

# LEASE

THIS LEASE (the "Lease"), made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the **Town of Johnsborg**, a municipal corporation with a mailing address at 219 Main Street, North Creek, New York 12853, as Landlord ("Landlord"), and **Gregory Tomb**, an individual who does business as "Gregory T. Glass" or "Gregory Tomb Glassblowing Studio" currently having its mailing address as \_\_\_\_\_, as Tenant ("Tenant").

## WITNESSETH:

The parties hereto, for the consideration herein stated, hereby covenant and agree to the terms of this Lease as follows:

### 1. PREMISES

a. Landlord, in consideration of the rent to be paid and the other covenants and agreements to be performed by Tenant and upon the terms hereinafter stated, does hereby lease and demise to Tenant, and Tenant does hereby hire and take from Landlord, a non-exclusive use of the following described premises at 21 Railroad Place, North Creek, New York known as the "Kellogg Building" (the "Building" or "Kellogg Building"), and being a portion thereof consisting of approx. 2400 square feet within the Kellogg Building (the "Premises"), consisting of the main hall and old office space on the North end of the building; together with all the appurtenances, rights, privileges, and easements in any way pertaining thereto including, but not limited to, exclusive use of Premises. Landlord agrees to maintain and deliver all corridors, entrances, rest rooms, parking areas, and other similar or related facilities as may exist in and about the building ("Common Areas") in good working order to the tenant.

b. The Premises are demised and let subject to (i) the rights of any parties in possession thereof and the existing state of the title thereof as of the commencement of the term of this Lease, (ii) any state of facts which an accurate survey or physical inspection thereof might show, (iii) all zoning regulations, restrictions, rules, ordinances, building restrictions, and other laws and regulations now in effect or hereafter adopted by any governmental authority having jurisdiction, and (iv) with respect to buildings, structures, and other improvements located on the Premises, their condition as of the commencement of the term of this Lease, without representation or warranty by Landlord. Tenant represents that it has examined the limitations set forth in a certain Conservation Easement dated January 28, 2011 between Landlord and the Open Space Conservancy, Inc. and recorded in the Warren County Clerk's Office on February 4, 2011 in Book 4191, at page 18, more particularly set forth in **Exhibit "B"** attached hereto prior to the execution and delivery of this Lease and has found the same to be satisfactory for all purposes hereof.

### 2. TERM

a. The Initial Term ("Term") shall be for a period commencing on the Commencement Date, defined on May 15 2021 and ending on October 15, 2021, without the necessity of notice from either party to the other, such notice being expressly waived, at midnight on the last day of the termination set forth above (the "Expiration Date"), unless sooner terminated as hereinafter provided. Tenant may extend the aforementioned Term for two additional one (1) year terms, upon written notice to Landlord delivered prior to November 1 of the expiration year of then current Term, so long as Tenant is not in default under any of the terms of the Lease. Tenant's operational occupancy shall be limited annually to the May 15 to October 15 period. Tenant may exclusively occupy up to 30% of the Main room of Premises between expiration and commencement of next term, to store items in mutually agreed upon area.

**Commented [1]:**  
Not sure what this means.

b. If for any reason Landlord is unable to deliver possession of the Premises to Tenant on the Commencement Date, Landlord shall not be subject to any liability for such failure and the validity of this Lease shall not be impaired under such circumstances, but Rent shall be abated until such delivery of the Premises or Tenant may terminate this Lease.

### 3. RENT

a. The annual base rent ("Base Rent") for the Premises, beginning on the Commencement Date through October 15, 2021, shall be in accordance to the schedule below, which Tenant agrees to pay to Landlord in equal monthly installments as described, without demand, notice, deduction, counterclaim, abatement, suspension, or setoff, for each month. Time is of the essence as to any payment due from Tenant to Landlord under this Lease.

| Period            | Percentage of Gross Product Sales (not including applicable sales tax) | Base Annual Rent | Base Monthly Installment |
|-------------------|--|------------------|--------------------------|
| 5/15/21-10/15/21  | 10%  | \$2,500          | \$500.00                 |
| 5/15/22-10/15/22* | 10%  | \$2,500          | \$500.00                 |
| 5/15/23-10/15/23* | 10%  | \$2,500          | \$500.00                 |

\*If extended pursuant to paragraph 2 of this Lease.

All Base Rent due or to become due hereunder shall be paid to Landlord at its address first above written, or at such address otherwise designated by Landlord from time to time, on or before the first day of each calendar month during the Term of this Lease, and payable in current legal tender of the United States of America. Tenant, however, shall pay the first month of the Base Rent upfront to the Landlord prior to occupancy.

b. In addition to the Base Rent payable under this Lease as set forth above, Tenant shall pay to Landlord Additional Rent, based on Tenant's Gross product sales not including applicable sales tax, of ten percent (10.00%) of Tenant's gross product sales for the month prior to the payment ("Additional Rent"). Tenant shall pay this on or before the fifteenth (15<sup>th</sup>) of the full month following the month of calculation. For example, the 10% for May shall be calculated and paid on or before July 15, and so on monthly provided that the payment for October shall be made on or before December 15.

### 4. USE OF PREMISES

a. The Premises shall be used for Tenant's glass making, glass blowing and related instructional classes and retail sales of Tenant's own made glass products and for any other product tenant sees fit related to his art, process, location, or creative expression. ("Permitted Use"). Tenant agrees to be 'open for business' during normal business hours of at least 11am through 5pm for at least eighty (80) days of each Term of this Lease. Tenant shall keep and maintain the Premises secure and provide for security acceptable to Landlord.

**Commented [2]:**  
I'm fine with this, but will be contingent on approval by OSI.

b. Tenant shall not at any time use or occupy, or suffer or permit anyone to use or occupy, the Premises, for any business or purpose other than the Permitted Use or for any use or purpose which is unlawful, in part or in whole, disreputable in any manner, or extra hazardous. Tenant will conduct its business and control its agents, employees, and invitees in such a manner as not to create any nuisance or interference with the possession of other tenants or Landlord in the management of the Building, nor impair proper and economic maintenance of the Building and/or any equipment, facilities, or systems therein.

c. Tenant shall, at its sole cost and expense, promptly comply with all statutes, ordinances, rules, orders, regulations, and requirements ("Laws") of the federal, state, and local government and of any and all of their departments and bureaus applicable to the Premises, including those related to the correction, prevention, and abatement of nuisances or other grievances, in, upon, or connected with said Premises during the Term; and shall also, at all times during the Term promptly comply with all rules, orders, and regulations of the New York Board of Fire Underwriters and/or other similar organization for the prevention of fires; and shall also, at all times during the Term comply with all rules, requirements or limitations set forth in **Exhibit "B"** attached hereto. Tenant assumes all aforementioned statutes to be covered as per tenants previous occupation of Premises in 2020. Therefore all costs and liabilities will be paid by Landlord and confirmed prior to any future occupation. Tenant hereby represents that it is not a public accommodation, as defined in the Americans with Disabilities Act. Tenant shall, at Tenant's expense, timely remove any systems or equipment Tenant installs in the event that any future Laws so require. Tenant shall with Landlord's assistance, at Tenant's expense, procure and maintain a current certificate of occupancy for the Premises.

d. ADA Compliance. Landlord will deliver Premises in full accordance with ADA laws and regulations. Tenant understands that the Premises and all improvements constructed by Tenant must comply with the requirements of the Americans with Disabilities Act of 1990 (ADA) and other applicable codes or ordinances. Landlord agrees to indemnify the Tenant for any legal fees, other expenses, and damages ensuing from any lawsuit, government investigation, or government enforcement action brought by an individual, group of individuals, or any government agency for the violation of the ADA or other applicable codes or ordinances of existing structure which are the responsibility of Landlord.

