confirmation of the Plan.

At the Confirmation Hearing, the Court must determine, among other things, whether the Plan has been accepted by each Class of Creditors who's Claims are impaired under the Plan.

Under Section 1126 of the Bankruptcy Code, any impaired Class is deemed to accept the Plan if it is accepted by at least two-thirds in amount and more than one-half in number of the Allowed Claims of Class members who have voted on the Plan. Further, unless there is unanimous acceptance of the Plan by an impaired Class, the Court must also determine that under the Plan, Class members will receive property of value as of the Effective Date of the Plan that is not less than the amount such Class members would receive or retain if the Debtor was liquidated under Chapter 7 of the Bankruptcy Code on the Effective Date. This requirement is commonly referred to as the "Best Interests Test."

**Chapter 7:**

To determine the value that the holders of Impaired Claims would receive if the Debtor was liquidated, the Bankruptcy Court must determine the dollar amount that would be generated from the liquidation of assets and properties of the Debtor in the context of a chapter 7 liquidation case. Section 704 of the Bankruptcy Code requires a chapter 7 trustee to collect and reduce to money the property of the estate as expeditiously as is compatible with the best interests of parties in interest. In the case of the Debtor, a chapter 7 trustee would be administering an estate made up largely of the same Assets that are available for Creditors under the Plan. The Cash available for satisfaction of Allowed Claims would consist of the proceeds resulting from the disposition of assets of the Debtor, augmented by Cash, if any, held by the Debtor at the time of the commencement of the chapter 7 case. That Cash amount would then be reduced by the amount of any Claims secured by the assets, the costs and expenses of the liquidation, and additional Administrative Claims and other Priority Claims that may result from the use of chapter 7 for the purposes of liquidation. The costs of liquidation under chapter 7 would include fees payable to the trustee in bankruptcy, as well as those that might be payable to his or her attorneys and to other professionals that the trustee may engage, plus any unpaid expenses incurred by the Debtor during the Chapter 11 Case that would be allowed in the chapter 7 cases, such as compensation for attorneys, accountants or other professionals and costs and expenses of the Debtor. These Administrative Claims would have to be paid in Cash, in full, from the liquidation proceeds before the balance of those proceeds could be made available to pay other Priority Claims and allowed General Unsecured Claims from the Chapter 11 Case. In a chapter 7 case, there would be no payment from any disposable income of the debtor after such conversion. Please see **Exhibit**

“B”, Liquidation Analysis.

**4. Persons Entitled to Vote on the Plan**

Only the votes of Classes whose Claims are impaired by the Plan will be counted in connection with Confirmation. Generally, this includes any Creditors who, under the Plan, will receive less than payment in full of the Allowed Amount of their Claims on the Effective Date.

In determining the acceptance of the Plan, votes will be counted only if submitted by a Creditor whose Claim is scheduled by the Debtor as undisputed, non-contingent, and liquidated or who timely filed with the Bankruptcy Court a proof of claim which has not been objected to or disallowed.

**5. Solicitation of Acceptances**

This Disclosure Statement must be finally approved by the Court in accordance with Section 1125 of the Bankruptcy Code and be provided to each Creditor whose Claim has been scheduled by the Debtor or who filed a proof of claim. This Disclosure Statement is intended to assist Creditors whose Claims are impaired in evaluating the Plan and in determining whether to accept or reject the Plan. Under the Bankruptcy Code, final approval of the Disclosure Statement means that this document sets forth "adequate information" as required by the Bankruptcy Code, and does not constitute a recommendation by the Court either for or against the Plan.

**6. How to Vote**

A form of Ballot is being provided to the members of Classes II and III by which Creditors in those Class may vote to either accept or reject the Plan. To vote on the Plan, please complete the enclosed Ballot by (1) indicating that you either accept or reject the Plan and (2)

signing your name and mailing the Ballot.

**BALLOTS MUST BE COMPLETED, SIGNED AND MAILED SO AS TO BE RECEIVED BY DEBTOR'S COUNSEL NO LATER THAN 5:00 STANDARD TIME ON \_\_\_\_\_ AT THE FOLLOWING ADDRESS OR THEY WILL NOT BE COUNTED:**

Law Offices of Alla Kachan, P.C.  
3099 Coney Island Avenue, 3<sup>rd</sup> Floor  
Brooklyn, NY 11235

**IF YOUR BALLOT IS NOT PROPERLY COMPLETED, SIGNED AND RECEIVED AS DESCRIBED, IT WILL NOT BE COUNTED. IF YOUR BALLOT IS DAMAGED OR LOST, YOU MAY REQUEST A REPLACEMENT BY ADDRESSING A WRITTEN REQUEST TO THE ADDRESS SHOWN ABOVE.**

A copy of the proposed ballot has been annexed hereto as **Exhibit "C"**.

**7. Objections to Confirmation**

Any objections to confirmation of the Plan must be in writing and must be filed with the Bankruptcy Court and served on counsel listed below on or before \_\_\_\_\_:

**Counsel for the Debtor:**  
Law Offices of Alla Kachan, P.C.  
Alla Kachan, Esq.  
3099 Coney Island Avenue, 3<sup>rd</sup> Floor  
Brooklyn, NY 11235

**H. DESCRIPTION OF THE PLAN**

The following is a summary of certain provisions of the Plan.

**A DISCUSSION OF THE PRINCIPAL PROVISIONS OF THE PLAN AS THEY RELATE TO THE TREATMENT OF CLASSES OF ALLOWED CLAIMS ARE SUMMARIZED BELOW. THE DISCUSSION OF THE PLAN THAT FOLLOWS CONSTITUTES A SUMMARY ONLY AND SHOULD NOT BE RELIED UPON FOR**

**VOTING PURPOSES. YOU ARE URGED TO READ THE PLAN IN FULL IN EVALUATING WHETHER TO ACCEPT OR REJECT THE PLAN. IF ANY INCONSISTENCY EXISTS BETWEEN THIS SUMMARY AND THE PLAN, THE TERMS OF THE PLAN CONTROL. ALL CAPITALIZED TERMS NOT OTHERWISE DEFINED HAVE THE MEANINGS ASCRIBED TO THEM IN THE PLAN.**

**7. Overview**

The Plan contemplates reconciliation of outstanding Claims against the estate by the Post-Confirmation Debtor, and the making of distributions to Creditors under the Plan in accordance with the priorities established by the Bankruptcy Code by the Post-Confirmation Debtor as Disbursing Agent. The Plan categorizes the Claims against the Debtor into distinct Classes. In accordance with the Bankruptcy Code, Administrative Claims, Priority Tax Claims and Bankruptcy Fees are not classified. The Plan also provides that expenses incurred by the Debtor during the Chapter 11 Case will be paid in full (or as may otherwise be agreed by any party) and specifies the manner in which holders of Allowed Claims in each Class will be treated. If there is any discrepancy between this description of the Plan's treatment of Creditors and that set forth in the Plan, the terms of the Plan are controlling.

<b>CLASS</b>	<b>CLAIM</b>	<b>STATUS</b>	<b>VOTING</b>
Class II	General Unsecured Claims	Impaired	Entitled to Vote
Class III	General Unsecured Claims	Impaired	Entitled to Vote

**8. Unclassified Claims**

**a. Administrative Claims**



Administrative claims consist of the Debtor's duly retained professionals and any other administrative expenses allowed under Section 503 of the Bankruptcy Code.

Administrative Claims will include the fees and expenses of the Debtor's Counsel, Alla Kachan, Esq., in the approximate amount of \$10,000.00 (through confirmation, exclusive of the pre-petition retainer received prior to the Petition Date in the amount of \$5,000.00 from the Debtor).

Wisdom Professional Services Inc. asserts a claim for the fees and expenses as accountants for the Debtor, in the approximate amount of \$5,000.00. Wisdom Professional Services Inc. has not received an initial retainer fee prior to filing.

The claims of Debtor's professionals shall be subject to final fees applications pursuant to Bankruptcy Code Section 330 and orders of the Court approving the fees and expenses as sought by this application. The Debtor estimates that the total administrative fees paid to professionals will equal to **\$15,000.00**.

In order to confirm the Plan, it is necessary for the Debtor to satisfy the Administrative Claims in full at or before Confirmation or have the holder of each Administrative Claim agree to a different treatment.

**b. Priority Claims**

**Class I – Priority Claims:**

(i) Unsecured Priority claim of New York State Department of Labor with a priority claim in the amount of \$20,149.39 comprising base taxes and accumulated interest shall be paid in full within sixty (60) months of the Confirmation Date or have the holder of the Priority Claim agree to a different treatment, together with 6% rate of interest compounded daily in equal monthly installments of **\$389.56**. Please see attached Exhibit D;

(ii) Unsecured Priority claim of New York State Department of Taxation and Finance in the amount of \$333.86 comprising base taxes and accumulated interest shall be paid in full within sixty (60) months of the Confirmation Date or have the holder of the Priority Claim agree to a different treatment, together with 6% rate of interest compounded daily in equal monthly installments of **\$6.46**. Please see attached Exhibit E;

(iii) Unsecured Priority claim of NYC Department of finance in the amount of **\$2,687.04** comprising base taxes and accumulated interest shall be paid in full within sixty (60) months of the Confirmation Date or have the holder of the Priority Claim agree to a different treatment, together with 6% rate of interest compounded daily in equal monthly installments of **\$51.95**. Please see attached Exhibit F;

(iv) Unsecured Priority claim of Internal Revenue Service in the amount of **\$48,501.46** comprising base taxes and accumulated interest shall be paid in full within sixty (60) months of the Confirmation Date or have the holder of the Priority Claim agree to a different treatment, together with 6% rate of interest compounded daily in equal monthly installments of **\$937.68**. Please see attached Exhibit G.

The class I creditors are not impaired and are not entitled to vote on the Plan.

**c. Statutory Bankruptcy Fee**

All Bankruptcy fees and charges assessed against the Debtor under 28 U.S. § 1930(a)(6) payable to the United States Trustee shall be paid in cash by the Effective Date, with any applicable interest thereon. Thereafter, such fees and any applicable interest shall continue to be paid by the Debtor until Debtor's case is closed by entry of a final decree, converted, or dismissed.

The Debtor shall pay all United States Trustee quarterly fees under 28 U.S.C.

§1930(a)(6), plus interest due and payable under 31 U.S.C. § 3717 on all disbursements, including Plan payments and disbursements in and outside the ordinary course of the Debtor's affairs, until the entry of a Final Decree, dismissal of the Chapter 11 Case or conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code. Additionally, the Debtor shall file quarterly Post Confirmation Reports and schedule quarterly post-confirmation status conferences with the Court.

d. **General Unsecured Claim**

**Class II** – (Unsecured Creditors) consists of the claims of general unsecured creditors in the Debtor's case totaling approximately \$12,449.41:

Penalties assessed New York State Department of Taxation and Finance is \$2,585.42;

Penalties assessed Internal Revenue Service is \$7,400.93;

ConEdison is \$2,463.06.

The Debtor proposes to pay the Unsecured Creditors ten percent (10%) dividend of their allowed claims in twenty four (24) equal monthly installments of respectively:

Members of Class II	Aggregate Dollar Amount of Claims in Class II	Plan Treatment of Class II	10% Dividend	Monthly payment
NYS Department of Taxation and Finance	\$2,585.42	10% dividend in 24 monthly installment payments	\$258.54	\$10.77
IRS	\$7,400.93	10% dividend in 24 monthly installment payments	\$740.09	\$30.84
ConEdison	\$2,463.06	10% dividend in 24 monthly installment	\$246.30	\$10.26

		payments		
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The class II creditors are impaired and are entitled to vote on the Plan.

e. **Class III** consists of the two claims of Ilya Mitelman, as agent for the Landlords, in the amounts of \$105,154.41 and \$115,000.00 for pre petition rent and additional rent. The treatment of these claims is fully set forth in the Global Stipulation of Owners of 99-13 and 99-17 63<sup>rd</sup> Road, Rego Park, as well as the finalized and executed new lease agreements for the premises located at 99-13 and 99-17 63<sup>rd</sup> Road, attached as Exhibits A and B to First Amended Chapter 11 Plan. These amounts constitute payments due under the prior Leases which have been rejected under the Global Stipulation and replaced with the Replacement Leases between the Landlord and the Debtor.

Namely, the Global Stipulation requires the following:

1. The Owners shall receive the payment of no less than \$95,000.00 on or before the effective date of the within plan.
2. During the first 12 months following confirmation, beginning with the effective date of the plan, the Debtor shall pay to Owners, in addition to any and all amounts to be paid under the replacement leases, the sum of \$3,000.00 per month, and beginning on the 13<sup>th</sup> month after the effective date, and then for the next 17 months of the plan, the Debtor shall pay to Owners, \$9,000.00 per month.

These amounts will adjust as appropriate once (i) the payment from the Isakova Account is made; and (ii) the final amount of the Legal Fees is known. Such amount of legal fees shall not exceed \$370/month extra for 27 months, to be paid over the full life of the Chapter 11 Plan. The stipulated payments do not include the accumulated interest proscribed by the original leases

for the premises. As such, the Landlord has waived the collection of that interest. Therefore, class III creditors are impaired as they are not receiving the full amounts they would be entitled to under the terms of the original leases. The class III creditors are therefore entitled to vote on the Plan.

Maria Isakova and George Borok are the **Class IV** interest holders, shall retain their interest in the Debtor following Confirmation in consideration of the new value contribution being made by them as the equity holders toward the payment of Escrow funds and Settlement Amounts pursuant to the Global Stipulation of Settlement and the finalized and executed lease agreements fo 99-13 and 99-17 63<sup>rd</sup> Road, Rego Park general unsecured creditor claims. The new value contribution shall consist of installment contributions of \$1,400.00 per month, over the 29 month term of the stipulation of settlement, to equal approxiamately \$40,000.00 by each of the Principals in total by the conclusion of the term of the Stipulation. Ms. Isakova and Mr. Borak intend to use their monthly salaries from the business to fund these payments.

**f. Classes Impaired Under The Plan**

**Under Section 1126 of the Bankruptcy Code, Classes of Claims which are impaired are entitled to vote on a plan of reorganization. Under Section 1124 of the Code, a Class of Claims is impaired unless the Plan, with respect to such Class:**

(a) leaves unaltered the legal, equitable and contractual rights to which such Claim or Interest entitles the holder of such Claim or Interest; or

(b) reinstates a previously accelerated Claim or Interest by which (a) curing any prepetition defaults (other than a default under Section 365(b)(2) of the Code, (b) reinstating the maturity of such Claim or Interest as it existed result of reliance on a contractual acceleration provisions or similar applicable law, and (c) not otherwise altering the legal,

equitable or contractual rights to which such Claim or Interest entitle the holders of such Claim or Interest; or

(c) provides on the Effective Date that (a) with respect to a class of Claims, the holders of such Claims receive Cash equal to the allowed amount of their Claims; and (b) with respect to a class of Interests, the holders of such Interests receive the greater of any fixed liquidation preference that they are entitled to under any security, or any fixed price at which the debtor may redeem such security pursuant to the terms of such security.

Classes II and III are impaired under the Plan and entitled to vote. Administrative Claims are not impaired under the Plan and are not entitled to vote.

## I. MEANS OF IMPLEMENTING THE PLAN

### a. Source of payment

Payments and distributions under the Plan will be funded by the following:

By continued operation and increased earnings of Fairytale Day Care, Inc.

New Value contributions by the principles of Fairytale Day Care, Inc.

### b. Post-confirmation Management

The Post-Confirmation Managers of the Debtor, and their compensations, shall be as follows:

Name	Affiliations	Insider ( yes or no)?	Position	Compensation
Maria Isakova		Yes	Manager	\$4,000.00 monthly
George Borok		Yes	Assistant Manager	\$3,000.00 monthly

## J. CURRENT BALANCE SHEET AND STATEMENTS OF OPERATION

### 1. Balance Sheet

Annexed hereto as **Exhibit "H"** is a copy of Debtor's balance sheet as of May 31, 2016.

### **K. CLAIMS OBJECTIONS**

The Debtor is currently reviewing its books and records to evaluate which, if any, claims shall be made the subject of an objection.

### **L. ABSOLUTE PRIORITY RULE**

With certain exceptions, one of the requirements for confirmation is that a plan not provide for any payments to a junior class unless all superior classes are paid in full. Since general unsecured creditors are superior to the Debtor, the Debtor may not retain their interests, unless one of three situations occur:

1. The plan provides for full payment to general unsecured creditors; or
2. The stockholders seeking to retain their equity interests contribute “money or money’s worth” in the form of needed capital to the reorganized debtor reasonably equivalent in value to that of the equity interest sought to be retained; or
3. The class of unsecured creditors waive their rights by consenting to the plan as proposed. In the present case, the unsecured creditors are expected to consent to the Plan as proposed, and therefore, the Debtor does not anticipate seeking a “cram down” of the claims of unsecured creditors. The Debtor expects the class of unsecured creditors to vote in favor of the Plan as the Plan establishes a set amount to be paid with regularity toward the payment of the creditors’ claims that is tenable in light of the Debtors priority and post-petition obligations.

### **M. TAX CONSEQUENCES OF THE PLAN**

THE FOLLOWING DISCUSSION IS A SUMMARY OF CERTAIN SELECTED

SIGNIFICANT FEDERAL INCOME TAX CONSEQUENCES BUT NOT STATE, LOCAL OR FOREIGN TAX CONSEQUENCES, OF THE PLAN TO THE DEBTOR, HOLDERS OF CLAIM AND INTERESTS. THESE TAX CONSEQUENCES MAY BE AFFECTED BY SUCH FACTORS AS CHANGES IN THE STRUCTURE OF THE DEBTOR FROM THAT DESCRIBED HEREIN. THE FEDERAL INCOME TAX CONSEQUENCES TO HOLDERS MAY VARY SIGNIFICANTLY DEPENDING ON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER. MOREOVER, THE FEDERAL INCOME TAX CONSEQUENCES OF CERTAIN ASPECTS OF THE PLAN ARE UNCERTAIN BECAUSE OF THE LACK OF APPLICABLE LEGAL PRECEDENT AND THE POSSIBILITY OF CHANGES IN FEDERAL INCOME TAX LAWS. ACCORDINGLY, EACH HOLDER OF AN ALLOWED CLAIM OR INTEREST IS STRONGLY ADVISED TO CONSULT WITH SUCH HOLDER'S OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE PLAN.

In general, the federal income tax consequences to the Debtor and to each holder of an Allowed Claim will depend on numerous factors. These factors include but are not limited to the following:

- A. The identity and status of the particular Claimant for federal income tax purposes;
- B. The financial status of the Claimant and the Debtor, including the amount and character of any current tax attributes and tax attribute carryovers or carrybacks of the Claimant and/or the Debtor;
- C. The nature (recourse or nonrecourse) and terms of the debt instrument(s) to be restructured including the allocation of payments between principal and accrued but unpaid



interest;

D. The accounting method of the Claimant;

E. The relationship, if any, between the Debtor and Claimants;

F. The residency, alienage or place of legal incorporation or formation (foreign or U.S.) of the Claimant and/or the persons owning beneficial equity interests in the Claimant.

G. The type or method of debt restructure adopted by the Debtor and Claimant and the timing of such debt restructure. The application of the factors to each Claimant will depend on the Claimant's individual facts and circumstances. In addition the federal income tax consequences to the Debtor and Claimants may depend on events which occur several years after the Plan is implemented.

**THE DEBTOR'S LEGAL COUNSEL DOES NOT HAVE SUFFICIENT INFORMATION TO DETERMINE ALL OF THE SPECIFIC FEDERAL INCOME TAX CONSEQUENCES TO EACH OF THE CLAIMANTS RESULTING FROM THE PLAN. ACCORDINGLY, EACH HOLDER OF A CLAIM IS STRONGLY ADVISED TO CONSULT WITH SUCH HOLDER'S OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE PLAN.**

**NO RULINGS HAVE BEEN OR ARE EXPECTED TO BE REQUESTED FROM THE INTERNAL REVENUE SERVICE OR ANY STATE TAX AGENCY CONCERNING ANY OF THE TAX MATTERS DESCRIBED HEREIN. THERE CAN BE NO ASSURANCE THAT THE IRS OR ANY STATE TAX AGENCY WILL NOT CHALLENGE THE POSITIONS TAKEN BY THE DEBTOR WITH RESPECT TO ANY OF THE ISSUES ADDRESSED HEREIN OR THAT A COURT OF COMPETENT JURISDICTION WOULD NOT SUSTAIN SUCH A CHALLENGE.**

#### N. TAX CONSEQUENCES TO ALLOWED CLAIMANTS

The federal income tax consequences with respect to payments of cash to Allowed Claimants in partial or full satisfaction of debt, or pursuant to a tax free recapitalization or other restructuring, depend on the allocation of such payments to principal and interest owed on the debt. The allocation of payments between interest and principal may affect:

- a. the existence and timing of recognition of interest income by a cash basis Claimant;
- b. the existence and timing of interest deductions on a cash basis (and sometimes to an accrual basis) Debtor;
- c. the amount (and possibly the character) of worthless debt loss recognized by the Claimants;
- d. the amount of cancellation of indebtedness income recognized by the Debtor;
- e. the amount of gain or loss recognized by the Claimant pursuant to a recapitalization under Internal Revenue Code § 368(a)(1)(E).

An Allowed Claimant will recognize ordinary income to the extent that any stock, debt securities, other premises, or cash received is attributable to interest (including original issue discount) which has accrued while the Claimant held the debt and which the Claimant previously included in income, exceeds the fair market value of stock, debt and cash received by the Claimant which is attributable to such accrued interest (including OID).

In addition, such Claimants will realize gain on such amount equal to the excess of the fair market value of stock, debt, other premises and cash received (excluding amounts attributable to interest and discussed above) over the cost or other tax basis of the debt claims

surrendered (excluding any tax basis allocated to accrued interest). The gain may be a capital gain or ordinary gain unless the exchange has the effect of the distribution of a dividend under Internal Revenue Code § 305 (discussed below) in which case gain recognized that is not in excess of earning and profits of the Debtor will be treated as a dividend. A corporate Claimant who receives a dividend may qualify for a dividend received deduction with respect to the dividend.

The rules regarding taxation of payments to Claimants which are attributable to other accrued but unpaid income items (e.g., rents, compensation, royalties, dividends, etc.) are similar to the rules described above for payments allocated to interest.

**- Importance of obtaining professional Tax Assistance.**

**THE FOREGOING IS INTENDED TO BE ONLY A SUMMARY OF SELECTED FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN, AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH, AND RECEIPT OF ADVICE FROM, A TAX PROFESSIONAL.**

**THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN THAT ARE DESCRIBED HEREIN AND THE STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE PLAN THAT ARE NOT ADDRESSED HEREIN, ARE COMPLEX AND, IN SOME CASES, UNCERTAIN. SUCH CONSEQUENCES MAY ALSO VARY BASED ON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER OF A CLAIM. ACCORDINGLY, EACH CLAIMANT AND EQUITY HOLDER IS STRONGLY URGED TO CONSULT WITH ITS OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE PLAN.**

**O. MAINTENANCE OF EMPLOYEE BENEFIT PLANS**

The Debtor does not maintain any employee benefit plans.

**P. ACCOUNTING PROCESS**

The financial information contained in this Disclosure Statement was derived from the Petition, Schedules and monthly operating reports filed by the Debtor in this case.

**Q. POST-PETITION ASSETS AND LIABILITIES**

The Debtor has not accrued significant assets or liabilities except as otherwise set forth herein.

**R. EXECUTORY CONTRACTS**

Unless the Confirmation Order shall otherwise provide, or the Debtor shall have filed a motion to reject any executory contracts on the Effective Date, the Debtor will assume all executory contracts which have not otherwise expired by their own terms. A proof of claim for any claim arising from the rejection of an executory contract shall be filed within thirty (30) days subsequent to the date that an order is entered rejecting the executory contract and the claim arising from the rejection of an executor contract for which a proof of claim is not filed within such time period shall be disallowed in its entirety and forever barred.

**S. RETENTION OF JURISDICTION**

Following Confirmation, the Bankruptcy Court shall retain such jurisdiction as is legally permissible, including, without limitation, for the following purposes: (i) to determine the

allowability, classification, or priority of Claims;

- (i) to construe and to take any action to enforce and execute the Plan, the Confirmation Order, or any other order of the Bankruptcy Court; (iii) to issue such orders as may be necessary for the implementation, execution, performance, and consummation of the Plan; (iv) to determine any and all applications for allowance of compensation and expense reimbursement of Professional Persons; (v) to determine any other request for payment of Administrative Claims; (vi) to determine all applications, motions, adversary proceedings, contested matters, claim objections, and any other litigated matters instituted prior to the closing of the Reorganization Case, including litigation commenced to set aside or avoid any transfers pursuant to Bankruptcy Code Sections 544, 545, 547, 548, 549, 550 and 553; (vii) to modify the Plan under Bankruptcy Code Section 1127, to remedy any defect or omission in the Plan, or to reconcile any inconsistency in the Plan, or to reconcile any inconsistency in the Plan so as to carry out its intent and purposes.

## **T. DISTRIBUTIONS UNDER THE PLAN**

General Matters Concerning the Distribution of Consideration

### **1. The Disbursing Agent(s)**

The Debtor shall act as Disbursing Agent(s) under the Plan with respect to all creditors.

### **2. Cash Payments**

Cash payments made pursuant to the Plan will be in U.S. dollars by checks drawn on a banking institution that is an authorized depository in the Southern District of New York selected by the Debtor, or by wire transfer from a banking institution that is an authorized

depository in the Southern District of New York, at the option of the Debtor.

**3. Transmittal of Distributions**

All distributions shall be deemed made at the time such distribution is deposited in the United States mail, postage prepaid or, in case of wire transfers, upon receiving confirmation from the transferring bank. Except as otherwise agreed with the holder of an Allowed Claim, such distribution shall be distributed by mail to (i) the address listed by such holder for receiving distributions in its Proof of Claim or (ii), if no Proof of Claim was filed, the mailing address reflected upon the filed Schedules of Assets and Liabilities or in the Debtor's books and records for such holder.

**4. Undeliverable Distributions**

If any distribution is returned to a Disbursing Agent as undeliverable, no further distributions shall be made to the holder of the Allowed Claim or Allowed Interest on which such distribution was made unless and until the Debtor are notified in writing of such holder's then-current address. Undeliverable distributions shall remain in the possession of the Debtor, until such time as a distribution becomes deliverable or is deemed canceled (as hereinafter provided). Any unclaimed distribution shall be accounted for separately, but there shall be no duty to invest any such unclaimed distribution in any manner. Any holder of an Allowed Claim or Allowed Interest that does not present a Claim for an undeliverable distribution within one hundred and eighty (180) days after the date upon which a distribution is first made available to such holder shall have its right to such distribution discharged. In such event the subject claimant shall be forever barred from asserting any such Claim against the Debtor or its property. All unclaimed or undistributed distributions shall, pursuant to Bankruptcy Code Section 347(b), be the property of the Debtor and shall be treated as

determined by the Debtor in its sole and absolute discretion.

**U. PROCEDURES FOR RESOLVING DISPUTED CLAIMS**

**a. Time Limit for Objections to Claims**

Objections to Claims shall be filed by the Debtor with the Court and served upon each Holder of each of the Claims to which objections are made, not later than sixty (60) days subsequent to the Confirmation Date or with such other time period as may be fixed by the Court.

**b. Resolution of Disputed Claims**

Unless otherwise ordered by the Court, the Debtor shall litigate to judgment, settle or withdraw objections to Disputed Claims, in its sole discretions, without notice to any party in interest.

Notwithstanding any other provision of the Plan, no Distributions shall be made with respect to all or any portion of a Disputed Claim unless and until all objections to the Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim, or some portion thereof, has become an Allowed Claim. To the extent that a Claim is not a Disputed Claim but is held by a Holder that is or may be liable to the Debtor on account of a Cause of Action, no Distributions shall be made with respect to all or any portion of such Claim unless and until such Claim and liability have been settled or withdrawn or have been determined by Final Order of the Bankruptcy Court or such other court having jurisdiction over the matter.

**c. Distributions upon Disputed Claims that Become Allowed Claims.**

Distributions to holders of Disputed Claims that subsequently become Allowed Claims

will be paid by the Debtor no later than the later to occur of (i) sixty (60) days after the Disputed Claim becomes an Allowed Claim; and (ii) Debtor's making other distributions under the Plan to holders of Allowed Claims.

**d. Estimation.**

The Debtor may, at any time, request that the Bankruptcy Court estimate any contingent, unliquidated, or Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether the Debtor previously objected to such Claim. The Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including, without limitation, during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any contingent, unliquidated, or Disputed Claim, the amount so estimated shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Debtor may pursue supplementary proceedings to object to the allowance of such Claim. All of the aforementioned objection, estimation, and resolution procedures are intended to be cumulative and not exclusive of one another. On and after the Effective Date, Claims that have been estimated may be compromised, settled, withdrawn, or otherwise resolved subsequently, without further order of the Bankruptcy Court.

**V. LEGAL EFFECTS OF CONFIRMATION AND EFFECTIVENESS OF THE PLAN**

**a. Discharge of the Debtor**

Pursuant to Section 1141(d)(1) of the Bankruptcy Code, upon the Effective Date, except as set forth in the Plan or in the order confirming the Plan, the Debtor will be discharged from



any claim that arose prior to the petition date whether or not the Holder of the Claim has accepted the Plan, except that the debtor may, by separate motion and after notice and a hearing seek discharge for cause. Pursuant to Section 1141(d)(2) of the Bankruptcy Code.

**b. Injunction**

Except as otherwise provided in the Plan, the Confirmation Order shall provide, among other things, that from and after the Effective Date all Persons who have held, hold or may hold Claims against the Debtor are permanently enjoined from taking any of the following actions against the Debtor, its Estate, or any of their property on account of any such Claims: (1) commencing or continuing, in any manner or in any place, any action or other proceeding; (2) enforcing, attaching, collecting or recovering in any manner, any judgment, award, decree or order; (3) creating, perfecting or enforcing any lien or encumbrance; (4) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due to the Debtor unless authorized under the Plan; (5) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan; provided, however, that nothing contained in the Plan shall preclude such Persons from exercising their rights pursuant to an d consistent with the terms of the Plan or the Confirmation Order.

**c. Limitation of Liability**

To the extent permitted by Section 1125(e) of the Bankruptcy Code, except as otherwise provided in the Plan, the Debtor and its Professionals and any of such parties' successors and assigns, shall not have or incur any claim, action, proceeding, Cause of Action, suit, account, controversy, agreement, promise, right to legal remedies, right to equitable remedies, right to payment or Claim (as defined) in Section 101(4) of the Bankruptcy Code), whether known,

unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured and whether asserted or assertable directly or derivatively, in law equity or otherwise to one another or to any Holder of a Claim, or any other party in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys, or any of their successors or assigns, for any act or omission originating or occurring on or after the Petition Date through and including the Effective Date in connection with, relating to, or arising out of the Debtor, the Chapter 11 Case, negotiation and filing of the Plan or any prior plans, filing Chapter 11 Case, the pursuit of confirmation of the Plan or any prior plans, the consummation of the Plan, the administration of the Plan or the property to be liquidated other than resulting from willful misconduct and/or gross negligence as determined by a Final Order of a court of competent jurisdiction, and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan. Nothing herein shall abrogate the requirements of any applicable professional disciplinary rules.

Nothing under the Plan shall limit any person's or any party's liability for fraud, gross negligence, willful misconduct, malpractice, breach of fiduciary duty, criminal conduct, unauthorized use of confidential information that causes damages, or ultra vires acts. Nothing herein shall limit the liability of the Debtor's professionals or any other professionals for malpractice pursuant to Rule 1.8 (h)(1) of the New York State Rules of Professional Conduct. Nothing in the Plan shall effect a release of any claim by the United States Government or any of its agencies or any state and local authority whatsoever, including, without limitation, any claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against the Debtor any of its

members, shareholders, officers, directors, employees, attorneys, advisors, agents, representatives and assigns, nor shall anything in the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action or other proceedings against the against the entities referred to herein for any liability whatever, including without limitation, any claim, suit or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state or local authority, nor shall anything in this Plan exculpate any party from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including liabilities arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States.

**d. Terms of Bankruptcy Injunction or Stays**

All injunctions or stays provided for in the Chapter 11 Case under Sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date unless otherwise provided in this Plan. Upon the Effective Date, the injunction provided in Article V(b) shall apply.

**W. MODIFICATION AND AMENDMENT OF THE PLAN**

The Debtor may alter, amend or modify the Plan or any Exhibits under Section 1127(a) of the Bankruptcy code at any time prior to the Confirmation Date. After the Confirmation Date and prior to substantial consummation of the Plan as defined in Section 1101(2) of the Bankruptcy Code, the Debtor may, under Section 1127(b) of the Bankruptcy Code, institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order, and such matters as may be necessary to carry out the purpose and effect of the Plan so long as

such proceedings do not adversely affect the treatment of Holders of Claims under the Plan; provided, however, that prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or order of the Bankruptcy Court. The Plan shall not be materially modified post confirmation without notice and hearing.

#### **X. EVENT OF DEFAULT**

The Debtor shall be deemed in default if it fails to make timely payments to any creditors as provided for in the Plan and the Debtor and each creditor shall abide by the following:

1. Upon written receipt from any creditor of notice of default relating to payments, the Debtor shall have a period of thirty (30) days from receipt of such notice to cure such default, during such 30-day period, the creditors shall take no action to terminate the Debtor's Plan. If such default is cured by the Debtor within the 30-day period, the Plan shall continue in full force and effect. Any notices of default under the Plan shall be served upon the Debtor and Debtor's attorney. Notwithstanding the foregoing, the thirty (30) day period to cure defaults shall not apply to payments to the Landlords under the Replacement Leases. The default provisions and cure periods with respect to such payments are set forth in the Replacement Leases and riders thereto as well as in the Global Stipulation, which provisions shall control.

2. If full payment of the default amount is not paid by the Debtor within thirty (30) days of such demand, the Internal Revenue Service, New York State Department of Taxation and Finance and New York City Department of Taxation and Finance may collect any unpaid liabilities through governing administrative collection provisions, and the automatic stay of 11 U.S.C. §363(a) is lifted for this purpose without further order of the court.

a. If Debtor fails to make any post-confirmation deposits or plan payments, fails to pay any post-confirmation tax liability, defaults in the payments to any class of creditors under the Plan, or fails to file post-confirmation tax returns by the due date of the tax return, then after 5-days written notice of default to Debtor and Debtor's counsel and Debtor's failure to cure, the United States and/or the New York State Department of Taxation and Finance or any creditor may declare a default of the Plan.

#### Y. FINAL DECREE

Pursuant to Local Bankruptcy Rule 3022-1, within fifteen (15) days following the full administration of the estate, the Debtor or the Reorganized Debtor shall file, on notice to the United States Trustee, an application and a proposed order for a final decree closing this case.

#### CONCLUSION

The Debtor believes that the Plan affords Creditors the potential for repayment and, therefore, is in the best interest of the Creditors. The only other alternative is conversion to chapter 7 wherein a trustee would be appointed to liquidate Debtor's remaining assets for distribution. Accordingly, the Debtor urges all Creditors to cast their ballots in favor of accepting the Plan. The Debtor shall be required to file quarterly post-confirmation status reports until the case is closed, converted, or dismissed, whichever happens earlier.

Dated: Brooklyn, New York  
July 6, 2016

/s/ Alla Kachan  
Alla Kachan, Esq.  
Law Offices of Alla Kachan, P.C.  
3099 Coney Island Avenue, 3<sup>rd</sup> Floor  
Brooklyn, NY 11235

Dated: Brooklyn, NY

Debtor and Debtor-in-Possession By:

July 6, 2016

/s/ Maria Isakova

The president of Fairytale Day Care, Inc.

**EXHIBIT A**

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**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK**

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**IN RE:  
FAIRYTALE DAY CARE, INC.**

**CHAPTER 11**

**Case No. 1-15-42535 (CEC)**

**Debtor.**

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**DEBTOR'S FIRST AMENDED CHAPTER 11 PLAN**

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ALLA KACHAN, ESQ.  
Attorney for Debtor, Fairytale Day Care, Inc.  
3099 Coney Island Ave, 3rd Floor  
Brooklyn, NY 11235  
Tel: (718) 513-3145  
Fax: (347) 342-315  
E-mail: [alla@kachanlaw.com](mailto:alla@kachanlaw.com)



## **PLAN OF REORGANIZATION**

The Debtor, by and through its attorney, Alla Kachan pursuant to 11 U.S.C. §1121 et seq., proposes the following first amended Chapter 11 Plan.

Fairytale Day Care, Inc. ("Fairytale Day Care, Inc."), the above named captioned debtor and debtor-in-possession ("Debtor") hereby submits the following first amended Chapter 11 Plan of Reorganization (the "Plan") pursuant to the provisions of Chapter 11 of the Bankruptcy Code. All Holders of Claims who are eligible to vote on the Plan are encouraged to read the Plan and the accompanying Disclosure Statement including all exhibits before voting to accept or reject the Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to its substantial consummation. The Debtor is the proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code.

Nothing contained herein shall constitute an offer, acceptance or legally binding obligation of the Debtor or any other party in interest and the Plan is subject to approval of the Bankruptcy court and other customary conditions.

**ALL HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN ARE ENCOURAGED TO READ CAREFULLY THE DISCLOSURE STATEMENT (INCLUDING ALL EXHIBITS) AND THE PLAN, EACH IN ITS ENTIRETY, BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.**

### **ARTICLE I DEFINED TERMS AND RULES OF INTERPRETATION**

#### **A. Rules of Construction**

For purposes of this Plan, except as expressly provided herein or unless the context

otherwise requires, all capitalized terms not otherwise defined shall have the meanings ascribed to them in Article I of this Plan or any Exhibit. Any term used and not defined in this Plan but is defined in the Bankruptcy Code of the Bankruptcy Rules shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable. Whenever the context requires, such terms shall include the plural as well as the singular number, the masculine gender shall include the feminine, and the feminine gender shall include the masculine.

**B. Definition**

**1.1 Administrative Claim** means as Allowed Claim for costs and expenses of administration of the Chapter 11 Case under section 503(b), 507(b) or 1114(e)(2) of the Bankruptcy Code including: (a) any actual and necessary costs and expenses, incurred after the Petition Date, of preserving the Estate and operating business and Claims of governmental units for taxes (including tax audit Claims related to tax years commencing after the Petition Date, but excluding Claims relating to tax periods, or portions thereof, ending on or before the Petition Date); and (b) all other claims entitled to administrative claim status pursuant to a Final Order of the Bankruptcy Court and including Profession Fee Claims.

**1.2 Administrative Bar Date** means the last day in which creditors and parties-in-interest can file a proof of claim against the Debtor for administrative expenses.

**1.3 Administrative Period** means the period beginning on the Petition Date and ending on the Confirmation Date.

**1.4 Adversary Proceeding** means any and all actions previously commenced, or to be commenced, by the Debtor to recover money or property on behalf of the Debtor's Estate.

**1.5 Allowed Claim** means a Claim or any portion thereof (a) that has been allowed by a Final Order of the Bankruptcy Court (or such court as the Debtor and the Holder of any Claim

agree may adjudicate the Claim and any objection thereto), (b) that either has been Scheduled as a liquidated, non-contingent, and undisputed in an amount greater than zero on the Scheduled, or, is the subject of a timely filed proof of claim as to which either (i) no objection to its allowance has been Filed (either by way of objection or amendment to the Schedules) within the periods of limitation fixed by the Bankruptcy Code or by any order of the Bankruptcy Court or (ii) any objection to its allowance has been settled, waived through payment, or withdrawn, or has been denied by a Final Order, or (c) that is expressly Allowed in a liquidated amount in the Plan; provided, however, that with respect to an Administrative Claim, "Allowed Claim" means an Administrative Claim as to which a timely written request for payment has been made in accordance with applicable bar dates for such requests set by the Bankruptcy Court (if such written request is required) in each case as to which the Debtor, or any other party in interest has not interposed a timely objection or has interposed a timely objection and such objection has been settled, waived through payment, or withdrawn, or has been denied by a Final Order.

**1.6 Avoidance Actions** means Causes of Action arising under Bankruptcy Code sections 502, 510, 541, 542, 544, 545, 547 through 551 and/or 553, or under related state or federal statutes and common law, including, without limitation, fraudulent transfer laws, whether or not litigation is commenced to prosecute such Causes of Action; provided, however, that Avoidance Actions shall not be deemed to include those causes of action released, waived and/or discharged pursuant to this Plan or an order of the Bankruptcy Court.

**1.7 Ballot** means each of the ballot forms distributed to each Holder of a Claim entitled to vote to accept or reject this Plan.

**1.8 Bankruptcy Code** means title 11 of the United States Code, as now in effect or hereafter amended and as applicable to the Chapter 11 Case.

**1.9 Bankruptcy Court** means the United States Bankruptcy Court for the Eastern District of New York or any other court with jurisdiction over the Chapter 11 Case.

**1.10 Bankruptcy Rules** means the Federal Rules of Bankruptcy Procedure and the local rules of the Bankruptcy Court, as now in effect or hereinafter amended.

**1.11 Bar Date** means the last day in which creditors and parties-in-interest can file a proof of claim against Debtor.

**1.12 Cash** means the legal tender of the United States of America and equivalents thereof, which may be conveyed by check or wire transfer.

**1.13 Chapter 11 Case** means the case under chapter 11 of the Bankruptcy Code commenced by the Debtor.

**1.14 Claims** means a "claim" as defined in section 101(5) of the Bankruptcy Code.

**1.15 Claimant** means the holder of a Claim.

**1.16 Claims Objection Deadline** means the last day for Filing objections to Claims, other than Administrative Claims and Professional Fee Claims, which day shall be (a) the later of (i) 60 days after the Effective Date and (ii) 60 days after the filing of a proof of claim for, or request for payment of, such Claim and (b) such other date as the Bankruptcy Court may order.

**1.17 Class** means a category of Holders of Claims, as described in Article II.

**1.18 Closing Date** means the date that Debtor completes all Plan payments and a final decree is entered by the Court.

**1.19 Confirmation** means entry of a Final Order confirming the Plan in accordance with Section 1129 of the Bankruptcy Code.

**1.20 Confirmation Date** means the date on which the Bankruptcy Court entered the Confirmation Order.

**1.21 Confirmation Hearing** means the hearing held before the Bankruptcy Court to consider confirmation of this Plan pursuant to Section 1128(a) and 1129 of the Bankruptcy Code, as it may be adjourned or continued from time to time.

**1.22 Confirmation Order** means the order issued and entered confirming the Plan, pursuant to Section 1129 of the Bankruptcy Code.

**1.23 Consummation of the Plan** means the date upon which the Debtor's obligations under the plan have been substantially performed.

**1.24 Creditor** means all entities and/or individuals holding Claims against the Debtor's estate.

**1.25 Cure Period** means the period of thirty (30) days the Debtor has to cure any default in payments required under the Plan after a Claimant provide written notice to the Debtor and attorneys of the default.

**1.26 Debtor** means Fairytale Day Care, Inc.

**1.27 Disallowed Claim** means a Claim, or any portion thereof, that (a) has been disallowed by the Final Order, (b) is scheduled at zero or as contingent, disputed or unliquidated and as to which no Proof of Claim has been filed by the Bar Date or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy or any Final Order, or otherwise deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any final Order or under applicable law, or (c) is not Scheduled, and as to which (i) no Proof of Claim has been filed by the Bar Date or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order or under applicable law, or (ii) no request for payment of an Administrative Claim has been filed by the Administrative Claims Bar Date or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy

Code or any Final Order or under applicable law.

**1.28 Disbursing Agent** means the Post-Confirmation Debtor.

**1.29 Disclosure Statement** means the Disclosure Statement filed pursuant to Section 1125 of the Bankruptcy Code filed by the Debtor in connection with the Reorganization Case, and all Exhibits in connection therewith and any documents delivered in connection therewith, as the same may be amended from time to time by any duly authorized amendments or modification.

