

**DREAM PORT 3, LLC  
RETAIL LEASE**

**NOTICE:**

**The submission of this document for examination does not constitute an option or offer to lease space at the Building. This document shall have no binding effect on the parties unless executed by the Landlord and the executed copy is delivered to the Tenant.**

**RETAIL LEASE**

This Lease is made this 29<sup>th</sup> day of August, 2016 by and between **Dream Port 3, LLC**, a Maine limited liability company ("**Landlord**") and The King's Head LLC d/b/a Jäger, a Maine limited liability company ("**Tenant**").

**WITNESSETH:**

**1. BASIC LEASE PROVISIONS:**

- 1.1. Building Name: 41 Wharf Street, Portland, ME 04101  
Address: 41 Wharf Street, Portland, ME 04101  
  
Unit/Suite No.: First Floor
- 1.2. Area of Premises: 1,000 square feet of Rentable Area as reflected on the site plan attached hereto as **Schedule 1**.
- 1.3. Tenant's Percentage Share: 9.8% (said Percentage Share shall be adjusted in the event the rentable area of the Building is increased or decreased).  
  
Based upon Premises of 1,000 square feet of Rentable Area in the buildings containing commercial space in 432-434 Fore Street/41-43 Wharf Street as reflected on the stacking plan attached hereto as **Schedule 2** owned by Dream Port, 3 LLC of 10,550 rentable square feet.
- 1.4. Commencement Date of Lease: September 1st, 2016.
- 1.5. Expiration Date of Lease: August 31st, 2021.
- 1.6. Rent Commencement: November 1<sup>st</sup>, 2016. Tenant agrees to accept the Premises in an "as is" condition and acknowledges that no representations with respect to the condition of the Premises have been made by Landlord.
- 1.7. Basic Rent: \$29,100 **OR** \$29.10 per square foot of Rentable Area per year, payable in equal monthly installments of \$2,425 per month.
- 1.8. Reserved
- 1.9. Security Deposit: \$2,425.
- 1.10. Permitted Use: Tenant will use the Premises as a German-style ale house with light pub fare.
- 1.11. Trade Name: The King's Head LLC d/b/a Jäger.
- 1.12. Reserved
- 1.13. Section 46 regarding Promotional Program is not applicable.
- 1.14. Reserved
- 1.15. Late Charges: The parties agree that late payment by Tenant to Landlord of rent will cause Landlord to incur costs not contemplated by this Lease, the amount of which is extremely difficult to ascertain. Therefore, the parties agree that if any installment of rent is not received by Landlord within **10 days** after rent is due, Tenant will pay to Landlord a sum equal to 6% of the monthly rent as a late charge.
- 1.16. Rental Adjustment(s) during initial term:

<u>Adjustment Date</u>	<u>Adjusted Monthly Rent</u>
9/1/2017	\$2497.75
9/1/2018	\$2572.68
9/1/2019	\$2649.86
9/1/2020	\$2729.36
- 1.17. Option to Extend: One (1) Five (5) year option.

- 1.18. Rent for Option Period: Fair market rent. See Schedule 3 for computation of fair market rent.
- 1.19. Option Exercise Deadline: Tenant must give Landlord written notice of the exercise of the option(s) set forth in **Paragraph 1.17** above 9 months prior to the date this Lease would terminate if such option were not exercised ("**Option Exercise Deadline**"). Tenant's exercise of the option(s) will only be effective if Tenant is not in default on the date on which Tenant exercises said option(s) and if Tenant is also not in default on the date on which the option period commences.
- 1.20. Base Year for Operating Expenses and Taxes: 2016
- 1.21. Calculation of Operating Expense Rent: See **Paragraph 6**.
- 1.22. Guarantor(s): Justin O'Connor. See **Schedule 4**.
- 1.23. Address for payment of rent and notices:

<p>Landlord:          Dream Port 3, LLC          101 Merritt Ave,          Bergenfield, NJ 07621          Attn.: Stephen B. Wolgin          (201) 248-9719</p>	<p>Tenant:          The King's Head LLC d/b/a Jäger          41 Wharf Street,          Portland, ME 04101          Attn.: Justin O'Connor          (518) 637-8784</p>
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- 1.24. Broker: The Broker is: Nate Stevens of CBRE | The Boulos Company. Landlord will bear the cost of the commission payable to Broker in connection with this Lease. Landlord and Tenant warrant and represent to each other that they have not consulted or negotiated with any broker or finder with regard to the Premises or this Lease other than Broker. If either party shall be in breach of the foregoing warranty, such party shall indemnify the other against any loss, liability and expense (including attorneys' fees and court costs) arising out of claims for fees or commissions from anyone having dealt with such party in breach.
- 1.25. Reserved
- 1.26. Reserved

**2. DEFINITIONS:** Unless the context otherwise specifies or requires, the following terms will have the meanings set forth below:

- 2.1. Common Areas: All areas and facilities outside the Premises and within the exterior boundaries of the Building that are not leased to other tenants and that are provided and designated by Landlord, in its sole discretion from time to time, for the general use and convenience of Tenant and other tenants of the Building and their authorized representatives, entities, invitees and the general public. Common Areas include areas within and outside of the buildings on the Building, such as pedestrian walkways, patios, landscaped areas, sidewalks, service corridors, elevators, restrooms, stairways, decorative walls, loading areas, parking areas and roads.
- 2.2. Reserved
- 2.3. Lease Year: Each 12 month period during the term of this Lease ending on **August 31<sup>st</sup>**, provided that the first Lease Year will commence upon the commencement of the term hereof and will end on the next succeeding **August 31<sup>st</sup>** and the last Lease Year will end upon the expiration of the term hereof.
- 2.4. Rentable Area: All floor area within the Premises measured at floor level from the midpoint of all demising walls to the exterior surface of all exterior walls and exterior glass separating the Premises from the Common Areas (without deduction for columns or projections necessary to the Building) plus Tenant's proportionate share of the Common Areas. In addition to forgoing, use of basement is included in Base Rent.
- 2.5. Operating Expenses: All costs of operating, servicing, administering, repairing and maintaining the Building (excluding costs paid directly by Tenant and other Tenants in the Building or otherwise reimbursable to Landlord), the landscaping of Common Areas of the Building and any

lot contiguous to the Building if Tenant is not paying any parking fees. All costs of operating, servicing, administering, repairing and maintaining the Building include any reasonable and necessary costs of operation, maintenance and repair, computed in accordance with generally accepted accounting principles applied on a consistent basis ("GAAP"), and will include by way of illustration, but not limitation:

- (i) all necessary costs of managing, operating and maintaining the Building, including, without limitation, wages, salaries, fringe benefits and payroll burden for employees on-site utilized in the day to day operation of the Building; public liability, flood, property damage and all other insurance premiums paid by Landlord with respect to the Building, including any amounts that would be charged as premiums if Landlord self-insures any of the insurance risks; liability disclaimers; water, sewer, heating, air conditioning, ventilating and all other utility charges (other than with respect to utilities separately metered and paid directly by Tenant or other tenants); the cost of contesting the validity or amount of real estate and personal property taxes; janitorial services; access control; window cleaning; elevator maintenance; fire detection and security services; gardening and landscape maintenance; all costs of snow and ice removal; trash, rubbish, garbage and other refuse removal; pest control; painting; facade maintenance; lighting; exterior and partition (demising) wall repairs; roof repairs; maintenance of all steam, water and other water retention and discharging piping, lakes, culverts, fountains, pumps, weirs, lift stations, catch basins and other areas and facilities, whether or not on-site; canal embankment and related maintenance; repair and repainting of sidewalks due to settlement and potholes and general resurfacing and maintenance of exterior areas; sanitary control; depreciation of machinery and equipment used in any of such maintenance and repair activities; management fees; union increases; road sidewalk and driveway maintenance; and all other Building maintenance, repairs and insurance;
- (ii) the costs (amortized together with a reasonable finance charge in accordance with GAAP) of any capital improvements: (A) made to the Building by Landlord primarily for the purpose of reducing Operating Expenses; or (B) made to the Building by Landlord primarily to comply with any governmental law or regulation that was not in force at the Commencement Date;
- (iii) the costs of supplies, materials and tools;
- (iv) all real and personal property taxes, assessments (whether they be general or special), sewer rents, rates and charges, transit taxes, taxes based upon the receipt of rent and any other federal, state or local government charge, general, special, ordinary or extraordinary (but not including income taxes), which may now or hereafter be levied or assessed against the land upon which the Building stands or the Building for such year or the furniture, fixtures, machinery, equipment, apparatus, systems and appurtenances used in connection with the Building for the operation thereof (the "Taxes").

