Reviewed for Code Compliance
Inspections Division
Approved with Conditions
Date: 04/18/17

LEASE AMENDMENT AGREEMENT

THIS AMENDMENT TO LEASE, ("Amendment") made as of the 14th day of December, 2012, by and between **BACM 2007-3 WHARF STREET, LLC**, a Maine limited liability company ("Landlord") and **BLAZIN' ACE, LLC** a Maine Company ("Tenant").

RECITALS

R-1 Landlord's predecessor, OLD PORT RETAIL HOLDINGS, LLC, and Tenant entered into a certain Lease Agreement ("Lease"), dated June 3, 2009, under the terms of which Tenant leased, for a term of three (3) years, the premises, consisting of 1,500 +/- rentable square feet of retail space in the building commonly known as 432-446 Fore Street ("Building"), Portland, ME 04101 ("Demised Premises") (a copy of said Lease is attached hereto and made a part hereof as Exhibit B); and

R-2 As of August 5, 2011, OLD PORT RETAIL HOLDINGS, LLC conveyed their respective interests to BACM 2007-3 WHARF STREET, LLC a Maine limited liability company (hereinafter "Landlord").

R-3 Landlord and Tenant desire to modify and amend the Lease to reflect an extension of the Term of the Lease and other modifications as set forth herein.

NOW, THEREFORE, in consideration of the premises and such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree to amend, modify and extend the Lease as follows:

1. **Recitals:** The recitals are incorporated herein by this reference.

2. **Capitalized Terms:** Unless otherwise stated, capitalized terms are defined as provided in the Lease. To the extent the provisions of this Amendment are inconsistent with the provisions of the Lease, the provisions of this Amendment shall be controlling.

3. **Term:** The Term of the Lease shall be amended by extending the Term so that the new termination date becomes August 31, 2017.

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4 **Rent:** Section 3 (A) of the Lease shall be amended such that the monthly Base Rent for the extension term shall be:

Date	Monthly Base Rent
9/1/12-11/31/12	$0.00 MG
12/01/12-8/31/13	$2,500.00 MG
9/1/13-8/31/14	$2,687.50 MG
9/1/14-8/31/15	$2,768.13 MG
9/1/15-8/31/16	$2,851.17 MG
9/1/16-8/31/17	$2,936.70 MG

5. **Brokers:** Tenant warrants and represents that it has not dealt with a real estate broker in connection with the consummation of this Lease Agreement Amendment except for CBRE/The Boulos Company. In the event of any brokerage claims against Landlord predicated upon dealings with Tenant other than by CBRE/The Boulos Company, Tenant agrees to defend the same and indemnify Landlord against any such claim. In accordance with the Broker's signed listing agreement listing agreement with the Landlord, Landlord shall be responsible for payment of the brokerage commission to CBRE/The Boulos Company.

6. **Due Execution:** The individuals signing this Lease Amendment Agreement on behalf of the Tenant and Landlord represent and warrant to each other that they have the full right, power, capacity and authority to execute and deliver this Lease Amendment Agreement as a binding and valid obligation of the Tenant and Landlord, respectively.

7. **Ratification:** Except as expressly modified herein, the Lease shall be and remain in full force and effect.

8. **Entire Agreement:** This Lease Amendment Agreement sets forth the entire agreement between the parties with respect to the matters set forth herein. There have been no additional oral or written representations or agreements. Except as amended herein, the Lease between the parties shall remain in full force and effect.

9. **Effective Date:** This Lease Amendment Agreement shall become binding upon the parties when executed by both parties. The terms and provisions hereof shall apply and become effective as an amendment to the Lease as of, on and after the date hereof and shall continue on effect until otherwise amended by the parties in writing or until expiration or sooner termination of the Lease.

10. **Binding effect:** This Lease Amendment Agreement shall bind and inure to the benefit of Landlord and Tenant and their respective heirs, successors and assigns.

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11. **Governing Law:** This Lease Amendment Agreement and the rights and obligations of the parties hereto, shall be governed by and construed in accordance with the laws and court decisions of the State of Maine.

