

**TOWN OF HEMPSTEAD INDUSTRIAL DEVELOPMENT AGENCY  
BOARD MEETING  
AGENDA**

**Old Courtroom, 2<sup>nd</sup> Floor, 350 Front Street Hempstead, NY  
Tuesday, June 20, 2023, 9:00 AM**

- A livestream of the meeting may also be viewed at [www.tohida.org](http://www.tohida.org) .  
Select "Meeting Information" and then "YouTube – Live Streams and Recorded Meetings".

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The Agenda will include but not be limited to:

**AGENDA:**

- Confirm the presence of a Quorum
- Public Comment with respect to Agenda items

**EXECUTIVE SESSION:**

**VILLAGE BUSINESS:**

**Village of Freeport:** None

**Village of Hempstead:**

- Consideration of a Termination of Benefits for **Alphamore LLC**, 50 Clinton Street, Hempstead

**NEW BUSINESS - Applications, Transaction Resolutions and Presentations:**

- Consideration of a Tenant Consent for **Valley Stream Green Acres**, 2034 Green Acres Road, Valley Stream - -Designer Jewelers

**NEW BUSINESS - Other:**

- CEO's Report
- Consideration of Agency Account Transfer Resolutions (4)

**OLD BUSINESS:** None

**READING AND APPROVAL OF MINUTES OF PREVIOUS MEETING(s):**

- Consideration and Adoption of the Minutes of May 23, 2023

**REPORT OF THE TREASURER:**

- Financial Statements and Expenditure List: May 17, 2023 – June 13, 2023

**ADJOURNMENT**

Chairman Approval: 6/12/23

Contact: [arlyeam@hempsteadny.gov](mailto:arlyeam@hempsteadny.gov) (516) 489-5000, x 3077

Arlyn Eames

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**From:** Arlyn Eames  
**Sent:** Monday, May 22, 2023 12:41 PM  
**To:** Leo Ifraimov  
**Cc:** Fred Parola; John Ryan; Edie Longo; Michael Lodato; Benny Breuer; Shimon Dier; Chana Vashovsky; [REDACTED]; Ephraim Vashovsky; [REDACTED]; [REDACTED]; [REDACTED]; Arlyn Eames; [REDACTED]; [REDACTED]; Bill Weir [REDACTED]; Feary Emma ([REDACTED]); [REDACTED]; [REDACTED]; Walsh Terance ([REDACTED]); [REDACTED]; [REDACTED]  
**Subject:** Alphamore LLC Non Compliance

Good afternoon Mr. Ifraimov--

As per our conversation, please provide an update on the status of the verification of the employee numbers submitted for the property at 50 Clinton Street. Your project is still non-compliant with regards to this request.

Our Board of Directors will be updated at tomorrow's IDA Board Meeting.

Thank you.

- Fred Parola

**Frederick E. Parola, Esq.**  
**Chief Executive Officer**  
Town of Hempstead IDA  
350 Front Street, Room 234-A  
Hempstead, NY 11550  
Phone: (516) 812-3134

## Arlyn Eames

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**From:** Arlyn Eames  
**Sent:** Tuesday, June 13, 2023 11:09 AM  
**To:** Leo Ifraimov; Benny Breuer  
**Cc:** [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Subject:** [REDACTED]  
**Attachments:** [REDACTED]

Good afternoon –

Alphamore LLC will appear on the June 20th IDA Agenda for possible Termination of Benefits due to non-payment of the PILOT and non-Compliance with the terms of the Agreements between the company and the Agency.

Below is a list of everything that we are missing:

**PILOT Payments:**

- 1) 2<sup>nd</sup> Half School 2022/23: We have received a check for the 2<sup>nd</sup> Half School in the amount of \$108,246.03, however as of June 10<sup>th</sup> there have been 2 late fees applied. See invoice dated 6/13/23. Late fees for the 2<sup>nd</sup> Half School total is **\$6,548.00** made payable to the Town of Hempstead IDA.
- 2) 1<sup>st</sup> Half Village 2023 was due June 1<sup>st</sup> in the amount of **\$52,932.52**, made payable to the Village of Hempstead.
- 3) Administrative late fee owed is **\$1,623.65** made payable to the Town of Hempstead IDA.

**Compliance:**

- 1) A verification of the number of employees submitted by the company for 2022. The Agency was told someone would be conducting a count at the project site.
- 2) On June 18<sup>th</sup>, the current certificate of liability Insurance will expire so we will need a copy of the renewal certificate.

Thank you for your attention to this matter.

Arlyn Eames  
Deputy Financial Officer  
Town of Hempstead IDA  
350 Front Street, Room 234-A  
Hempstead, NY 11550  
Phone: (516) 812-3077

**From:** Arlyn Eames <arlyeam@hempsteadny.gov>  
**Sent:** Monday, June 12, 2023 10:15 AM  
**To:** [REDACTED]  
**Subject:** Alphmamore checks

Good morning Dan –

Please see attachment. We received a check for the 2<sup>nd</sup> Half School PILOT without the late fee. The 1<sup>st</sup> Half Village PILOT remains outstanding. We also received a check that doesn't correspond to an invoice that I can find.

Please forward to your client and provide the IDA with any updates.

Thank you.

-Arlyn

Arlyn Eames  
Deputy Financial Officer  
Town of Hempstead IDA  
350 Front Street, Room 234-A  
Hempstead, NY 11550  
Phone: (516) 812-3077

**From:** TOH IDA <[idascan@tohmail.org](mailto:idascan@tohmail.org)>

**Sent:** Monday, June 12, 2023 9:59 AM

**To:** Arlyn Eames <[arlyeam@hempsteadny.gov](mailto:arlyeam@hempsteadny.gov)>

**Subject:** Attached Image

## Arlyn Eames

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**From:** Sosinsky, Gary <Gary.Sosinsky@macerich.com>  
**Sent:** Tuesday, May 30, 2023 12:56 PM  
**To:** Arlyn Eames  
**Cc:** Edie Longo; twalsh@nixonpeabody.com; ewood@nixonpeabody.com; efeary@nixonpeabody.com; Rendos, Nancy; Floccari, Joe; Jenkins, Trish  
**Subject:** IDA Approval of Tenant Sublease - Valley Stream Green Acres LLC 2015 Facility - 2034 Green Acres Road South, Valley Stream, NY 11581 - Designer Jewelers  
**Attachments:** Designer Jewelers - Green Acres - Pilot Checklist.docx; Designer Jewelers - Green Acres - Retail Kiosk Lease and Guaranty.docx

Dear Ms. Eames:

In accordance with instructions from Daniel Baker of Certilman Balin Adler & Hyman, LLP, attached please find sent directly to you a copy of the tenant sublease for your approval in accordance with Section 9.3 of the Lease Agreement dated May 1, 2015 for the above referenced location ("Valley Stream Green Acres Lease") related to the following:

- **Size of Premises:** 150 feet
- **Tenant:** Designer Jewelers Inc, a New York corporation, d/b/a Designer Jewelers
- **Address:** Space #0K07C, Green Acres Mall, Valley Stream, NY
- **Estimated employees:** 2
- **Estimated average salaries:** \$25.00 per hour (full time)

Also attached is a chart regarding the corresponding tenant sublease provisions compared to the provisions listed in Exhibit G of the Valley Stream Green Acres Lease as indicated in Nancy Rendos' 7/15/15 memo to you.

Please note, there is no NDA requested in connection with this Lease

Please confirm your approval of the lease and execution of the resolution by the TOHIDA approving the lease by a reply email to me so I may proceed with execution of the tenant sublease as soon as possible. If you have any questions in the meantime, please do not hesitate to contact me at the number below.

Sincerely,

**Gary Sosinsky | AVP, Real Estate Counsel**

.....  
**Macerich**

11411 N Tatum Blvd  
Phoenix, AZ 85028  
p. 602.953.6333

# KIOSK LEASE AGREEMENT

BY AND BETWEEN

**VALLEY STREAM GREEN ACRES LLC**

AS LANDLORD

AND

**DESIGNER JEWELERS INC**

doing business as

**Designer Jewelers**

AS TENANT

FOR PREMISES LOCATED WITHIN

**Green Acres Mall  
Valley Stream, New York**



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### Exhibits

- A Depiction of Center
- B Depiction of Premises
- C Provisions for the Design and Construction of the Premises
- D Certain Defined Terms
- E Center Rider
- F Intentionally Omitted
- G Monthly and Annual Sales Statement Form

# KIOSK LEASE AGREEMENT

THIS KIOSK LEASE AGREEMENT ("Lease") is made as of \_\_\_\_\_ ("Effective Date") by and between **VALLEY STREAM GREEN ACRES LLC**, a Delaware limited liability company ("Landlord"), and **DESIGNER JEWELERS INC.**, a New York corporation ("Tenant").

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

In consideration of the rents to be paid and the covenants to be performed by Tenant, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the following described Premises, upon the following terms and conditions (capitalized terms used herein without definition shall have the meanings ascribed to such terms in Exhibit D):

### 1. FUNDAMENTAL LEASE PROVISIONS

- 1.1. **Center:** Green Acres Mall, located in the Village of Valley Stream, County of Nassau, State of New York Section 2.1
- 1.2. **Premises:** Space #0K07C, together with any Kiosk located at the Premises on the Delivery Date or any Kiosk hereinafter constructed or installed at the Premises in accordance with Exhibit C. Section 2.1
- 1.3. **Floor Area of the Premises:** 150 square feet Section 2.1
- 1.4. **Term:** From the Delivery Date until the Expiration Date, unless sooner terminated pursuant to the terms of this Lease
- 1.5. **Required Opening Date:** 60 days following the Delivery Date. Section 2.1
- 1.6. **Rent Commencement Date:** The earlier to occur of (a) the date on which Tenant first opens the Premises for business or (b) the Required Opening Date.
- 1.7. **Expiration Date:** The day immediately preceding the 5th anniversary of the Rent Commencement Date (however, if the Rent Commencement Date does not occur on the first day of a calendar month, then the Expiration Date shall be the last day of the calendar month in which such anniversary occurs).
- 1.8. **Fixed Minimum Rent:** Section 3.4
- | <u>Dates</u>        | <u>Annual Fixed<br/>Minimum Rent*</u> | <u>Monthly Fixed<br/>Minimum Rent*</u> |
|---------------------|---------------------------------------|--|
| † - Expiration Date | \$ 84,000.00                          | \$ 7,000.00                            |
- †From the Rent Commencement Date  
\*Subject to increases pursuant to Section 3.4
- 1.9. **Percentage Rent Rate:** 10% Section 3.5



1.10. <b>Annual Breakpoint:</b>	<div> <div> <i>Dates</i>  ‡ - Expiration Date </div> <div> <i>Annual Breakpoint**</i>  \$ 650,000.00 </div> </div>	Section 3.5
	‡From the Rent Commencement Date **Subject to increases pursuant to Section 3.5	
1.11. <b>Permitted Use:</b>	The Premises shall be used only for the sale at retail of men's and women's gold, silver and gold plated jewelry and semi-precious stones ("Primary Use"). As ancillary to the Primary Use, Tenant may also offer jewelry repair services; provided, however, all such actual repairs are done off-site of the Premises. The Premises shall be used for no other use or purpose.	Section 7.1
1.12. <b>Trade Name:</b>	Designer Jewelers	Section 7.1
1.13. <b>Center Hours:</b>	Monday through Saturday 10:00 a.m. to 9:00 p.m. and Sunday 11:00 a.m. to 7:00 p.m., or such other hours that the Center is open for business as such hours are designated from time-to-time by Landlord.	
1.14. <b>Radius:</b>	3 miles, measured from the outside boundaries of the Center, as the Center is constituted on the Effective Date.	Section 7.3
1.15. <b>Landlord's Address For Notices:</b>	Valley Stream Green Acres LLC 2034 Green Acres Mall Valley Stream, NY 11581-1545 Attention: Center Manager  <u>With a copy of notices to:</u> Valley Stream Green Acres LLC c/o Macerich P.O. Box 2172 401 Wilshire Boulevard, Suite 700 Santa Monica, California 90407 Attn: Correspondence Routing System/Legal Department	Article 14
1.16. <b>Tenant's Address For Notices:</b>	DESIGNER JEWELERS Inc 17 Arleigh Drive Albertson, NY 11507 Attn: Ivan Kumar	Article 14
1.17. <b>Address For Payment of Rent:</b>	Valley Stream Green Acres LLC Dept # 880508 P.O. Box 29650 Phoenix, AZ 85038-9650	Section 3.1
1.18. <b>Landlord's Broker(s):</b>	None.	Section 21.3

- 1.19. **Tenant's Broker(s):** None. Section 21.3
- 1.20. **Guarantor(s):** Ivan Kumar, an unmarried individual
- 1.21. **Rent Inquiry Address:** Landlord: Section 3.1  
Phone: (866) 811-1095  
Email: GreenAcresAR@macerich.com  
  
Tenant:  
Designer Jewelers Inc  
17 Arleigh Drive  
Albertson, NY 11507  
Email: ivkumars213@gmail.com  
Phone: (516) 907-7091
- 1.22. **Landlord's Sales Reporting Address:** Section 3.5  
Valley Stream Green Acres LLC  
Attention: Sales Associate  
P.O. Box 2188  
Santa Monica, CA 90406  
  
Phone: (866) 811-1095  
Facsimile: (602) 953-8354  
Email: greenacres.salesreporting@macerich.com
- 1.23. **Electric Charge:** \$59.00 per month, subject to annual increases as set forth in Section 6.2.
- 1.24. **Security Deposit:** \$14,000.00

## 2. PREMISES AND CONSTRUCTION OF IMPROVEMENTS

2.1. **Center and Premises.** The Center, as of the Effective Date, is known by the name set forth in Section 1.1. Exhibit A is an approximate depiction of the Center; however, the depiction of the Center on Exhibit A is not a representation, warranty or covenant of any kind by Landlord that all or any part of the Center is, will be, or will continue to be configured as indicated on Exhibit A. Landlord expressly reserves the right at any time to change the name of the Center without any liability to Tenant. The approximate location of the Premises is depicted by crosshatching on Exhibit B.

2.2. **Tenant's Work.** Promptly following (a) the Delivery Date, (b) Landlord's approval of the Approved Plans and (c) Tenant's receipt of all permits and licenses required by governmental authorities, Tenant shall, at its sole cost and expense, cause Tenant's Contractor to commence Tenant's Work in accordance with the Approved Plans, this Lease, Exhibit C and the Tenant Package and to diligently pursue the same to completion so as to open the Premises for business to the public on or before the Required Opening Date.

2.3. **Timely Opening.** Tenant acknowledges the financial success of the Center depends, in part, on Tenant completing Tenant's Work and opening the Premises for business to the public on or before the Required Opening Date ("Timely Opening Requirement") and Landlord's damages arising from Tenant's failure to comply with the Timely Opening Requirement are difficult to ascertain. Therefore, if Tenant fails to

complete Tenant's Work and/or open the Premises for business to the public on or before the Required Opening Date, then in addition to Landlord's other remedies under this Lease, Landlord shall have the right to collect from Tenant, in addition to all Rent, an amount equal to 50% of the Fixed Minimum Rent (prorated on a daily basis) for each such full or partial day that the Timely Opening Requirement is not met.

2.4. **Prior Occupant.** Tenant acknowledges that, as of the Effective Date, the Premises are occupied by another Occupant ("Prior Occupant"). Landlord shall use all reasonable means to obtain possession of the Premises from the Prior Occupant. However, if for any reason Landlord is unable to obtain possession of the Premises from the Prior Occupant and to deliver the Premises to Tenant, this Lease shall not be void or voidable nor shall Landlord or the Landlord Parties be liable to Tenant therefor, monetarily or otherwise. If, after using reasonable means to obtain possession of the Premises from the Prior Occupant, Landlord is unable to obtain possession of the Premises and deliver the Premises to Tenant on or before September 1, 2024, then either Landlord or Tenant may elect to terminate this Lease by written notice to the other (which notice must be given to the other prior to the date Landlord delivers possession of the Premises to Tenant), in which case this Lease shall terminate and Landlord and Tenant shall each be discharged from all further obligations and liability under this Lease (other than obligations and liabilities which have theretofore accrued hereunder).

### 3. RENT

3.1. **Payment of Rent.** Tenant shall pay all Rent to Landlord without notice, demand, deduction or offset, in lawful money of the United States of America, to the Address for Payment of Rent or at such other place as Landlord may from time-to-time designate in writing to Tenant. Tenant shall be obligated to pay Rent when due regardless of whether Tenant receives a statement therefor. Landlord and Tenant may each use the other's Rent Inquiry Address for any inquiries relating to Rent. The acceptance by Landlord of partial payment of any sum due from Tenant shall not be deemed a waiver by Landlord of any of its rights to the full amount due or an admission by Landlord of the accuracy of any Monthly Sales Statement or any Annual Sales Statement submitted by Tenant. Any endorsement or statement on any check or accompanying letter from Tenant shall not be deemed an accord and satisfaction. Any Rent payments received from Tenant or any other person shall be conclusively presumed to have been paid on Tenant's behalf; however, in no event shall the foregoing be construed as requiring Landlord to accept any Rent from any person other than Tenant. The acceptance by Landlord of Rent from Tenant or any person other than Tenant shall not be deemed to be a waiver by Landlord of any provision of this Lease or to be a consent to any Transfer or to be a release of Tenant from any obligation under this Lease. The acceptance by Landlord of delinquent payment shall not constitute a waiver of any default and shall not constitute a waiver of timely payment of the particular payment involved. Landlord shall have the right to apply payments received from Tenant pursuant to this Lease, regardless of Tenant's designation of such payments, in such order and amounts as Landlord, in its sole discretion, may elect.

3.2. **Prorations.** If the Rent Commencement Date begins on a day other than the first day of a month or if the Term expires on a day other than the last day of a month, then Fixed Minimum Rent for such month shall be an amount equal to the product obtained by multiplying the respective annual amounts by a fraction, the numerator of which shall be the number of days in such month and the denominator of which shall be the actual number of days in such calendar year, unless otherwise provided. If the Lease Year is less than 12 full calendar months, then the Annual Breakpoint for such Lease Year shall be an amount equal to the product obtained by multiplying the Annual Breakpoint by a fraction, the numerator of which shall be the number of days in such Lease Year and the denominator of which shall be 365. If the Premises are closed for any full or partial day during Center Hours, then Annual Breakpoint shall be prorated for the Lease Year in which such closure occurs.

3.3. **Late Payments.** If Tenant fails to pay any Rent to Landlord when due, Landlord shall have the right to collect, as a fair estimate of the expenses Landlord would incur by reason of Tenant's late payment of Rent or a dishonored check: (a) interest on the unpaid Rent at the Agreed Rate from the date payment is due until the date payment is made and (b) a monthly service charge equal to 10% of the overdue amount. If payment is made by a check which is dishonored by the drawing bank, Tenant shall pay to

Landlord a service charge equal to \$50.00, and Landlord may require that all future payments of Rent shall be made by electronic money transfers. The imposition of such interest and service charges shall neither constitute a waiver of Tenant's default with respect to such overdue amount nor prevent Landlord from exercising any other right or remedy available to Landlord.

3.4. **Fixed Minimum Rent.** From and after the Rent Commencement Date, Tenant shall pay in equal monthly installments, in advance on the first day of each month (except for the first installment, which shall be paid on the Rent Commencement Date), the Fixed Minimum Rent. Commencing on January 1, 2025 and on each January 1st thereafter (each such date is sometimes referred to as a "Rent Adjustment Date"), the Fixed Minimum Rent then in effect (or which would then have been in effect absent any abatement or reductions in Fixed Minimum Rent, except for permanent reductions in Fixed Minimum Rent due to a permanent Taking) shall be increased by 3%.

3.4.1. **Application of Fixed Minimum Rent.** Landlord shall have the absolute right to apply and/or allocate any portion, or no portion, of Fixed Minimum Rent toward costs associated with (a) the operation, management, administration, maintenance, equipment, repair and replacement of the Common Area, (b) real estate taxes, (c) insurance and (d) any other so called fringe charges.

3.5. **Percentage Rent**

3.5.1. **Percentage Rent.** Tenant shall owe Percentage Rent to Landlord for each Lease Year commencing upon the calendar month in which Tenant's Gross Sales first exceed the Annual Breakpoint for each Lease Year. Percentage Rent shall be payable to Landlord concurrently with Tenant's submittal of the Monthly Sales Statement for each calendar month thereafter in an amount equal to the product obtained by multiplying the Percentage Rent Rate by the amount of Gross Sales during the preceding calendar month that is in excess of the Annual Breakpoint. If Fixed Minimum Rent during any Lease Year is reduced pursuant to a provision in this Lease or by express written agreement between Landlord and Tenant, then the Annual Breakpoint shall likewise be reduced by a percentage equal to the percentage decrease in the Fixed Minimum Rent payable for the period during which the change in Fixed Minimum Rent is in effect. On each Rent Adjustment Date, the Annual Breakpoint shall be adjusted by a percentage equal to the increase in Annual Fixed Minimum Rent on such Rent Adjustment Date.

3.5.2. **Sales Statements.** Within 10 days after the end of each calendar month, Tenant shall deliver to Landlord at Landlord's Sales Reporting Address a Monthly Sales Statement specifying the Gross Sales made for the preceding calendar month. Within 20 days after the end of each Lease Year, Tenant shall deliver to Landlord at Landlord's Sales Reporting Address an Annual Sales Statement specifying the Gross Sales made for the preceding Lease Year. If Tenant should fail to timely provide any Monthly Sales Statement or any Annual Sales Statement in the manner and form required by this Lease, then, without limitation as to any and all rights and remedies available to Landlord in this Lease, at law and in equity, Landlord shall also have the right to invoice Tenant the sum of \$250.00 per incident per month to cover the additional time and expense involved to obtain each such Monthly Sales Statement or Annual Sales Statement.