Operating Expenses shall not include:

- (a) depreciation on the Building or any Common Areas;
- (b) costs of space planning, tenant improvements, marketing expenses, finder's fees and real estate broker commissions;
- (c) any and all expenses for which Landlord is reimbursed (either by an insurer, condemnor or other person or entity), but only to the extent of such reimbursement, and any and all expenses for which Landlord is reimbursed or entitled to reimbursement by a tenant in the Building pursuant to a lease provision in such tenant's lease;
- (d) salaries for personnel above the grade of senior property manager, senior controller, senior accountant and senior engineer;
- (e) costs in connection with services or benefits of a type which are not provided to Tenant, but are provided to another tenant or occupant;
- (f) mark-ups on electricity and condenser cooling water for heat pumps in excess of Landlord's costs therefor;
- (g) Landlord's general overhead and administrative expenses not directly allocable to the operation of the Building; and

- (h) cost of repair or other work necessitated by the gross negligence or willful misconduct of Landlord or Landlord's employees, contractors or agents.

**3. PREMISES:**

- 3.1. Lease of Premises: Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the term and subject to the agreements, covenants, conditions and provisions set forth in this Lease, to which Landlord and Tenant hereby mutually agree, the premises (the "Premises") described in **Paragraphs 1.1** and **1.2** above.
- 3.2. Building: The Premises are a part of the Building (the "**Building**") described in **Paragraph 1**. Landlord further reserves the right to make alterations and/or additions to and to build or cause to be built additional stories on the building in which the Premises are situated and to add any buildings adjoining the Premises or elsewhere in the Building. Landlord reserves the right to install, maintain, use, repair and replace pipes, ducts, conduits and wires leading through the Premises and serving other parts of the Building in a manner that will not materially interfere with Tenant's use of the Premises. Landlord will also have the right to increase and expand the size of the Building by adding additional land, buildings and other structures to the Building. Landlord shall have the right to change the Building's name without notice, to change the Building's street address upon **90 days** prior notice, to grant to any person or entity the exclusive right to conduct any business or render any service in or to the Building, provided such exclusive right shall not operate to prohibit Tenant from using the Premises for the purpose set forth in **Paragraph 1**, to retain at all times master keys or passkeys to the Premises, and to place such signs, notices or displays as Landlord reasonably deems necessary or desirable upon the roof and exterior of the Building.
- 3.3. Intentionally deleted

**4. COMMON AREAS:**

- 4.1. Tenant's Right to Use Common Areas: Landlord grants Tenant and its authorized representatives and invitees the non-exclusive right to use the Common Areas with others who are entitled to use the Common Areas subject to Landlord's rights as set forth in this Lease.
- 4.2. Landlord's Control: Landlord has the right to:
  - (a) establish and enforce reasonable rules and regulations applicable to all tenants concerning the maintenance, management, use and operation of the Common Areas;
  - (b) close, if necessary, any of the Common Areas to prevent dedication of any of the Common Areas or the accrual of any rights of any person or of the public to the Common Areas;
  - (c) close temporarily any of the Common Areas for maintenance purposes;
  - (d) select a person, firm or corporation which may be an entity related to Landlord to maintain and operate any of the Common Areas; and

Notwithstanding the provisions of this **Subparagraph**, in exercising its rights hereunder, Landlord will provide reasonable access to and from the Premises.

**5. RENT/AUDIT:**

- 5.1. Base Rent: Tenant will pay to Landlord as rent for the use and occupancy of the Premises at the times and in the manner provided below, Base Rent in the amount specified in **Paragraph 1** above payable in advance on the commencement of the term of this Lease and on or before the first day of each and every successive calendar month during the term hereof without demand, setoff or deduction.
- 5.2. Intentionally Deleted

**6. OPERATING EXPENSES:**

- 6.1. Operating Expenses Rent: In addition to Basic Rent, Tenant shall pay Tenant's Percentage Share, as specified in **Paragraph 1** above, of the Operating Expenses paid or incurred by Landlord in such year in excess of the Operating Expenses for the Base Year ("Operating Expenses Rent"). In addition to Operating Expenses Rent, Tenant shall also pay to Landlord an administrative charge

equal to **15%** of the Operating Expenses Rent, to be paid concurrently with Tenant's payment of Operating Expenses Rent.

- 6.2. **Payment:** During December of each calendar year or as soon thereafter as practicable, Landlord will give Tenant written notice of its estimate (line item and detailed support included) of Operating Expenses Rent for the ensuing calendar year. On or before the first day of each month during the ensuing calendar year, Tenant will pay to Landlord **1/12th** of such estimated amounts, provided that if such notice is not given in December, Tenant will continue to pay on the basis of the prior year's estimate until the month after such notice is given. If at any time or times it appears to Landlord that the amounts payable for Operating Expenses Rent for the current calendar year will vary from its estimate by more than **10%**, Landlord, by written notice to Tenant, will revise its estimate for such year, and subsequent payments by Tenant for such year will be in an amount so that by the end of such year Tenant will have paid a total sum equal to such revised estimate. Landlord will indicate in its notice to Tenant the reasons Landlord believes its estimate is low by more than **10%**.
- 6.3. **Statement:** Within **90 days** after the close of each calendar year or as soon after such **90 day** period as practicable, Landlord will deliver to Tenant a statement of amounts of Operating Expenses Rent payable under this Lease for such calendar year. If such statement shows an amount owing by Tenant that is more than the estimated payments for such calendar year previously made by Tenant, Tenant will pay the deficiency to Landlord within **30 days** after delivery of the statement. If the total of the estimated monthly installments paid by Tenant during any Calendar Year exceeds the actual Expense Adjustment Amounts due from Tenant for such Calendar Year and provided Tenant is not in default hereunder, such excess shall, at Landlord's option, be either credited against payments next due hereunder or refunded by Landlord to Tenant. Tenant has the right, exercisable no more than once each calendar year on reasonable notice and at a time reasonably acceptable to Landlord, to cause an audit to be performed at Tenant's sole cost and expense of Landlord's operations and/or books and records pertaining to Operating Expenses for the preceding **2 calendar years**. Landlord, at Landlord's sole discretion, may provide an audit prepared by a certified public accountant in lieu of allowing Tenant to audit Landlord's operations and/or books. In the event Landlord has overstated Operating Expenses by more than **5%**, within **30 days** after demand therefor by Tenant accompanied by Tenant's verification of such overcharges and paid invoices, Landlord will reimburse Tenant for all overcharges and the costs of such audit and verification incurred by Tenant.
- 6.4. **Proration:** If for any reason other than the default of Tenant, this Lease terminates on a day other than the last day of a calendar year, the amount of Operating Expenses Rent payable by Tenant applicable to the calendar year in which such termination occurs will be prorated on the basis which the number of days from the commencement of such calendar year to and including such termination date bears to **365**.
- 6.5. **Computation:** Tenant's Percentage Share of the Operating Expenses is the proportion that the rentable square footage occupied by Tenant bears to the total rentable square footage of the Building, as determined by Landlord.
- 6.6. **Taxes Payable by Tenant:** Tenant shall be directly responsible for taxes upon, measured by or reasonably attributable to the cost or value of Tenant's equipment, furniture, fixtures and other personal property located in the Premises or by the cost or value of any leasehold improvements made in or to the Premises by or for Tenant other than any initial improvements to be installed at Landlord's expense regardless of whether title to such improvements is in Tenant or Landlord.

## 7. **USE OF PREMISES:**

- 7.1. **Effect on Insurance:** Tenant shall not use any portion of the Premises for purposes other than those specified in **Paragraph 1** and no use shall be made or permitted to be made upon the Premises, nor acts done, which will increase the existing rate of insurance upon the Building, or cause cancellation of insurance policies covering said Building.
- 7.2. **Continuous Operation:** Tenant will not leave the Premises unoccupied or vacant and will continuously conduct and carry on in the Premises the type of business for which the Premises are leased.
- 7.3. **Miscellaneous Restrictions:** Tenant will operate from the Premises using the Trade Name set forth in **Paragraph 1**. Tenant will not use the Premises for or permit in the Premises any offensive, noisy, or dangerous trade, business, manufacture or occupation or interfere with the business of any other tenant in the Building or permit any auction, liquidation, fire or bankruptcy sale to be held or conducted in or about the Premises. Tenant agrees not to cause, permit or suffer any waste or damage, disfigurement or injury to the Premises or the fixtures or equipment thereof

or the Common Areas. Tenant will not use the Premises for washing clothes or cooking and nothing will be prepared, manufactured or mixed in the Premises which might emit any offensive odor into the Building. Tenant will not keep, display or sell any merchandise outside of the Premises or otherwise obstruct the sidewalks, mall or Common Areas on the Property or use the same for business operations or advertising. Tenant will at all times comply with the rules and regulations of the Building attached hereto as **Schedule 5** and with such additional rules and regulations as may be adopted by Landlord from time to time.