**Commented [3]:**  
Not sure about this sentence - have not had building evaluated for compliance.

e. In regard to its use and occupancy of the Premises and the Kellogg Building as well as any adjacent Landlord owned or operated property, Tenant will not: (i) place or maintain any trash, refuse, or other articles in any vestibule or entry of the Premises and the Kellogg Building as well as any adjacent Landlord owned or operated property, on the foot-walks, or corridors adjacent thereto, or elsewhere on the exterior of the Premises so as to obstruct any driveway, corridor, foot-walk, parking area; (ii) permit undue accumulations of or burn garbage, trash, rubbish, or other refuse within or without the Premises; (iii) cause or permit offensive odors to emanate or to be dispelled from the Premises, which odors are not inherent with respect to the normal operations of glass blowing; (iv) distribute handbills or other advertising matter to, in, or upon any automobiles parked in the parking area or any other Common Areas; (v) permit the parking of vehicles so as to interfere with the use of any driveway, corridor, foot-walk, parking area, or other Common Areas; (vi) use or permit the use of any portion of the Premises for any unlawful purpose or for any activity of a type which is not generally considered appropriate for similar premises conducted in accordance with good and generally accepted standards of operation.

f. Tenant acknowledges that it is Landlord's intent that the Premises and the Kellogg Building as well as any adjacent Landlord owned or operated property be operated in a manner which is consistent with the highest standards of decency and morals prevailing in the community which it serves. Toward that end, Tenant agrees that it will not sell, distribute, display, or offer for sale any item which, in Landlord's good faith judgment, is inconsistent with the quality of operation of the Premises and the Kellogg Building as well as any adjacent Landlord owned or operated property or may tend to injure or detract from the moral character or image of the Premises and the Kellogg Building as well as any adjacent Landlord owned or operated property. Without limiting the generality of the foregoing, Tenant will not sell, distribute, display,

or offer for sale (i) any roach clip, water pipe, bong, toke, coke spoon, cigarette papers, hypodermic syringe, or other paraphernalia commonly used in the use or ingestion of illicit drugs, or (ii) any pornographic, lewd, suggestive, or "adult" newspaper, book, magazine, film, videotapes, picture, representation, or merchandise of any kind.

g. Tenant recognizes that the use provisions contained in this Paragraph 4 are reasonable and necessary for the protection of the Premises and the Kellogg Building as well as any adjacent Landlord owned or operated property's operations and Landlord's legitimate business interests, goodwill with the public, and relations with tenants. Tenant acknowledges that any breach or violation of the use provisions contained in this Paragraph 4 will cause substantial damages and irreparable harm to the Landlord for which there may be no adequate remedy at law. Thus, in addition to any other remedies, Landlord will be entitled to temporary and/or permanent injunctive relief to enforce the provisions of this Paragraph 4 without the necessity of proving actual damages or posting bond or other security.

h. Landlord may with Tenant approval, as Landlord deems necessary, establish, alter, modify, and amend rules and regulations for all tenants of Landlord. Tenant agrees that Tenant shall be bound by and act in accordance with such rules and regulations, upon receiving notice of said establishment or changes, provided that no such rules and regulations shall preclude the ability of Tenant to operate as a glassblowing studio in accordance with applicable state and municipal laws or this Lease.

#### **5. LEASE AND NON-TERMINABILITY**

a. This is a lease, and the Base Rent, Additional Rent, and all other sums payable hereunder by Tenant, whether as the rent for the Premises or otherwise, shall be paid without notice or demand, and without set-off, counterclaim, abatement, suspension, reduction, deduction, or defense.

b. This Lease shall not terminate, nor shall Tenant have any right to terminate this Lease, except as otherwise expressly provided herein. Tenant shall not be entitled to any abatement or reduction of rent hereunder except as otherwise expressly provided herein. Nor shall the obligations of Tenant under this Lease be affected by reason of:

(i) Any damage to or the destruction of all or any part of the Premises by the Tenant.

(ii) Any default on the part of Tenant under this Lease or under any other agreement to which Landlord and Tenant may be parties.

c. It is the intention of the parties hereto that the obligations of Tenant hereunder shall be separate and independent covenants and agreements, that the Base Rent, and all other sums payable by Tenant hereunder shall continue to be payable in all events, and that the obligations of Tenant hereunder shall continue unaffected, unless the requirement to pay or perform the same shall have been terminated pursuant to an express provision hereof, with the exception of the following circumstances, which will result in an immediate termination of all moneys owed to the landlord, allowing the Tenant 30 days to remove all property or arrange to store in compliance with storage agreement mentioned in Terms 2a.;

(i) The taking of the Premises or any portion thereof by condemnation, requisition, or otherwise for any reason.

(ii) Any eviction by paramount title or otherwise.

(iii) The prohibition, limitation, or restriction of Tenant's use of all or any part of the Premises, or any interference with such use

(iv) Damage or destruction of Tenant's or Landlord's property by a member of Landlord's staff or any representative of NY state, Warren County or Town of Johnsborg.

d. Tenant agrees that it will remain obligated hereunder in accordance herewith, and that it will not take any action to terminate, rescind, or avoid this Lease, notwithstanding:

(i) The bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution, winding-up, or other proceeding affecting Landlord or any assignee of Landlord in any such proceeding.

(ii) Any action with respect hereto which may be taken by any trustee or receiver of Landlord or of any assignee of Landlord in any such proceeding or by any court in any such proceeding.

(iii) Any Pandemic related mass closure of any aspect of Tenant's operation.

## 6. UTILITIES AND SERVICES

a. Tenant shall be responsible for all janitorial services to the Premises and shall be expected to maintain such services in its own name and keep such accounts in good standing at all times.

b. Landlord shall not be liable to Tenant for interruption in or curtailment of any service or utility or for loss of or injury to property as a result thereof, nor shall any such interruption or curtailment constitute a constructive eviction or grounds for rental abatement in whole or in part hereunder, unless interruption is caused by willfully or neglectfully by a member of the Landlord's staff or an employee of the Town of Johnsborg, Warren County or State of New York.

c. Electricity and Trash removal will be paid and maintained by Landlord.

d. Landlord agrees to act as caretaker of outdoor property, including landscaping, lighting, driveway, foot path and tree maintenance.

## 7. MAINTENANCE AND REPAIRS

a. Landlord shall maintain the roof and structure of the Building in a state of good operating condition and repair. Tenant shall maintain the interior of the Premises, perimeter walls, ceiling, floors, windows, the electrical and lighting system, and any installed ventilating system. Tenant shall take good care of the Premises and fixtures, make good any injury or breakage done by Tenant or Tenant's agents, employees, or visitors, and shall quit and surrender said Premises, at the expiration of the Term, in as good condition as the reasonable use thereof will permit, free of Tenant's signs, goods, and effects and any machinery, trade fixtures, and equipment used in conducting Tenant's trade or business which is not owned by Landlord, except items agreed upon in advance and in writing which may be left over the winter occupying up to 30% of designated space. Tenant shall keep the interior of the Premises in a neat and orderly condition. Tenant shall, at its sole expense, maintain all finishes and fixtures within the Premises, as well as any equipment solely serving the Premises (including, but not limited to, any separate air conditioning systems, non-standard lighting, and any plumbing fixtures within the Premises). All repairs or alterations to the premises made by Tenant, as provided herein, shall be performed by licensed, bonded, and insured contractors or subcontractors that comply with Tenant's internal screening protocol. Landlord shall keep the parking areas, driveways, and walkways reasonably clear of ice and snow in an appropriate manner suitable for continued business and operations within the Planned Unit Development. Except as set forth elsewhere in this Lease, Landlord shall mow and landscape the exterior Common Areas and remove trash

**Commented [4]:**  
Removed utilities - building is not metered and we can not isolate the specific area which Tennant will occupy.

as Landlord shall in its sole and absolute discretion determine. In the event that Tenant substantially vacates the space prior to the expiration of the Term, Landlord shall have the right to enter the Premises for purposes of making improvements. Tenant hereby acknowledges that Landlord may, in its sole discretion, make any repairs and/or improvements to the Common Areas of the Building.

b. Tenant hereby expressly waives any right to make repairs at the expense of Landlord, which right may be provided for in any statute or law in effect at the time of the execution and delivery of this Lease hereof or of any other statute or law which may thereafter be enacted.

c. Except as expressly otherwise provided in this Lease, Landlord shall have no liability to Tenant by reason of any inconvenience, annoyance, interruption, or injury to business arising from Landlord, Tenant, or others making or failing to make any repairs or changes which are required or permitted by this Lease, or required by law to make, in or to any portion of the Building or the Premises. Landlord and Tenant, as the case may be, shall use due diligence in making any repairs required under Paragraph 7 herein.