3.6. **Intentionally Omitted.**

3.7. **Intentionally Omitted.**

3.8. **Personal Property and Other Taxes.** Tenant shall pay directly to Landlord or to the appropriate taxing authority, before delinquency, any and all taxes (including any excise, transaction, sales or privilege tax imposed upon Landlord on account of, attributed to, or measured by Rent), assessments and public charges levied, assessed or imposed by governmental authorities upon Tenant's business, upon Tenant's sales, upon Rent, upon Tenant's leasehold interest, and upon all Personal Property and Improvements, as well as upon Tenant's right to occupy, and do business at, the Premises.

3.9. **Security Deposit.** Concurrently with Tenant's execution of this Lease and delivery of this Lease to Landlord (or at some future point in time as may hereinafter be provided), Tenant shall deposit

with Landlord the Security Deposit, which sum shall be held by Landlord as security for the faithful performance by Tenant of all of the terms, covenants and conditions of this Lease. The Security Deposit is neither an advance Rent deposit nor a measure of Landlord's damages in the event of Tenant's default. The Security Deposit may be used by Landlord to remedy any default by Tenant, to repair damage caused by Tenant to any part of the Center, and to undertake on Tenant's behalf any Surrender Obligations which Tenant has failed to complete as of the date the Premises are surrendered to Landlord, as well as to reimburse Landlord for any amount which Landlord may expend by reason of Tenant's default or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default. If any portion of the Security Deposit is so used or applied, Tenant shall, within 10 days after written demand, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to the full amount set forth at Section 1.23. Landlord shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on the Security Deposit. Tenant may not elect to use any portion of the Security Deposit as a Rent payment although Landlord may elect to do so in the event Tenant is in default hereunder or is insolvent. Tenant shall not encumber or assign its interest in the Security Deposit. If Tenant fully and faithfully performs every provision of this Lease to be performed by it, the Security Deposit (less any amount which has been applied in the manner permitted by this Section 3.9), shall be returned to Tenant within 30 days after the Refund Date.

#### 4. GROSS SALES

4.1. **Definition of Gross Sales.** "Gross Sales" means the aggregate selling price of all goods, wares, merchandise, tickets, food, beverages and services sold, leased, licensed or delivered from any part of the Premises by Tenant and Tenant's Occupants and shall include, but not be limited to, (a) sales or charges for cash or credit regardless of collections, (b) sales by vending devices, (c) proceeds from audio games and video games, (d) commissions and fees received for the sale of lottery tickets, money orders, check cashing, phone and gift card sales and any other similar income, (e) rent income, (f) orders received or filled at the Premises (including, without limitation, orders made by use of the mail, Internet, wire and telephone), (g) all deposits not refunded to purchasers, (h) fees, commissions and catalogue sales, (i) sales from solicitations, regardless of where conducted, by personnel operating from, or reporting to any person at, the Premises and (j) all service, finance and interest charges on any type of account or note receivable to the extent the principal amount would constitute Gross Sales. Gross Sales shall be deemed to be the average daily Gross Sales for the same month in the calendar year immediately preceding (or if no such Gross Sales are available for such month in the immediately preceding calendar year then the average daily Gross Sales for the 3 months immediately preceding the closure) for each day of nonoperation by Tenant.

4.2. **Tenant's Records.** All business upon the Premises shall be operated so that evidence of payment shall be issued with each sale, transaction or other event resulting in Gross Sales ("Tenant's Receipts"). For the purpose of permitting verification by Landlord of any amounts due as Percentage Rent, Tenant shall keep and preserve at all times during the period required, at the Premises all books and records reflecting Tenant's operations solely at the Premises ("Tenant's Records"). Tenant's Records shall (a) disclose in detail all information reasonably required to permit Landlord to verify Tenant's Gross Sales, (b) conform to and be in accordance with generally accepted accounting principles consistently applied with respect to all operations of the business conducted from the Premises, (c) be maintained in the English language and (d) be kept and preserved for at least 36 months following the end of the Lease Year for which the same pertain (or such longer period, if and while the same may need to be consulted in reference to any dispute or audit, until such dispute or audit has been finally resolved).

#### 5. INDEMNIFICATION AND INSURANCE

##### 5.1. Indemnification

5.1.1. **Indemnification by Tenant.** Tenant hereby agrees to indemnify, defend and hold Landlord and the Landlord Parties harmless from and against any and all Claims for property damage, personal injury or any other matter arising, claimed, charged or incurred against or by Landlord or any of the Landlord Parties in connection with or relating to any event, condition, matter or thing which (a) occurs in, on, under or about the Premises from any cause except to the extent due to the gross

negligence or willful misconduct of Landlord or any of the Landlord Parties, (b) occurs in, on, under or about the remainder of the Center due to the gross negligence or willful misconduct of Tenant or any of the Tenant Parties or (c) is caused by or relates to any default, breach, violation or non-performance by Tenant of any provision of this Lease.

5.1.2. **Indemnification by Landlord.** Landlord hereby agrees to indemnify, defend and hold Tenant harmless from and against any and all Claims for property damage, personal injury or any other matter arising, claimed, charged or incurred against or by Tenant in connection with or relating to any event, condition, matter or thing which (a) occurs in, on, under or about the Common Area from any cause except due to the gross negligence or willful misconduct of Tenant or any of the Tenant Parties, (b) occurs in, on, under or about the Premises due to the gross negligence or willful misconduct of Landlord or any of the Landlord Parties or (c) is caused by or relates to any default, breach, violation or non-performance by Landlord of any provision of this Lease.

5.1.3. **Release and Waiver of Subrogation.** If any part of the Premises or the Center is damaged by fire or other cause for which a party is required to carry insurance pursuant to this Lease ("Insuring Party"), the other party shall not be liable to the Insuring Party (and the Insuring Party hereby waives all claims on behalf of itself and shall cause its insurance company to waive all such claims) for any loss, cost or expense arising out of or in connection with such damage. Notwithstanding anything to the contrary contained herein, in no event shall Landlord be liable to Tenant or any of the Tenant Parties for any damages or injury arising out of or in connection with (a) any act or omission of any Occupant or for losses arising out of or in connection with theft or burglary or other acts or omissions of third parties or (b) fire, steam, electricity, gas, water or rain which may leak or flow from or into any part of the Premises or the Center, or from the breakage, leakage, obstruction or other defects of the pipes, sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures or (c) injuries to Tenant's employees in the Center.

5.2. **Tenant's Insurance.** Tenant shall procure and maintain, at its sole cost and expense, the following policies of insurance:

5.2.1. **Liability.** Commercial general liability insurance on an occurrence basis (including personal and advertising injury) with coverage limits of not less than \$3,000,000.00 per occurrence, and \$5,000,000.00 general aggregate per location, specifically including liability insurance covering the consumption of alcoholic beverages by customers of Tenant, if the sale of alcoholic beverages is permitted in the Premises. Tenant's general liability insurance shall (a) not include an abuse or molestation exclusion, and (b) contain cross-liability endorsements or a separation of insureds clause. Such insurance may be satisfied by a combination of primary and excess limits.

5.2.2. **Property.** Property insurance covering any peril generally included in the classification ISO Causes of Loss - Special Form covering all (a) Personal Property, and (b) Improvements in an amount not less than 100% of their full replacement cost without co-insurance or margin clauses. Such insurance shall include coverage for all plate glass on the Premises. If the Center is located in the Federal Emergency Management Area flood zone A or V, Tenant shall also procure and maintain, at its sole cost and expense, flood insurance with a deductible not to exceed \$10,000.00, including purchase of the National Flood Insurance Policy, if applicable. If the Center is located in the New Madrid seismic areas or the states of California, Oregon or Washington, Tenant shall also procure and maintain, at its sole cost and expense, earthquake insurance with a deductible not to exceed 5% of the total insured value. Any policy proceeds shall be used for the repair or replacement of the property damaged or destroyed, unless this Lease is terminated under the provisions of Article 18. The insurance required pursuant to this Section 5.2.2 shall also include business interruption or rental loss insurance sufficient to cover, for a period of not less than 12 full calendar months, all Rent and other payment obligations of Tenant under this Lease which would be borne by or due from Tenant under this Lease if the Premises and Tenant's business was fully open and operating.

5.2.3. **Other Insurance.** Tenant [or Tenant's contractor as to the insurance required in

subsection (c) below] shall maintain the following insurance: (a) workers' compensation insurance and employers' liability insurance on an "occurrence" basis but, in either case, with a limit of not less than the greater of the amount required in the state in which the Center is located or \$1,000,000.00 each accident, \$1,000,000.00 each employee by disease and \$1,000,000.00 policy aggregate by disease, for the benefit of Tenant's employees, (b) boiler and machinery insurance on all Utility Facilities exclusively serving the Premises, (c) builder's risk insurance in an amount equal to 100% of the value of any construction and installation of Improvements to the Premises, together with such other insurance as Landlord may reasonably require and (d) business automobile liability insurance covering vehicles of Tenant or Tenant's employees used in connection with the operation of its business from the Premises, with limits of not less than \$1,000,000.00 per occurrence combined single limit, insuring for bodily injury, death and property damage.

5.2.4. **Policy Requirements.** All policies of insurance provided for in this Section 5.2 shall (a) be issued by insurance companies that have a general policyholder's rating of not less than "A" and a financial rating of not less than Class VIII as rated in the most current available "Best's Insurance Reports", and that have been admitted or qualified to do business in the state where the Center is located, (b) name Landlord, Landlord's Manager, all Mortgagees and such other individuals or entities as Landlord may from time-to-time designate, as "additional insureds", and (c) not contain a deductible, nor be subject to a self-insured retention, in an amount greater than \$5,000.00, except as otherwise expressly set forth in this Lease. Tenant shall provide to Landlord, at least 10 days prior to the Delivery Date and thereafter 30 days prior to the expiration of any such policies, certificates of insurance to evidence insurance procured by Tenant as required hereunder. All commercial general liability insurance, property damage or other casualty policies shall be written as primary policies, not contributory with or secondary to coverage that Landlord may carry. If Tenant fails to obtain and maintain any insurance required under this Lease, or fails to timely provide Landlord with certificates of insurance, Landlord shall have the right (but not the obligation) to procure such insurance and Tenant shall pay to Landlord, promptly on demand, the costs and expenses thereof as a Reimbursed Cost. Tenant shall deliver (or cause its insurance carrier to deliver) to Landlord a copy of any insurance policy maintained by Tenant hereunder in connection with any applicable Claim within 20 days after Landlord's written request therefor. The amount or availability of Tenant's insurance shall not limit Tenant's liability or relieve Tenant of any obligation hereunder.

## 6. UTILITIES

6.1. **Utilities.** Tenant shall be solely responsible for obtaining, and shall promptly pay all charges for use and consumption of, all Utilities furnished to the Premises. Landlord may (at its election) supply some or all of the Utilities to the Premises, and, so long as Landlord continues to provide such Utilities to the Premises, Tenant agrees to pay Landlord on the first day of each month, Tenant's share of such Utilities (based on Landlord's engineer's calculations or such other reasonable measuring methodologies). Landlord may also charge Tenant: (a) an Administrative Charge on any Utilities Tenant receives from Landlord, and (b) a pro rata share of the costs and expenses of operating, maintaining, repairing, installing and servicing the Utility Facilities at the Center (including any depreciation, reserves and interest costs). Tenant shall promptly provide Landlord, upon Landlord's written request therefor, such details as Landlord or its engineer may reasonably require to calculate amounts which are payable by Tenant pursuant to this Article 6. Landlord shall have the right to designate alternate third party provider(s) to provide any Utilities to the Premises. Tenant shall be required to use the facilities installed by Landlord at the Center to transmit voice, data and any other utilities to the Premises and access to such facilities must be coordinated by Tenant through Landlord's designated system administrator at Tenant's cost. Landlord shall not be in default and neither Landlord nor the Landlord Parties shall be liable for any damages directly or indirectly resulting from an interruption in any of the Utilities, the quality or quantity of the Utilities, the unavailability of any of the Utilities, or from cooperating with the energy conservation efforts of governmental agencies or utility suppliers and none of the preceding shall (a) constitute an eviction or disturbance of Tenant's use and possession of the Premises, (b) constitute a termination of this Lease, (c) entitle Tenant to an abatement of any Rent or (d) relieve Tenant from performing any of its obligations under this Lease.

6.2. **Electric Charge.** Notwithstanding anything in Article 6 to the contrary, from and after the Rent Commencement Date, subject to adjustment as provided for herein, Tenant shall pay, in equal monthly installments, in advance on the first day of each month, the Electric Charge as stated in Section 1.23 above. The Electric Charge is for electricity provided to the Premises by Landlord. On the first anniversary of the Rent Commencement Date and on each anniversary thereafter, Tenant's Electric Charge shall be increased by 3%. Tenant shall use best efforts not to operate the Utilities in a wasteful or excessive manner. If Landlord determines in good faith that Tenant is not in compliance with the foregoing sentence and Tenant fails, within 30 days following delivery of written notice by Landlord to Tenant identifying the wasteful or excess usage, to correct any such compliance failure, Landlord shall have the right to charge Tenant for Tenant's utility usage from the 31<sup>st</sup> day following such written notice and continuing through the remainder of the Term. Tenant shall be responsible for payment of any Utilities not expressly set forth above.

## 7. **USE AND OPERATION**

7.1. **Days and Hours of Operation.** Tenant shall, continuously during only the Center Hours, (i) operate in the entire Premises only for the Permitted Use and only under the Trade Name and for no other use or purpose and under no other trade name, (ii) maintain an adequate sales force so as to maximize Gross Sales, (iii) keep in stock a full line of merchandise, and (iv) keep display windows, exterior signs and exterior advertising adequately illuminated and in first-class condition (collectively, "Operating Covenant"). Tenant acknowledges that its failure to comply with the Operating Covenant will cause Landlord to suffer damages which will be difficult to ascertain. Therefore, if Tenant fails to comply with the Operating Covenant, then in addition to Landlord's other remedies under this Lease, Landlord shall have the right to collect from Tenant, in addition to all Rent, an amount equal to 50% of the Fixed Minimum Rent (prorated on a daily basis) for each such full or partial day Tenant fails to comply with the Operating Covenant.

7.2. **Prohibited and Restricted Uses.** Tenant shall do none of the following: (a) permit anything to be done in or about the Premises nor bring or keep anything therein which will in any way increase the existing rate of, or affect any, fire or other insurance upon the Premises or the Center or cause a cancellation of any insurance policy covering the Premises or the Center or any part thereof or any of its contents; (b) permit anything to be done in or about the Premises or bring or keep anything therein that may cause any deleterious or harmful substance including, without limitation, mold or fungus, to exist in, on, under or about the Premises or elsewhere in the Center, (c) obstruct or interfere with the rights of Occupants or injure or annoy them; (d) use any loudspeakers, televisions, speakers or other devices of similar nature in such manner so as to cause a disturbance; (e) emit any obnoxious noise, odors, fumes or smoke; (f) use the Premises for any improper, unethical, immoral, unlawful, pornographic or other similarly objectionable or offensive purpose; (g) conduct or permit in the Premises any fire, bankruptcy, auction, "closeout", "going out of business" or similar sale; (h) use any part of the Center outside of the Premises for the sale, display or storage of any merchandise or Personal Property or for the solicitation of customers or for any other business, occupation or undertaking, including, without limitation, hawking, calling out or otherwise verbally or by motions offering or distributing samples of Tenant's merchandise to any person in the Common Area; (i) install or use upon or outside the Premises or any coin- or token-operated vending machine or other coin- or token-operated device for the sale of any goods, wares, merchandise, food, beverages and/or services; (j) install or use an automated teller machine or other cash dispensing machines; (k) use any portion of the Premises as living quarters, sleeping quarters or for lodging purposes; (l) keep or place any obstruction in the Common Area; (m) store or stock any merchandise which Tenant is not permitted to sell within the Premises; (n) install or operate any device, equipment or facility for transmitting, receiving, relaying or amplifying communications signals used or operated as a part of a telecommunications network or global positioning system, or otherwise emitting or receiving signals, frequencies, video, data or voice communications, including, without limitation, any dish, panel, antenna, satellite or cellular communications equipment, amplifiers, microcells, picocells or other similar devices or equipment which transmit or receive signals into or from the Common Area more than an 8' radius from the Premises or which otherwise interfere with the operation of any other transmission or receiving device at the Center; (o) operate any sales reporting, credit verification or such other similar electronic devices through the use of Landlord's public wireless fidelity (Wi-Fi) network; and (p) display, sell or promote cigarettes, electronic cigarettes, MOD's,



atomizers, any other supplies, accessories or devices used in connection with cigarettes, electronic cigarettes, vaporizers, atomizers, herbal vaporizers, e-liquids, cannabis [including without limitation the cannabis plant and any and all parts, seeds, derivatives, cannabinoids (such as CBD), and extracts thereof] or any products constituting a technological evolution thereof for vaping. The Premises shall be kept in a clean condition, and all health and police regulations shall, in all respects and at all times, be fully complied with by Tenant. Tenant shall not commit or allow to be committed any waste upon the Premises.

7.3. **Radius.** Neither Tenant nor any person or entity in which Tenant has a financial interest or who or which has a financial interest in Tenant (other than stock of Tenant if such stock is publicly traded) shall, at any time after the Effective Date, directly or indirectly (other than stock held in a public company) own, operate or otherwise become financially interested in any business similar to or competing with the business operating in the Premises ("Competing Interest") within the Radius. If Tenant violates the provisions of this Section 7.3, then Landlord, in its sole discretion and without limiting Landlord's remedies under this Lease, at law or in equity, may (a) declare such violation to be an incurable default under this Lease and terminate this Lease and/or (b) include the gross sales made from any such business(es) within the Radius in the Gross Sales under this Lease for so long as there continues to be a violation of this Section 7.3. If Landlord elects to include the gross sales from such other business in the Gross Sales pursuant to (b) preceding, then all gross sales and Tenant's records from such business shall be subject to the provisions of Article 3 and Landlord's audit rights under Section 21.1.

## 8. REPAIRS, MAINTENANCE, IMPROVEMENTS AND SIGNS

8.1. **Landlord's Obligations.** Landlord shall be under no obligation to maintain, repair or replace any portion of the Premises.

8.2. **Tenant's Repair and Maintenance Obligations.** Tenant shall, at its sole cost and expense, maintain, keep and repair the Premises in good order, condition and repair. Such obligations of Tenant shall include, without limitation, the maintenance, repair and replacement of interior surfaces of exterior and demising walls, exterior doors and entrances, locks and closing devices, all plate glass, frames, moldings and trim of all doors and windows, all partitions, door surfaces, floor covering, fixtures, equipment and appurtenances thereof, lighting, plumbing fixtures (including any grease traps, grease lines and piping exclusively serving the Premises), toilet facilities and fixtures, windows, window sashes, showcases, storefronts, security grilles and similar enclosures, all of Tenant's signs (including the Storefront Sign) and any HVAC exclusively serving the Premises (provided that maintenance work regarding parts of the HVAC or plumbing systems which protrude outside of the Premises shall be completed by a contractor selected by Landlord, as a Reimbursed Cost). Tenant shall promptly, at its sole cost and expense, comply, and cause the Premises to comply, with all Governmental Regulations affecting the Premises and Tenant's activities in the Center. Tenant shall maintain the area within ten feet (10') of the boundaries of the Premises in a clean condition, free of debris.

8.3. **Improvements.** Tenant shall make no Improvements without Landlord's express, prior written consent in each instance. All Improvements approved by Landlord shall be performed by Tenant (at its sole cost and expense) in accordance with Exhibit C and in such a manner as to not impede access to the premises of any other Occupant or of any part of the Common Area, and in a good and workman-like manner, with diligence. Tenant shall give Landlord at least 10 business days' prior written notice of the commencement of any work at the Premises. Tenant shall keep the Premises, the Building and the Center free from any liens and other claims arising out of work performed, materials furnished, or obligations incurred by or on behalf of Tenant. If, as a result of any work performed or materials furnished or obligations incurred for the benefit of the Premises, any claim of lien is filed against the Premises or any part of the Center or any similar action affecting title to such property is commenced, Tenant shall immediately cause such lien to be released of record by payment or by recording of a proper statutory discharge of lien bond. If Tenant fails to cause such lien to be released within 20 days following the imposition of any lien or the filing of a lawsuit seeking foreclosure of such lien, Landlord shall have, in addition to all other remedies provided herein and at law, the right (but not the obligation) to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien, as a Reimbursed Cost.

8.4. **Signs.** Tenant shall, at its sole cost and expense, obtain all necessary licenses and permits for, and purchase, install, operate, repair and replace, as necessary, all of Tenant's signs (including the Storefront Sign) and such signs shall (a) comply with all Governmental Regulations and the Rules and shall have received the prior written approval of Landlord and, if required, of governmental authorities, (b) comply with the provisions of this Lease (including the Tenant Package) and (c) be maintained in working, first-class condition.

## 9. SURRENDER OF PREMISES

9.1. **Surrender.** Prior to the Expiration Date or date of earlier termination of this Lease, Tenant shall surrender to Landlord the Premises, broom-clean and in good condition and perform the following (collectively, "Surrender Obligations") at its sole cost and expense: (a) remove all Personal Property and, at Landlord's election, remove the Kiosk (including any floor fasteners), from the Premises and (b) repair all damage caused by or in connection with Tenant's performance of the Surrender Obligations (including without limitation thereto, repairing the floor and patching and painting the walls if damaged beyond ordinary wear and tear). If Tenant's performance of the Surrender Obligations would damage or otherwise affect the Building structure, Tenant shall give Landlord prior written notice thereof and Landlord may elect to perform selected Surrender Obligations as a Reimbursed Cost. All Improvements (including any Attached Fixtures) shall become the property of Landlord upon the Expiration Date or date of earlier termination of this Lease.