**8. PARKING: Intentionally Deleted**

**9. SIGNS:** Tenant, at Tenant's sole cost and expense, will install and maintain on the exterior of the Premises adjacent to entrances to the Premises and above the entrances to the Premises such sign or signs as have first received the written approval of the Landlord as to type, size, color, location, copy nature and display qualities. Landlord may withhold said approval in Landlord's sole and absolute discretion. Landlord must also approve Tenant's signage contractor, which approval will not be unreasonably withheld. The installation and maintenance of any signs or other advertising matter will at all times be in strict compliance with any and all laws. If at any time Tenant's signs are not in compliance with any and all laws, Landlord shall have the right to remove or otherwise cause such signs to be in compliance. Tenant shall promptly upon demand by Landlord pay Landlord for all of Landlord's costs and expenses incurred in such removal or other action, which such costs and expenses shall constitute additional rent hereunder. Upon expiration or the termination of this Lease, Tenant, at Landlord's election but at Tenant's expense, will remove any and all signs and restore the exterior of the Premises or wherever Tenant has installed signs in a manner satisfactory to Landlord. Tenant will be permitted a lighted sign above the entrance – depicted in schedule 7. In addition to permanent signage above the entrance, tenant will be permitted to use a sandwich sign on the sidewalk; a Neon sign in the window; and an open flag displayed to the left of the entrance in keeping with practices of other pubs on Wharf Street. All sign installations must abide by local and state ordinances and Tenant shall go through all legal channels to have such signage approved.

**10. ASSIGNMENT AND SUBLETTING; ENCUMBRANCE:** Tenant shall not assign this Lease or sublet any portion of the Premises without prior written consent of the Landlord, which will not be unreasonably withheld or delayed, it being understood that it shall be reasonable for Landlord, among other things, to withhold consent if Landlord is not satisfied with the financial responsibility, identity, reputation or business character of the proposed assignee or sublessee. Any change in the ownership of Tenant, if Tenant is a corporation, limited liability company or partnership, shall constitute an assignment for purposes of this **Paragraph**. At Landlord's option, any request by Tenant for consent to an assignment of the Lease or transfer of ownership of Tenant's business shall be accompanied by financial statements independently audited by a CPA documenting the financial condition of Tenant and the proposed assignee or owner, not including any minority shareholders. Notwithstanding any consent by Landlord, Tenant and Guarantor(s), if any, shall remain jointly and severally liable (along with each approved assignee and sublessee, which shall automatically become liable for all obligations of Tenant hereunder with respect to that portion of the Premises so transferred), and Landlord shall be permitted to enforce the provisions of this Lease directly against Tenant or any assignee or sublessee without proceeding in any way against any other party. In the event of an assignment, contemporaneously with the granting of Landlord's consent, Tenant shall cause the assignee to expressly assume in writing and agree to perform all of the covenants, duties and obligations of Tenant hereunder and such assignee shall be jointly and severally liable therefore along with Tenant. No usage of the Premises different from the usage provided for in **Paragraph 1** above shall be permitted, and all other terms and provisions of the Lease shall continue to apply after such assignment or sublease. Landlord shall have the option, within thirty (30) days after receipt of a request by Tenant to assign the Lease or sublet the Premises, to terminate this Lease as of the effective date of the proposed assignment or subleasing, in which event the Landlord and the Tenant shall perform all of the obligations due to be performed under this Lease up to the date of the proposed termination and the rights and duties of the parties under this Lease shall thereafter terminate. Tenant shall not enter into, execute or deliver any financing or security agreement that can be given priority over any mortgage given by Landlord or its successors, and, in the event Tenant does so execute or deliver such financing or security agreement, such action on the part of Tenant shall be considered a breach of the terms and conditions of this Lease and a default by Tenant entitling Landlord to such remedies as are provided for in this Lease. Landlord shall have the right to assign or transfer, in whole or in part, Landlord's rights and obligations hereunder and in the Premises.

**II. ORDINANCES AND STATUTES:** At Tenant's sole cost, Tenant will comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Premises, occasioned by or affecting the use thereof by Tenant, including, but not limited to, the Americans With Disabilities Act, and those relating to noise. The commencement or pendency of any state or federal court abatement proceeding affecting the use of the Premises shall, at the option of the Landlord, be deemed a breach thereof.

**12. MAINTENANCE, REPAIRS, ALTERATIONS:**

- 12.1. Tenant's Obligations: Tenant acknowledges that the Premises are in good order and repair, unless otherwise indicated herein. Tenant shall, at its own expense and at all times, maintain the Premises in good and safe condition, including plate glass, electrical wiring, plumbing and HVAC installations and any other system or equipment upon the Premises and shall surrender the same, at termination hereof, in as good condition as received, normal wear and tear excepted. Tenant, at Tenant's expense, shall be responsible for all repairs required, excepting the roof, exterior walls, structural foundations, exterior areas and other Common Areas, which shall be repaired by Landlord and included in Operating Expenses.
- 12.2. Limits on Alterations: Tenant may not make any structural improvement or alteration to the Premises without the prior written consent of Landlord. Tenant may not make any nonstructural improvement or alteration of the Premises costing in excess of \$5,000 without the prior written consent of the Landlord. Prior to the commencement of any repair, improvement, or alteration, Tenant shall give Landlord at least **2 days** written notice in order that Landlord may post appropriate notices to avoid any liability for liens. All alterations will be made by a licensed contractor consented to by Landlord and performed in a good and workmanlike manner. All materials used shall be of a quality comparable to or better than those in the Premises and shall be in accordance with plans and specifications approved by Landlord.
- 12.3. Liens: Tenant will pay all costs of construction done by it or caused to be done by it on the Premises as permitted by this Lease. Tenant will keep the Building free and clear of all construction, mechanic's, materialman's, laborer's and supplier's liens, resulting from construction done by or for Tenant. The interest of Landlord in the Premises and the Building shall not be subject to liens for improvements made by Tenant. Any lien filed by any contractor, materialman, laborer or supplier performing work for Tenant shall attach only to Tenant's interest in the Premises. Tenant agrees to indemnify, defend and hold harmless Landlord from and against any and all costs and liabilities (including attorneys' fees and expenses) and any and all construction, mechanic's, materialman's, laborer's or supplier's liens arising out of or pertaining to any improvements or construction done by Tenant. All persons and entities contracting or otherwise dealing with Tenant relative to the Premises or the Building are hereby placed on notice of the provisions of this **Paragraph**, and Tenant shall further notify in writing such persons or entities of the provisions of this **Paragraph** prior to commencement of any Tenant work in the Premises. If any construction, mechanic's, materialman's, laborer's or supplier's lien is ever claimed, fixed or asserted against the Premises or any other portion of the Building in connection with any such Tenant work, Tenant shall, within **10 days** after receipt by Tenant of notice of such lien, discharge same as a lien either by payment or by posting of any bond as permitted by law. If Tenant shall fail to discharge any such lien, whether valid or not, within **10 days** after receipt of notice from Landlord, Landlord shall have the right, but not the obligation, to discharge such lien on behalf of Tenant and all costs and expenses incurred by Landlord associated with the discharge of the lien, including, without limitation, attorneys' fees, shall constitute additional rent hereunder and shall be immediately due and payable by Tenant.
- 12.4. Surrender of Premises: On the last day of the term hereof or on any sooner termination, Tenant shall surrender the Premises to Landlord in the same condition as when received, ordinary wear and tear excepted, clear and free of debris, and free of Tenant's trade fixtures, furnishings and equipment. Tenant shall repair any damage to the Premises occasioned by the installation or removal of Tenant's trade fixtures, furnishings and equipment. Any fixtures, furnishings and equipment not removed at the end of the term shall be deemed abandoned by Tenant and shall, at the option of Landlord, become the property of Landlord, and Tenant hereby waives any claim to such Tenant's fixtures, furnishings and equipment and agrees to indemnify Landlord against all costs and expenses incurred by Landlord in storing, removing and disposing of any such fixtures, furnishings and equipment.
13. **ENTRY AND INSPECTION**: Tenant shall permit Landlord or Landlord's agents to enter upon the Premises at reasonable times and upon reasonable notice for the purpose of inspecting the same, performing any services required of Landlord hereunder and showing the Premises to potential and existing mortgagees and purchasers and prospective tenants of other space in the Building. The foregoing notwithstanding, Landlord is not required to give notice to Tenant if Landlord must enter the Premises because of an emergency. Tenant will permit Landlord at any time within **180 days** prior to the expiration of this Lease, to place upon the Premises any usual "To Let" or "For Lease" signs, and permit potential tenants to inspect the Premises.
14. **INDEMNIFICATION OF LANDLORD**: Subject to **Paragraph 16.10** below, Tenant agrees to and shall indemnify, defend and hold Landlord harmless from and against any and all claims, demands, losses, damages, costs and expenses (including attorneys' fees and expenses) or death of or injury to any person or damage to any property whatsoever arising out of Tenant's negligent acts or omissions, or