## 8. ALTERATIONS AND IMPROVEMENTS

a. Tenant shall have the right, at its own expense, to make such non-structural alterations and changes in and to the Premises as it shall deem expedient or necessary for its purposes. Landlord may permit Tenant to make non-structural alterations and changes to the exterior Common Areas limited to displays and landscaping, indoor ventilation, electrical, plumbing or other necessary systems to all for Tenant's operation. At least five (5) days prior to commencing alterations or changes, Tenant shall provide Landlord with basic plans and specifications for Landlord's records. Landlord shall execute and deliver, upon the request of Tenant, such instrument or instruments embodying the approval of Landlord which may be required by any authority to obtain a permit for such alterations, Tenant agreeing to pay for and procure such license or permit. Tenant shall, prior to the expiration of the Term, remove any alteration at its expense and shall repair all damage to the Premises caused by such removal.

b. If any buildings, structures, or other improvements made to the Premises by Tenant shall encroach upon any property, street, or right-of-way adjoining or adjacent to the Premises, or shall violate the agreements or conditions contained in any restrictive covenant or **Exhibit "B"** affecting the Premises or any part thereof, or shall hinder or obstruct any easement or right-of-way, then, promptly after written request of Landlord or of any person affected by any such encroachment, violation, hindrance, obstruction, or impairment, Tenant shall, at its sole expense, either (i) obtain valid and effective waivers or settlements of all claims, liabilities, and damages resulting from each such encroachment, violation, hindrance, obstruction, or impairment, whether the same shall affect Landlord, Tenant, or both, or (ii) make such changes in the buildings, structures, and other improvements to the Premises, and take such other action as shall be necessary to remove such encroachments, hindrances, or obstructions, and to end such violations or impairments, including, if necessary, the alteration or removal of any such building, structure, or other improvement.

c. Tenant shall (i) immediately after it is filed or claimed, bond or have released any mechanic's, materialmen's or other lien filed or claimed against any or all of the Premises, the Building, or any other property owned or leased by Landlord, by reason of labor or materials provided for Tenant or any of its contractors or subcontractors or otherwise arising out of Tenant's use or occupancy of the Premises or any other portion of the Building, and (ii) defend, indemnify, and hold harmless Landlord against and from any and all liability, claim of liability, or expense (including, by way of example rather than of limitation, that of reasonable attorneys' fees) incurred by Landlord on account of any such lien or claim. Nothing contained in this Paragraph 8(c) herein shall be construed as constituting the consent or request of Landlord, expressed or implied, to or for the performance of any labor or services or the furnishing of any materials for any construction, alteration, addition, repair, or demolition of or to the Premises or any part thereof by any contractor, subcontractor, laborer, materialman, or vendor. Notice is hereby given that Landlord will not be liable for any labor, services, or materials furnished or to be furnished to Tenant, or to anyone holding

the Premises or any part through or under Tenant, and that no mechanics' or other liens for any such labor, services, or materials shall attach to or affect the interest of Landlord in and to the Premises.

d. On the Expiration Date or other termination of the Lease and annually no later than October 15, Tenant shall deliver up the Premises with all improvements located therein in good repair and condition, reasonable wear and tear excepted, and shall deliver to Landlord all keys to the Premises. Tenant shall remove all alterations, additions, improvements, and partitions erected by Landlord or Tenant and shall restore the Premises relatively close to its original condition by the date of termination of this Lease or upon earlier vacating of the Premises, except as provided herein. Notwithstanding any of the foregoing, these provisions shall not apply to any trade fixtures or shelving installed or used by Tenant; so long as Tenant restores the Premises to its original condition no later than the Expiration Date, exempting any reasonable normal wear and tear.

## **9. SIGNS**

a. Subject to the Landlord's written consent, and provided and Tenant's proposed signage is permitted by the applicable state, county, town, or municipal authorities, Tenant shall have the right to place signage at the Premises. Tenant acknowledges that the Premises are part of an integrated and uniform Building and that the control of signs by Landlord is essential in order to maintain uniformity and aesthetic values in such areas, and to conform with the overall architectural design of the Building. Any sign that Landlord permits Tenant to erect or install may be removed during the Term of this Lease only with the written approval of Landlord. Upon the expiration or earlier termination of this Lease, such signs must be removed and all damage caused by the erection, maintenance, or removal of any and all such signs shall be fully repaired promptly at the expense of Tenant.

## **10. PARKING**

Landlord hereby grants to Tenant the right to use the parking area surrounding the Building for its customers and employees, in common with all other tenants of the property, unless otherwise assigned to a specific tenant. Any parking is made and offered without representation, warranty or guarantee and shall not be exclusive. Landlord shall not be liable for any availability or lack of availability of parking.

## **11. ASSIGNMENT AND SUBLETTING**

a. Tenant will not sell, assign, mortgage, or transfer this Lease, or sublet or rent the Premises or any part thereof, or permit the same or any part thereof to be used or occupied by anyone other than Tenant or Tenant's employees, without the prior written consent of Landlord which Landlord may grant or deny in its sole and absolute discretion. In no event shall the proposed subtenant or assignee be an existing occupant of the Building or an affiliate of any such occupant. The business reputation of the proposed subtenant or assignee shall be in accordance with generally acceptable commercial standards. Any sale, assignment, mortgage, transfer, or subletting of this Lease which is not in compliance with the provisions of this Paragraph 11 shall be of no effect and void. If this Lease is sublet, assigned, sold, or otherwise transferred without Landlord's consent, Landlord additionally has the right to discontinue furnishing services and utilities to the Premises.

b. If Tenant shall desire to sublet the Premises, Tenant shall give written notice thereof to Landlord requesting Landlord's consent thereto, which notice shall set forth a proposed commencement date ("Proposed Effective Date") of the sublease term or assignment, which is not less than forty-five (45) days nor more than one hundred twenty (120) days after the sending of said notice and attached to said notice shall be a copy of the proposed sublease or assignment agreement and of all agreements collateral thereto. The form of said sublease or assignment shall be subject to Landlord's approval and, among other things, provide for the subtenant to be bound by all of the terms and provisions contained in this Lease. Landlord,

within twenty (20) business days after receipt of said notice, shall give Tenant written notice of Landlord's consent or lack of consent to Tenant's said request.

d. In the event of any sublease of all or any portion of the Premises where the Base Rent reserved in the sublease exceeds the rental or pro rata portion of the Base Rent after all adjustments for services and equipment have been made by Tenant, in its reasonable discretion, as the case may be, for such space reserved in the Lease, Tenant shall pay to Landlord monthly, as Additional Rent, at the same time as the monthly installments of Base Rent hereunder, fifty percent (50.00%) of the excess of the rental reserved in the sublease over the Base Rent reserved in this Lease applicable to the subleased space.

e. If this Lease be assigned, sublet, or transferred in any manner whatsoever, such assignment or transfer shall be upon and subject to all of the covenants, provisions, and conditions contained in this Lease and notwithstanding any consent by Landlord to any such assignment, transfer, or any subletting by Tenant, Tenant shall continue to be and remain liable hereunder. Any consent by Landlord to any such assignment, transfer, subletting, or other matter or thing contained in this Paragraph shall not in any way be construed to relieve Tenant from obtaining the prior consent of Landlord to any other or further such assignment, transfer, subletting, matter, or thing.

f. No assignment or subletting hereunder shall affect the continuing primary liability of Tenant (which, following assignment, shall be joint and several with the assignee).