12. **Valid Agreement:** If any term, provision, covenant or condition of this Lease Amendment Agreement shall be deeded invalid or unenforceable, then in such event, the remainder of this Amendment shall not be affected and shall remain binding and enforceable, as fully as if such invalid or unenforceable term, provision, covenant, or condition had never been included.

IN WITNESS WHEREOF, the Landlord and Tenant have duly executed, sealed, and delivered this Lease Amendment Agreement the day and year written below.

WITNESS:

LANDLORD:

BACM 2007-3 WHARF STREET, LLC
A Maine Limited Liability Company

By: LNR Partners, LLC
A Florida Limited Liability Company
As: Its Manager

By: _____

Name: Rodolfo S. Lauredo

Title: VICE PRESIDENT

WITNESS:

TENANT:

BLAZIN' ACE, LLC
A Maine Limited Liability Company

By: _____

Name: Chris Blake

Title: Owner

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LEASE AGREEMENT

LEASE, made the 3 **day of** ~~May~~ June **2009 between** Old Port Retail Holdings LLC, **a Delaware Lin... Liability Company (hereinafter referred to as "Landlord"), having an office c/o KND Management Co. Inc.,** 101 Richardson Street, Brooklyn, New York 11211, **and Blazin' Ace LLC, a Maine Company (hereinafter referred to as "Tenant"), having an office at** 432 Fore St, Portland Me.

WITNESSETH

For and in consideration of the covenants herein contained, and upon the terms and conditions herein set forth, Landlord and Tenant agree as follows:

1. **DESCRIPTION.** Landlord hereby leases to Tenant, and Tenant hereby hires from Landlord, the space (hereinafter, together with all improvements, fixtures and equipment which are or shall become attached thereto, called the "Demised Premises" or "Premises") located on portions of the **first** and **second** floors of 432 Fore Street , Portland Maine, 04101 (hereinafter called the "Building"), as shown on the plan annexed hereto as Exhibit A which has been accepted by Landlord and Tenant.

2. **TERM**. The term of this Lease shall be for a period of **3 years** (or until sooner terminated as herein provided), commencing on the first day of **June 2009** (the "Commencement Date") and ending on **May 31st 2012** (the "Expiration Date") which period shall hereinafter be referred to as the "Term". In the event Landlord is unable to deliver possession of the Leased Premises on the Commencement Date, the term shall none-the-less expire on May 31st 2012, and Landlord shall not be liable for any damage thereby nor shall this Lease be void or voidable, but Tenant shall not be liable for any rent until the later of the Commencement Date or the day following written notice is provided by Landlord to Tenant stating that the Leased Premises is able to be delivered in substantially completed condition in accordance with the terms of this Lease.

3. **RENT (A)** BASIC RENT. The Tenant shall pay to the Landlord during the term of this Lease Base Rent (herein "Rent" or "Base Rent" or "Basic Rent") as shown in the table below.

From		To	Annually	Monthly
June 1st 2009	through	May 31st 2010	$36,000.00	$3,000.00
June 1st 2010	through	May 31st 2011	$37,080.00	$3,090.00
June 1st 2011	through	May 31st 2012	$38,192.40	$3,182.70

The rent shall be payable in advance on the first day of each calendar month during the term. If either the first or last month of the term of this Lease should commence or end on a day other than the first day or last day, respectively, of the month, a proportionately lesser sum of basic rent and Additional Rent shall be paid in accordance with the provisions of the Lease herein set forth. Tenant shall pay rent, and any Additional Rent as hereinafter provided, to Landlord at Landlord's above stated address, or at such other place as Landlord may designate in writing, without demand and without counterclaim, deduction or setoff.

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4. **USE AND OCCUPANCY.** Tenant shall use and occupy the Premises as a retail store and shall not use or occu Premises for any other purpose without the prior written consent of Landlord, which consent may be withheld b Landlord at its sole discretion and judgment.

5. **UTILITIES:**

   (a) Tenant shall contract and pay for all of its utilities, including but not limited to, electrical service, water, gas and telephone, if required by Tenant, directly with the public utility serving the area in which the Premises are located and Tenant shall pay for all of Tenant's utilities, including the cost of the installments of meters or sub-meters. Tenant shall, upon the request of Landlord, furnish Landlord with evidence of having contracted with the utilities for such service.