relating to Tenant's breach or default under this Lease, including, but not limited to, Tenant's breach of **Paragraph 21** below or Tenant's use or occupancy of the Premises or caused by Tenant or its agents, employees or invitees. Landlord shall not be liable to Tenant for any damage by or from any act or negligence of any co-tenant or other occupant of the Building or by any owner or occupant of adjoining or contiguous property. Tenant agrees to pay for all damage to Building as well as all damage to tenants or occupants thereof caused by misuse or neglect of said Premises, its apparatus or appurtenances or the Common Areas, by Tenant or Tenant's employees, agents and invitees.

15. **POSSESSION:** If Landlord is unable to deliver possession of the Premises at the commencement hereof, Landlord shall not be liable for any damage caused thereby, nor shall this Lease be void or voidable, but Tenant shall not be liable for any rent until possession is delivered, at which time the term shall commence and the Expiration Date shall be extended so as to give effect to the full stated term. Tenant may terminate this Lease if possession is not delivered within **180 days** of the commencement of the term hereof.
16. **TENANT'S INSURANCE:** At all times during the term of this Lease, Tenant shall, at its sole expense, procure and maintain the following types of insurance coverage:
  - 16.1. Commercial General Liability: Commercial General Liability insurance, including Bodily Injury and Property Damage Liability, Products and Completed Operations, Personal and Advertising Injury Liability, and Fire Damage Liability against any and all damages and liability, including attorneys' fees and expenses, on account of or arising out of injuries to or the death of any person or damage to property, however occasioned, in, on or about the Premises in amounts not less than **\$1,000,000** per occurrence, **\$2,000,000** annual aggregate, and **\$50,000** Fire Damage Liability;
  - 16.2. Plate Glass: Insurance on all plate or tempered glass in or enclosing the Premises, for the replacement cost of such glass;
  - 16.3. Personal Property: Insurance on an All Risks basis covering 100% of the Replacement Cost value of property at the Premises including, without limitation, leasehold improvements, trade fixtures, merchandise, furnishings, equipment, goods and inventory;
  - 16.4. Intentionally deleted
  - 16.5. Intentionally deleted
  - 16.6. Employer's Liability/Workers' Compensation: Employer's Liability insurance with limits not less than \$500,000, and Workers' Compensation insurance providing statutory state benefits for all persons employed by Tenant in connection with the Premises as required by applicable law; 16.7. Sprinkler Leakage: Insurance covering damage from leakage of sprinkler systems now or hereafter installed in the Premises in an amount not less than the current replacement cost covering Tenant's merchandise, Tenant's improvements and Tenant's trade fixtures; and
  - 16.8. Intentionally deleted
  - 16.9. Form of Insurance/Companies: All insurance provided for in Paragraph 16 hereof shall be in a form satisfactory to Landlord and carried with insurance companies reasonably acceptable to Landlord that are licensed or authorized to do business in the State in which the Building is located, are in good standing with the Department of Insurance in the State in which the Building is located, have a current rating issued by A.M. Best Company of not less than A-:VII, and/or whose claim paying ability is rated no lower than A by Standard & Poor's Ratings Service and A2 by Moody's Investors Service. Insurance coverage shall be written as primary policy coverage and not contributing with or excess of any coverage which Landlord may carry, and Landlord and Landlord's managing agent shall be named as Additional Insureds with respect to Commercial General Liability and Automobile Liability, including any Umbrella or Excess policies. Tenant shall furnish Landlord at the inception of this Lease (i) a Certificate of Insurance evidencing that all such insurance is in effect and that Landlord will be given at least 30 days prior written notice of cancellation or non-renewal, and (ii) proof that premiums have been paid by Tenant. Not later than **15 days** prior to the expiration of any insurance policy, evidence of renewals or replacements of such policy shall be delivered to Landlord, together with proof of payment of the associated premiums. In the event Tenant shall fail to procure any contract of insurance required under the terms hereof or any renewal of or replacement for any contract of insurance that is expiring or has been canceled, Landlord may, but shall not be obligated to, procure such insurance on behalf of Tenant and the cost thereof shall be payable to Landlord as additional rent within **10 days** following written demand therefor.

16.10. Subrogation: Landlord and Tenant shall each obtain from their respective insurers under all policies of property insurance maintained by either of them at any time during the term hereof insuring or covering the Premises, a waiver of all rights of subrogation which the insurer of one party might otherwise have, if at all, against the other party.

**17. UTILITIES:**

17.1. Tenant's Responsibility: Tenant agrees that it shall be responsible for the payment of all utilities, including water, gas, electricity, heat and other services delivered to the Premises. If any such services are not separately metered to the Premises, Tenant shall pay a reasonable proportion, as determined by Landlord, of all charges jointly metered with other premises.

17.2. Landlord's Responsibility: Landlord shall not be liable for failure to furnish any of the utilities described in **Paragraph 17** and Tenant shall have no right to abatement of rental hereunder or to termination of this Lease with respect to any such interruption nor shall such failure constitute an eviction, nor shall Landlord be liable under any circumstances for loss of or injury to property, however occurring through or in connection with or incidental to the furnishing of any of the services enumerated above.

**18. CONDEMNATION:** If 25% of the land area of the Building shall be taken or condemned for public use, Landlord may elect to terminate this Lease effective on the date of taking; otherwise this Lease will remain in full force and effect. If there is a taking of all of the Premises or a part thereof so that the remaining part of the Premises is not suited for Tenant's continued use, either party may elect to terminate this Lease effective on the date of taking. If there is a taking of a portion of the Premises and a part remains which is suitable for Tenant's use, this Lease shall, as to the part taken, terminate as of the date the condemnor acquires possession, and thereafter Tenant shall be required to pay such proportion of the rent for the remaining term as the value of the Premises remaining bears to the total value of the Premises at the date of condemnation. The election to terminate this Lease as provided herein must be exercised, if at all, within **60 days** after the nature and extent of the taking is determined, otherwise, this Lease will remain in full force and effect. All sums which may be payable on account of any condemnation shall belong solely to the Landlord, and Tenant shall not be entitled to any part thereof, provided however, that Tenant shall be entitled to retain any amount awarded to it for its trade fixtures or moving expenses.

**19. TRADE FIXTURES:** Any and all improvements made to the Premises during the term hereof shall, unless Landlord requests their removal, belong to the Landlord without compensation, allowance or credit to Tenant, except movable trade fixtures of the Tenant which can be removed without defacing the Premises or the Building, including the walk-in cooler

**20. DESTRUCTION OF PREMISES:**

20.1. Partial Destruction: In the event of a partial destruction of the Premises during the term hereof, from any cause covered by insurance, Landlord must repair the same to the extent insurance proceeds are received by Landlord for such repairs, and within **60 days** from receipt of such proceeds under then existing governmental laws and regulations. Such partial destruction shall not terminate this Lease and Tenant shall be entitled to a proportionate reduction of rent while such repairs are being made, based upon the extent to which the making of such repairs shall interfere with the business of Tenant on the Premises. If such repairs cannot be made within said **60 day** period, Landlord, at its option, may make the repairs within a reasonable time. If Landlord elects to make said repairs, this Lease will continue in effect and the rent will be proportionately abated as stated above. If the repairs cannot be made within **60 days** from receipt of insurance proceeds by Landlord, and Landlord elects not to make said repairs, this Lease may be terminated at the option of either party.