## 12. STORAGE

Tenant may exclusively occupy up to 30% of the Main room of Premises between expiration and commencement of next term, to store items in mutually agreed upon area. Some of Tenant's property may be stored in "office" locked for the "off-season" (from October 15-May 15). Landlord will not be held responsible for any damage to equipment or belongings stored in the "off-season".

## 13. INDEMNITY AND INSURANCE

a. Except to the extent caused by the negligence of Landlord or its agents, contractors, or employees, Tenant agrees that it will defend all actions against Landlord (including any partners, officers, directors, employees, agents, or mortgagees) and that it will indemnify to the fullest extent permitted by law and save Landlord harmless from and against any and all liabilities, losses, damages, causes of action, suits, claims, demands, judgments, costs, interest, and expenses of any kind (including court costs and reasonable attorneys' fees) relating to or arising from or in connection with (i) the possession, use, occupancy, management, repair, maintenance, non-use, condition, or control of the Premises or any portion thereof by Tenant and/or its agents, sublessees, contractors, employees, or invitees; (ii) any act, omission, or default of Tenant or Tenant's agents, sublessees, contractors, employees, or invitees; (iii) any default, violation, or injury to person or property or loss of life sustained in or about the Premises; (iv) any violation or breach of this Lease by Tenant; (v) any other matter arising from Tenant's occupancy or use of the Premises or any act or omission of Tenant, its agents, sublessees, contractors, employees, or invitees; (vi) any work or thing whatsoever done, or any condition created (other than by Landlord, its employees, agents, or contractors) by or on behalf of Tenant in or about the Premises, including during the period of time, if any, prior to the Commencement Date, that Tenant may have been given access to the Premises for any purpose, including performing any work or making any installations. In case any action or proceeding is brought against Landlord by reason of any one or more of the actions listed in this Paragraph 13(a)(i) through Paragraph 13(a)(vi), Tenant shall pay all reasonable resulting costs, attorneys' fees, expenses, and liabilities and shall defend such action or proceeding if Landlord shall so request, at Tenant's expense, by counsel reasonably satisfactory to Landlord.

b. Except to the extent caused by the negligence of Tenant or its agents, contractors, or employees, Landlord agrees, subject to the exclusions noted in Paragraph 13(e) herein, that it will defend all actions

Commented [5]:  
Added

against Tenant and that it will indemnify to the fullest extent permitted by law and save Tenant harmless from and against any and all liabilities, losses, damages, causes of action, suits, claims, demands, judgments, costs, interest, and expenses of any kind (including court costs and reasonable attorneys' fees) relating to or arising from, or in connection with (i) any negligent act of Landlord or Landlord's agents, contractors, employees, or invitees pertaining to the Premises, or (ii) any material breach of this Lease by Landlord. To the extent not covered by the insurance to be obtained by Tenant in accordance with Paragraph 13(c) herein, Landlord shall pay all reasonable resulting costs, attorneys' fees, expenses, and liabilities and shall defend such action or proceeding if Tenant shall so request, by counsel reasonably satisfactory to Tenant.

c. Tenant shall carry and keep in force, at its own expense, with respect to the Premises, a policy or policies of commercial general liability and other insurance as more particularly described below with an insurance company or companies reasonably satisfactory to Landlord. Such insurance policies shall: (i) be from a responsible and solvent insurance company, authorized to do business in the State of New York, with an A.M. Best Rating of A- or better; (ii) cover Tenant's contractual obligations as set forth in this Lease, (iii) name Landlord and its managing agent(s) and Lenders as "Primary Additional Insured" or loss payee as applicable, (iv) provide that the insurer waives all right of recovery by way of subrogation against Landlord, its partners, affiliates, agents, and employees, (v) be primary over any other insurance the Landlord may carry; Landlord's insurance being non-contributory and excess only and only to the benefit of the Landlord. Such policies shall be in the following minimum amounts, which may be accomplished by a combination of underlying policies with Excess/ Umbrella Liability limits:

| <u>Coverage</u>  | <u>Limits of Liability</u> |
|--|----------------------------|
| Commercial General Liability (per occurrence)  | \$ 1,000,000               |
| General Aggregate Limit  | \$ 2,000,000               |
| Personal Injury Occurrence Limit   | \$ 1,000,000               |
| Bodily Injury & Property Damage Each Occurrence Limit                                | \$ 1,000,000               |
| Fire Damage (Any One Fire)   | \$ 100,000                 |
| Medical Expense (Any One Person)   | \$ 5,000                   |
| All Risk Property Insurance - sufficient to cover Tenant's property and improvements |                            |
| NY State Workers' Compensation Insurance including Employers Liability - Statutory   |                            |

\* Waived if Tenant's only vehicles parked or used on site are owned by individual employees. Required if Tenant has any on-site vehicles owned by Tenant or any affiliated company.

(i) The "Tenant's property and improvements" referenced above include all of Tenant's personal property, trade fixtures, and all leasehold improvements existing on the Premises. The certificates of such policy or policies evidencing such coverage, together with an endorsement thereon evidencing payment of the premium or other satisfactory proof thereof, shall be delivered to Landlord concurrently with Tenant's execution of this Lease and at least annually upon written request of Landlord. Such policies shall not be modified or cancelled without at least thirty (30) days' prior written notice to Landlord. The certificate of insurance shall be renewed and submitted to Landlord annually, at least thirty (30) days prior to the expiration of Tenant's then current policies for the duration of the Term of this Lease.

d. Tenant shall not violate, or permit the violation of any condition imposed by any and all insurance policies carried by Landlord with respect to the Building, and Common Areas and shall not do, or permit anything to be done, or keep or permit anything to be kept in the demised Premises which would subject Landlord to any liability or responsibility for personal injury or death or property damage, or which would increase the fire or other casualty insurance rate on the Building or the land thereunder over the rate which would otherwise then be in effect or which would result in insurance companies of good standing refusing to insure the Building or its land in amounts reasonably satisfactory to Landlord.

e. Landlord is exempt from any and all liability for any damage or injury to person or property (i) due to the Premises, or any part thereof or any appurtenances thereto becoming out of repair, or (ii) resulting from

steam, electricity, gas, water, rain, ice, snow, windstorm, tornado, electrical wiring, sprinkler system, plumbing, heating and air conditioning apparatus, any leak or flow from or into any part of said Building or from any damage or injury resulting or arising from any other cause or happening whatsoever, including any acts or omissions of other tenants or other occupants of the Building. To the maximum extent permitted by law, Tenant agrees to use and occupy the Premises and to use such other portions of the Building as Tenant is herein given the right to use, at Tenant's own risk.

f. Landlord and Tenant acknowledge their mutual intent to preserve their business relationship during the Term and agree to rely on the protections afforded through insurance rather than prosecuting legal claims against each other for any property damage to their buildings or personal property. Each party agrees to maintain the insurance coverage on their respective properties and their liability insurance coverage as set forth elsewhere in this Lease. Each party will assume all risk of loss or damage to its own property. Each party hereby waives claims and waives right of recovery and subrogation rights against the other party for any property loss or damage, including any consequential damages, and waives claims and right of recovery and subrogation rights in connection with third-party claims for property loss or damage and for personal injury or death. This waiver shall apply regardless of fault, accident, negligence, or willful misconduct of any employees or agents of the parties. Tenant will indemnify Landlord against any third-party claims in connection with Tenant's use and occupancy of the Premises. If any insurance does not expressly allow the insured to waive rights of subrogation before loss, it shall be endorsed with a waiver of subrogation.