9.2. **Personal Property.** Landlord may dispose of any Personal Property remaining on the Premises after the Expiration Date or date of earlier termination of this Lease in accordance with applicable statutes relating to the disposition of abandoned property. If no such statutes exist, Landlord may retain, store or dispose of such Personal Property and title to any such Personal Property retained by Landlord shall vest in Landlord. Tenant waives all claims against Landlord for any damage or loss to Tenant arising out of Landlord's retention, storage or disposition of Personal Property and shall be liable to Landlord for Landlord's costs incurred pursuant to this Section 9.2 as a Reimbursed Cost.

9.3. **Holding Over.** If Tenant holds over after the Expiration Date or date of earlier termination of this Lease without the express written approval by Landlord, (a) such tenancy shall be at sufferance only and not a renewal of this Lease or an extension of the Term, (b) monthly installments of Fixed Minimum Rent, Percentage Rent and Additional Rent shall be payable in an amount equal to 200% times the Fixed Minimum Rent, Percentage Rent and Additional Rent in effect as of the last full calendar month of the Term (not taking into consideration any Rent abatement to which Tenant might have been entitled for such month), and each shall be due and payable at the times specified therefor in this Lease and (c) such tenancy shall be subject to every other term, covenant and agreement contained herein other than any provisions for rent concessions, Landlord's Work, or optional rights of Tenant requiring Tenant to exercise the same by written notice (such as any options to extend the Term). Nothing contained in this Section 9.3 shall be construed as consent by Landlord to any holding over by Tenant (or limit any of Landlord's rights and remedies incident to a holding over under this Lease, at law or in equity), and nothing in this Section 9.3 shall affect Landlord's right to require Tenant to perform all obligations under this Article 9 and surrender possession of the Premises to Landlord as provided in this Lease upon the Expiration Date or date of earlier termination of this Lease or at any time subsequent thereto as Landlord shall specify.

9.4. **No Merger on Surrender of Lease.** The voluntary or other surrender of this Lease by Tenant, or a mutual termination thereof, shall not work as a merger. Such surrender or termination shall, at the option of Landlord, terminate all or any existing subleases or subtenancies, or may, at the option of Landlord, operate as an assignment to it of any or all such subleases or subtenancies. The delivery of keys to the Premises to Landlord or its agent and/or the taking of physical possession of the Premises by Landlord shall not constitute a surrender or termination of this Lease absent Landlord's written agreement that this Lease has been so surrendered or terminated.

## 10. ASSIGNMENT AND SUBLETTING

10.1. **Prohibited Transactions.** Tenant is prohibited from (a) Assigning this Lease or Subletting the Premises to a governmental agency or instrumentality thereof and/or (b) mortgaging, pledging or

encumbering this Lease or Tenant's interest in the Premises to any entity and/or (c) making any Involuntary Assignment. Tenant shall not effect a Transfer, by operation of law or otherwise, without the prior written consent of Landlord in each instance, which consent shall not be unreasonably withheld (subject to the provisions of this Article 10). No Transfer shall relieve Tenant of any obligation to be performed by Tenant under this Lease.

10.2. **Tenant's Application.** If Tenant desires to effect a Transfer, Tenant shall submit in writing to Landlord at least 45 days prior to the proposed effective date of the Transfer a notice of intent to Transfer ("Request to Transfer"). Each Request to Transfer must contain, or be accompanied with, pertinent and reasonable information concerning the proposed Transfer and the proposed Transferee as Landlord shall require to evaluate the Request to Transfer.

10.3. **Standards for Approval and Disapproval.** In determining whether to grant or withhold its consent to a proposed Transfer, Landlord may consider any reasonable factor. Without limiting the conditions that may be construed as a reasonable factor, it is deemed reasonable that Tenant demonstrate to Landlord's reasonable satisfaction each of the following: (a) the proposed Transferee has sufficient financial worth to fully and timely discharge all of the then remaining obligations of Tenant under this Lease, (b) the proposed Transferee is of sound business reputation, (c) the use of the Premises by the proposed Transferee will be the Permitted Use, (d) the proposed Transferee is likely to maintain the same levels and increases in Percentage Rent as Tenant is anticipated to generate during the remaining Term of this Lease, (e) the proposed Transferee has sufficient retail experience to successfully undertake its business at the Premises, (f) the proposed Transferee does not occupy premises in the Center, (g) the proposed Transferee has not delivered a letter of intent to Landlord or Landlord's agent to lease space in the Center and (h) the proposed Transferee is not actively negotiating with Landlord or Landlord's agent to lease space in the Center. Furthermore, if Tenant is then in default of any obligation of Tenant under this Lease, it shall be reasonable for Landlord to elect, in its sole discretion, to deny its consent to such proposed Transfer so long as such default exists. Notwithstanding anything to the contrary contained in this Lease, if Tenant or any proposed Transferee claims that Landlord has unreasonably withheld or delayed its consent under this Article 10 or otherwise has breached or acted unreasonably under this Article 10, their sole remedies shall be a declaratory judgment and an injunction for the relief sought without any monetary damages, and Tenant hereby waives all other remedies, including, without limitation any right at law or in equity to terminate this Lease, on its own behalf and, to the extent permitted under all applicable laws, on behalf of the proposed Transferee.

10.4. **Landlord's Notification to Tenant.** Within 30 days after Landlord's receipt of the Request to Transfer and all of the information required pursuant to Section 10.2, Landlord shall notify Tenant in writing that Landlord has elected to (a) terminate this Lease by notice to Tenant ("Notice of Transfer Termination"), or (b) consent to such proposed Transfer or (c) withhold consent to such proposed Transfer. If Landlord delivers the Notice of Transfer Termination to Tenant, then (i) this Lease shall terminate upon the date set forth therein and (ii) provided Tenant has performed all Surrender Obligations, Tenant shall be released from all further obligations accruing under this Lease from and after such date. Landlord may lease the Premises, or any portion thereof, to the prospective Transferee without liability to Tenant.

10.5. **Review Fee.** Simultaneously with the delivery to Landlord of the Request to Transfer Tenant shall pay to Landlord a fee in the amount of \$1,000.00 for Landlord's review of each such transaction.

## 11. TRANSFER OF LANDLORD'S INTEREST

Landlord shall have the right to sell or transfer its ownership of all or any part of the Center to one or more third parties. If Landlord sells or transfers its interest in the Premises (other than a transfer for security purposes), (a) Landlord shall be released from all obligations and liabilities accruing thereafter under this Lease and Landlord's successor shall be deemed to have assumed Landlord's obligations thereafter accruing under this Lease and (b) Tenant agrees to attorn to the purchaser or assignee.

## 12. COMMON AREA

Tenant and the Tenant Parties shall have the non-exclusive right in common with Landlord and all others to whom Landlord has or shall give the same or similar rights, to use the Common Area for its intended purposes subject to (a) the right of Landlord, Occupants and their respective invitees, customers, agents, employees and independent contractors to use the Common Area, (b) any Superior Agreements, and (c) each provision of this Lease. Landlord shall, or shall cause others to, operate (including making available for use or closing portions thereof), repair, equip and maintain the Common Area in a manner deemed by Landlord in its business judgment to be reasonable and appropriate. The Common Area shall be subject to the exclusive control and management of Landlord. Landlord may, from time-to-time, impose parking charges at the Center.

### **13. LANDLORD'S RESERVATION OF RIGHTS**

**13.1. Reservation of Rights and Changes to the Center.** Landlord reserves the right, and shall have the right and privilege, from time-to-time, as Landlord deems desirable, to: (a) expand, reduce, remove, demolish, change, renovate, rearrange, add or construct any existing or new improvements at the Center including, without limitation, the location, relocation, enlargement, reduction, addition and/or elimination of driveways, malls, entrances and exits, automobile parking spaces, employee and customer parking areas, buildings and other structures, the direction and flow of traffic, establishment of protected areas, landscaped areas and any and all other facilities of the Common Area, the right at any time to locate on the Common Area permanent and/or temporary RMUs, and/or other building(s) and/or other improvements of any type and the right at any time to enclose or un-enclose any portions of the Common Area and/or Mall, and/or convert Common Area to leasable space and to convert leasable space to Common Area, (b) expand, reduce or otherwise change the size, configuration or boundaries of the Center and (c) to lease space in the Center to any person or entity and for any purpose Landlord shall deem appropriate, including retail, office, non-retail, residential, mixed use and commercial purposes. Landlord shall have complete and exclusive control of the design, structure, construction, materials, colors, architectural elements and aesthetics of all improvements and Common Area at the Center, as well as all uses and activities undertaken by Landlord and other Occupants in connection therewith. This Lease does not grant any rights to light or air over or about the Center. Landlord reserves exclusively to itself the use: (i) roofs and exterior walls, (ii) telephone, electrical, utility, communication and janitorial closets, (iii) equipment rooms, building risers or similar areas used by Landlord for the provision of services, (iv) portions of the Premises for the installation, repair, maintenance and replacement of machinery, pipes, conduits, utility lines and the like serving other Occupants and/or the Center, and (v) the areas beneath, adjacent to and above the Premises (including the plenum within the Premises). Notwithstanding any contrary provision contained in this Lease, services and facilities may be discontinued, and access to the Premises and the Center restricted, in whole or in part, during such times as the Center is not open for business, and any other times as are necessary for temporary purposes such as repairs, alterations, strikes and other reasonable purposes.

**13.2. Entry by Landlord.** Landlord and its representatives (including contractors) shall have the right at all reasonable times upon reasonable prior notice to Tenant (and at all times without notice in the event of an emergency), to enter the Premises (a) for any purpose permitted by law, (b) to ascertain if the Premises are in good order, condition and repair, including to inspect the Premises to insure that the Premises are clean and free from vermin and pests, (c) to post notices permitted or required by law or notices of non-responsibility or other notices which Landlord may deem necessary for the protection of Landlord, the Premises, the Center and any other party having any interest therein, against mechanics' and materialmen's liens, (d) to show the Premises to prospective purchasers, mortgagees or ground or underlying lessors (each of which may then also enter the Premises), (e) to perform any obligation of Landlord under this Lease, (f) to take possession of the Premises due to an event of default or (g) to perform environmental assessments. During the 12 months prior to the Expiration Date, Landlord may show the Premises to brokers, consultants, prospective tenants and their representatives. Landlord shall use good faith efforts during any entry upon the Premises pursuant to this Section 13.2 not to unreasonably interfere with Tenant's conduct of business. No exercise by Landlord of any rights in this Section 13.2 shall entitle Tenant to any damage for any injury or inconvenience occasioned thereby nor to any abatement of Rent.

**13.3. Relocation.** Landlord may, by written notice delivered to Tenant ("Relocation Notice"),

require that Tenant surrender possession of the Premises, provided and on condition that (a) Landlord and Tenant shall, for a period of 30 days following delivery of the Relocation Notice, negotiate in good faith to enter into a lease for substitute premises at the Center on substantially the same terms and conditions as those contained in this Lease ("Substitute Lease") to the extent applicable, for the balance of the remaining Term, or (b) if, despite such good faith negotiations, the parties are unable to enter into the Substitute Lease on or before the 30th day following the delivery of the Relocation Notice, Landlord may elect, by written notice delivered to Tenant, to terminate this Lease. If Landlord terminates this Lease, the termination shall be effective on the date specified in Landlord's written notice (which shall be at least 15 days after the sending of such notice). The relocation of the Premises in accordance with (a) herein shall be Tenant's sole recourse and right in the event Tenant is required to surrender possession of the Premises as provided in this Section 13.3.

13.4. **Non-compliance.** If Landlord determines that the location of the Kiosk at the Premises violates Governmental Regulations or any Superior Agreements or any other agreement affecting the Center, Landlord shall have the right, in its sole and absolute discretion, to either (a) terminate this Lease upon no less than 30 days' notice to Tenant or (b) relocate the Premises to other space in the Center at Landlord's cost and expense. The provisions of this Section are in addition to, and independent of, the provisions set forth at Section 13.3. Tenant shall vacate and surrender the Premises and, if Tenant is relocated hereunder, shall occupy the new location promptly (and, in any event, not later than 15 days) after Landlord has delivered the new location to Tenant. Tenant shall not be entitled to any compensation for any inconvenience or interference with Tenant's business or to any abatement or reduction of Rent in connection with any relocation under this Section.

#### 14. NOTICES

Any notice, demand or communication required or permitted to be given by one party to the other shall be in writing and addressed to Landlord's Address for Notices or Tenant's Address for Notices, as the case may be, or to such other address(es) and/or to such other parties as one party may from time-to-time reasonably designate in writing to the other party, and shall be (a) personally served, (b) deposited in the United States mail, duly registered or certified with postage fully prepaid thereon or (c) delivered by an overnight courier service that confirms delivery. Notice shall be effective upon receipt or refusal to receive, in the event of personal service; or upon receipt or refusal to receive (but in no event more than 3 days after the date first mailed in the manner herein required), in the event of depositing notice in the United States mails; or upon receipt or refusal to receive, in the event of delivery by overnight courier service. Any notice required or permitted by Article 15 shall be in lieu of, and not in addition to, any notice required under any Governmental Regulations providing for notice and any cure period. Landlord may (at its discretion) serve a statutory notice to quit, a statutory notice to pay rent or quit, or a statutory notice of default, to effect the giving of any notice required by Article 15. No notice and opportunity to cure is conferred upon Tenant with regard to any default except as expressly set forth in Article 15.

#### 15. DEFAULTS BY TENANT

The occurrence of any one or more of the following events shall constitute a default by Tenant under this Lease:

15.1. **Monetary.** The failure by Tenant to make any payment of Rent or of any other sum required to be made by Tenant when due (however Tenant shall have up to 3 days after written notice from Landlord to cure such default).

15.2. **Failure to Timely Open.** If Tenant should fail to complete Tenant's Work and initially open the Premises for business on or before the Required Opening Date fully fixtured, staffed and stocked or, thereafter, to keep the Premises open for business as required by this Lease.

15.3. **Abandonment and Vacation.** The vacation or abandonment of the Premises by Tenant. "Vacation" means any absence from the Premises for 14 or more consecutive days.

15.4. **Cross-Default.** If Tenant (or an Affiliate of Tenant) is in default of any other lease or

occupancy agreement between Landlord (or an Affiliate of Landlord) and Tenant (or an Affiliate of Tenant), all as the case may be.

15.5. **Bankruptcy.** The making by Tenant of any general assignment for the benefit of creditors, the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within 60 days), or the appointment of a trustee or receiver to take possession of, or the attachment, execution or other judicial seizure of, substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within 30 days. If, in the context of the filing of any bankruptcy, insolvency, reorganization, assignment for benefit of creditors, or other debt relief proceeding (an "Insolvency Proceeding") by or against the Tenant or any sublessee, Tenant, the Trustee, or sublessee shall immediately reimburse Landlord for all expenses, including reasonable attorneys' fees, Landlord may incur in connection with any act that Landlord deems necessary, either through legal proceedings or otherwise, to monitor such Insolvency Proceeding, to enforce or attempt to enforce any provision of this Lease, to enforce or attempt to enforce any actions required under the Bankruptcy Code to be taken by the Tenant, Trustee, or sublessee, or in the negotiation of any amendment, sublease, modification or other agreement made to the Lease during or related to such Insolvency Proceeding. For avoidance of doubt, such expenses incurred by Landlord shall be payable to Landlord as part of the cure payment paid to Landlord in connection with any assumption or assumption and assignment of this Lease, and to the extent necessary, such expenses shall be awarded to Landlord as an administrative expense by the Bankruptcy Court, or other court overseeing such Insolvency Proceeding.

15.6. **Other Non-Monetary Defaults.** The failure by Tenant or any of the Tenant Parties to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant not previously covered by Section 15.1 through Section 15.5 above (however Tenant shall have up to 10 days after written notice from Landlord to cure such default except if the nature of Tenant's default is such that it cannot be cured solely by payment of money and more than 10 days are reasonably required for its cure, then Tenant shall be obligated to commence such cure within the 10-day period and thereafter diligently prosecute such cure to completion).

## 16. LANDLORD'S REMEDIES

16.1. **Landlord's Remedies.** Upon a default hereunder, should Tenant fail within the time period, if any, specified in Article 15 to fully cure such default, then without limiting Landlord in the exercise of any other right or remedy at law or in equity which Landlord may have (all remedies provided herein being non-exclusive and cumulative), Landlord may do any one or more of the following:

16.1.1. **Continue Lease.** Landlord may continue this Lease in effect after Tenant's default and recover Rent as it becomes due. Accordingly, if Landlord does not elect to terminate this Lease on account of any default by Tenant, Landlord may, from time-to-time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including the right to recover all Rent and other monetary charges as they become due.

16.1.2. **Terminate Lease.** Landlord may terminate Tenant's right to possession by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default including (without limitation) the following: (a) The worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus (b) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such Rent loss that Tenant proves could have been reasonably avoided; plus (c) the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such Rent loss that Tenant proves could have been reasonably avoided; plus (d) any other amount and court costs necessary to compensate Landlord for all the detriment proximately caused by Tenant's default or which in the ordinary course of things would be likely to result therefrom (including, without limiting the generality of the foregoing, the amount of any

commissions, finder's fee, advertising costs, remodeling costs and attorneys' fees in connection with obtaining a replacement tenant); plus (e) at Landlord's election, Unamortized Landlord Costs and such other amounts in addition to or in lieu of the foregoing as may be permitted from time-to-time by applicable law. As used in subparagraphs (a) and (b) of this Section 16.1.2, the "worth at the time of award" shall be computed by allowing interest at the Agreed Rate, and, as used in subparagraph (c) of this Section 16.1.2, the "worth at the time of award" is to be computed by discounting such amount at the discount rate of the U.S. Federal Reserve Bank of San Francisco at the time of award, plus 1%.

16.1.3. **Collect Sublease Rents.** Landlord may collect sublease rents (or appoint a receiver to collect such rents) and otherwise perform Tenant's obligations at the Premises, it being agreed, however, that neither the filing of a petition for the appointment of a receiver for Tenant nor the appointment itself shall constitute an election by Landlord to terminate this Lease.

16.1.4. **Cure Default.** Landlord may proceed to cure the default at Tenant's sole cost and expense, without waiving or releasing Tenant from any obligation hereunder. If at any time Landlord pays any sum or incurs any expense as a result of or in connection with curing any default of Tenant (including any administrative fees provided for herein and reasonable attorneys' fees), the amount thereof shall be immediately due as a Reimbursed Cost.

16.2. **No Offsets.** All covenants and agreements to be performed by Tenant under this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any offset to or abatement of Rent, except as otherwise expressly provided in this Lease. Tenant hereby waives any right to plead all non-compulsory counterclaims or offsets in any action or proceeding brought by Landlord against Tenant for any default. This waiver shall not be construed, however, as a waiver of any right of Tenant to assert any non-compulsory counterclaims or offsets in any separate action brought by Tenant.

## 17. DEFAULTS BY LANDLORD

17.1. **Defaults by Landlord.** If Landlord fails to perform or observe any of the terms, covenants or conditions contained in this Lease on its part to be performed or observed within 30 days after written notice of default from Tenant or, when more than 30 days shall be required because of the nature of the default, if Landlord shall fail to commence to cure such default after written notice thereof from Tenant and thereafter diligently pursue such cure to completion, said failure shall constitute a default by Landlord under this Lease.

17.2. **Limitations on Recovery Against Landlord.** The aggregate liability of Landlord and the Landlord Parties to Tenant for any default by Landlord under this Lease or arising in connection herewith or with the operation, management, leasing, repair, renovation, alteration of, or any other matter relating to, the Center or the Premises shall be limited solely and exclusively to an amount equal to the interest of Landlord in the Center. Under no circumstances shall any present or future partner of Landlord (if Landlord is a partnership), or trustee or beneficiary (if Landlord or any partner of Landlord is a trust), have any liability for the performance of Landlord's obligations under this Lease. Notwithstanding any contrary provision herein, neither Landlord nor the Landlord Parties shall be liable under any circumstances for injury or damage to, or interference with, Tenant's business, including but not limited to, loss of profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring.

## 18. CASUALTY AND TAKING

18.1. **Insured Casualty.** Upon the occurrence of an Insured Casualty to the Premises, Landlord shall promptly and diligently, subject to reasonable delays for insurance adjustment and payment, issuance of permits or other matters beyond Landlord's reasonable control, and subject to all other terms of this Article 18, restore the damaged Premises (except for such work with respect to the Premises which is the responsibility of Tenant pursuant to this Article 18). Tenant, at its sole cost and expense, shall be responsible for the prompt and diligent repair and restoration, in accordance with Exhibit C and the Tenant Package, of all items constituting Improvements and Personal Property (which repair and restoration work shall be completed no later than 60 days after the completion of Landlord's work under this Section 18.1).

18.2. **Uninsured Casualty.** Upon the occurrence of an Uninsured Casualty to the Premises, Landlord shall have the right (in its sole discretion) to elect either to commence repair and restoration of the Premises (in which event this Lease shall continue in full force and effect and Landlord and Tenant shall diligently perform their respective repair and restoration obligations required pursuant to Section 18.1) or not to perform such repair and restoration, in which event this Lease shall cease and terminate 60 days after Landlord's notice of its election to terminate. Landlord shall give Tenant notice of its election under this Section 18.2 within 90 days following the later of (a) the date of such Uninsured Casualty, or (b) the date that Landlord's insurers determine that the Casualty is an Uninsured Casualty.