**1.30 Disputed Claim** means a Claim, or any portion thereof, designated as disputed, contingent or unliquidated in the Debtor's Schedules filed in connection with its Reorganization Case, or any Claim against which an objection to the allowance thereof has been interposed and as to which such objection a Final Order has not been entered or any Claim against which the period for bringing such objection as provided hereunder has not expired.

**1.31 Disputed Claim Amount** means (a) if a liquidated amount is set forth in the Proof of Claim relating to a Disputed Claim, (i) the liquidated amount set forth in the Proof of Claim relating to the Disputed Claim; (ii) an amount agreed to by the Debtor and the Holder of the Disputed Claim; or (iii) if a request for estimation is filed by any party, the amount at which the Claim is estimated by the Bankruptcy Court; (b) if no liquidated amount is set forth in the Proof of Claim relating to a Disputed Claim, (i) an amount agreed to by the Debtor and the holder of the Disputed Claim or (ii) the amount estimated by the Bankruptcy Court with respect to the Disputed Claim; or (c) if the Claim was listed on the Schedules as unliquidated, contingent or disputed and no Proof of Claim was filed, or deemed to have been filed, by the Bar Date and the Claim has not been resolved by written agreement of the parties or an order of the Bankruptcy Court, zero.

**1.32 Disputed Claim Holder** means the holder of a Disputed Claim.

**1.33 Distribution** means any distribution pursuant to the Plan to the Holders of Allowed Claims.

**1.34 Distribution Date** means the date upon which initial distributions are made by the Disbursing Agent to Holders of Allowed Claims entitled to receive Distribution under the Plan, which shall be thirty (30) days after the Effective Date.

**1.35 Effective Date** means the day following the day upon which the order of Confirmation has become a Final Order.

**1.36 Escrow Funds** means the funds the Chapter 7 Trustee (the "Trustee") in the chapter 7 case of Maria Isakova, Case No. 14-40017 (CEC) is holding in an attorney escrow account in the approximate amount of \$114,000.00, which were turned over to the Trustee by Ms. Isakova's attorney.

**1.37 Estate** means the estate of the Debtor created under section 541 of the Bankruptcy Code.

**1.38 Exhibit** means the exhibits filed in support of this Plan or as an appendix to the Disclosure Statement.

**1.39 Extension Period** means the additional ninety (90) days that the Cure period shall be extended in the event of any act of terrorism or God which adversely impacts upon the ability of the Debtor or Reorganized Debtor to satisfy payment obligation under the Plan.

**1.40 Final Order** means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, as entered in the Chapter 11 Case, the operation or effect of which has not been stayed, reversed or amended and as to which order or judgment (or any revision, modification, or amendment thereof) the time to appeal or seek review or rehearing has expired and as to which no appeal or petition for review or rehearing was Filed or, if Filed, remains

pending.

**1.41 General Unsecured Claim** means a Claim that is not an Administrative Claim, Priority Tax Claims, Priority Non-Tax Claim, Secured claim or Professional Fee Claim.

**1.42 Global Stipulation** means that certain court-approved global stipulation of settlement by and between the Debtor and the landlords of 99-13 63<sup>rd</sup> Road, Rego Park, NY 11374 and 99-17 63<sup>rd</sup> Road, Rego Park, NY 11374.

**1.43 Governmental Unit** means a “governmental unit” as defined in section 101(27) of the Bankruptcy Code.

**1.44 Holder** means the legal or beneficial holder of a Claim (and, if used in conjunction with a Class or type of Claim, means a holder of a Claim in such Class or of such type).

**1.45 Impaired** means a Claim or Class that is impaired within the meaning of section 1124 of the Bankruptcy Code.

**1.46 Landlords** shall mean the owners of the Premises.

**1.47 Person** means an individual, corporation, partnership, joint venture, trust, estate, unincorporated association, unincorporated organization, governmental entity, or political subdivision thereof, or any other entity.

**1.48 Petition Date** means May 29, 2015, the date of the commencement of the Debtor’s Reorganization Case.

**1.49 Plan** means this document entitled “Plan of Reorganization” including the exhibits and all supplements, appendices, and schedules, either in its current form or as the same may be altered, amended, or modified from time to time in accordance with the Bankruptcy Code and Bankruptcy Rules.

**1.50 Plan Supplement** means, if any, such exhibits, documents, lists or schedules not filed



with the Plan but as may be filed in connection therewith within ten (10) days of the Confirmation Hearing.

**1.51 Premises** means 99-13 63<sup>rd</sup> Road, Rego Park, NY 11374 and 99-17 63<sup>rd</sup> Road, Rego Park, NY 11374, the improved parcels of real property on which the Debtor operates its business.

**1.52 Priority Non-Tax Claim** means a Claim, other than an Administrative Claim or Priority Tax Claim, which is entitled to priority in payment pursuant to section 507(a) of the Bankruptcy Code.

**1.53 Priority Tax Claim** means a Claim of a Governmental Unit of the kind specified in sections 502(i) and 507(a)(8) of the Bankruptcy Code.

**1.54 Post-Confirmation Expenses** means all reasonable fees, expenses and disbursements of Professional Person incurred after the Confirmation Date.

**1.55 Professional** means (a) any professional employed in the Chapter 11 Case pursuant to sections 327, 328, or 1103 or otherwise of the Bankruptcy Code and (b) any professional or other entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Cases pursuant to section 503(b)(4) of the Bankruptcy Code.

**1.56 Professional Fees** means all allowances of compensation and reimbursement of expenses Allowed, or to be allowed pursuant to Section 330 or 331 of the Bankruptcy Code, to any Professional Person retained pursuant to Section 327 of the Bankruptcy Code.

**1.57 Proof of Claim** means the proof of claim that must be filed on or before the Bar Date or such other date as prescribed by the Bankruptcy Court.

**1.58 Released Parties** means any of the Debtor and its agents, accountants, attorneys, and representatives.

**1.59 Replacement Leases** means the replacement leases attached as Exhibit \_\_ to the Global

Stipulation, once approved by this Court, for the Premises entered into between the Landlords and the Debtor.

**1.60 Schedules** means the schedules of assets and liabilities and the statement of financial affairs filed by the Debtor pursuant to Section 521 of the Bankruptcy Code and the Bankruptcy Rules, as such schedules have been or may be further modified, amended or supplemented in accordance with Bankruptcy Rule 1009 or orders of the Bankruptcy Court.

**1.61 Tax Claim** means all or that part of a Claim held by a Governmental Unit for a tax assessed or assessable against the Debtor, including income and employment taxes and any related penalties or interest.

**1.62 Unclassified Claims** means Administrative, Priority and Tax Claims.

**1.63 Unimpaired** means a Claim that is not impaired within the meaning of Section 1124 of the bankruptcy Code.

**1.64 Unsecured Claims** means any Claims which do not qualify as an Administrative Claim, Priority Claim or Secured Claim.

**1.65 Unsecured Creditor** means the holder of an Unsecured Claim.

**1.66 Voting Deadline** means the date and time, as fixed by an order of the Bankruptcy Court and set forth in the Disclosure Statement, by which all Ballots to accept or reject the Plan must be received in order to be counted.

**C. Rules of Interpretation**

The provisions of the Plan shall control over any descriptions contained in the Disclosure Statement. Where the Plan refers to "any contract, instrument, or other agreement or document created in connection with the Plan," the provisions of such contract, instrument, or other agreement or document shall control over any inconsistency with the terms of the Plan,

and the Plan will be interpreted to avoid any inconsistencies with the provisions of such contract, instrument, or other agreement or document.

1. Without limiting foregoing, the rules of construction set forth in Bankruptcy Code §102 shall apply. The definitions and rules of construction contained herein do not apply to the Disclosure Statement or to the Exhibits to the Disclosure Statement except to the extent expressly so stated in the Disclosure Statement.

2. The words "herein," "hereto," "hereunder" and others of similar import refer to the Plan as a whole and not to any particular Article, Section, subsection or clause contained in the Plan.

3. Unless specified otherwise in a particular reference, all references in the Plan to Articles, Sections and Exhibits are references to Articles, Sections and Exhibits of or to the Plan.

4. Any reference in the Plan to an existing document or Exhibit means such document or Exhibit as it may have been amended, restated, modified, or supplemented as of the Effective Date.

5. Captions and reference to Articles and Sections in the Plan are inserted for convenience only and shall neither constitute a part of the Plan nor in any way affect the interpretation of any provisions hereof.

**D. Computation of Time**

In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

**E. Governing Law**

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) and except as otherwise provided herein or therein, the laws of the

State of New York shall govern the construction and implementation of the Plan and any agreements, documents and instruments executed in connection with the Plan.

**ARTICLE II  
CLASSIFICATION OF CLAIMS**

**A. Introduction:**

All Claims except Administrative Claims and Bankruptcy Fees are placed in the Classes set forth below. In accordance with Section 1123(a)(1) of the Bankruptcy Code, Priority Tax Claims have not been classified. A claim is placed in a particular Class only to the extent that the Claim falls within the description of that Class, and is classified in other Classes to the extent that any portion of the Claim falls within the description of the other Classes. A Claim is also placed in a particular Class for the purpose of receiving distributions pursuant to the Plan only to the extent that such Claim is Allowed in that Class and the Claim has not been paid, released or otherwise settled prior to the Effective Date.

**B. Unclassified Claims**

1. Administrative Claims
2. Bankruptcy Fees.

**C. Priority Claims**

**Class I – Unsecured Priority Tax Claims:**

- (i) Unsecured Priority claim of New York State Department of Labor with a priority claim in the amount of \$20,149.39;
- (ii) Unsecured Priority claim of New York State Department of Taxation and Finance in the amount of \$333.86 comprising base taxes and accumulated interest;
- (iii) Unsecured Priority claim of NYC Department of finance in the amount of \$2,687.04 comprising base taxes and accumulated interest;

(iv) Unsecured Priority claim of Internal Revenue Service in the amount of \$48,501.46 comprising base taxes and accumulated interest.

**D. Class II** consists of the claims of general unsecured creditors in the Debtor's case totaling approximately \$12,449.41:

Penalties assessed by the New York State Department of Taxation and Finance are \$2,585.42;

Penalties assessed by the Internal Revenue Service are \$7,400.93;

ConEdison is \$2,463.06.

**E. Class III** consists of the two claims for prepetition rent, filed by Ilya Mitelman, as agent for the Landlord of the premises, in the amount of \$105,154.41 for 99-13 63<sup>rd</sup> Road, Rego Park, NY 11374 and \$115,000.00 for 99-17 63<sup>rd</sup> Road, Rego Park, NY 11374.

**F.** Maria Isakova and George Borok, the **Class IV** interest holders.

### **ARTICLE III TREATMENT OF CLAIM**

#### **1. Administrative Claims**

Administrative claims consist of the Debtor's duly retained professionals and any other administrative expenses allowed under Section 503 of the Bankruptcy Code.

Administrative Claims will include the fees and expenses of the Debtor's Counsel, Alla Kachan, Esq., in the approximate amount of \$10,000.00 (through confirmation, exclusive of the pre-petition retainer received prior to the Petition Date in the amount of \$5,000.00 from the Debtor).

Wisdom Professional Services Inc. asserts a claim for the fees and expenses as accountants for the Debtor, in the approximate amount of \$5,000.00. Wisdom Professional Services Inc. has not received an initial retainer fee prior to filing.

The claims of Debtor's professionals shall be subject to final fees applications pursuant to Bankruptcy Code Section 330 and orders of the Court approving the fees and expenses as sought by this application. The Debtor estimates that the total administrative fees paid to professionals will equal to **\$15,000.00**.

In order to confirm the Plan, it is necessary for the Debtor to satisfy the Administrative Claims in full at or before Confirmation or have the holder of each Administrative Claim agree to a different treatment.

## **2. Statutory Bankruptcy Fee**

All Bankruptcy fees and charges assessed against the Debtor under 28 U.S. § 1930(a)(6) payable to the United States Trustee shall be paid in cash by the Effective Date, with any applicable interest thereon. Thereafter, such fees and any applicable interest shall continue to be paid by the Debtor until Debtor's case is closed by entry of a final decree, converted, or dismissed.

The Debtor shall pay all United States Trustee quarterly fees under 28 U.S.C. §1930(a)(6), plus interest due and payable under 31 U.S.C. § 3717 on all disbursements, including Plan payments and disbursements in and outside the ordinary course of the Debtor's affairs, until the entry of a Final Decree, dismissal of the Chapter 11 Case or conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code. Additionally, the Debtor shall file quarterly Post Confirmation Reports and schedule quarterly post-confirmation status conferences with the Court.

## **3. Priority Claims**

### **Class I – Unsecured Priority Tax Claims:**

- (i) Unsecured Priority claim of New York State Department of Labor with a priority claim in the amount of \$20,149.39 comprising base taxes and accumulated interest shall be paid in full

within sixty (60) months of the Confirmation Date or have the holder of the Priority Claim agree to a different treatment, together with 6% rate of interest compounded daily in equal monthly installments of **\$389.56**.

(ii) Unsecured Priority claim of New York State Department of Taxation and Finance in the amount of \$333.86 comprising base taxes and accumulated interest shall be paid in full within sixty (60) months of the Confirmation Date or have the holder of the Priority Claim agree to a different treatment, together with 6% rate of interest compounded daily in equal monthly installments of **\$6.46**.

(iii) Unsecured Priority claim of NYC Department of finance in the amount of **\$2,687.04** comprising base taxes and accumulated interest shall be paid in full within sixty (60) months of the Confirmation Date or have the holder of the Priority Claim agree to a different treatment, together with 6% rate of interest compounded daily in equal monthly installments of **\$51.95**.

(iv) Unsecured Priority claim of Internal Revenue Service in the amount of **\$48,501.46** comprising base taxes and accumulated interest shall be paid in full within sixty (60) months of the Confirmation Date or have the holder of the Priority Claim agree to a different treatment, together with 6% rate of interest compounded daily in equal monthly installments of **\$937.68**.

The class I creditors are not impaired and are not entitled to vote on the Plan.

#### **4. General Unsecured Claim**

**Class II** – (Unsecured Creditors) consists of the claims of general unsecured creditors in the Debtor's case totaling approximately \$12,449.41:

Penalties assessed by the New York State Department of Taxation and Finance are \$2,585.42;

Penalties assessed by the Internal Revenue Service are \$7,400.93;

ConEdison is \$2,463.06.

The Debtor proposes to pay the Unsecured Creditors ten percent (10%) dividend of their allowed claims in twenty four (24) equal monthly installments of respectively:

Members of Class II	Aggregate Dollar Amount of Claims in Class II	Plan Treatment of Class II	10% Dividend	Monthly payment
NYS Department of Taxation and Finance	\$2,585.42	10% dividend in 24 monthly installment payments	\$258.54	\$10.77
IRS	\$7,400.93	10% dividend in 24 monthly installment payments	\$740.09	\$30.84
ConEdison	\$2,463.06	10% dividend in 24 monthly installment payments	\$246.30	\$10.26

The class II creditors are impaired and are entitled to vote on the Plan.

5. **Class III** consists of the two claims of Ilya Mitelman, landlord, in the amounts of \$105,154.41 for 99-13 63<sup>rd</sup> Road, Rego Park, NY 11374 and \$115,000.00 for 99-17 63<sup>rd</sup> Road, Rego Park, NY 11374, for pre petition rent and additional rent. The treatment of these claims is fully set forth in the Global Stipulation of Landlords of 99-13 and 99-17 63<sup>rd</sup> Road, Rego Park, as well as the finalized and executed new lease agreements for the premises located at 99-13 and 99-17 63<sup>rd</sup> Road, Rego Park, NY 11374, copies of which are attached as Exhibits A and B. The Global Stipulation is a material term of this Plan and is incorporated herein by reference as if fully set forth herein.



Namely, the Global Stipulation requires the Debtor to make certain payments to the Landlords including but not limited to the following:

1. The Landlords shall receive the payment of no less than \$95,000.00 on or before the Effective Date of the within Plan. From this amount, the first \$20,154.41 shall be allocated as follows: \$15,000.00 shall be paid on account of the pre-petition claim for 99-17 63<sup>rd</sup> Road and \$5,154.41 shall be paid on account of the pre-petition claim for 99-13 63<sup>rd</sup> Road, with the balance divided equally between the claims of 99-17 and 99-13.

2. During the first 12 months following confirmation, beginning with the Effective Date of the Plan, the Debtor shall pay to Landlords, in addition to any and all amounts to be paid under the Replacement Leases, the sum of \$3,000.00 per month; and beginning on the 13<sup>th</sup> month after the Effective Date, and then for the next 17 months of the plan, the Debtor shall pay to Landlords, \$9,000.00 per month. These amounts will adjust as appropriate once (i) the payment from the Isakova Account is made; and (ii) the final amount of the Landlord's legal fees is known (collectively, the "Landlord Settlement Amounts"). Such amount of legal fees shall not exceed \$370/month extra for 27 months, to be paid over the full life of the Chapter 11 Plan. As set forth in the Global Stipulation and Replacement Leases, the Replacement Leases are interim leases until such time as all of the Landlord Settlement Amounts are paid in full, provided that notwithstanding the foregoing, in the event of any dispute with respect to Debtor's tenancy, the Replacement Leases shall govern. Furthermore, in the event Landlord is required to bring an action in any court against the Debtor, with respect to Debtor's use and occupancy or tenancy at either 99-17 and/or 99-13 63<sup>rd</sup> Road, Rego Park, NY, then the Replacement Leases (and no other leases) shall govern the relationship between Landlord(s) and Debtor.

The stipulated payments do not include the accumulated interest proscribed by the original leases for the premises. As such, the Landlord has waived the collection of that interest. Therefore, class III creditors are impaired as they are not receiving the full amounts they would be entitled to under the terms of the original leases. The class III creditors are therefore entitled to vote on the Plan.

Maria Isakova and George Borok are the **Class IV** interest holders, shall retain their interest in the Debtor following Confirmation in consideration of the new value contribution being made by them as the equity holders toward the payment of Escrow Funds and Landlord Settlement Amounts pursuant to the Global Stipulation of Settlement, the finalized and executed Replacement Leases for 99-13 and 99-17 63<sup>rd</sup> Road, Rego Park and general unsecured creditor claims. The new value contribution shall consist of installment contributions of \$1,400.00, over the 29 month term of the Global Stipulation of settlement, to equal approximately \$40,000.00 by each of the Principals in total by the conclusion of the term of the Stipulation. Ms. Isakova and Mr. Borak intend to use their monthly salaries from the business.

#### **ARTICLE IV ACCEPTANCE OR REJECTION OF THE PLAN**

**A. Impaired Classes of Claims entitled to Vote**

The Holders of Claims in Classes II and III are entitled to vote to accept or reject the Plan, and the votes of the Holders of claims in said Classes will be solicited.

**B. Impaired Classes of Claims entitled to Vote**

In accordance with Section 1126(c) of the Bankruptcy Code and except as provided in Section 1126(e) of the Bankruptcy Code, an Impaired Class or Claims shall have accepted the Plan if the Plan is accepted by the Holders of at least two-thirds (2/3) in dollar amount

and more than one-half (1/2) in number of Allowed Claims of such Class that have timely and properly voted.

**ARTICLE V  
MEANS FOR IMPLEMENTATION THE PLAN**

**A. Implementing Action**

The entity's reorganization plan is to utilize funds earned from thriving operation of the business to fund a Global Stipulation resolving all motions and issues in dispute and enter into new leases for the premises located at 99-13 and 99-17 63<sup>rd</sup> Road, Rego Park, NY 11734.

Maria Isakova and George Borok shall retain their interest in the Debtor following Confirmation in consideration of the new value contribution being made by them as the equity holders toward the payment of Escrow Funds and Settlement Amounts pursuant to the Global Stipulation of Settlement and the finalized and executed lease agreements for 99-13 and 99-17 63<sup>rd</sup> Road, Rego Park general unsecured creditor claims.

**B. Post-Effective Date Costs**

From and after the Effective Date and without further order of the Bankruptcy Court, the Debtor shall pay the fees and expenses of its Professionals in the ordinary course of business including, without limitations, those fees and expenses incurred in connection with the implementation and consummation of the Plan.

**C. Preservation of Causes of Action**

In accordance with Section 1123(b)(3) of the Bankruptcy Code and except as otherwise provided in an order of the Bankruptcy Court the Debtor and its Estate shall retain all of the causes of action arising under applicable state laws, including, without limitation, the Causes of Action, Avoidance Actions, if any, and all other causes of action of a trustee and debtor in possession under the Bankruptcy Code; except that, pursuant to the Global Stipulation,

the Landlord's claims against the Debtor, Claim Nos. 7 and 8, are hereby allowed in the as-filed amounts. Furthermore, as set forth in the Global Stipulation, and as a material inducement for Landlords to enter into the Global Settlement, the Debtor expressly agrees to release any and all claims which are currently pending or which have arisen before the Effective Date, against any and all Landlords, including but not limited to, claims against Ilya Mitelman, Diana Mitelman which are currently pending before the Supreme Court of the State of New York, Counties of Queens and Nassau. In furtherance of the foregoing, the Debtor shall execute a stipulation of settlement and a stipulation of discontinuance within thirty (30) days of the Effective Date, discontinuing the actions with prejudice.

**ARTICLE VI  
DISTRIBUTION UNDER THE PLAN**

**A. The Disbursing Agent(s)**

The reorganized Debtor shall act as Disbursing Agent(s) under the Plan, subject to the terms and provisions of the Plan. The Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy court or required by the Bankruptcy Code or the Bankruptcy Rules.

**B. Cash Payments**

Cash payments made pursuant to the Plan will be made on the Effective Date in U.S. Dollars by checks drawn on a banking institution that is an authorized depository in the Eastern District of New York selected by the Debtor or by wire transfer from a banking institution that is an authorized depository in the Eastern district of New York at the option of the Debtor.

**C. Transmittal of Distribution**

All distributions shall be deemed made at the time such distribution is deposited in the United States mail, postage prepaid. Except as otherwise agreed with the holder of an

Allowed Claim or Allowed Interest such distribution shall be distributed by mail to (i) the latest mailing address filed of record for the party entitled thereto or to a Holder of a power of attorney designated by such Holder to receive such distributions or (ii) if no such mailing address has been so filed, the mailing address reflected upon the filed Schedules of Assets and Liabilities or in the Debtor's books and records.

**D. Undeliverable Distribution**

If any distribution is returned to a disbursing Agent as undeliverable or is otherwise unclaimed, no further distributions shall be made to the Holder of the Allowed Claim or Allowed Interest on which such distribution was made unless and until the Debtor is notified in writing of such Holder's then-current address, at which time all missed Distributions shall be made to the Holder without interest. Undeliverable distributions shall remain in the possession of the Debtor until such time as a distribution becomes deliverable or is deemed canceled (as hereinafter provided). Any unclaimed distribution held by Debtor shall be accounted for separately, but the Disbursing Agent shall be under no duty to invest any such unclaimed distribution in any manner. Any Holder of an Allowed Claim or Allowed Interest that does not present a claim for an undeliverable distribution within one hundred eighty (180) days after the date upon which a distribution is first made available to such Holder shall have its rights to such distribution discharged after service by the Debtor with a waiver notice detailing the creditor(s) name and distribution amount, and shall be forever barred from asserting any such Claim or Interest against the Debtor or its property or against any other Person, including the Debtor. Notwithstanding the foregoing, any payment to the Landlords that is returned, the Debtor shall immediately notify, in the manner set forth in the notice provision of the Replacement Leases, Ilya Mitelman as agent for the Landlords of such returned payment. All

unclaimed or undistributed distributions shall, pursuant to Bankruptcy Code Section 347(b) be the property of the Debtor and shall be treated as determined by the Debtor in its sole and absolute discretion.

**E. Interest on Claims**

Post-petition interest shall not accrue or be paid on any Claims, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim unless otherwise specifically provided for in the Confirmation Order, or required by applicable bankruptcy law.

**F. Withholding and Reporting Requirements**

In accordance with Section 346 of the Bankruptcy Code and in connection with the Plan and all distributions hereunder, the Disbursing Agent shall, to the extent applicable, comply with all withholding and reporting requirements imposed by any federal, state, provincial, local or foreign taxing authority. The Disbursing Agent shall be authorized to take any and all actions necessary and appropriate to comply with such requirements. As a condition of making any distribution under Plan, the Disbursing Agent may require the Holder of an Allowed Claim to provide such Holder's taxpayer identification number, and such other information, certification or form as necessary to comply with applicable tax reporting and withholding laws. Notwithstanding any other provision of the Plan, each Person receiving a Distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of tax obligations on account of any such Distribution.

**ARTICLE VII  
CONFIRMATION AND CONSUMMATION OF THE PLAN**

The following are conditions precedent to the occurrence of the Effective Date, each

of which must be satisfied or waived in writing: (i) The Confirmation Order shall have been entered and become a Final Order and shall provide that the Debtor is authorized and directed to take all actions necessary or appropriate to enter into, implement and consummate the agreements or documents created in connection with the Plan or effectuate advance or further the purposes thereof; (ii) All other actions, documents, and agreements necessary to implement the Plan shall have been effected or executed; and (iii) The Debtor shall have sufficient Cash to enable all required payments necessary to Confirmation to be made.

If the Effective Date does not timely occur, the Debtor reserve all rights to seek an order from the Bankruptcy Court directing that the Confirmation Order be vacated, that the Plan be null and void in all respects, and/or that any settlement of Claims provided for in the Plan be null and void. If the Bankruptcy Court enters an order vacating the Confirmation Order, the time within which the Debtor may assume and assign, or reject all executory contracts and unexpired leases not previously assumed, assumed and assigned, or rejected, shall be extended for a period of 30 days after the date the Confirmation Order is vacated, without prejudice to further extensions. This provision shall not apply to, and shall not extend the time period for assumption, assumption and assignment, or rejection of, the leases that are the subject of the Landlord's motion, filed December 7, 2015, seeking to deem the leases with the Debtor rejected [Docket No.57].

## **ARTICLE VIII PROCEDURES FOR RESOLVING DISPUTED CLAIMS**

### **A. Time Limit for Objections to Claims**

Except with respect to the Landlords' Claim, which are deemed allowed, objections to Claims shall be filed by the Debtor with the Court and served upon each Holder of each of

the Claims to which objections are made, not later than sixty (60) days subsequent to the Confirmation Date or with such other time period as may be fixed by the Court.

**B. Resolution of Disputed Claims**

Unless otherwise ordered by the Court, the Debtor shall litigate to judgment, settle or withdraw objections to Disputed Claims, in its sole discretions, without notice to any party in interest.

Notwithstanding any other provision of the Plan, no Distributions shall be made with respect to all or any portion of a Disputed Claim unless and until all objections to the Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim, or some portion thereof, has become an Allowed Claim. To the extent that a Claim is not a Disputed Claim but is held by a Holder that is or may be liable to the Debtor on account of a Cause of Action, no Distributions shall be made with respect to all or any portion of such Claim unless and until such Claim and liability have been settled or withdrawn or have been determined by Final Order of the Bankruptcy Court or such other court having jurisdiction over the matter.

**C. Distribution after Allowance**

Distributions to the Holder of a disputed claim, to the extent that it ultimately becomes an Allowed claim, will be made in accordance with provisions of the Plan that govern distributions to Holders in that Class.

**D. Estimation**

The Debtor may, at any time, request that the Bankruptcy Court estimate any contingent, unliquidated, or Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether the Debtor previously objected to such Claim. The Bankruptcy



Court shall retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including, without limitation, during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any contingent, unliquidated, or Disputed Claim, the amount so estimated shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Debtor may pursue supplementary proceedings to object to the allowance of such Claim. All of the aforementioned objection, estimation, and resolution procedures are intended to be cumulative and not exclusive of one another. On and after the Effective Date, Claims that have been estimated may be compromised, settled, withdrawn, or otherwise resolved subsequently, without further order of the Bankruptcy Court.

**ARTICLE IX**  
**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Rejected Contracts and Leases**

Except as otherwise provided in the Confirmation Order or the Plan, the Confirmation Order shall constitute an order under Section 365 of the Bankruptcy Code rejecting all pre-petition executory contracts and unexpired leases to which the Debtor is a party, to the extent such contracts or leases are executory contracts or unexpired leases, on and subject to the occurrence of the Effective Date, unless such contract or lease (a) previously shall have been assumed, assumed and assigned, or rejected by the Debtor, (b) previously shall have expired or terminated pursuant to its own terms before the Effective Date, or (c) is the subject of a pending motion to assume or reject on the Confirmation Date.

**B. Bar to Rejection Damages**

If the rejection of an executor contract or unexpired lease gives rise to a Claim by the other party or parties to the contract or lease, the Claim shall be forever barred and shall not be enforceable against the Post-Confirmation Debtor, unless a Proof of Claim is filed and served on the Post- Confirmation Debtor within 30 days after service of a notice of the Effective Date or such other date as is prescribed by the Bankruptcy Court.

#### **ARTICLE X DEFAULT**

The Debtor shall be deemed in default if it fails to make timely payments to any creditors as provided for in the Plan and the Debtor and each creditor shall abide by the following:

1. Upon written receipt from any creditor of notice of default relating to payments, the Debtor shall have a period of thirty (30) days from receipt of such notice to cure such default, during such 30-day period, the creditors shall take no action to terminate the Debtor's Plan. If such default is cured by the Debtor within the 30-day period, the Plan shall continue in full force and effect. Any notices of default under the Plan shall be served upon the Debtor and Debtor's attorney. Nothing herein shall extend the Debtor's time to fulfill its obligations under the Global Stipulation or Replacement Leases. The time limits and cure periods set forth in the Global Stipulation or Replacement Leases shall govern the Debtor's obligations under those agreements. As set forth in the Global Stipulation and Replacement Leases, a default by the Debtor in any of its obligations to the Landlords under this Plan constitutes a default under the Replacement Leases.

2. If full payment of the default amount is not paid by the Debtor within thirty (30) days of such demand, the Internal Revenue Service and/or New York State Department of Taxation and Finance may collect any unpaid liabilities through governing administrative

collection provisions, and the automatic stay of 11 U.S.C. §363(a) is lifted for this purpose without further order of the court.

3. If Debtor fails to make any post-confirmation deposits, fails to make a timely payment to creditors under this Plan, fails to pay any post-confirmation tax liability, or fails to file post-confirmation tax returns by the due date of the tax return, then after 5-days written notice of default to Debtor and Debtor's counsel and Debtor's failure to cure, the affected creditor, the United States and/or the New York State Department of Taxation and Finance may declare a default of the Plan.

## **ARTICLE XI DISCHARGE AND INJUNCTION**

### **A. Discharge of the Debtor**

Pursuant to Section 1141(d)(1) of the Bankruptcy Code, upon the Effective Date, except as set forth in the Plan or in the order confirming the Plan, the Debtor will be discharged from any claim that arose prior to the petition date whether or not the Holder of the Claim has accepted the Plan, except that the Debtor may, by separate motion and after notice and a hearing seek discharge for cause. Pursuant to Section 1141(d)(2) of the Bankruptcy Code, the Debtor will not be discharged from any debt excepted from discharge under section 523 of this title.

### **B. Release by the Debtor**

To the extent permitted by Section 1125(e) of the Bankruptcy Code on the Effective Date, the Debtor and its Estate shall be released unconditionally, and hereby deemed to forever release unconditionally, Debtor's Professionals from any and all claims, obligations, suits, judgments, damages, rights, causes of action and liabilities whatsoever (other than the right to enforce the performance of their respective obligations, if any, to the Debtor under the Plan, and

the contracts and other agreements delivered under the Plan), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, directly or derivatively, then existing or thereafter arising, in law, equity or otherwise that are based in whole or in part on any act or omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtor, the Chapter 11 Case, the Plan or the Disclosure Statement provided, however, that notwithstanding the foregoing nothing contained herein is intended to or shall operate as a release of any claims for fraud, willful misconduct or gross negligence.

**C. Injunction**

Except as otherwise provided in the Plan, the Confirmation Order shall provide, among other things, that from and after the Effective Date all Persons who have held, hold or may hold Claims against the Debtor are permanently enjoined from taking any of the following actions against the Debtor, its Estate, or any of their property on account of any such Claims: (1) commencing or continuing, in any manner or in any place, any action or other proceeding; (2) enforcing, attaching, collecting or recovering in any manner, any judgment, award, decree or order; (3) creating, perfecting or enforcing any lien or encumbrance; (4) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due to the Debtor unless authorized under the Plan; (5) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan; provided, however, that nothing contained in the Plan shall preclude such Persons from exercising their rights pursuant to and consistent with the terms of the Plan or the Confirmation Order.

**D. Limitation of Liability**

Except as otherwise provided in the Plan, the Debtor and its Professionals and any of such parties' successors and assigns, shall not have or incur any claim, action, proceeding, Cause of Action, suit, account, controversy, agreement, promise, right to legal remedies, right to equitable remedies, right to payment or Claim (as defined) in Section 101(4) of the Bankruptcy Code), whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured and whether asserted or assertable directly or derivatively, in law equity or otherwise to one another or to any Holder of a Claim, or any other party in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys, or any of their successors or assigns, for any act or omission originating or occurring on or after the Petition Date through and including the Effective Date in connection with, relating to, or arising out of the Debtor, the Chapter 11 Case, negotiation and filing of the Plan or any prior plans, filing Chapter 11 Case, the pursuit of confirmation of the Plan or any prior plans, the consummation of the Plan, the administration of the Plan or the property to be liquidated other than resulting from and/or gross negligence as determined by a Final Order of a court of competent jurisdiction, and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan. Nothing herein shall abrogate the requirements of any applicable professional disciplinary rules.

Nothing under the Plan shall limit any person's or any party's liability for fraud, gross negligence, willful misconduct, malpractice, breach of fiduciary duty, criminal conduct, unauthorized use of confidential information that causes damages, or ultra vires acts. Nothing herein shall limit the liability of the Debtor's professionals or any other professionals for malpractice pursuant to Rule 1.8 (h)(1) of the New York State Rules of Professional

Conduct. Nothing in the Plan shall effect a release of any claim by the United States Government or any of its agencies or any state and local authority whatsoever, including, without limitation, any claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against the Debtor any of its members, shareholders, officers, directors, employees, attorneys, advisors, agents, representatives and assigns, nor shall anything in the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action or other proceedings against the against the entities referred to herein for any liability whatever, including without limitation, any claim, suit or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state or local authority, nor shall anything in this Plan exculpate any party from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including liabilities arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States.

**E. Terms of Bankruptcy Injunction or Stays**

All injunctions or stays provided for in the Chapter 11 Case under Sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date unless otherwise provided in this Plan. Upon the Effective Date, the injunction provided in Article XI(D) shall apply.

**ARTICLE XII  
RETENTION OF JURISDICTION**

The Court shall retain and have exclusive jurisdiction over the Chapter 11 Case for the following purposes:

1. to determine any and all objections to the allowance of claims;

2. to determine any and all pending applications for the rejection or assumption of executor contracts or unexpired leases to which the Debtor is a party or with respect to which it may be liable, and to hear and determine, and if not be to liquidate, any and all Claims arising therefrom;
3. to determine any and all applications, adversary proceedings, and contested or litigated matters, to set aside liens or encumbrances and to recover any preferences, transfers, assets or damages to which the Debtor may be entitled under applicable provisions of the Bankruptcy Code or other federal, state or local law;
4. to consider any modifications of the Plan, any defect or omission or reconcile any inconsistency in any order of the Bankruptcy Code, including the Confirmation Order, to the extent authorized by the Bankruptcy Code or other applicable law;
5. to determine all controversies, suits and disputes that may arise in connection with the interpretation, enforcement or consummation of the Plan, including disputes between or among classes of claimants under the Plan regarding allocations or payments of distribution hereunder;
6. to consider and act on the compromise and settlement of any claim against or cause of action by or against the Debtor or the Debtor's estate;
7. to determine such other matters which may be set forth in the Confirmation Order or which may arise in connection with the Plan, including, but not limited to, extending and time limits provided in the Plan and to implement the transfer of the fee simple interest in the Premises to Debtor;
8. to fix the allowance of compensation of professionals;
9. Enforce all orders previously entered by the Bankruptcy Court; and
10. Enter a Final Decree closing the Chapter 11 Case.

**ARTICLE XIII  
GENERAL PROVISIONS**

**A. Modification and Amendments**

The Debtor may alter, amend or modify the Plan or any Exhibits under Section 1127(a) of the Bankruptcy code at any time prior to the Confirmation Date. After the Confirmation Date and prior to substantial consummation of the Plan as defined in Section 1101(2) of the Bankruptcy Code, the Debtor may, under Section 1127(b) of the Bankruptcy Code, institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order, and such matters as may be necessary to carry out the purpose and effect of the Plan so long as such proceedings do not adversely affect the treatment of Holders of Claims under the Plan; provided, however, that prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or order of the Bankruptcy Court. The Plan shall not be materially modified post confirmation without notice and hearing.

**B. Severability**

If any provision in this Plan is determined to be invalid, void or unenforceable, the determination will in no way limit or affect the enforceability and operative effect of any other provision of this Plan.

**C. Binding Effect**

The Plan shall be binding upon and inure to the benefit of the Debtor, all present and former Holders of Claims and their respective successors and assigns.

**D. Successors and Assigns**

The rights, benefits and obligations of any Person named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or



assign of that Person.

**E. Final Decree**

Pursuant to Local Bankruptcy Rule 3022-1, within fifteen (15) days following the full administration of the estate, the Debtor or the Reorganized Debtor shall file, on notice to the United States Trustee, an application and a proposed order for a final decree closing this case.

**F. Post-Confirmation Report**

The Debtor shall be required to file quarterly post-confirmation status reports until the case is closed, converted, or dismissed whichever happens earlier.

**G. Notice and Service of Documents**

Any notice, request or demand required or permitted to be made or provided to or upon the Debtor under the Plan shall be (a) in writing, (b) served by (i) hand delivery, (ii) overnight delivery service, (iii) first class mail, (iv) email or (v) facsimile transmission, (c) deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed and (d) addressed as follows:

**Law Offices of Alla Kachan, P.C.**  
**3099 Coney Island Avenue, 3<sup>rd</sup> Floor**  
**Brooklyn, NY 11235**  
**Phone: (718) 513-3145**  
**Fax:(347)-342-3156**  
**[alla@kachanlaw.com](mailto:alla@kachanlaw.com)**

**H. Plan Exhibits**

Any and all Plan Exhibits, or other lists or schedules not filed with the Plan shall be filed with the Clerk of the Bankruptcy Court at least three business Days prior to the date of the commencement of the Confirmation Hearing. Upon filing, those documents may be inspected in the office of the Clerk of the Bankruptcy Court during normal court hours. Holders of Claims may obtain a copy of any document upon request to the Debtor.

**I. Filing of Additional Documents**

On or before substantial consummation of this Plan, the Debtor shall file such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of this Plan.

Dated: Brooklyn, New York  
July 6, 2016

Debtor and Debtor-in-Possession By:  
s/ Maria Isakova  
The president of Fairytale Day Care, Inc.

s/ Alla Kachan  
Alla Kachan, Esq.  
Law Offices of Alla Kachan, PC  
3099 Coney Island Avenue, 3<sup>RD</sup> Floor  
Brooklyn, NY 11235

**EXHIBIT A**

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK**

	)	
	)	
In re:	)	Chapter 11
FAIRYTALE DAY CARE, INC.,	)	Case No. 15-42535 (CEC)
<i>Debtor-in-Possession.</i>	)	
	)	
	)	

**STIPULATION RESOLVING (1) MOTION OF OWNERS OF 99-13 AND 99-17 63<sup>RD</sup> ROAD, REGO PARK, NEW YORK TO DIRECT DEBTOR TO PAY POSTPETITION AMOUNTS DUE UNDER LEASES PURSUANT TO SECTION 365(d)(3) OF THE BANKRUPTCY CODE [DOCKET NO. 24] AND (2) MOTION OF OWNERS OF 99-13 AND 99-17 63<sup>RD</sup> ROAD, REGO PARK, NEW YORK 11374 FOR AN ORDER FINDING THE LEASES REJECTED PURSUANT TO SECTION 365(d)(4) OF THE BANKRUPTCY CODE [DOCKET NO. 57]**

WHEREAS, the above-captioned debtor (the "Debtor") filed a voluntary chapter 11 case on May 29, 2015 (the "Petition Date"); and

WHEREAS, since the Petition Date, the Debtor and the landlords (the "Landlords" or "Owners" and with the Debtor, the "Parties") for 99-13 and 99-17 63<sup>rd</sup> Road, Rego Park, NY 11374 (each a "Property" and together the "Properties") have had numerous disputes concerning postpetition rents and additional rents and/or amounts due and owing for their use and occupancy of the Properties as set forth in more detail in the Landlord's motion regarding same (the "Postpetition Claims Motion") [Docket No. 24] and the Debtor's opposition thereto [Docket No. 29] (the "Postpetition Claims"); and

WHEREAS, on or about November 20, 2015, the Court entered an order authorizing mediation and appointing Bruce Weiner, Esq. mediator to mediate discussions toward resolving the Postpetition Claims [Docket No. 54]; and

WHEREAS, on December 7, 2015, the Landlords filed a motion pursuant to section 365(d)(4) of the Bankruptcy Code (the "365(d)(4) Motion") [Docket No. 57]; and

WHEREAS, on January 8, 2016, the Debtor filed an objection to the 365(d)(4) Motion [Docket No. 66] and

WHEREAS, on December 16, 2015, December 22, 2015, January 7, 2016, and February 8, 2016 the Parties met for mediation sessions and have executed that certain Memorandum of Understanding dated February 26, 2016 (the "MOU"), which memorializes their agreements in the mediation as of that date concerning the Postpetition Claims and the 365(d)(4) Motion, but which MOU remained subject in its entirety to the execution of this Stipulation and mutually agreeable replacement leases and riders for each of the Properties (the "Replacement Leases") in accordance with the terms hereof and the terms of the Replacement Leases; and

WHEREAS, as of the date hereof, the parties have resolved the remaining disputes under the Postpetition Claims Motion and the 365(d)(4) Motion as set forth below; and

**NOW THEREFORE, IT IS STIPULATED AND AGREED BY AND BETWEEN THE UNDERSIGNED PARTIES THAT:**

1. The Debtor has agreed to pay the Landlord the amount of \$16,317.23 (the "Postpetition Claim Settlement Amount"), which amounts have been tendered to Landlord, and which includes a \$850.00 credit from the Landlord on account of certain repairs made by Tenant, and such Postpetition Claim Settlement Amount is on account of:

Real Estate Taxes:

Amount Due for 99-17: \$1,738.75  
Amount Due for 99-13: \$3,953.69

Small Fire Violation:

Amount Due for 99-17: \$341.75

\$5,000 Fire Violation:

Amount Due: \$2,555.48

Water Inspection Charges:

Amount Due for 99-17: \$462.73

Amount Due for 99-13: \$462.73

HVAC Repair Charges Deducted from Base Rent:

Amount Due for 99-13: \$1,433.20

Elevator Maintenance Charges Due to Landlord:

Amount Due for 99-17: \$1,203.30

Amount Due for 99-13: \$1,217.10

CAD Testing Fee:

Amount Due for 99-17: \$1,524.25

Amount Due for 99-13: \$1,524.25

Elevator CAD Testing Inspection Fee:

Amount Due for 99-17: \$375

Amount Due for 99-13: \$375

2. The Landlords and the Debtor each hereby represent and warrant that they are not aware of any other outstanding charges, violations, bills, etc. other than those specifically addressed in this Stipulation. To the extent that the Owners or Debtor receive notice or become aware of such charges, violations, bills, etc. that relates to an event that occurred prior to the effective date of the Stipulation, such amount(s) shall not be included herein and the Owners and Debtor reserve all rights with respect to same. The Parties have agreed to run a title report and split the cost of same in a further effort to ascertain any outstanding violations, etc., not addressed by this Stipulation.

3. The Debtor hereby acknowledges that as of the date hereof any and all leases and riders (the "Prior Leases") that it is party to with the Landlords are null, void and terminated but shall be used as a model for use and occupancy charges for the Properties until this Stipulation is approved by the Court. The Debtor further acknowledges that any and all related guaranties concerning such Prior Leases remain valid and enforceable until the terms of this Stipulation are carried out. Upon full satisfaction of all obligations under the Stipulation and the plan of

reorganization (the "Chapter 11 Plan") it contemplates, all guaranties of Prior Leases shall terminate. Such termination shall not impair the Landlord's rights or any guarantor's obligations under any guaranties of the Replacement Leases.