#### **14. DAMAGE OR DESTRUCTION**

a. Tenant must give Landlord prompt notice of fire, accident, damage, or dangerous or defective conditions.

b. In case of damage, by fire, other action of the elements, or other insured casualty to the Building, without the fault of Tenant or of Tenant's agents or employees, if, in Landlord's reasonable opinion, the damage is so extensive as to amount practically to the total destruction of the Premises or a substantial destruction of the Building, or, if for any reason, Landlord shall, within a reasonable time not to exceed sixty (60) days from the date of damage, decide not to rebuild, this Lease shall cease and come to an end, and the Base Rent and Additional Rent shall be apportioned to the time of the damage.

c. In all other cases where the Premises are damaged by fire, elements, or other casualty, without the fault of Tenant or of Tenant's agents or employees, Landlord shall repair the damage with reasonable dispatch, after notice of damage, to the extent of the insurance proceeds available therefor. If the cost of performing Landlord's obligation exceeds the actual proceeds of insurance paid or payable to Landlord on account of such casualty, Landlord may terminate this Lease unless Tenant, within fifteen (15) days after demand therefor, deposits with Landlord a sum of money sufficient to pay the difference between the cost of repair and the proceeds of insurance available for such purpose. If the damage has rendered the Premises untenantable, in whole or in part, there shall be an apportionment of the Base Rent and Additional Rent until the damage has been repaired. In determining what constitutes reasonable dispatch, consideration shall be given to delays caused by strikes, adjustment of insurance, and other causes beyond Landlord's control, including disease and epidemics.

d. Tenant, at its sole expense, shall restore thereto all work and improvements originally installed or performed by Tenant immediately upon the completion of the Landlord's repairs pursuant to Paragraph 14(c) above or simultaneously with the Landlord's performance of such repairs to the extent practicable.

e. If the fire or other casualty is caused by an act or neglect of Tenant, Tenant's employees, agents, contractors, or invitees, or at the time of the fire or casualty Tenant is in default in any Term, then all repairs will be made at Tenant's expense and Tenant must pay the full Base Rent and Additional Rent with no adjustment. The cost of the repairs will be treated as Additional Rent.

## 15. CONDEMNATION

a. If, the Premises, or any part thereof, or any estate therein, or any other part of the Building materially affecting Tenant's use of the Premises, or any substantial part of the Building (even if Tenant's use of the Premises is not materially affected) be taken by federal, state, county, city, or other authority for public use under any statute or by virtue of eminent domain, this Lease may be terminated by Landlord if Tenant's use of the Premises is not materially affected or by either party if Tenant's use of the Premises is materially affected, and the Base Rent and Additional Rent, if any, shall be apportioned as of the date of such termination, and any Base Rent and Additional Rent paid for any period beyond such date of termination shall be repaid to Tenant.

b. Tenant shall be entitled to any part of the award or any payment in lieu thereof made in such taking or condemnation, in the amount greater or equal to the value of reserved services which the Tenant may lose with said condemnation. Tenant may file a claim against the condemner for any taking of fixtures and improvements owned by or paid for by Tenant and for relocation expenses.

c. In the event of a partial taking or partial condemnation which does not result in the termination of this Lease, the Base Rent and Additional Rent shall be apportioned according to the part of the Premises remaining usable by Tenant.

d. For the purposes of this Paragraph 15, all amounts payable pursuant to any agreement with any condemning authority which has been made in settlement of or under threat of any condemnation or other eminent domain proceeding affecting the Premises shall be deemed to constitute an award made in such proceeding.

## 16. ACCESS

Landlord's agents, employees, and contractors shall have the right to enter the Premises upon no less than forty-eight (48) hours' notice to perform any work which Landlord elects or is required to undertake, or to perform any work made necessary by reason of Tenant's default under the Lease. Landlord's agents, employees, prospective purchasers, and prospective tenants shall have the right to enter the Premises, no less than forty-eight (48) hours' notice, to conduct the marketing, rental, or sale of the Building and/or Premises during the last twelve (12) months of any Term of this Lease, or at other times with the permission of Tenant, which permission will not be unreasonably delayed or withheld, so long as entrance to the building does not impede Tenant's business. Landlord shall have the right to enter the Premises, as reasonably necessary, to inspect the Premises and/or for other legitimate business reasons. Landlord, its employees, agents, and contractors shall have the right to enter the Premises without notice at any time as may be necessary for the purpose of making urgent repairs thereto and to the Building and its systems, and for the purpose of performing the services to be performed by Landlord pursuant to the terms hereof. Landlord is responsible for any damage to any lock or security system caused by emergency entrance by Landlord or its agents. If, prior to the Expiration Date, Tenant shall have ceased operations within the Premises, Tenant shall reasonably secure the Premises and Landlord may reasonably enter the Premises for purposes of showing the Premises to prospective tenants and/or purchasers. Landlord's right of entry shall not be deemed to impose upon Landlord any obligation or liability for the care, supervision, or repair of the Premises other than as expressly provided in the Lease. Landlord shall have the right as of one hundred twenty (120) days prior to the expiration of the Lease to show the premises to prospective Tenants if Tenant chooses not to renew the Lease.

## 17. DEFAULT BY TENANT

a. Tenant shall be considered to be in default, if Tenant, at any time during the Term of this Lease, shall:

(i) Fail to pay any installment of Base Rent, Additional Rent, or any other sum specifically to be paid by Tenant hereunder without demand, and such default shall not have been cured within five (5) days after Landlord shall have given to Tenant written notice specifying such default; or

(ii) Fail in the observance or performance of any of Tenant's other covenants hereunder (other than the covenant to pay Base Rent and Additional Rent or any other sum herein specified to be paid by Tenant) and such default shall not have been cured within fifteen (15) days after Landlord shall have given to Tenant written notice specifying such default; provided, however, that if the default cannot be completely remedied or cured within such fifteen (15) day period, then such default shall not be enforceable for the purposes of this Paragraph if Tenant commences curing such default within such fifteen (15) day period and proceeds with reasonable diligence and in good faith to remedy the default (provided that such cure must be completed within sixty (60) days of such notice); or

(iii) Abandon the Premises, without notice to Landlord, and fails to pay its rental obligations set forth hereunder during any period of abandonment; or

(iv) Fail to comply with Paragraph 23 of this Lease during the allotted time period and such default shall not have been cured within five (5) business days after Landlord shall have given to Tenant written notice specifying such default; or

(v) (A) Be adjudicated bankrupt or insolvent, (B) Apply for or consent to the appointment of a receiver, trustee, or liquidator of Tenant or of all or a substantial part of its assets, (C) File a petition or an answer seeking a reorganization or an arrangement with creditors, or seek to take advantage of any insolvency law, (D) Make an assignment for the benefit of its creditors, (E) Suffer an order to be entered approving a petition filed against Tenant seeking reorganization of Tenant under the Federal Bankruptcy Laws or any other applicable law or statute of the United States thereof, or (F) Perform any other act of bankruptcy.

b. Upon the occurrence of an event of default, Landlord shall have the option to pursue any one or more of the following remedies, with or without notice or demand, in addition to any other remedies available to Landlord at law or in equity:

(i) To give Tenant written notice that this Lease is terminated on the date of such given notice or any later date specified therein; and on such specified date, Tenant's right to possession of the Premises shall cease and this Lease shall thereupon be terminated, except for the sole purpose of retrieving Tenant's property.