18.3. **Rent Adjustment.** Landlord shall not be liable for any inconvenience or annoyance to Tenant or the Tenant Parties, or injury to Tenant's business, resulting in any way from any Casualty or repair and restoration work. If any Casualty damages the Premises, or if the Premises are not reasonably accessible and are not used by Tenant due to any Casualty to the Common Area, Tenant shall be entitled to an abatement of Fixed Minimum Rent during such time the Premises are unfit for occupancy for the Permitted Use and are not used by Tenant, or the Premises are not reasonably accessible and are not used by Tenant due to damage to the Common Area unless Tenant receives proceeds from its insurer in accordance with the requirements of Section 5.2.2. However, if the Casualty is due to the gross negligence or willful misconduct of Tenant or any of the Tenant Parties, Tenant shall be responsible for any reasonable, applicable insurance deductible (which shall be payable to Landlord upon demand) and there shall be no Rent abatement. In the event of termination of this Lease pursuant to this Article 18, all proceeds from Tenant's insurance (including self-insurance and deductibles) covering the Improvements (but excluding proceeds for Personal Property) shall be payable to Landlord. In no event shall Tenant be entitled to share in Landlord's insurance proceeds or to take any action which would result in a reduction of Landlord's insurance proceeds.

18.4. **Major Destruction.** Notwithstanding any of the foregoing provisions of this Article 18, should there be a Major Destruction of the Center, Landlord shall have the right to terminate this Lease by written notice to Tenant, which notice shall be given within 120 days following the date of such Major Destruction (in which case such termination shall then take effect on the date specified in Landlord's termination notice).

18.5. **Taking.** If there is a Taking of the Premises, this Lease shall terminate as of the date of such Taking, and Landlord and Tenant shall have no further liability or obligation (except as otherwise provided for in this Lease) arising under this Lease after such date.

## 19. HAZARDOUS MATERIALS

Tenant covenants and agrees that Tenant shall, at its sole cost and expense, comply with and assume responsibility and liability under all Environmental Laws applicable to occupancy or use of or operations at the Premises by Tenant and the Tenant Parties. In the event that Tenant proposes to undertake any Improvements, Tenant shall comply (at Tenant's sole cost) with Landlord's criteria (as established from time to time) for testing and remediation of Hazardous Materials. Tenant agrees that should it or any of the Tenant Parties know of (a) any violation of Environmental Laws relating to the Premises, or (b) the escape, release or threatened release of any Hazardous Materials in, on, under or about the Premises, Tenant shall promptly notify Landlord in writing of such violation, escape, release or threatened release, and that it will provide all warnings of exposure to Hazardous Materials in, on, under or about the Premises in strict compliance with all applicable Environmental Laws. Tenant shall at no time use, analyze, generate, manufacture, produce, transport, store, treat, release, dispose of or permit the escape of, or otherwise deposit in, on, under or about the Premises or the Center, any Hazardous Materials, or permit or allow any of the Tenant Parties to do so.

## 20. SUBORDINATION

Tenant covenants and agrees that (a) this Lease is and shall automatically and without further act or deed by Tenant be subject and subordinate to any mortgages, deeds of trust, security deeds or other security instruments, and any ground leases or underlying leases presently existing or hereafter placed upon all or



any portion of the Center (each a "Mortgage") and to all renewals, replacements, modifications, consolidations and extensions thereof or participation thereof, (b) any mortgagee, grantee, master lessor, beneficiary or trustee (each a "Mortgagee") may elect to have this Lease made a prior lien to its Mortgage and (c) Tenant shall execute and deliver whatever instruments may reasonably be required by Landlord or any present or prospective Mortgagee. If any proceeding is brought for default under any Mortgage to which this Lease is subject, or in the event of foreclosure, deed in lieu of foreclosure or the exercise of the power of sale under any Mortgage covering the Premises and if requested by Landlord's successor, Tenant shall attorn to the successor and shall recognize that successor as Landlord under this Lease. If so requested, Tenant shall enter into a new lease with that successor on the same terms and conditions as are contained in this Lease (for the unexpired Term of this Lease then remaining).

## 21. MISCELLANEOUS

21.1. **Audits.** Landlord shall have the right to audit Tenant's books and records respecting Gross Sales. Any audit shall be conducted during business hours by a non-contingency fee auditor at such offices as Landlord shall reasonably specify. Landlord may not conduct an audit more than once in each Lease Year. If an audit should disclose that Tenant shall have misstated Gross Sales by more than 5%, then Tenant shall pay to Landlord all reasonable costs and expenses relating to such audit (including, without limitation, reasonable travel costs) in addition to paying any additional amounts due under this Lease as a result of such understatement. Neither party shall have any right (whether at law, at equity or under this Lease) to audit any Rent under this Lease except as expressly set forth in this Section 21.1.

21.2. **Authority of Signatories.** Each person executing this Lease on behalf of Tenant represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of Tenant, and that Tenant is qualified to do business in the state where the Center is located. Tenant hereby warrants and represents that neither its execution of nor performance under this Lease shall cause Tenant to be in violation of any agreement, instrument, contract, law, rule or regulation by which Tenant is bound.

21.3. **Brokers.** Landlord and Tenant shall each indemnify, defend and hold the other harmless from and against, all damages (including reasonable attorneys' fees and costs) resulting from any claims that may be asserted against Landlord or Tenant by any broker, consultants, finder, or other person with whom the indemnifying party has or purportedly has dealt.

21.4. **Captions and Form.** The names of Articles and Sections are for convenience only and shall not be used to interpret or construe the meaning of any provision in this Lease. All references to Articles, Sections and Exhibits are references to Articles and Sections contained in this Lease and Exhibits attached to this Lease unless otherwise expressly provided. Landlord and Tenant acknowledge and agree that (a) this Lease has been freely negotiated by Landlord and Tenant; and (b) in no event shall any ambiguity, controversy, dispute or disagreement over the interpretation, validity or enforceability of this Lease or any of its covenants, terms or conditions, any inference, presumption or conclusion whatsoever be drawn against Landlord by virtue of the initial draft of this Lease having been generated by Landlord.

21.5. **Confidentiality.** Tenant shall keep the content of this Lease, documents related thereto and any audits under Section 21.1 strictly confidential.

21.6. **Costs of Suit.** If either party brings action for relief against the other, arising out of this Lease, the non-prevailing party shall pay the prevailing party its reasonable costs, fees, expenses and attorneys' fees incurred in connection with and in preparation for said action.

21.7. **Counterparts.** This Lease may be executed in counterparts with the same effect as if both parties hereto had executed the same document. All counterparts shall be construed together and shall constitute a single Lease. Any signature to this Lease transmitted electronically through DocuSign shall be deemed an original signature and be binding upon the parties hereto (it being agreed that such electronic signature shall have the same force and effect as an original signature).

21.8. **Estoppel.** Tenant shall, from time-to-time within 10 days after prior written notice from Landlord, execute, acknowledge and deliver to Landlord a statement in writing in such form as may be

reasonably required by Landlord.

21.9. **Force Majeure.** Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, acts of war or terrorism, inability to obtain services, labor, or materials or reasonable substitutes therefor, governmental actions, civil commotions, fire or other Casualty, in each case if due to a cause beyond the reasonable control of the party obligated to perform, and other causes beyond the reasonable control of the party obligated to perform, except with respect to the obligations imposed with regard to Rent payable by Tenant pursuant to this Lease and Tenant's obligations to comply with Governmental Regulations (collectively, "Force Majeure") shall, notwithstanding anything to the contrary contained in this Lease, excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Lease specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure. For purposes of this Section 21.9, a cause shall not be deemed beyond a party's control if it is within the control of such party's agents, employees or contractors.

21.10. **Governing Law.** This Lease shall be governed by the laws of the state where the Center is located.

21.11. **Labor Contracts.** Neither Tenant nor any of the Tenant Parties shall take any action which creates any work stoppage, picketing, labor disruption or dispute, or interferes with the business of Landlord or any Occupant in the Center or with the rights and privileges of any customer or other person(s) lawfully in the Center, or causes any impairment or reduction of the goodwill of the Center. If there shall be any work stoppage, picketing, labor disruption or dispute as the result of the actions of Tenant or any of the Tenant Parties, Tenant shall immediately undertake such action as may be necessary to eliminate such dispute or potential dispute, including, but not limited to, (a) removing all disputants from the job site until such time as the labor dispute no longer exists, (b) seeking a judgment for a breach of contract between Tenant and Tenant's contractor and (c) filing appropriate unfair labor practice charges in the event of a union jurisdictional dispute.

21.12. **Merger.** This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreement, negotiations, brochures, arrangements or understanding pertaining to any such matter shall be effective for any purpose unless expressed herein. Tenant has not relied upon any representations, covenants, warranties, promises, agreements, conditions or undertakings, oral or written, made by Landlord or any of the Landlord Parties concerning or relating to the (a) Center, (b) Occupants, (c) Premises, (d) Lease, (e) Tenant's obligation to pay Rent or Additional Rent or (f) the Tenant's business, other than set forth within this Lease. Tenant acknowledges that it has thoroughly and independently investigated the potential for the success of its operations in the Center and has not relied upon any inducements or representations on the part of Landlord or any of the Landlord Parties other than those contained within this Lease. Tenant also acknowledges, understands and agrees that, to the extent any projections, materials or discussions have related to Tenant's projected or likely sales volume, customer traffic, or Tenant's success or profitability, that any and all such projections, materials and discussions are based solely upon Landlord's past experiences with other Occupants or upon standardized marketing studies, and have not been relied upon by Tenant, and any such discussions or marketing studies shall not be construed as a promise or guarantee that Tenant will realize the same or similar results.

21.13. **OFAC Certification.** Tenant represents and warrants that it is not, and shall not become, a person or entity with whom Landlord is restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including, without limitation, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended ["Executive Order 13224"]), or other governmental action and is not, and shall not, engage in any dealings or transactions or otherwise be associated with such persons or entities; and it is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation with whom Landlord is restricted from doing business under the

regulations of OFAC (including, but not limited to, Executive Order 13224) or other governmental action and is not and shall not engage in any dealings or transactions, employ or otherwise be associated, with such person, group, entity or nation. Any breach of the representation and/or warranty contained in this Section 21.13 shall constitute a non-curable default and is grounds for immediate termination of this Lease by Landlord. Any such exercise by Landlord of its remedies under this Section 21.13 shall not constitute a waiver by Landlord to recover (a) any Rent due under this Lease and (b) any damages arising from such breach by Tenant.

**21.14. Other Miscellaneous Provisions.** This Lease shall be construed as though the covenants herein between Landlord and Tenant are independent and Tenant hereby expressly waives the benefit of any statute to the contrary. If any provision of this Lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall be valid and enforceable to the fullest extent permitted by law. No provision of this Lease may be amended except by an agreement in writing signed by the parties hereto or their respective successors-in-interest. Landlord's or Tenant's consent to or approval of any act by the other requiring its consent or approval shall not constitute a consent or approval of any subsequent act by the other. No delay or omission in the exercise of any right or remedy of Landlord or Tenant for any default by the other shall impair such right or remedy or be construed as a waiver. Any waiver by Landlord of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Lease. Except as otherwise expressly provided in this Lease, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

**21.15. Quiet Enjoyment.** So long as Tenant timely pays all Rent, timely performs its covenants and obligations under this Lease and recognizes any successor to Landlord in accordance with the terms of this Lease, Tenant shall lawfully and quietly have, hold and enjoy the Premises without hindrance or molestation by Landlord or anyone claiming by, through or under Landlord, subject, however, to all Superior Agreements. This Lease and Tenant's rights hereunder are subject and subordinate in all respects to all Superior Agreements.

**21.16. REIT Qualifications.** Landlord and Tenant agree that all Rent paid to Landlord under this Lease shall qualify as "rents from real property" as defined in Internal Revenue Code Section 856(d) and as further defined in Treasury Regulation Section 1.856-4, as each is amended from time-to-time. Should the requirements of the said Internal Revenue Code Section or Treasury Regulation Section be amended so that any rent no longer qualifies as "rents from real property" for the purposes of the Internal Revenue Code or the Treasury Regulation, the Rent payable to Landlord shall be adjusted so that such Rent will qualify as "rents from real property" under the Internal Revenue Code and Treasury Regulation. Tenant shall, within 10 days after Landlord's written request therefor, execute and deliver to Landlord any amendments to this Lease as may be reasonably required by Landlord to adjust rent pursuant this Section 21.16 or to avoid jeopardizing Landlord's status as a real estate investment trust.

**21.17. Rules.** Tenant shall (and shall cause all of the Tenant Parties to) comply with all Rules as established by Landlord from time-to-time.

**21.18. Security.** Landlord may from time-to-time elect to obtain or cease to provide security services and/or devices for the protection of the Common Area. To the extent that such security services and devices are provided, they are not intended to provide protection for the Premises or the persons thereon or the contents thereof and, therefore, Tenant shall obtain any and all security services and/or devices as Tenant shall reasonably require for the protection of the Premises, the Tenant Parties, and Improvements and Personal Property. No firearms or other devices that could cause grievous bodily harm shall be used, possessed or carried by any of Tenant's security services, or any of Tenant or the Tenant Parties, unless Landlord shall have agreed to the same in writing (which consent Landlord may grant or withhold in its sole discretion) and Tenant shall have provided Landlord with such instruments as Landlord shall require to protect Landlord and the Landlord Parties from any and all liability in connection with the use of such firearms or devices.

**21.19. Survey.** Tenant acknowledges Landlord's commitment to corporate responsibility. In

furtherance of Landlord's commitment, Landlord will be collecting anonymized data not more than one time per year which identifies the demographics of the employees working at the Center. Tenant will respond promptly to Landlord's request for reasonable information regarding the demographics of Tenant's employees working in the Premises.

21.20. **Survival.** Every obligation to pay Rent, every indemnification of one party by the other and every provision relating to Hazardous Materials shall survive the expiration or earlier termination of this Lease, unless and to the extent otherwise expressly provided in this Lease.

21.21. **Time is of the Essence.** Time is of the essence of this Lease and each and every provision hereof, except as may be expressly provided otherwise. Tenant shall not record this Lease or a memorandum hereof.

21.22. **Waivers.** Tenant hereby waives for Tenant and for all those claiming under Tenant to redeem by order or judgment of any court or by any legal process or writ, Tenant's right of occupancy of the Premises after any termination of this Lease, including any right to seek relief against forfeiture. Except as otherwise expressly provided herein, there shall be no abatement of Rent and no liability of Landlord by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations or improvements in or to any part of the Premises or the Center. Tenant hereby waives the right to make repairs at Landlord's expense under the provisions of any such applicable laws. The provisions of Article 18 constitute an express agreement between Landlord and Tenant with respect to any Casualty. Therefore, the provisions of Article 18 shall govern and prevail over any statute or regulation in conflict thereof. LANDLORD AND TENANT EACH HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE OR TENANT'S USE OR OCCUPANCY OF THE PREMISES, INCLUDING ANY CLAIM OF INJURY OR DAMAGE, AND ANY EMERGENCY AND OTHER STATUTORY REMEDY WITH RESPECT THERETO. LANDLORD AND TENANT ALSO AGREE THAT THE VENUE OF ANY SUCH ACTION, PROCEEDING OR COUNTERCLAIM SHALL BE IN THE CITY, COUNTY AND STATE IN WHICH THE CENTER IS LOCATED OR AT SUCH OTHER CITY AND COUNTY AS MAY BE DETERMINED BY LANDLORD IN ITS SOLE AND ABSOLUTE DISCRETION.

///SIGNATURE PAGE TO FOLLOW///

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

**LANDLORD:**

VALLEY STREAM GREEN ACRES LLC,  
a Delaware limited liability company

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

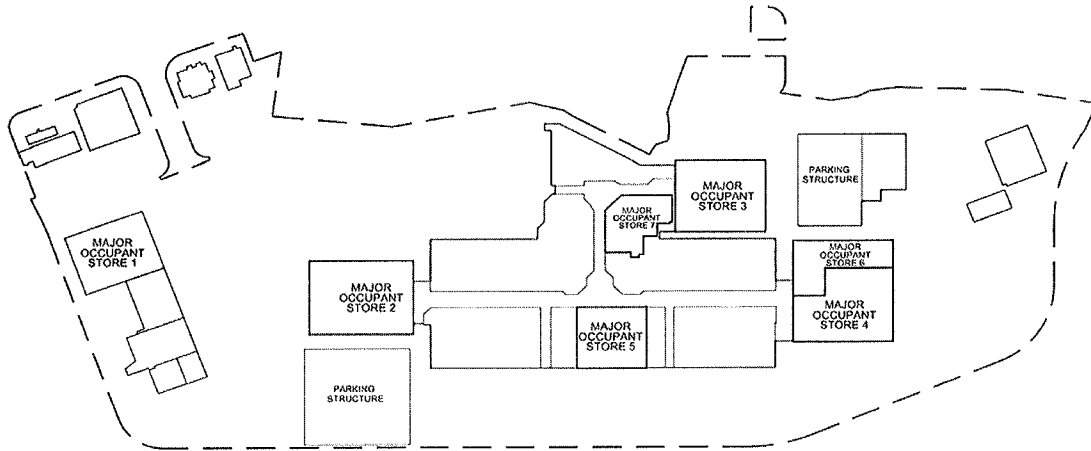
**TENANT:**

DESIGNER JEWELERS INC,  
a New York corporation

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

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

# EXHIBIT A DEPICTION OF CENTER



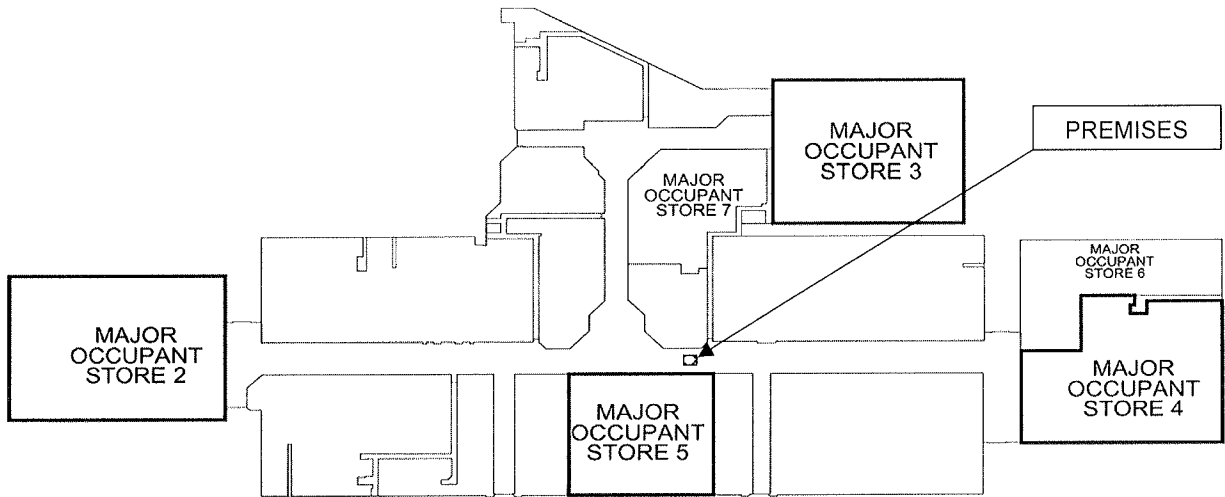
**LEGEND:**  
 ——— CENTER BOUNDARY LINE



## GREEN ACRES

This is a schematic plan intended only to show the general layout of the Center or a part thereof. Landlord reserves the right to alter, vary, add to or omit whole or in part any structures, and/or improvements, and/or Common Area, and/or land area shown on this plan. This plan is subject to change and modification as may be made by Landlord or required by any authority having jurisdiction. All measurements and distances are approximate. This plan is not to be scaled. Landlord does not warrant or represent that any Occupant indicated herein is or will remain a tenant in either the space marked or in any other space in the Center and nothing as set forth in this plan is a representation, agreement or easement right except as specifically set forth in the Lease.

# EXHIBIT B DEPICTION OF PREMISES



## GREEN ACRES FIRST LEVEL

This is a schematic plan intended only to show the general layout of the Center or a part thereof. Landlord reserves the right to alter, vary, add to or omit whole or in part any structures, and/or improvements, and/or Common Area, and/or land area shown on this plan. This plan is subject to change and modification as may be made by Landlord or required by any authority having jurisdiction. All measurements and distances are approximate. This plan is not to be scaled. Landlord does not covenant or represent that any Occupant indicated herein is or will remain a tenant in either the space marked or in any other space in the Center and nothing as set forth in this plan is a representation, agreement or easement right except as specifically set forth in the Lease.