4. The Landlords shall enter into new triple net leases with the Debtor defined herein as the Replacement Leases in accordance with the provisions of this Stipulation and upon such other terms as the Landlords require. Such Replacement Leases, the payments due under this Stipulation and the Chapter 11 Plan payments due to the Owners are to be personally guarantied by Maria Isakova (the "Guaranties"). True and correct copies of such Replacement Leases (including riders thereto) and the Guaranties are annexed hereto as Exhibits "B," and "C." As set forth in such Replacement Leases, the Debtor has agreed to assume all costs of operating and maintaining the Properties without limitation unless such cost is expressly declared to be a duty of the Landlords.

5. Among the obligations of the Debtor under this Stipulation and the Replacement Leases is the payment of the Debtor of all costs and fees associated in any way with the care and maintenance of the elevators including, but not limited to, maintaining an elevator service contract with a duly licensed servicing company, any type of testing, inspections, repairs, monthly or other servicing, service calls, alarms, lights, CAD testing, CAD testing inspection fees, etc. As part of the elevator repairs that are currently required (the "99-13 Elevator Repair"), the Owners of 99-13 shall give the Debtor a credit of  $\frac{1}{2}$  of the projected repair cost of the 99-13 elevator up to a maximum amount of  $\frac{1}{2}$  of \$21,775 or \$10,887.50 (the "Elevator Repair Credit") for repairs listed in the Kone estimate attached here as Exhibit "A". The Parties hereto acknowledge that the Elevator Repair Credit shall be a maximum of \$10,887.50 but may be less once Debtor negotiates the final repair cost with Kone. Whether the final repair cost is higher or lower than \$21,775, the Owner's credit to Debtor shall be limited to \$10,887.50. For example, if the elevator repair cost is \$10,000, then the Elevator Repair Credit shall be \$5,000 and if the elevator repair cost is \$40,000, then the Elevator

Repair Credit shall be \$10,887.50. The Elevator Repair Credit shall vest only upon the Owners receiving a final paid invoice and confirmation from Kone that all elevator issues have been resolved and the elevators at both 99-17 and 99-13 are operational and in good working order. For purposes of this paragraph, "good working order" shall mean that the elevators are fully compliant with all applicable laws and passed all CAD testing and have no open repair issues. The Elevator Repair Credit shall be entirely limited to the repairs described in Exhibit "A" hereto.

6. The Parties hereby acknowledge that the Owners have given the Debtor a qualified letter of authorization to negotiate the cost of an elevator repair and a maintenance plan with Kone, provided that, nothing in this letter or herein shall be deemed as Owners giving consent to Debtor to negotiate or otherwise discuss elevator issues on behalf of Owners or to bind Owners to any financial obligation concerning the elevators or otherwise. The Owners shall not be bound by any agreement negotiated, entered into, by, or on behalf of the Debtor unless executed by Ilya Mitelman, as representative of the Owners. All of the costs and expenses incurred by Debtor through negotiations with Kone shall be the responsibility of Debtor. Under no circumstance, shall the Owners be responsible for any Kone charges, except for the Elevator Repair Credit mentioned herein, which amount is a credit to the Debtor, not Kone and the Parties agree that Kone shall not be an intended or incidental third party beneficiary to the Elevator Repair Credit and shall have no rights to same. The Debtor agrees to defend, indemnify and hold Owners harmless for any legal or administrative action taken by Kone against the Owners, either of the Properties or any of its principals for any non-payment of Kone charges.

7. No later than thirty (30) days after approval of this Stipulation, the Debtor shall enter into a full service maintenance contract with Kone. A copy of said contract, and any amendment or renewal thereof, shall be provided to Owners. The Debtor shall bear all other costs associated with the elevators including but not limited to certain existing or prior costs and charges, which include,



but are not limited to:

Debtor's Elevator Repair Charges: \$3,900;

Debtor's Elevator Repair Charges: Kone Invoice # 1157080670 in the amount of 882.72 for services rendered on 10/26/15 and Kone Invoice # 1157083905 in the amount of \$1,091.35 for services rendered at 99-13 on 10/29/15;

Elevator Repairs for 99-13: Estimated Cost: \$22,000; and

Elevator Repairs for 99-17: Estimated Costs for repair of the 99-17 elevator: Approximately \$3,300

8. The Debtor shall pay the Landlord's legal fees incurred during this case. The payments will be made under the Chapter 11 Plan in the following amounts: \$25,275.25 through February 8, 2016, plus the fees and expenses incurred from February 9, 2016 through the effective date of confirmation in this case, with the understanding that the Owners' attorney has agreed to cap his legal fees for the period February 9, 2016 through the effective date of confirmation of this case to \$10,000 (the "Post 2/8/16 Legal Fees") for a maximum amount of \$35,275.25 with the further understanding that this case proceeds promptly to confirmation and there is no additional litigation (collectively, the "Legal Fees"). The Landlord shall update the Legal Fees no later than three business days prior to the effective date of confirmation. The Elevator Repair Credit shall be a credit against the Legal Fees. The Owners shall have the sole right to decide how they will allocate the Elevator Repair Credit as between themselves.

9. The Owners' prepetition claims, Nos. 7 and 8 on the Claims Register in this case, are hereby allowed claims in the amounts set forth therein. To the extent the Owners received payments from funds from the Isakova case or from Fairytale, they shall amend their claims as appropriate to reflect the reduced amounts owed (as amended, the "Allowed Prepetition Claims").

10. The chapter 7 trustee is holding in an attorney escrow account approximately \$114,000 (the "Isakova Account"). The Debtor and Owners hereby agree and acknowledge that after administrative, priority, secured and other unsecured claims are paid from the Isakova Account, the balance of such funds shall be paid in two equal parts to Owners on account of Claim

Nos. 6 and 7, each filed on account of their guaranty claims in the Isakova chapter 7 case. Such payments shall be in full satisfaction of the Owners' claims in the Isakova case. As set forth in paragraph 19 below, the Debtor and Isakova personally agree that if the aggregate payment on account of Claim Nos. 6 and 7 is less than \$95,000, the Debtor and/or Isakova shall make up the difference from whatever source so that the total paid to Owners on or before the effective date of the Chapter 11 Plan totals \$95,000. The Owners shall then amend their Allowed Prepetition Claims in the Fairytale case to reflect such payment.

11. The Replacement Leases with the Debtor shall each have a 10-year term commencing upon the execution thereof and shall each contain three five-year renewal options. The rent for the three five year renewal options shall be determined based on fair market value, which shall be solely determined by Owners at the time of renewal.

12. Notwithstanding anything to the contrary in paragraph 4 above, the Replacement Leases shall be full triple net leases where Fairytale is responsible for all aspects of preserving, maintaining, and caring for the Properties, plus the payment of all fees, costs, charges, and expenses associated with same without limitation. It is the intent of the Parties hereto that the Rent and Additional Rent payable under the Replacement Leases shall be an absolutely net return to the Landlords and that the Debtor shall pay or reimburse the Landlords for all costs and expenses, without limitations, relating to the use, operation, maintenance and repair of the Properties by the Debtor and the Debtor's business carried on therein unless otherwise expressly provided in this Stipulation or in the Replacement Leases. Such obligation of the Debtor extends to all parts of the Properties, without limitation, including inside and outside walls, rooms, closets, basements, crawlspaces, drive ways, sidewalks, gardens and grassy areas, common areas, vestibules, front, rear and side yards, roof tops, common areas, service areas, and hallways. Any amount or obligation herein or in the Replacement Leases relating to the use and occupancy of the Premises which is not

expressly declared to be an obligation of Landlords shall be deemed to be an obligation of the Debtor to be performed by Debtor at Debtor's expense.

13. The Debtor agrees to pay, without further notice, demand, setoff, counterclaim, abatement, suspension, deduction or defense unless specifically provided herein or in the Replacement Leases, the Rent and Additional rents (as defined in the Replacement Leases), plus all associated costs, without limitation, including operation, maintenance, insurance, taxes, real estate taxes, water and sewer, heating, cooling, air conditioning, elevators, and any other cost or expense of the Properties.

14. The Landlord's sole responsibility under the Leases shall be limited to maintenance of the "structural integrity" of the Properties foundation, exterior walls, load bearing walls in the interior of the Properties, provided that the same have not been altered, modified or repaired by Tenant without Owners' express written consent. "Structural integrity" shall not include repairing or sealing the roof or walls from leaks, or waterproofing of any aspect of the Properties, or any aesthetic repairs of any kind whether interior or exterior. All roof and leak repairs shall be the responsibility of Tenant, subject to Owners' prior written approval.

15. The Replacement Leases and/or the Chapter 11 Plan (as appropriate) shall contain the following provisions in addition to any typical triple net lease provisions:

The Debtor hereby accepts the Properties as they are on the date hereof with no warranties, express or implied from Landlord. The Debtor admits that it fully inspected the Properties and, including but not limited to the conditions as set forth in that certain In-Spect engineer's report dated April 21, 2015, the Debtor is fully aware of all of the conditions of the Properties and any amenities or improvements thereto and, except as specifically set forth herein, shall be responsible to maintain, repair and remediate any and all existing conditions. Debtor further acknowledges that Debtor had sufficient time to hire experts of its choosing to inspect the Properties.

The terms of the Replacement Leases would take interim effect immediately upon the effective date of the Chapter 11 Plan but would become final fully enforceable leases only upon full payment of the obligations set forth herein and in the Chapter 11 Plan provided there are no other further defaults. The interim period shall not extend the term of the Replacement Leases.

The Debtor shall timely pay all real estate taxes along with its monthly rent payment and any other Rent or Additional Rent amounts due to Landlords. The Debtor may pay all annual taxes in one lump sum provided such payment is advance on the due date for such taxes. Once annually, the Landlords shall provide updated real estate tax figures to the Debtor and then divide the total into 12 monthly installments to be paid as part of the rent and additional rent unless the Debtor chooses to pay such taxes in full at the beginning of the tax year.

The Debtor shall keep track of all water and sewer usage for both Properties and timely pay same.

As set forth in paragraph 13 above, the Replacement Leases shall make clear that the Debtor has no right to offset any charge, expense or grievance against Rent or Additional Rent. Its only option in the event of an irreconcilable dispute is to make the payment as required under the Replacement Lease and bring an action to collect same or enter into good faith negotiations with Landlord to resolve same.

The Debtor shall take and acknowledges its receipt of the Properties "As-Is". The Debtor shall be responsible for all repairs of all types and all maintenance contracts within or related to the Properties, including, but not limited to, elevator repairs, elevator maintenance, HVAC systems, heating, cooling, maintenance of the interior of the premises, stair cases and grounds surrounding the premises, etc. The Landlords shall be deemed "out-of-possession" Landlords.

The Debtor shall keep the roofs in good repair at all times at the Property. The Debtor shall notify the Landlord by email of all repairs to the Properties which cost in excess of \$500 for any single repair or in the aggregate of \$1,000 monthly for multiple repairs and same shall be subject to Owner's approval, which shall not be unreasonably withheld. The Debtor shall advise the Landlords who the Debtor uses for general maintenance, electrical, plumbing and roofing services. The Debtor shall be fully responsible for any required roof repairs, whether pre-existing, existing or repairs required in the future. Debtor shall submit all plans for repairs in excess of the limits set forth above to Owners, which Owner shall promptly review and approve, which approval shall not be unreasonably withheld. Debtor shall make sure that any roof repairs are such that after such repairs, the roof shall be sufficient for everyday use by anyone permitted by the Debtor to be on the premises. In other words, the roof shall be repaired such that it is capable of withstanding the wear and tear of the children, staff and visitors of the daycare at a bare minimum.

The Debtor agrees to immediately enter into a full service contract with Kone and make all other necessary payments to Kone to clear any open accounts with Kone related to the Properties. A copy of the Kone maintenance contract shall be promptly provided to Landlord. Furthermore, documentation with respect to all maintenance and repair services performed to the elevators shall be provided to Landlords.

The Landlords shall provide the Debtor with appropriate authorizations to permit it enter into agreements with Kone, provided however, that such agreements make clear that the Landlords will have no liability under such agreements.

The Debtor agrees to fully indemnify the Landlords for any expenses they incur of any type in connection with the Debtor's leasehold and use and occupancy of the Properties or any part thereof.

The Debtor shall only use fully licensed, bonded and insured contractors for work of any type on the Properties and the Landlord must be listed as an additional insured on any insurance policies of any type protecting the Debtor and the Properties. The insurance policies shall have minimum coverage limits of \$2 million per occurrence and \$5 million in the aggregate.

The Debtor shall not make any change or alterations to the Properties that would involve movement of walls, beams, ceilings, electrical and plumbing systems windows or change the certificate of occupancy or make any changes that are structural in nature without Landlord's prior written approval.

Owners shall have reasonable access to the building, which shall mean reasonable access during normal operating hours and, upon request, after hours or on the weekends.

The Debtor shall be permitted to sublet a portion of the Properties, with the permission of the respective Owner which permission shall not be unreasonably withheld. Notwithstanding the foregoing, Landlords may withhold permission or consent for any reason or no reason, or impose any type of restrictions or conditions, if the Tenant wishes to sublet any portion of the Properties in excess of 25%.

The Debtor shall automatically pay the Rent and Additional Rent so as to be received by Landlord on the 1<sup>st</sup> of the month with a 10-day grace period. Landlord shall not be required to provide bills, notices or invoices for monthly Rent or Additional Rent items. After the 10<sup>th</sup> of the month, late charges shall apply.

16. The Debtor shall pay to the Owners the sum of \$50,000 as additional security deposit (the "Additional Security Deposit"). This amount shall be paid monthly over a twenty-four (24) month period in the amount of \$2,083.33 per month commencing on the 13<sup>th</sup> month after the effective date of the Chapter 11 Plan. The Additional Security Deposit shall be allocated 50% to the 99-13 leasehold and 50% to 99-17 leasehold. Once fully paid, \$25,000 shall be treated as additional security deposit for 99-13 and \$25,000 shall be treated as additional security deposit for 99-17. The Additional Security Deposit is included the Chapter 11 Plan payments addressed.

17. Except with respect to the obligations set forth in this Stipulation and the obligations under the Replacement Leases, the Debtor and Landlords hereby release each other from any all claims they have between each other from the beginning of time through the date hereof except, provided that such release of the Debtor by the Landlord becomes effective upon the final payment of all amounts due under the Chapter 11 Plan and under this Stipulation, provided there is no default under the Replacement Leases.

18. The Parties shall each promptly dismiss with prejudice the state court proceedings pending against each other in Queens Supreme Court and in Nassau Supreme Court, but such dismissal with prejudice shall not impair the Owners' claims in this case or the Isakova case, or under this Stipulation and any guaranties of the obligations hereof or guaranties of Chapter 11 Plan payments to the Owners.

19. The Debtor shall file the Chapter 11 Plan so as to provide for payments in the following amounts to the Owners on account of the Allowed Prepetition Claims (after adjustment based on any partial payment from the Isakova account), the Additional Security Deposits, and the Legal Fees (subject to finalizing the total Legal Fees):

The Debtor shall file the Chapter 11 Plan consistent with this Stipulation and in a form reasonably acceptable to the Owners. The Chapter 11 Plan shall provide that on or before the effective date, the Owners shall receive the payment of no less than \$95,000 as set forth in paragraph 10 above. The Chapter 11 Plan shall further provide that during the first 12 months following confirmation, beginning with the effective date of a plan, the Debtor shall pay to Owners, in addition to any and all to be paid under the Replacement Leases, the sum of \$3,000 per month, and beginning on the 13<sup>th</sup> month after the effective date and then for the next 17 months of the Plan the Debtor shall pay to Owners \$9,000 per month. These amounts shall be adjusted as appropriate once (i) the payment from the Isakova Account is made; and (ii) the final amount of the Legal Fees is known on final basis provided that, such additional payment on account of the Post 2/8/16 Legal Fees shall not exceed \$370/month extra for 27 months (if paid over the full life of the Chapter 11 Plan or \$631/month extra if such amount is paid only over the final 17 months of the Chapter 11 Plan).

20. The Plan shall provide that upon the full payment of the Postpetition Amounts, the Prepetition Claims, the Legal Fees, and the Additional Security Deposit, the Chapter 11 Plan shall

be deemed fully performed and the Replacement Leases shall be deemed fully enforceable.

21. The Chapter 11 Plan shall provide that a default under the Chapter 11 Plan shall constitute a default under the Leases. In the event of an uncurable default under the Chapter 11 Plan, the Landlords shall be permitted to terminate the Replacement Lease with no further notice.

22. The Chapter 11 Plan shall provide that payments due under the Chapter 11 Plan and the Replacement Leases shall be due on the 1<sup>st</sup> of each month and that the first such payment is due on the effective date of the Chapter 11 Plan. The Debtor shall have a ten-day grace period (the "Grace Period") to make payments under the Plan and the Replacement Leases. Payments are deemed made when received by the Owners. *The Debtor acknowledges that all times set forth herein are time is of the essence.* Timely receipt of such payments by the Landlord is the responsibility of the Debtor. After the tenth day of the month, there commences a curable default period (the "Curable Default Period"), which shall run until the final day of the month, regardless of whether such day falls on a Sunday or holiday. Any payment required to be received by the Landlord that is not received during the Grace Period shall accrue late fee interest at the rate of 5.00% of such payment. The full amount of such payment, plus the late fee interest, may be paid so as to be received by the Landlord anytime during the Curable Default Period. It shall constitute a non-curable default ("Non-Curable Default") if such payment, including any applicable late fee interest, is not paid during the Curable Default Period. In the event of a Non-Curable Default, the Landlords in their sole discretion may waive such Non-Curable Default in writing or they may deem such Replacement Lease terminated and pursue their remedies under applicable law.

23. The Parties represent and warrant to each other that (a) the signatories to this Stipulation are authorized to execute this Stipulation; (b) each Party has full power and authority to enter into this Stipulation; and (c) this Stipulation is duly executed and delivered and constitutes a valid binding agreement in accordance with its terms.

24. This Stipulation may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument, and it shall constitute sufficient proof of this Stipulation to present any copy, copies, facsimiles or portable documents format signed by the Parties herein to be charged.

25. The provisions of this Stipulation shall be binding upon the Parties' respective successors and assigns.

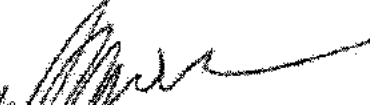
26. Any express representations and warranties made herein shall survive the execution of this Stipulation until the terms hereof have been carried out by each Party hereto and then shall cease.

27. The Court shall retain jurisdiction over the subject matter of this Stipulation, including the interpretation thereof, to resolve all disputes relating thereto and to enforce the settlement set forth herein.


Dated: New York, New York  
~~March~~ 2016

JUNE 19, 2016


LAW OFFICES OF ARIEL KACZAN, P.C.  
Attorneys for the Debitors

By:   
Ariel Kaczan  
3079 Coney Island Avenue, 3rd Floor  
Brooklyn, NY 11233  
Tel: (718) 513-3143  
Fax: (347) 242-3136

ROBERT LLC  
Attorneys for the Owners of 99-13 and 99-17  
63rd Road, Rego Park, NY 11374

By:   
Gary C. Raven  
116 West 21 Street, Fifth Floor  
New York, New York 10011  
Tel: (212) 961-4770  
Fax: (212) 677-5419

FARREYDALE DAY CARE, INC.  
Debitors' Best Defense to Possession

By:   
Maria Indecus  
President

OWNERS OF 99-13 AND 99-17 63RD ROAD,  
REGO PARK, NY 11374.  
Lenders

By:   
Robert LLC  
Authorized Signatory



SO ORDERED:

**EXHIBIT B**

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

AGREEMENT OF LEASE, made as of this 1st day of June, 2016, between

Iva Mitehman and Alexandr Lipel, 634 Flanders Drive, Valley Stream, New York 11581  
party of the first part, hereinafter referred to as OWNER, and

FAIRYTALE DAYCARE INC.,  
party of the second part, hereinafter referred to as TENANT,

WITNESSETH: Owner hereby leases to Tenant and Tenant hereby hires from Owner the entire building located at 99-13 63<sup>rd</sup> Road, Rego Park, New York 11374.

in the Borough of Queens, City of New York ("Demised Premises", "demised premises", "Premises") for the term of ten (10) years with possible three options to renew, with each option having a five year term, (or until such term shall sooner cease and expire or extended as hereinafter provided) to commence on the 1<sup>st</sup> day of May, 2016 and to end on the 30th day of April, 2026, both dates inclusive, at an annual rental rate of:

See Rider attached hereto and made a part hereof

which Tenant agrees to pay in lawful money of the United States which shall be legal tender in payment of all debts and dues, public and private, at the time of payment, in equal monthly installments in advance on the first day of each month during said term, at the office of Owner or such other place as Owner may designate, without any set off or deduction whatsoever, except that Tenant shall pay the first monthly installment(s) on the execution hereof (unless this lease be a renewal).

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

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

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

and for no other purpose. Tenant shall at all times conduct its business in a high grade and reputable manner, shall not violate Article 37 hereof, and shall keep show windows and signs in a neat and clean condition.

**Tenant**

**Alterations:** 3. Tenant shall make no changes in or to the demised premises of any nature without Owner's prior written consent. Subject to the prior written consent of Owner, and to the provisions of this article, Tenant at Tenant's expense, may make alterations, installations, additions or improvements which are nonstructural and which do not affect utility services or plumbing and electrical lines, in or to the interior of the demised premises by using contractors or mechanics first approved by Owner. Tenant shall, before making any alterations, additions, installations or improvements, at its expense, obtain all permits, approvals and certificates required by any governmental or quasi-governmental bodies and (upon completion) certificates of final approval thereof and shall deliver promptly duplicates of all such permits, approvals and certificates to Owner and Tenant agrees to carry and will cause Tenant's contractors and sub-contractors to carry such workman's compensation, general liability, personal and property damage insurance as Owner may require. If any mechanic's lien is filed against the demised premises, or the building of which the same forms a part, for work claimed to have been done for, or materials furnished to, Tenant, whether or not done pursuant to this article, the same shall be discharged by Tenant within ten (10) days thereafter, at Tenant's expense, by filing the bond required by law. All fixtures and all paneling, partitions, railings and like installations, installed in the premises at any time, either by Tenant or by Owner in Tenant's behalf, shall, upon installation, become the property of Owner and shall remain upon and be surrendered with the demised premises unless Owner, by notice to Tenant no later than twenty (20) days prior to the date fixed as the termination of this lease, elects to relinquish Owner's right thereto and to have them removed by Tenant, in which event the same shall be removed from the premises by Tenant prior to the expiration of the lease, at Tenant's expense. Nothing in this Article shall be construed to give Owner title to or to prevent Tenant's removal of trade fixtures, moveable office furniture and equipment, but upon removal of any such from the premises or upon removal of other installations as may be required by Owner, Tenant shall immediately and at its expense, repair and restore the premises to the condition existing prior to installation and repair any damage to the demised premises or the building due to such removal. All property permitted or required to be removed, by Tenant at the end of the term remaining in the premises after

Tenant's removal shall be deemed abandoned and may, at the election of Owner, either be retained as Owner's property or may be removed from the premises by Owner, at Tenant's expense.

**Repairs:** 4. Tenant/Owner shall maintain and repair the public portions of the building, both exterior and interior, except that if Owner allows Tenant to erect on the outside of the building a sign or signs, or a hoist, lift or sidewalk elevator for the exclusive use of Tenant, Tenant shall maintain such exterior installations in good appearance and shall cause the same to be operated in a good and workmanlike manner and shall make all repairs thereto necessary to keep same in good order and condition, at Tenant's own cost and expense, and shall cause the same to be covered by the insurance provided for hereafter in Article 8. Tenant shall, throughout the term of this lease, take good care of the demised premises and the fixtures and appurtenances therein, and the sidewalks adjacent thereto, and at its sole cost and expense, make all non-structural repairs thereto as and when needed to preserve them in good working order and condition, reasonable wear and tear, obsolescence and damage from the elements, fire or other casualty, excepted. If the demised premises be or become infested with vermin, Tenant shall, at Tenant's expense, cause the same to be exterminated from time to time to the satisfaction of Owner. Except as specifically provided in Article 9 or elsewhere in this lease, there shall be no allowance to the Tenant for the diminution of rental value and no liability on the part of Owner by reason of inconvenience, annoyance or injury to business arising from Owner, Tenant or others making or failing to make any repairs, alterations, additions or improvements in or to any portion of the building or the demised premises or in and to the fixtures, appurtenances or equipment thereof. The provisions of this Article 4 with respect to the making of repairs shall not apply in the case of fire or other casualty which are dealt with in Article 9 hereof.

**Window**  
**Cleaning:** 5. Tenant will not clean nor require, permit, suffer or allow any window in the demised premises to be cleaned from the outside in violation of Section 202 of the Labor Law or any other applicable law or of the Rules of the Board of Standards and Appeals, or of any other Board or body having or asserting jurisdiction.

**Requirements of Law, Fire Insurance, Floor Loads:**

6. Prior to the commencement of the lease term, if Tenant is then in possession, and at all times thereafter, Tenant, at Tenant's sole cost and expense, shall promptly comply with all present and future laws, orders and regulations of all state, federal, municipal and local governments, departments, commissions and boards and any direction of any public officer pursuant to law, and all orders, rules and regulations of the New York Board of Fire Underwriters or Insurance Services Office, or any similar body which shall impose any violation, order or duty upon Owner or Tenant with respect to the demised premises, and with respect to the portion of the sidewalk adjacent to the premises, if the premises are on the street level, whether or not arising out of Tenant's use or manner of use thereof, or with respect to the building if arising out of Tenant's use or manner of use of the premises or the building (including the use permitted under the lease). Except as provided in Article 29 hereof, nothing herein shall require Tenant to make structural repairs or alterations unless Tenant has by its manner of use of the demised premises or method of operation therein, violated any such laws, ordinances, orders, rules, regulations or requirements with respect thereto. Tenant shall not do or permit any act or thing to be done in or to the demised premises which is contrary to law, or which will invalidate or be in conflict with public liability, fire or other policies of insurance at any time carried by or for the benefit of Owner. Tenant shall pay all costs, expenses, fines, penalties or damages, which may be imposed upon Owner by reason of Tenant's failure to comply with the provisions of this Article. If the fire insurance rate shall at the beginning of the lease or at any time thereafter, be higher than it otherwise would be, then Tenant shall reimburse Owner, as additional rent hereunder, for that portion of all fire insurance premiums thereafter paid by Owner which shall have been charged because of such failure by Tenant, to comply with the terms of this Article. In any action or proceeding wherein Owner and Tenant are parties, a schedule or "make-up" of rate for the building or demised premises issued by a body making fire insurance rates applicable to said premises shall be conclusive evidence of the facts therein stated and of the several items and charges in the fire insurance rate then applicable to said premises.

**Subordination:** 7. This lease is subject and subordinate to all ground or underlying leases and to all mortgages which may now or hereafter affect such leases or the real property of which demised premises are a part and to all renewals, modifications, consolidations, replacements and extensions of any such underlying leases and mortgages. This clause shall be self-operative and no further instrument of subordination shall be required by any ground or underlying lease or by any mortgagee, affecting any lease or the real property of which the demised premises are a part. In confirmation of such subordination, Tenant shall execute within ten (10) days, any subordination, non-disturbance and/or attornment agreement, when requested by Owner, in a form reasonably required by Owner or its lender or prospective lender.

**Tenant's Liability Insurance Property Loss, Damage**

**Indemnity:** 8. Owner or its agents shall not be liable for any damage to property of Tenant or of others entrusted to employees of the building, nor for loss of or damage to any property of Tenant by theft or otherwise, nor for any injury or damage to persons or property resulting from any cause of whatsoever nature, unless caused by or due to the negligence of Owner, its agents, servants or employees. Owner or its agents will not be liable for any such damage caused by other tenants or persons in, upon or about said building or caused by operations in construction of any private, public or quasi public work. Tenant agrees, at Tenant's sole cost and expense, to maintain general public liability insurance in standard form in favor of Owner and Tenant against claims for bodily injury or death or property damage occurring in or upon the demised premises, effective from the date Tenant enters into possession and during the term of this lease. Such insurance shall be in an amount and with carriers acceptable to the Owner. Such policy or policies shall be delivered to the Owner. On Tenant's default in obtaining or delivering any such policy or policies or failure to pay the charges therefor, Owner may secure or pay the charges for any such policy or policies and charge the Tenant as additional rent therefor. Tenant shall indemnify and save harmless Owner against and from all liabilities, obligations, damages, penalties, claims, costs and expenses for which Owner shall not be reimbursed by insurance, including reasonable attorneys' fees, paid, suffered or incurred as a result of any breach by Tenant, Tenant's agents, contractors, employees, invitees, or licensees, of any covenant on condition of this lease, or the carelessness, negligence or improper conduct of the Tenant, Tenant's agents, contractors, employees, invitees or licensees. Tenant's liability under this lease extends to the acts and omissions of any subcontractor, and any agent, contractor, employee, invitee or licensee of any subcontractor. In case any action or proceeding is brought against Owner by reason of any such claim,

Tenant, upon written notice from Owner, will, at Tenant's expense, resist or defend such action or proceeding by counsel approved by Owner in writing, such approval not to be unreasonably withheld.

**Destruction, Fire and Other Casualty:**

9. (a) If the demised premises or any part thereof shall be damaged by fire or other casualty, Tenant shall give immediate notice thereof to Owner and this lease shall continue in full force and effect except as hereinafter set forth. (b) If the demised premises are partially damaged or rendered partially unusable by fire or other casualty, the damages thereto shall be repaired by and at the expense of Owner and the rent, until such repair shall be substantially completed, shall be apportioned from the day following the casualty according to the part of the premises which is usable. (c) If the demised premises are totally damaged or rendered wholly unusable by fire or other casualty, then the rent shall be proportionately paid up to the time of the casualty and thereupon shall cease until the date when the premises shall have been repaired and restored by Owner, subject to Owner's right to elect not to restore the same as hereinafter provided. (d) If the demised premises are rendered wholly unusable or (whether or not the demised premises are damaged in whole or in part) if the building shall be so damaged that Owner shall decide to demolish it or to rebuild it, then, in any of such events, Owner may elect to terminate this lease by written notice to Tenant, given within ninety (90) days after such fire or casualty, specifying a date for the expiration of the lease, which date shall not be more than 60 days after the giving of such notice, and upon the date specified in such notice the term of this lease shall expire as fully and completely as if such date were the date set forth above for the termination of this lease and Tenant shall forthwith quit, surrender and vacate the premises without prejudice however, to Landlord's rights and remedies against Tenant under the lease provisions in effect prior to such termination, and any rent owing shall be paid up to such date and any payments of rent made by Tenant which were on account of any period subsequent to such date shall be returned to Tenant. Unless Owner shall serve a termination notice as provided for herein, Owner shall make the repairs and restorations under the conditions of (b) and (c) hereof, with all reasonable expedition, subject to delays due to adjustment of insurance claims, labor troubles and causes beyond Owner's control. After any such casualty, Tenant shall cooperate with Owner's restoration by removing from the premises as promptly as reasonably possible, all of Tenant's salvageable inventory and movable equipment, furniture, and other property. Tenant's liability for rent shall resume five (5) days after written notice from Owner that the premises are substantially ready for Tenant's occupancy. (e) Nothing contained hereinabove shall relieve Tenant from liability that may exist as a result of damage from fire or other casualty. Notwithstanding the foregoing, each party shall look first to any insurance in its favor before making any claim against the other party for recovery for loss or damage resulting from fire or other casualty, and to the extent that such insurance is in force and collectible and to the extent permitted by law, Owner and Tenant each hereby releases and waives all right of recovery against the other or any one claiming through or under each of them by way of subrogation or otherwise. The foregoing release and waiver shall be in force only if both releasors' insurance policies contain a clause providing that such a release or waiver shall not invalidate the insurance. If, and to the extent, that such waiver can be obtained only by the payment of additional premiums, then the party benefiting from the waiver shall pay such premium within ten days after written demand or shall be deemed to have agreed that the party obtaining insurance coverage shall be free of any further obligation under the provisions hereof with respect to waiver of subrogation. Tenant acknowledges that Owner will not carry insurance on Tenant's furniture and/or furnishings or any fixtures or equipment, improvements, or appurtenances removable by Tenant and agrees that Owner will not be obligated to repair any damage thereto or replace the same. (f) Tenant hereby waives the provisions of Section 227 of the Real Property Law and agrees that the provisions of this article shall govern and control in lieu thereof.

**Eminent Domain:**

10. If the whole or any part of the demised premises shall be acquired or condemned by Eminent Domain for any public or quasi public use or purpose, then and in that event, the term of this lease shall cease and terminate from the date of title vesting in such proceeding and Tenant shall have no claim for the value of any unexpired term of said lease and assigns to Owner, Tenant's entire interest in any such award.

**Assignment, Mortgage, Etc.:**

11. Tenant, for itself, its heirs, distributees, executors, administrators, legal representatives, successors and assigns, expressly covenants that it shall not assign, mortgage or encumber this agreement, nor underlet, or suffer or permit the demised premises or any part thereof to be used by others, without the prior written consent of Owner in each instance. Transfer of the majority of the stock of a corporate Tenant shall be deemed an assignment. If this lease be assigned, or if the demised premises or

any party thereof be underlet or occupied by anybody other than Tenant, Owner may, after default by Tenant, collect rent from the assignee, under-tenant or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, underletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, under-tenant or occupant as tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained. The consent by Owner to an assignment or underletting shall not in any way be construed to relieve Tenant from obtaining the express consent in writing of Owner to any further assignment or underletting.

**Electric**

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

**Access to**

**Premises:** 13. Owner or Owner's agents shall have the right (but shall not be obligated) to enter the demised premises in any emergency at any time, and, at other reasonable times, to examine the same and to make such repairs, replacements and improvements as Owner may deem necessary and reasonably desirable to any portion of the building or which Owner may elect to perform, in the premises, following Tenant's failure to make repairs or perform any work which Tenant is obligated to perform under this lease, or for the purpose of complying with laws, regulations and other directions of governmental authorities.

Tenant shall permit Owner to use and maintain and replace pipes and conduits in and through the demised premises and to erect new pipes and conduits therein provided they are within the walls, Owner may, during the progress of any work in the demised premises, take all necessary materials and equipment into said premises without the same constituting an eviction nor shall the Tenant be entitled to any abatement of rent while such work is in progress nor to any damages by reason of loss or interruption of business or otherwise. Throughout the term hereof Owner shall have the right to enter the demised premises at reasonable hours for the purpose of showing the same to prospective purchasers of mortgages of the building, and during the last six months of the term for the purpose of showing the same to prospective tenants and may, during said six (6) months period, place upon the premises the usual notice "To Let" and "For Sale" which notices Tenant shall permit to remain thereon without molestation. If Tenant is not present to open and permit an entry into the premises, Owner or Owner's agents may enter the same whenever such entry may be necessary or permissible by master key or forcibly and provided reasonable care is exercised to safeguard Tenant's property, such entry shall not render Owner or its agents liable therefor, nor in any event shall the obligations of Tenant hereunder be affected. If during the last month of the term Tenant shall have removed all or substantially all of Tenant's property therefrom, Owner may immediately enter, alter, renovate or redecorate the demised premises without limitation or abatement of rent, or incurring liability to Tenant for any compensation and such act shall have no effect on this lease or Tenant's obligations hereunder. Owner shall have the right at any time, without the same constituting an eviction and without incurring liability to Tenant therefor to change the arrangement and/or location of public entrances, passageways, doors, doorways, corridors, elevators, stairs, toilets, or other public parts of the building and to change the name, number or designation by which the building may be known.

**Vault, Vault**

**Space, Area:** 14. No Vaults, vault space or area, whether or not enclosed or covered, not within the property line of the building is leased hereunder, anything contained in or indicated on any sketch, blue print or plan, or anything contained elsewhere in this lease to the contrary notwithstanding. Owner makes no representation as to the location of its property line of the building. All vaults and vault space and all such areas not within the property line of the building, which Tenant may be permitted to use and/or occupy, is to be used and/or occupied under a revocable license, and if any such license be revoked, or if the amount of such space or area be diminished or required by any federal, state or municipal authority or public utility, Owner shall not be subject to any liability nor shall Tenant be entitled to any compensation or diminution or abatement of rent, nor shall such revocation, diminution or requisition be deemed constructive or actual

eviction. Any tax, fee or charge of municipal authorities for such vault or area shall be paid by Tenant.

**Occupancy:** 15. Tenant will not at any time use or occupy the demised premises in violation of Articles 2 or 37 hereof, or of the certificate of occupancy issued for the building of which the demised premises are a part. Tenant has inspected the premises and accepts them "as is", subject to the riders annexed hereto with respect to Owner's work, if any. In any event, Owner makes no representation as to the condition of the premises and Tenant agrees to accept the same subject to violations, whether or not of record.

**Bankruptcy:** 16. (a) Anything elsewhere in this lease to the contrary notwithstanding, this lease may be cancelled by Landlord by the sending of a written notice to Tenant within a reasonable time after the happening of any one or more of the following events: (1) the commencement of a case in bankruptcy or under the laws of any state naming Tenant as the debtor; or (2) the making by Tenant of an assignment or any other arrangement for the benefit of creditors under any state statute. Neither Tenant nor any person claiming through or under Tenant, or by reason of any statute or order of court, shall thereafter be entitled to possession of the premises demised but shall forthwith quit and surrender the premises. If this lease shall be assigned in accordance with its terms, the provisions of this Article 16 shall be applicable only to the party then owning Tenant's interest in this lease.

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

**Default:** 17. (1) If Tenant defaults in fulfilling any of the covenants for the payment of rent or additional rent; or if the demised premises become vacant or deserted; or if any execution or attachment shall be issued against Tenant or any of Tenant's property whereupon the demised premises shall be taken or occupied by someone other than Tenant; or if this lease be rejected under Section 365 of Title 11 of the U.S. Code (Bankruptcy Code); or if Tenant shall fail to move into or take possession of the premises within fifteen (15) days after the commencement of the term of this lease, of which fact Owner shall be the sole judge; then, in any one or more of such events, upon Owner serving a written five (5) days notice upon Tenant specifying the nature of said default and upon the expiration of said five (5) days, if Tenant shall have failed to comply with or remedy such default, or if the said default or omission complained of shall be of a nature that the same cannot be completely cured or remedied within said five (5) day period, and if Tenant shall not have diligently commenced curing such default within such five (5) day period, and shall not thereafter with reasonable diligence and in good faith proceed to remedy or cure such default, the Owner may serve a written three (3) days notice of cancellation of this lease upon Tenant, and upon the expiration of said three (3) days, this lease and the term thereunder shall end and expire as fully and completely as if the expiration of such three (3) day period were the day herein definitely fixed for the end and expiration of this lease and the term thereof and Tenant shall then quit and surrender the demised premises to Owner but Tenant shall remain liable as hereinafter provided.

(2) If the notice provided for in (1) hereof shall have been given, and the term shall expire as aforesaid; or if Tenant shall make default in the payment of the rent reserved herein or any item of additional rent herein mentioned or any part of either or in making any other payment herein required; then and in any of such events Owner may without notice, re-enter the demised premises either by force or otherwise, and dispossession

Tenant by summary proceedings or otherwise, and the legal representative of Tenant or other occupant of demised premises and remove their effects and hold the premises as if this lease had not been made, and Tenant hereby waives the service of notice of intention to re-enter or to institute legal proceedings to that end.

**Remedies of Owner and Waiver of Redemption:**

**18.** In case of any such default, re-entry, expiration and/or dispossession by summary proceedings or otherwise, (a) the rent, and additional rent, shall become due thereupon and be paid up to the time of such re-entry, dispossession and/or expiration; (b) Owner may re-let the premises or any part or parts thereof, either in the name of Owner or otherwise, for a term or terms, which may at Owner's option be less than or exceed the period which would otherwise have constituted the balance of the term of this lease and may grant concessions or fine rent or charge a higher rental than that in this lease; and/or (c) Tenant or the legal representatives of Tenant shall also pay Owner as liquidated damages for the failure of Tenant to observe and perform said Tenant's covenants herein contained, any deficiency between the rent hereby reserved and/or covenanted to be paid and the net amount, if any, of the rents collected on account of the subsequent lease or leases of the demised premises for each month of the period which would otherwise have constituted the balance of the term of this lease. The failure of Owner to re-let the premises or any part or parts thereof shall not release or affect Tenant's liability for damages. In computing such liquidated damages, there shall be added to the said deficiency such expenses as Owner may incur in connection with re-letting, such as legal expenses, attorneys' fees, brokerage, advertising and for keeping the demised premises in good order or for preparing the same for re-letting. Any such liquidated damages shall be paid in monthly installments by Tenant on the rent day specified in this lease. Owner, in putting the demised premises in good order or preparing the same for re-rental, may, at Owner's option, make such alterations, repairs, replacements and/or decorations in the demised premises as Owner, in Owner's sole judgment, considers advisable and necessary for the purpose of re-letting the demised premises, and the making of such alterations, repairs, replacements and/or decorations shall not operate or be construed to release Tenant from liability.

Owner shall in no event be liable in any way whatsoever for failure to re-let the demised premises, or in the event that the demised premises are re-let, for failure to collect the rent thereof under such re-letting, and in no event shall Tenant be entitled to receive any excess, if any, of such net rents collected over the sums payable by Tenant to Owner hereunder. In the event of a breach or threatened breach by Tenant of any of the covenants or provisions hereof, Owner shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings and other remedies were not herein provided for. Mention in this lease of any particular remedy, shall not preclude Owner from any other remedy, in law or in equity. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws.

**Fees and Expenses:**

**19.** If Tenant shall default in the observance or performance of any term or covenant on Tenant's part to be observed or performed under or by virtue of any of the terms or provisions in any article of this lease, then, unless otherwise provided elsewhere in this lease, Owner may immediately or at any time thereafter and without notice perform the obligation of Tenant hereunder. If Owner, in connection with the foregoing or in connection with any default by Tenant in the covenant to pay rent hereunder, makes any expenditures or incurs any obligations for the payment of money, including, but not limited to attorney's fees, in instituting, prosecuting or defending any action or proceeding, then Tenant will reimburse Owner for such sums so paid or obligations incurred with interest and costs. The foregoing expenses incurred by reason of Tenant's default shall be deemed to be additional rent hereunder and shall be paid by Tenant to Owner within five (5) days of rendition of any bill or statement to Tenant therefor. If Tenant's lease term shall have expired at the time of making of such expenditures or incurring of such obligations, such sums shall be recoverable by Owner as damages.

**No Representations by Owner:**

**20.** Neither Owner nor Owner's agents have made any representations or promises with respect to the physical condition of the building, the land upon which it is erected or the demised premises, the rents, leases, expenses of operation, or any other matter or thing affecting or related to the premises except as herein expressly set forth and no rights, easements or licenses are acquired by Tenant by implication or otherwise except as expressly set forth in the provisions of this lease. Tenant has inspected the building and the demised premises and is thoroughly acquainted with their condition, and agrees to take the same "as is"

and acknowledges that the taking of possession of the demised premises by Tenant shall be conclusive evidence that the said premises and the building of which the same form a part were in good and satisfactory condition at the time such possession was taken, except as to latent defects. All understandings and agreements heretofore made between the parties hereto are merged in this contract, which alone fully and completely express the agreement between Owner and Tenant and any executory agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of it in whole or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought.

**End of Term:**

**21.** Upon the expiration or other termination of the term of this lease, Tenant shall quit and surrender to Owner the demised premises, broom clean, in good order and condition, ordinary wear excepted, and Tenant shall remove all of its property. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of this lease. If the last day of the term of this lease or any renewal thereof falls on Sunday, this lease shall expire at noon on the preceding Saturday, unless it be a legal holiday, in which case, it shall expire at noon on the preceding business day.