(ii) To elect to waive such default and continue this Lease as if such event of default had not occurred, provided that Tenant shall pay to Landlord all late charges as provided herein, or, if the default is other than for failure to pay rent, an administrative charge of twenty dollars (\$20.00). Said administrative charge shall apply to each such default.

(iv) In the event of re-entry, as provided in Paragraph 17(b)(ii) above, the entire rent up to said termination of this Lease shall be immediately due and payable. Said rent shall be determined calculating any past due rent. No future or remaining rent of term shall be collected.

(v) Should Landlord take possession pursuant to this Lease or as provided for by law, Landlord may, from time to time, relet the Premises, or any part thereof, upon such terms and conditions as Landlord may deem advisable, with the right to make alterations and repairs to the Premises.

(vi) If an event of default occurs, regardless of whether Landlord elects to terminate the Lease or re-enter and take possession of the Premises, or continue the Lease, all fixtures, furniture, equipment, improvements, additions, and alterations, and other personal property of Tenant, or any person claiming through or under Tenant (hereafter Tenant's Property) shall remain on the Premises, and

Landlord, so long as an event of default shall exist, shall have the right:

A. To demand that Tenant remove Tenant's Property, and the failure to do so, within 30 (30) days after notice is received by Tenant, shall constitute abandonment of Tenant's Property, with Tenant and all persons claiming through or under Tenant conveying all rights, but not liabilities, with regard thereto to Landlord or Landlord's assigns.

B. To remove all or any portion of Tenant's Property and place the same, at Tenant's expense, in a public warehouse or other storage area, and the failure by Tenant to claim the same within ninety (90) days of service of notice of storage shall constitute abandonment of Tenant's Property, with Tenant and all persons claiming through or under Tenant conveying all rights, but not liabilities, with regard thereto to Landlord or Landlord's assigns.

#### **18. SELF HELP**

Removed.

#### **19. LIABILITY**

The liability of Landlord and all officers, employees, shareholders, venturers, or partners (general or limited) of Landlord to Tenant for any default by Landlord under the terms of this Lease shall be nonrecourse and limited only to any applicable insurance limit, if any, and Landlord or any officer, employee, shareholder, venture, or partner (general or limited) of Landlord shall have the right to sell or transfer all or any portion of the Building to any third party, and upon any such sale or other transfer of all of the Building, and the corresponding assignment of this Lease, the previous Landlord shall have no further liability or obligation to Tenant hereunder or otherwise.

#### **20. FORCE MAJEURE**

a. Landlord shall be excused for the period of any delay in the performance of any obligations hereunder, when prevented from so doing by cause or causes beyond Landlord's control which shall include, without limitation, all labor disputes, civil commotion, war, terrorism, war-like operations, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, fire or other casualty, disease, epidemic, pandemic, or through acts of God.

b. Tenant shall similarly be excused for delay in the performance of obligations hereunder provided: (i) nothing contained in this Paragraph or elsewhere in this Lease shall be deemed to excuse or permit any delay in the payment of any sums of money required hereunder, or any delay in the cure of any default which may be cured by the payment of money unless Tenant's operations are forced to close or be substantially reduced due to any government imposed order pertaining to any pandemic, for a period of at least three (3) days, in which case Tenant may request a rent deferral pursuant to Paragraph 20(c) herein; (ii) no reliance by Tenant upon this Paragraph shall limit or restrict in any way Landlord's right of self-help as provided in this Lease; and (iii) Tenant shall not be entitled to rely upon this Paragraph unless it shall advise Landlord in writing, of the existence of any force majeure event preventing the performance of an obligation of Tenant within five (5) business days after the commencement of the force majeure event.

c. Tenant, at Tenant's option and written request, may require Landlord to defer the Rent, and other payments due under the terms of this Lease, if Tenant is required to close its business due to governmental regulation, order, or recommendation pertaining to pandemic for a period greater than three (3) days. Such rental deferral will be applicable until Tenant is allowed to open its business without restrictions and/or with reasonable restrictions.

d. In the event of a rental deferral under Paragraph 20(c), Landlord shall first apply the existing security deposit to the amount of the deferred Rent. With respect to any remaining balance related to the deferred Rent, Landlord, at its option, may add additional months to the term of the Lease, amortize the deferred Rent over the remaining term or other specified period, or require a balloon payback at a future date. If Tenant receives any funding from federal and/or state bailout plans pertaining to a pandemic, Tenant will apply such funds to any remaining balance related to the deferred Rent to the extent such application of funds does not violate either federal or state law.

e. In the event that a force majeure event pertaining to a pandemic occurs and continues for an uninterrupted period of thirty (30) days, either party may terminate this Lease by giving written notice to the other party within thirty (30) days after the expiration of such thirty (30) day period. At which time, storage agreement as per paragraph 12 STORAGE.

f. In the case of a pandemic, the notice date of Paragraph 20(b) is not measured by the date of the classification of such pandemic as a pandemic, but as to the date of the issuance of the governmental restriction, order, regulation, or recommendation issued with respect to such pandemic which has prevented a party's performance under the contract.

## **21. SECURITY DEPOSIT/LAST MONTH RENT**

A security deposit of five hundred dollars (\$500.00) shall be required of Tenant and paid at least thirty (30) days prior to the Commencement Date of this Lease, as security for the payment of Rent and for the faithful performance of all the terms, conditions, and covenants hereof. If Tenant shall be in default in the performance of any provision of this Lease, Landlord shall have the right, but not the obligation, to use all or part of the security deposit, as is necessary, to reimburse Landlord for any expense or damages incurred by reason of Tenant's default. In such event, Tenant shall promptly remit to Landlord a sufficient amount of cash to restore said security deposit to its original amount. If Tenant fully complies with all the terms of this Lease, said security deposit shall be USED TO PAY the LAST MONTH'S RENT of rental term. The security deposit shall not be deemed to be liquidated damages, and if the claims of Landlord exceed the deposit, Tenant shall remain liable for the balance of such claims. In no event shall any mortgagee be responsible or liable for any security deposit held by Landlord. Landlord shall keep and maintain said security deposit in Landlord's operating account along with Landlord's operating funds.

## **22. REMOVED**

## **23. ENVIRONMENTAL PROTECTIONS**

a. Tenant shall conduct all activity in compliance with all federal, state, and local laws, statutes, ordinances, rules, regulations, orders, and requirements of common law concerning protection of the environment or human health ("Environmental Laws"). Tenant shall also cause its subtenants (if subtenants are permitted by this Lease or are hereafter approved by Landlord), licensees, invitees, agents, contractors, subcontractors, and employees to comply with all Environmental Laws. Tenant and its permitted subtenants, licensees, invitees, agents, contractors, and subcontractors shall obtain, maintain, and comply with all necessary environmental permits, approvals, registrations, and licenses.

b. In addition to and not in limitation of the foregoing, Tenant, its permitted subtenants, licensees, invitees, agents, contractors, subcontractors, and employees shall not in a way contrary to any applicable government law, rule or regulation, use, generate, refine, produce, transfer, process, or transport Hazardous Material on, above, beneath or near the Premises, the Building, or the Land. As used herein, the term "Hazardous Materials" shall include, without limitation, all of the following: (1) hazardous

substances, as such term is defined in the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9601 (14), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99499, 100 Stat. 1613 (Oct. 17, 1986) ("SARA"); (2) regulated substances, within the meaning of Title I of the Resource Conservation and Recovery Act, 42 U.S.C. Sections 69916991(i), as amended by SARA; (3) any element, compound, or material which can pose a threat to the public health or the environment when released into the environment; (4) petroleum and petroleum byproducts; (5) an object or material which is contaminated with any of the foregoing; (6) any other substance designated by any of the Environmental Laws or a federal, state, or local agency as detrimental to public health, safety, and the environment.