**EXHIBIT C**  
**PROVISIONS FOR THE DESIGN**  
**AND CONSTRUCTION OF THE PREMISES**  
**AS IS WITH REMODEL**  
**TENANT SUPPLIED KIOSK**

1. **GENERAL PROVISIONS.** This Exhibit C sets forth certain provisions with respect to Landlord's Work and Tenant's Work. Capitalized terms used in this Exhibit C without definition shall have the meaning ascribed to such terms in the Tenant Package. Unless otherwise expressly provided in this Exhibit C, references to Articles, Sections and captions are references to Articles, Sections and captions contained in this Exhibit C.
2. **TENANT PACKAGE.** Tenant acknowledges that Landlord has made available to Tenant on Landlord's website ([www.macerich.com](http://www.macerich.com)) a Tenant Package which shall govern all of Tenant's Work. Tenant shall, and Tenant shall cause, Tenant's Architect, Tenant's engineer and Tenant's Contractor and subcontractors to, in all respects comply with, and Tenant's Work shall in all respects be subject to, the Tenant Package. "Tenant Package" means the package(s) containing, among other materials, the following: (a) Tenant Design and Construction Criteria, (b) Sign Criteria and Plan Submittal Guidelines, (c) Contractors' Rules and Regulations and (d) Technical Manual. The Tenant Package is hereby incorporated herein and made a part of this Exhibit C by this reference.
3. **LANDLORD'S WORK.** "Landlord's Work" means the work, if any, which Landlord is expressly obligated to undertake pursuant to this Article 3. Except as set forth herein or in the Tenant Package, Landlord shall have no obligation to improve, remodel, alter or otherwise modify or prepare the Premises, Building or the Center in connection with Tenant's occupancy, to furnish any additional materials upon any part of the Center or to provide any additional Utilities or other systems for the benefit of the Premises. Landlord shall designate a person, or persons, as Tenant Coordinator ("Tenant Coordinator") who alone shall have authority on behalf of Landlord to oversee and manage the review and approval of Preliminary Documents, Construction Documents, As Built Documents, Plan Revisions and other matters specified in this Exhibit C and the Tenant Package. No matter shall be deemed approved by Landlord under this Exhibit C or the Tenant Package unless approved in writing by the Tenant Coordinator. Landlord's Work shall be limited to the removal of the kiosk currently situated at the Premises and causing the current electric service to the Premises to be disconnected.
4. **DESCRIPTION OF TENANT'S WORK**
  - 4.1. **Condition of Premises.** Upon the Delivery Date, Tenant shall accept delivery of the Premises, Building and the Center in an "As Is" condition and "With All Faults", except to the extent otherwise expressly stated in Article 3. Tenant hereby represents each of the following: (a) Tenant or its authorized representative has inspected the Premises and has made all inquiries, tests and studies that it deems necessary in connection with its leasing of the Premises and, (b) Tenant is relying solely on Tenant's own inspection, inquiries, tests and studies conducted in connection with, and Tenant's own judgment with respect to, the condition of the Premises and Tenant's leasing thereof. Landlord or its predecessor-in-interest has constructed the Center, and the Building and other improvements upon the Center (exclusive of improvements constructed by or on behalf of each present and prior Occupant). Tenant has inspected the Center, the Building, the Utilities, the types, quantities and qualities of the Utilities, and the other systems and Tenant has found the same to be suitable, sufficient and in acceptable condition for the purpose of Tenant conducting the Permitted Use upon the Premises.
  - 4.2. **Tenant's Work Defined.** "Tenant's Work" means the purchase, installation, construction and performance of the improvements and duties specified in the Approved Plans and as described in the Tenant Package for a full and complete remodel of the Premises and the purchase, installation and construction of Tenant's Kiosk, furniture, equipment and Personal Property, all at Tenant's sole cost and expense (except to the extent otherwise expressly provided in the Tenant Package) and in compliance with applicable Governmental Regulations. All Tenant's Work shall be performed by a licensed, bondable contractor retained by Tenant and approved in advance, in writing, by Landlord ("Tenant's Contractor").



Tenant's Contractor shall construct Tenant's Work in a good and workmanlike manner pursuant to the Approved Plans, the Lease and the Tenant Package, and in compliance with all Governmental Regulations. Tenant shall engage a licensed architect ("Tenant's Architect") to prepare the Preliminary Documents, Construction Documents and As Built Documents (collectively, "Tenant's Plans"). Landlord's approval of Tenant's Plans shall not constitute any representation or warranty by Landlord that the same are complete or sufficient for (a) purposes of Tenant's design, (b) purposes of constructing the Premises or any part thereof or (c) complying with any Governmental Regulations. Landlord shall not be liable to Tenant if Tenant's Plans fail to satisfy subsections (a), (b), and/or (c) preceding and Tenant shall not be relieved of any obligations under this Exhibit C, the Tenant Package, the Lease or Governmental Regulations on account of any approval by Landlord. Tenant shall pay the Plan Review Fee for review of the Preliminary Documents within 10 days after Landlord's demand therefor. No mezzanines shall be permitted upon the Premises, unless expressly set forth in the Approved Plans.

4.3. **Landlord's Right to Access.** Landlord, Landlord's authorized representatives (including Tenant Coordinator) and Landlord's contractors shall have the right to access the Premises and inspect the progress of Tenant's Work, Tenant's and Tenant's Contractor's compliance with the provisions of the Lease, this Exhibit C and the Tenant Package.

**EXHIBIT D  
CERTAIN DEFINED TERMS**

1. **INTENT.** The purpose of this Exhibit D is to set forth certain defined terms which are used in the Lease. Terms which are not defined in this Exhibit D are defined in the Lease or the Exhibits attached to the Lease. All references to Articles, Sections and captions contained in this Exhibit D are Articles, Sections and captions contained in the Lease unless otherwise provided.

2. **CERTAIN DEFINED TERMS**

2.1. **Additional Rent** means all amounts payable by Tenant under this Lease, other than Fixed Minimum Rent and Percentage Rent.

2.2. **Administrative Charge** means 15% of the subject sum. The Administrative Charge is intended to reimburse Landlord for additional administrative costs incurred by Landlord for providing work, materials or services.

2.3. **Affiliate** means any entity that Controls, is Controlled by or is under common Control with another specified entity.

2.4. **Agreed Rate** means the prime commercial rate of interest charged from time-to-time by Wells Fargo Bank, National Association (or, if the same does not exist, such other comparable bank selected by Landlord), plus 2% per annum, but not to exceed the maximum rate of interest allowable under law.

2.5. **Annual Sales Statement** means a written statement in the form attached as Exhibit G to the Lease certified to be true and correct by an Authorized Officer of Tenant.

2.6. **Approved Plans** means the final set of plans for Landlord's Work and/or Tenant's Work (as the case may be) which have received the final written approval of both Landlord and Tenant to the extent required by any applicable provisions of this Lease and the Tenant Package.

2.7. **Assignment, Assign and Assigning** mean any assignment of Tenant's interest in the Lease and Assignment Instrument means the instrument by which an Assignment is made.

2.8. **Attached Fixtures** means such trade fixtures, equipment and other Personal Property which is attached or affixed to the Premises (including, without limitation, carpeting, flooring, lighting, light fixtures, electrical systems, communications wiring and cabling, built-in shelving, built-in furniture and the cash wrap).

2.9. **Authorized Officer** means (a) each natural person who executed the Lease (or the most recent amendment of the Lease), if Tenant is one or more natural persons, (b) an authorized officer, if Tenant is a corporation, (c) an authorized or managing partner, if Tenant is a partnership or a limited liability partnership or (d) an authorized member, if Tenant is a limited liability company.

2.10. **Building** means the building, if any, of which the Premises are a part.

2.11. **Casualty** means fire or any other casualty.

2.12. **Claims** means, collectively, claims, charges, liabilities, obligations, penalties, causes of action, liens, damages, costs and expenses, including reasonable attorneys' and other expert and third party fees and costs.

2.13. **Common Area** means all improvements, facilities, equipment, signs, land and areas within the exterior boundaries of the Center which are now or hereafter made available for general use, convenience or benefit of more than one (1) Occupant, which may include, but not limited to, parking areas, access and perimeter roads, driveways, loading docks, pedestrian malls and courts, corridors, stairs, ramps, elevators, escalators, first-aid stations, security stations, drinking fountains, toilets, public washrooms, community halls, auditoriums, and other public facilities, parcel pick-up stations and landscaped areas. Common Area shall include any other land which Landlord acquires, and which land is

not presently part of the Center, to the extent Landlord designates any such land as Common Area.

2.14. **Control, Controlled and Controls** mean the ownership, directly or indirectly, of at least 51% of the voting securities of, or possession of the right to vote, in the ordinary direction of its affairs, of at least 51% of the voting interest in, any person or entity.

2.15. **Delivery Date** means the date Landlord delivers possession of the Premises to Tenant.

2.16. **Environmental Laws** means any and all federal, state and local laws, regulations, ordinances, codes and policies, and any and all judicial or administrative interpretations thereof by governmental authorities, as now in effect or hereinafter amended or enacted, relating to:

2.16.1. Pollution or protection of the environment, natural resources or health and safety; including, without limitation, those regulating, relating to, or imposing liability for emissions, discharges, releases or threatened releases of Hazardous Materials into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, release, transport or handling of Hazardous Materials; and

2.16.2. The use of chemical, electrical, radiological or nuclear processes, radiation, sophisticated electrical and/or mechanical equipment, sonar and sound equipment, lasers, and laboratory analysis and materials.

2.17. **Excluded Floor Area** means the total Floor Area of the following (but excluding the Floor Area of the Premises): Major Occupant Stores, premises between 15,000 and 40,000 square feet of Floor Area, premises having an exterior entrance if the Center is enclosed, movie theatres, pad sites, educational facilities, offices, restaurants, mezzanines, storage areas, Occupants under leases, licenses or other agreements each with an original stated term of 12 months or less, Landlord's management office(s), merchants' association offices, marketing service offices, maintenance buildings and offices, equipment rooms, and such facilities and areas the primary purpose of which is to afford services, convenience or recreation to customers and invitees or for municipal and community purposes.

2.18. **Fixed Minimum Rent** means the annual and/or monthly rent sum specified at Section 1.8, as the same may be adjusted from time-to-time.

2.19. **Floor Area** means Landlord's calculation of the number of square feet of floor area of all floors in such space measured from the exterior faces of all exterior walls (and from the extensions thereof in the case of openings) and from the center line of interior demising walls inclusive of the floor area of mezzanines and basements (unless otherwise excluded), except RMUs shall be Landlord's calculation of the floor area of the footprint of each of the RMUs.

2.20. **Governmental Regulations** means all laws, statutes, ordinances, rules, regulations, zoning codes, building codes, standards and requirements of all governmental and quasi-governmental authorities, and of all board of fire insurance underwriters, having jurisdiction of the Premises or the Center.

2.21. **Intentionally Omitted.**

2.22. **Hazardous Materials** means any and all substances, chemicals, wastes, sewage or other materials that are now or hereafter regulated, controlled or prohibited by any Environmental Laws, including, without limitation, any (a) substance defined as a 'hazardous substance', 'extremely hazardous substance', 'hazardous material', 'hazardous chemical', 'hazardous waste', 'toxic substance' or 'air pollutant' by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq.; the Federal Water Pollution Control Act, 33 U.S.C. Section 1251, et seq.; the Clean Air Act, 42 U.S.C. Section 7401, et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. Section 11001, et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq.; or the Occupational Safety and Health Standards, 25 C.F.R. 1910-1000 et seq., or regulations promulgated thereunder, all as amended to date and as amended hereafter; (b) hazardous substance, hazardous waste,

toxic substance, toxic waste or hazardous material, waste, chemical or compound described in any other Environmental Laws; and (c) asbestos, polychlorinated biphenyls, urea formaldehyde insulation, flammable or explosive or radioactive materials, gasoline, oil, motor oil, waste oil, petroleum (including, without limitation, crude oil or any component thereof), petroleum-based products, paints, solvents, lead, cyanide, DDT, printing inks, acids, pesticides, ammonium compounds, and other regulated chemical products.

2.23. **HVAC** means heating, ventilating and air conditioning system(s).

2.24. **Improvements** means all existing and future fixtures, installations, alterations, replacements, additions, changes and improvements to the Premises, including the Kiosk.

2.25. **Insured Casualty** means damage or destruction the repair of which is fully covered by insurance proceeds made available to Landlord for repair and restoration pursuant to any insurance policy required to be carried by Landlord under the terms of this Lease.

2.26. **Involuntary Assignment** means any transfer of interest of Tenant in the Lease by operation of law (including, without limitation, the transfer of this Lease by testacy or intestacy, or in any bankruptcy or insolvency proceeding) and each of the following acts shall be considered an Involuntary Assignment: (a) if Tenant is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes a proceeding under any bankruptcy law in which Tenant is the bankrupt; or, if Tenant is a partnership or consists of more than one (1) person or entity, if any partner of the partnership or other such person or entity is or becomes bankrupt or insolvent, or makes an assignment for the benefit of creditors; (b) if a writ of attachment or execution is levied on this Lease; (c) if, in any proceeding or action to which Tenant is a party, a receiver is appointed with authority to take possession of the Premises; or (d) there is any assumption, assignment, sublease or other transfer under or pursuant to the Bankruptcy Code 11 U.S.C. 101 et seq., as amended from time-to-time.

2.27. **Kiosk** means the RMU which is located at the Premises.

2.28. **Landlord Parties** means, collectively, the Manager, Landlord's Designees and the respective past, present and future partners, officers, directors, shareholders, beneficiaries, trustees, employees, agents and independent contractors of both Landlord and Manager.

2.29. **Landlord's Designees** means, collectively, the Manager, the Mortgagee, any lessors under any ground or underlying leases lien on the Premises and such person(s) designated by Landlord as having an insurable interest in the Premises.

2.30. **Lease Year** means, as to the first Lease Year, the period from the Rent Commencement Date through the immediately following December 31, and as to each subsequent Lease Year, the period of January 1 of a given year through the immediately following December 31 of the same year; however, the last Lease Year shall end upon the Expiration Date.

2.31. **Major Destruction** means any destruction (whether or not an Insured Casualty) (a) to the extent of more than 25% of the full replacement cost of any of the Premises, the Building, the parking structures located at the Center or the Center, as the case may be, as of the date of destruction, (b) that will take in excess of 1 year to complete repair and restoration, or (c) that occurs at any time during the last 24 months of the Term.

2.32. **Major Occupant** means each Occupant (if any) occupying premises containing at least 40,000 square feet of contiguous Floor Area, and shall include such Occupants who have (if any) contiguous stores with different trade names but with direct access between or among such stores.

2.33. **Major Occupant Stores** means (a) each of the premises (if any) identified on Exhibit A as a "Major Occupant Store" and (b) the premises occupied, or designated for occupancy, by Major Occupants.

2.34. **Mall** means (a) that portion of the Common Area which is contained in the enclosed mall, if the Center contains an enclosed mall, or (b) the Common Area of the Center, if the Center does not

contain an enclosed mail.

2.35. **Manager** means such entity with whom Landlord then has an agreement to manage the Center.

2.36. **Monthly Sales Statement** means a written statement in the form attached as Exhibit G to the Lease certified to be true and correct by an Authorized Officer of Tenant.

2.37. **Occupant** means any entity, inclusive of Tenant and exclusive of Landlord (except to the extent Landlord operates any retail business open to the public in the Center), entitled by any form of instrument to occupy Floor Area in the Center.

2.38. **Percentage Rent** means the amount, if any, equal to the product obtained by multiplying the Percentage Rent Rate by the amount of Gross Sales for each Lease Year that is in excess of the Annual Breakpoint for each such Lease Year.

2.39. **Personal Property** means all of the following which do not otherwise constitute Attached Fixtures: Tenant's trade fixtures, equipment, appliances, furniture, displays, Storefront Sign, other signs, inventory, merchandise and other personal property.

2.40. **Plan Review Fee** means the sum of \$2,500.00; however, (a) if the scope of the plans depicts nothing more than painting, carpeting, installing or remodeling the storefront and Storefront Sign, such sum shall be in the amount of \$1,250.00, and (b) if the scope of the plans depicts nothing more than the Storefront Sign, such sum shall be in the amount of \$500.00. Notwithstanding anything to the contrary contained in the Lease, Exhibit C and this Section, the Plan Review Fee for Tenant's Work set forth at Section 2.2 of the Lease shall be the sum of \$500.00.

2.41. **Intentionally Omitted.**

2.42. **Refund Date** means the date which is the later of (a) the Expiration Date or date of earlier termination of this Lease, or (b) the date Tenant has fully performed all of its Surrender Obligations under Section 9.1.

2.43. **Reimbursed Cost(s)** means Landlord's cost for performing specific work or services, or providing materials on behalf of Tenant, together with interest at the Agreed Rate, calculated from the date Landlord performs such work or services, or provides such materials, until the date that any such cost(s) are paid by Tenant. Tenant shall pay any Reimbursed Costs within 10 days after Landlord's written demand therefor.

2.44. **Rent** means Fixed Minimum Rent, Percentage Rent and Additional Rent.

2.45. **RMUs** means carts, kiosks and other retail merchandising units of Occupants located in the Common Area.

2.46. **Rules** means such rules and regulations established by Landlord.

2.47. **Storefront Sign** means the sign for the Premises facing onto the Mall which shall contain no name other than the Trade Name.

2.48. **Subletting** and **Sublet** mean a subletting of all or any portion of the Premises or any concession, franchise or license with respect to the Premises.

2.49. **Superior Agreements** means all mortgages, deeds of trust, ground leases, reciprocal easement agreements, declarations, covenants, conditions, restrictions, easements, rights-of-way and other matters of record (whether placed of record on, prior to, or after the Effective Date) affecting all or any portion of the Center, as the same may be modified, amended and supplemented from time-to-time.

2.50. **Taking** means any taking or appropriation for public or quasi-public use by the right of eminent domain or otherwise by a taking in the nature of inverse condemnation, with or without litigation, or a transfer by agreement in lieu thereof.

2.51. **Tenant Parties** means, collectively, Tenant's Occupants and the respective past and present officers, directors, shareholders, invitees, customers, agents, employees and independent contractors of both Tenant and Tenant's Occupants.

2.52. **Tenant's Occupants** means all concessionaires, licensees, subtenants, assignees and others holding any rights to, or interest in, any part of the Premises under Tenant.

2.53. **Intentionally Omitted (Form).**

2.54. **Transfer** and **Transferring** mean an Assignment, a Subletting, and/or a transfer, assignment or hypothecation of 25% or more of the total stock, or the legal or beneficial interest, in Tenant or Guarantor, whether in a single transaction or a series of related or unrelated transactions and whether on a direct or indirect basis.

2.55. **Transferee** means all of the following: concessionaire(s), franchisee(s), licensee(s), assignee(s) and subtenant(s), as the case may be.

2.56. **Unamortized Landlord Costs** shall mean an amount equal to (i) the unamortized portion of the Construction Allowance, if any, which was theretofore disbursed by Landlord to Tenant, (ii) the unamortized portion of any brokerage commission paid to Tenant's Broker, and/or (iii) the unamortized portion of the cost of Landlord's Work, all amortized as of the effective date of any termination on a straight-line basis over the initial term of the Lease commencing on the Rent Commencement Date.

2.57. **Intentionally Omitted (Form).**

2.58. **Uninsured Casualty** means damage or destruction resulting from any flood, earthquake, act of war, act of terrorism, nuclear reaction, nuclear radiation or radioactive contamination, or any other casualty of any kind or nature whatsoever which is not an Insured Casualty.

2.59. **Utilities** means all water, gas, sewer, heat, electricity, steam, chilled water, conditioned water, hot water, sprinklers, fire-life safety systems, lighting, power, HVAC, telecommunications services (including telephone, data and other telecommunications services including any technological evolution related to the transfer of sound or data), sewer service, refuse removal service and all other utilities and related services.

2.60. **Utility Facilities** means any and all systems, machinery, facilities, installations, supply lines, transformers, pipes, conduits, ducts, penetrations, components, appurtenances and equipment, located on or at the Center, for the generation or supply of any Utilities (including, without limitation, any central plants and individual HVAC units owned or maintained by Landlord).

**EXHIBIT E**  
**CENTER RIDER**  
**GREEN ACRES MALL**

**1. GENERAL PROVISIONS**

- 1.1. **Purpose.** This Exhibit E sets forth certain provisions particular to the Center and the state in which the Premises are located.
- 1.2. **Prevailing Provisions.** If there are any inconsistencies between the Lease and the provisions of this Exhibit E, the provisions of this Exhibit E shall prevail.
- 1.3. **Definitions.** Unless otherwise expressly defined in this Exhibit E, all capitalized words shall have the meanings specified in the Lease.

1.1.

**2. AMENDMENT AND SUPPLEMENTS**

1.2. The following Articles and Sections of the Lease are amended and supplemented as follows:

- 2.1. **Article 2 (Premises)** is amended by adding the following new Section(s) to the end thereof:

**New York Real Property Law.** If a Section of this Article provides that the Premises are occupied upon the Effective Date by another Occupant, then the provisions thereof are intended to constitute 'an express provision to the contrary' within the meaning of Section 223-a of the New York Real Property Law, as the same may be amended from time-to-time, or under any similar statute now or hereafter in force, or under any present or future laws or case decisions to the same effect.

- 2.2. **Article 3 (Rent)** is amended by adding the following new Section(s) to the end thereof:

**Terrorism Insurance.** From and after the Rent Commencement Date, Tenant shall pay in equal monthly installments, in advance on the first day of each month (except for the first installment, which shall be paid on the Rent Commencement Date), an amount equal to \$0.25 per square foot of the Floor Area of the Premises per annum ("Terrorism Insurance"). Commencing on the first day of January next following the Rent Commencement Date and on each January 1st thereafter (each such date is sometimes referred to as a "Terrorism Insurance Adjustment Date"), Terrorism Insurance then in effect (or which would then have been in effect absent any abatement or reductions in Terrorism Insurance) shall be increased by 3%.

- 2.3. **Section 3.9 (Security Deposit)** is amended by adding the following to the end thereof:

Notwithstanding the foregoing, Landlord shall keep the Security Deposit separate from its general funds.

- 2.4. **Section 5.2.4 (Policy Requirements)** is amended by adding the following to the end thereof:

2. Tenant shall include The Town of Hempstead Industrial Development Agency as an additional insured as well as the parties provided for under the Lease and as designated by Landlord pursuant to the terms of the Lease.