**Enjoyment:**

**22.** Owner covenants and agrees with Tenant that upon Tenant paying the rent and additional rent and observing and performing all the terms, covenants and conditions, on Tenant's part to be observed and performed, Tenant may peaceably and quietly enjoy the premises hereby demised, subject, nevertheless, to the terms and conditions of this lease including, but not limited to, Article 31 hereof and to the ground leases, underlying leases and mortgages hereinbefore mentioned.

**Failure To Give Possession:**

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

**No Waiver:**

**24.** The failure of Owner to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this lease or of any of the Rules or Regulations, set forth or hereafter adopted by Owner, shall not prevent a subsequent act which would have originally constituted a violation from having all the force and effect of an original violation. The receipt by Owner of rent with knowledge of the breach of any covenant of this lease shall not be deemed a waiver of such breach and no provision of this lease shall be deemed to have been waived by Owner unless such waiver be in writing signed by Owner. No payment by Tenant or receipt by Owner of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement of any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Owner may accept such check or payment without prejudice to Owner's right to recover the balance of such rent or pursue any other remedy in this lease provided. No act or thing done by Owner or Owner's agents during the term hereby demised shall be deemed an acceptance of a surrender of said premises, and no agreement to accept such surrender shall be valid unless in writing signed by Owner. No employee of Owner or Owner's agent shall have any power to accept the keys of said premises prior to the termination of the lease and the delivery of keys to any such agent or employee shall not operate as a termination of the lease or a surrender of the premises.

**Waiver of**

**Trial by Jury:** 25. It is mutually agreed by and between Owner and Tenant that the respective parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other (except for personal injury or property damage) on any matter whatsoever arising out of or in any way connected with this lease, the relationship of Owner and Tenant, Tenant's use of or occupancy of said premises, and any emergency statutory or any other statutory remedy. It is further mutually agreed that in the event Owner commences any summary proceeding for possession of the premises, Tenant will not interpose any counterclaim of whatever nature or description in any such proceeding including a counterclaim under Article 4.

**Inability to Perform:**

26. This Lease and the obligation of Tenant to pay rent hereunder and perform all of the other covenants and agreements hereunder on part of Tenant to be performed shall in no way be affected, impaired or excused because Owner is unable to fulfill any of its obligations under this lease or to supply or is delayed in supplying any service expressly or impliedly to be supplied or is unable to make, or is delayed in making any repair, additions, alterations or decorations or is unable to supply or is delayed in supplying any equipment or fixtures if Owner is prevented or delayed from so doing by reason of strike or labor troubles or any cause whatsoever including, but not limited to, government preemption in connection with a National Emergency or by reason of any rule, order or regulation of any department or subdivision thereof of any government agency or by reason of the conditions of supply and demand which have been or are affected by war or other emergency.

**Bills and Notices:**

27. Except as otherwise in this lease provided, a bill, statement, notice or communication which Owner may desire or be required to give to Tenant, shall be deemed sufficiently given or rendered if, in writing, delivered to Tenant personally or sent by registered or certified mail addressed to Tenant at the building of which the demised premises form a part or at the last known residence address or business address of Tenant or left at any of the aforesaid premises addressed to Tenant, and the time of the rendition of such bill or statement and of the giving of such notice or communication shall be deemed to be the time when the same is delivered to Tenant, mailed, or left at the premises as herein provided. Any notice by Tenant to Owner must be served by registered or certified mail addressed to Owner at the address first hereinabove given or at such other address as Owner shall designate by written notice.

**Water Charges:**

28. If Tenant requires, uses or consumes water for any purpose in addition to ordinary lavatory purposes (of which fact Tenant constitutes Owner to be the sole judge), Owner may install a water meter and thereby measure Tenant's water consumption for all purposes. Tenant shall pay Owner for the cost of the meter and the cost of the installation thereof and throughout the duration of Tenant's occupancy, Tenant shall keep said meter and installation equipment in good working order and repair at Tenant's own cost and expense. Tenant agrees to pay for water consumed, as shown on said meter and when bills are rendered. Tenant covenants and agrees to pay the sewer rent, charge or any other tax, rent, levy or charge which now or hereafter is assessed, imposed or levied upon the demised premises or the realty of which they are a part pursuant to law, order or regulation made or issued in connection with the use, consumption, maintenance or supply of water, water system or sewage or sewage connection or system. The bill rendered by Owner shall be payable by Tenant as additional rent. If the building or the demised premises or any part thereof be supplied with water through a meter through which water is also supplied to other premises, Tenant shall pay to Owner, as additional rent, on the first day of each month, 100% of the total meter charges, as Tenant's portion, independently of and in addition to any of the remedies reserved to Owner hereinabove or elsewhere in this lease.

**Sprinklers:**

29. Anything elsewhere in this lease to the contrary notwithstanding, if the New York Board of Fire Underwriters or the Insurance Services Office or any bureau, department or official of the federal, state or city government require or recommend the installation of a sprinkler system or that any changes, modifications, alterations, or additional sprinkler heads or other equipment be made or supplied in an existing sprinkler system by reason of Tenant's business, or the location of partitions, trade fixtures, or other contents of the demised premises, or for any other reason, or if any such sprinkler system installations, changes, modifications, alterations, additional sprinkler heads or other such equipment, become necessary to prevent the imposition of a penalty or charge against the full allowance for a sprinkler system in the fire insurance rate set by any said Exchange or by an fire insurance company, Tenant shall, at Tenant's expense, promptly make such sprinkler system installations, changes, modifications, alterations, and supply

additional sprinkler heads or other equipment as required whether the work involved shall be structural or non-structural in nature. Tenant shall pay to Owner, as additional rent, the sum of \*\*see rider on the first day of each month during the term of this lease, as Tenant's portion of the contract price for sprinkler supervisory service.

**Heat:**

**Cleaning:**

30. As long as Tenant is not in default under any of the covenants of this lease, Owner shall, if and insofar as existing facilities permit, furnish heat to the demised premises, when and as required by law, on business days from 8:00 a.m. to 6:00 p.m. and on Saturdays from 8:00 a.m. to 1:00 p.m. Tenant shall, at Tenant's expense, keep demised premises clean and in order to the satisfaction of the Owner, and if demised premises are situated on the street floor, Tenant shall, at Tenant's own expense, make all repairs and replacements to the sidewalks and curbs adjacent thereto, and keep said sidewalks and curbs free from snow, ice, dirt and rubbish. Tenant shall pay to Owner the cost of removal of any of Tenant's refuse and rubbish from the building. Bills for the same shall be rendered by Owner to Tenant at such times as Owner may elect and shall be due and payable when rendered, and the amount of such bills shall be deemed to be, and be paid as, additional rent. Tenant shall, however, have the option of independently contracting for the removal of such rubbish and refuse in the event that Tenant does not wish to have same done by employees of Owner. Under such circumstances, however, the removal of such refuse and rubbish by others shall be subject to such rules and regulations as, in the judgment of Owner, are necessary for the proper operation of the building.

**Security:**

31. Tenant has deposited with Owner the sum of \$32,937.28 as security for the faithful performance and observance by Tenant of the terms, provisions and conditions of this lease; it is agreed that in the event Tenant defaults in respect of any of the terms, provisions and conditions of this lease, including, but not limited to, the payment of rent and additional rent, Owner may use, apply or retain the whole or any part of the security so deposited to the extent required for the payment of any rent and additional rent or any other sum as to which Tenant is in default or for any sum which Owner may expend or may be required to expend by reason of Tenant's default in respect of any of the terms, covenants and conditions of this lease, including but not limited to, any damages or deficiency in the re-letting of the premises, whether such damages or deficiency accrued before or after summary proceedings or other re-entry by Owner. In the event that Tenant shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this lease, the security shall be returned to Tenant after the date fixed as the end of the Lease and after delivery of entire possession of the demised premises to Owner. In the event of a sale of the land and building or leasing of the building, of which the demised premises form a part, Owner shall have the right to transfer the security to the vendee or lessee and Owner shall thereupon be released by Tenant from all liability for the return of such security, and Tenant agrees to look to the new Owner solely for the return of said security, and it is agreed that the provisions hereof shall apply to every transfer or assignment made of the security to a new Owner. Tenant further covenants that it will not assign or encumber or attempt to assign or encumber the monies deposited herein as security and that neither Owner nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

**Captions:**

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

**Definitions:**

33. The term "Owner" as used in this lease means only the Owner, or the mortgagee in possession, for the time being of the land and building (or the Owner of a lease of the building or of the land and building) of which the demised premises form a part, so that in the event of any sale or sales of said land and building or of said lease, or in the event of a lease of said building, or of the land and building, the said Owner shall be and hereby is entirely freed and relieved of all covenants and obligations of Owner hereunder, and it shall be deemed and construed without further agreement between the parties or their successors in interest, or between the parties and the purchaser, at any such sale, or the said lessee of the building, or of the land and building, that the purchaser or the lessee of the building has assumed and agreed to carry out any and all covenants and obligations of Owner hereunder. The words "re-enter" and "re-entry" as used in this lease are not restricted to their technical legal meaning. The term "business days" as used in this lease shall exclude Saturdays (except such portion thereof as is covered by specific hours in Article 30 hereof), Sundays and all days designated as holidays by the applicable building service union employees service contract or by the applicable Operating Engineers contract with respect to HVAC service.

**Adjacent Excavation - Shoring:**

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

**Rules and Regulations:**

35. Tenant and Tenant's servants, employees, agents, visitors and licensees shall observe faithfully, and comply strictly with the Rules and Regulations and such other and further reasonable Rules and Regulations as Owner or Owner's agents may from time to time adopt. Notice of any additional rules or regulations shall be given in such manner as Owner may elect. In case Tenant disputes the reasonableness of any additional Rule or Regulation hereafter made or adopted by Owner or Owner's agents, the parties hereto agree to submit the question of the reasonableness of such Rule or Regulation for decision to the New York office of the American Arbitration Association, whose determination shall be final and conclusive upon the parties hereto. The right to dispute the reasonableness of any additional Rule or Regulation upon Tenant's part shall be deemed waived unless the same shall be asserted by service of a notice, in writing, upon Owner within ten (10) days after the giving of notice thereof. Nothing in this lease contained shall be construed to impose upon Owner any duty or obligation to enforce the Rules and Regulations or terms, covenants or conditions in any other lease, as against any other tenant and Owner shall not be liable to Tenant for violation of the same by any other tenant, its servants, employees, agents, visitors or licensees.

**Glass:** 36. Owner shall replace, at the expense of Tenant, any and all plate and other glass damaged or broken from any cause whatsoever in and about the demised premises. Owner may insure, and keep insured, at Tenant's expense, all plate and other glass in the demised premises for and in the name of Owner. Bills for the premiums therefor shall be rendered by Owner to Tenant at such times as Owner may elect, and shall be due from, and payable by,

Tenant when rendered and the amount thereof shall be deemed to be, and be paid as, additional rent.

**Pornographic Uses Prohibited:**

37. Tenant agrees that the value of the demised premises and the reputation of the Owner will be seriously injured if the premises are used for any obscene or pornographic purposes or any sort of commercial sex establishment. Tenant agrees that Tenant will not bring or permit any obscene or pornographic material on the premises and shall not permit or conduct any obscene, nude, or semi-nude live performances on the premises, nor permit use of the premises for nude modeling, rap sessions, or as a so-called rubber goods shop, or as a sex club of any sort, or as a "massage parlor." Tenant agrees further that Tenant will not permit any of these uses by sublessee or assignee of the premises. This Article shall directly bind any successor in interest to the Tenant. Tenant agrees that if at any time Tenant violates any of the provisions of this Article, such violation shall be deemed a breach of a substantial obligation of the terms of this lease and objectionable conduct. Pornographic material is defined for purposes of this Article as any written or pictorial matter with prurient appeal or any objects of instrument that are primarily concerned with lewd or prurient sexual activity. Obscene material is defined herein as it is in Penal Law §235.00.

**Estoppel Certificate:**

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

**Successors And Assigns:**

39. The covenants, conditions and agreements contained in this lease shall bind and inure to the benefit of Owner and Tenant and their respective heirs, distributees, executors, administrators, successors, and except as otherwise provided in this lease, their assigns.

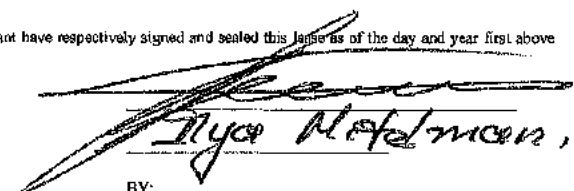
**IN WITNESS WHEREOF**, Owner and Tenant have respectively signed and sealed this lease as of the day and year first above written.

Witness for Owner:

\_\_\_\_\_

Witness for Tenant:

\_\_\_\_\_

  
BY: \_\_\_\_\_

FAIRYTALE DONUTS INC. ☺

BY: \_\_\_\_\_

Print Name: MARIA ISAKO



ACKNOWLEDGMENTS

STATE OF NEW YORK,  
COUNTY OF \_\_\_\_\_

Field Cod

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2016 before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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

## IMPORTANT - PLEASE READ

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

1. The sidewalks, entrances, driveways, passages, courts, elevators, vestibules, stairways, corridors or halls shall not be obstructed or encumbered by any Tenant or used for any purpose other than for ingress or egress from the demised premises and for delivery of merchandise equipment in a prompt and efficient manner using elevators and passageways designated for such delivery by Owner. There shall not be used in any space, or in the public hall of the building, either by any Tenant or by jobbers or other in the delivery or receipt of merchandise, any hand trucks, except those equipped with rubber tires and sidguards. If said premises are situated on the ground floor of the building, Tenant thereof shall further, at Tenant's expense, keep the sidewalk and curb in front of said premises clean and free from ice, snow, dirt and rubbish.

2. The water and wash closets and plumbing fixtures shall not be used for any purposes other than those for which they were designed or constructed and no sweepings, rubbish, rags, acids or other substances shall be deposited therein, and the expense of any breakage, stoppage, or damage resulting from the violation of this rule shall be borne by the Tenant who, or whose clerks, agents, employees or visitors, shall have caused it.

3. No carpet, rug or other article shall be hung or shaken out of any window of the building; and no Tenant shall sweep or throw or permit to be swept or thrown from the demised premises any dirt or other substances into any of the corridors or halls, elevators, or out of the doors or windows or stairways of the building and Tenant shall not use, keep or permit to be used or kept any fuel or noxious gas or substance in the demised premises, or permit or suffer the demised premises to be occupied or used in a manner offensive or objectionable to Owner or other occupants of the building by reason of noise, odors, and/or vibrations, or interfere in any way with other Tenants or those having business therein, nor shall any animals or birds be kept in or about the building. Smoking or carrying lighted cigars or cigarettes in the elevators of the building is prohibited.

4. No awnings or other projections shall be attached to the outside walls of the building without the prior written consent of Owner.

5. No signs, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed by any Tenant on any part of the outside of the demised premises or the building or on the inside of the demised premises if the same is visible from the outside of the premises without the prior written consent of Owner, except that the name of Tenant may appear on the entrance door of the premises. In the event of the violation of the foregoing by any Tenant, Owner may remove same without any liability, and may charge the expense incurred by such removal to Tenant or Tenants violating this rule. Interior signs on doors and directory tablets shall be inscribed, painted or affixed for each Tenant by Owner at the expense of such Tenant, and shall be of a size, color and style acceptable to Owner.

6. No Tenant shall mark, paint, drill into, or in any way deface any part of the demised premises or the building of which they form a part. No burning, cutting or strunging of wires shall be permitted, except with the prior written consent of Owner, and as Owner may direct. No Tenant shall lay linoleum, or other similar floor covering, so that the same shall come in direct contact with the floor of the demised premises, and, if linoleum or

other similar floor covering is desired to be used an interlining of builder's deadening felt shall be first affixed to the floor, by a paste or other material, soluble in water, the use of cement or other similar adhesive material being expressly prohibited.

7. No additional locks or bolts of any kind shall be placed upon any of the doors or windows by any Tenant, nor shall any changes be made in existing locks or mechanism thereof. Each Tenant must, upon the termination of his Tenancy, restore to Owner all keys of stores, offices and toilet rooms, either furnished to, or otherwise procured by, such Tenant, and in the event of the loss of any keys, so furnished, such Tenant shall pay to Owner the cost thereof.

8. Freight, furniture, business equipment, merchandise and bulky matter of any description shall be delivered to and removed from the premises only on the freight elevators and through the service entrances and corridors, and only during hours and in a manner approved by Owner. Owner reserves the right to inspect all freight to be brought into the building and to exclude from the building all freight which violates any of these Rules and Regulations of the lease or which these Rules and Regulations are a part.

9. Canvassing, soliciting and peddling in the building is prohibited and each Tenant shall cooperate to prevent the same.

10. Owner reserves the right to exclude from the building between the hours of 6 P.M. and 8 A.M. and at all hours on Sundays, and legal holidays all persons who do not present a pass to the building signed by Owner. Owner will furnish passes to persons for whom any Tenant requests same in writing. Each Tenant shall be responsible for all persons for whom he requests such pass and shall be liable to Owner for all acts of such persons.

11. Owner shall have the right to prohibit any advertising by any Tenant which in Owner's opinion, tends to impair the reputation of the building or its desirability as a building for offices, and upon written notice from Owner, Tenant shall refrain from or discontinue such advertising.

12. Tenant shall not bring or permit to be brought or kept in or on the demised premises, any inflammable, combustible or explosive fluid, material, chemical or substance, or cause or permit any odors or cooking or other processes, or any unusual or other objectionable odors to permeate in or emanate from the demised premises.

13. If the building contains central air conditioning and ventilation, Tenant agrees to keep all windows closed at all times and to abide by all rules and regulations issued by the Owner with respect to such services. If Tenant requires air conditioning or ventilation after the usual hours, Tenant shall give notice in writing to the building superintendent prior to 3:00 P.M. in the case of services required on week days, and prior to 3:00 P.M. on the day prior in the case of after hours service required on weekends or on holidays.

14. Tenant shall not move any safe, heavy machinery, heavy equipment, bulky matter, or fixtures into or out of the building without Owner's prior written consent. If such safe, machinery, equipment, bulky matter or fixtures require special handling, all work in connection therewith shall comply with the Administrative Code of the City of New York and all other laws and regulations applicable thereto and shall be done during such hours as Owner may designate.

**RIDER TO LEASE, dated the 1st day of June, 2016 by and between Ilya Mitelman and Alexandr Lipel, as "Landlord" and Fairytale Daycare Inc., as "Tenant" for the premises known as 99-13 63<sup>rd</sup> Road, Rego Park, New York, (the "premises" or "demised premises"), (collectively referred to as "Lease" or "lease"),**

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**40. CONFLICT BETWEEN PRINTED LEASE AND RIDER**

In the event there shall be any conflicts between the printed portions of the Lease and the provisions contained in the Rider, the terms, covenants, conditions and provisions of this Rider shall govern and control the rights and obligations of the parties hereto. When the word Lease is used herein, it shall mean the Lease and Rider.

**41. USE OF WORDS "OWNER" AND "LANDLORD"**

Wherever the word "Owner" is referred to in the lease or herein it shall be deemed to mean "Landlord" and words "Owner" and "Landlord" shall be interchangeable. Whenever the term "lease", "Lease", "Rider" or "rider" are used, such term shall mean the Lease and Rider together as one integral document.

**42. NO RECORDING**

Tenant may not record this lease or any memorandum hereof without the prior written consent of the Landlord.

**43. BASE RENT AND OPTION**

Tenant covenants to pay to Landlord the base rent (the "Base Rent") during the term of this lease, as set forth below:

	<u>Period</u>	<u>Annual Base Rent</u>	<u>Monthly Base Rent</u>
Year 1:	May 1, 2016 – April 30, 2017	\$141,126.00	\$11,760.50
Year 2:	May 1, 2017 – April 30, 2018	\$145,359.78	\$12,113.31
Year 3:	May 1, 2018 – April 30, 2019	\$149,720.57	\$12,476.70
Year 4:	May 1, 2019 – April 30, 2020	\$154,212.19	\$12,851.06
Year 5:	May 1, 2020 – April 30, 2021	\$158,838.56	\$13,236.55
Year 6:	May 1, 2021 – April 30, 2022	\$163,603.71	\$13,633.63
Year 7:	May 1, 2022 – April 30, 2023	\$168,511.82	\$14,042.65
Year 8:	May 1, 2023 – April 30, 2024	\$173,567.18	\$14,463.93
Year 9:	May 1, 2024 – April 30, 2025	\$178,774.19	\$14,897.85
Year 10:	May 1, 2025 – April 30, 2026	\$184,137.42	\$15,344.79

A. This lease is for a period of ten (10) years. Tenant shall have three (3) consecutive five (5) year renewal options (each an "Option Term") each of which must be exercised by the Tenant prior to the expiration of the then current term, on not more than one hundred and fifty (150) and not less than on ninety (90) days prior written notice to Landlord before the expiration of the then current term, **TIME BEING OF THE ESSENCE**. Each option to extend the term of this Lease is contingent on Tenant exercising a corresponding option to extend the term of the premises commonly known as 99-17 63<sup>rd</sup> Road, Rego Park, New York. For purposes of clarity, if Tenant does not exercise Tenant's option to extend the term of the lease for the premises commonly

Tenant MI  
 Landlord FA

known as 99-17 63<sup>rd</sup> Road, Rego Park, New York, then Tenant's option (and all subsequent options) to extend the term of the Premises shall automatically lapse. Each Such notice and each option shall only be valid if: (i) Tenant is not in default of the Lease at the time renewal option is sought, (ii) Tenant has not been in default of the Lease in the six (6) months preceding the date on which Tenant exercises the option to extend the term of the Lease, (iii) Tenant is then current on all amounts of rent and additional rent due, and (iv) Tenant has not been late in the payment of rent and/or additional rent more than four times in any consecutive twenty-four (24) month period. Each option to renew must be exercised by the Tenant with respect to the Premises only and shall be exercisable by the Tenant by delivering to Landlord written notice by overnight mail, with a carrier of national reputation. In the event that the Tenant fails to give the required written notice by the date due, the Tenant shall be deemed to have waived its right to all Option Terms. The base rent for the first year of each Option Term shall be determined by Landlord based on the then current fair market value. If Landlord and Tenant cannot agree on the fair market value for the first year of the then current Option Term within twenty (20) days of Tenant's exercise of its option to renew, Landlord and Tenant shall select one qualified commercial appraiser from a list of at least three qualified appraisers provided to Tenant by Landlord, who shall determine the fair market value of the premises, which shall be binding on Landlord and Tenant. Landlord and Tenant shall each be responsible for fifty (50%) percent of the costs charged by the selected appraiser. If Tenant fails to select an appraiser from such list within the time prescribed to herein, Landlord shall select any of the appraisers provided to Tenant whose appraisal shall be binding on both parties as if both Landlord and Tenant had selected such an appraiser. If the appraiser provides a range of values for the fair market value, Landlord shall use the midpoint value provided by such appraiser and such fair market value shall be binding on Landlord and Tenant. Under no circumstances shall the fair market value, even if such is determined by the selected appraiser, be less than base rent paid in the immediately preceding year. If a renewal is granted for each Option Term, Tenant shall deposit with Landlord additional security deposit in the amounts specified in paragraph "48" below. With respect to each Option Term, the base rent for each Option Term shall increase three (3%) percent each year for each of the four remaining years following the years in which the fair market value is determined, for each respective Option Term. For purposes of clarity, if exercised in accordance with the terms hereof, the term for each Option Term shall be as follows: Option Term 1, May 1, 2026 – April 30, 2031, Option Term 2, May 1, 2031 – April 30, 2036 and Option Term 3, May 1, 2036 – April 30, 2041.

- B. The base rent and all additional rent is required to be paid in equal monthly installments to be received on the first (1<sup>st</sup>) of each month, with a grace period for receipt until the tenth (10<sup>th</sup>) of each month. For any payment received after the tenth (10<sup>th</sup>) of the month within which it is due, Tenant agrees to pay, as additional rent, a five (5%) percent late fee charge until full payment is received. All late fees due pursuant the lease and this Rider shall be paid as additional rent. Interest on all unpaid amounts due shall be computed at one and one half (1.5%) percent per month, or the maximum interest allowed by applicable law, beginning on the first in the month following the month in which such amount is due. If any check for rent or additional rent, or any other check or payment provided by Tenant to Landlord is dishonored, is refused, or is "bounced" then in addition to all other amounts due hereunder, Tenant shall pay Landlord a dishonored check fee of \$250.00 per check.
- C. If the Tenant retains possession of the demised premises or any part thereof after the termination of the term (or any Option Term) by lapse of time or otherwise, without prior written approval by Landlord, the Tenant shall pay the Landlord use and occupancy at two (2) times the Base Rent then provided for the last month of the term hereof immediately prior to the termination of this Lease set forth herein together with all additional rent accrued during such month, for the time the Tenant thus remains in possession, and in addition thereto, shall pay the Landlord all damages,

Tenant MJ  
Landlord [Signature]

consequential as well as direct, sustained by reason of the Tenant's retention of possession including any loss of rent suffered by Landlord from any tenant with which the Landlord has executed a new lease for the demised premises. If the Tenant remains in possession of the demised premises, or any part thereof, after the termination of the term by lapse of time or otherwise, such holding over shall at the election of the Landlord expressed in a written notice to the Tenant and not otherwise, constitute an extension of this lease on a month-to-month basis at the amount of use and occupancy as set forth herein. The provisions of this Section do not exclude the Landlord's right of re-entry or any other right hereunder.

#### 44. ASSIGNMENT & SUBLETTING

Tenant understands that this lease may not be assigned or sublet without Landlord's express prior written consent, which consent may not be unreasonably withheld by Landlord. A transfer of more than twenty (20%) percent of Tenant's corporate stock shall be deemed an assignment. Landlord agrees to promptly consider any request to an assignment which includes references and credit reports, and Landlord will promptly consider same and will not unreasonably withhold consent if: (i) Tenant is not in default of the Lease at the time the assignment is sought, (ii) Tenant has not been in default of the Lease in the six (6) months preceding the date on which the assignment is sought, (iii) Tenant is then current on all amounts of rent and additional rent due, and (iv) Tenant has not been late in the payment of rent and/or additional rent more than four (4) times in any consecutive twenty-four (24) month period preceding the request of such assignment; (v) the proposed new tenant can prove financial worth and stability, which shall be determined by Landlord at Landlord's sole discretion, and if approved by Landlord, the proposed new tenant agrees to sign a personal guaranty and agrees to deposit with Landlord an additional security deposit equal to three (3) months of the base rent as of the date of the assignment or sublease, none of which may be used by Tenant or prospective tenant toward (or to offset) rent or additional rent. Tenant shall pay on application to assign Landlord's attorney's fees of \$2,500.00 to review the assignment or sublease request. Landlord may freely assign or transfer this lease or sell the Premises, or any portion thereof, without Tenant's consent, and Tenant agrees to sign any and all document, including but not limited to acknowledgements and consents, which may be reasonably requested by Landlord if required for such assignment. Tenant specifically grants Landlord an assignment of all rents from all approved subtenants and Landlord shall be entitled to collect the rents of all subtenants of the Tenant upon default in the payment of rent or any other obligation of Tenant under this Lease and which default remains uncured after ten (10) days' written notice.

#### 45. SIGNS

Tenant shall not place any signs, sign posts, flags or posters on the outside of the building without Landlord's prior written approval, which approval may be withheld by Landlord for any reason or no reason. Tenant shall post no signs or posters in any window without Landlord's prior written approval. Tenant may place one sign on the ground floor outside the building, which shall also require Landlord's prior written approval. Tenant shall maintain all permitted signs and/or posters in good condition and repair. No flashing lights in the window or on a sign shall be permitted. The breach of this clause is material to the Landlord. If this clause is breached, Landlord may terminate the lease without further notice after one ten (10) day written notice (either by mail or personal delivery) to cure the defect. If Tenant fails to cure said default, then Landlord may terminate the lease immediately.

#### 46. CONDITIONS

Tenant acknowledges that it has inspected and examined the Premises and is thoroughly familiar with the condition thereof and that no representations or warranties have been made to Tenant by Landlord other than those representations and warranties set forth herein, if any, and that Landlord is unwilling to

Tenant MJ  
Landlord T. O'Leary

make any representations other than those set forth herein and has held out no inducement to Tenant. Tenant has inspected the Premises or caused in inspection thereof to be made on its behalf. Tenant is thoroughly acquainted with the condition of the Premises on the commencement of this Lease as Tenant currently occupies the Premises. Tenant further acknowledges that it has accepted the Premises in "**AS IS**" condition as of the date hereof. Tenant warrants and represents that it has fully and completely investigated all aspects of the Premises, both structural and non-structural, and fully satisfied itself as to the suitability of the Premises or any part thereof for Tenant's intended use and that Landlord has not made and is unwilling to make any representations in connection with the Premises or in any way relating to this Lease other than for those representations set forth elsewhere herein. Without limiting the generality of the above, Tenant has not relied on any representations or warranties, and Landlord has not made any representations or warranties in either case express or implied, other than those representations and warranties set forth elsewhere in this Lease, if any, as to (i) the current or future real estate tax liability, assessment or valuation of the Premises; (ii) the potential qualification of the Premises for any and all benefits conferred by Federal, state or municipal laws, whether for subsidies, special real estate tax treatment, insurance, mortgages, or any other benefits, whether similar or dissimilar to those enumerated; (iii) the compliance of the Premises, in its current or any future state with applicable zoning ordinances and the ability to obtain a variance in respect to the Premises' non-compliance, if any, with said zoning ordinances; (iv) the availability of any financing for the purchase, alteration, rehabilitation or operation of the Premises from any source, including but not limited to state, city or Federal government or any institutional lender; (v) the current or future use of the Premises, (vi) the present and future condition and operating state of any machinery or equipment on the Premises and the present or future structural and physical condition of the Premises or its suitability for rehabilitation, alteration or renovation; (vii) the ownership or state of title of any personal property on the Premises; (viii) the presence or absence of any rules or notices of violations of law issued by any governmental authority, or (ix) any other matter or thing affecting or relating to the Premises. Tenant acknowledges that neither Landlord, nor any employee, agent or contractor of Landlord has made any representation or warranty concerning the land, building, or Premises, or the suitability of either for the conduct of Tenant's business and use of the Premises.

#### 47. NOTICES

Except as otherwise specifically provided in the lease, any notice which is due to Landlord, which Tenant or Tenant's attorney or agent desires to give to the Landlord, shall be deemed sufficiently given if in writing and hand delivered to Ilya Mitelman or if mailed to Landlord by certified mail and first class mail, or by overnight mail, using a carrier of national reputation (such as Federal Express, UPS or the United States Postal Service). The Landlord's address shall be: 634 Flanders Drive, Valley Stream NY 11581, Attn: Ilya Mitelman. Any notice that Landlord wishes to give to the Tenant shall be deemed sufficiently given if in writing and personally delivered to Tenant or any officer, manager, agent or employee of Tenant or if mailed to Tenant by overnight mail, using a carrier of national reputation (such as Federal Express, UPS or the United States Postal Service) or certified mail and first class mail. Any notice given to Tenant shall be personally delivered or sent to the following address: 99-13 63<sup>rd</sup> Road, Rego Park, NY. Either party may designate another address for notice pursuant to a notice given in accordance with this section.

#### 48. SECURITY

Landlord and Tenant acknowledge that the total security deposit being held by Landlord is \$32,937.28 Dollars. Landlord and Tenant further acknowledge that Tenant will deposit with Landlord an additional security deposit in the amount of Twenty Five Thousand (\$25,000.00) Dollars, which amount shall be paid to Landlord in twenty-four equal consecutive monthly installments of \$1,041.67 per month beginning on the first day of the thirteenth month after this lease becomes effective. The security deposit,

Tenant MI  
Landlord SM

its use and return, shall be subject to and pursuant to paragraph "31" of the Standard Form Lease of which this Rider is a part. If the lease option to renew is granted and accepted by Landlord and Tenant pursuant to the terms of paragraphs "43" above, then Tenant shall pay to Landlord at the commencement of each Option Term Fifteen Thousand (\$15,000.00) Dollars as additional security deposit, unless otherwise agreed to in writing. Landlord is not required to keep the security deposit in an interest bearing account.

#### 49. TAXES

- A. Tenant agrees to pay as additional rent, annually during the term of this lease, and during any term during which Tenant occupies or possesses any portion of the premises, one hundred (100%) percent of all Taxes (as such term is hereinafter defined) which Landlord becomes obligated to pay. Such additional rent shall be paid when the tax becomes fixed. Tax bills (except as hereinafter provided) shall be conclusive evidence of the amount of such Taxes and shall be used for the calculation of the amounts to be paid by Tenant. Landlord shall not be obligated to provide Tenant with Tax bills, as proof of the Taxes due, more than once per year. Landlord need not pay the tax or produce proof of payment to be entitled to collect from Tenant.
- B. If Landlord receives a refund of any part of the tax escalation actually paid by Tenant, then Tenant shall be entitled to a proportional part of that refund minus attorney's fees and costs involved in obtaining the tax reduction and/or refund. Notwithstanding the foregoing, Landlord shall not be obligated to contest the levy or assessment of any Taxes, and it shall be at Landlord's sole discretion whether any such contest shall be undertaken. Landlord hereby reserves the exclusive right to take and prosecute all such proceedings, and if so taken, Landlord may proceed without notice to Tenant and may prosecute the proceeding, including settlement and discontinuance, in such manner as Landlord may determine in its sole discretion. In no event shall the annual fixed rent under this lease be reduced by virtue of this section 49. Landlord shall timely file all necessary documents required for the current abatement at the Premises. Notwithstanding the foregoing, Tenant acknowledges that notwithstanding the current abatement, Taxes are assessed by governmental entities and are nevertheless likely to increase annually (or more frequently) during the term of this Lease.
- C. The term "Taxes" or "Real Estate Taxes" shall mean all the real estate taxes and assessments, water/sewer charges and Department of Finance charges, special or otherwise, assessed or imposed by Federal, State or City governments or any agency or any public or private entity thereof, against or upon the building of which the premises form a part and the land upon which it is erected. If due to a future change in the method of taxation, any franchise, income, profit or other tax, or other payment, shall be levied against Landlord, in whole or in part in substitution for or in lieu of any tax which would otherwise constitute "Taxes" or "Real Estate Taxes", such as occupancy taxes, franchise, income profit, or other tax or payment due from Landlord to a municipal or state agency shall be deemed to be Taxes for the purpose hereof. If Landlord should incur expenses in connection with Landlord's endeavor to reduce or prevent increases in assessed valuation, Tenant shall be obligated to pay as additional rent the amount of such reasonable expenses of Landlord only to the extent of the amounts expended by the Landlord during the Tenant's occupancy of the premises, and such amount shall be due and payable upon demand by Landlord and collectible in the same manner as base rent or additional rent. The obligation to make any payments of additional rent pursuant to this section shall survive the expiration or other termination of the lease. All assessments may be paid by Landlord over the longest period of time allowed by law.

#### 50. INDEMNITY, LIABILITY, INSURANCE

Tenant MJ  
Landlord T.M.P.

- A. Tenant covenants and agrees to indemnify and save Landlord and its designees harmless from and against any and all claims arising during the term of this lease, or any period during which Tenant occupies, possesses or controls the Premises, for damages to the Premises, or injuries to goods, wares, merchandise and property and/or for any personal injury or loss of life, except such claims as may be the result of the gross negligence of Landlord, its agents, employees or contractors. Tenant covenants and agrees to indemnify and save Landlord and its designees harmless from and against any and all claims arising during the term of this lease, or any period during which Tenant occupies, possesses or controls the Premises for damages or injuries to goods, wares, merchandise and property and/or for any personal injury or loss of life in or about the building or on the sidewalks as a result of Tenant's negligence, errors or omissions.
- B. Tenant covenants to provide on or before the commencement date of the term of this lease and any renewal term for the benefit of Landlord and Tenant a comprehensive policy of liability insurance protecting Landlord and Tenant and any designee of Landlord against any liability whatsoever occasioned by accident on or about the demised premises or the building in which the demised premises is a part, or any appurtenances thereto. On all such insurance policies, Tenant shall name Landlord, and Landlord's principals, officers, successors and assigns as additional insured. Such policy is to be written by good and solvent insurance company licensed to do business in the State of New York rated A or better, and the limits of liability thereunder shall not be less than the amount of Four Million (\$4,000,000) Dollars in respect of any one person, in the amount of Four Million (\$4,000,000) Dollars in respect of any one accident, and in the amount of Two Million (\$2,000,000) Dollars in respect of property damages. The limit may be provided through a combination of primary and umbrella/excess liability policies. Tenant shall also maintain the following insurance policies: (i) insurance upon Tenant's property, the Premises and any and all improvements in an amount equal to the full replacement value thereof, (ii) workers compensation and employer's liability insurance to the extent required by state law, (iii) all risk insurance including coverage for sprinkler damage, vandalism and malicious mischief, covering all of Tenant's alterations, improvements and betterments to the Premises now existing or to be added, including, without limitation, Tenant's property, to the extent of their full replacement costs as updated from time to time during the Term of the Lease, or any extensions hereof. For each of the foregoing policies, Tenant shall name both Landlord and Tenant as insured parties as their interests may appear. Tenant further hereby agrees to assigns its interest in the proceeds of such insurance to Landlord so that the proceeds shall be paid directly to Landlord.
- C. Prior to the time such insurance is first required to be carried by Tenant, and thereafter, at least thirty (30) days prior to the expiration of any such policy, Tenant agrees to deliver to Landlord either a duplicate original of the aforesaid policy or a certificate evidencing such insurance provided said certificate contains an endorsement that such insurance may not be cancelled or modified except upon thirty (30) days notice to Landlord together with evidence of payment for the policy. Tenant's failure to provide and keep in force the aforementioned insurance shall be regarded as a material default hereunder entitling Landlord to exercise any or all of the remedies as provided in this lease in the event of Tenant's default. In the event Landlord's insurance carrier requires any additional premium because of Tenant's use, Tenant shall pay the increased premium and same shall be additional rent hereunder.
- D. Landlord shall not be responsible or liable to Tenant, or those claiming by, through or under Tenant, for any loss or damage to persons or property resulting from the negligence, acts or omissions of persons occupying space adjoining or adjacent to the Premises, or connected to the Premises, or occupying any other part of the Building, or of any of their respective agents, employees, contractors, invitees or customers, including, without limitation, caused by breaking

Tenant MJ  
Landlord J.M.



or falling of electrical cables and wires, or the breaking, bursting, stoppage or leakage of water, gas, sewer or steam pipes.

- E. Anything contained in section 50 hereof to the contrary, Tenant shall be solely responsible for the insurance for, and in the event of fire or other casualty, the reconstruction, replacement or repair of, any damage to any of Tenant's furniture, fixtures, equipment and all other personal property and inventory of Tenant within the Premises and all Alterations, construction and other improvements made by Tenant to the Premises, and Landlord's obligation shall be to otherwise put the Premises in the condition existing prior to the damage, other than Alterations, construction and other improvements made by Tenant to the Premises.
- F. Tenant acknowledges that Landlord will not carry insurance with respect to Tenant's furniture and/or furnishings or any fixtures or equipment, improvements, inventory or appurtenances, and agrees that Landlord will not be obligated to repair any damage thereto or replace the same. Tenant hereby waives the provisions of Section 227 of the Real Property Law and agrees that the provisions of this section 47 shall govern and control in lieu thereof.
- G. In the event Tenant's use of the Premises including the use provided for in this Lease, shall result in an increase in insurance premiums for the building on which the subject premises is located, Tenant agrees to pay Landlord such increases as additional rent. The Tenant shall take appropriate action to eliminate any criticism or comply with any recommendation with respect to Tenant's use of the Premises or the area surrounding the Premises which any of Landlord's insurance carriers may reasonably make to keep Landlord's insurance in force and effect and/or keep the then current rate. In the event Tenant shall fail to comply herewith, after written notice from Landlord, within the time allowed by said insurance company to keep Landlord's insurance in effect and/or keep the then current rates, Landlord may take such action as Landlord may deem necessary or proper, to enforce Landlord's rights and/or in the alternative or as additional relief, may do what is necessary to eliminate or comply therewith and in such event, and may charge Tenant with the cost of same as additional rent. Tenant shall take no actions resulting in interference of the Landlord's relationship with the insurer and shall be obligated to undertake all measures necessary to insure the policy in the building remains in effect.

**51. TENANT CERTIFICATION**

Tenant shall execute, acknowledge and deliver to Landlord, promptly upon request, a certificate to be provided by Landlord stating: (a) that this lease is unmodified and in full force and effect (or, if there have been modifications, that this lease is in full force and effect, as modified, and identifying the modifications); (b) the commencement and expiration dates of the term of this lease; (c) the dates through which fixed rent and additional rent have been paid; (d) whether or not there is any existing default by Landlord or Tenant with respect to which a notice of default has been delivered, and if there is any such default, specifying the nature and extent thereof; and (e) whether or not there are any setoffs, defenses or counterclaims against the enforcement of any of the agreements, terms, covenants or conditions of this lease to be paid, complied with or performed by Tenant. Any such certificate may be relied upon by Landlord and any mortgagee, purchaser or other person with whom Landlord may deal.

**52. SEVERABILITY**

If any of the provisions of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remained of this Lease shall not be affected thereby and every provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

Tenant ml  
Landlord J.M.C.

**53. REPAIRS/ALTERATIONS**

- A. Should Tenant need to make any repairs, alterations or improvements on or to the Premises, such repairs, alterations or improvements shall require Landlord's prior written approval. No person, firm or corporation is authorized to supply any labor and/or materials in connection with such repairs, alterations or improvements based on the credit of the Landlord. Under no circumstances shall any person, firm or corporation supplying labor and/or materials for the Tenant be permitted to file any lien against the Premises of the Landlord for repairs, alterations or improvements. All necessary permits and license, if any, shall be obtained by the Tenant from the proper authorities at the Tenant's own cost and expense, and all necessary plans shall be provided to the Landlord prior to the commencement of work for his prior written consent, which in the case of non-structural work shall not be unreasonably withheld or delayed. Any such work shall be in accordance with the rules and regulations of any governmental or quasi-governmental agent having jurisdiction and shall be performed by fully bonder and insured licensed professionals. All repairs, improvements and alterations require Landlord's prior written approval. If Landlord needs a professional architect, accountants, lawyers, engineer or contractor to review the plans, Tenant shall pay the cost thereof.
- B. If, because of any act or omission of Tenant or anyone claiming through or under Tenant, any mechanics' or other lien or order for the payment of money shall be filed against the Premises or the building, or against Landlord (whether or not such lien or order is valid or enforceable as such), Tenant shall, at Tenant's own cost and expense, cause the same to be canceled and discharged of record within sixty (60) days after the date of filing thereof, and shall also indemnify and save harmless Landlord from and against any and all costs, expenses, claims, losses or damages, including reasonable counsel fees, resulting therefrom or by reason thereof. If Tenant shall fail to timely cancel, discharge or bond such lien, Landlord may, but shall not be obligated to, cause such lien to be canceled, discharged or bonded in its sole discretion and Tenant shall immediately reimburse Landlord all of its costs and expenses incurred thereby including its reasonable attorneys' fees, the cost of any bond, any collateral for such bond and any sums paid to the lienor to obtain a discharge or satisfaction thereof.

**54. TENANT'S FAILURE TO PERFORM**

Should Tenant fail to perform any of its covenants herein agreed to be performed, and if same is not cured within ten (10) days after written notice to Tenant Landlord may, at its sole option and at Tenant's expense, perform such covenants, and all sums so expended by Landlord therein shall be immediately payable by Tenant to Landlord with interest thereon at the maximum legal rate of interest at the time of Landlord's demand therefor per annum from date thereof until paid, and in addition, Tenant shall reimburse Landlord for Landlord's reasonable expenses in enforcing or performing such covenants, including reasonable attorney's fees. Any such costs and/or expenses incurred or payments made by the Landlord shall be deemed to be additional rent payable by Tenant and collectible as such by Landlord. Such performance and payment by Landlord shall in no way constitute a waiver of, or limitation upon, any other right of Landlord conferred upon him by law or in any way hereunder. Landlord may choose to terminate the tenancy or to sue for non-performance.

**55. ELECTRIC**

Tenant covenants and agrees that at all times its use of electric current shall not exceed the capacity of the existing feeders to the building of the risers or wiring installation. Tenant shall pay for its own electrical usage.