c. Tenant shall be solely responsible for, and shall protect, indemnify, and save Landlord, its directors, officers, employees, agents, successors, and assigns, as well as any mortgagee of the Building, harmless from and against any and all liability, loss, damage, cost, or expense (including reasonable attorneys' fees) that Landlord or any mortgagee may suffer or incur as a result of any claims, demands, damages, losses, liabilities, costs, charges, suits, orders, judgments, or adjudications asserted, assessed, filed, or entered against Landlord or any of the Building or the Land, by any third party, including, without limitation, any governmental authority, arising from Tenant's breach of Environmental Laws or otherwise arising from the alleged generation, refining, production, storage, handling, use, transfer, processing, transportation, release, spillage, pumping, pouring, emission, emptying, dumping, discharge, or escape of Hazardous Materials on, from, or affecting the Premises, the Building, or the Land, and caused by Tenant, Tenant's permitted subtenants, licensees, invitees, agents, contractors, subcontractors, and/or employees, including, without limitation, liability for costs and expenses of abatement, correction, cleanup, preparation and implementation of any required remedial plans, or other remedy, fines, damages, response (including death), and property damage. Tenant shall, upon the request of Landlord, provide Landlord with a bond or letter of credit, in form and substance satisfactory to Landlord, in an amount sufficient to cover the costs of any required cleanup.

d. Tenant, its permitted subtenants, licensees, invitees, agents, contractors, subcontractors, and employees shall not release, spill, pump, pour, emit, empty, dump, or otherwise discharge or allow to escape Hazardous Materials onto the Building or surrounding land, and Tenant shall take all action necessary to remedy the results of any such release, spillage, pumping, pouring, emission, emptying, dumping, discharge, or escape. Tenant shall arrange for disposal of any medical waste in a proper fashion at Tenant's sole expense.

e. Tenant shall, within forty-eight (48) hours of receipt, deliver to Landlord copies of any written communication relating to the Building or the surrounding land, between Tenant and any governmental agency or instrumentality, concerning or relating to Environmental Laws.

f. Tenant's obligations under this Paragraph 23 shall survive the termination or other expiration of this Lease with respect to any conduct of Tenant and/or its permitted subtenants, licensees, invitees, agents, contractors, subcontractors, and employees" which is in violation of this Paragraph 23 during the Lease Term or any extended term thereof.

#### **24. OVERDUE SERVICE FEE; ADDITIONAL RENT**

In the event any Base Rent payments, any Additional Rent herein, and any and all payments due under the provisions of this Lease from Tenant, unless herein otherwise specifically referred to, are not received by Landlord on their due date, Tenant shall pay, in addition to such sums owed, and not as a penalty, Additional Rent in the form of an overdue service fee equal to the greater of (i) five percent (5.00%) of such monthly installment of the Base Rent or such other sums owed for each month or part thereof such payment is overdue. Notwithstanding the foregoing, Landlord shall waive the late fee for any amount that is paid

within fifteen (15) calendar days of the due date, so long as Tenant has not been more than five (5) days late in paying any amount due under this Lease within the last twelve (12) months.

#### **25. HOLDOVER**

—removed

#### **25. LAWS, RULES, AND REGULATIONS**

Tenant covenants and agrees to comply with such reasonable rules and regulations as may be established by Landlord from time to time for the necessary, proper, and orderly care and use of the Building, Common Areas and Premises, which rules and regulations shall be binding upon Tenant to the same extent as if they were incorporated in and a part of this Lease. Any such rules and regulations shall become effective upon written notice to Tenant as provided for in this Lease. Tenant further agrees to comply with all laws, ordinances, rules, and regulations of the federal, state, county, city, and municipal authorities applicable to the Premises and to the business to be conducted in the Premises.

#### **26. NOTICES**

All notices, requests, demands, or other communications with respect to this Lease, whether or not herein expressly provided for, shall be in writing and shall be deemed to have been duly given when mailed by United States First-Class, certified or registered mail, postage prepaid, return receipt requested, or by overnight delivery, to the parties, at their respective addresses, as first above written, or as applicable to Tenant, any such additional addresses as Landlord may reasonably determine. Any such addresses for the giving of notice may be changed by either party by giving notice thereof in writing to the other party. **Tenant's address for these purposes shall be changed to the Premises' address once it has occupied the Premises.**

#### **27. REAL ESTATE BROKERS**

~~—Both Landlord and Tenant warrant that they have had no dealings with any real estate brokers or agents in connection with the negotiation of this Lease, and that they know of no real estate broker or agent who is or might be entitled to a commission or fee in connection with this Lease. Each party agrees to indemnify and hold the other party harmless from and against any and all claims for any such commission or fee. The foregoing indemnity shall survive the expiration or earlier termination of this Lease.~~

#### **28. NO WAIVER**

a. The failure of Landlord or Tenant to insist upon a strict performance of any of the terms, conditions, and covenants herein, shall not be deemed a waiver of any rights or remedies that Landlord or Tenant may have, and shall not be deemed a waiver or any subsequent breach or default in the terms, conditions, and covenants herein contained. Nor shall the failure of the Landlord to enforce any of the rules and regulations against any tenant of the Building be deemed a waiver of any such rules and regulations. No act or thing done by Landlord or Landlord's agents during the Term hereof shall be deemed an acceptance of the surrender of the Premises, and no agreement to accept such surrender shall be valid unless in a writing signed by Landlord. Delivery of Tenant's keys to any officer, employee, agent, or general partner of Landlord and acceptance thereof, shall not constitute a termination of this Lease unless a written agreement has been entered into with Landlord to this effect.

b. No payment by Tenant, nor receipt from Landlord, of a lesser amount than the amount herein stipulated shall be deemed to be other than on account of the earliest amount owed, 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 shall be entitled to accept such check or payment without prejudice to Landlord's right to recover the balance of such amount owed or to pursue any other remedy available to Landlord.

**30. QUIET ENJOYMENT**

—REMOVED

**31. RECORDING**

—REMOVED

**29. BINDING EFFECT**

Each and all of the terms and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto, their heirs, personal and legal representatives, successors, and permitted assigns.

**30. ENTIRE AGREEMENT**

This instrument contains the entire agreement made between the parties and may not be modified orally or in any manner other than by an agreement in writing signed by all the parties hereto or their respective successors in interest.

**31. JURISDICTION AND VENUE**

The laws of the State of New York shall apply to any action brought to enforce the terms of this Lease, without giving effect to that state's principles of conflict of laws. Any action to enforce the terms of this Lease shall be brought in a federal or state court of competent jurisdiction located in the County of Warren, State of New York.

**32. WAIVER OF RIGHT TO REDEEM**

Tenant DOES NOT waive its right to redeem under New York law. In the case of any termination of this lease, both parties will make efforts to resolve directly and peacefully, without legal assistance.

**36. WAIVER OF JURY TRIAL**

—REMOVED

**33. REMEDIES CUMULATIVE**

Any and all rights and remedies which Landlord may have under this Lease and at law or equity, shall be cumulative and shall not be deemed inconsistent with each other, and any two or more or all of said rights and remedies may be exercised at the same time or at different times and from time to time.

**34. ATTORNEYS' FEES**

In case it should be necessary or proper for either party to bring any action under this Lease or to consult or place this Lease, or any amount payable hereunder, with an attorney concerning a default of the other party hereunder, irrespective of whether such default is later cured, then the non-prevailing party shall

pay any and all reasonable attorneys' fees, court costs, and expenses of the prevailing party incurred in connection with such enforcement.