   (b) Landlord shall not in any way be liable or responsible to Tenant for any loss, damage or expense which Tenant may sustain or incur if either the quantity or character of electric, gas, heat, water or such other utility service is changed or is no longer available or suitable for Tenant's requirements. Any riser or risers to supply Tenant's electrical requirements, upon written request of Tenant and written consent of Landlord, may be installed by Tenant, as the sole cost and expense of Tenant, if and only if, in the Landlord's sole judgment, the same are necessary and will not cause permanent damage or injury to the Demised Premises or cause or create a dangerous or hazardous condition or entail excessive or unreasonable alternations, repairs or expense or interfere with or disturb other Tenants or occupants. In addition to the installation of such riser or risers, Tenant will also, at its sole cost and expense, install all other equipment proper and necessary in connection therewith subject to the aforesaid terms and conditions. Tenant covenants and agrees that at all times its use of electric current shall never exceed the capacity of the feeders to the Premises or the risers or wiring installation. It is further covenanted and agreed by Tenant that all the aforesaid costs and expense are chargeable and collectable as Additional Rent and shall be paid by Tenant to Landlord with the next monthly installment of Basic Rent.

6. **CARE AND REPAIR OF PREMISES.** Tenant shall commit no act of waste and shall take good care of the Premises and the improvements, fixtures and equipment therein, and shall, in the use and occupancy of the Premises, conform to all laws, orders and regulations of the federal, state and municipal governments or any of their departments including quasi-governmental organizations. Tenant at its own expense shall maintain and make all necessary interior repairs to the Demised Premises, including but not limited to pest control, repairs to lighting fixtures, bathrooms, electrical panels, & HVAC equipment, its business equipment, flooring, whether existing or new, and with regards to the outside of the building all skylights, windows including cleaning and repair and snow and ice removal for the areas immediately outside the demised premises. Landlord, at its own expense, shall maintain and make all necessary repairs to the Building and its structure, the roof, and if applicable, the portions of the plumbing and electrical systems, sprinkler systems not exclusively serving the Demised or Subleased Premises, and the exterior of the Premises, except where the repair has been made necessary by misuse or neglect by Tenant or Tenant's agents, servants, visitors or licensees, in which event Landlord may nevertheless make the repair but Tenant shall pay to Landlord, as Additional Rent, immediately upon demand, the reasonable costs therefor (net of any insurance reimbursements actually received). All improvements made

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by Tenant to the Premises, which are attached to the Premises, shall become the property of Landlord, including fixtures, ovens, cabinetwork, moveable paneling and partitions and the like; Tenant shall repair all injury done b connection with such installation or removal of said property and improvements; and surrender the Premises in as good condition as they were at the beginning of the term, reasonable wear and damage by fire, the elements casualty, or other causes not due to the misuse or neglect by Tenant, Tenant's agents, servants, visitors, or licensees excepted.

All furniture, property, and equipment currently in the Demised Premises, including but not limited to: lighting, sinks walk-in humidor, etc… whether or not attached to the Premises, shall become the property of Landlord upon termination or expiration of the lease and such property may not be otherwise mortgaged, pledged as collateral, or separately sold, removed or transferred without the express written consent of the Landlord.

All other property of Tenant remaining on the Premises after the last day of the term of this Lease shall be conclusively deemed abandoned and may be removed by Landlord, and Tenant shall reimburse Landlord for the reasonable cost of such removal. Landlord may have any of the property stored at Tenant's risk and expense.

7. **ALTERATIONS, ADDITIONS OR IMPROVEMENTS.** Tenant shall not, without obtaining the prior written consent of Landlord which shall not be unreasonably withheld, make any alterations, additions or improvements in, to or about the Premises, and in no event shall Landlord be required to consent to any alterations, additions or improvements which effect the Common Facilities, or any other portion of the Building which is not included within the Premises. Landlord may require that any such alterations, additions or improvements be architecturally or decoratively consistent, as determined by Landlord, with the remainder of the Building and the common Facilities thereof. Notwithstanding anything to the contrary contained herein, Tenant shall insure that any and all vendors and/or contractors operating in the Demised Premised or performing work or repairs therein and/or on be fully insured including but not limited to liability and workmen's comp and such shall provide evidence of such in accordance with the provisions of this Lease and name the Landlord as an additional insured.