Tenant MI  
Landlord [Signature]

**56. ABANDONMENT**

It is understood and agreed that if Tenant abandons the premises or moves out upon the expiration of this Lease or after default in payment of rent or in violation of any provisions of this Lease or is dispossessed and an order of possession issues, and after any of the said events, fails to remove any of property from the premises at the end of ten (10) days therefrom, at the option of the Landlord the Tenant's property remaining at and about the premises shall be deemed abandoned by Tenant and shall become the property of the Landlord.

**57. ENFORCEMENT AGAINST LANDLORD**

In any action brought to enforce obligations under this lease, any judgment or decree against Landlord shall be enforceable against Landlord only to the extent of Landlord's interest in the building of which the premises form a part, and no such judgment shall be the basis of execution on, or be lien on, assets of Landlord or any assets of any party being a partner, officer, director, member, manager, employee or stockholder in Landlord, other than the interest in said building.

**58. PARTIAL PAYMENTS**

If Landlord receives from Tenant any payment (i.e. partial payment) less than the sum of the fixed annual rent, additional rent and other charges then due and owing pursuant to the terms of the Lease, Landlord in its sole discretion may allocate such partial Payment in whole or in part to any fixed annual rent, any additional rent and/or any other charges or to any combination thereof.

**59. ADDITIONAL RENT**

All payments other than annual base rent to be made by Tenant pursuant to this Lease shall be deemed additional rent (even if not specifically identified as additional rent) and, in the event of non-receipts by Landlord thereof within five (5) days of any written or oral demand, Landlord shall have all rights and remedies provided for herein or by law for nonpayment of rent. If Tenant disputes the correctness of any statement or amount billed by Landlord, Tenant shall, as a condition precedent to its right to contest the correctness of such statement or amount, make payment of the amount billed, including, but not limited to the payment of all base rent and additional rent billed, without prejudice to its position, but if Tenant does not timely pay, the Landlord need not consider any Tenant claim or dispute. If such dispute is finally determined in Tenant's favor, Landlord shall refund to Tenant the amount determined have been overpaid, if any. The amounts of additional rent provided in this Lease shall be apportioned as of the expiration of the Lease term or earlier termination of this Lease. The obligations of Tenant to pay all amounts due hereunder, including base rent and additional rent as provided for herein shall survive the expiration of the Lease term or earlier termination of this Lease. If Tenant continues in possession of the demised premises after the expiration of the Lease term or earlier termination of this Lease, as a month to month tenant or otherwise, the provisions of this section 59 shall continue in full force and effect for so long as Tenant remains in possession of the demised premises.

**60. TENANT MAINTENANCE & RESPONSIBILITIES**

- A. Tenant shall be liable and responsible for maintaining and repairing all aspects of the premises, including the surrounding areas, which include, but are not limited to, all internal and external components and areas of the building, structural and surrounding areas of the demised premises. Landlord shall not be liable or responsible for making any repairs, replace any portion, or maintain any area in or about the premises. Tenant's responsibilities shall include, but are not limited to:

Tenant ml  
 Landlord [Signature]

- B. Tenant acknowledges and agrees that Tenant, at its sole cost and expense, shall maintain and make all necessary repairs to the HVAC, heating, electrical, gas, air-conditioning, cooling, ventilation, elevator, sprinkler, plumbing, mechanical, alarms, and all other systems that service the Premises. If any damage, repair or maintenance is required or needed, to the plumbing system used in the Building or servicing the Premises or any HVAC, heating, gas, cooling, electrical, elevator, sprinkler, plumbing, mechanical or any other system in the Building or servicing the Premises (whether such damage is within or outside the Premises) occurs Tenant shall, at Tenant's sole cost and expense, make any required repair, maintenance or service, or subject to Landlord's prior written approval, which approval shall not be unreasonably withheld, replace any such system. Furthermore, Tenant shall be solely responsible for repair, maintenance and replacement of any water pipes or sewer pipes servicing the demised premises. Tenant shall also, at its own cost and expense, keep clean and free from dirt, snow, ice, rubbish, obstructions and encumbrances, the Premises, areas, vaults, chutes, sidewalks, sidewalk hoists, railings, gutters, alleys and curbs in front of or adjacent to the Premises. If any areas, vaults, chutes, sidewalks, sidewalk hoists, railings, gutters, alleys and curbs in front of or adjacent to the Premises require maintenance, repair or replacement, Tenant shall, subject to Landlord's prior written approval, perform such maintenance, repair or replacement at Tenant's sole cost and expense.
- C. Tenant shall provide at its own cost and expense all plumbing and plumbing fixtures and all accessories (including all meters and all components thereof) within or without the Premises, required to supply the business and Premises with water and sewer services. Tenant shall maintain in good repair and working order at all times the plumbing and plumbing fixtures installed by Tenant and upon termination of the Lease, all plumbing and plumbing fixtures installed by Tenant shall become the property of Landlord. Tenant shall not be authorized to install any plumbing or plumbing fixtures or in any way make any other additions or alterations to the Premises without Landlord's prior written consent.
- D. Tenant shall be solely responsible for the maintenance (including maintaining any service contract) of the grass, shrubbery and trees within or adjacent to the Premises.
- E. Tenant shall also maintain and repair the roof as required and shall be responsible for the structural integrity of the premises and the building. Under no circumstance shall Landlord be responsible for any structural repairs, if any such damage is caused as a result of actions or omissions of Tenant. Tenant shall solely be responsible for the repair and/or replacement of any structural component of the building and for any structural damage resulting from Tenant's activities or from any alteration, modification or repair performed by Tenant, whether existing prior to, or after, the date of this Lease. Subject to Landlord's prior written approval, which approval shall not be unreasonably withheld, as a material inducement for Landlord to enter into this Lease with Tenant, Tenant expressly agrees subject to Landlord's review and approval, to repair the roof at the premises. Tenant further covenants and agrees that Tenant shall be fully responsible for any required roof repairs, whether pre-existing, existing, or repairs which are required in the future. All plans for roof repairs shall be submitted to Landlord for Landlord's approval. Tenant shall make sure that the roof repairs are such that after such repairs, the roof is free of leaks, is in such condition to be usable for Tenant's required purpose and that all components thereof, shall be in compliance with all applicable laws and shall be sufficient for use by Tenant. In other words, the roof shall be repaired and maintained such that it is capable of withstanding the everyday wear and tear of the children and adults who attend and use the daycare facility at the premises. Tenant acknowledges that the use of any roof space shall be at Tenant's sole risk, and provided that such use is allowed pursuant to applicable laws, rules, regulations or ordinances.

Tenant ml  
Landlord [Signature]

- F. By entering into this Lease, Tenant acknowledges that Tenant has fully inspected and knows the condition of the roof and all structural and non-structural components of the premises. Tenant acknowledges that Tenant, at Tenant's sole cost and expense shall maintain all aspects of the Premises and the Building and shall not look to Landlord to repair or replace same or any component thereof. If the roof, or any structural component of the Premises, requires repair or replacement, Tenant shall immediately notify Landlord, and upon Landlord's approval, which approval shall not be unreasonably withheld, Tenant shall at Tenant's sole cost and expense make any such necessary repair or replacement, unless such repair is Landlord's responsibility as specifically set forth in this lease.
- G. Tenant further acknowledges that Tenant shall be entirely responsible for all aspects of the maintenance and repair of the elevators serving the premises, including all electrical and physical components thereof. For purposes of clarification, Tenant shall be responsible for elevator inspection, maintenance, repair, and replacement and shall be responsible for all costs and expenses associated with the use, maintenance, repair, replacement and inspection of the elevators. Tenant acknowledges that it is aware the KONE is the current elevator service provided and expressly agrees that upon execution of this Lease, Tenant shall enter into a full service agreement with KONE to service and maintain the elevators at the subject premises. All costs and expenses associated with the elevators, including annual CAD testing and inspections and including all costs and expenses required to make the elevators compliant with all applicable laws and ordinances shall be the responsibility of Tenant. Tenant further agrees that Tenant shall promptly make all payments to KONE and any other elevator service or maintenance provider and shall at all times maintain the elevators in good working order. The elevators servicing the premises shall be operated in accordance with applicable laws at all times.
- H. Landlord shall have no obligation to furnish to the Premises any cleaning services, electric energy, air-conditioning, ventilation, heating, gas or any other service or utility. Tenant shall obtain air-conditioning, ventilation, heating, gas and any other services or utilities required by Tenant at Tenant's sole cost and expense and in compliance with the applicable provisions of (a) all legal requirements and insurance requirements, (b) the rules and regulations of any public utility or other company furnishing such service or utility, and (c) this Lease.
- I. Landlord shall not be responsible for providing any utility service to the Premises, including, but not limited to, electricity sewer, air conditioning, cleaning service, exterminating services, garbage removal or security, nor for providing meters, submeters or other devices for the measurement of utilities supplied to the Premises, and Tenant shall arrange for the furnishing to the Premises of such utility services as it may require, as well as for the installation of all such meters, submeters or other devices. Tenant shall be solely responsible for and shall promptly pay, to Landlord or the utility company, as applicable, as and when the same become due and payable, all charges for water, sewer, electricity, gas, telephone, cable service, internet service, steam, and any other utility or other communication device used or consumed in the Premises and supplied by a public utility or public authority or any other person, firm, or entity supplying same. Tenant shall provide its own hot and cold water to service the Premises.
- J. Tenant shall be solely responsible for all costs and expenses associated with the maintenance, repair and/or inspection for any and all meters servicing the Premises.
- K. Tenant shall not overload the electrical system serving the Premises, and shall not at any time overburden or exceed the capacity of the mains, feeders, ducts, conduits, pipes, valves, or other facilities by which electric and other utilities are supplied to, distributed in or serve the Premises. If Tenant desires to install any equipment that shall require additional utility facilities, such

Tenant ml  
Landlord J.P.C.

installation shall be subject to Landlord's prior approval of Tenant's plans and specifications therefor. If such installation is approved by Landlord and if Landlord provides such additional facilities to accommodate Tenant's installation, Tenant agrees to pay Landlord, on demand, as Additional Rent, the cost for providing such additional utility facilities.

- L. Landlord shall not be liable to Tenant in any way for any interruption, curtailment or failure, or defect in the supply or character of electricity, heat, gas, water, or any other utility furnished to the Premises by reason of any requirement, act or omission of Landlord or of any public utility or other company servicing the Building with electricity or for any other reason except Landlord's gross negligence or willful misconduct. Landlord does not represent or warrant that any utility or other service provided, or any utility or other service used or to be used by Tenant at the Premises, (a) shall be adequate for Tenant's particular purposes or (b) shall be free from interruption or reduction.
- M. If any mold or any other hazardous condition is discovered within the Premises, whether now or during the term (or any extension thereof) of this Lease, Tenant shall within ten (10) days of such discovery, commence the remediation of the discovered condition, at Tenant's sole cost and expense. Tenant shall not maintain at or about the Premises any hazardous materials such as, but not limited to, gasoline, propane gas, flammable fluids or materials, tanks or other hazardous or dangerous materials.
- N. Tenant shall pay all costs, expenses, fines, penalties, violations and damages (including reasonable attorney and expert fees) which may be imposed against the Premises or any component thereof, or against the Landlord while Tenant is in occupancy or control of the Premises during the term of the Lease (and where applicable, or any extension thereof). For purposes of clarification, if any fines, penalties, violations or any other fee is imposed against the Landlord or Premises by any governmental or quasi-governmental authority or any other entity having jurisdiction over the Premises, then Tenant shall, at Tenant's sole cost and expense immediately cure any condition that caused the issuance of any such costs, expenses, fines, penalties or violations and shall immediately make payment to the applicable authority for any such fine, penalty, fee or violation and immediately fix, cure or remedy the cause giving rise to such fine, penalty, fee or violation, at Tenant's sole cost and expense. If Tenant fails to make any such payment and cure such condition (if required), Landlord may immediately make such payment (and cure such condition) and bill such amount, including all costs and expenses (including reasonable attorney's fees, expert fees and expenses) to Tenant as additional rent.
- O. If Tenant fails perform any of Tenant's covenants, conditions, or obligations under this Lease, including but not limited to the failure to maintain, remedy, repair or replacement any item that Tenant is required to maintain, remedy, repair or replace, then Landlord may, but shall have no obligation to, make such maintenance, repairs or replacement and Tenant, upon demand by Landlord, shall pay to Landlord as additional rent, an amount equal to the cost of such maintenance, repair, remedy and replacement plus twenty percent (20%) thereof as compensation for the cost of supervising such repairs, which amount shall also be additional rent.
- P. Tenant shall maintain all alarm systems at Tenant's sole cost and expense.
- Q. Tenant hereby expressly agrees that Landlord shall be considered an "Out-of-Possession Landlord." Accordingly, it shall be the responsibility of the Tenant to conduct all maintenance and repair to the Premises, both structural and non-structural in nature, provided that any maintenance or repair of any structural component of the Premises shall be first approve in writing by Landlord.

Tenant MI  
Landlord [Signature]

**61. LANDLORD'S HAS NO LIABILITY FOR DAMAGE.**

Tenant agrees not to hold Landlord liable for any water damage or any other damage caused to the Premises which results from leaking pipes, the roof, walls or from any source, including but not limited to, the sprinkler system, as well as any other water pipes located within or without the Premises. It is expressly agreed that that the Landlord shall not be responsible for any water damage of any kind suffered by the Tenant due to any act or omissions of the Landlord or Tenant.

**62. PAYMENT**

All checks tendered to the Landlord as and for the rent or additional rent of the premises shall be deemed payments for the account of the Tenant. Acceptance by the Landlord of rent from anyone other than the Tenant shall not be deemed to operate as an attornment to the Landlord by the payor of such rent or as consent of the Landlord to assignment or subletting by the Tenant of the premises to such payor, or as a modification of the provisions of this Lease. No payment by Tenant, or on behalf of Tenant, or receipt or acceptance by Landlord of a lesser amount than the Fixed Rent or Additional Rent shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance or pursue any other remedy in this Lease or at law provided.

**63. ENTRY**

Tenant shall permit Landlord and Landlord's agents to enter the premises at reasonable hours for inspection, maintenance, and/or repair. If Landlord requires access to the premises after hours or on the weekends, then Landlord shall provide Tenant with reasonable notice of same and Tenant agrees to make reasonable accommodations to permit Landlord to inspect same. Landlord's entry or inspection, however, shall in no way be deemed to incur any liability on the part of Landlord to make any repair, or as between Landlord and Tenant, in the event of any claim by a third party for damages because of any disrepair or negligence of Tenant. The obligations here under do not give rise to any liability on Landlord's part, it being the intention of the parties that the obligation to maintain the premises by which is meant to store above is upon Tenant and Tenant shall be solely liable to any such third party and indemnify Landlord, including attorney's fees, with respect to same.

**64. [Reserved]**

**65. GARBAGE/TRASH**

Tenant shall be responsible at Tenant's own cost and expense for the removal of garbage and trash, and for the cost of removing/paying ECB violation that occur if Tenant does not properly remove trash/garbage as required by law. At no time may any garbage or trash remain in any hallway or lobby and may not be placed in the street except on the day of pickup.

**66. LANDLORD'S CONSENT**

Whenever in this Lease Landlord's approval is requested, Landlord agrees to respond at the latest within thirty (30) days after receipt of a request. The thirty days will run from the time the Landlord receives all of the necessary documents upon which the request was based, with proof of mailing to be provided by Tenant. If in this Lease, it is provided that Owner's consent or approval as to any matter will not be unreasonably withheld, then Tenant's sole remedy shall be an action for specific performance or an

Tenant [Signature]  
Landlord [Signature]

injunction, and if it is established by a court or body having final jurisdiction thereof that Owner has unreasonably withheld consent, the only effect of such finding shall be that Owner shall be deemed to have given its consent or approval, but Owner shall not be liable to Tenant in any respect for money damages by reason of withholding its consent.

**67. VIOLATION OF USE CLAUSE**

Tenant acknowledges that it is a primary obligation of Tenant to comply with the uses specified in Paragraph "2" of the lease, and not to use the premises for any other purpose without the written consent of the Landlord. In the event of a breach under this provision, Landlord has the right on twenty (20) days written notice to Tenant to terminate the Lease, upon which occurrence Tenant shall quickly vacate and surrender possession of the demised premises, and upon failure to do so, the base rent for the "holdover" period shall be deemed to be \$30,000.00 per month, and Landlord, at Landlord's option, may take steps to obtain possession of the demised premises.

**68. WINDOW DAMAGE**

In addition to paragraph "4" of the lease, in the event any window is damaged or broken, they must be replaced by Tenant at Tenant's sole cost.

**69. RELATIONSHIP OF PARTIES**

Nothing contained in this lease shall be construed to create the relationship of principal and agent, partnership, joint venture or any other relationship between the parties hereto other than the relationship of Landlord and Tenant.

**70. USE OF PREMISES**

Tenant covenants and agrees that throughout the demised term it shall not suffer, allow or permit any offensive or obnoxious vibrations, noises, odor or other undesirable effect to emanate from the premises, to constitute a nuisance or otherwise unreasonably interfere with the safety, comfort or convenience of adjacent tenants or the other tenants of the premises, and upon Landlord's notice thereof to Tenant, Tenant shall, within ten (10) days thereof, eliminate or control same. If any such condition is not so remedied then Landlord may at his own discretion, either: (a) cure such condition and add any cost and expense incurred by Landlord therefore to the next installment of rent or additional rent due hereunder, or (b) treat such failure on the part of Tenant to remedy such condition as a material default of this lease on the part of Tenant hereunder, entitling Landlord to any of his remedies, pursuant to the terms of this lease. In no event, however, shall the Tenant make any alterations, additions or structural installations in or to the premises or any parts thereof without the prior written consent of Landlord.

**71. STATUTES AND ORDINANCES**

Landlord does not warrant that any governmental license, approval and/or permit which may be required for the business to be carried on in the demised premises will be granted, or if granted, will be continued in effect and renewed. If any governmental license, approval and/or permit shall be required for the lawful conduct of Tenant's business, including any use set forth in the lease, including, but not limited to exit signs, alarm systems, elevator inspection, maintenance, repair, sprinklers, and fire extinguishers. Tenant shall duly procure and thereafter maintain same and submit the same to inspection by Landlord, it being expressly understood and agreed that Tenant's obligations under this lease shall in no way be affected or impaired by reason of Tenant's inability to secure and/or maintain same. Tenant shall at all times comply with the terms and conditions of each such license, approval and/or permit at Tenant's sole

Tenant ml  
Landlord J.M.F.



cost and expense, including but not limited to maintaining exit signs, alarm systems, elevators, fire extinguishers, sprinklers and the Premises. Landlord agrees to reasonably cooperate with Tenant for the purpose of obtaining any such license or permit and to execute any documents or instruments reasonably necessary in connection therewith, all at Tenant's expense.

**72. NO BROKER**

Landlord and Tenant represents that each has not dealt with a broker and each does hereby indemnify the other party against claims of any broker with whom such party, its agents, employees or principals thereof, may have dealt with respect to this lease, and each does hereby agree to reimburse the other party for any expenses the non-breaching party may incur in connection with defending any such claims, including but not limited to reasonable attorney's fees.

**73. ATTORNEY'S FEES**

Notwithstanding anything in the subject lease contained to the contrary, it is further agreed by the Landlord and Tenant as follows:

- a) Tenant hereby agrees to pay as additional rent all reasonable attorney's fees and disbursements which Landlord may incur or pay by reason of or in connection with:
  - i. Any action or proceeding by the Landlord to terminate the lease.
  - ii. Any other action or proceeding by Landlord against Tenant to enforce the terms of the lease and any guaranty hereto.
  - iii. Any default by Tenant in the observance or performance of any obligation under the lease (including, but not limited to, matters involving: payment of rent and/or additional rent, taxes, alterations, subletting or assignment) whether or not Landlord commences any action or proceeding against Tenant.
  - iv. Any action or proceeding brought by Tenant against Landlord (or any partner, principal or employee of Landlord) in which Tenant fails to secure a final unappealable judgment against Landlord.
  - v. Any other appearance by Landlord (principal or employee) as a witness or otherwise in any action or proceeding involving Landlord, Tenant and/or this lease.
- b) Reasonable attorney's fees shall be calculated during the term of this lease, or any option or extension hereof, at the rate of \$400.00 to \$500.00 per hour.
- c) Tenant's obligation under this section is intended to supplement, and not limit, other provisions of this lease pertaining to indemnities and/or attorneys' fees.

**74. LANDLORD'S RIGHT TO TERMINATE LEASE**

If Tenant shall fail to pay any amount of rent or additional rent within twenty (20) days of said due date of said rent or additional rent for any two (2) months in any twenty four (24) consecutive month period, Landlord may, upon ten (10) days written notice to Tenant, terminate this Lease on a date certain, and the Lease shall come to an end on that date as if it was the date specified in this Lease. Owner may then commence summary proceedings to remove Tenant from the Premises.

Tenant ML  
Landlord J.M.



interest of Landlord or its successor in the demised premises for the satisfaction of any judgment or other judicial process requiring the payment of money by Landlord based upon any default hereunder, and no other assets of Landlord or any such successor shall be subject to levy, execution or other enforcement procedure for the satisfaction of any such judgment or process.

**80. NO SETOFF, NO ABATEMENT**

Tenant shall pay all rent and additional rent due hereunder as and when the same shall become due and payable, without demand therefor, and without any abatement, setoff or deduction whatsoever, and shall keep, observe and perform each and every covenant and agreement herein contained on its part to be kept, observed and performed. In the event of a good faith dispute, Tenant shall nevertheless make all payments of rent and additional rent due hereunder to Landlord until such good faith dispute is resolved in full. Landlord shall not be required to segregate any amounts paid to Landlord pursuant to this Lease if any such amounts paid to Landlord are disputed by Tenant. There shall be no abatement, diminutions or reduction of rent or additional rent or of other obligations of Tenant hereunder under any circumstances. The obligations and liabilities of Tenant hereunder in no way shall be released, discharged or otherwise affected (except as expressly provided herein) by reason of: any damage to or destruction of, or any taking by condemnation or eminent domain of, the demised premises or any part thereof; any restriction on or interference with any use of the demised premises or any part thereof; any title defect or encumbrance or any eviction from the demised premises or any part thereof by paramount title or otherwise; any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other similar proceeding relating to Landlord, or any action taken with respect to this lease by any trustee or receiver of Landlord, or by any court, in any such proceeding; any claim which Tenant has or might have against Landlord; any failure on the part of Landlord to comply with or perform any provision hereof or of any other agreement with Tenant; or any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Tenant shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Tenant waives all rights now or hereafter conferred by statute or otherwise to quit, terminate or surrender this lease or the demised premises or any part thereof, or to receive any abatement, suspension, deferment, diminution or reduction of any rent payable by Tenant hereunder.

**81. NO ORAL AGREEMENT; NO PRIOR AGREEMENTS**

This Lease contains all of the promises, agreements, conditions, inducements and understanding between Landlord and Tenant relative to the Premises and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, express or implied, between them other than as set forth herein. Tenant expressly agrees that this Lease shall replace all prior leases with respect to the premises and all prior leases and/or agreements with respect to the Premises shall be null and void.

**82. DESIGNATION OF MANAGING AGENT**

Landlord may designate an agent to collect rent, commence a judicial proceeding, and conduct other business at the Premises on behalf of the Landlord.

**83. NO WAIVER**

Landlord's failure or delay to prepare or deliver any tax bill, invoice, statement, demand, notice, invoices, or Landlord's failure to demand any amount or rent or additional rent or any other demand set forth

Tenant MJ  
Landlord J.P.R.

herein, shall not, in any way, be deemed a waiver or cause Landlord to forfeit or surrender any of Landlord's rights to collect any of the foregoing items of rent or additional rent which may have become due.

**84. SQUARE FOOTAGE**

Landlord makes no representation as to the square footage of the Premises.

**85. CERTAIN RIGHTS RESERVED TO LANDLORD**

Landlord reserves the following rights: (i) to name the Building or change the name or street address of the Premises or the building without notice or liability of Landlord to Tenant; (ii) during the last ninety (90) days of any term or any part thereof, if during or prior to that time Tenant vacates the Premises, to decorate, remodel, repair, alter or otherwise prepare the Premises for re-occupancy; (iii) to constantly have pass keys to the Premises (no locks shall be changed without Landlord's consent); (iv) to designate and approve prior to installation, all types of carpeting, paint, wall hanging devices, window shades, blinds, drapes, and other similar equipment, and to control all internal lighting that may be visible from the exterior of the Premises; (v) to take any and all measures, including inspections, repairs, alterations, additions and improvements to the Premises or to the building, as may be necessary or desirable for the safety, protection or preservation of the Premises or the building or Landlord's interests, or as may be necessary or desirable in the operation of the building. Provided that Landlord gives reasonable advance notice to Tenant (except in cases of emergency, when no notice shall be required), Landlord may enter upon the Premises and may exercise any or all of the foregoing rights hereby reserved or other rights and duties provided in this Lease without being deemed guilty of an eviction or disturbance of Tenant's use or possession and without being liable in any manner to Tenant.

**86. SURVIVAL OF TENANT'S OBLIGATIONS AND DAMAGES.**

No expiration or termination of the any Lease term pursuant to this Lease, by operation of law or otherwise (except as expressly provided herein), and no repossession of the Premises or any part thereof pursuant to this Lease or otherwise, shall relieve Tenant of Tenant's obligations or liabilities hereunder, all of which shall survive such expiration, termination or repossession, unless otherwise agreed to in writing by Landlord. In the event of any such expiration, termination or repossession, Tenant shall pay to Landlord all Rent and additional rent up to the time of such expiration, termination or repossession, together with all costs and expenses incurred by Landlord in connection with such termination or repossession including attorneys' fees and expenses, and thereafter Tenant, until the end of what would have been the then current Lease term in the absence of such expiration, termination or repossession, and whether or not the Premises or any part thereof shall have been re-let, shall be liable to Landlord for, and shall pay to Landlord, as liquidated and agreed and current damages for Tenant's default, (a) all Rent and Additional Rent which would be payable under this Lease by Tenant through the expiration date as set forth in the Lease, less (b) all net rents collected by Landlord from the tenants or subtenants during the remainder of the then current term of the Premises, if any, and the net proceeds, if any, of any re-letting affected for the account of Tenant, after deducting from such proceeds all Landlord's costs and expenses in connection with such re-letting and other sums owed by Landlord, including without limitation all repossession costs, brokerage commissions, legal and accounting expenses, attorneys' fees, employees' expenses, promotional expenses, reasonable alteration costs, and expenses of preparation for such re-letting. In the event Landlord undertakes any action whatsoever to compel Tenant to comply with the terms of this Lease or to terminate this Lease by virtue of Tenant's default, Tenant shall be required to reimburse Landlord for all reasonable legal fees and expenses so incurred by Landlord.

**87. PERSONAL GUARANTIES**

Tenant ml  
Landlord T.M.

At the time this lease is executed and delivered, Tenant shall deliver to Landlord, concurrently with this lease, a guaranty executed by **Maria Isakova and David Ibrogimov**, jointly and severally as Guarantor, and properly acknowledged, in the form annexed hereto as Exhibit A. Tenant represents and acknowledges that Maria Isakova is a principal of Tenant.

**IN WITNESS WHEREOF, the parties have duly executed this lease on the day and year first above written.**

**LANDLORD:**

By: ILYA MITELMAN

By: ALEXSANDR LIPEL

TENANT:  
FAIRYTALE DAYCARE, INC.



By: MARIA ISAKOVA

**STATE OF NEW YORK,  
COUNTY OF QUEENS**

On the 1<sup>st</sup> day of June in the year 2016 before me, the undersigned, a Notary Public in and for said State, personally appeared **MARIA ISAKOVA** personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

**EUGENIA A. MONTEMARANO**  
Notary Public, State of New York  
No. 02MOS012101  
Qualified in Nassau County  
Commission Expires June 15, 2019

Notary Public

Tenant M.I.  
Landlord J.M.

GUARANTY OF LEASE

In order to induce, Ilya Mitelman and Aleksandr Lipel, as landlord ("Landlord"), to enter into a lease dated as of June 1, 2016 with Fairytale Daycare, Inc., as tenant ("Tenant"), for the premises commonly known as 99-13 63<sup>rd</sup> Road, Rego Park NY, in the form and upon the terms of the lease hereto annexed (the "Lease"), 63-0910854LEH Marja Isakova, an individual, residing at 63-0910854LEH and David Ibragimov, an individual, residing at 63-0910854LEH jointly and severally (each a "Guarantor" and collectively referred to as "Guarantors"), hereby represents, guarantees and agrees with Landlord as follows:

(1) Guarantor Maria Isakova is a principal of Tenant and Guarantor David Ibragimov is an agent of the Tenant.

(2) Each Guarantor hereby unconditionally, irrevocably and as a primary obligor hereunder guarantees to Landlord, the full and faithful performance and observance of all of the terms, covenants, provisions, and conditions contained in the Lease on the part of the Tenant to be performed and/or observed, including, without limitation, the full, prompt and faithful payment of all Base Rent, Additional Rent, and other sums due under the Lease as well as all sums payable under the Lease for use and occupancy arising from the holding over by Tenant after the expiration or sooner termination of the term of the Lease and all damages and expenses caused by or arising out of such holding over, including, without limitation, attorneys' fees and disbursements.

(3) This Guaranty is primary, absolute and unconditional and shall not be discharged, mitigated, or affected by (i) any modification of the Lease; (ii) any failure of Landlord to enforce any of the provisions of the Lease or by any extension of time or indulgence extended by Landlord to Tenant thereunder; (iii) any defense available to Tenant or Guarantors; or (iv) any invalidity or unenforceability of all or any portion of the Lease; and each Guarantor hereby consents to all of the foregoing without notice to the Guarantors and each Guarantor's liability shall extend to the Lease as so modified or extended.

(4) (a) Each Guarantor hereby absolutely, unconditionally and irrevocably waives (i) promptness and diligence, (ii) notice of acceptance and notice of the incurrence of any obligation by the Tenant; (iii) notice of any actions taken by Landlord, Tenant or any interested party under the Lease or any other agreement or instrument relating thereto; (iv) all other notices, demands and protests, and all other formalities of every kind in connection with the enforcement of the Lease or of this Guaranty, the omission of which, but for the provisions of this Paragraph (4) might constitute grounds for relieving the Guarantors of Guarantors' obligations hereunder; and (iv) the right to a trial by jury of any dispute arising under, or relating to, this Guaranty or the Lease.

(b) Without limiting the generality of Paragraph (4)(a) hereof, each Guarantor hereby unconditionally and irrevocably waives any and all rights to assert any defense, including but not limited to, those which may arise by reason of (i) the incapacity, lack of authority, death or disability of, or revocation hereof by, any person or entity, (ii) the failure of Landlord to file or enforce any claim against the estate (in probate, bankruptcy or any other proceedings) of any person or entity, or (iii) any setoff, counterclaim or crossclaim of any nature whatsoever with respect to this Guaranty or the Lease.

(5) Landlord may proceed directly against each Guarantor or both Guarantors under this Guaranty without being required to proceed against Tenant under the Lease or to pursue or exhaust any other rights or remedies it may have against Tenant or against any other security or guaranty given to

Tenant ml  
Landlord DIP

Landlord, and the right to recover possession of the Premises, and/or Guarantors may be joined in any action or proceeding commenced by Landlord against Tenant in connection with the Lease.

(6) Each Guarantor's liability under this Guaranty shall not be deemed to be discharged, mitigated or affected by reason of the release or the discharge of Tenant or the disaffirmance of the Lease in any bankruptcy or insolvency proceedings.

(7) Each Guarantor covenants to and agrees with Landlord that, until all the covenants and conditions in the Lease on Tenant's part to be performed and observed are fully performed and observed, each Guarantor (i) waives any right of subrogation against Tenant by reason of any payments, acts or performance by such Guarantor herewith or any right to enforce any remedy which a Guarantor may have against Tenant by reason of any such payment, act or performance, and (ii) subordinates any liability or indebtedness of Tenant now or hereafter held by each Guarantor to the obligations of Tenant to Landlord under the Lease.

(8) This Guaranty shall be enforceable against each Guarantor without the necessity of any notice of any default by Tenant or any notice of acceptance of this Guaranty or of any other notice or demand to which each Guarantor might otherwise be entitled, all of which notices each Guarantor hereby expressly waives in advance.

(9) The rights and remedies provided hereunder are cumulative and are in addition to and not in limitation of any other rights and remedies to which Landlord may be entitled in law and in equity and under the provisions of the Lease by reason of Tenant's default under the Lease, and are in addition to the rights and remedies Landlord may have under any other security or guaranty given to Landlord.

(10) Landlord may pursue its remedies under this Guaranty concurrently with or independent of any action or proceeding or steps taken against Tenant or against any other security or guaranty given to Landlord.

(11) The obligations of each Guarantor under this Guaranty shall not be discharged, mitigated or affected in any respect by reason of any action or proceeding taken against Tenant under the Lease including without limitation, termination of the Lease and recovery of possession of the Premises or against any other security or guaranty given to Landlord.

(12) This Guaranty may not be changed or terminated orally. All previous negotiations have been merged herein.

(13) Guarantor acknowledges that Guarantor has examined the Lease and is fully familiar with all of the provisions thereof.

(14) The word "Tenant", as used in this Guaranty, shall include any person, corporation, partnership or other entity to whom Tenant's leasehold estate under the Lease shall have been assigned.

(15) Guarantor shall pay all of Landlord's expenses, including reasonable attorneys' fees, incurred by Landlord in enforcing this Guaranty and collecting any judgment obtained in any action or proceeding brought by Landlord in connection therewith.

Tenant ml  
Landlord J.P.P.

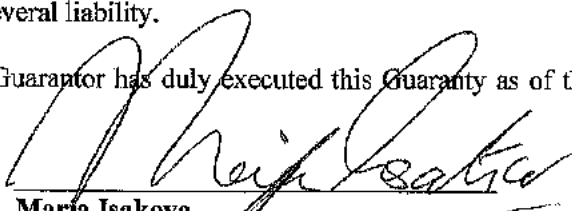
(16) It is agreed that the Supreme Court of the State of New York, and the United States District Court, located in the County of Queens, shall have jurisdiction to hear and determine any claim, action or proceeding by Landlord against Guarantor under this Guaranty.

(17) This Guaranty shall be binding upon Guarantor and inure to the benefit of Landlord and their respective distributees, personal representatives, successors and assigns.

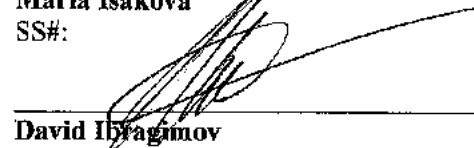
(18) The provisions of this Guaranty shall be governed by and interpreted solely in accordance with the internal laws of the State of New York, without giving effect to the principles of conflicts of law.

(19) Each Guarantor represents that Guarantor has the legal right and capacity to execute this Guaranty. If this Guaranty is held ineffective or unenforceable, each Guarantor shall be deemed to be a tenant under the Lease with the same force and effect as if each Guarantor was expressly named as a joint tenant therein with joint and several liability.

IN WITNESS WHEREOF, Guarantor has duly executed this Guaranty as of the 1<sup>st</sup> day of June, 2016



Maria Isakova  
SS#:



David Ibragimov  
SS#:

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

On the 1<sup>st</sup> day of June in the year 2016 before me, the undersigned, a Notary Public in and said State, personally appeared Maria Isakova, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

On the 1<sup>st</sup> day of June in the year 2016 before me, the undersigned, a Notary Public in and said State, personally appeared David Ibragimov, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

**EUGENIA A. MONTEMARANO**  
Notary Public, State of New York  
No. 02MO5012181  
Qualified in Nassau County  
Commission Expires June 15, 2019

Notary Public

**EUGENIA A. MONTEMARANO**  
Notary Public, State of New York  
No. 02MO5012181  
Qualified in Nassau County  
Commission Expires June 15, 2019

Tenant M  
Landlord Landlord



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

**AGREEMENT OF LEASE**, made as of this 1st day of June, 2016, between

Ilya Mitelman and Diana Mitelman, 634 Flanders Drive, Valley Stream, New York 11581  
party of the first part, hereinafter referred to as **OWNER**, and

FAIRYTALE DAYCARE INC.,

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

**WITNESSETH:** Owner hereby leases to Tenant and Tenant hereby hires from Owner the entire building located at 99-17 63<sup>rd</sup> Road, Rego Park, New York 11374.

in the Borough of **Queens**, City of New York ("**Demised Premises**", "**demised premises**", "**Premises**") for the term of ten (10) years with possible three options to renew, with each option having a five year term, (or until such term shall sooner cease and expire or extended as hereinafter provided) to commence on the 1<sup>st</sup> day of May, 2016 and to end on the 30th day of April, 2026, both dates inclusive, at an annual rental rate of:

See Rider attached hereto and made a part hereof

which Tenant agrees to pay in lawful money of the United States which shall be legal tender in payment of all debts and dues, public and private, at the time of payment, in equal monthly installments in advance on the first day of each month during said term, at the office of Owner or such other place as Owner may designate, without any set off or deduction whatsoever, except that Tenant shall pay the first monthly installment(s) on the execution hereof (unless this lease be a renewal).

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

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

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

and for no other purpose. Tenant shall at all times conduct its business in a high grade and reputable manner, shall not violate Article 37 hereof, and shall keep show windows and signs in a neat and clean condition.

**Tenant**

**Alterations:** 3. Tenant shall make no changes in or to the demised premises of any nature without Owner's prior written consent. Subject to the prior written consent of Owner, and to the provisions of this article, Tenant at Tenant's expense, may make alterations, installations, additions or improvements which are nonstructural and which do not affect utility services or plumbing and electrical lines, in or to the interior of the demised premises by using contractors or mechanics first approved by Owner. Tenant shall, before making any alterations, additions, installations or improvements, at its expense, obtain all permits, approvals and certificates required by any governmental or quasi-governmental bodies and (upon completion) certificates of final approval thereof and shall deliver promptly duplicates of all such permits, approvals and certificates to Owner and Tenant agrees to carry and will cause Tenant's contractors and sub-contractors to carry such workman's compensation, general liability, personal and property damage insurance as Owner may require. If any mechanic's lien is filed against the demised premises, or the building of which the same forms a part, for work claimed to have been done for, or materials furnished to, Tenant, whether or not done pursuant to this article, the same shall be discharged by Tenant within ten (10) days thereafter, at Tenant's expense, by filing the bond required by law. All fixtures and all paneling, partitions, railings and like installations, installed in the premises at any time, either by Tenant or by Owner in Tenant's behalf, shall, upon installation, become the property of Owner and shall remain upon and be surrendered with the demised premises unless Owner, by notice to Tenant no later than twenty (20) days prior to the date fixed as the termination of this lease, elects to relinquish Owner's right thereto and to have them removed by Tenant, in which event the same shall be removed from the premises by Tenant prior to the expiration of the lease, at Tenant's expense. Nothing in this Article shall be construed to give Owner title to or to prevent Tenant's removal of trade fixtures, moveable office furniture and equipment, but upon removal of any such from the premises or upon removal of other installations as may be required by Owner, Tenant shall immediately and at its expense, repair and restore the premises to the condition existing prior to installation and repair any damage to the demised premises or the building due to such removal. All property permitted or required to be removed, by Tenant at the end of the term remaining in the premises after

Tenant's removal shall be deemed abandoned and may, at the election of Owner, either be retained as Owner's property or may be removed from the premises by Owner, at Tenant's expense.

**Repairs:** 4. ~~Tenant~~Owner shall maintain and repair the public portions of the building, both exterior and interior, except that if Owner allows Tenant to erect on the outside of the building a sign or signs, or a hoist, lift or sidewalk elevator for the exclusive use of Tenant, Tenant shall maintain such exterior installations in good appearance and shall cause the same to be operated in a good and workmanlike manner and shall make all repairs thereto necessary to keep same in good order and condition, at Tenant's own cost and expense, and shall cause the same to be covered by the insurance provided for hereafter in Article 8. Tenant shall, throughout the term of this lease, take good care of the demised premises and the fixtures and appurtenances therein, and the sidewalks adjacent thereto, and at its sole cost and expense, make all non-structural repairs thereto as and when needed to preserve them in good working order and condition, reasonable wear and tear, obsolescence and damage from the elements, fire or other casualty, excepted. If the demised premises be or become infested with vermin, Tenant shall, at Tenant's expense, cause the same to be exterminated from time to time to the satisfaction of Owner. Except as specifically provided in Article 9 or elsewhere in this lease, there shall be no allowance to the Tenant for the diminution of rental value and no liability on the part of Owner by reason of inconvenience, annoyance or injury to business arising from Owner, Tenant or others making or failing to make any repairs, alterations, additions or improvements in or to any portion of the building or the demised premises or in and to the fixtures, appurtenances or equipment thereof. The provisions of this Article 4 with respect to the making of repairs shall not apply in the case of fire or other casualty which are dealt with in Article 9 hereof.

**Window**

**Cleaning:** 5. Tenant will not clean nor require, permit, suffer or allow any window in the demised premises to be cleaned from the outside in violation of Section 202 of the Labor Law or any other applicable law or of the Rules of the Board of Standards and Appeals, or of any other Board or body having or asserting jurisdiction.

**Requirements of Law, Fire Insurance, Floor Loads:**

6. Prior to the commencement of the lease term, if Tenant is then in possession, and at all times thereafter, Tenant, at Tenant's sole cost and expense, shall promptly comply with all present and future laws, orders and regulations of all state, federal, municipal and local governments, departments, commissions and boards and any direction of any public officer pursuant to law, and all orders, rules and regulations of the New York Board of Fire Underwriters or Insurance Services Office, or any similar body which shall impose any violation, order or duty upon Owner or Tenant with respect to the demised premises, and with respect to the portion of the sidewalk adjacent to the premises, if the premises are on the street level, whether or not arising out of Tenant's use or manner of use thereof, or with respect to the building if arising out of Tenant's use or manner of use of the premises or the building (including the use permitted under the lease). Except as provided in Article 29 hereof, nothing herein shall require Tenant to make structural repairs or alterations unless Tenant has by its manner of use of the demised premises or method of operation therein, violated any such laws, ordinances, orders, rules, regulations or requirements with respect thereto. Tenant shall not do or permit any act or thing to be done in or to the demised premises which is contrary to law, or which will invalidate or be in conflict with public liability, fire or other policies of insurance at any time carried by or for the benefit of Owner. Tenant shall pay all costs, expenses, fines, penalties or damages, which may be imposed upon Owner by reason of Tenant's failure to comply with the provisions of this Article. If the fire insurance rate shall at the beginning of the lease or at any time thereafter, be higher than it otherwise would be, then Tenant shall reimburse Owner, as additional rent hereunder, for that portion of all fire insurance premiums thereafter paid by Owner which shall have been charged because of such failure by Tenant, to comply with the terms of this Article. In any action or proceeding wherein Owner and Tenant are parties, a schedule or "make-up" of rate for the building or demised premises issued by a body making fire insurance rates applicable to said premises shall be conclusive evidence of the facts therein stated and of the several items and charges in the fire insurance rate then applicable to said premises.

**Subordination:** 7. This lease is subject and subordinate to all ground or underlying leases and to all mortgages which may now or hereafter affect such leases or the real property of which demised premises are a part and to all renewals, modifications, consolidations, replacements and extensions of any such underlying leases and mortgages. This clause shall be self-operative and no further instrument of subordination shall be required by any ground or underlying lease or by any mortgage, affecting any lease or the real property of which the demised premises are a part. In confirmation of such subordination, Tenant shall execute within ten (10) days, any subordination, non-disturbance and/or assignment agreement, when requested by Owner, in a form reasonably required by Owner or its lender or prospective lender.