### **35. RELATIONSHIP**

Landlord shall not be responsible for any debts incurred by Tenant. Nothing contained herein shall be deemed or construed by the parties as creating any relationship or partnership, joint venture, or principal and agent between the parties other than the relationship of landlord and tenant.

### **36. AUTHORITY**

Each party hereto represents and warrants that it has the necessary power and authority to enter into this Lease and it has taken all necessary action in order to duly execute this Lease.

### **~~41. SEVERABILITY~~**

~~—REMOVED~~

### **37. PARAGRAPH HEADINGS**

The paragraph headings contained herein are solely for convenience and shall in no way define, increase, limit, or describe the scope or intent of any provisions of this Lease.

### **38. ACCEPTANCE**

The submission of this Lease for examination or consideration by Tenant does not constitute an offer, reservation of, or option for the Premises and this Lease shall be and become effective as a lease only upon legal execution and delivery hereof by Landlord and Tenant.

### **~~44. This paragraph reserved.~~**

### **~~45. JOINT AND SEVERAL LIABILITY~~**

~~—REMOVED.~~

### **~~46. This paragraph reserved.~~**

### **39. NO DISCRIMINATION**

Tenant shall not discriminate in the conduct and operation of its business in the Premises against any person or group of persons because of the race, creed, color, sex, sexual orientation, age, national origin, or ancestry of such person or group of persons.

### **40. PATRIOT ACT**

Tenant represents and warrants to, and covenants with, Landlord that neither Tenant nor any of its respective affiliates currently are, or shall be at any time during the Term hereof, in violation of any laws relating to terrorism or money laundering, including without limitation Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism and/or the Uniting and

Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (the "USA Patriot Act").

**41. TIME IS OF THE ESSENCE**

Time is of the essence with respect to the terms, conditions and provisions of this Lease.

**[EXECUTION PAGE TO FOLLOW]**

**EXECUTION PAGE**

**IN WITNESS WHEREOF**, Landlord and Tenant have executed this Lease as of the date first above written.

**TENANT:**

\_\_\_\_\_

Name: Gregory Tomb

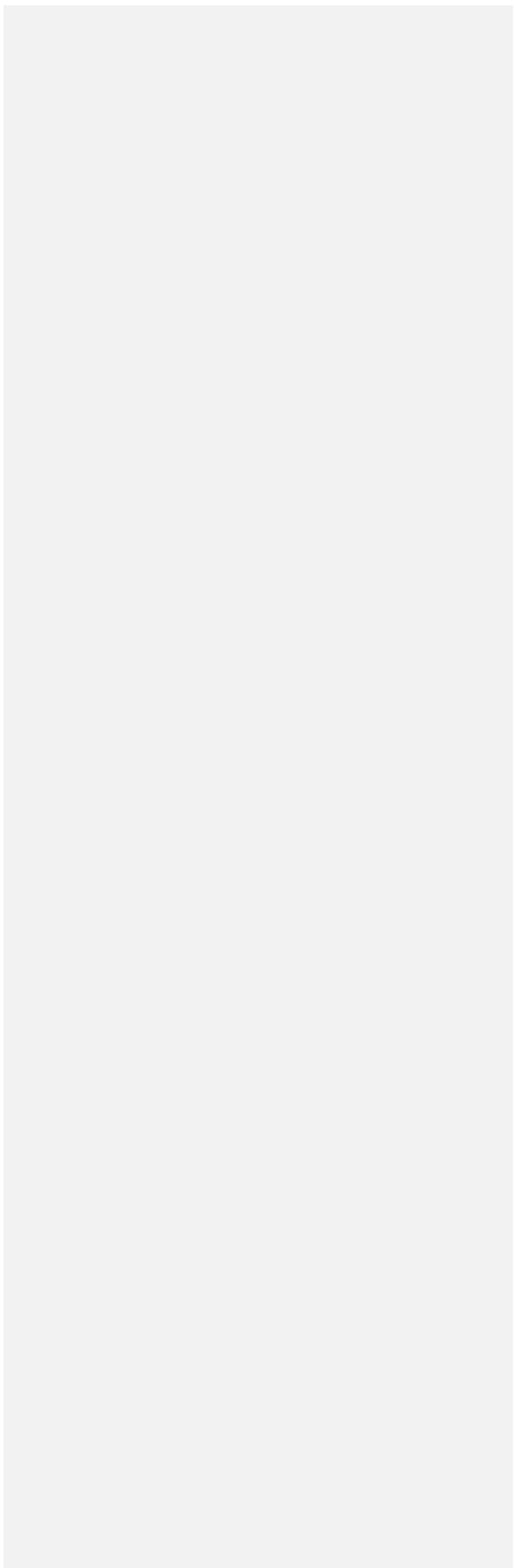
**LANDLORD:**

Town of Johnsburg

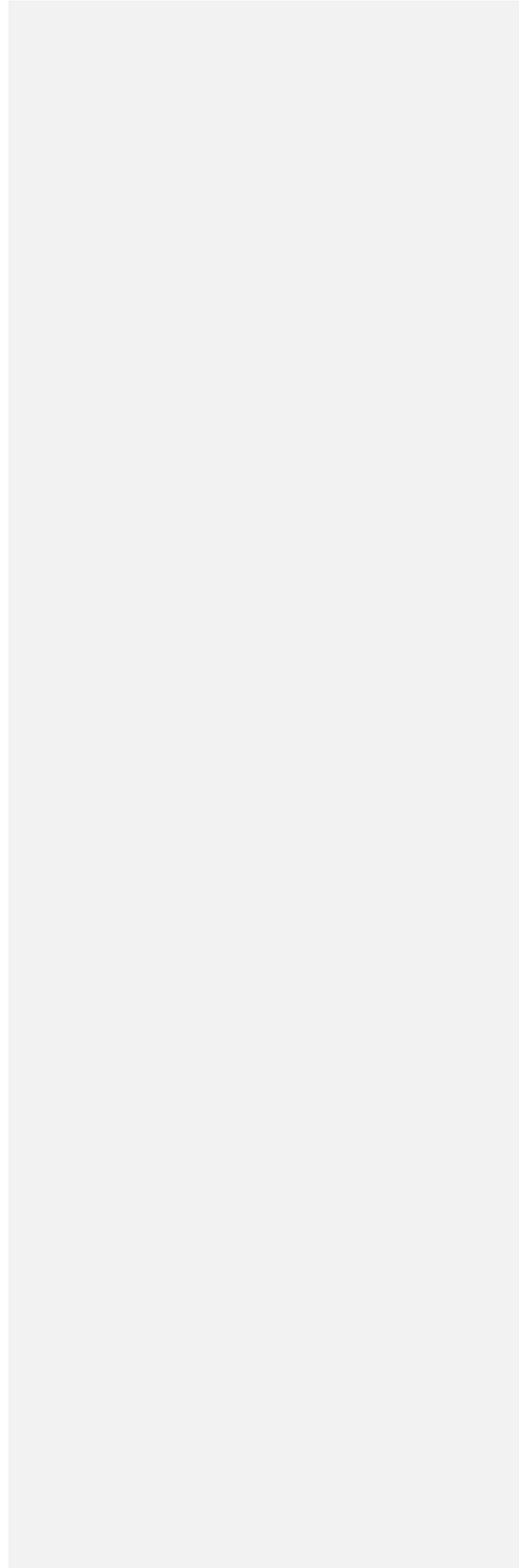
By: \_\_\_\_\_

Name: Hon. Andrea Hogan

Title: Supervisor



**EXHIBIT "A"**  
**PREMISES**



**EXHIBIT "B"**

**OSI Covenants**