8. **ABANDONMENT.** Tenant shall not, without first obtaining the written consent of Landlord abandon the Premises, or allow the Premises to become vacant or deserted.

9. **ASSIGNMENT AND SUBLEASE.** Tenant may assign or sublease the within Lease to any party subject to the following:

(A) In the event that Tenant desires to sublease the whole or any portion of the Premises or assign the within Lease to any other party, the terms and conditions of any such sublease or assignment, and, prior to such effective date, Landlord shall have the option for five (5) days from the date of which the Tenant gives written notice of its desire to sublease, exercisable in writing to Tenant, to recapture the within Lease so that such prospective subtenant or assignee shall then become the sole Tenant or Landlord hereunder, or alternatively to recapture said space, and thereafter the within Tenant shall be fully released from any and all obligations hereunder; provided, however, that in the event of a proposed sublease, if Landlord elects to recapture, the recapture shall only be with respect to that portion of the Premises so proposed to be sublet, and only for the duration of the proposed sublease. In the event Landlord elects to recapture as

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provided herein, Tenant shall have the option for five (5) days from the date which the Landlord gives its notice election to recapture the Premises to withdraw (by written notice) the initial sublease or assignment request.

(B) In the event that the Landlord elects not to recapture the Lease or space as hereinabove provided, the Tenant may nevertheless assign this Lease or sublet the whole or any portion of the Premises, subject to the Landlord's prior written consent, which consent shall not be unreasonably withheld, on the basis of the following terms and conditions:

(1) The Tenant shall provide to the Landlord the name, address and any other due diligence material reasonably requested by the Landlord for the proposed assignee or subtenant and if applicable its principals. The Tenant shall submit all documentation relating to the proposed sublease agreement or assignment containing the financial terms of such proposed transaction to the Landlord.

(2) An assignee shall assume, by written instrument in form and substance acceptable to Landlord, all of the obligations of this Lease, and an executed and acknowledged counterpart copy of such assumption agreement shall be furnished to the Landlord within ten (10) days of its execution.

(3) The Tenant and each assignee shall be and remain jointly and severally liable for the observance of all the covenants and provisions of this Lease, including, but not limited to, the payment of the entire rent reserved herein for the entire Premises, through the entire term of this Lease. Tenant shall give Landlord a full copy of the sublease or assignment agreement prior to its effective date, and as a condition of Landlord's prior consent to the sublease, such agreement shall require that the subtenant or assignee adhere to the rules and regulations in force from time to time as provided in Section 10.

(4) The Tenant and any assignee or subtenant shall promptly pay to Landlord one-half of all of the rent (net of actual expenses amortized over the term of the sublease), as and when received, in excess of the rent required to be paid by Tenant for the area sublet, computed on the basis of an average square foot rent for the gross rentable square footage' of the Premises or proportionate portion thereof, as determined by Landlord. In the event of an assignment of the Lease where consideration is paid to Tenant for such assignment, Tenant shall pay upon receipt one half of the amount of the consideration paid by the Assignee.

(5) In any event, the acceptance by the Landlord of any rent from any assignee or subtenant or the failure of the Landlord to insist upon a strict performance of any of the terms, conditions and covenants herein shall not release the Tenant herein, nor any assignee assuming this Lease, from any and all obligations herein during and for the entire term of this Lease.

(C) Tenant shall be prohibited from Subletting or Assigning any part of the Leased Premises to any Tenant already having a lease or who is currently negotiating a lease with the Landlord.