**Tenant's Liability Insurance Property Loss, Damage Indemnity:**

8. Owner or its agents shall not be liable for any damage to property of Tenant or of others entrusted to employees of the building, nor for loss of or damage to any property of Tenant by theft or otherwise, nor for any injury or damage to persons or property resulting from any cause of whatsoever nature, unless caused by or due to the negligence of Owner, its agents, servants or employees. Owner or its agents will not be liable for any such damage caused by other tenants or persons in, upon or about said building or caused by operations in construction of any private, public or quasi public work. Tenant agrees, at Tenant's sole cost and expense, to maintain general public liability insurance in standard form in favor of Owner and Tenant against claims for bodily injury or death or property damage occurring in or upon the demised premises, effective from the date Tenant enters into possession and during the term of this lease. Such insurance shall be in an amount and with carriers acceptable to the Owner. Such policy or policies shall be delivered to the Owner. On Tenant's default in obtaining or delivering any such policy or policies or failure to pay the charges therefor, Owner may secure or pay the charges for any such policy or policies and charge the Tenant as additional rent therefor. Tenant shall indemnify and save harmless Owner against and from all liabilities, obligations, damages, penalties, claims, costs and expenses for which Owner shall not be reimbursed by insurance, including reasonable attorneys' fees, paid, suffered or incurred as a result of any breach by Tenant, Tenant's agents, contractors, employees, invitees, or licensees, of any covenant on condition of this lease, or the carelessness, negligence or improper conduct of the Tenant, Tenant's agents, contractors, employees, invitees or licensees. Tenant's liability under this lease extends to the acts and omissions of any subtenant, and any agent, contractor, employee, invitee or licensee of any subtenant. In case any action or proceeding is brought against Owner by reason of any such claim,

Tenant, upon written notice from Owner, will, at Tenant's expense, resist or defend such action or proceeding by counsel approved by Owner in writing, such approval not to be unreasonably withheld.

**Destruction, Fire and Other Casualty:**

9. (a) If the demised premises or any part thereof shall be damaged by fire or other casualty, Tenant shall give immediate notice thereof to Owner and this lease shall continue in full force and effect except as hereinafter set forth. (b) If the demised premises are partially damaged or rendered partially unusable by fire or other casualty, the damages thereto shall be repaired by and at the expense of Owner and the rent, until such repair shall be substantially completed, shall be apportioned from the day following the casualty according to the part of the premises which is usable. (c) If the demised premises are totally damaged or rendered wholly unusable by fire or other casualty, then the rent shall be proportionately paid up to the time of the casualty and thenceforth shall cease until the date when the premises shall have been repaired and restored by Owner, subject to Owner's right to elect not to restore the same as hereinafter provided. (d) If the demised premises are rendered wholly unusable or (whether or not the demised premises are damaged in whole or in part) if the building shall be so damaged that Owner shall decide to demolish it or to rebuild it, then, in any of such events, Owner may elect to terminate this lease by written notice to Tenant, given within ninety (90) days after such fire or casualty, specifying a date for the expiration of the lease, which date shall not be more than 60 days after the giving of such notice, and upon the date specified in such notice the term of this lease shall expire as fully and completely as if such date were the date set forth above for the termination of this lease and Tenant shall forthwith quit, surrender and vacate the premises without prejudice however, to Landlord's rights and remedies against Tenant under the lease provisions in effect prior to such termination, and any rent owing shall be paid up to such date and any payments of rent made by Tenant which were on account of any period subsequent to such date shall be returned to Tenant. Unless Owner shall serve a termination notice as provided for herein, Owner shall make the repairs and restorations under the conditions of (b) and (c) hereof, with all reasonable expedition, subject to delays due to adjustment of insurance claims, labor troubles and causes beyond Owner's control. After any such casualty, Tenant shall cooperate with Owner's restoration by removing from the premises as promptly as reasonably possible, all of Tenant's salvageable inventory and movable equipment, furniture, and other property. Tenant's liability for rent shall resume five (5) days after written notice from Owner that the premises are substantially ready for Tenant's occupancy. (e) Nothing contained hereinabove shall relieve Tenant from liability that may exist as a result of damage from fire or other casualty. Notwithstanding the foregoing, each party shall look first to any insurance in its favor before making any claim against the other party for recovery for loss or damage resulting from fire or other casualty, and to the extent that such insurance is in force and collectible and to the extent permitted by law, Owner and Tenant each hereby releases and waives all right of recovery against the other or any one claiming through or under each of them by way of subrogation or otherwise. The foregoing release and waiver shall be in force only if both lessors' insurance policies contain a clause providing that such a release or waiver shall not invalidate the insurance. If, and to the extent, that such waiver can be obtained only by the payment of additional premiums, then the party benefiting from the waiver shall pay such premium within ten days after written demand or shall be deemed to have agreed that the party obtaining insurance coverage shall be free of any further obligation under the provisions hereof with respect to waiver of subrogation. Tenant acknowledges that Owner will not carry insurance on Tenant's furniture and/or furnishings or any fixtures or equipment, improvements, or appurtenances removable by Tenant and agrees that Owner will not be obligated to repair any damage thereto or replace the same. (f) Tenant hereby waives the provisions of Section 227 of the Real Property Law and agrees that the provisions of this article shall govern and control in lieu thereof.

**Eminent Domain:**

10. If the whole or any part of the demised premises shall be acquired or condemned by Eminent Domain for any public or quasi public use or purpose, then and in that event, the term of this lease shall cease and terminate from the date of title vesting in such proceeding and Tenant shall have no claim for the value of any unexpired term of said lease and assigns to Owner, Tenant's entire interest in any such award.

**Assignment, Mortgage, Etc.:**

11. Tenant, for itself, its heirs, distributees, executors, administrators, legal representatives, successors and assigns, expressly covenants that it shall not assign, mortgage or encumber this agreement, nor underlet, or suffer or permit the demised premises or any part thereof to be used by others, without the prior written consent of Owner in each instance. Transfer of the majority of the stock of a corporate Tenant shall be deemed an assignment. If this lease be assigned, or if the demised premises or

any party thereof be underlet or occupied by anybody other than Tenant, Owner may, after default by Tenant, collect rent from the assignee, under-tenant or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, underletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, under-tenant or occupant as tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained. The consent by Owner to an assignment or underletting shall not in any way be construed to relieve Tenant from obtaining the express consent in writing of Owner to any further assignment or underletting.

**Electric**

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

**Access to**

**Premises:** 13. Owner or Owner's agents shall have the right (but shall not be obligated) to enter the demised premises in any emergency at any time, and, at other reasonable times, to examine the same and to make such repairs, replacements and improvements as Owner may deem necessary and reasonably desirable to any portion of the building or which Owner may elect to perform, in the premises, following Tenant's failure to make repairs or perform any work which Tenant is obligated to perform under this lease, or for the purpose of complying with laws, regulations and other directions of governmental authorities.

Tenant shall permit Owner to use and maintain and replace pipes and conduits in and through the demised premises and to erect new pipes and conduits therein provided they are within the walls, Owner may, during the progress of any work in the demised premises, take all necessary materials and equipment into said premises without the same constituting an eviction nor shall the Tenant be entitled to any abatement of rent while such work is in progress nor to any damages by reason of loss or interruption of business or otherwise. Throughout the term hereof Owner shall have the right to enter the demised premises at reasonable hours for the purpose of showing the same to prospective purchasers of mortgages of the building, and during the last six months of the term for the purpose of showing the same to prospective tenants and may, during said six (6) months period, place upon the premises the usual notice "To Let" and "For Sale" which notices Tenant shall permit to remain thereon without molestation. If Tenant is not present to open and permit an entry into the premises, Owner or Owner's agents may enter the same whenever such entry may be necessary or permissible by master key or forcibly and provided reasonable care is exercised to safeguard Tenant's property, such entry shall not render Owner or its agents liable therefor, nor in any event shall the obligations of Tenant hereunder be affected. If during the last month of the term Tenant shall have removed all or substantially all of Tenant's property therefrom, Owner may immediately enter, alter, renovate or redecorate the demised premises without limitation or abatement of rent, or incurring liability to Tenant for any compensation and such act shall have no effect on this lease or Tenant's obligations hereunder. Owner shall have the right at any time, without the same constituting an eviction and without incurring liability to Tenant therefor to change the arrangement and/or location of public entrances, passageways, doors, doorways, corridors, elevators, stairs, toilets, or other public parts of the building and to change the name, number or designation by which the building may be known.

**Vault, Vault**

**Space, Areas:** 14. No Vaults, vault space or area, whether or not enclosed or covered, not within the property line of the building is leased hereunder, anything contained in or indicated on any sketch, blue print or plan, or anything contained elsewhere in this lease to the contrary notwithstanding. Owner makes no representation as to the location of the property line of the building. All vaults and vault space and all such areas not within the property line of the building, which Tenant may be permitted to use and/or occupy, is to be used and/or occupied under a revocable license, and if any such license be revoked, or if the amount of such space or area be diminished or required by any federal, state or municipal authority or public utility, Owner shall not be subject to any liability nor shall Tenant be entitled to any compensation or diminution or abatement of rent, nor shall such revocation, diminution or requisition be deemed constructive or actual

eviction. Any tax, fee or charge of municipal authorities for such vault or area shall be paid by Tenant.

**Occupancy:**

15. Tenant will not at any time use or occupy the demised premises in violation of Articles 2 or 37 hereof, or of, the certificate of occupancy issued for the building of which the demised premises are a part. Tenant has inspected the premises and accepts them "as is", subject to the riders annexed hereto with respect to Owner's work, if any. In any event, Owner makes no representation as to the condition of the premises and Tenant agrees to accept the same subject to violations, whether or not of record.

**Bankruptcy:**

16. (a) Anything elsewhere in this lease to the contrary notwithstanding, this lease may be cancelled by Landlord by the sending of a written notice to Tenant within a reasonable time after the happening of any one or more of the following events: (1) the commencement of a case in bankruptcy or under the laws of any state naming Tenant as the debtor; or (2) the making by Tenant of an assignment or any other arrangement for the benefit of creditors under any state statute. Neither Tenant nor any person claiming through or under Tenant, or by reason of any statute or order of court, shall thereafter be entitled to possession of the premises demised but shall forthwith quit and surrender the premises. If this lease shall be assigned in accordance with its terms, the provisions of this Article 16 shall be applicable only to the party then owning Tenant's interest in this lease.

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

**Default:**

17. (1) If Tenant defaults in fulfilling any of the covenants for the payment of rent or additional rent, or if the demised premises become vacant or deserted; or if any execution or attachment shall be issued against Tenant or any of Tenant's property whereupon the demised premises shall be taken or occupied by someone other than Tenant; or if this lease be rejected under Section 365 of Title 11 of the U.S. Code (Bankruptcy Code); or if Tenant shall fail to move into or take possession of the premises within fifteen (15) days after the commencement of the term of this lease, of which fact Owner shall be the sole judge; then, in any one or more of such events, upon Owner serving a written five (5) days notice upon Tenant specifying the nature of said default and upon the expiration of said five (5) days, if Tenant shall have failed to comply with or remedy such default, or if the said default or omission complained of shall be of a nature that the same cannot be completely cured or remedied within said five (5) day period, and if Tenant shall not have diligently commenced curing such default within such five (5) day period, and shall not thereafter with reasonable diligence and in good faith proceed to remedy or cure such default, the Owner may serve a written three (3) days notice of cancellation of this lease upon Tenant, and upon the expiration of said three (3) days, this lease and the term thereunder shall end and expire as fully and completely as if the expiration of such three (3) day period were the day herein definitely fixed for the end and expiration of this lease and the term thereof and Tenant shall then quit and surrender the demised premises to Owner but Tenant shall remain liable as hereinafter provided.

(2) If the notice provided for in (1) hereof shall have been given, and the term shall expire as aforesaid, or if Tenant shall make default in the payment of the rent reserved herein or any item of additional rent herein mentioned or any part of either or in making any other payment herein required; then and in any of such events Owner may without notice, re-enter the demised premises either by force or otherwise, and dispossess

Tenant by summary proceedings or otherwise, and the legal representative of Tenant or other occupant of demised premises and remove their effects and hold the premises as if this lease had not been made, and Tenant hereby waives the service of notice of intention to re-enter or to institute legal proceedings to that end.

**Remedies of Owner and Waiver of Redemption:**

18. In case of any such default, re-entry, expiration and/or dispossession by summary proceedings or otherwise, (a) the rent, and additional rent, shall become due thereupon and be paid up to the time of such re-entry, dispossession and/or expiration; (b) Owner may re-let the premises or any part or parts thereof, either in the name of Owner or otherwise, for a term or terms, which may at Owner's option be less than or exceed the period which would otherwise have constituted the balance of the term of this lease and may grant concessions or free rent or charge a higher rental than that in this lease, and/or (c) Tenant or the legal representatives of Tenant shall also pay Owner as liquidated damages for the failure of Tenant to observe and perform said Tenant's covenants herein contained, any deficiency between the rent hereby reserved and/or covenanted to be paid and the net amount, if any, of the rents collected on account of the subsequent lease or leases of the demised premises for each month of the period which would otherwise have constituted the balance of the term of this lease. The failure of Owner to re-let the premises or any part or parts thereof shall not release or affect Tenant's liability for damages. In computing such liquidated damages, there shall be added to the said deficiency such expenses as Owner may incur in connection with re-letting, such as legal expenses, attorneys' fees, brokerage, advertising and for keeping the demised premises in good order or for preparing the same for re-letting. Any such liquidated damages shall be paid in monthly installments by Tenant on the rent day specified in this lease. Owner, in putting the demised premises in good order or preparing the same for re-rental, may, at Owner's option, make such alterations, repairs, replacements and/or decorations in the demised premises as Owner, in Owner's sole judgment, considers advisable and necessary for the purpose of re-letting the demised premises, and the making of such alterations, repairs, replacements and/or decorations shall not operate or be construed to release Tenant from liability.

Owner shall in no event be liable in any way whatsoever for failure to re-let the demised premises, or in the event that the demised premises are re-let, for failure to collect the rent thereof under such re-letting, and in no event shall Tenant be entitled to receive any excess, if any, of such net rents collected over the sums payable by Tenant to Owner hereunder. In the event of a breach or threatened breach by Tenant of any of the covenants or provisions hereof, Owner shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings and other remedies were not herein provided for. Mention in this lease of any particular remedy, shall not preclude Owner from any other remedy, in law or in equity. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws.

**Fees and Expenses:**

19. If Tenant shall default in the observance or performance of any term or covenant on Tenant's part to be observed or performed under or by virtue of any of the terms or provisions in any article of this lease, then, unless otherwise provided elsewhere in this lease, Owner may immediately or at any time thereafter and without notice perform the obligation of Tenant thereunder. If Owner, in connection with the foregoing or in connection with any default by Tenant in the covenant to pay rent hereunder, makes any expenditures or incurs any obligations for the payment of money, including, but not limited to attorney's fees, in instituting, prosecuting or defending any action or proceeding, then Tenant will reimburse Owner for such sums so paid or obligations incurred with interest and costs. The foregoing expenses incurred by reason of Tenant's default shall be deemed to be additional rent hereunder and shall be paid by Tenant to Owner within five (5) days of rendition of any bill or statement to Tenant therefor. If Tenant's lease term shall have expired at the time of making of such expenditures or incurring of such obligations, such sums shall be recoverable by Owner as damages.

**No Representations by Owner:**

20. Neither Owner nor Owner's agents have made any representations or promises with respect to the physical condition of the building, the land upon which it is erected or the demised premises, the rents, leases, expenses of operation, or any other matter or thing affecting or related to the premises except as herein expressly set forth and no rights, easements or licenses are acquired by Tenant by implication or otherwise except as expressly set forth in the provisions of this lease. Tenant has inspected the building and the demised premises and is thoroughly acquainted with their condition, and agrees to take the same "as is"

and acknowledges that the taking of possession of the demised premises by Tenant shall be conclusive evidence that the said premises and the building of which the same form a part were in good and satisfactory condition at the time such possession was taken, except as to latent defects. All understandings and agreements heretofore made between the parties hereto are merged in this contract, which alone fully and completely express the agreement between Owner and Tenant and any executory agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of it in whole or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought.

**End of Term:**

21. Upon the expiration or other termination of the term of this lease, Tenant shall quit and surrender to Owner the demised premises, broom clean, in good order and condition, ordinary wear excepted, and Tenant shall remove all of its property. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of this lease. If the last day of the term of this lease or any renewal thereof falls on Sunday, this lease shall expire at noon on the preceding Saturday, unless it be a legal holiday, in which case, it shall expire at noon on the preceding business day.

**Quiet Enjoyment:**

22. Owner covenants and agrees with Tenant that upon Tenant paying the rent and additional rent and observing and performing all the terms, covenants and conditions, on Tenant's part to be observed and performed, Tenant may peacefully and quietly enjoy the premises hereby demised, subject, nevertheless, to the terms and conditions of this lease including, but not limited to, Article 31 hereof and to the ground leases, underlying leases and mortgages hereinbefore mentioned.

**Failure To Give Possession:**

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

**No Waiver:**

24. The failure of Owner to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this lease or of any of the Rules or Regulations, set forth or hereafter adopted by Owner, shall not prevent a subsequent act which would have originally constituted a violation from having all the force and effect of an original violation. The receipt by Owner of rent with knowledge of the breach of any covenant of this lease shall not be deemed a waiver of such breach and no provision of this lease shall be deemed to have been waived by Owner unless such waiver be in writing signed by Owner. No payment by Tenant or receipt by Owner of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement of any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Owner may accept such check or payment without prejudice to Owner's right to recover the balance of such rent or pursue any other remedy in this lease provided. No act or thing done by Owner or Owner's agents during the term hereby demised shall be deemed an acceptance of a surrender of said premises, and no agreement to accept such surrender shall be valid unless in writing signed by Owner. No employee of Owner or Owner's agent shall have any power to accept the keys of said premises prior to the termination of the lease and the delivery of keys to any such agent or employee shall not operate as a termination of the lease or a surrender of the premises.

**Waiver of**

**Trial by Jury:** 25. It is mutually agreed by and between Owner and Tenant that the respective parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other (except for personal injury or property damage) on any matters whatsoever arising out of or in any way connected with this lease, the relationship of Owner and Tenant, Tenant's use or occupancy of said premises, and any emergency statutory or any other statutory remedy. It is further mutually agreed that in the event Owner commences any summary proceeding for possession of the premises, Tenant will not interpose any counterclaim of whatever nature or description in any such proceeding including a counterclaim under Article 4.

**Inability to Perform:**

26. This Lease and the obligation of Tenant to pay rent hereunder and perform all of the other covenants and agreements hereunder on part of Tenant to be performed shall in no way be affected, impaired or excused because Owner is unable to fulfill any of its obligations under this lease or to supply or is delayed in supplying any service expressly or impliedly to be supplied or is unable to make, or is delayed in making any repair, additions, alterations or decorations or is unable to supply or is delayed in supplying any equipment or fixtures if Owner is prevented or delayed from so doing by reason of strike or labor troubles or any cause whatsoever including, but not limited to, government prescription in connection with a National Emergency or by reason of any rule, order or regulation of any department or subdivision thereof of any government agency or by reason of the conditions of supply and demand which have been or are affected by war or other emergency.

**Bills and Notices:**

27. Except as otherwise in this lease provided, a bill, statement, notice or communication which Owner may desire or be required to give to Tenant, shall be deemed sufficiently given or rendered if, in writing, delivered to Tenant personally or sent by registered or certified mail addressed to Tenant at the building of which the demised premises form a part or at the last known residence address or business address of Tenant or left at any of the aforesaid premises addressed to Tenant, and the time of the rendition of such bill or statement and of the giving of such notice or communication shall be deemed to be the time when the same is delivered to Tenant, mailed, or left at the premises as herein provided. Any notice by Tenant to Owner must be served by registered or certified mail addressed to Owner at the address first hereinabove given or at such other address as Owner shall designate by written notice.

**Water**

**Charges:**

28. If Tenant requires, uses or consumes water for any purpose in addition to ordinary lavatory purposes (of which fact Tenant constitutes Owner to be the sole judge), Owner may install a water meter and thereby measure Tenant's water consumption for all purposes. Tenant shall pay Owner for the cost of the meter and the cost of the installation thereof and throughout the duration of Tenant's occupancy, Tenant shall keep said meter and installation equipment in good working order and repair at Tenant's own cost and expense. Tenant agrees to pay for water consumed, as shown on said meter as and when bills are rendered. Tenant covenants and agrees to pay the sewer rent, charge or any other tax, rate, levy or charge which now or hereafter is assessed, imposed or a lien upon the demised premises or the realty of which they are part pursuant to law, order or regulation made or issued in connection with the use, consumption, maintenance or supply of water, water system or sewage or sewage connection or system. The bill rendered by Owner shall be payable by Tenant as additional rent. If the building or the demised premises or any part thereof be supplied with water through a meter through which water is also supplied to other premises, Tenant shall pay to Owner, as additional rent, on the first day of each month, 100% of the total meter charges, as Tenant's portion, independently of and in addition to any of the remedies reserved to Owner hereinabove or elsewhere in this lease.

**Sprinklers:**

29. Anything elsewhere in this lease to the contrary notwithstanding, if the New York Board of Fire Underwriters or the Insurance Services Office or any bureau, department or official of the federal, state or city government require or recommend the installation of a sprinkler system or that any changes, modifications, alterations, or additional sprinkler heads or other equipment be made or supplied in an existing sprinkler system by reason of Tenant's business, or the location of partitions, trade fixtures, or other contents of the demised premises, or for any other reason, or if any such sprinkler system installations, changes, modifications, alterations, additional sprinkler heads or other such equipment, become necessary to prevent the imposition of a penalty or charge against the full allowance for a sprinkler system in the fire insurance rate set by any said Exchange or by an fire insurance company, Tenant shall, at Tenant's expense, promptly make such sprinkler system installations, changes, modifications, alterations, and supply

additional sprinkler heads or other equipment as required whether the work involved shall be structural or non-structural in nature. Tenant shall pay to Owner, as additional rent, the sum of \*\*see rider on the first day of each month during the term of this lease, as Tenant's portion of the contract price for sprinkler supervisory service.

**Heat.**

**Cleaning:**

30. As long as Tenant is not in default under any of the covenants of this lease, Owner shall, if and insofar as existing facilities permit, furnish heat to the demised premises, when and as required by law, on business days from 8:00 a.m. to 6:00 p.m. and on Saturdays from 8:00 a.m. to 1:00 p.m. Tenant shall, at Tenant's expense, keep demised premises clean and in order to the satisfaction of the Owner, and if demised premises are situated on the street floor, Tenant shall, at Tenant's own expense, make all repairs and replacements to the sidewalks and curbs adjacent thereto, and keep said sidewalks and curbs free from snow, ice, dirt and rubbish. Tenant shall pay to Owner the cost of removal of any of Tenant's refuse and rubbish from the building. Bills for the same shall be rendered by Owner to Tenant at such times as Owner may elect and shall be due and payable when rendered, and the amount of such bills shall be deemed to be, and be paid as, additional rent. Tenant shall, however, have the option of independently contracting for the removal of such rubbish and refuse in the event that Tenant does not wish to have same done by employees of Owner. Under such circumstances, however, the removal of such refuse and rubbish by others shall be subject to such rules and regulations as, in the judgment of Owner, are necessary for the proper operation of the building.

**Security:**

31. Tenant has deposited with Owner the sum of \$32,937.28 as security for the faithful performance and observance by Tenant of the terms, provisions and conditions of this lease; it is agreed that in the event Tenant defaults in respect of any of the terms, provisions and conditions of this lease, including, but not limited to, the payment of rent and additional rent, Owner may use, apply or retain the whole or any part of the security so deposited to the extent required for the payment of any rent and additional rent or any other sum as to which Tenant is in default or for any sum which Owner may expend or may be required to expend by reason of Tenant's default in respect of any of the terms, covenants and conditions of this lease, including but not limited to, any damages or deficiency in the re-letting of the premises, whether such damages or deficiency accrued before or after summary proceedings or other re-entry by Owner. In the event that Tenant shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this lease, the security shall be returned to Tenant after the date fixed as the end of the Lease and after delivery of quiet possession of the demised premises to Owner. In the event of a sale of the land and building or leasing of the building, of which the demised premises form a part, Owner shall have the right to transfer the security to the vendee or lessee and Owner shall thereupon be released by Tenant from all liability for the return of such security; and Tenant agrees to look to the new Owner solely for the return of said security, and it is agreed that the provisions hereof shall apply to every transfer or assignment made of the security to a new Owner. Tenant further covenants that it will not assign or encumber or attempt to assign or encumber the monies deposited herein as security and that neither Owner nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

**Captions:**

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

**Definitions:**

33. The term "Owner" as used in this lease means only the Owner, or the mortgagee in possession, for the time being of the land and building (or the Owner of a lease of the building or of the land and building) of which the demised premises form a part, so that in the event of any sale or sales of said land and building or of said lease, or in the event of a lease of said building, or of the land and building, the said Owner shall be and hereby is entirely freed and relieved of all covenants and obligations of Owner hereunder, and it shall be deemed and construed without further agreement between the parties or their successors in interest, or between the parties and the purchaser, at any such sale, or the said lessee of the building, or of the land and building, that the purchaser or the lessee of the building has assumed and agreed to carry out any and all covenants and obligations of Owner hereunder. The words "re-enter" and "re-entry" as used in this lease are not restricted to their technical legal meaning. The term "business days" as used in this lease shall exclude Saturdays (except such portion thereof as is covered by specific hours in Article 30 herof), Sundays and all days designated as holidays by the applicable building service union employees service contract or by the applicable Operating Engineers contract with respect to HVAC service.

**Adjacent Excavation - Shoring:**

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

**Rules and Regulations:**

35. Tenant and Tenant's servants, employees, agents, visitors and licensees shall observe faithfully, and comply strictly with the Rules and Regulations and such other and further reasonable Rules and Regulations as Owner or Owner's agents may from time to time adopt. Notice of any additional rules or regulations shall be given in such manner as Owner may elect. In case Tenant disputes the reasonableness of any additional Rule or Regulation hereafter made or adopted by Owner or Owner's agents, the parties hereto agree to submit the question of the reasonableness of such Rule or Regulation for decision to the New York office of the American Arbitration Association, whose determination shall be final and conclusive upon the parties hereto. The right to dispute the reasonableness of any additional Rule or Regulation upon Tenant's part shall be deemed waived unless the same shall be asserted by service of a notice, in writing, upon Owner within ten (10) days after the giving of notice thereof. Nothing in this lease contained shall be construed to impose upon Owner any duty or obligation to enforce the Rules and Regulations or terms, covenants or conditions in any other lease, as against any other tenant and Owner shall not be liable to Tenant for violation of the same by any other tenant, its servants, employees, agents, visitors or licensees.

**Glass:** 36. Owner shall replace, at the expense of Tenant, any and all plate and other glass damaged or broken from any cause whatsoever in and about the demised premises. Owner may insure, and keep insured, at Tenant's expense, all plate and other glass in the demised premises for and in the name of Owner. Bills for the premiums therefor shall be rendered by Owner to Tenant at such times as Owner may elect, and shall be due from, and payable by,

Tenant when rendered and the amount thereof shall be deemed to be, and be paid as, additional rent.

**Pornographic Uses Prohibited:**

37. Tenant agrees that the value of the demised premises and the reputation of the Owner will be seriously injured if the premises are used for any obscene or pornographic purposes or any sort of commercial sex establishment. Tenant agrees that Tenant will not bring or permit any obscene or pornographic material on the premises and shall not permit or conduct any obscene, nude, or semi-nude live performances on the premises, nor permit use of the premises for nude modeling, rap sessions, or as a so-called rubber goods shop, or as a sex club of any sort, or as a "massage parlor." Tenant agrees further that Tenant will not permit any of these uses by sublessee or assignee of the premises. This Article shall directly bind any successor in interest to the Tenant. Tenant agrees that if at any time Tenant violates any of the provisions of this Article, such violation shall be deemed a breach of a substantial obligation of the terms of this lease and objectionable conduct. Pornographic material is defined for purposes of this Article as any written or pictorial matter with prurient appeal or any objects of instrument that are primarily concerned with lewd or prurient sexual activity. Obscene material is defined herein as it is in Penal Law §235.00.

**Estoppel Certificate:**

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

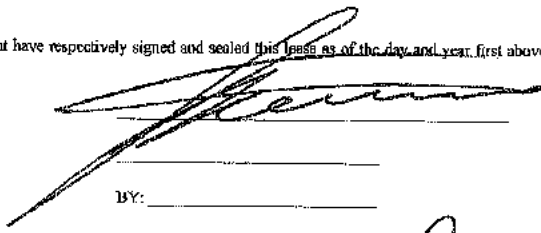
**Successors And Assigns:**

39. The covenants, conditions and agreements contained in this lease shall bind and inure to the benefit of Owner and Tenant and their respective heirs, distributees, executors, administrators, successors, and except as otherwise provided in this lease, their assigns.

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

Witness for Owner:

Witness for Tenant:



BY: \_\_\_\_\_

FAIRVIEW HEALTH CARE INC.

BY: 

Print Name: MARIA ISAKOV

ACKNOWLEDGMENTS

STATE OF NEW YORK,  
COUNTY OF \_\_\_\_\_

Field Code

On the \_\_\_ day of \_\_\_\_\_ in the year 2016 before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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

## IMPORTANT -- PLEASE READ

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

1. The sidewalks, entrances, driveways, passages, courts, elevators, vestibules, stairways, corridors or halls shall not be obstructed or encumbered by any Tenant or used for any purpose other than for ingress or egress from the demised premises and for delivery of merchandise equipment in a prompt and efficient manner using elevators and passageways designated for such delivery by Owner. There shall not be used in any space, or in the public hall of the building, either by any Tenant or by jobbers or other in the delivery or receipt of merchandise, any load trucks, except those equipped with rubber tires and sideguards. If said premises are situated on the ground floor of the building, Tenant thereof shall further, at Tenant's expense, keep the sidewalk and curb in front of said premises clean and free from ice, snow, dirt and rubbish.

2. The water and wash closets and plumbing fixtures shall not be used for any purpose other than those for which they were designed or constructed and no sweepings, rubbish, rags, acids or other substances shall be deposited therein, and the expense of any breakage, stoppage, or damage resulting from the violation of this rule shall be borne by the Tenant who, or whose clerks, agents, employees or visitors, shall have caused it.

3. No carpet, rug or other article shall be hung or shaken out of any window of the building; and no Tenant shall sweep or throw or permit to be swept or thrown from the demised premises any dirt or other substances into any of the corridors or halls, elevators, or out of the doors or windows or stairways of the building and Tenant shall not use, keep or permit to be used or kept any foul or noxious gas or substance in the demised premises, or permit or suffer the demised premises to be occupied or used in a manner offensive or objectionable to Owner or other occupants of the building by reason of noise, odors, and/or vibrations, or interfere in any way with other Tenants or those having business therein, nor shall any animals or birds be kept in or about the building. Smoking or carrying lighted cigars or cigarettes in the elevators of the building is prohibited.

4. No awnings or other projections shall be attached to the outside walls of the building without the prior written consent of Owner.

5. No signs, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed by any Tenant on any part of the outside of the demised premises or the building or on the inside of the demised premises if the same is visible from the outside of the premises without the prior written consent of Owner, except that the name of Tenant may appear on the entrance door of the premises. In the event of the violation of the foregoing by any Tenant, Owner may remove same without any liability, and may charge the expense incurred by such removal to Tenant or Tenants violating this rule. Interior signs on doors and directory tablet shall be inscribed, painted or affixed for each Tenant by Owner at the expense of such Tenant, and shall be of a size, color and style acceptable to Owner.

6. No Tenant shall mark, paint, drill into, or in any way deface any part of the demised premises or the building of which they form a part. No boring, cutting or stringing of wires shall be permitted, except with the prior written consent of Owner, and as Owner may direct. No Tenant shall lay linoleum, or other similar floor covering, so that the same shall come in direct contact with the floor of the demised premises, and, if linoleum or

other similar floor covering is desired to be used an interlining of builder's dodecene felt shall be first affixed to the floor, by a paste or other material, soluble in water, the use of cement or other similar adhesive material being expressly prohibited.

7. No additional locks or bolts of any kind shall be placed upon any of the doors or windows by any Tenant, nor shall any changes be made in existing locks or mechanism thereof. Each Tenant must, upon the termination of his Tenancy, restore to Owner all keys of stores, offices and toilet rooms, either furnished to, or otherwise procured by, such Tenant, and in the event of the loss of any keys, so furnished, such Tenant shall pay to Owner the cost thereof.

8. Freight, furniture, business equipment, merchandise and bulky matter of any description shall be delivered to and removed from the premises only on the freight elevators and through the service entrances and corridors, and only during hours and in a manner approved by Owner. Owner reserves the right to inspect all freight to be brought into the building and to exclude from the building all freight which violates any of these Rules and Regulations of the lease or which these Rules and Regulations are a part.

9. Conveying, soliciting and peddling in the building is prohibited and each Tenant shall cooperate to prevent the same.

10. Owner reserves the right to exclude from the building between the hours of 6 P.M. and 8 A.M. and at all hours on Sundays, and legal holidays all persons who do not present a pass in the building signed by Owner. Owner will furnish passes to persons for whom any Tenant requests same in writing. Each Tenant shall be responsible for all persons for whom he requests such pass and shall be liable to Owner for all acts of such persons.

11. Owner shall have the right to prohibit any advertising by any Tenant which in Owner's opinion, tends to impair the reputation of the building or its desirability as a building for offices, and upon written notice from Owner, Tenant shall refrain from or discontinue such advertising.

12. Tenant shall not bring or permit to be brought or kept in or on the demised premises, any inflammable, combustible or explosive fluid, material, chemical or substance, or cause or permit any odors or cooking or other processes, or any unusual or other objectionable odors to permeate in or emanate from the demised premises.

13. If the building contains central air conditioning and ventilation, Tenant agrees to keep all windows closed at all times and to abide by all rules and regulations issued by the Owner with respect to such services. If Tenant requires air conditioning or ventilation after the usual hours, Tenant shall give notice in writing to the building superintendent prior to 3:00 P.M. in the case of services required on week days, and prior to 3:00 P.M. on the day prior in the case of after hours service required on weekends or on holidays.

14. Tenant shall not move any safe, heavy machinery, heavy equipment, bulky matter, or fixtures into or out of the building without Owner's prior written consent. If such safe, machinery, equipment, bulky matter or fixtures requires special handling, all work in connection therewith shall comply with the Administrative Code of the City of New York and all other laws and regulations applicable thereto and shall be done during such hours as Owner may designate.



**RIDER TO LEASE**, dated the 1st day of June, 2016 by and between Ilya Mitelman and Diana Mitelman, as "Landlord" and Fairytale Daycare Inc., as "Tenant" for the premises known as 99-17 63<sup>rd</sup> Road, Rego Park, New York, (the "premises" or "demised premises"), (collectively referred to as "Lease" or "lease"),

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**40. CONFLICT BETWEEN PRINTED LEASE AND RIDER**

In the event there shall be any conflicts between the printed portions of the Lease and the provisions contained in the Rider, the terms, covenants, conditions and provisions of this Rider shall govern and control the rights and obligations of the parties hereto. When the word Lease is used herein, it shall mean the Lease and Rider.

**41. USE OF WORDS "OWNER" AND "LANDLORD"**

Wherever the word "Owner" is referred to in the lease or herein it shall be deemed to mean "Landlord" and words "Owner" and "Landlord" shall be interchangeable. Whenever the term "lease", "Lease", "Rider" or "rider" are used, such term shall mean the Lease and Rider together as one integral document.

**42. NO RECORDING**

Tenant may not record this lease or any memorandum hereof without the prior written consent of the Landlord.

**43. BASE RENT AND OPTION**

Tenant covenants to pay to Landlord the base rent (the "Base Rent") during the term of this lease, as set forth below:

	<u>Period</u>	<u>Annual Base Rent</u>	<u>Monthly Base Rent</u>
Year 1:	May 1, 2016 – April 30, 2017	\$165,500.40	\$13,791.70
Year 2:	May 1, 2017 – April 30, 2018	\$170,465.41	\$14,205.45
Year 3:	May 1, 2018 – April 30, 2019	\$175,579.37	\$14,631.61
Year 4:	May 1, 2019 – April 30, 2020	\$180,846.75	\$15,070.56
Year 5:	May 1, 2020 – April 30, 2021	\$186,272.15	\$15,522.70
Year 6:	May 1, 2021 – April 30, 2022	\$191,860.32	\$15,988.36
Year 7:	May 1, 2022 – April 30, 2023	\$197,616.13	\$16,468.01
Year 8:	May 1, 2023 – April 30, 2024	\$203,544.61	\$16,962.05
Year 9:	May 1, 2024 – April 30, 2025	\$209,650.95	\$17,470.91
Year 10:	May 1, 2025 – April 30, 2026	\$215,940.48	\$17,995.04

- A. This lease is for a period of ten (10) years. Tenant shall have three (3) consecutive five (5) year renewal options (each an "Option Term") each of which must be exercised by the Tenant prior to the expiration of the then current term, on not more than one hundred and fifty (150) and not less than on ninety (90) days prior written notice to Landlord before the expiration of the then current term, **TIME BEING OF THE ESSENCE**. Each option to extend the term of this Lease is contingent on Tenant exercising a corresponding option to extend the term of the premises commonly known as 99-13 63<sup>rd</sup> Road, Rego Park, New York. For purposes of clarity, if Tenant does not exercise Tenant's option to extend the term of the lease for the premises commonly

Tenant mi  
Landlord Table

known as 99-13 63<sup>rd</sup> Road, Rego Park, New York, then Tenant's option (and all subsequent options) to extend the term of the Premises shall automatically lapse. Each Such notice and each option shall only be valid if: (i) Tenant is not in default of the Lease at the time renewal option is sought, (ii) Tenant has not been in default of the Lease in the six (6) months preceding the date on which Tenant exercises the option to extend the term of the Lease, (iii) Tenant is then current on all amounts of rent and additional rent due, and (iv) Tenant has not been late in the payment of rent and/or additional rent more than four times in any consecutive twenty-four (24) month period. Each option to renew must be exercised by the Tenant with respect to the Premises only and shall be exercisable by the Tenant by delivering to Landlord written notice by overnight mail, with a carrier of national reputation. In the event that the Tenant fails to give the required written notice by the date due, the Tenant shall be deemed to have waived its right to all Option Terms. The base rent for the first year of each Option Term shall be determined by Landlord based on the then current fair market value. If Landlord and Tenant cannot agree on the fair market value for the first year of the then current Option Term within twenty (20) days of Tenant's exercise of its option to renew, Landlord and Tenant shall select one qualified commercial appraiser from a list of at least three qualified appraisers provided to Tenant by Landlord, who shall determine the fair market value of the premises, which shall be binding on Landlord and Tenant. Landlord and Tenant shall each be responsible for fifty (50%) percent of the costs charged by the selected appraiser. If Tenant fails to select an appraiser from such list within the time prescribed to herein, Landlord shall select any of the appraisers provided to Tenant whose appraisal shall be binding on both parties as if both Landlord and Tenant had selected such an appraiser. If the appraiser provides a range of values for the fair market value, Landlord shall use the midpoint value provided by such appraiser and such fair market value shall be binding on Landlord and Tenant. Under no circumstances shall the fair market value, even if such is determined by the selected appraiser, be less than base rent paid in the immediately preceding year. If a renewal is granted for each Option Term, Tenant shall deposit with Landlord additional security deposit in the amounts specified in paragraph "48" below. With respect to each Option Term, the base rent for each Option Term shall increase three (3%) percent each year for each of the four remaining years following the years in which the fair market value is determined, for each respective Option Term. For purposes of clarity, if exercised in accordance with the terms hereof, the term for each Option Term shall be as follows: Option Term 1, May 1, 2026 – April 30, 2031, Option Term 2, May 1, 2031 – April 30, 2036 and Option Term 3, May 1, 2036 – April 30, 2041.

- B. The base rent and all additional rent is required to be paid in equal monthly installments to be received on the first (1<sup>st</sup>) of each month, with a grace period for receipt until the tenth (10<sup>th</sup>) of each month. For any payment received after the tenth (10<sup>th</sup>) of the month within which it is due, Tenant agrees to pay, as additional rent, a five (5%) percent late fee charge until full payment is received. All late fees due pursuant the lease and this Rider shall be paid as additional rent. Interest on all unpaid amounts due shall be computed at one and one half (1.5%) percent per month, or the maximum interest allowed by applicable law, beginning on the first in the month following the month in which such amount is due. If any check for rent or additional rent, or any other check or payment provided by Tenant to Landlord is dishonored, is refused, or is "bounced" then in addition to all other amounts due hereunder, Tenant shall pay Landlord a dishonored check fee of \$250.00 per check.
- C. If the Tenant retains possession of the demised premises or any part thereof after the termination of the term (or any Option Term) by lapse of time or otherwise, without prior written approval by Landlord, the Tenant shall pay the Landlord use and occupancy at two (2) times the Base Rent then provided for the last month of the term hereof immediately prior to the termination of this Lease set forth herein together with all additional rent accrued during such month, for the time the Tenant thus remains in possession, and in addition thereto, shall pay the Landlord all damages,

Tenant MI  
Landlord DM

consequential as well as direct, sustained by reason of the Tenant's retention of possession including any loss of rent suffered by Landlord from any tenant with which the Landlord has executed a new lease for the demised premises. If the Tenant remains in possession of the demised premises, or any part thereof, after the termination of the term by lapse of time or otherwise, such holding over shall at the election of the Landlord expressed in a written notice to the Tenant and not otherwise, constitute an extension of this lease on a month-to-month basis at the amount of use and occupancy as set forth herein. The provisions of this Section do not exclude the Landlord's right of re-entry or any other right hereunder.

#### 44. ASSIGNMENT & SUBLETTING

Tenant understands that this lease may not be assigned or sublet without Landlord's express prior written consent, which consent may not be unreasonably withheld by Landlord. A transfer of more than twenty (20%) percent of Tenant's corporate stock shall be deemed an assignment. Landlord agrees to promptly consider any request to an assignment which includes references and credit reports, and Landlord will promptly consider same and will not unreasonably withhold consent if: (i) Tenant is not in default of the Lease at the time the assignment is sought, (ii) Tenant has not been in default of the Lease in the six (6) months preceding the date on which the assignment is sought, (iii) Tenant is then current on all amounts of rent and additional rent due, and (iv) Tenant has not been late in the payment of rent and/or additional rent more than four (4) times in any consecutive twenty-four (24) month period preceding the request of such assignment; (v) the proposed new tenant can prove financial worth and stability, which shall be determined by Landlord at Landlord's sole discretion, and if approved by Landlord, the proposed new tenant agrees to sign a personal guaranty and agrees to deposit with Landlord an additional security deposit equal to three (3) months of the base rent as of the date of the assignment or sublease, none of which may be used by Tenant or prospective tenant toward (or to offset) rent or additional rent. Tenant shall pay on application to assign Landlord's attorney's fees of \$2,500.00 to review the assignment or sublease request. Landlord may freely assign or transfer this lease or sell the Premises, or any portion thereof, without Tenant's consent, and Tenant agrees to sign any and all document, including but not limited to acknowledgements and consents, which may be reasonably requested by Landlord if required for such assignment. Tenant specifically grants Landlord an assignment of all rents from all approved subtenants and Landlord shall be entitled to collect the rents of all subtenants of the Tenant upon default in the payment of rent or any other obligation of Tenant under this Lease and which default remains uncured after ten (10) days' written notice.

#### 45. SIGNS

Tenant shall not place any signs, sign posts, flags or posters on the outside of the building without Landlord's prior written approval, which approval may be withheld by Landlord for any reason or no reason. Tenant shall post no signs or posters in any window without Landlord's prior written approval. Tenant may place one sign on the ground floor outside the building, which shall also require Landlord's prior written approval. Tenant shall maintain all permitted signs and/or posters in good condition and repair. No flashing lights in the window or on a sign shall be permitted. The breach of this clause is material to the Landlord. If this clause is breached, Landlord may terminate the lease without further notice after one ten (10) day written notice (either by mail or personal delivery) to cure the defect. If Tenant fails to cure said default, then Landlord may terminate the lease immediately.