20.2. Material/Total Destruction: If the Building in which the Premises are situated or the Building sustains damage of more than **1/3** of the replacement cost thereof, Landlord may elect to terminate this Lease whether the Premises are injured or not. A total destruction of the Building in which the Premises are situated or the Building shall terminate this Lease.

**21. HAZARDOUS SUBSTANCES:**

21.1. Definitions: For the purposes of this Agreement, the following terms have the following meanings:

- (a) **"Environmental Law"** means any law, statute, ordinance or regulation pertaining to health, industrial hygiene or the environment including, without limitation, CERCLA (Comprehensive Environmental Response, Compensation and Liability Act of 1980),

**RCRA** (Resources Conservation and Recovery Act of 1976) and **SARA** (Superfund Amendments and Reauthorization Act of 1986).

- (b) **“Hazardous Substance”** means any substance, material or waste which is or becomes designated, classified or regulated as being “toxic” or “hazardous” or a “pollutant” or which is or becomes similarly designated, classified or regulated, under any Environmental Law, including asbestos, petroleum and petroleum products.

21.2. Tenant’s Responsibilities: At its own expense, Tenant will procure, maintain in effect and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required for Tenant’s use of the Premises. Tenant will not cause or permit any Hazardous Substance to be brought upon, kept or used in or about the Building by Tenant, its agents, employees, contractors or invitees without the prior written consent of Landlord. Tenant will cause any and all Hazardous Substances brought upon the Premises by Tenant to be removed from the Premises and transported solely by duly licensed haulers to duly licensed facilities for final disposal of such materials and wastes. Tenant will, in all respects, handle, treat, deal with and manage any and all Hazardous Substances in, on, under or about the Premises in total conformity with all applicable Environmental Laws and prudent industry practices regarding management of such Hazardous Substances. Upon expiration or earlier termination of the term of the Lease, Tenant will cause all Hazardous Substances placed on, under or about the Premises by Tenant or at Tenant’s direction to be removed and transported for use, storage or disposal in accordance and compliance with all applicable Environmental Laws. Tenant will not take any remedial action in response to the presence of any Hazardous Substances in or about the Premises or the Building, nor enter into any settlement agreement, consent decree or other compromise in respect to any claims relating to any Hazardous Substances in any way connected with the Premises without first notifying Landlord of Tenant’s intention to do so and affording Landlord ample opportunity to appear, intervene or otherwise appropriately assert and protect Landlord’s interests with respect thereto.

21.3. Indemnification: If the Premises or the Building become contaminated in any manner for which Tenant is legally liable or otherwise become affected by any release or discharge of a Hazardous Substance, Tenant shall immediately notify Landlord of the release or discharge of the Hazardous Substance, and Tenant shall indemnify, defend and hold harmless Landlord from and against any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, a decrease in value of the Building or the Premises, damages caused by loss or restriction of rentable or usable space, or any damages caused by adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys’ fees and expenses, consultant fees and expert fees) arising during or after the term of this Lease and arising as a result of such contamination, release or discharge. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any cleanup, removal or restoration mandated by federal, state or local agency or political subdivision.

22. **EVENTS OF DEFAULT**: If one or more of the following events (“**Event of Default**”) occurs, such occurrence constitutes a breach of this Lease by Tenant:

22.1. Abandonment/Vacation: Tenant abandons or vacates the Premises or removes furniture, fixtures or personal property, except in the normal course of business; or

22.2. Rent: Tenant fails to pay any monthly Basic Rent or Operating Expenses Rent, if applicable, as and when the same becomes due and payable, and such failure continues for more than **10 days**; or

22.3. Other Sums: Tenant fails to pay any other sum or charge payable by Tenant hereunder as and when the same becomes due and payable, and such failure continues for more than **30 days** after Landlord gives written notice thereof to Tenant; or

22.4. Other Provisions: Tenant fails to perform or observe any other agreement, covenant, condition or provision of this Lease to be performed or observed by Tenant as and when performance or observance is due, and such failure continues for more than **30 days** after Landlord gives written notice thereof to Tenant, or if the default cannot be cured within said **30 day** period and Tenant fails promptly to commence with due diligence and dispatch the curing of such default or, having so commenced, thereafter fails to prosecute or complete with due diligence and dispatch the curing of such default; or

22.5. Insolvency: Tenant **(a)** files or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction; **(b)** makes an assignment for the benefit of its creditors; **(c)** consents to the appointment of a

custodian, receiver, trustee or other officer with similar powers of itself or of any substantial part of its property; or (d) takes action for the purpose of any of the foregoing; or

- 22.6. Receiver: A court or governmental authority of competent jurisdiction, without consent by Tenant, enters an order appointing a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial power of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding up or liquidation of Tenant, or if any such petition is filed against Tenant and such petition is not dismissed within 60 days; or
- 22.7. Attachments: This Lease or any estate of Tenant hereunder is levied upon under any attachment or execution and such attachment or execution is not vacated within 60 days; or
- 22.8. Assignment/Sublease: Tenant assigns this Lease or subleases all or any portion of the Premises without Landlord's prior written consent.

**23. REMEDIES OF LANDLORD ON DEFAULT:**

- 23.1. Termination: In the event of any breach of this Lease by Tenant, Landlord may, at its option, and after giving tenant 60 days notice to remedy breach and after cure period, terminate the Lease and repossess the Premises pursuant to the laws of the State in which the Building is located and recover from Tenant as damages:
  - (a) the unpaid rent and other amounts due at the time of termination plus interest thereon at the maximum lawful rate per annum from the due date until paid;
  - (b) the present value of the balance of the rent for the remainder of the term after termination less the present value of the fair market value rental of the Premises for said period (both determined by applying a discount rate of 1½% below the Wall Street Journal Prime Rate); and
  - (c) any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under the Lease or which in the ordinary course of things would be likely to result therefrom, including, without limitation, the cost of recovering the Premises.
- 23.2. Landlord's Options: Landlord may, in the alternative, (i) continue this Lease in effect, as long as Landlord does not terminate Tenant's right to possession, and Landlord may enforce all its rights and remedies under the Lease, including the right to recover the rent as it becomes due under the Lease; or (ii) terminate Tenant's right of possession (but not this Lease) and repossess the Premises pursuant to the laws of the State in which the Building is located, without demand or notice of any kind to Tenant, in which event Landlord may, but shall be under no obligation to do so (except to the extent required by the laws of the State in which the Building is located), relet the Premises for the account of Tenant for such rent and upon such terms as shall be satisfactory to Landlord. For purpose of such reletting Landlord is authorized by Tenant to decorate or to make any repairs, changes, alterations or additions in or to the Premises that may be necessary or convenient, at Tenant's expense. Tenant shall also be responsible for rent for the period that the Premises are vacant and all costs of re-letting, including, without limitation, brokerage commissions and attorneys' fees. Tenant shall be liable for any deficiency of such rental below the total rental and all other payments herein provided for the unexpired balance of the term of this Lease. If said breach of the Lease continues, Landlord may, at any time thereafter, elect to terminate the Lease; or (iii) exercise any and all other rights and remedies available to Landlord at law or in equity.

- 24. **SECURITY DEPOSIT**: The Security Deposit set forth in **Paragraph 1**, if any, shall secure the performance of the Tenant's obligations hereunder. Landlord may, but shall not be obligated to, apply all or portions of the Security Deposit on account of Tenant's obligations hereunder. In the event that Landlord applies all or a portion of the Security Deposit to Tenant's obligations hereunder, Tenant shall be obligated, within 10 days of receipt of notice from Landlord, to deposit cash with Landlord in an amount sufficient to restore the Security Deposit to the full amount stated in **Paragraph 1.9** above. Failure to deposit such cash shall be a default under the terms of this Lease. Provided Tenant is not in default, any balance remaining upon termination shall be returned to Tenant. Tenant shall not have the right to apply the Security Deposit in payment of the last month's rent. No interest shall be paid by Landlord on the Security Deposit. In the event of a sale of the Building, Landlord shall have the right to transfer the Security Deposit to the purchaser, upon such transfer Landlord shall have no further liability with respect thereto, and Tenant agrees to look solely to such purchaser for the return of the Security

Deposit. Landlord shall not be required to keep the Security Deposit in a segregated account, and the Security Deposit may be commingled with other funds of Landlord.