- 2.5. **Section 9.3 (Holding Over)** is amended by adding the following to the end thereof:

In addition to the other provisions of this Section, Tenant hereby expressly agrees that the acceptance by Landlord of any payments from Tenant after the expiration or earlier termination of this Lease shall not preclude Landlord from commencing and prosecuting a holdover or summary eviction proceeding (the foregoing being an 'agreement expressly providing otherwise' within the meaning of Section 232-c of the Real Property Law of the State of New York) nor shall any such acceptance be deemed anything other than an acceptance of payment on account of the amounts to be paid by Tenant in accordance with the provisions of this Section. Tenant expressly waives, for itself and for any person claiming through or under Tenant, any rights which Tenant or any such person may have under the

provisions of Section 2201 of the New York Civil Practice Law and Rules and of any successor law of like import then in force in connection with any holdover summary proceedings which Landlord may institute to enforce the provisions this Section.

- 2.6. **Section 16.1.2** (Terminate Lease) is amended by adding the following to the end thereof:

In addition to the other provisions of this Section 16.1.2, Landlord reserves the right to terminate this Lease at any time after an event of default by Tenant which is not cured by Tenant within the applicable notice and/or cure period, if any, by giving written notice to Tenant specifying a date (not less than five [5] business days from the date on which such notice is given) on which this Lease shall terminate provided such default has not been cured, and, on such date, the Term shall end, and all rights of Tenant under this Lease shall cease, but the foregoing provisions of this Section shall not relieve Landlord from first complying with all applicable provisions and proceedings required by law as conditions precedent for any such termination.

- 2.7. **Article 18 (Casualty and Taking)** is amended by adding the following new Section to the end thereof:

**Waiver.** Except as otherwise specifically provided herein, Tenant hereby expressly waives all rights to terminate this Lease under Section 227 of the New York Real Property Law, as the same may be amended from time-to-time, or under any similar statute now or hereafter in force as the result of such Casualty, or under any present or future laws or case decisions to the same effect.

- 2.8. **Article 21 (Miscellaneous)** is amended by adding the following new Section(s) to the end thereof:

3. **AGENCY PROVISIONS:** The following items 1-7 shall be collectively referred to as the Agency Provisions:

1. **Payment in Lieu of Taxes**

(a) **PILOT Program Defined.** The financial incentive program offered by the Town of Hempstead Industrial Development Agency (the "Agency"), for eligible proposals that involve the creation, expansion, improvement or retention of property and facilities within The Town of Hempstead by companies moving to or remaining in the Town, including all benefits and requirements contained therein (collectively, the "PILOT Program").

(b) **Reporting Requirements.** Tenant covenants on behalf of itself, its successors and assigns to timely complete and return to Landlord, the Agency, or its successors and assigns upon written request, not more often than twice per calendar year, a copy of Tenant's NYS-45 reports submitted to the New York State Department Of Labor for the most recent calendar year (or, if Tenant has multiple retail business locations operating within the state of New York, copies of form BLS 3020 completed to show the employee information for the Premises for the most recent calendar year or the form attached hereto as Schedule 1 of Exhibit E), concerning, in substance, the total payroll, its operations, the number of part time and full time employees Tenant employs at the Center, and such other matters as may be necessary for Landlord to comply with the terms of the PILOT Program and the Agency to make and submit its annual reports. Such information shall be provided within thirty (30) days following written request from the Agency or Landlord. Tenant shall furnish to the Agency within thirty (30) days of their filing, copies of all reports, if any, filed with the Securities and Exchange Commission, pursuant to the Securities Exchange Act of 1934, as amended, relative to Tenant.

2. **Qualification as Project.** Tenant shall not take any action, or fail to take any action, which action or failure to act would cause the Center not to constitute a "project" as such quoted term is defined in Title 1 of Article 18A of the General Municipal Law of the State of New York, as amended (collectively, the "Act"). In accordance with Section 862(1) of the Act, the occupancy of the Premises by Tenant will not result in the removal of a facility or plant of the Tenant from one area of the State of New York to another area of the State or in the abandonment of one or more plants or facilities of Tenant located



within the State of New York; provided, however that neither restriction shall apply if the Agency shall determine:

- (i) that such occupation of the Premises by Tenant is reasonably necessary to discourage the Tenant from removing such other plant or facility to a location outside the State of New York, or
  - (i) that such occupation of the Premises by Tenant is reasonably necessary to preserve the competitive position of Tenant in Tenant's business.
- 3. **No Warranty of Condition or Suitability by Agency.** THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF, OR TITLE TO, THE CENTER OR THAT IT IS OR WILL BE SUITABLE FOR TENANT'S PURPOSES OR NEEDS.
- 4. **Employment Opportunities; Notice of Jobs.** Tenant covenants and agrees that, in consideration of the participation of the Agency in the PILOT, Tenant will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, cause any new employment opportunities created in connection with the Premises to be listed with the New York State Department of Labor, Community Services Division and with the administrative entity of the service delivery area created pursuant to the Job Training Partnership Act (PL 97-300) in which the Center is located (collectively, the "**Referral Agencies**"). Tenant also agrees that it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the Referral Agencies.
- 5. **Agency as Third Party Beneficiary.** The Agency is a third party beneficiary of these Agency Provisions with the full right to enforce all provisions hereof in an action at law or in equity.
- 6. **Confidential Information.** The Agency shall hold as confidential all non-public information provided by Tenant pursuant to the terms of this Lease except to the extent that the Agency is require by applicable law to disclose such information.
- 7. **Successors and Assigns.** The rights and obligations hereunder of the Agency under these Agency Provisions shall bind and inure to the benefit of the successors and assigns of the Agency.
- 2.9. **Exhibit C, Section 2.1, Tenant Package.** Add the following sentence to the end of Section 2.1 of Exhibit C: Tenant acknowledges per the Tenant Package, Tenant is required to use local building trades to complete all Tenant Work.
- 2.10. **Exhibit D, Section 2.28, Landlord Parties.** Landlord Parties shall also include the Town of Hempstead Industrial Development Agency of the Town of Hempstead, New York.

## SCHEDULE 1

### Tenant Employee Questionnaire Form

Business Mailing Address (please print):

Business Name: \_\_\_\_\_

\_\_\_\_\_, Suite \_\_\_\_\_

Valley Stream, NY \_\_\_\_\_

#### ANNUAL REPORT INFORMATION

CALENDAR YEAR ENDING: 12/31/20

Number of Employees:	Month 1	Month 2	Month 3	Quarterly Wages of Location (round to the nearest dollar)
1 <sup>st</sup> Quarter				
2 <sup>nd</sup> Quarter				
3 <sup>rd</sup> Quarter				
4 <sup>th</sup> Quarter				

I certify under penalty of perjury under the laws of the State of New York that the foregoing information is true and correct.

Name: \_\_\_\_\_

Phone: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

**EXHIBIT F**

***Exhibit F has been Intentionally Omitted***

**EXHIBIT G**  
**MONTHLY AND ANNUAL SALES STATEMENT FORM**

Center: \_\_\_\_\_

Store Name/Number: \_\_\_\_\_

	CERTIFIED GROSS SALES
January	_____
February	_____
March	_____
April	_____
May	_____
June	_____
July	_____
August	_____
September	_____
October	_____
November	_____
December	_____
TOTALS	_____

I certify that the sales indicated above are true and correct.

\_\_\_\_\_  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Authorized Signatory

## GUARANTEE OF LEASE

**THIS GUARANTEE OF LEASE** ("Guarantee") is made as of \_\_\_\_\_ by **IVAN KUMAR**, a single man ("Guarantor"), whose address is set forth below.

**WHEREAS, VALLEY STREAM GREEN ACRES LLC**, a Delaware limited liability company ("Landlord") and **DESIGNER JEWELERS INC.**, a New York corporation ("Tenant") have entered into that certain Lease Agreement dated \_\_\_\_\_ ("Lease"), concerning the premises commonly referred to as Space No. 0K07C ("Premises") in the commercial project known as Green Acres Mall ("Center"), located in the City of Valley Stream, County of Nassau, State of New York;

**WHEREAS**, This Guarantee is being executed as additional consideration for the Landlord's agreement to enter into the Lease, and the execution of this Guarantee is intended to be contemporaneous with the Lease;

**WHEREAS**, Guarantor has a financial interest in Tenant and/or will otherwise obtain substantial direct and indirect benefits from the Lease; and

**WHEREAS**, Landlord would not execute the Lease if Guarantor did not execute this Guarantee.

**NOW, THEREFORE**, for and in consideration of Landlord's execution of the Lease, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Guarantor agrees as follows:

1. Guarantor hereby irrevocably and unconditionally guarantees to Landlord the full payment of all Tenant's monetary obligations under the Lease during its term and any extensions thereof, including without limitation all rent, additional rent, percentage rent, service charges and other charges and fees (including attorneys' fees), interest, costs, liquidated damages and any other amounts owed by Tenant under the Lease or incurred in enforcing this Guarantee ("Guaranteed Obligations"). Guarantor waives any right to revoke this Guarantee, and waives the benefits of any State or Federal statute to the contrary, including those listed in Paragraph 20 below (to the extent applicable).

2. Landlord may, at any time in its sole discretion, take any or all of the following actions without notice to Guarantor, without obtaining Guarantor's consent, and without affecting, terminating, or otherwise diminishing the Guaranteed Obligations: (a) amend any provision of the Lease, including renewing, amending, extending, or otherwise changing the time for payment; (b) consent to the change, restructure or termination of the corporate or organizational structure or existence of Tenant, or its affiliates; (c) accept partial or delayed payment of the Guaranteed Obligations; (d) apply any security; (e) settle, release or otherwise liquidate any Lease obligation, security or guarantee of the Lease; (f) release Tenant or any other person of its liability for all or any of the Guaranteed Obligations, whether in bankruptcy receivership, assignment for the benefit of creditors or other debtor-relief proceeding ("Insolvency Proceeding"); (g) exercise or not exercise rights available to it in any Insolvency Proceeding; (h) release or substitute any guarantor; and (i) assign its rights under this Guarantee in whole or in part.

3. Guarantor agrees that if Tenant shall fail to pay any amount due under the Lease, Guarantor shall upon Landlord's demand, pay all sums owing under the Lease to Landlord. Landlord may enforce this Guarantee without proceeding against Tenant or any other party, and Guarantor waives any right to require Landlord to proceed against Tenant, any party or security held by Landlord, or to exercise any right or remedy under the Lease or otherwise before proceeding against Guarantor.

4. Guarantor's liability under this Guarantee is one of payment, and not collectability. Guarantor's obligations under this Guarantee are independent of those of Tenant and any other party.

5. This Guarantee shall not be released, modified or affected by Landlord's failure or delay to enforce any of its rights or remedies under the Lease or this Guarantee, at law or in equity.

6. Guarantor's liability under this Guarantee shall continue until all Guaranteed Obligations have been satisfied in full. Guarantor's obligations shall continue and remain in effect in the event that any payment due under the Lease by Tenant is avoided or recovered from Landlord as a preference, fraudulent transfer or otherwise.

7. To the fullest extent permitted by law, Guarantor hereby waives and agrees not to assert or take advantage of: (a) any and all notice or notice requirements to Guarantor, Tenant, or any other person, including, but not limited to, notices of the acceptance of this Guarantee, the amendment or other modification of the Lease, the enforcement of any right or remedy with respect to the Lease or the Guaranteed Obligations, and notice of any other matters relating thereto; (b) any defense based upon the Landlord's failure to perfect any security interest, or the failure to file a claim in any Insolvency Proceeding of Tenant; (c) demand for performance of any other party; (d) any right to require Landlord to apply to any default any security it may hold under the Lease; (e) any right or defense that may arise by reason of the lack of authority or death of Tenant; (f) principles or provisions of law which conflict with the terms of this Guarantee; and (g) any right to enter upon or take possession of the Premises.

8. Without limiting the foregoing, and in addition to all other provisions herein, Guarantor waives any rights, defenses and benefits available to it under any State or Federal statute, including those listed in Paragraph 20 below (to the extent applicable). Guarantor waives any defenses arising from any impairment of Guarantor's rights of subrogation, reimbursement, contribution and indemnification, and Guarantor agrees that it intends that all waivers of such defenses and waivers of any other rights, privileges, defenses or protections available to Guarantor by reason of any State or Federal statute, including those listed in Paragraph 20 below (to the extent applicable) are also waived. Guarantor agrees that its obligations shall not be affected by any circumstances which constitute a legal or equitable discharge of a guarantor or surety.

9. Guarantor agrees that it shall have no right of subrogation against Tenant or any right of contribution against any other guarantor unless and until the Guaranteed Obligations are paid in full. Guarantor absolutely, unconditionally and irrevocably, irrespective of any lack of validity or enforceability of this Guarantee, waives all rights to assert any defense, (including but not limited to deduction, failure of consideration, failure to act in good faith, presentment, demand, protest, notice of protest, notice of nonpayment, subrogation, reimbursement, indemnity and contribution, or purported revocation or rescission of this Guarantee or any of the Guaranteed Obligations) set off, counterclaim or cross-claim of any nature whatsoever with respect to this Guarantee or the obligations of the Guarantor under this Guarantee or the obligations of any other person or party (including, without limitation, the Tenant) relating to this Guarantee or the obligations of the Guarantor under this Guarantee or otherwise with respect to the Lease, in any action or proceeding brought by the Landlord to collect the Guaranteed Obligation or any portion thereof, or to enforce, the obligations of the Guarantor under this Guarantee. In addition, Guarantor waives all rights to enforce any remedy that Tenant may have against Landlord, and all rights to participate in any security held by Tenant for the Guaranteed Obligations, including any such right set forth in any State or Federal statute, including those listed in Paragraph 20 below (to the extent applicable). To the extent Guarantor's waiver of rights of subrogation and contribution is found to be void or voidable for any reason, any subrogation right Guarantor may have against Tenant shall be junior and subordinate to any rights Landlord may have against Tenant, and any rights of contribution Guarantor may have against any other guarantor shall be junior and subordinate to any rights Landlord may have against such other guarantor. The Guarantor shall indemnify, defend and hold Landlord harmless from and against any loss, damage, claim, demand, cost or any other liability (including reasonable attorneys' fees and costs) resulting from a dispute between Guarantor and any other party as to any right of contribution.

10. The Guaranteed Obligations shall not be altered, limited or affected by a voluntary or involuntary Insolvency Proceeding by Tenant, or any defense which Tenant may have by reason of order, decree or decision of any court or administrative body resulting from an Insolvency Proceeding, including that Guarantor's liability shall not be subject to any limitation on liability that may exist in favor of Tenant in such Insolvency Proceeding, such as any limitation set forth in 11 U.S.C. § 502(b)(6) or similar provision. Guarantor acknowledges and agrees that any payment which accrues with respect to Tenant's obligations under the Lease (including, without limitation, the payment of rent) after the commencement of any such proceeding shall be an obligation of Guarantor hereunder, regardless of whether such payment is collectable from Tenant, because the parties intend that said obligations should be determined without regard to any rule or law or order which may relieve Tenant of any of its obligations under the Lease. Guarantor hereby authorizes any trustee in bankruptcy, receiver, debtor-in-possession, assignee for benefit of creditors or similar person to pay Landlord, or allow the claim of Landlord in respect of, any such payment accruing after the commencement of an Insolvency Proceeding. Guarantor hereby assigns Landlord its right to receive any payments from any trustee in bankruptcy, receiver, debtor-in-possession, assignee for benefit of creditors or similar person by way of dividend, adequate protection payment or otherwise, unless and until the Guaranteed Obligations are paid in full.

11. Any notice, statement, demand, consent, approval or other communication required or permitted to be given, rendered or made by either party to the other shall be in writing and shall be deemed to have been properly given, rendered or made only if hand-delivered, sent by a reputable overnight delivery company, or sent by first-class mail (postage pre-paid, return receipt requested), addressed to the other party at its respective address set forth below. By giving notice as provided herein, either party may designate a different address for such notices.

To Guarantor: Ivan Kumar  
17 Arleigh Drive  
Albertson, NY 11507

To Landlord: Valley Stream Green Acres LLC  
401 Wilshire Boulevard, Suite 700  
Santa Monica, California 90401  
Attention: Legal Department

12. Guarantor represents and warrants that it has the full right, power and authority to execute and deliver this Guarantee, and perform all obligations required by this Guarantee. No consent of any other person, including, without limitation, any creditors of Guarantor, and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority is required by Guarantor in connection with this Guarantee or the execution, delivery, performance, validity or enforceability of this Guarantee. This Guarantee has been executed and delivered by Guarantor, and constitutes the legally valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.

13. The Guarantor acknowledges that no oral or other agreements, understandings, representations or warranties exist with respect to this Guarantee, the Lease or with respect to the obligations of the Guarantor under this Guarantee, except as specifically set forth in this Guarantee. This Guarantee fully incorporates the agreements and understandings of the Guarantor with the Landlord with respect to the subject matter hereof, Guarantor's obligation concerning the Guaranteed Obligations, and Guarantor's waiver of all defenses, set-offs, deductions and counterclaims, and all prior negotiations, drafts, and other extrinsic communications between the Guarantor and the Landlord shall have no evidentiary affect whatsoever. Guarantor further agrees that Guarantor has read and fully understands the terms of this Guarantee; Guarantor has had the opportunity to consult with counsel with respect to this Guarantee;

the Guarantee fully reflects Guarantor's intentions and parole evidence is not required to interpret the terms of this Guarantee.

14. Guarantor represents that it is not insolvent, and no bankruptcy or other Insolvency Proceeding is pending, or to the best of its knowledge, contemplated by or against Guarantor.

15. This Guarantee is binding upon Guarantor and its heirs, representatives, administrators, executors, successors and assigns and shall inure to the benefit of and shall be enforceable by Landlord, its successors, endorsees and assigns. A married person executing this Guarantee agrees that recourse may be had against community assets and against his or her separate property for the satisfaction of the Guaranteed Obligations.

16. Guarantor shall immediately reimburse and pay Landlord for charges, costs and expenses (including, without limitation, attorneys' fees) incurred by Landlord, whether or not litigation is filed or prosecuted to judgment, for any dispute or litigation, including those arising from: (a) enforcement of this Guarantee or its terms; or (b) all actions taken in connection with the representation of Landlord in any Insolvency Proceeding of or relating to Tenant.

17. The invalidity or unenforceability of any one or more provisions of this Guarantee will not affect the validity or enforceability of any other provision.

18. This Guarantee constitutes the entire agreement between Guarantor and Landlord with respect to the subject matter herein. No provision of this Guarantee or right of Landlord may be waived, nor may Guarantor be released from any obligation absent the express written consent of Landlord.

19. LANDLORD AND GUARANTOR EACH HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS GUARANTEE, INCLUDING ANY EMERGENCY OR OTHER STATUTORY REMEDY WITH RESPECT THERETO. LANDLORD AND GUARANTOR ALSO AGREE THAT THIS GUARANTEE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THE CENTER IS LOCATED, WITHOUT REGARD TO CONFLICTS OF LAW PROVISIONS, AND THAT THE VENUE OF ANY SUCH ACTION, PROCEEDING OR COUNTERCLAIM SHALL BE IN ONE OF THE FOLLOWING JURISDICTIONS AS MAY BE SELECTED BY LANDLORD IN ITS SOLE AND ABSOLUTE DISCRETION: (A) THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, OR (B) THE COUNTY AND STATE IN WHICH THE CENTER IS LOCATED. LANDLORD AND GUARANTOR EACH HEREBY CONSENT TO THE PERSONAL JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN BOTH THE STATE OF CALIFORNIA AND IN THE STATE IN WHICH THE CENTER IS LOCATED.

20. State Law Provisions. The following provisions will apply if the Premises is located in one of the states listed below:

20.1. California. Guarantor waives any right to revoke this Guarantee, and waives the benefits of California Civil Code Section 2815. Without limiting the provisions of Paragraph 8 above, and in addition to all other provisions herein, Guarantor waives any rights, defenses and benefits available to it under California Civil Code Sections 2787 to 2855, inclusive, 2899 and 3433, and any successor sections. . Guarantor waives any defenses arising from any impairment of Guarantor's rights of subrogation, reimbursement, contribution and indemnification, and Guarantor agrees that it intends that all waivers of such defenses and waivers of any other rights, privileges, defenses or protections available to Guarantor by reason of California Civil Code Sections 2787 to 2855, inclusive, to be effective to the maximum extent permitted by California Civil Code Section 2856 and other applicable law. Guarantor waives all rights to enforce any remedy that Tenant may



have against Landlord, and all rights to participate in any security held by Tenant for the Guaranteed Obligations, including any such right set forth in any California Civil Code Sections 2848 or 2849, until the Guaranteed Obligations have been paid in full.

20.2. Arizona. Guarantor expressly waives any right, statutory or otherwise, to be discharged from liability hereunder by reason of Landlord's failure to bring suit against Tenant, including without limitation, any and all rights and defenses which might arise under Arizona Revised Statutes Sections 12-1641, 12-1642, 12-1644, 12-1645, 12-1646 and 44-142 and Rule 17(f) of the Arizona Rules of Civil Procedure.

21. Any signature to this Guarantee transmitted electronically through DocuSign shall be deemed an original signature and be binding upon Guarantor (it being agreed that such electronic signature shall have the same force and effect as an original signature).