#### 46. CONDITIONS

Tenant acknowledges that it has inspected and examined the Premises and is thoroughly familiar with the condition thereof and that no representations or warranties have been made to Tenant by Landlord other than those representations and warranties set forth herein, if any, and that Landlord is unwilling to

Tenant M  
Landlord J.M.

make any representations other than those set forth herein and has held out no inducement to Tenant. Tenant has inspected the Premises or caused in inspection thereof to be made on its behalf. Tenant is thoroughly acquainted with the condition of the Premises on the commencement of this Lease as Tenant currently occupies the Premises. Tenant further acknowledges that it has accepted the Premises in "**AS IS**" condition as of the date hereof. Tenant warrants and represents that it has fully and completely investigated all aspects of the Premises, both structural and non-structural, and fully satisfied itself as to the suitability of the Premises or any part thereof for Tenant's intended use and that Landlord has not made and is unwilling to make any representations in connection with the Premises or in any way relating to this Lease other than for those representations set forth elsewhere herein. Without limiting the generality of the above, Tenant has not relied on any representations or warranties, and Landlord has not made any representations or warranties in either case express or implied, other than those representations and warranties set forth elsewhere in this Lease, if any, as to (i) the current or future real estate tax liability, assessment or valuation of the Premises; (ii) the potential qualification of the Premises for any and all benefits conferred by Federal, state or municipal laws, whether for subsidies, special real estate tax treatment, insurance, mortgages, or any other benefits, whether similar or dissimilar to those enumerated; (iii) the compliance of the Premises, in its current or any future state with applicable zoning ordinances and the ability to obtain a variance in respect to the Premises' non-compliance, if any, with said zoning ordinances; (iv) the availability of any financing for the purchase, alteration, rehabilitation or operation of the Premises from any source, including but not limited to state, city or Federal government or any institutional lender; (v) the current or future use of the Premises, (vi) the present and future condition and operating state of any machinery or equipment on the Premises and the present or future structural and physical condition of the Premises or its suitability for rehabilitation, alteration or renovation; (vii) the ownership or state of title of any personal property on the Premises; (viii) the presence or absence of any rules or notices of violations of law issued by any governmental authority, or (ix) any other matter or thing affecting or relating to the Premises. Tenant acknowledges that neither Landlord, nor any employee, agent or contractor of Landlord has made any representation or warranty concerning the land, building, or Premises, or the suitability of either for the conduct of Tenant's business and use of the Premises.

#### 47. NOTICES

Except as otherwise specifically provided in the lease, any notice which is due to Landlord, which Tenant or Tenant's attorney or agent desires to give to the Landlord, shall be deemed sufficiently given if in writing and hand delivered to Ilya Mitelman or if mailed to Landlord by certified mail and first class mail, or by overnight mail, using a carrier of national reputation (such as Federal Express, UPS or the United States Postal Service). The Landlord's address shall be: 634 Flanders Drive, Valley Stream NY 11581, Attn: Ilya Mitelman. Any notice that Landlord wishes to give to the Tenant shall be deemed sufficiently given if in writing and personally delivered to Tenant or any officer, manager, agent or employee of Tenant or if mailed to Tenant by overnight mail, using a carrier of national reputation (such as Federal Express, UPS or the United States Postal Service) or certified mail and first class mail. Any notice given to Tenant shall be personally delivered or sent to the following address: 99-17 63<sup>rd</sup> Road, Rego Park, NY. Either party may designate another address for notice pursuant to a notice given in accordance with this section.

#### 48. SECURITY

Landlord and Tenant acknowledge that the total security deposit being held by Landlord is \$32,937.28 Dollars. Landlord and Tenant further acknowledge that Tenant will deposit with Landlord an additional security deposit in the amount of Twenty Five Thousand (\$25,000.00) Dollars, which amount shall be paid to Landlord in twenty-four equal consecutive monthly installments of \$1,041.67 per month beginning on the first day of the thirteenth month after this lease becomes effective. The security deposit,

Tenant mi  
Landlord J.M.

its use and return, shall be subject to and pursuant to paragraph "31" of the Standard Form Lease of which this Rider is a part. If the lease option to renew is granted and accepted by Landlord and Tenant pursuant to the terms of paragraphs "43" above, then Tenant shall pay to Landlord at the commencement of each Option Term Fifteen Thousand (\$15,000.00) Dollars as additional security deposit, unless otherwise agreed to in writing. Landlord is not required to keep the security deposit in an interest bearing account.

#### 49. TAXES

- A. Tenant agrees to pay as additional rent, annually during the term of this lease, and during any term during which Tenant occupies or possesses any portion of the premises, one hundred (100%) percent of all Taxes (as such term is hereinafter defined) which Landlord becomes obligated to pay. Such additional rent shall be paid when the tax becomes fixed. Tax bills (except as hereinafter provided) shall be conclusive evidence of the amount of such Taxes and shall be used for the calculation of the amounts to be paid by Tenant. Landlord shall not be obligated to provide Tenant with Tax bills, as proof of the Taxes due, more than once per year. Landlord need not pay the tax or produce proof of payment to be entitled to collect from Tenant.
- B. If Landlord receives a refund of any part of the tax escalation actually paid by Tenant, then Tenant shall be entitled to a proportional part of that refund minus attorney's fees and costs involved in obtaining the tax reduction and/or refund. Notwithstanding the foregoing, Landlord shall not be obligated to contest the levy or assessment of any Taxes, and it shall be at Landlord's sole discretion whether any such contest shall be undertaken. Landlord hereby reserves the exclusive right to take and prosecute all such proceedings, and if so taken, Landlord may proceed without notice to Tenant and may prosecute the proceeding, including settlement and discontinuance, in such manner as Landlord may determine in its sole discretion. In no event shall the annual fixed rent under this lease be reduced by virtue of this section 49. Landlord shall timely file all necessary documents required for the current abatement at the Premises. Notwithstanding the foregoing, Tenant acknowledges that notwithstanding the current abatement, Taxes are assessed by governmental entities and are nevertheless likely to increase annually (or more frequently) during the term of this Lease.
- C. The term "Taxes" or "Real Estate Taxes" shall mean all the real estate taxes and assessments, water/sewer charges and Department of Finance charges, special or otherwise, assessed or imposed by Federal, State or City governments or any agency or any public or private entity thereof, against or upon the building of which the premises form a part and the land upon which it is erected. If due to a future change in the method of taxation, any franchise, income, profit or other tax, or other payment, shall be levied against Landlord, in whole or in part in substitution for or in lieu of any tax which would otherwise constitute "Taxes" or "Real Estate Taxes", such as occupancy taxes, franchise, income profit, or other tax or payment due from Landlord to a municipal or state agency shall be deemed to be Taxes for the purpose hereof. If Landlord should incur expenses in connection with Landlord's endeavor to reduce or prevent increases in assessed valuation, Tenant shall be obligated to pay as additional rent the amount of such reasonable expenses of Landlord only to the extent of the amounts expended by the Landlord during the Tenant's occupancy of the premises, and such amount shall be due and payable upon demand by Landlord and collectible in the same manner as base rent or additional rent. The obligation to make any payments of additional rent pursuant to this section shall survive the expiration or other termination of the lease. All assessments may be paid by Landlord over the longest period of time allowed by law.

#### 50. INDEMNITY, LIABILITY, INSURANCE

Tenant MJ  
Landlord GM

- A. Tenant covenants and agrees to indemnify and save Landlord and its designees harmless from and against any and all claims arising during the term of this lease, or any period during which Tenant occupies, possesses or controls the Premises, for damages to the Premises, or injuries to goods, wares, merchandise and property and/or for any personal injury or loss of life, except such claims as may be the result of the gross negligence of Landlord, its agents, employees or contractors. Tenant covenants and agrees to indemnify and save Landlord and its designees harmless from and against any and all claims arising during the term of this lease, or any period during which Tenant occupies, possesses or controls the Premises for damages or injuries to goods, wares, merchandise and property and/or for any personal injury or loss of life in or about the building or on the sidewalks as a result of Tenant's negligence, errors or omissions.
- B. Tenant covenants to provide on or before the commencement date of the term of this lease and any renewal term for the benefit of Landlord and Tenant a comprehensive policy of liability insurance protecting Landlord and Tenant and any designee of Landlord against any liability whatsoever occasioned by accident on or about the demised premises or the building in which the demised premises is a part, or any appurtenances thereto. On all such insurance policies, Tenant shall name Landlord, and Landlord's principals, officers, successors and assigns as additional insured. Such policy is to be written by good and solvent insurance company licensed to do business in the State of New York rated A or better, and the limits of liability thereunder shall not be less than the amount of Four Million (\$4,000,000) Dollars in respect of any one person, in the amount of Four Million (\$4,000,000) Dollars in respect of any one accident, and in the amount of Two Million (\$2,000,000) Dollars in respect of property damages. The limit may be provided through a combination of primary and umbrella/excess liability policies. Tenant shall also maintain the following insurance policies: (i) insurance upon Tenant's property, the Premises and any and all improvements in an amount equal to the full replacement value thereof, (ii) workers compensation and employer's liability insurance to the extent required by state law, (iii) all risk insurance including coverage for sprinkler damage, vandalism and malicious mischief, covering all of Tenant's alterations, improvements and betterments to the Premises now existing or to be added, including, without limitation, Tenant's property, to the extent of their full replacement costs as updated from time to time during the Term of the Lease, or any extensions hereof. For each of the foregoing policies, Tenant shall name both Landlord and Tenant as insured parties as their interests may appear. Tenant further hereby agrees to assigns its interest in the proceeds of such insurance to Landlord so that the proceeds shall be paid directly to Landlord.
- C. Prior to the time such insurance is first required to be carried by Tenant, and thereafter, at least thirty (30) days prior to the expiration of any such policy, Tenant agrees to deliver to Landlord either a duplicate original of the aforesaid policy or a certificate evidencing such insurance provided said certificate contains an endorsement that such insurance may not be cancelled or modified except upon thirty (30) days notice to Landlord together with evidence of payment for the policy. Tenant's failure to provide and keep in force the aforementioned insurance shall be regarded as a material default hereunder entitling Landlord to exercise any or all of the remedies as provided in this lease in the event of Tenant's default. In the event Landlord's insurance carrier requires any additional premium because of Tenant's use, Tenant shall pay the increased premium and same shall be additional rent hereunder.
- D. Landlord shall not be responsible or liable to Tenant, or those claiming by, through or under Tenant, for any loss or damage to persons or property resulting from the negligence, acts or omissions of persons occupying space adjoining or adjacent to the Premises, or connected to the Premises, or occupying any other part of the Building, or of any of their respective agents, employees, contractors, invitees or customers, including, without limitation, caused by breaking

Tenant M.I.  
Landlord J.M.

or falling of electrical cables and wires, or the breaking, bursting, stoppage or leakage of water, gas, sewer or steam pipes.

- E. Anything contained in section 50 hereof to the contrary, Tenant shall be solely responsible for the insurance for, and in the event of fire or other casualty, the reconstruction, replacement or repair of, any damage to any of Tenant's furniture, fixtures, equipment and all other personal property and inventory of Tenant within the Premises and all Alterations, construction and other improvements made by Tenant to the Premises, and Landlord's obligation shall be to otherwise put the Premises in the condition existing prior to the damage, other than Alterations, construction and other improvements made by Tenant to the Premises.
- F. Tenant acknowledges that Landlord will not carry insurance with respect to Tenant's furniture and/or furnishings or any fixtures or equipment, improvements, inventory or appurtenances, and agrees that Landlord will not be obligated to repair any damage thereto or replace the same. Tenant hereby waives the provisions of Section 227 of the Real Property Law and agrees that the provisions of this section 47 shall govern and control in lieu thereof.
- G. In the event Tenant's use of the Premises including the use provided for in this Lease, shall result in an increase in insurance premiums for the building on which the subject premises is located, Tenant agrees to pay Landlord such increases as additional rent. The Tenant shall take appropriate action to eliminate any criticism or comply with any recommendation with respect to Tenant's use of the Premises or the area surrounding the Premises which any of Landlord's insurance carriers may reasonably make to keep Landlord's insurance in force and effect and/or keep the then current rate. In the event Tenant shall fail to comply herewith, after written notice from Landlord, within the time allowed by said insurance company to keep Landlord's insurance in effect and/or keep the then current rates, Landlord may take such action as Landlord may deem necessary or proper, to enforce Landlord's rights and/or in the alternative or as additional relief, may do what is necessary to eliminate or comply therewith and in such event, and may charge Tenant with the cost of same as additional rent. Tenant shall take no actions resulting in interference of the Landlord's relationship with the insurer and shall be obligated to undertake all measures necessary to insure the policy in the building remains in effect.

**51. TENANT CERTIFICATION**

Tenant shall execute, acknowledge and deliver to Landlord, promptly upon request, a certificate to be provided by Landlord stating: (a) that this lease is unmodified and in full force and effect (or, if there have been modifications, that this lease is in full force and effect, as modified, and identifying the modifications); (b) the commencement and expiration dates of the term of this lease; (c) the dates through which fixed rent and additional rent have been paid; (d) whether or not there is any existing default by Landlord or Tenant with respect to which a notice of default has been delivered, and if there is any such default, specifying the nature and extent thereof; and (e) whether or not there are any setoffs, defenses or counterclaims against the enforcement of any of the agreements, terms, covenants or conditions of this lease to be paid, complied with or performed by Tenant. Any such certificate may be relied upon by Landlord and any mortgagee, purchaser or other person with whom Landlord may deal.

**52. SEVERABILITY**

If any of the provisions of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remained of this Lease shall not be affected thereby and every provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

Tenant mi  
Landlord [Signature]

**53. REPAIRS/ALTERATIONS**

- A. Should Tenant need to make any repairs, alterations or improvements on or to the Premises, such repairs, alterations or improvements shall require Landlord's prior written approval. No person, firm or corporation is authorized to supply any labor and/or materials in connection with such repairs, alterations or improvements based on the credit of the Landlord. Under no circumstances shall any person, firm or corporation supplying labor and/or materials for the Tenant be permitted to file any lien against the Premises of the Landlord for repairs, alterations or improvements. All necessary permits and license, if any, shall be obtained by the Tenant from the proper authorities at the Tenant's own cost and expense, and all necessary plans shall be provided to the Landlord prior to the commencement of work for his prior written consent, which in the case of non-structural work shall not be unreasonably withheld or delayed. Any such work shall be in accordance with the rules and regulations of any governmental or quasi-governmental agent having jurisdiction and shall be performed by fully bonder and insured licensed professionals. All repairs, improvements and alterations require Landlord's prior written approval. If Landlord needs a professional architect, accountants, lawyers, engineer or contractor to review the plans, Tenant shall pay the cost thereof.
- B. If, because of any act or omission of Tenant or anyone claiming through or under Tenant, any mechanics' or other lien or order for the payment of money shall be filed against the Premises or the building, or against Landlord (whether or not such lien or order is valid or enforceable as such), Tenant shall, at Tenant's own cost and expense, cause the same to be canceled and discharged of record within sixty (60) days after the date of filing thereof, and shall also indemnify and save harmless Landlord from and against any and all costs, expenses, claims, losses or damages, including reasonable counsel fees, resulting therefrom or by reason thereof. If Tenant shall fail to timely cancel, discharge or bond such lien, Landlord may, but shall not be obligated to, cause such lien to be canceled, discharged or bonded in its sole discretion and Tenant shall immediately reimburse Landlord all of its costs and expenses incurred thereby including its reasonable attorneys' fees, the cost of any bond, any collateral for such bond and any sums paid to the lienor to obtain a discharge or satisfaction thereof.

**54. TENANT'S FAILURE TO PERFORM**

Should Tenant fail to perform any of its covenants herein agreed to be performed, and if same is not cured within ten (10) days after written notice to Tenant Landlord may, at its sole option and at Tenant's expense, perform such covenants, and all sums so expended by Landlord therein shall be immediately payable by Tenant to Landlord with interest thereon at the maximum legal rate of interest at the time of Landlord's demand therefor per annum from date thereof until paid, and in addition, Tenant shall reimburse Landlord for Landlord's reasonable expenses in enforcing or performing such covenants, including reasonable attorney's fees. Any such costs and/or expenses incurred or payments made by the Landlord shall be deemed to be additional rent payable by Tenant and collectible as such by Landlord. Such performance and payment by Landlord shall in no way constitute a waiver of, or limitation upon, any other right of Landlord conferred upon him by law or in any way hereunder. Landlord may choose to terminate the tenancy or to sue for non-performance.

**55. ELECTRIC**

Tenant covenants and agrees that at all times its use of electric current shall not exceed the capacity of the existing feeders to the building of the risers or wiring installation. Tenant shall pay for its own electrical usage.

Tenant MI  
Landlord L.M.



**56. ABANDONMENT**

It is understood and agreed that if Tenant abandons the premises or moves out upon the expiration of this Lease or after default in payment of rent or in violation of any provisions of this Lease or is dispossessed and an order of possession issues, and after any of the said events, fails to remove any of property from the premises at the end of ten (10) days therefrom, at the option of the Landlord the Tenant's property remaining at and about the premises shall be deemed abandoned by Tenant and shall become the property of the Landlord.

**57. ENFORCEMENT AGAINST LANDLORD**

In any action brought to enforce obligations under this lease, any judgment or decree against Landlord shall be enforceable against Landlord only to the extent of Landlord's interest in the building of which the premises form a part, and no such judgment shall be the basis of execution on, or be lien on, assets of Landlord or any assets of any party being a partner, officer, director, member, manager, employee or stockholder in Landlord, other than the interest in said building.

**58. PARTIAL PAYMENTS**

If Landlord receives from Tenant any payment (i.e. partial payment) less than the sum of the fixed annual rent, additional rent and other charges then due and owing pursuant to the terms of the Lease, Landlord in its sole discretion may allocate such partial Payment in whole or in part to any fixed annual rent, any additional rent and/or any other charges or to any combination thereof.

**59. ADDITIONAL RENT**

All payments other than annual base rent to be made by Tenant pursuant to this Lease shall be deemed additional rent (even if not specifically identified as additional rent) and, in the event of non-receipts by Landlord thereof within five (5) days of any written or oral demand, Landlord shall have all rights and remedies provided for herein or by law for nonpayment of rent. If Tenant disputes the correctness of any statement or amount billed by Landlord, Tenant shall, as a condition precedent to its right to contest the correctness of such statement or amount, make payment of the amount billed, including, but not limited to the payment of all base rent and additional rent billed, without prejudice to its position, but if Tenant does not timely pay, the Landlord need not consider any Tenant claim or dispute. If such dispute is finally determined in Tenant's favor, Landlord shall refund to Tenant the amount determined have been overpaid, if any. The amounts of additional rent provided in this Lease shall be apportioned as of the expiration of the Lease term or earlier termination of this Lease. The obligations of Tenant to pay all amounts due hereunder, including base rent and additional rent as provided for herein shall survive the expiration of the Lease term or earlier termination of this Lease. If Tenant continues in possession of the demised premises after the expiration of the Lease term or earlier termination of this Lease, as a month to month tenant or otherwise, the provisions of this section 59 shall continue in full force and effect for so long as Tenant remains in possession of the demised premises.

**60. TENANT MAINTENANCE & RESPONSIBILITIES**

- A. Tenant shall be liable and responsible for maintaining and repairing all aspects of the premises, including the surrounding areas, which include, but are not limited to, all internal and external components and areas of the building, structural and surrounding areas of the demised premises. Landlord shall not be liable or responsible for making any repairs, replace any portion, or maintain any area in or about the premises. Tenant's responsibilities shall include, but are not limited to:

Tenant MI  
Landlord J.M.

- B. Tenant acknowledges and agrees that Tenant, at its sole cost and expense, shall maintain and make all necessary repairs to the HVAC, heating, electrical, gas, air-conditioning, cooling, ventilation, elevator, sprinkler, plumbing, mechanical, alarms, and all other systems that service the Premises. If any damage, repair or maintenance is required or needed, to the plumbing system used in the Building or servicing the Premises or any HVAC, heating, gas, cooling, electrical, elevator, sprinkler, plumbing, mechanical or any other system in the Building or servicing the Premises (whether such damage is within or outside the Premises) occurs Tenant shall, at Tenant's sole cost and expense, make any required repair, maintenance or service, or subject to Landlord's prior written approval, which approval shall not be unreasonably withheld, replace any such system. Furthermore, Tenant shall be solely responsible for repair, maintenance and replacement of any water pipes or sewer pipes servicing the demised premises. Tenant shall also, at its own cost and expense, keep clean and free from dirt, snow, ice, rubbish, obstructions and encumbrances, the Premises, areas, vaults, chutes, sidewalks, sidewalk hoists, railings, gutters, alleys and curbs in front of or adjacent to the Premises. If any areas, vaults, chutes, sidewalks, sidewalk hoists, railings, gutters, alleys and curbs in front of or adjacent to the Premises require maintenance, repair or replacement, Tenant shall, subject to Landlord's prior written approval, perform such maintenance, repair or replacement at Tenant's sole cost and expense.
- C. Tenant shall provide at its own cost and expense all plumbing and plumbing fixtures and all accessories (including all meters and all components thereof) within or without the Premises, required to supply the business and Premises with water and sewer services. Tenant shall maintain in good repair and working order at all times the plumbing and plumbing fixtures installed by Tenant and upon termination of the Lease, all plumbing and plumbing fixtures installed by Tenant shall become the property of Landlord. Tenant shall not be authorized to install any plumbing or plumbing fixtures or in any way make any other additions or alterations to the Premises without Landlord's prior written consent.
- D. Tenant shall be solely responsible for the maintenance (including maintaining any service contract) of the grass, shrubbery and trees within or adjacent to the Premises.
- E. Tenant shall also maintain and repair the roof as required and shall be responsible for the structural integrity of the premises and the building. Under no circumstance shall Landlord be responsible for any structural repairs, if any such damage is caused as a result of actions or omissions of Tenant. Tenant shall solely be responsible for the repair and/or replacement of any structural component of the building and for any structural damage resulting from Tenant's activities or from any alteration, modification or repair performed by Tenant, whether existing prior to, or after, the date of this Lease. Subject to Landlord's prior written approval, which approval shall not be unreasonably withheld, as a material inducement for Landlord to enter into this Lease with Tenant, Tenant expressly agrees subject to Landlord's review and approval, to repair the roof at the premises. Tenant further covenants and agrees that Tenant shall be fully responsible for any required roof repairs, whether pre-existing, existing, or repairs which are required in the future. All plans for roof repairs shall be submitted to Landlord for Landlord's approval. Tenant shall make sure that the roof repairs are such that after such repairs, the roof is free of leaks, is in such condition to be usable for Tenant's required purpose and that all components thereof, shall be in compliance with all applicable laws and shall be sufficient for use by Tenant. In other words, the roof shall be repaired and maintained such that it is capable of withstanding the everyday wear and tear of the children and adults who attend and use the daycare facility at the premises. Tenant acknowledges that the use of any roof space shall be at Tenant's sole risk, and provided that such use is allowed pursuant to applicable laws, rules, regulations or ordinances.

Tenant MI  
Landlord S.M.

- F. By entering into this Lease, Tenant acknowledges that Tenant has fully inspected and knows the condition of the roof and all structural and non-structural components of the premises. Tenant acknowledges that Tenant, at Tenant's sole cost and expense shall maintain all aspects of the Premises and the Building and shall not look to Landlord to repair or replace same or any component thereof. If the roof, or any structural component of the Premises, requires repair or replacement, Tenant shall immediately notify Landlord, and upon Landlord's approval, which approval shall not be unreasonably withheld, Tenant shall at Tenant's sole cost and expense make any such necessary repair or replacement, unless such repair is Landlord's responsibility as specifically set forth in this lease.
- G. Tenant further acknowledges that Tenant shall be entirely responsible for all aspects of the maintenance and repair of the elevators serving the premises, including all electrical and physical components thereof. For purposes of clarification, Tenant shall be responsible for elevator inspection, maintenance, repair, and replacement and shall be responsible for all costs and expenses associated with the use, maintenance, repair, replacement and inspection of the elevators. Tenant acknowledges that it is aware the KONE is the current elevator service provided and expressly agrees that upon execution of this Lease, Tenant shall enter into a full service agreement with KONE to service and maintain the elevators at the subject premises. All costs and expenses associated with the elevators, including annual CAD testing and inspections and including all costs and expenses required to make the elevators compliant with all applicable laws and ordinances shall be the responsibility of Tenant. Tenant further agrees that Tenant shall promptly make all payments to KONE and any other elevator service or maintenance provider and shall at all times maintain the elevators in good working order. The elevators servicing the premises shall be operated in accordance with applicable laws at all times.
- H. Landlord shall have no obligation to furnish to the Premises any cleaning services, electric energy, air-conditioning, ventilation, heating, gas or any other service or utility. Tenant shall obtain air-conditioning, ventilation, heating, gas and any other services or utilities required by Tenant at Tenant's sole cost and expense and in compliance with the applicable provisions of (a) all legal requirements and insurance requirements, (b) the rules and regulations of any public utility or other company furnishing such service or utility, and (c) this Lease.
- I. Landlord shall not be responsible for providing any utility service to the Premises, including, but not limited to, electricity sewer, air conditioning, cleaning service, exterminating services, garbage removal or security, nor for providing meters, submeters or other devices for the measurement of utilities supplied to the Premises, and Tenant shall arrange for the furnishing to the Premises of such utility services as it may require, as well as for the installation of all such meters, submeters or other devices. Tenant shall be solely responsible for and shall promptly pay, to Landlord or the utility company, as applicable, as and when the same become due and payable, all charges for water, sewer, electricity, gas, telephone, cable service, internet service, steam, and any other utility or other communication device used or consumed in the Premises and supplied by a public utility or public authority or any other person, firm, or entity supplying same. Tenant shall provide its own hot and cold water to service the Premises.
- J. Tenant shall be solely responsible for all costs and expenses associated with the maintenance, repair and/or inspection for any and all meters servicing the Premises.
- K. Tenant shall not overload the electrical system serving the Premises, and shall not at any time overburden or exceed the capacity of the mains, feeders, ducts, conduits, pipes, valves, or other facilities by which electric and other utilities are supplied to, distributed in or serve the Premises. If Tenant desires to install any equipment that shall require additional utility facilities, such

Tenant MI  
Landlord SM

installation shall be subject to Landlord's prior approval of Tenant's plans and specifications therefor. If such installation is approved by Landlord and if Landlord provides such additional facilities to accommodate Tenant's installation, Tenant agrees to pay Landlord, on demand, as Additional Rent, the cost for providing such additional utility facilities.

- L. Landlord shall not be liable to Tenant in any way for any interruption, curtailment or failure, or defect in the supply or character of electricity, heat, gas, water, or any other utility furnished to the Premises by reason of any requirement, act or omission of Landlord or of any public utility or other company servicing the Building with electricity or for any other reason except Landlord's gross negligence or willful misconduct. Landlord does not represent or warrant that any utility or other service provided, or any utility or other service used or to be used by Tenant at the Premises, (a) shall be adequate for Tenant's particular purposes or (b) shall be free from interruption or reduction.
- M. If any mold or any other hazardous condition is discovered within the Premises, whether now or during the term (or any extension thereof) of this Lease, Tenant shall within ten (10) days of such discovery, commence the remediation of the discovered condition, at Tenant's sole cost and expense. Tenant shall not maintain at or about the Premises any hazardous materials such as, but not limited to, gasoline, propane gas, flammable fluids or materials, tanks or other hazardous or dangerous materials.
- N. Tenant shall pay all costs, expenses, fines, penalties, violations and damages (including reasonable attorney and expert fees) which may be imposed against the Premises or any component thereof, or against the Landlord while Tenant is in occupancy or control of the Premises during the term of the Lease (and where applicable, or any extension thereof). For purposes of clarification, if any fines, penalties, violations or any other fee is imposed against the Landlord or Premises by any governmental or quasi-governmental authority or any other entity having jurisdiction over the Premises, then Tenant shall, at Tenant's sole cost and expense immediately cure any condition that caused the issuance of any such costs, expenses, fines, penalties or violations and shall immediately make payment to the applicable authority for any such fine, penalty, fee or violation and immediately fix, cure or remedy the cause giving rise to such fine, penalty, fee or violation, at Tenant's sole cost and expense. If Tenant fails to make any such payment and cure such condition (if required), Landlord may immediately make such payment (and cure such condition) and bill such amount, including all costs and expenses (including reasonable attorney's fees, expert fees and expenses) to Tenant as additional rent.
- O. If Tenant fails perform any of Tenant's covenants, conditions, or obligations under this Lease, including but not limited to the failure to maintain, remedy, repair or replacement any item that Tenant is required to maintain, remedy, repair or replace, then Landlord may, but shall have no obligation to, make such maintenance, repairs or replacement and Tenant, upon demand by Landlord, shall pay to Landlord as additional rent, an amount equal to the cost of such maintenance, repair, remedy and replacement plus twenty percent (20%) thereof as compensation for the cost of supervising such repairs, which amount shall also be additional rent.
- P. Tenant shall maintain all alarm systems at Tenant's sole cost and expense.
- Q. Tenant hereby expressly agrees that Landlord shall be considered an "Out-of-Possession Landlord." Accordingly, it shall be the responsibility of the Tenant to conduct all maintenance and repair to the Premises, both structural and non-structural in nature, provided that any maintenance or repair of any structural component of the Premises shall be first approve in writing by Landlord.

Tenant ML  
Landlord J.M.

**61. LANDLORD'S HAS NO LIABILITY FOR DAMAGE.**

Tenant agrees not to hold Landlord liable for any water damage or any other damage caused to the Premises which results from leaking pipes, the roof, walls or from any source, including but not limited to, the sprinkler system, as well as any other water pipes located within or without the Premises. It is expressly agreed that that the Landlord shall not be responsible for any water damage of any kind suffered by the Tenant due to any act or omissions of the Landlord or Tenant.

**62. PAYMENT**

All checks tendered to the Landlord as and for the rent or additional rent of the premises shall be deemed payments for the account of the Tenant. Acceptance by the Landlord of rent from anyone other than the Tenant shall not be deemed to operate as an attornment to the Landlord by the payor of such rent or as consent of the Landlord to assignment or subletting by the Tenant of the premises to such payor, or as a modification of the provisions of this Lease. No payment by Tenant, or on behalf of Tenant, or receipt or acceptance by Landlord of a lesser amount than the Fixed Rent or Additional Rent shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance or pursue any other remedy in this Lease or at law provided.

**63. ENTRY**

Tenant shall permit Landlord and Landlord's agents to enter the premises at reasonable hours for inspection, maintenance, and/or repair. If Landlord requires access to the premises after hours or on the weekends, then Landlord shall provide Tenant with reasonable notice of same and Tenant agrees to make reasonable accommodations to permit Landlord to inspect same. Landlord's entry or inspection, however, shall in no way be deemed to incur any liability on the part of Landlord to make any repair, or as between Landlord and Tenant, in the event of any claim by a third party for damages because of any disrepair or negligence of Tenant. The obligations here under do not give rise to any liability on Landlord's part, it being the intention of the parties that the obligation to maintain the premises by which is meant to store above is upon Tenant and Tenant shall be solely liable to any such third party and indemnify Landlord, including attorney's fees, with respect to same.

**64. [Reserved]**

**65. GARBAGE/TRASH**

Tenant shall be responsible at Tenant's own cost and expense for the removal of garbage and trash, and for the cost of removing/paying ECB violation that occur if Tenant does not properly remove trash/garbage as required by law. At no time may any garbage or trash remain in any hallway or lobby and may not be placed in the street except on the day of pickup.

**66. LANDLORD'S CONSENT**

Whenever in this Lease Landlord's approval is requested, Landlord agrees to respond at the latest within thirty (30) days after receipt of a request. The thirty days will run from the time the Landlord receives all of the necessary documents upon which the request was based, with proof of mailing to be provided by Tenant. If in this Lease, it is provided that Owner's consent or approval as to any matter will not be unreasonably withheld, then Tenant's sole remedy shall be an action for specific performance or an

Tenant ml  
Landlord [Signature]

injunction, and if it is established by a court or body having final jurisdiction thereof that Owner has unreasonably withheld consent, the only effect of such finding shall be that Owner shall be deemed to have given its consent or approval, but Owner shall not be liable to Tenant in any respect for money damages by reason of withholding its consent.

**67. VIOLATION OF USE CLAUSE**

Tenant acknowledges that it is a primary obligation of Tenant to comply with the uses specified in Paragraph "2" of the lease, and not to use the premises for any other purpose without the written consent of the Landlord. In the event of a breach under this provision, Landlord has the right on twenty (20) days written notice to Tenant to terminate the Lease, upon which occurrence Tenant shall quickly vacate and surrender possession of the demised premises, and upon failure to do so, the base rent for the "holdover" period shall be deemed to be \$30,000.00 per month, and Landlord, at Landlord's option, may take steps to obtain possession of the demised premises.

**68. WINDOW DAMAGE**

In addition to paragraph "4" of the lease, in the event any window is damaged or broken, they must be replaced by Tenant at Tenant's sole cost.

**69. RELATIONSHIP OF PARTIES**

Nothing contained in this lease shall be construed to create the relationship of principal and agent, partnership, joint venture or any other relationship between the parties hereto other than the relationship of Landlord and Tenant.

**70. USE OF PREMISES**

Tenant covenants and agrees that throughout the demised term it shall not suffer, allow or permit any offensive or obnoxious vibrations, noises, odor or other undesirable effect to emanate from the premises, to constitute a nuisance or otherwise unreasonably interfere with the safety, comfort or convenience of adjacent tenants or the other tenants of the premises, and upon Landlord's notice thereof to Tenant, Tenant shall, within ten (10) days thereof, eliminate or control same. If any such condition is not so remedied then Landlord may at his own discretion, either: (a) cure such condition and add any cost and expense incurred by Landlord therefore to the next installment of rent or additional rent due hereunder, or (b) treat such failure on the part of Tenant to remedy such condition as a material default of this lease on the part of Tenant hereunder, entitling Landlord to any of his remedies, pursuant to the terms of this lease. In no event, however, shall the Tenant make any alterations, additions or structural installations in or to the premises or any parts thereof without the prior written consent of Landlord.

**71. STATUTES AND ORDINANCES**

Landlord does not warrant that any governmental license, approval and/or permit which may be required for the business to be carried on in the demised premises will be granted, or if granted, will be continued in effect and renewed. If any governmental license, approval and/or permit shall be required for the lawful conduct of Tenant's business, including any use set forth in the lease, including, but not limited to exit signs, alarm systems, elevator inspection, maintenance, repair, sprinklers, and fire extinguishers. Tenant shall duly procure and thereafter maintain same and submit the same to inspection by Landlord, it being expressly understood and agreed that Tenant's obligations under this lease shall in no way be affected or impaired by reason of Tenant's inability to secure and/or maintain same. Tenant shall at all times comply with the terms and conditions of each such license, approval and/or permit at Tenant's sole

Tenant IM  
Landlord JIM

cost and expense, including but not limited to maintaining exit signs, alarm systems, elevators, fire extinguishers, sprinklers and the Premises. Landlord agrees to reasonably cooperate with Tenant for the purpose of obtaining any such license or permit and to execute any documents or instruments reasonably necessary in connection therewith, all at Tenant's expense.

**72. NO BROKER**

Landlord and Tenant represents that each has not dealt with a broker and each does hereby indemnify the other party against claims of any broker with whom such party, its agents, employees or principals thereof, may have dealt with respect to this lease, and each does hereby agree to reimburse the other party for any expenses the non-breaching party may incur in connection with defending any such claims, including but not limited to reasonable attorney's fees.

**73. ATTORNEY'S FEES**

Notwithstanding anything in the subject lease contained to the contrary, it is further agreed by the Landlord and Tenant as follows:

- a) Tenant hereby agrees to pay as additional rent all reasonable attorney's fees and disbursements which Landlord may incur or pay by reason of or in connection with:
  - i. Any action or proceeding by the Landlord to terminate the lease.
  - ii. Any other action or proceeding by Landlord against Tenant to enforce the terms of the lease and any guaranty hereto.
  - iii. Any default by Tenant in the observance or performance of any obligation under the lease (including, but not limited to, matters involving: payment of rent and/or additional rent, taxes, alterations, subletting or assignment) whether or not Landlord commences any action or proceeding against Tenant.
  - iv. Any action or proceeding brought by Tenant against Landlord (or any partner, principal or employee of Landlord) in which Tenant fails to secure a final unappealable judgment against Landlord.
  - v. Any other appearance by Landlord (principal or employee) as a witness or otherwise in any action or proceeding involving Landlord, Tenant and/or this lease.
- b) Reasonable attorney's fees shall be calculated during the term of this lease, or any option or extension hereof, at the rate of \$400.00 to \$500.00 per hour.
- c) Tenant's obligation under this section is intended to supplement, and not limit, other provisions of this lease pertaining to indemnities and/or attorneys' fees.

**74. LANDLORD'S RIGHT TO TERMINATE LEASE**

If Tenant shall fail to pay any amount of rent or additional rent within twenty (20) days of said due date of said rent or additional rent for any two (2) months in any twenty four (24) consecutive month period, Landlord may, upon ten (10) days written notice to Tenant, terminate this Lease on a date certain, and the Lease shall come to an end on that date as if it was the date specified in this Lease. Owner may then commence summary proceedings to remove Tenant from the Premises.

Tenant ml  
Landlord J.M.

**75. DAMAGES**

IN NO EVENT SHALL LANDLORD BE LIABLE TO TENANT FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO LOSS OF PROFIT, LOSS OF OPPORTUNITY, WHETHER FORESEEABLE OR UNFORESEEABLE, WHICH MAY ARISE OUT OF OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF WHETHER IT HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING, OR WHETHER CLAIMS ARE BASED OR REMEDIES ARE SOUGHT IN CONTRACT OR TORT OR OTHERWISE.

**76. PATRIOT ACT**

Supplementing All Prior Agreements and Further Agreed By and Between Landlord and Tenant: Tenant hereby certifies that Tenant is in compliance with the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism ACT ("Patriot Act") and the Executive Order 13224 (the "Executive Order") and, in particular, Tenant acknowledges that (a) Tenant is prohibited from doing any business with any persons who commit, threaten to commit or support terrorism; (b) Tenant, and Tenant's employees, vendors, contractors, officers, directors, representatives, and/or agents are not, to the best of his knowledge, persons who commit, threaten to commit, or support terrorism; (c) Tenant has performed, and will, to the best of his ability, perform during the term of this lease, a though investigation to ascertain whether they are persons who commit, threaten to commit, or support terrorism; and (d) Tenant shall take commercially diligent steps to ensure that, to the best of his ability, Tenant shall comply with the Patriot Act and the Executive Order during the term of the lease. Tenant shall indemnify and hold Landlord and Landlord's agents harmless from and against any losses arising from a breach of this section. The indemnification and hold harmless provision contained in this section shall survive the termination of this lease.

**77. GOVERNING LAW**

This lease shall be governed by and construed in accordance with the laws of the State of New York without regard to its conflicts of laws principles. Landlord and Tenant mutually agree and do hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use of or occupancy of the Premises and any emergency, statutory or any other statutory remedy. It is further mutually agreed that in the event Landlord commences any summary proceeding for possession of the Premises or other proceeding relating to Tenant's obligations hereunder, including the obligation to pay fixed rent and additional rent, Tenant will not interpose any affirmative defenses or counterclaims of whatever nature or description in any such action or proceeding.

**78. CORPORATE TENANT**

Each person executing the lease and Rider on behalf of corporate entity or limited liability company represents that the corporation or limited liability company is in good standing, is authorized to do business in the State of New York and that the person signing has the authority to enter into this agreement on behalf of the entity.

**79. NO PERSONAL LIABILITY**

Tenant agrees that, notwithstanding any other provision of this Lease, Landlord shall not be under any personal liability under this Lease and, if Landlord defaults hereunder, Tenant shall look solely to the

Tenant ml  
Landlord J. M.



interest of Landlord or its successor in the demised premises for the satisfaction of any judgment or other judicial process requiring the payment of money by Landlord based upon any default hereunder, and no other assets of Landlord or any such successor shall be subject to levy, execution or other enforcement procedure for the satisfaction of any such judgment or process.

**80. NO SETOFF, NO ABATEMENT**

Tenant shall pay all rent and additional rent due hereunder as and when the same shall become due and payable, without demand therefor, and without any abatement, setoff or deduction whatsoever, and shall keep, observe and perform each and every covenant and agreement herein contained on its part to be kept, observed and performed. In the event of a good faith dispute, Tenant shall nevertheless make all payments of rent and additional rent due hereunder to Landlord until such good faith dispute is resolved in full. Landlord shall not be required to segregate any amounts paid to Landlord pursuant to this Lease if any such amounts paid to Landlord are disputed by Tenant. There shall be no abatement, diminutions or reduction of rent or additional rent or of other obligations of Tenant hereunder under any circumstances. The obligations and liabilities of Tenant hereunder in no way shall be released, discharged or otherwise affected (except as expressly provided herein) by reason of: any damage to or destruction of, or any taking by condemnation or eminent domain of, the demised premises or any part thereof; any restriction on or interference with any use of the demised premises or any part thereof; any title defect or encumbrance or any eviction from the demised premises or any part thereof by paramount title or otherwise; any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other similar proceeding relating to Landlord, or any action taken with respect to this lease by any trustee or receiver of Landlord, or by any court, in any such proceeding; any claim which Tenant has or might have against Landlord; any failure on the part of Landlord to comply with or perform any provision hereof or of any other agreement with Tenant; or any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Tenant shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Tenant waives all rights now or hereafter conferred by statute or otherwise to quit, terminate or surrender this lease or the demised premises or any part thereof, or to receive any abatement, suspension, deferment, diminution or reduction of any rent payable by Tenant hereunder.

**81. NO ORAL AGREEMENT; NO PRIOR AGREEMENTS**

This Lease contains all of the promises, agreements, conditions, inducements and understanding between Landlord and Tenant relative to the Premises and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, express or implied, between them other than as set forth herein. Tenant expressly agrees that this Lease shall replace all prior leases with respect to the premises and all prior leases and/or agreements with respect to the Premises shall be null and void.

**82. DESIGNATION OF MANAGING AGENT**

Landlord may designate an agent to collect rent, commence a judicial proceeding, and conduct other business at the Premises on behalf of the Landlord.

**83. NO WAIVER**

Landlord's failure or delay to prepare or deliver any tax bill, invoice, statement, demand, notice, invoices, or Landlord's failure to demand any amount or rent or additional rent or any other demand set forth

Tenant ml  
Landlord STW

herein, shall not, in any way, be deemed a waiver or cause Landlord to forfeit or surrender any of Landlord's rights to collect any of the foregoing items of rent or additional rent which may have become due.

#### 84. SQUARE FOOTAGE

Landlord makes no representation as to the square footage of the Premises.

#### 85. CERTAIN RIGHTS RESERVED TO LANDLORD

Landlord reserves the following rights: (i) to name the Building or change the name or street address of the Premises or the building without notice or liability of Landlord to Tenant; (ii) during the last ninety (90) days of any term or any part thereof, if during or prior to that time Tenant vacates the Premises, to decorate, remodel, repair, alter or otherwise prepare the Premises for re-occupancy; (iii) to constantly have pass keys to the Premises (no locks shall be changed without Landlord's consent); (iv) to designate and approve prior to installation, all types of carpeting, paint, wall hanging devices, window shades, blinds, drapes, and other similar equipment, and to control all internal lighting that may be visible from the exterior of the Premises; (v) to take any and all measures, including inspections, repairs, alterations, additions and improvements to the Premises or to the building, as may be necessary or desirable for the safety, protection or preservation of the Premises or the building or Landlord's interests, or as may be necessary or desirable in the operation of the building. Provided that Landlord gives reasonable advance notice to Tenant (except in cases of emergency, when no notice shall be required), Landlord may enter upon the Premises and may exercise any or all of the foregoing rights hereby reserved or other rights and duties provided in this Lease without being deemed guilty of an eviction or disturbance of Tenant's use or possession and without being liable in any manner to Tenant.