25. **LIEN FOR RENT:** In addition to and independent of any lien in favor of Landlord arising by operation of law, Tenant hereby grants to Landlord a security interest to secure payment of all Basic Rent and other sums of money becoming due hereunder from Tenant, and to secure payment of any damages or loss which Landlord may suffer by reason of the breach by Tenant of any covenant, agreement or condition contained herein, upon all goods, wares, equipment, fixtures, furnishings, inventory, improvements and other personal property of Tenant presently or which hereafter may be situated in or on the Premises, and all proceeds therefrom, and such property shall not be removed therefrom without the consent of Landlord until any and all other sums of money then due to Landlord hereunder, first shall have been paid and discharged, and all covenants, agreements and conditions hereof have been fully complied with and performed by Tenant. Tenant hereby authorizes Landlord, at any time and from time to time, to file any UCC-1 Financing Statement or such other documents or instruments as Landlord may deem necessary to perfect or confirm the security interest created by this **Paragraph**. All exemption laws are hereby waived by Tenant. This lien and security interest may be foreclosed with or without court proceedings, by public or private sale, with or without notice, and Landlord shall have the right to become purchaser upon being the highest bidder at such sale. Landlord, as secured party, shall be entitled to all the rights and remedies afforded a secured party under the Uniform Commercial Code, which rights and remedies shall be in addition to and cumulative of the Landlord's liens and rights provided by law or by the terms and provisions of this Lease.
26. **ERISA:** Intentionally deleted.
27. **LIMITATION ON LANDLORD'S PERSONAL LIABILITY:** Tenant specifically agrees to look solely to Landlord's interest in the Building for the recovery of any judgment from Landlord, it being agreed that Landlord (and any officers, members, shareholders, directors or employees of Landlord) shall never be personally liable for any such judgment.
28. **ATTORNEYS' FEES:** In the event Tenant defaults in the performance of any of the terms, covenants, agreements or conditions contained in this Lease and Landlord places the enforcement of this Lease or the collection of any rent due or to become due hereunder or recovery of the possession of the Premises in the hands of an attorney, Tenant agrees to pay Landlord reasonable attorneys' fees and costs. If there is any legal action or proceeding between Landlord and Tenant to enforce any provision of this Lease or to protect or establish any right or remedy of either Landlord or Tenant hereunder, the unsuccessful party to such action or proceeding will pay to the prevailing party all costs and expenses, including reasonable attorneys' fees (including allocated costs of Landlord's in-house attorney), incurred by such prevailing party in such action or proceeding and in any appearance in connection therewith, and if such prevailing party recovers a judgment in any such action, proceeding or appeal, such costs, expenses and attorneys' fees will be determined by the court handling the proceeding and will be included in and as a part of such judgment.
29. **WAIVER:** No failure of Landlord to enforce any term hereof shall be deemed to be a waiver.
30. **SEVERABILITY:** If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the term hereof, then it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of both parties that in lieu of each clause or provision that is illegal, invalid or unenforceable, there shall be added as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.
31. **NOTICES:** All notices or other communications required or permitted hereunder must be in writing, and be (i) personally delivered (including by means of professional messenger service), (ii) sent by overnight courier, with request for next Business Day delivery, or (iii) sent by registered or certified mail, postage prepaid, return receipt requested, to the addresses set forth in **Paragraph 1**. All notices sent by mail will be deemed received **2 days** after the date of mailing.
32. **HOLDING OVER:** Any holding over after the expiration or termination of this Lease shall be construed as a month-to-month tenancy at a rental of **200%** of the rent for the month of the Lease preceding the month in which the expiration or termination occurred, and otherwise in accordance with the terms hereof, as applicable. In the event Tenant shall be or become a holdover tenant, Tenant shall also indemnify Landlord against all claims for damages against Landlord as a result of Tenant's possession of the Premises, including, without limitation, claims for damages by any tenant to whom Landlord may have leased the Premises, or any portion thereof, for a term commencing after the expiration or termination of this Lease.
33. **TIME:** Time is of the essence of this Lease.

34. **HEIRS, ASSIGNS, SUCCESSORS:** This Lease is binding upon and inures to the benefit of the assigns and successors in interest of Landlord and is binding upon and inures to the benefit of Tenant and Tenant's heirs and successors and, to the extent assignment may be approved by Landlord hereunder, Tenant's assigns.
35. **SUBORDINATION:** This Lease is and shall always be subject and subordinate to the lien of any mortgages which are now or shall at any future time be placed upon the Building, the Premises or Landlord's rights hereunder, and to any renewals, extensions, modifications or consolidations of any such mortgage. This clause shall be self-operative and no further instrument of subordination need be required by any mortgagee. In confirmation of such subordination, however, Tenant, at Landlord's request, shall execute promptly any appropriate certificate or instrument that Landlord may reasonably request.
36. **ESTOPPEL CERTIFICATE; FINANCIAL STATEMENTS:**
- 36.1. Content: Tenant shall at any time upon not less than **5 days** prior written notice from Landlord execute, acknowledge and deliver to Landlord a statement in writing:
- (a) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect), the amount of any security deposit, and the date to which the rent and other charges are paid in advance, if any; and
  - (b) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by a prospective purchaser or encumbrancer to the Premises.
- 36.2. Failure to Deliver: At Landlord's option, Tenant's failure to deliver such statement within such time shall be a material breach of this Lease or shall be conclusive upon Tenant:
- (a) that this Lease is in full force and effect, without modification, except as may be represented by Landlord;
  - (b) that there are no uncured defaults in Landlord's performance; and
  - (c) that not more than one month's rent has been paid in advance or such failure may be considered by Lessor as a default by Tenant under this Lease.
- 36.3. Intentionally deleted
37. **AUTHORIZATION:** If Tenant executes this Lease as a corporation, limited liability company or partnership, then Tenant and the person(s) executing this Lease on behalf of Tenant, represent and warrant that such entity is duly qualified to do business in the State in which the Building is located and that the individuals executing this Lease on Tenant's behalf are duly authorized to execute and deliver this Lease on Tenant's behalf.
38. **JOINT AND SEVERAL LIABILITY:** In the event that more than one person or entity executes the Lease as Tenant, all such persons and entities shall be jointly and severally liable for all of Tenant's obligations hereunder.
39. **FORCE MAJEURE:** Landlord shall be excused for the period of any delay in the performance of any obligations hereunder when prevented from doing so by cause or causes beyond Landlord's absolute control which shall include, without limitation, all labor disputes, civil commotion, civil disorder, riot, civil disturbance, war, war-like operations, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations, orders, moratoriums or controls, fire or other casualty, inability to obtain any material, services or financing or Acts of God.
40. **RECORDING:** Tenant shall not record this Lease, or any memorandum or short form thereof, without the written consent and joinder of Landlord, which may be unreasonably withheld.
41. **RIDER:** A Rider, signed by the parties [is attached] **OR** [is not attached] hereto.
42. **ENTIRE AGREEMENT:** The foregoing constitutes the entire agreement between the parties and may be modified only by a writing signed by both parties.
43. **GOVERNING LAW:** This Lease shall be construed in accordance with the laws of the State in which the Building is located.

- 44. Intentionally Deleted
- 45. Intentionally Deleted

46. **WAIVER OF THE RIGHT TO TRIAL BY JURY:** LANDLORD AND TENANT HEREBY KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING THAT LANDLORD OR TENANT MAY HEREINAFTER INSTITUTE AGAINST EACH OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS LEASE OR THE LEASED PREMISES.