**IN WITNESS WHEREOF**, Guarantor has executed this Guarantee as of the date first above written.

**GUARANTOR:**

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**IVAN KUMAR**

**Green Acres and Green Acres Commons – Parallel Provisions Check Sheet – Designer Jewelers**

<b>PILOT Agreement Exhibit G Provision</b>	<b>Parallel Approved Macerich Lease Provision</b>	<b>Check if Provision Substantially Conforms</b>	<b>Explanation of Substantial Deviation</b>
2.1 and 2.2	Section 8.2, including 8.2.1 – 8.2.8 (w/includes self-insurance)	X	
2.3	Section 23.5 and Exhibit D, definition of <b>Insured Casualty</b> (alphabetically)	X	
2.4	Lines 15 – 19 of Section 8.2.8, Policy Requirements (and Exhibit E provision modifying 8.2.8 including the TOHIDA as an additional insured)	X	
3.1	Exhibit C, Section 3.2 and 4.1, and Exhibit E provision labeled "No Warranty of Condition or Suitability by Agency."	X	
3.2	Sections 8.1.1 and 8.1.3, and Exhibit E, change to Exhibit D definition of Landlord Parties (final provision in Exhibit E unless something else is negotiated into Exhibit E.)	X	
3.3	17.4	X	
3.4 and 3.5	12.1.2 and 27.4	X	
3.6	Exhibit E, Agency Provision 1(a) and 2	X	
3.7(a)	12.1.2 (w/includes Tenant alteration language from formbook)	X	
3.7(b)	Art. 25	X	
3.8	Exhibit E, Agency Provision 1.(b) labeled "Reporting Requirements"	X	
3.9	Exhibit E, Agency Provision 4. Labeled "Employment Opportunities; Notice of Jobs."	X	
3.10	Article 14 (w/includes Corporate, Affiliate & Franchise transfer language from our formbook)	X	
3.11, 1 <sup>st</sup> sentence	Section 7.2	X	
3.11, 2 <sup>nd</sup> sentence	Exhibit E, Agency Provision 1(b), labeled "Reporting Requirements."	X	
3.12	Exhibit E, labeled Agency Provision 5, "Agency as Third Party Beneficiary".	X	
3.13	Exhibit E, labeled Agency Provision 6, "Confidential Information"	X	

3.14	Exhibit E, Agency Provision 7, "Successors and Assigns"	X	
NDA			No NDA requested

## *CEO's REPORT*

### *June 20, 2023*

*\*Indicates new proposal not included in prior reports*

#### **ACTIVE PROJECTS:**

**MRCT Investments** - This proposed \$50 million Mill Creek Residential project in West Hempstead will have 150 units. The company received a 20-year PILOT and was induced at our January 2022 meeting. Contacts: Russell Tepper, Managing Director © 908 770-2144, Nick Halstead © 917 846-3594, Elisabetta Coschignano, Esq. (228-1300), Nicholas Cappadore (Sahn, Ward, Coschignano) 228-1300.

**Parabit Systems**- an existing beneficiary of IDA benefits has purchased additional property abutting its situs in Roosevelt, 33-35 Debevoise Avenue. The new project will include a 10,000 square foot expansion of the existing facility (structure) and will be a 6,000 square foot net increase as 4,000 square feet of the existing building will have to be demolished. Parabit purchased property for \$145,000. Land use authorization (variances, etc.) as well as Town Board Approval must be completed prior to closing with IDA. The company currently employs eighty-five (85) workers and expects to add ten (10) in the first year. Parabit manufactures ATM devices and Kiosks. They seek a Pilot (15 years), sales tax exemption and mortgage recording tax exemption. This project was induced at the January 2022 meeting for an additional 11-year PILOT. An Authorizing Resolution was approved at our February 2022 meeting. The company is awaiting permits from the building department. Contacts: Richard Kick, VP Operations cell (516-519-1085) Dan Baker, Esq. of Certilman Balin.

**Aloft-Red Roof Inn, Westbury**- This situs and building therein is a former project that received IDA benefits when it was developed three decades ago as a hotel. The property is located at 699 Dibblee Drive, Westbury. In recent decades some of the building houses tenants through section 8 vouchers. The 163 units are 80% occupied. Beachwood Homes recently purchased the property and seeks to convert the existing use to either upper and short-term occupants or college housing. The extensive renovations to the project would be \$5 to \$10 million. Contacts: Steve Dubb or Edward Pleber (935-5555) Anthony Guadino, Esq. of Farrell Fritz, P.C. (631-367-0716).

**The Meadowwood Properties** – Developer seeks to construct twenty (20) units of residential rental housing on property located on Newbridge Road in East Meadow which had been owned by St. Raphael's Church. The two buildings will be for fifty-five (55) and older. The current taxes on the undeveloped land are \$20,000. Project costs are approximately \$5.8 million. Contact: James Neisloss (917 -838-4664), Negus, Esq. of McLaughlin & Stern, LLP (516-467-5431). Dan Deegan, Esq.

**283-287 Fulton Avenue, LLC** – The property is located on the intersection of Fulton Avenue & Front Street, Hempstead. The building has three floors. The first floor has 4,200 square feet, the second & third 3,100 square feet each. The developer seeks to round off the second & third floors to 4,200 square feet to match the first floor. Project costs are projected to be ten million dollars. The renovation would convert the current office space to ten units of two-bedroom apartments. The retail space on the ground floor would remain as the situs of the property abuts the Terrace Avenue Poverty Census Tract and, therefore, qualifies for the exemption for retail. The developers are awaiting final approval from the village which has been delayed due to the Covid-19 and the death of one of the developers. The project is moving forward. Taxes are currently \$65,000. Contacts: Michael Mitchell (816-8994). Attorney: Dan Baker, Esq.

**MCRT** – The developer seeks to build 250 units of mixed fifty-five and over middle-income apartments on 4.57-acre site on Atlantic Avenue in Oceanside. Project remains in early stages. Contacts: Elisabetta Coschignano, Esq., 47 Broadway, Wilbur Breslin, Pres.

**111 Hempstead Turnpike LLC (Heatherwood)** - The proposed project located at 111 Hempstead Turnpike in West Hempstead seeks to demolish an existing 300,000 square foot abandoned building and construct a 488,819 square foot structure on the 9.43-acre site located at 111 Hempstead Turnpike. The proposal will include 5,143 square feet of retail space and the construction of 428 apartment units in two three story buildings and one four story structure. There will be (7) full-time employees. The company has met with all the civic groups in the area and local officials. Heatherwood has obtained a change of zone from the town board. Total project costs are approximately \$180 million. Contacts: Dan Deegan, Esq. & Chris Capece. Public Hearings were held on September 28, 2021, and May 10, 2023 due to the extended period of time between the two. A closing date of May 30<sup>th</sup> has been set.

**PGD Baldwin Commons, LLC** - Park Grove Realty working with the CDC of Long Island and (Community Development Corporation of Long Island) seeks to construct thirty-three (33) units of work force housing on the specially zoned site at the northwest corner of Grand Avenue & Merrick Road in Baldwin. The \$3 million project would have twenty-seven (27) one-unit dwellings and six (6) two-bedroom units. The project would add one full-time employee. This project was induced at the IDA October 2022 Board Meeting with 20-year PILOT Agreement with a 10-year optional extension if in compliance, Sales Tax Exemption, and MRT Exemption. Approval by NYS HCR has delayed the project, but recent discussions between the developer and the HCR are positive. The project was re-induced at our February 2022 meeting and authorized at the April 2023 meeting. We are awaiting a closing date. This project is located within the Baldwin mixed use overlay. Contact: Gwen O'Shea, CEO, CDA of LI (631) 471-1215 x 175.

**Ocean Avenue Marina, Inc.** – The developer intends to demolish the existing catering hall and construct two buildings at 50 & 80 Waterfront Blvd., Island Park. The new apartment complex will be four stories, 135,406 square feet, housing 117 units (74 one-bedroom units and 43 two-bedroom units). The first floor will provide 196 parking spaces with the remaining three floors providing the aforementioned rental units. Project costs are \$41.143 million. The developer seeks a 20-year PILOT, Sales Tax Exemption and Mortgage Recording Tax Exemption. Contact: Peter Curry, Esq., Dylan Vitale, owner. This project vote failed on a Due Diligence Resolution at our September Board Meeting and revoted in October 2021 received a Due Diligence Resolution.

**Inwood Property Development:** The applicant seeks to build a forty-unit, 52582 square foot building of 20 one bedroom, 15 two bedroom and 12 three bedroom and one studio. The \$22 million dollar project will include 25% affordable units. This project was induced on January 31, 2022, with benefits that included Sales Tax Exemption, Mortgage Recording Tax Exemption and a 20-year PILOT. A Public Hearing was held on February 15, 2022. An authorizing Resolution was held on February 24, 2022. The company is currently trying to obtain financing.

**Sunrise of Oceanside NY Propco, LLC** – The developers seek to transform the vacant property of 374 Atlantic Avenue, Oceanside into an 84 unit assisted living facility. The site will be 77,433 square feet of living space with 34 one-bedroom units and 50 two-bedroom units. There will be 52 on-site parking spaces. The project will include assisted living, memory care, and hospice care as well. Amenities include a spa, beauty salon, exercise room, entertainment area with bistro and dining room. Total costs are approximately \$48.395 million. Fifty-five full-time jobs are expected to be added by the beginning of year. The developer seeks a fifteen (15) year PILOT, sales tax exemption and mortgage recording tax exemption. The Public Hearing has been held on September 28, 2022. The project has been approved by the BZA and an authorizing resolution was adopted 10/25/22. Contact: Andrew Coello & Elizabetta Coschignano.

**Rock 50, LLC** – The applicant seeks to convert the former Rockville Center Roman Catholic Diocese office at the subject site of 50 North Park Avenue, Rockville Centre to a class A commercial Office Building. The 60,000 square foot building will be upgraded with the existing exterior extensively renovated. Total costs are approximately \$19.1 million. Two hundred twenty-three (223) new full-time positions are expected to be added by the second year. The applicant seeks a twenty-year PILOT, Sales tax exemption and mortgage recording tax exemption. This property was induced at the January 22, 2022,

Board Meeting, A subsequent hearing was held on February 22, 2022. An authorizing resolution was adopted on 11/16/2022. Issues remain with respect to subsequent transfers and the listing of plots.

**Baldwin Jaz, LLC** - The proposed project seeks to redevelop the properties located at 2253 Grand Avenue & 2292 Harrison Avenue in Baldwin. The property was previously used as a car lot and will be developed into a multiple family transit-oriented site. The project would include 215 residential units (47 studios, 132 one-bedrooms and 36 two-bedroom units) on a 74,488 square foot site. Project will include a ground floor restaurant and retail space (5000 square feet) with 251 on-site parking spaces. Project costs are estimated to be \$106.1 million with 8.5 full-time job equivalents added. The developer seeks a 30-year PILOT, sales tax exemption and mortgage recording tax waiver. This project was induced 9/20/22. The project was re-induced in April 2023 with minor changes to project. The project was given a 30-year PILOT, Mortgage recording Tax Exemption and Sales Tax Exemption. The authorizing Resolution was adopted 5/23/23. Contacts: Elizabetta Coschignano & Kenneth Breslin.

**CenterPoint Inwood, LLC** - The developer seeks to erect a high-ceiling warehouse and office space in this now vacant parcel of approximately 138,245 square feet. There will be integrated rooftop surface parking, thirty-one drive-up loading docks and two drive-ins. The property is located on Rason Road; Inwood consists of 87 acres. Additional surface parking, storm water and landscaping improvements will be included. The project will cost \$84 million with a minimum of twenty-five full-time jobs added by the second year and seventy-five construction positions. The project was induced in March 2023 and authorized in April 2023. They were granted a 15-year PILOT and Sales Tax Exemption. We are awaiting a closing date. No tenant has been selected. Contact: Ronel Borner, Dan Deegan, Esq.

**The Gardens at Buffalo, LLC** - The developer seeks to demolish an existing warehouse (11,451 Square feet) and part of a three-story building as well as utilizing 80,044 square feet of space. The resulting structure will be approximately 165,936 square feet which will be five stories. The project should include 200 units of apartments. The project cost is \$49.3 million. The applicant seeks a 25-year PILOT, sales tax exemption, and mortgage recording tax waiver. The board adopted a Due Diligence Resolution 5/23/23. Contact: Jack Martins, Esq.

**\*Centennial Hall** - The developers seek to construct twenty-four (24) units on property in Floral Park that will be "land only". The units will consist of twelve two bedrooms and twelve one bedrooms. The project will be three stories of market rate housing with underground parking. The total costs are \$6.5 million. The developer seeks a 15-year PILOT. Contact: Dan Deegan, Esq.

**\*Conklin Estates** - The developers seek to construct sixteen (16) units of market rate housing consisting of (12) units of two bedrooms and (4) units of three bedrooms. Project costs are \$5.5 million. Contact: Dan Deegan, Esq.

**\*1315 Peninsula** - The company seeks to relocate its corporate offices from Great Neck and New York City to Hewlett. The project will be self-financing, at least initially. There will be thirty employees. Project costs are approximately six (6) million dollars in the 11,000 square foot, two level office building. A twenty (20) year PILOT is sought. Contact: Dan Deegan, Esq.

#### **INACTIVE PROJECTS:**

**Empire Offshore Wind, LLC** - The Company seeks to construct a renewable wind project including a five-acre substation in Oceanside consisting of 6.65 acres (existing buildings to be removed). This environmentally positive project will reduce fossil fuel reliance and upgrade the local power grid. Project costs are \$221.8 million. Developer seeks a 31-year PILOT, sales tax exemption and mortgage tax exemption. It's very preliminary. No action will take place without the input and approval of local districts, schools, villages, town is secured. Contact: Jonathan Forte (713) 897-9980.

Amended  
RESOLUTION

TOWN OF HEMPSTEAD  
INDUSTRIAL DEVELOPMENT AGENCY

Post-Retirement Health Insurance Account Transfer

WHEREAS, the Town of Hempstead Industrial Development Agency previously passed a “Budget Line Transfer Resolution” and authorized transfer of funds from Bank of America to First National Bank of Long Island in the amount of \$80,000.00, and;

WHEREAS, the Town of Hempstead Industrial Development Agency hereby amends the aforementioned Resolution #060-2022 to a “Post-Retirement Health Insurance Account Transfer” as follows: From Agency Fund Balance Account ending in #4381 at Bank of America, to the Post-Retirement Health Insurance Account ending in #2593 at First National Bank of Long Island in the amount of \$80,000.00,

NOW, THEREFORE, BE IT

RESOLVED, the Agency hereby authorizes the amendment outlined above for an amount not to exceed \$80,000.00 as previously approved.

Adopted: 12/20/22

Ayes:

Nays:

Resolution Number: 060-2022

Amended: 6/1/23

Ayes:

Nays:

Resolution Number: 029-2023

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Flo Girardi, Chairman

# RESOLUTION

## TOWN OF HEMPSTEAD INDUSTRIAL DEVELOPMENT AGENCY

### Post-Retirement Health Insurance Account Transfer

WHEREAS, the Town of Hempstead Industrial Development Agency hereby authorizes the transfer from the Agency Fund Balance Account ending in #4402 at Bank of America, to the Post-Retirement Health Insurance Account ending in #2593 at First National Bank of Long Island in the amount of \$350,000.00,

NOW, THEREFORE, BE IT

RESOLVED, the Agency hereby authorizes the transfer outlined above, for an amount not to exceed \$350,000.00.

Adopted:

Ayes:

Nays:

Resolution Number: 030-2023

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Flo Girardi, Chairman



# RESOLUTION

## TOWN OF HEMPSTEAD INDUSTRIAL DEVELOPMENT AGENCY

### Severance Account Transfer

WHEREAS, the Town of Hempstead Industrial Development Agency hereby authorizes the Agency Fund Balance transfer from Bank of America Checking Account ending in #4402 to the First National Bank of Long Island Severance Account ending in #2585 in the amount of \$150,000.00,

NOW, THEREFORE, BE IT

RESOLVED, the Agency hereby authorizes the transfer outlined above, for an amount not to exceed \$150,000.00.

Adopted:

Ayes:

Nays:

Resolution Number: 031-2023

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Flo Girardi, Chairman

# RESOLUTION

## TOWN OF HEMPSTEAD INDUSTRIAL DEVELOPMENT AGENCY

### Operating Account Transfer

WHEREAS, the Town of Hempstead Industrial Development Agency hereby authorizes the transfer from the First National Bank of Long Island Operating Checking Account ending in #9667 to the First National Bank of Long Island Operating Investment Account ending in #2577 in the amount of \$155,000.00,

NOW, THEREFORE, BE IT

RESOLVED, the Agency hereby authorizes the transfer outlined above, for an amount not to exceed \$155,000.00.

Adopted:

Ayes:

Nays:

Resolution Number: 032-2023

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Flo Girardi, Chairman



Board Members  
Florestano Girardi  
Eric C. Mallette  
James Marsh  
Jack Majkut  
Robert Bedford  
Cherice Vanderhall  
Thomas Grech

Frederick E. Parola  
Chief Executive Officer

350 FRONT STREET, HEMPSTEAD, NY 11550-4037  
(516) 489-5000 Ext. 4200 • Fax: (516) 489-3179

TOWN OF HEMPSTEAD INDUSTRIAL DEVELOPMENT AGENCY  
BOARD MEETING

May 23, 2023, 9:00 a.m.

Town Hall Pavilion, One Washington Street, Hempstead

**Agenda: Village Business: Village of Freeport:** North Shore Linen Mortgage refinance, 129 Hanse Avenue, Freeport, Consideration of a Due Diligence Resolution for The Gardens at Buffalo, 80-84 Albany Ave, Freeport **Village of Hempstead:** Consideration of an Extension of the Completion Date for FAD Henry Street Food Corp., 216-228 Henry Street, Hempstead, No New Business, **New Business:** Consideration of an Authorizing Resolution for Baldwin Jazz LLC, Grand Ave and Sunrise Highway, Baldwin, Consideration of an Authorizing Resolution for 111 Hempstead Tpke., West Hempstead, Consideration of a Resolution to Approve the Proposal by NYSID/Seery Systems for scanning, digitizing, and disposing of IDA documents, Consideration and Adoption of the Agency By Laws, Consideration and Adoption of the Travel Policy, Consideration and Adoption of the Retail Policy, Consideration and Adoption of the Recapture and Termination Policy, Consideration and Adoption of the Fee Schedule, Consideration and Adoption of the Code of Conduct/Whistleblower Policy, Consideration and Adoption of the Time and Leave Policy, **New Business – Other,** CEO's Report, LIBDC 53<sup>rd</sup> Annual Conference Save the Date, **Old Business:** None, **Reading and Approval of Previous Minutes:** Consideration and Adoption of the Minutes of April 18, 2023, **Report of the Treasurer:** Financial Statements and Expenditure List, April 12, 2023 – May 16, 2023, Committee Updates, Executive Session, Adjournment

Those in attendance:

Florestano Girardi, Chairman  
Thomas Grech, Vice Chairman  
Eric C. Mallette, Treasurer  
Jack Majkut, Secretary  
Robert Bedford, Board Member  
Jerry Kornbluth, Board Member  
Jill Mollitor, Board Member

Also in attendance:

Frederick E. Parola, CEO  
Edie Longo, CFO  
Arlyn Eames, Deputy Financial Officer  
Michael Lodato, Deputy Executive Director  
Laura Tomeo, Deputy Agency Administrator  
Paul O'Brien, Phillips Lytle LLP  
Barry Carrigan, Nixon Peabody  
John E. Ryan, Agency Counsel  
Alan Wax, Todd Shapiro Associates, Inc. (electronically)

Absent:

Lorraine Rhoads, Agency Administrator

The meeting was called to order at 9:05 a.m. The Chairman declared a quorum was present.

**Public Comment:** The Chairman opened the floor to comments by the public. There was no public comment.

### **Village of Freeport:**

**Consideration of a Mortgage Refinance for North Shore Linen, 129 Hanse Avenue, Freeport:** The borrowers, collectively, 800 Chettic Avenue LLC, and 20 Rider Place, LLC, will be refinancing their current loans with Bank of America (BOA) and the US Small Business Administration (Pursuit) to consolidate debt, pay off debt, and capitalize the operating entity and corporate guarantor, North Shore Linen Inc. No new money will be financed. Eric Mallette made a motion to approve a Consideration of a Mortgage Refinance for North Shore Linen in the amount of \$3,212,503.00. This motion was seconded by Jerry Kornbluth. All were in favor. Motion carried.

**Consideration of a Due Diligence Resolution for The Gardens at Buffalo, 80-84 Albany Avenue, Freeport:** Howard Colton, the attorney representing the Gardens at Buffalo 80-84 Albany Avenue, Freeport addressed the Board. The current property consists of an approximately 2.5355-acre parcel with a warehouse, small one-story office building and three 3-story residential apartment buildings. The applicant seeks to add a story addition to the three 3-story buildings and will construct an additional two 5-story structures attaching to the existing residential structures for a total of 200 rental apartment units. The warehouse will be demolished, and the office building will be renovated for the purpose of community amenities. Upon completion the project will be approximately 165,936 square feet. The 5 constructed and renovated buildings will consist of with the following breakdown: 10 studio apartments, 100 1-bedroom units, 70 two-bedroom and 20 3-bedroom units. There will be a 10% set aside for workforce housing. The parking will be as follows: 132 within the stacked parking structure, plus 45 on-site parking spots, for a total of 177. Mayor Robert Kennedy of Freeport and Mark Davella spoke in favor of the project. Tom Grech made a motion to adopt a Due Diligence Resolution for The Gardens at Buffalo. This motion was seconded by Jack Majkut. All were in favor. Motion carried.

### **Village of Hempstead:**

**Consideration of an Extension of the Completion Date for FAD Henry Street Food Corp., 216-228 Henry Street, Hempstead:** Dan Baker the attorney representing FAD Henry addressed the Board on the completion FAD Henry project. FAD Henry in the past few years has experienced serious delays in completing construction due to COVID-related issues of supply chain shortages, delays and work stoppage. Presently, the bulk of construction is done with only limited items necessary for completion. The lighting and electrical is being finished currently and the remaining items include HVAC work and site/paving work. The necessary HVAC units are expected for delivery in June/July and can then be installed as soon as possible. Once the building is completed, sitework can then be finished and will have a full inspection by the Village of Hempstead and any other necessary agencies. Flo Girardi made a motion to extend the completion date for FAD Henry Street Food Corp to March 1, 2024. This motion was seconded by Eric Mallette. All were in favor. Motion carried.