#### 86. SURVIVAL OF TENANT'S OBLIGATIONS AND DAMAGES.

No expiration or termination of the any Lease term pursuant to this Lease, by operation of law or otherwise (except as expressly provided herein), and no repossession of the Premises or any part thereof pursuant to this Lease or otherwise, shall relieve Tenant of Tenant's obligations or liabilities hereunder, all of which shall survive such expiration, termination or repossession, unless otherwise agreed to in writing by Landlord. In the event of any such expiration, termination or repossession, Tenant shall pay to Landlord all Rent and additional rent up to the time of such expiration, termination or repossession, together with all costs and expenses incurred by Landlord in connection with such termination or repossession including attorneys' fees and expenses, and thereafter Tenant, until the end of what would have been the then current Lease term in the absence of such expiration, termination or repossession, and whether or not the Premises or any part thereof shall have been re-let, shall be liable to Landlord for, and shall pay to Landlord, as liquidated and agreed and current damages for Tenant's default, (a) all Rent and Additional Rent which would be payable under this Lease by Tenant through the expiration date as set forth in the Lease, less (b) all net rents collected by Landlord from the tenants or subtenants during the remainder of the then current term of the Premises, if any, and the net proceeds, if any, of any re-letting affected for the account of Tenant, after deducting from such proceeds all Landlord's costs and expenses in connection with such re-letting and other sums owed by Landlord, including without limitation all repossession costs, brokerage commissions, legal and accounting expenses, attorneys' fees, employees' expenses, promotional expenses, reasonable alteration costs, and expenses of preparation for such re-letting. In the event Landlord undertakes any action whatsoever to compel Tenant to comply with the terms of this Lease or to terminate this Lease by virtue of Tenant's default, Tenant shall be required to reimburse Landlord for all reasonable legal fees and expenses so incurred by Landlord.

#### 87. PERSONAL GUARANTIES

Tenant MJ  
Landlord J.P.R.

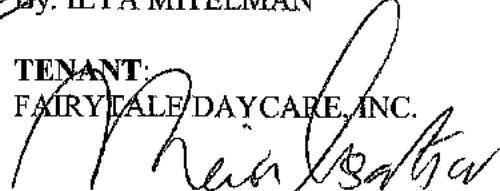
At the time this lease is executed and delivered, Tenant shall deliver to Landlord, concurrently with this lease, a guaranty executed by **Maria Isakova and David Ibrogimov**, jointly and severally as Guarantor, and properly acknowledged, in the form annexed hereto as Exhibit A. Tenant represents and acknowledges that Maria Isakova is a principal of Tenant.

**IN WITNESS WHEREOF**, the parties have duly executed this lease on the day and year first above written.

**LANDLORD:**

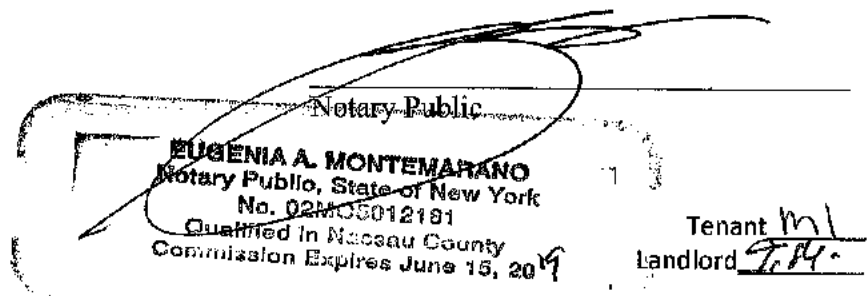
  
By: ILYA MITELMAN

**TENANT:**  
FAIRYTALE DAYCARE, INC.

  
By: MARIA ISAKOVA

**STATE OF NEW YORK,  
COUNTY OF QUEENS**

On the 1<sup>st</sup> day of June in the year 2016 before me, the undersigned, a Notary Public in and for said State, personally appeared **MARIA ISAKOVA** personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
Notary Public  
**EUGENIA A. MONTEMARANO**  
Notary Public, State of New York  
No. 02M05012181  
Qualified in Nassau County  
Commission Expires June 15, 2019  
Tenant MI  
Landlord J.M.

GUARANTY OF LEASE

In order to induce, Ilya Mitelman and Diana Mitelman, as landlord ("Landlord"), to enter into a lease dated as of June 1, 2016 with Fairytale Daycare, Inc., as tenant ("Tenant"), for the premises commonly known as 99-17 63<sup>rd</sup> Road, Rego Park NY, in the form and upon the terms of the lease hereto annexed (the "Lease"), ~~63-09 1085 SHAPLEY~~ Maria Isakova, an individual, residing at ~~63-09 1085 SHAPLEY~~ and David Ibragimov, an individual, residing at ~~63-09 1085 SHAPLEY~~ jointly and severally (each a "Guarantor" and collectively referred to as "Guarantors"), hereby represents, guarantees and agrees with Landlord as follows:

(1) Guarantor Maria Isakova is a principal of Tenant and Guarantor David Ibragimov is an agent of the Tenant.

(2) Each Guarantor hereby unconditionally, irrevocably and as a primary obligor hereunder guarantees to Landlord, the full and faithful performance and observance of all of the terms, covenants, provisions, and conditions contained in the Lease on the part of the Tenant to be performed and/or observed, including, without limitation, the full, prompt and faithful payment of all Base Rent, Additional Rent, and other sums due under the Lease as well as all sums payable under the Lease for use and occupancy arising from the holding over by Tenant after the expiration or sooner termination of the term of the Lease and all damages and expenses caused by or arising out of such holding over, including, without limitation, attorneys' fees and disbursements.

(3) This Guaranty is primary, absolute and unconditional and shall not be discharged, mitigated, or affected by (i) any modification of the Lease; (ii) any failure of Landlord to enforce any of the provisions of the Lease or by any extension of time or indulgence extended by Landlord to Tenant thereunder; (iii) any defense available to Tenant or Guarantors; or (iv) any invalidity or unenforceability of all or any portion of the Lease; and each Guarantor hereby consents to all of the foregoing without notice to the Guarantors and each Guarantor's liability shall extend to the Lease as so modified or extended.

(4) (a) Each Guarantor hereby absolutely, unconditionally and irrevocably waives (i) promptness and diligence, (ii) notice of acceptance and notice of the incurrence of any obligation by the Tenant; (iii) notice of any actions taken by Landlord, Tenant or any interested party under the Lease or any other agreement or instrument relating thereto; (iv) all other notices, demands and protests, and all other formalities of every kind in connection with the enforcement of the Lease or of this Guaranty, the omission of which, but for the provisions of this Paragraph (4) might constitute grounds for relieving the Guarantors of Guarantors' obligations hereunder; and (iv) the right to a trial by jury of any dispute arising under, or relating to, this Guaranty or the Lease.

(b) Without limiting the generality of Paragraph (4)(a) hereof, each Guarantor hereby unconditionally and irrevocably waives any and all rights to assert any defense, including but not limited to, those which may arise by reason of (i) the incapacity, lack of authority, death or disability of, or revocation hereof by, any person or entity, (ii) the failure of Landlord to file or enforce any claim against the estate (in probate, bankruptcy or any other proceedings) of any person or entity, or (iii) any setoff, counterclaim or crossclaim of any nature whatsoever with respect to this Guaranty or the Lease.

(5) Landlord may proceed directly against each Guarantor or both Guarantors under this Guaranty without being required to proceed against Tenant under the Lease or to pursue or exhaust any other rights or remedies it may have against Tenant or against any other security or guaranty given to

Tenant MJ  
Landlord JIN

Landlord, and the right to recover possession of the Premises, and/or Guarantors may be joined in any action or proceeding commenced by Landlord against Tenant in connection with the Lease.

(6) Each Guarantor's liability under this Guaranty shall not be deemed to be discharged, mitigated or affected by reason of the release or the discharge of Tenant or the disaffirmance of the Lease in any bankruptcy or insolvency proceedings.

(7) Each Guarantor covenants to and agrees with Landlord that, until all the covenants and conditions in the Lease on Tenant's part to be performed and observed are fully performed and observed, each Guarantor (i) waives any right of subrogation against Tenant by reason of any payments, acts or performance by such Guarantor herewith or any right to enforce any remedy which a Guarantor may have against Tenant by reason of any such payment, act or performance, and (ii) subordinates any liability or indebtedness of Tenant now or hereafter held by each Guarantor to the obligations of Tenant to Landlord under the Lease.

(8) This Guaranty shall be enforceable against each Guarantor without the necessity of any notice of any default by Tenant or any notice of acceptance of this Guaranty or of any other notice or demand to which each Guarantor might otherwise be entitled, all of which notices each Guarantor hereby expressly waives in advance.

(9) The rights and remedies provided hereunder are cumulative and are in addition to and not in limitation of any other rights and remedies to which Landlord may be entitled in law and in equity and under the provisions of the Lease by reason of Tenant's default under the Lease, and are in addition to the rights and remedies Landlord may have under any other security or guaranty given to Landlord.

(10) Landlord may pursue its remedies under this Guaranty concurrently with or independent of any action or proceeding or steps taken against Tenant or against any other security or guaranty given to Landlord.

(11) The obligations of each Guarantor under this Guaranty shall not be discharged, mitigated or affected in any respect by reason of any action or proceeding taken against Tenant under the Lease including without limitation, termination of the Lease and recovery of possession of the Premises or against any other security or guaranty given to Landlord.

(12) This Guaranty may not be changed or terminated orally. All previous negotiations have been merged herein.

(13) Guarantor acknowledges that Guarantor has examined the Lease and is fully familiar with all of the provisions thereof.

(14) The word "Tenant", as used in this Guaranty, shall include any person, corporation, partnership or other entity to whom Tenant's leasehold estate under the Lease shall have been assigned.

(15) Guarantor shall pay all of Landlord's expenses, including reasonable attorneys' fees, incurred by Landlord in enforcing this Guaranty and collecting any judgment obtained in any action or proceeding brought by Landlord in connection therewith.

Tenant MI  
Landlord J.A.

(16) It is agreed that the Supreme Court of the State of New York, and the United States District Court, located in the County of Queens, shall have jurisdiction to hear and determine any claim, action or proceeding by Landlord against Guarantor under this Guaranty.

(17) This Guaranty shall be binding upon Guarantor and inure to the benefit of Landlord and their respective distributees, personal representatives, successors and assigns.

(18) The provisions of this Guaranty shall be governed by and interpreted solely in accordance with the internal laws of the State of New York, without giving effect to the principles of conflicts of law.

(19) Each Guarantor represents that Guarantor has the legal right and capacity to execute this Guaranty. If this Guaranty is held ineffective or unenforceable, each Guarantor shall be deemed to be a tenant under the Lease with the same force and effect as if each Guarantor was expressly named as a joint tenant therein with joint and several liability.

IN WITNESS WHEREOF, Guarantor has duly executed this Guaranty as of the 1<sup>st</sup> day of June, 2016

*[Handwritten signature of Maria Isakova]*

Maria Isakova  
SS#:

*[Handwritten signature of David Ibragimov]*

David Ibragimov  
SS#:

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

On the 1<sup>st</sup> day of June in the year 2016 before me, the undersigned, a Notary Public in and said State, personally appeared Maria Isakova, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

On the 1<sup>st</sup> day of June in the year 2016 before me, the undersigned, a Notary Public in and said State, personally appeared David Ibragimov, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

**EUGENIA A. MONTEMARANO**  
Notary Public, State of New York  
No. 02MO0312101  
Qualified in Nassau County  
Commission Expires June 10, 2017

Notary Public

**EUGENIA A. MONTEMARANO**  
Notary Public, State of New York  
No. 02MO5012181  
Qualified in Nassau County  
Commission Expires June 15, 2017

Tenant [Signature]  
Landlord [Signature]

**EXHIBIT B**

## Liquidation Analysis of Fairytale Daycare Inc

### AVAILABLE FUNDS

Proceeds available from sale of Property at FMV	\$	20,000.00
Cash in Debtor's bank account now	\$	46,070.00
Additional cash Debtor will accumulate from net earnings between now and effective date of the Plan	\$	16,000.00
<b>Total available for distribution</b>	<b>\$</b>	<b>82,070.00</b>

### CLAIMS

Other reorganizational expenses	\$	3,150.00
IRS payroll tax-postpetition	\$	37,605.00
NYS payroll tax-postpetition	\$	9,056.00
<b>Net Proceeds Available to Creditors</b>	<b>\$</b>	<b>78,920.00</b>
IRS payroll tax-prepetition	\$	47,187.58
Rent payable-prepetition	\$	215,000.00
<b>Total Claims</b>	<b>\$</b>	<b>262,187.58</b>
<b>Cash available after repayment</b>	<b>\$</b>	<b>(183,267.58)</b>



**EXHIBIT C**

Alla Kachan, Esq.  
Law Offices of Alla Kachan, P.C.  
3099 Coney Island Avenue, 3<sup>rd</sup> Floor  
Brooklyn, NY 11235  
Tel.: (718) 513-3145

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X

In re:

FAIRYTALE DAY CARE, INC.,

Case No.: 1-15-42535-cec  
Chapter 11

Debtor.

-----X

**CLASS [ ] | BALLOT FOR ACCEPTING OR REJECTING  
PLAN OF REORGANIZATION**

FAIRYTALE DAY CARE, INC. filed the first amended Chapter 11 plan of reorganization dated July 6, 2016 (the "Plan") for the Debtor in this case. The Court has [conditionally] approved a disclosure statement with respect to the Plan (the "Disclosure Statement"). The Disclosure Statement provides information to assist you in deciding how to vote your ballot. If you do not have a Disclosure Statement, you may obtain a copy from:

**LAW OFFICE OF ALLA KACHAN, P.C.  
3099 CONEY ISLAND AVENUE, THIRD FLOOR  
BROOKLYN, NEW YORK 11235  
TEL.: (718) 513-3145**

Court approval of the disclosure statement does not indicate approval of the Plan by the Court.

**You should review the Disclosure Statement and the Plan before you vote. You may wish to seek legal advice concerning the Plan and your classification and treatment under the Plan. Your claim has been placed in Class [ ] under the Plan. If you hold claims or equity interests in more than one class, you will receive a ballot for each class in which you are entitled to vote.**

**If your ballot is not received by**

**LAW OFFICE OF ALLA KACHAN, P.C.  
3099 CONEY ISLAND AVENUE, THIRD FLOOR  
BROOKLYN, NEW YORK 11235  
TEL.: (718) 513-3145**

On or before \_\_\_\_\_, and such deadline is not extended, your vote will not count as either an acceptance or rejection of the Plan.

If the Plan is confirmed by the Bankruptcy Court it will be binding on you whether or not you vote.

**ACCEPTANCE OR REJECTION OF THE PLAN**

The undersigned, the holder of a Class [ ] claim against the Debtors in the unpaid amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

[ ] **ACCEPTS THE PLAN**

[ ] **REJECTS THE PLAN**

Dated: \_\_\_\_\_

Print or Type Name:

\_\_\_\_\_

Signature: \_\_\_\_\_

Title (if corporation or partnership): \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**RETURN THIS BALLOT TO:**

**LAW OFFICE OF ALLA KACHAN, P.C.  
3099 CONEY ISLAND AVENUE, THIRD FLOOR  
BROOKLYN, NEW YORK 11235  
TEL.: (718) 513-3145**

**EXHIBIT D**

## Loan Amortization Table Calculator

Loan Summary	
Principal:	\$ <input style="width: 80%;" type="text" value="20150"/>
Interest Rate: <small>current mortgage rates</small>	<input style="width: 80%;" type="text" value="6"/> %
Term:	<input style="width: 80%;" type="text" value="5"/> years

Payment Summary		
Monthly Payment	Total Interest Paid	Total Paid
<b>\$389.56</b>	<b>\$3,223.36</b>	<b>\$23,373.36</b>

Amortization Table							
Payment	Principal	Interest	Balance	Payment	Principal	Interest	Balance
1 (\$389.56)	\$288.81	\$100.75	\$19,861.19	31 (\$389.56)	\$335.42	\$64.14	\$10,491.92
2 (\$389.56)	\$290.25	\$99.31	\$19,570.94	32 (\$389.56)	\$337.10	\$52.46	\$10,154.82
3 (\$389.56)	\$291.70	\$97.85	\$19,279.24	33 (\$389.56)	\$338.78	\$50.77	\$9,816.04
4 (\$389.56)	\$293.16	\$96.40	\$18,986.08	34 (\$389.56)	\$340.48	\$49.08	\$9,475.57
5 (\$389.56)	\$294.63	\$94.93	\$18,691.46	35 (\$389.56)	\$342.18	\$47.38	\$9,133.39
6 (\$389.56)	\$296.10	\$93.46	\$18,395.26	36 (\$389.56)	\$343.89	\$45.67	\$8,789.50
7 (\$389.56)	\$297.58	\$91.98	\$18,097.78	37 (\$389.56)	\$345.61	\$43.95	\$8,443.89
8 (\$389.56)	\$299.07	\$90.49	\$17,798.71	38 (\$389.56)	\$347.34	\$42.22	\$8,096.55
9 (\$389.56)	\$300.56	\$88.99	\$17,498.15	39 (\$389.56)	\$349.07	\$40.48	\$7,747.48
10 (\$389.56)	\$302.07	\$87.49	\$17,196.09	40 (\$389.56)	\$350.82	\$38.74	\$7,396.66
11 (\$389.56)	\$303.58	\$85.98	\$16,892.51	41 (\$389.56)	\$352.57	\$36.98	\$7,044.09
12 (\$389.56)	\$305.09	\$84.46	\$16,587.42	42 (\$389.56)	\$354.34	\$35.22	\$6,689.75
13 (\$389.56)	\$306.62	\$82.94	\$16,280.80	43 (\$389.56)	\$356.11	\$33.45	\$6,333.65
14 (\$389.56)	\$308.15	\$81.40	\$15,972.65	44 (\$389.56)	\$357.89	\$31.67	\$5,975.76
15 (\$389.56)	\$309.69	\$79.86	\$15,662.95	45 (\$389.56)	\$359.68	\$29.88	\$5,616.08
16 (\$389.56)	\$311.24	\$78.31	\$15,351.71	46 (\$389.56)	\$361.48	\$28.08	\$5,254.61
17 (\$389.56)	\$312.80	\$76.76	\$15,038.91	47 (\$389.56)	\$363.28	\$26.27	\$4,891.32
18 (\$389.56)	\$314.36	\$75.19	\$14,724.55	48 (\$389.56)	\$365.10	\$24.46	\$4,526.22
19 (\$389.56)	\$315.93	\$73.62	\$14,408.62	49 (\$389.56)	\$366.92	\$22.63	\$4,159.30
20 (\$389.56)	\$317.51	\$72.04	\$14,091.11	50 (\$389.56)	\$368.76	\$20.80	\$3,790.54
21 (\$389.56)	\$319.10	\$70.46	\$13,772.01	51 (\$389.56)	\$370.60	\$18.95	\$3,419.94
22 (\$389.56)	\$320.70	\$68.86	\$13,451.31	52 (\$389.56)	\$372.46	\$17.10	\$3,047.48
23 (\$389.56)	\$322.30	\$67.26	\$13,129.01	53 (\$389.56)	\$374.32	\$15.24	\$2,673.16
24 (\$389.56)	\$323.91	\$65.65	\$12,805.10	54 (\$389.56)	\$376.19	\$13.37	\$2,296.97
25 (\$389.56)	\$325.53	\$64.03	\$12,479.57	55 (\$389.56)	\$378.07	\$11.48	\$1,918.90
26 (\$389.56)	\$327.16	\$62.40	\$12,152.41	56 (\$389.56)	\$379.96	\$9.59	\$1,538.94
27 (\$389.56)	\$328.79	\$60.76	\$11,823.62	57 (\$389.56)	\$381.86	\$7.69	\$1,157.08
28 (\$389.56)	\$330.44	\$59.12	\$11,493.18	58 (\$389.56)	\$383.77	\$5.79	\$773.31
29 (\$389.56)	\$332.09	\$57.47	\$11,161.09	59 (\$389.56)	\$385.69	\$3.87	\$387.62
30 (\$389.56)	\$333.75	\$55.81	\$10,827.34	60 (\$389.56)	\$387.62	\$1.94	\$0.00

**EXHIBIT E**

## Loan Amortization Table Calculator

Loan Summary	
Principal:	\$ <input style="width: 80%;" type="text" value="334"/>
Interest Rate: <small>current mortgage rates</small>	<input style="width: 80%;" type="text" value="6"/> %
Term:	<input style="width: 80%;" type="text" value="5"/> years

Payment Summary		
Monthly Payment	Total Interest Paid	Total Paid
<b>\$6.46</b>	<b>\$53.43</b>	<b>\$387.43</b>

Amortization Table							
Payment	Principal	Interest	Balance	Payment	Principal	Interest	Balance
1 (\$6.46)	\$4.78	\$1.67	\$329.21	31 (\$6.46)	\$5.56	\$0.90	\$173.91
2 (\$6.46)	\$4.81	\$1.65	\$324.40	32 (\$6.46)	\$5.59	\$0.87	\$168.32
3 (\$6.46)	\$4.84	\$1.62	\$319.57	33 (\$6.46)	\$5.62	\$0.84	\$162.71
4 (\$6.46)	\$4.86	\$1.60	\$314.71	34 (\$6.46)	\$5.64	\$0.81	\$157.06
5 (\$6.46)	\$4.88	\$1.57	\$309.82	35 (\$6.46)	\$5.67	\$0.79	\$151.39
6 (\$6.46)	\$4.91	\$1.55	\$304.92	36 (\$6.46)	\$5.70	\$0.76	\$145.69
7 (\$6.46)	\$4.93	\$1.52	\$299.98	37 (\$6.46)	\$5.73	\$0.73	\$139.96
8 (\$6.46)	\$4.96	\$1.50	\$295.03	38 (\$6.46)	\$5.76	\$0.70	\$134.21
9 (\$6.46)	\$4.98	\$1.48	\$290.04	39 (\$6.46)	\$5.79	\$0.67	\$128.42
10 (\$6.46)	\$5.01	\$1.45	\$285.04	40 (\$6.46)	\$5.82	\$0.64	\$122.60
11 (\$6.46)	\$5.03	\$1.43	\$280.00	41 (\$6.46)	\$5.84	\$0.61	\$116.76
12 (\$6.46)	\$5.06	\$1.40	\$274.95	42 (\$6.46)	\$5.87	\$0.58	\$110.89
13 (\$6.46)	\$5.08	\$1.37	\$269.87	43 (\$6.46)	\$5.90	\$0.55	\$104.96
14 (\$6.46)	\$5.11	\$1.35	\$264.76	44 (\$6.46)	\$5.93	\$0.52	\$99.05
15 (\$6.46)	\$5.13	\$1.32	\$259.62	45 (\$6.46)	\$5.96	\$0.50	\$93.09
16 (\$6.46)	\$5.16	\$1.30	\$254.47	46 (\$6.46)	\$5.99	\$0.47	\$87.10
17 (\$6.46)	\$5.18	\$1.27	\$249.28	47 (\$6.46)	\$6.02	\$0.44	\$81.06
18 (\$6.46)	\$5.21	\$1.25	\$244.07	48 (\$6.46)	\$6.05	\$0.41	\$75.03
19 (\$6.46)	\$5.24	\$1.22	\$238.83	49 (\$6.46)	\$6.08	\$0.38	\$68.94
20 (\$6.46)	\$5.26	\$1.19	\$233.57	50 (\$6.46)	\$6.11	\$0.34	\$62.83
21 (\$6.46)	\$5.29	\$1.17	\$228.28	51 (\$6.46)	\$6.14	\$0.31	\$56.69
22 (\$6.46)	\$5.32	\$1.14	\$222.98	52 (\$6.46)	\$6.17	\$0.28	\$50.51
23 (\$6.46)	\$5.34	\$1.11	\$217.62	53 (\$6.46)	\$6.20	\$0.26	\$44.31
24 (\$6.46)	\$5.37	\$1.09	\$212.25	54 (\$6.46)	\$6.24	\$0.22	\$38.07
25 (\$6.46)	\$5.40	\$1.06	\$206.86	55 (\$6.46)	\$6.27	\$0.19	\$31.81
26 (\$6.46)	\$5.42	\$1.03	\$201.43	56 (\$6.46)	\$6.30	\$0.16	\$25.51
27 (\$6.46)	\$5.45	\$1.01	\$195.98	57 (\$6.46)	\$6.33	\$0.13	\$19.18
28 (\$6.46)	\$5.48	\$0.98	\$190.51	58 (\$6.46)	\$6.36	\$0.10	\$12.82
29 (\$6.46)	\$5.50	\$0.95	\$185.00	59 (\$6.46)	\$6.39	\$0.06	\$6.43
30 (\$6.46)	\$5.53	\$0.93	\$179.47	60 (\$6.46)	\$6.43	\$0.03	\$0.00

**EXHIBIT F**



## Loan Amortization Table Calculator

Loan Summary	
Principal:	\$ <input style="width: 50px;" type="text" value="2697"/>
Interest Rate: <small>current mortgage rates</small>	<input style="width: 50px;" type="text" value="8"/> %
Term:	<input style="width: 50px;" type="text" value="5"/> years

Payment Summary		
Monthly Payment	Total Interest Paid	Total Paid
<b>\$51.95</b>	<b>\$429.83</b>	<b>\$3,116.83</b>

Amortization Table							
Payment	Principal	Interest	Balance	Payment	Principal	Interest	Balance
1 (\$51.95)	\$38.51	\$13.44	\$2,648.49	31 (\$51.95)	\$44.73	\$7.22	\$1,399.10
2 (\$51.95)	\$38.70	\$13.24	\$2,609.78	32 (\$51.95)	\$44.95	\$7.00	\$1,354.14
3 (\$51.95)	\$38.90	\$13.05	\$2,570.88	33 (\$51.95)	\$45.18	\$6.77	\$1,308.97
4 (\$51.95)	\$39.09	\$12.85	\$2,531.79	34 (\$51.95)	\$45.40	\$6.54	\$1,263.57
5 (\$51.95)	\$39.29	\$12.66	\$2,492.50	35 (\$51.95)	\$45.63	\$6.32	\$1,217.94
6 (\$51.95)	\$39.48	\$12.46	\$2,453.02	36 (\$51.95)	\$45.86	\$6.09	\$1,172.08
7 (\$51.95)	\$39.68	\$12.27	\$2,413.34	37 (\$51.95)	\$46.09	\$5.86	\$1,125.99
8 (\$51.95)	\$39.88	\$12.07	\$2,373.46	38 (\$51.95)	\$46.32	\$5.63	\$1,079.67
9 (\$51.95)	\$40.08	\$11.87	\$2,333.38	39 (\$51.95)	\$46.55	\$5.40	\$1,033.13
10 (\$51.95)	\$40.28	\$11.87	\$2,293.10	40 (\$51.95)	\$46.78	\$5.17	\$986.34
11 (\$51.95)	\$40.48	\$11.47	\$2,252.61	41 (\$51.95)	\$47.02	\$4.93	\$939.33
12 (\$51.95)	\$40.68	\$11.26	\$2,211.93	42 (\$51.95)	\$47.25	\$4.70	\$892.08
13 (\$51.95)	\$40.89	\$11.06	\$2,171.04	43 (\$51.95)	\$47.49	\$4.46	\$844.59
14 (\$51.95)	\$41.09	\$10.86	\$2,129.95	44 (\$51.95)	\$47.72	\$4.22	\$796.87
15 (\$51.95)	\$41.30	\$10.65	\$2,088.65	45 (\$51.95)	\$47.96	\$3.98	\$748.90
16 (\$51.95)	\$41.50	\$10.44	\$2,047.15	46 (\$51.95)	\$48.20	\$3.74	\$700.70
17 (\$51.95)	\$41.71	\$10.24	\$2,005.44	47 (\$51.95)	\$48.44	\$3.50	\$652.26
18 (\$51.95)	\$41.92	\$10.03	\$1,963.52	48 (\$51.95)	\$48.69	\$3.26	\$603.57
19 (\$51.95)	\$42.13	\$9.82	\$1,921.39	49 (\$51.95)	\$48.93	\$3.02	\$554.64
20 (\$51.95)	\$42.34	\$9.61	\$1,879.05	50 (\$51.95)	\$49.17	\$2.77	\$505.47
21 (\$51.95)	\$42.55	\$9.40	\$1,836.50	51 (\$51.95)	\$49.42	\$2.53	\$456.05
22 (\$51.95)	\$42.76	\$9.18	\$1,793.73	52 (\$51.95)	\$49.67	\$2.28	\$406.38
23 (\$51.95)	\$42.98	\$8.97	\$1,750.75	53 (\$51.95)	\$49.92	\$2.03	\$356.47
24 (\$51.95)	\$43.19	\$8.75	\$1,707.56	54 (\$51.95)	\$50.16	\$1.78	\$306.30
25 (\$51.95)	\$43.41	\$8.54	\$1,664.15	55 (\$51.95)	\$50.42	\$1.53	\$255.89
26 (\$51.95)	\$43.63	\$8.32	\$1,620.52	56 (\$51.95)	\$50.67	\$1.28	\$205.22
27 (\$51.95)	\$43.84	\$8.10	\$1,576.68	57 (\$51.95)	\$50.92	\$1.03	\$154.30
28 (\$51.95)	\$44.06	\$7.88	\$1,532.61	58 (\$51.95)	\$51.16	\$0.77	\$103.12
29 (\$51.95)	\$44.28	\$7.66	\$1,488.33	59 (\$51.95)	\$51.43	\$0.52	\$51.69
30 (\$51.95)	\$44.51	\$7.44	\$1,443.82	60 (\$51.95)	\$51.69	\$0.26	\$0.00

**EXHIBIT G**

## Loan Amortization Table Calculator

Loan Summary	
Principal:	\$ <input type="text" value="48502"/>
Interest Rate: <small>current mortgage rates</small>	<input type="text" value="6"/> %
Term:	<input type="text" value="5"/> years

Payment Summary		
Monthly Payment	Total Interest Paid	Total Paid
<b>\$937.68</b>	<b>\$7,758.77</b>	<b>\$56,260.77</b>

Amortization Table							
Payment	Principal	Interest	Balance	Payment	Principal	Interest	Balance
1 (\$937.68)	\$695.17	\$242.51	\$47,808.83	31 (\$937.68)	\$807.37	\$130.31	\$25,254.55
2 (\$937.68)	\$698.65	\$239.03	\$47,108.19	32 (\$937.68)	\$811.41	\$126.27	\$24,443.14
3 (\$937.68)	\$702.14	\$235.54	\$46,408.05	33 (\$937.68)	\$815.46	\$122.22	\$23,627.68
4 (\$937.68)	\$705.65	\$232.03	\$45,700.40	34 (\$937.68)	\$819.54	\$118.14	\$22,808.13
5 (\$937.68)	\$709.18	\$228.50	\$44,991.22	35 (\$937.68)	\$823.64	\$114.04	\$21,984.50
6 (\$937.68)	\$712.72	\$224.96	\$44,279.50	36 (\$937.68)	\$827.76	\$109.92	\$21,156.74
7 (\$937.68)	\$716.29	\$221.39	\$43,562.21	37 (\$937.68)	\$831.90	\$105.78	\$20,324.84
8 (\$937.68)	\$719.87	\$217.81	\$42,842.34	38 (\$937.68)	\$836.06	\$101.62	\$19,488.79
9 (\$937.68)	\$723.47	\$214.21	\$42,118.87	39 (\$937.68)	\$840.24	\$97.44	\$18,648.55
10 (\$937.68)	\$727.09	\$210.59	\$41,391.79	40 (\$937.68)	\$844.44	\$93.24	\$17,804.11
11 (\$937.68)	\$730.72	\$206.96	\$40,661.07	41 (\$937.68)	\$848.66	\$89.02	\$16,955.46
12 (\$937.68)	\$734.37	\$203.31	\$39,926.69	42 (\$937.68)	\$852.90	\$84.78	\$16,102.55
13 (\$937.68)	\$738.05	\$199.63	\$39,188.65	43 (\$937.68)	\$857.17	\$80.51	\$15,245.39
14 (\$937.68)	\$741.74	\$195.94	\$38,446.91	44 (\$937.68)	\$861.45	\$76.23	\$14,383.93
15 (\$937.68)	\$745.44	\$192.23	\$37,701.47	45 (\$937.68)	\$865.76	\$71.92	\$13,518.17
16 (\$937.68)	\$749.17	\$188.51	\$36,952.29	46 (\$937.68)	\$870.09	\$67.59	\$12,648.09
17 (\$937.68)	\$752.92	\$184.78	\$36,199.38	47 (\$937.68)	\$874.44	\$63.24	\$11,773.65
18 (\$937.68)	\$756.68	\$181.00	\$35,442.69	48 (\$937.68)	\$878.81	\$58.87	\$10,894.83
19 (\$937.68)	\$760.47	\$177.21	\$34,682.23	49 (\$937.68)	\$883.21	\$54.47	\$10,011.63
20 (\$937.68)	\$764.27	\$173.41	\$33,917.96	50 (\$937.68)	\$887.62	\$50.06	\$9,124.01
21 (\$937.68)	\$768.09	\$169.59	\$33,149.87	51 (\$937.68)	\$892.06	\$45.62	\$8,231.95
22 (\$937.68)	\$771.93	\$165.75	\$32,377.94	52 (\$937.68)	\$896.52	\$41.16	\$7,335.43
23 (\$937.68)	\$775.79	\$161.89	\$31,602.15	53 (\$937.68)	\$901.00	\$36.68	\$6,434.43
24 (\$937.68)	\$779.67	\$158.01	\$30,822.48	54 (\$937.68)	\$905.51	\$32.17	\$5,528.92
25 (\$937.68)	\$783.57	\$154.11	\$30,038.91	55 (\$937.68)	\$910.03	\$27.64	\$4,618.88
26 (\$937.68)	\$787.48	\$150.19	\$29,251.43	56 (\$937.68)	\$914.59	\$23.09	\$3,704.30
27 (\$937.68)	\$791.42	\$146.26	\$28,460.00	57 (\$937.68)	\$919.16	\$18.52	\$2,785.14
28 (\$937.68)	\$795.38	\$142.30	\$27,664.63	58 (\$937.68)	\$923.75	\$13.93	\$1,861.39
29 (\$937.68)	\$799.36	\$138.32	\$26,865.27	59 (\$937.68)	\$928.37	\$9.31	\$933.01
30 (\$937.68)	\$803.35	\$134.33	\$26,061.92	60 (\$937.68)	\$933.01	\$4.67	\$0.00

**EXHIBIT H**

10:14 AM  
06/02/16  
Accrual Basis

**Fairytale Day Care Inc.**  
**Balance Sheet**  
As of May 31, 2016  
May 31, 16

**ASSETS**

**Current Assets**

**Checking/Savings**

td bank-dip 46,070.03

**Total Checking/Savings** 46,070.03

**Other Current Assets**

prepaid expense 1,440.00

**Total Other Current Assets** 1,440.00

**Total Current Assets** 47,510.03

**Fixed Assets**

school bus 10,000.00

**DAY CARE FIXED ASSETS**

Accum Depn -18,244.00

**Total DAY CARE FIXED ASSETS** -18,244.00

**DAY CARE CAPITALIZED COSTS**

Leasehold Improvements 240,839.55

**Furniture & Fixtures**

art work 5,100.00

**FURNITURE** 10,723.36

**SIGN** 4,864.78

**Total Furniture & Fixtures** 20,488.14

**Machinery & Equipment**

**EQUIPMENT** 26,795.71

Machinery & Equipment - Other 3,236.35

**Total Machinery & Equipment** 30,032.06

**Total DAY CARE CAPITALIZED COSTS** 291,359.75

**Total Fixed Assets** 283,115.75

**Other Assets**

**SECURITY DEPOSITS- RENT** 75,396.28

**Total Other Assets** 75,396.28

**TOTAL ASSETS** 406,022.06

**LIABILITIES & EQUITY**

**Liabilities**

**Current Liabilities**

**Other Current Liabilities**

Payroll Liabilities-state 5,048.91

Payroll Liabilities-futa 425.40

Payroll Liabilities-suta 5,710.01

Payroll Liabilities-fed 23,978.45

professional fees payable-postp 2,550.00

ny sdi 24.00

**accounts payable**

payroll liab-prepet 47,187.58

rent payable 215,000.00

professional fees payable 11,197.50

10:14 AM  
06/02/16  
Accrual Basis

**Fairytale Day Care Inc.****Balance Sheet**

As of May 31, 2016

	<u>May 31, 16</u>
Total accounts payable	273,385.08
Payroll Liabilities	<u>18,900.96</u>
Total Other Current Liabilities	<u>330,022.81</u>
Total Current Liabilities	<u>330,022.81</u>
Total Liabilities	330,022.81
Equity	
distribution-GEORGE	-26,997.69
distribution-maria	-144,574.95
Retained Earnings	-125,427.71
ADDITIONAL PAID IN CAPITAL	340,436.20
Net Income	<u>32,563.40</u>
Total Equity	<u>75,999.25</u>
TOTAL LIABILITIES & EQUITY	<u><u>406,022.06</u></u>

**EXHIBIT I**

**PROJECTED PROFIT (LOSS)**

FOR THE TWELVE MONTHS ENDED AUGUST, 2021

	Aug, 2016	Sept, 2016	Oct, 2016	Nov, 2016	Dec, 2016	Jan, 2017	Feb, 2017	March, 2017
<b>Net Sales</b>	\$117,000.00	\$117,000.00	\$117,000.00	\$117,000.00	\$117,000.00	\$160,000.00	\$160,000.00	\$160,000.00
<b>COGS</b>								
<b>Gross Income:</b>	<b>\$117,000.00</b>	<b>\$117,000.00</b>	<b>\$117,000.00</b>	<b>\$117,000.00</b>	<b>\$117,000.00</b>	<b>\$160,000.00</b>	<b>\$160,000.00</b>	<b>\$160,000.00</b>
<b>Expenses:</b>								
Wages	\$27,000.00	\$27,000.00	\$27,000.00	\$27,000.00	\$27,000.00	\$37,000.00	\$37,000.00	\$37,000.00
Payroll Tax	\$3,600.00	\$3,600.00	\$3,600.00	\$3,600.00	\$3,600.00	\$4,300.00	\$4,300.00	\$4,300.00
Insurance	\$4,000.00	\$4,000.00	\$4,000.00	\$4,000.00	\$4,000.00	\$5,000.00	\$5,000.00	\$5,000.00
Office supplies	\$2,200.00	\$2,200.00	\$2,200.00	\$2,200.00	\$2,200.00	\$2,200.00	\$2,200.00	\$2,200.00
Outside labor	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$2,000.00	\$2,000.00	\$2,000.00
Educators/Teachers	\$10,880.00	\$10,880.00	\$10,880.00	\$10,880.00	\$10,880.00	\$18,300.00	\$18,300.00	\$18,300.00
Professional fees	\$600.00	\$600.00	\$600.00	\$600.00	\$600.00	\$600.00	\$600.00	\$600.00
Rent	\$35,000.00	\$35,000.00	\$35,000.00	\$35,000.00	\$35,000.00	\$40,000.00	\$40,000.00	\$40,000.00
Security	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$2,000.00	\$2,000.00	\$2,000.00
Utilities	\$4,000.00	\$4,000.00	\$4,000.00	\$4,000.00	\$4,000.00	\$5,000.00	\$5,000.00	\$5,000.00
Day care food and supplies	\$6,800.00	\$6,800.00	\$6,800.00	\$6,800.00	\$6,800.00	\$12,500.00	\$12,500.00	\$12,500.00
Repairs	\$1,800.00	\$1,800.00	\$1,800.00	\$1,800.00	\$1,800.00	\$1,000.00	\$1,000.00	\$1,000.00
Bank charges	\$25.00	\$25.00	\$25.00	\$25.00	\$25.00	\$25.00	\$25.00	\$25.00
<b>Total expenses:</b>	<b>\$98,405.00</b>	<b>\$98,405.00</b>	<b>\$98,405.00</b>	<b>\$98,405.00</b>	<b>\$98,405.00</b>	<b>\$129,925.00</b>	<b>\$129,925.00</b>	<b>\$129,925.00</b>
<b>Net income</b>	<b>\$18,595.00</b>	<b>\$18,595.00</b>	<b>\$18,595.00</b>	<b>\$18,595.00</b>	<b>\$18,595.00</b>	<b>\$30,075.00</b>	<b>\$30,075.00</b>	<b>\$30,075.00</b>











Aug-20	Sep-20	Oct-20	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21	Apr-21	May-21
\$185,220.00	\$185,220.00	\$185,220.00	\$185,220.00	\$185,220.00	\$193,200.00	\$193,200.00	\$193,200.00	\$193,200.00	\$193,200.00
<b>\$185,220.00</b>	<b>\$185,220.00</b>	<b>\$185,220.00</b>	<b>\$185,220.00</b>	<b>\$185,220.00</b>	<b>\$193,200.00</b>	<b>\$193,200.00</b>	<b>\$193,200.00</b>	<b>\$193,200.00</b>	<b>\$193,200.00</b>
\$45,000.00	\$45,000.00	\$45,000.00	\$45,000.00	\$45,000.00	\$48,000.00	\$48,000.00	\$48,000.00	\$48,000.00	\$48,000.00
\$5,150.00	\$5,150.00	\$5,150.00	\$5,150.00	\$5,150.00	\$5,500.00	\$5,500.00	\$5,500.00	\$5,500.00	\$5,500.00
\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00
\$2,200.00	\$2,200.00	\$2,200.00	\$2,200.00	\$2,200.00	\$2,200.00	\$2,200.00	\$2,200.00	\$2,200.00	\$2,200.00
\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00
\$24,300.00	\$24,300.00	\$24,300.00	\$24,300.00	\$24,300.00	\$25,100.00	\$25,100.00	\$25,100.00	\$25,100.00	\$25,100.00
\$600.00	\$600.00	\$600.00	\$600.00	\$600.00	\$600.00	\$600.00	\$600.00	\$600.00	\$600.00
\$40,000.00	\$40,000.00	\$40,000.00	\$40,000.00	\$40,000.00	\$40,000.00	\$40,000.00	\$40,000.00	\$40,000.00	\$40,000.00
\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00
\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00
\$17,200.00	\$17,200.00	\$17,200.00	\$17,200.00	\$17,200.00	\$18,600.00	\$18,600.00	\$18,600.00	\$18,600.00	\$18,600.00
\$1,700.00	\$1,700.00	\$1,700.00	\$1,700.00	\$1,700.00	\$1,200.00	\$1,200.00	\$1,200.00	\$1,200.00	\$1,200.00
\$25.00	\$25.00	\$25.00	\$25.00	\$25.00	\$25.00	\$25.00	\$25.00	\$25.00	\$25.00
<b>\$151,175.00</b>	<b>\$151,175.00</b>	<b>\$151,175.00</b>	<b>\$151,175.00</b>	<b>\$151,175.00</b>	<b>\$156,225.00</b>	<b>\$156,225.00</b>	<b>\$156,225.00</b>	<b>\$156,225.00</b>	<b>\$156,225.00</b>
<b>\$34,045.00</b>	<b>\$34,045.00</b>	<b>\$34,045.00</b>	<b>\$34,045.00</b>	<b>\$34,045.00</b>	<b>\$36,975.00</b>	<b>\$36,975.00</b>	<b>\$36,975.00</b>	<b>\$36,975.00</b>	<b>\$36,975.00</b>

Jun-21	Jul-21	Aug-21
\$193,200.00	\$193,200.00	\$193,200.00
<b>\$193,200.00</b>	<b>\$193,200.00</b>	<b>\$193,200.00</b>
\$48,000.00	\$48,000.00	\$48,000.00
\$5,500.00	\$5,500.00	\$5,500.00
\$6,000.00	\$6,000.00	\$6,000.00
\$2,200.00	\$2,200.00	\$2,200.00
\$2,000.00	\$2,000.00	\$2,000.00
\$25,100.00	\$25,100.00	\$25,100.00
\$600.00	\$600.00	\$600.00
\$40,000.00	\$40,000.00	\$40,000.00
\$2,000.00	\$2,000.00	\$2,000.00
\$5,000.00	\$5,000.00	\$5,000.00
\$18,600.00	\$18,600.00	\$18,600.00
\$1,200.00	\$1,200.00	\$1,200.00
\$25.00	\$25.00	\$25.00
<b>\$156,225.00</b>	<b>\$156,225.00</b>	<b>\$156,225.00</b>
<b>\$36,975.00</b>	<b>\$36,975.00</b>	<b>\$36,975.00</b>