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

LANDLORD  
DREAM PORT 3, LLC

TENANT

Stephen B. Wolgin

The King's Head LLC

By: Stephen B. Wolgin 8-29-16

By: Justin C. O'Connell 8-25-2016

Name: Stephen B. Wolgin

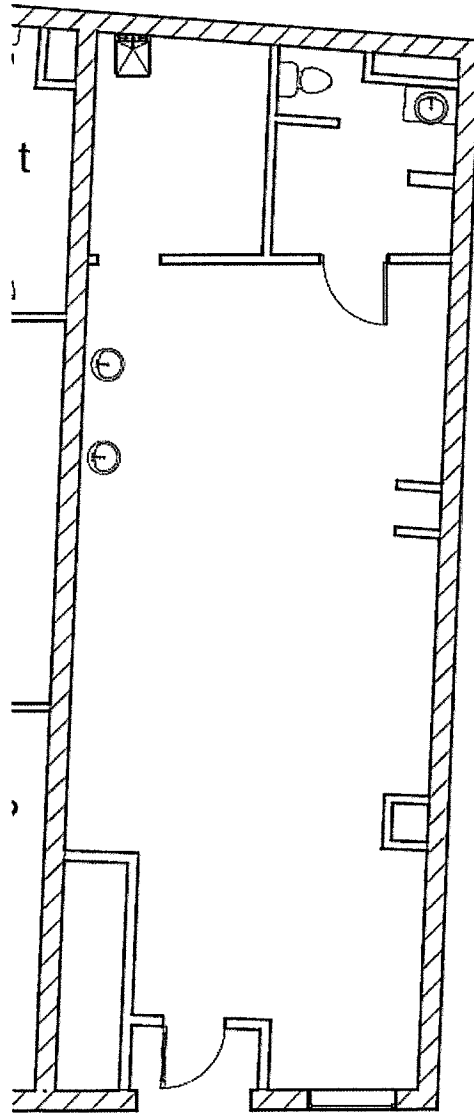
Name: Justin C. O'Connell CEO

Title: Managing Member

Title: CEO

SCHEDULE 1

SITE PLAN



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SCHEDULE 2

STACKING PLAN

4th Floor Fore Street	Apartment 3A	Apt 3C	Apt 3C
3rd Floor Fore Street	Apartment 3A	Apt 3B	Apt 3C
2nd Floor Fore Street	Blazin' Ace	Apt 3A	Apartment 2b
Fore St Retail Level	Blazin' Ace	Gorgeous Gelato	
Wharf St Retail Level	Leased Premises	Drink Exchange	
	432 Fore St/ 41 Wharf St	434 Fore St/ 43 Wharf St	

**SCHEDULE 3**

**FAIR MARKET RENT**

During the first year of the five (5) year extension term (if properly exercised by Tenant), Tenant shall pay Base Rent "**Option Period Basic Rent**", in the manner set forth in this Lease, in the amount that is the greater of (i) the Base Rent payable by Tenant during the last year of the initial Lease Term, or (ii) the fair market rental for the Leased Premises based on a lease for a five (5) year term. Thereafter, Base Rent shall increase each lease year, commencing with the second year of the extension term, by 3%. If Landlord and Tenant have not agreed on the fair market rental of the Leased Premises on or before the date which is four (4) months prior to the expiration of the initial Lease term, then Landlord and Tenant shall each select an appraiser of its choice and give the other party written notice of such appraisers' name, address and telephone number. The two appraisers so selected by Landlord and Tenant shall then select a third appraiser within ten (10) days thereafter, and furnish Landlord and Tenant written notice of such appraisers' name, address and telephone number. All appraisers selected pursuant to this provision shall be MAI appraisers, each having at least ten (10) years' experience in commercial property in Cumberland County, Maine, unless Landlord and Tenant shall otherwise agree in writing. Each of the three (3) selected appraisers shall then determine the fair market rental for the Leased Premises based on a lease for a five (5) year term, and the annual Base Rent for such purposes of this paragraph for the renewal term shall be the average of the two (2) appraisals that are closest to one another. Landlord and Tenant shall share all fees, costs and expenses incurred in connection with obtaining the appraisals equally

#### SCHEDULE 4

#### GUARANTY OF LEASE

ANNEXED TO AND FORMING A PART OF THE LEASE DATED August \_\_\_\_, 2016, BETWEEN DREAMPORT 3, LLC a Maine limited liability company ("Landlord") and The King's Head LLC d/b/a Jäger, a Maine limited liability company ("Tenant").

The undersigned, Justin C O'Connor ("Guarantor"), whose address is 154 High Street Portland, ME 04101, in consideration of the leasing of the Premises described in the annexed Lease to the above named Tenant, does hereby covenant and agree as follows:

- I. If Tenant shall default in the performance of any of the covenants and obligations of said Lease on Tenant's part to be performed (including payment of all amounts due thereunder), then Guarantor will on demand perform the covenants and obligations of the Lease on Tenant's part to be performed and will on demand pay to Landlord any and all sums due to Landlord, including all damages and expenses that may arise in consequence of Tenant's default, and Guarantor does hereby waive all requirements of notice of the acceptance of this Guaranty and all requirements of notice of breach or nonperformance by Tenant.
- II. This Guaranty is a guaranty of payment, and not of collection, for any sum of money owing from Tenant to Landlord.
- III. Guarantor hereby waives:
  - A. any right to require that any prior action be brought against Tenant;
  - B. any right to require that resort be had to any security or to any other credit in favor of Tenant; and
  - C. all suretyship defenses generally, and the right to petition for the marshaling of assets.
- IV. This Guaranty shall remain and continue in full force and effect:
  - A. as to any renewal, extension, holdover, modification or amendment of the Lease (including any expansion of the Premises and any increase in Tenant's obligations to Landlord) and this Guaranty shall remain and continue in full force and effect as to the Lease even though Tenant may have subleased all or any portion of the Premises or assigned all or any portion of Tenant's interest in the Lease. Guarantor waives notice of any and all such renewals, extensions, holdovers, modifications, amendments, subleases or assignments;
  - B. even though Landlord may have waived one or more defaults by Tenant, extended the time of performance by Tenant, released, returned or misapplied other collateral given as additional security (including other guaranties) or released Tenant from the performance of its obligation under the Lease;
  - C. notwithstanding the institution by or against Tenant of bankruptcy, reorganization, readjustment, receivership or insolvency proceeding of any nature, or the disaffirmance of the Lease in any such proceedings or otherwise; and
  - D. until such time as Landlord has executed and delivered to Guarantor an instrument specifically releasing Guarantor, Guarantor may not be released by any actions or oral statements of Landlord or by implication.
- V. If the Lease shall be terminated due to a default by Tenant, Guarantor shall (without in any way limiting its liability under any other provision of this Guaranty), at the request of and within the complete discretion of Landlord, enter into a new Lease with Landlord on the same terms and conditions as contained in the Lease immediately prior to its termination, commencing on the termination date of said Lease and ending on the expiration date of said Lease; this provision shall not, however, vest Guarantor with any right to demand or require such a new Lease from Landlord. Landlord shall have sole and absolute discretion as to whether or not such a new lease shall be required.

- VI. Guarantor shall submit to Landlord annually, or at such other times as Landlord shall request, financial statements and such other financial information as Landlord shall require, which shall be audited by a certified public accountant if required by Landlord.
- VII. If Guarantor is a corporation, Guarantor represents and warrants that this Guaranty has been duly authorized by all necessary corporate action on Guarantor's part, has been duly executed and delivered by a duly authorized officer, and constitutes Guarantor's valid and legally binding agreement in accordance with its terms.
- VIII. This Guaranty shall be applicable to and inure to the benefit of Landlord, its successors and assigns and shall be binding upon the heirs, representatives, successors and assigns of Guarantor.
- IX. Guarantor may, at Landlord's option, be joined in any action or proceeding commenced by Landlord against Tenant in connection with and based upon any covenants and obligations in the Lease and/or this Guaranty, and Guarantor waives any demand by Landlord and/or prior action by Landlord of any nature whatsoever against Guarantor.
- X. If this Guaranty is signed by more than one party, their obligations shall be joint and several and the release of one of such Guarantors shall not release any other such Guarantors.
- XI. The liability of Guarantor is co-extensive with that of Tenant and also joint and several; an action may be brought against [either] Guarantor and carried to final judgment either with or without making Tenant [or the other Guarantor] a party thereto.
- XII. Until all of Tenant's obligations under said Lease are fully performed, Guarantor (1) waives any rights that Guarantor may have against Tenant by reason of any one or more payments or acts in compliance with the obligation of Guarantor under this Guaranty, and (2) subordinates any liability or indebtedness of Tenant held by Guarantor to the obligations of Tenant to Landlord under said Lease.
- XIII. This Guaranty and the Lease shall be governed by, interpreted under the laws of, and enforced in the courts of the State in which the Premises are located.
- XIV. Guarantor hereby waives the benefit of any statute of limitations affecting Guarantor's liability under this Guaranty and any plea or claim of lack of personal jurisdiction or improper venue in any action, suit or proceeding brought to enforce this Guaranty or any of the obligations arising hereunder. Guarantor specifically authorizes any such action to be instituted and prosecuted in any Circuit Court in the State in which the Premises are located or United States District Court of the State in which the Premises are located, at the election of Landlord, where venue would lie and be proper. Guarantor irrevocably appoints Tenant as its agent for service of process.
- XV. Guarantor will pay to Landlord all of Landlord's expenses incurred in enforcing this Guaranty, including, but not limited to, attorneys' fees and costs at the trial level and at all levels of appeal and in connection with any bankruptcy or administrative proceedings.