### **New Business:**

**Consideration of an Authorizing Resolution for Baldwin Jaz LLC, Grand Avenue and Sunrise Highway, Baldwin:** Elisabetta Coschignano the attorney for the applicant addressed the board. The applicant intends to demolish a used car lot and develop the site into a multi-family, transit-oriented development. The project will be comprised of 5 stories and 215 residential units. There will be 5,000 square feet of ground floor restaurant and retail space, together with a public/private amenity space linking Grand Avenue with Sunrise Highway and contiguous with the proposed restaurant retail spaces. 251 on-site parking spaces will be provided. 10% of the units will be set aside as workforce housing. The building size will be approximately 59,341 square feet and project number will also include Community Space usable between the hours of 9 a.m. and 6 p.m. by the public, with an entrance on Harrison Avenue. Flo Girardi made a motion to adopt an Authorizing Resolution for Baldwin Jaz LLC, Grand Ave and Sunrise Highway, Baldwin. This motion was seconded by Jerry Kornbluth. All were in favor. Motion carried.

### **Consideration of an Authorizing Resolution for 111 Hempstead Tpke. LLC, 111 Hempstead Tpke., West Hempstead:**

John Gordon the Attorney representing 111 Hempstead Tpke. LLC, 111 Hempstead Tpke., West Hempstead. addressed the board. The applicant seeks to demolish a 302,652 square foot three story retail building on the west side of Broad Street as well as surface parking on both parcels. They plan to construct two (4) story buildings for a total of approximately 481,089 square feet on 9.43 acres. This includes 5,575 square feet of retail space located at 111 Hempstead Turnpike in West Hempstead. The project will also include improving streetscapes and constructing two (4) story buildings containing a total

of 428 apartments units and retail use. The complex will be configured with a total of market rate apartments allocated as follows: (38) studio/one -bathroom, (173) one-bedroom/one-bathroom apartments, (153) two-bedroom/two-bathroom apartment) and forty (64) three-bedroom/two-bathroom apartments. The board conveyed the following benefits: a 20-year PILOT, Sales Tax Exemption and Mortgage Recording Tax. Tom Grech made a motion to adopt an updated Authorizing Resolution for 111 Hempstead Tpke. LLC, 111 Hempstead Tpke., West Hempstead. This motion was seconded by Jerry Kornbluth. All were in favor. Motion carried.

**Consideration of a Resolution to Approve the Proposal by NYSID/Seery Systems for scanning, digitizing, and disposing of IDA documents:** Mike Lodato addressed the board on the scanning process and how Seery Systems scan and dispose of our documents properly. Flo Girardi made a motion to adopt a Resolution to approve the Proposal by NYSID/Seery Systems for scanning, digitizing, and disposing of IDA documents for an amount not to exceed \$48,841.50. This motion was seconded by Tom Grech. All were in favor. Motion carried.

**Consideration and Adoption of the By Laws:** Flo Girardi made a motion to adopt the Agency's By Laws, as approved by the Governance Committee. This motion was seconded by Eric Mallette. All were in favor. Motion carried.

**Consideration and Adoption of the Travel Policy:** Flo Girardi made a motion to adopt the Agency's Travel Policy, as approved by the Governance Committee. This motion was seconded by Jerry Kornbluth. All were in favor. Motion carried.

**Consideration and Adoption of the Retail Policy:** Flo Girardi made a motion to adopt the Agency's Retail Policy, as approved by the Governance Committee. This motion was seconded by Eric Mallette. All were in favor. Motion carried.

**Consideration and Adoption of the Recapture and Termination Policy:** Flo Girardi made a motion to adopt the Agency's Recapture and Termination Policy, as approved by the Governance Committee. This motion was seconded by Eric Mallette. All were in favor. Motion carried.

**Consideration and Adoption of the Fee Schedule:** Flo Girardi made a motion to adopt the Agency's Fee Schedule, as approved by the Governance Committee. This motion was seconded by Eric Mallette. All were in favor. Motion carried.

**Consideration and Adoption of the Code of Conduct/Whistleblower Policy:** Flo Girardi made a motion to adopt the Agency's Code of Conduct/Whistleblower Policy, as approved by the Audit Committee. This motion was seconded by Eric Mallette. All were in favor. Motion carried.

**Consideration and Adoption of the Time and Leave Policy:** Flo Girardi made a motion to adopt the Agency's Time and Leave Policy, as approved by the Time and Leave Committee. This motion was seconded by Jerry Kornbluth. All were in favor. Motion carried.

**CEO Report:** Fred Parola provided the Board with a copy of the CEO Report.

**Old Business:**

**Reading and Approval of Minutes of Previous Meeting(s):**

**Minutes of the April 18, 2023, Board Meeting:** Eric Malette made a motion to waive the reading and to adopt the minutes of April 18, 2023. This motion was seconded by Bob Bedford. All were in favor. Motion carried.

**Report of the Treasurer:** The Board was furnished with copies of the Financial Statements and Expenditure list for April 12, 2023 – May 16, 2023.

**Committee Updates:** There were no updates.

**Executive Session:** No executive session

**Adjournment:** With all business concluded. Flo Girardi made a motion to adjourn the meeting at 9:48 a.m. This motion was seconded by Tom Grech. All were in favor. Motion carried.

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Jack Majkut, Secretary  
June 20, 2023

9:17 AM

06/13/23

Accrual Basis

**Town of Hempstead I. D. A.**  
**Balance Sheet**  
As of June 13, 2023

	Jun 13, 23
<b>ASSETS</b>	
Current Assets	
Other Current Assets	
490-00 · Interest due from PILOT account	-124,801.49
380-01 · Accounts Recievable	8,933.96
Total Other Current Assets	-115,867.53
Checking/Savings	
200-22 · Checking (FNBLI)187009667	165,000.00
200-21 · Oper Invest MM(FNBLI) 186702577	235,182.56
200-20 · Severance (FNBLI) 186702585	238,140.43
200-19 · HlthRetirement (FNBLI)186702593	990,783.76
200 · Cash	
200-02 · Petty Cash	63.71
200-13 · Bank of America - 9419794381-Ck	50,271.13
200-14 · BankofAmerica MMS - 9419794402	3,727,843.25
Total 200 · Cash	3,778,178.09
Total Checking/Savings	5,407,284.84
Total Current Assets	5,291,417.31
Fixed Assets	
400-00 · Furniture & Fixtures	
400-02 · Accumulated Depreciation	-26,702.70
400-01 · Furniture and Fixtures	26,702.70
Total 400-00 · Furniture & Fixtures	0.00
400-051 · Computer equip.	
400-04 · Accumulated Dep. - Computer	-3,929.02
400-05 · Computer Equipment	3,929.02
Total 400-051 · Computer equip.	0.00
400-100 · Machinery & equip.	
400-102 · A/D - Equipment	-15,878.00
400-101 · Equipment	15,878.00
Total 400-100 · Machinery & equip.	0.00
450-00 · Leasehold improvement	
450-02 · Accumulated Amort.	-90,950.40
450-01 · Leasehold Improvements	14,140.00
450-03 · 2009 Leasehold improvements	84,273.98
Total 450-00 · Leasehold improvement	7,463.58
Total Fixed Assets	7,463.58
Other Assets	
Deferred outflows of resources	
700-1 · Changes in Agency cont GASB68	-52,127.00
700-3 · Diff - expect/actual exp GASB68	7,735.00
700-6 · Change in assumptions OPEB	242,567.00
700-5 · Diff expected & actual OPEB	255,424.00
700-4 · Change in assumptions	258,066.00
Total Deferred outflows of resources	711,665.00
Total Other Assets	711,665.00
<b>TOTAL ASSETS</b>	<b>6,010,545.89</b>
<b>LIABILITIES &amp; EQUITY</b>	
Liabilities	
Current Liabilities	
Other Current Liabilities	
550-00 · Accrued Expenses	-11,521.22
602-00 · Payroll Liabilities	
602-09 · NY Unemployment	-1,392.49

9:17 AM

06/13/23

Accrual Basis

**Town of Hempstead I. D. A.**  
**Balance Sheet**  
**As of June 13, 2023**

	Jun 13, 23
602-04 · FICA Tax W/H Social Sec.	-0.01
602-05 · FICA Tax W/H Medicare	0.01
602-07 · Disability W/H	79.20
602-01 · Retirement W/H	101.89
602-06 · Retirement Loan	604.00
<b>Total 602-00 · Payroll Liabilities</b>	<b>-607.40</b>
<b>Total Other Current Liabilities</b>	<b>-12,128.62</b>
<b>Total Current Liabilities</b>	<b>-12,128.62</b>
<b>Long Term Liabilities</b>	
605 · Net pension liability - pro. sh	-102,539.00
602 · -10 Compensated absences	103,824.24
Deferred inflows of resources	
500-4 · Change in assumptions	2,876.00
500-2 · Change in pro - employer & prop	23,857.00
500-5 · Changes in assumption OPEB	32,975.00
500-1 · Difference between expect/act	334,468.00
<b>Total Deferred inflows of resources</b>	<b>394,176.00</b>
603-00 · Postretirement health benefits	1,450,586.00
<b>Total Long Term Liabilities</b>	<b>1,846,047.24</b>
<b>Total Liabilities</b>	<b>1,833,918.62</b>
<b>Equity</b>	
3000 · Opening Bal Equity	498,858.39
Net Income	719,555.73
909-00 · Fund Balance	2,958,213.15
<b>Total Equity</b>	<b>4,176,627.27</b>
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b>6,010,545.89</b>



9:19 AM

06/13/23

Accrual Basis

**Town of Hempstead I. D. A.**  
**Account QuickReport**  
**As of June 13, 2023**

Type	Date	Num	Name	Memo	Split	Amount	Balance
<b>200 - Cash</b>							39,591.89
<b>200-13 - Bank of America - 9419794381-Ck</b>							39,591.89
Check	05/17/2023	31267	Fevola Reporting & T...	Invoice # 5971...	522-22 - Public ...	-367.50	39,224.39
Check	05/19/2023	52268	PAROLA, FREDERI...	522-52 Pay Pe...	-SPLIT-	-1,744.72	37,479.67
Check	05/19/2023	52269	LONGO, EDITH M.	522-52 Pay Pe...	-SPLIT-	-565.66	36,914.01
Check	05/19/2023	52270	RHOADS, LORRAINE	522-52 Pay Pe...	-SPLIT-	-706.90	36,207.11
Check	05/19/2023	52271	Arlyn C. Eames	522-52 Pay Pe...	-SPLIT-	-3,132.82	33,074.29
Check	05/19/2023	52272	Lodato, Michael	522-52 Pay Pe...	-SPLIT-	-2,873.45	30,200.84
Check	05/19/2023	52273	Laura N. Tomeo	522-52 Pay Pe...	-SPLIT-	-2,343.32	27,857.52
General Journal	05/19/2023	S&Co ...	Bank of America	522-52 Pay Pe...	602-04 - FICA ...	-5,269.72	22,587.80
Transfer	05/24/2023			Funds Transfe...	200-14 - Bankof...	60,000.00	82,587.80
Check	05/30/2023	31268	READY REFRESH b...	Acct# 042347...	522-07 - Office ...	-117.97	82,469.83
Check	05/30/2023	31269	Optimum	07858-547683...	522-07 - Office ...	-308.01	82,161.82
Check	06/02/2023	52274	PAROLA, FREDERI...	522-52 Pay Pe...	-SPLIT-	-1,658.05	80,503.77
Check	06/02/2023	52275	LONGO, EDITH M.	522-52 Pay Pe...	-SPLIT-	-565.68	79,938.09
Check	06/02/2023	52276	RHOADS, LORRAINE	522-52 Pay Pe...	-SPLIT-	-332.89	79,605.20
Check	06/02/2023	52277	Arlyn C. Eames	522-52 Pay Pe...	-SPLIT-	-3,132.83	76,472.37
Check	06/02/2023	52278	Lodato, Michael	522-52 Pay Pe...	-SPLIT-	-2,873.43	73,598.94
Check	06/02/2023	52279	Laura N. Tomeo	522-52 Pay Pe...	-SPLIT-	-2,343.30	71,255.64
General Journal	06/02/2023	S&Co ...	Bank of America	522-52 Pay Pe...	602-04 - FICA ...	-5,049.14	66,206.50
Check	06/02/2023	31270	TOH Department of ...	Health Ins. - I...	522-70 - Health...	-9,799.61	56,406.89
Check	06/05/2023	electro...	N.Y.S & LOCAL EMP...	Code 51313 - ...	-SPLIT-	-505.78	55,901.11
Check	06/12/2023	31271	TOH Dept of General...	RENT June 20...	522-12 - Rent E...	-2,500.00	53,401.11
Check	06/12/2023	31272	Town of Hemsptead -...	Postage May ...	522-19 - Postag...	-61.33	53,339.78
Check	06/12/2023	31273	AFLAC	NQR44- Invoic...	602-11 - AFLA...	-230.58	53,109.20
Check	06/12/2023	31274	Todd Shapiro	Consultant - J...	522-01 - Profes...	-2,500.00	50,609.20
Check	06/12/2023	electro...	PAYCHEX	Payroll Servic...	2100-01 - PAY...	-338.07	50,271.13
Total 200-13 - Bank of America - 9419794381-Ck						10,679.24	50,271.13
Total 200 - Cash						10,679.24	50,271.13
<b>TOTAL</b>						<b>10,679.24</b>	<b>50,271.13</b>

# EMPIRE PROJECTS FACE LONG BEACH HEADWINDS

## Residents speak out against plans for turbines, transmission cable

BY MARK HARRINGTON  
mark.harrington@newsday.com

Arty Schnee of Massapequa, wearing a black "Stop Empire Wind" T-shirt, stood in the mid-day heat on the Long Beach boardwalk last week as part of a group regularly protesting wind farms that would be sited just 15 miles from the beach.

"I wouldn't be so against it if it was 80 miles out," said Schnee, a retired teacher.

He said he's also opposed to the land cable coming through Long Beach neighborhoods and about potential impacts on marine mammals.

He's not alone.

Four years after former Gov. Andrew M. Cuomo announced the first Empire Wind project as part of a major kickoff of a decadeslong plan to replace dirty old fossil fuel plants, developer Norway-based Equinor and its partner, BP, are facing unexpected headwinds.

Some residents who live along the expected cable route for part of the project through Long Beach say they worry about potential health impacts, while others say they're concerned about seeing the nearly 1,000-foot-high turbines from shore. Others express concern about a new substation in their backyard in Island Park. Still others say they're worried about impacts on marine life.

Equinor, which held informational sessions last week at a Long Beach hotel, has worked to quell the concerns, even as it continues negotiating with local governments on a benefits package that could ease some of the pain.

The start date for Equinor's Empire 1 and 2 projects recently were pushed back to 2026 and 2028, respectively, as permitting and other issues have caused delays of about a year. The state is counting on a new fleet of wind-energy projects as the core of a new green-energy push by 2035 as it powers down carbon-belching oil and gas-fired plants.

### Blowback on LI

The effort is meeting perhaps its stiffest resistance on Long Island, where Empire 1, which will send its energy to New York City via Brooklyn, will be closest to shore. The three-mile, land-based cable for Empire 2 is slated to come ashore in Long Beach and run to a substation in Island Park.

Equinor has commissioned a survey of hundreds of residents in the area and found more than half expressed support the project, while around a third opposed. The company acknowledges it has some work to do in persuading that one third to support it.

On the Long Beach board-

## WHAT TO KNOW

- **Wind farm developer Equinor** and its partner, BP, are facing unexpected headwinds in building the Empire Wind 1 and 2 projects off Long Beach.
- **Some residents worry about a cable** for the project running through Long Beach. Others are concerned about seeing the nearly 1,000-foot-high turbines from shore.
- **The start date for both projects** have been pushed back to 2026 and 2028, as permitting and other issues have caused delays.

walk last week, as they have been for months, homeowners Tim and Christina Kramer flagged down passersby, passed out leaflets and sought signatures in opposition to the projects.

"It's right at my doorstep," Christina Kramer said.

The Empire 2 cable is slated to run down their street, a concern, she said, given the high-voltages and current 1,260 megawatt capacity of the array.

"If it was just visually obstructive, I'd suck it up," said Kramer, a photographer and teacher. "But I can't unsee all I've learned in terms of the impact" of the project, while the developers will reap "billions."

Her flyer asks residents, "Is your home on the route for exposure to Harmful, Cancer-



**Tim and Christina Kramer, of Long Beach, are leading a group of residents in opposition to the Empire Wind electricity projects.**

Causing EMPs and Radiation?" referring to electromagnetic fields.

On the top floor of the Allegria Hotel, Equinor engineers were doing their best to quell those concerns.

"There's more than 40 years of research on this question, and none has connected electromagnetic fields from transmission lines or any other sources as a cause of any health consequences," said Ben Cotts, an Equinor principal engineer.

Greg Hastings, a construc-

tion manager, said the cable will run 60 to 80 feet beneath the beach before making land at Riverside Boulevard, causing as little disruption as possible during the off-season. From Riverside, it will run along East Broadway to Lincoln Street and East Harrison Street before going under the channel beside the bridge to Island Park. He said the street work is expected to be largely completed during a single non-summer period.

Alex Gomez, another Equinor engineer, said the

planned substation in Island Park will be no higher than 60 feet above the water line, with some of the nondescript buildings on the site to be partly protected from views with vegetation.

"We'll try to make sure we don't have overwhelming structures that are imposing on anyone," he said.

#### **Impact on sea life**

Addressing concerns over impacts on sea mammals, John Carduner, permitting manager,

said the company will not pile drive the towers into the seabed during the January through April period, and the remainder of the year will employ several methods to make sure the thousands of blows of pile driving don't occur when whales are spotted in the area. They'll use bubble curtains to contain the noise, listen for whales with special audio equipment and monitor the surface with whale watchers.

Despite all the assurances, several residents who attended

the session expressed concerns. "I'm against it until I know it's safe," said Linda Giles, a Long Beach resident. "We don't have definite answers. The area is going to be full of cables."

"Mostly we don't like the impact on whales and the cable going by peoples' houses," added Phyllis Libutti, of Long Beach.

It's not just residents who are criticizing Equinor's approach.

"If there's a way not to do a project, Equinor seems to be embracing that model," said John Bendo, president of the Long Beach City Council, noting the city recently hired legal and technical experts to "help guide us through the process. Sometimes it feels like Equinor believes a magic wand is going to wave and it's all going to fall into place for them."

Equinor spokeswoman Lauren Shane said, "As our projects continue to make progress, people have more questions about what they can expect. That's why we've had numerous meetings, briefings and open houses where we've reached elected officials, civic leaders, and hundreds of community members over the last year."

Meanwhile, issues relating to community benefits packages for Long Beach and Island Park are "up for negotiation," said Brian Young, a senior communications consultant for Equinor. "We're definitely working with community as much as we can, meeting those . . . And trying to be as unobstructive as possible."

# Bill to open land for Long

BY YANCEY ROY

yancey.roy@newsday.com

connect to New York's power grid.

ALBANY — Some senators called it unprecedented and improper. Some called it necessary.

And when it hit the Senate floor just before the chamber adjourned for the summer last week, all heck broke out.

At issue was a bill to free up land and clear the way for a power transmission cable to run from a wind turbine array off the shore of Long Beach to

owned park land. The State Legislature routinely approves "alienation of park land" bills because are rarely controversial and typically involve, say, a town giving ownership of a parcel to a county.

This bill was different.

Citing local concerns and "unanswered questions" about the proposed cable, Sen. Patricia Canzoneri-Fitzpatrick (R-Malverne) — who represents Long Beach — put a hold on the bill, meaning it wouldn't likely be approved this year.

## Beach wind farm cable stalls in Assembly

Citing a need for the state to reach its energy goals, Democrats who control the Senate sought to free up the bill by essentially tucking it into a separate bill governing offshore wind projects and approving it in the waning hours of the session early Friday evening.

That started a long skirmish on the Senate floor.

Multiple Republicans took the floor during the debate to denounce the idea of a senator taking over a land-use issue centered in another's district.

Canzoneri-Fitzpatrick called it "an extreme overreach that has sought to bypass local representation." She said she favors "green energy" but contended Equinor hasn't answered residents' questions about safety and community benefits.

"I would not, under any circumstances, go into another senator's district and take over a [land-use] bill because that's not what we do here," said Sen. Jack Martins (R-Mineola). "It just doesn't seem right."

That's a hoot, Sen. Michael

Gianaris (D-Astoria) countered, considering many Republicans denounced him for opposing a proposed Amazon headquarters in his home district several years ago.

"There is no requirement that someone whose district is affected has the ultimate say in what happens," Gianaris said, adding state takeover of what one might call a local issue "has happened many, many times despite the protestations of my colleagues because there are a lot of things that have implica-

tions beyond a local effect."

Sen. Kevin Parker (D-Brooklyn), chairman of the Energy Committee, said the Equinor project was part a range of wind power projects the state needs to boost alternative fuel sources and reduce greenhouse gases.

"We saw that the needs of the state and the energy needs of Long Island take precedence over some of the objections we are hearing," Parker said. He didn't say if state energy regulators had weighed in.

In the end, Parker's bill was approved in a straight party-line vote, 42-21.

But the saga isn't over.

The Democratic-dominated Assembly adjourned Saturday without approving the bill because lawmakers had "concerns" about local sentiment for the project, a source said.

However, the Assembly plans to return to Albany as soon as next week to take up a slew of bills it didn't get to last week. It's unclear if the Long Beach bill will be part of the agenda.

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