XVI. LANDLORD AND GUARANTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY AND ANY AGREEMENTS CONTEMPLATED HEREBY TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF THE PARTIES HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE LANDLORD'S ACCEPTANCE OF THIS GUARANTY.

IN WITNESS WHEREOF, the undersigned has executed this Guaranty this \_\_\_\_ day of August, 2016.

WITNESSES:	GUARANTOR(S):	SOCIAL SECURITY NUMBER(S):
<u>John D. Bell</u>	<u>Justin C O'Connor</u>	<u>072-70-8417</u>
<u>Derek N. Miller</u>	<u>Justin C O'Connor</u>	

## SCHEDULE 5

### RULES AND REGULATIONS

1. In the event of any conflict between the terms of these rules and regulations and the express provisions of the Lease, the express, applicable provisions of the Lease shall control. Landlord reserves the right, without the approval of Tenant, to rescind, add to and amend any rules or regulations, to add new reasonable rules or regulations and to waive any rules or regulations with respect to any tenant or tenants. Tenant shall provide a copy of these rules and regulations to each of its employees to facilitate compliance with these standards.
2. The sidewalks, walks, plaza entries, corridors, ramps, staircases and elevators of the Building shall not be obstructed, and shall not be used by Tenant, or the employees, agents, servants, visitors or invitees of Tenant, for any purpose other than ingress and egress to and from the Premises. No skateboards, roller skates, roller blades or similar items shall be used in or about the Building.
3. No freight, furniture or other large or bulky merchandise or equipment of any description will be received into the Building or carried into the elevators, if any, except in such a manner, during such hours and using such elevators and passageways as may be approved or designated by Landlord, and then only upon having been scheduled in advance. Any hand trucks, carryalls, or similar equipment used for the delivery or receipt of merchandise or equipment shall be equipped with rubber tires, side guards and such other safeguards as Landlord shall reasonably require. Although Landlord or its personnel may participate or assist in the supervision of such movement, Tenant assumes financial responsibility for all risks as to damage to articles moved and injury to persons or public engaged or not engaged in such movement, including any equipment, property or personnel of Landlord damaged or injured in connection with carrying out this service for Tenant.
4. Landlord shall have the right to prescribe the weight, position and manner of installation of safes or other heavy equipment which shall, if considered necessary by Landlord, be installed in a manner which shall insure satisfactory weight distribution. All damage done to the Building by reason of a safe or any other article of Tenant's equipment being on the Premises shall be repaired at the expense of Tenant. The time, routing and manner of moving safes or other heavy equipment shall be subject to prior approval by Landlord.
5. Only persons authorized by Landlord will be permitted to furnish newspapers, ice, drinking water, towels, barbering, shoe shining, janitorial services, floor polishing and other similar services and concessions in the Building, and only at hours and under regulations fixed by Landlord.
6. Tenant, or the employees, agents, servants, visitors or invitees of Tenant, shall not at any time place, leave or discard any rubbish, paper, articles or object of any kind whatsoever outside the doors of the Premises or in the corridors or passageways of the Building.
7. Tenant shall not place, or cause or allow to be placed, any sign, placard, picture, advertisement, notice or lettering whatsoever, in, about or on the exterior of the Premises or Building, except in and at such places as may be designated by Landlord and consented to by Landlord in writing. Any such sign, placard, advertisement, picture, notice or lettering so placed without such consent may be removed by Landlord without notice to and at the expense of Tenant. All lettering and graphics on doors and windows shall conform to the building standard prescribed by Landlord.
8. Tenant shall not place, or cause or allow to be placed, any satellite dish, communications equipment, computer or microwave receiving equipment, antennae or other similar equipment about or on the exterior of the Premises or Building. Any such equipment so placed may be removed by Landlord without notice to and at the expense of Tenant.
9. Canvassing, soliciting or peddling in the Building is prohibited and Tenant shall cooperate reasonably to prevent same.
10. Landlord shall have the right to exclude any person from the Building, and any person in the Building will be subject to identification by employees and agents of Landlord. If Tenant desires additional security service for the Premises, Tenant shall have the right (with advance written consent of Landlord) to obtain such additional service at Tenant's sole cost and expense. Tenant shall keep doors to unattended areas locked and shall otherwise exercise reasonable precautions to protect property from theft, loss or damage. Landlord shall not be responsible for the theft, loss

or damage of any property or for any error with regard to the exclusion from or admission to the Building of any person. In case of invasion, mob, riot or public incitement, the Landlord reserves the right to prevent access to the Building during the continuance of same by taking measures for the safety of the tenants and protection of the Building and property or persons therein.

11. Only workmen employed, designated or approved by Landlord may be employed for repairs, installations, alterations, painting, material moving and other similar work that may be done in the Premises or on the Building.
12. Tenant shall not bring or permit to be brought or kept in or on the Premises or Building any inflammable, combustible, corrosive, caustic, poisonous, or explosive substance, or firearms, or cause or permit any odors to permeate in or emanate from the Premises, or permit or suffer the Building to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the Building by reason of light, radiation, magnetism, noise, odors and/or vibrations.
13. Tenant shall not mark, paint, drill into, or in any way deface any part of the Building or the Premises. No boring, driving of nails or screws, cutting or stringing of wires shall be permitted, except with the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. Tenant shall not install any resilient tile or similar floor covering in the Premises, except with the prior approval of Landlord, which approval shall not be unreasonably withheld or delayed.
14. No additional locks or bolts of any kind shall be placed on any door in the Premises and no lock on any door therein shall be changed or altered in any respect. Tenant shall not make duplicate keys. All keys shall be returned to Landlord upon the termination of this Lease and Tenant shall give to Landlord the explanations of the combinations of all safes, vaults and combination locks remaining with the Premises. Landlord may at all times keep a pass key to the Premises. All entrance doors to the Premises shall be left closed at all times and left locked when the Premises are not in use.
15. Tenant shall give immediate notice to Landlord in case of known theft, unauthorized solicitation or accident in the Premises or in the Building, or of known defects therein or in any fixtures or equipment, or of any known emergency in the Building.
16. Tenant shall not use the Premises or permit the Premises to be used for photographic, multilith or multigraph reproductions, except in connection with its own business and not as a service for others without Landlord's prior written permission.
17. No animals or birds shall be brought or kept in or about the Building, with the exception of guide dogs accompanying visually handicapped persons.
18. No awnings, draperies, shutters or other interior or exterior window coverings that are visible from the exterior of the Premises may be installed by Tenant without Landlord's prior written consent.
19. Tenant shall not place, install or operate within the Premises or any other part of the Building any engine, stove, or machinery, or conduct mechanical operations therein, without the written consent of Landlord.
20. No portion of the Premises or any other part of the Premises shall at any time be used or occupied as sleeping or lodging quarters.
21. Tenant shall at all times keep the Premises neat and orderly.
22. The toilet rooms, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein. The expenses of any breakage, stoppage or damage, resulting from the violation of this rule shall be borne by the Tenant who (or whose employees or invitees) shall have caused such damage.
23. All tenant modifications resulting from alterations or physical additions in or to the Premises must conform to all applicable building and fire codes. Tenant shall obtain written approval from the management office prior to commencement of any such modifications and shall deliver as built plans to the management office upon completion.
24. Tenant agrees to place all indoor potted plants requiring water within a container capable of collecting any water overflow, such containers to be approved and/or supplied by Landlord, at

Tenant's sole expense. Tenant agrees to use caution so that indoor plants do not damage or soil the Premises.

25. Any vehicle improperly parked, or parked in any unauthorized parking area on the Property, shall be towed at the vehicle owner's expense and without further or additional notice.



SCHEDULE 6

TENANTS PROPOSED FLOOR

SCHEDULE 6

TENANTS PROPOSED SIGNAGE

The Sign over the entrance will be up to 8 feet long and up to three feet deep. It will be black with White lettering. It will cover the current mess of wiring above the door in a manner that will allow access to wiring if needed. It will read "Jager". Centered above the text will be the skull and antlers of a red stag. There will be at least 2 black spots focusing down on the lettering, and one spot focusing up on the antlers.

Other signage will include an open flag to the left of the door, a folding sign on the street, and a neon beer sign in the window.

PLAN AND BUSINESS PLAN