10. **COMPLIANCE WITH RULES AND REGULATIONS.** Tenant shall observe and comply with such reasonable rules and regulations, which Landlord shall apply and enforce with respect to the Tenants in the Building, as Landlord may prescribe from time to time, on written notice to the Tenant, for the safety, care and cleanliness of the Building and the

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comfort, quiet and convenience of other occupants of the Building. During the entire term of this Lease: (i) Tena not injure or deface the leased premises or building; (ii) No auction sale, inflammable fluids, chemicals, nuisanc objectionable noise or odor shall be permitted on the leased premises; (iii) Tenant shall not permit the use of the leased premises for any purpose other than set forth herein or any use thereof which is improper, offensive, contrary to law or ordinance, or liable to invalidate or increase the premiums for any insurance on the building or its contents or liable to render necessary any alterations or additions to the building; and (iv) Tenant shall not obstruct in any manner any portion of the building not hereby demised or the sidewalks or approaches to said building or any inside or outside windows or doors. Tenant shall observe and comply with all codes, ordinances, laws, regulations and other governmental or quasi-governmental orders or inspections affecting Tenant, the leased premises and/or Tenant's use and all reasonable rules and security regulations now or hereafter made by Landlord for the care and use of the leased premises, the building, its facilities and approaches. Tenant agrees to keep the leased premises equipped with all safety appliances and make all accessibility alterations, improvements or installations to the building, and/or accommodations in Tenants use thereof required by law or any public authority as a result of Tenant's use or occupancy of the premises or Tenant's alterations or additions thereto, which alterations, improvements and installations shall be subject to Landlord's consent as provided in this Lease. Notwithstanding anything to the contrary contained herein, Tenant shall specifically make all efforts to mitigate noise emanating from the premises.

11. **DAMAGES TO BUILDING/WAIVER OF SUBROGATION.** If the Building is damaged by fire or any other cause to such extent that the cost of restoration, as reasonably estimated by Landlord, will equal or exceed twenty-five (25%) percent of the replacement value of the Building (exclusive of foundations) just prior to the occurrence of the damage, then Landlord may, no later than the ninetieth (90th) day following the damage, give Tenant a notice of election to terminate this Lease, or if the cost of restoration will equal or exceed fifty (50%) percent of such replacement value and if the premises shall not be reasonably usable for the purpose for which they are leased hereunder, then Tenant may, no later than the sixtieth (60th) day following the damage, give Landlord a notice of election to terminate this Lease. In either said event of election, this Lease shall be deemed to terminate on the thirtieth (30th) day after the giving of such notice, and Tenant shall surrender possession of the Premises within a reasonable time thereafter, and the basic rent, and any Additional Rent, shall be apportioned as of the date of casualty and any basic or Additional Rent paid for any period beyond said date shall be repaid to Tenant. If the cost of restoration as estimated by Landlord shall amount to less than twenty-five (25%) percent of said replacement value of the Building, or if, despite the cost, Landlord does not elect to terminate this Lease, Landlord shall restore the Building and the Premises with reasonable promptness, subject to force majeure (to the extent not reasonably remediable), and Tenant shall have no right to terminate this Lease. Landlord need not restore fixtures and improvements owned by Tenant. Notwithstanding anything else herein contained and notwithstanding force majeure, if following any damage referred to in the first sentence of this section the Premises shall as a result thereof not be leaseable after 120 days following such damage, Tenant may, upon 30 days prior written notice to Landlord, terminate this Lease, and upon the 30th day after such notice is given this Lease shall terminate, Tenant shall surrender possession of the Premises, and Tenant and Landlord shall have thereafter no further obligation to the other (except obligations arising prior to such termination).

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In any case, not involving a termination of this Lease as provided hereinabove, in which use of the Premises is a by any damage to the Building, provided Landlord receives the proceeds of rent insurance maintained in force b Landlord covering the basic and all Additional Rent due hereunder, no rent shall be payable by Tenant for each standard Building operating day for the period for which and the extent to which the Premises are not reasonably usable and are not used for the purpose for which they are leased hereunder. The words "restoration" and "restore" as used in this Section II shall include repairs. If the damage results from the fault of the Tenant, or Tenant's agents, servants, visitors or licensees, Tenant shall not be entitled to any abatement or reduction in basic rent. Landlord agrees, subject to the provisions hereof, to maintain full replacement value fire and extended coverage insurance and one year's rent insurance on the Building.

In the any event of loss or damage to the Building, the Premises and/or any contents, each party shall look first to any insurance in its favor for reimbursement of property or casualty loss before making any claim against the other party, and each party shall obtain, for each policy of insurance, provisions permitting waiver of any claim against the other party for property or casualty loss or damage within the scope of such insurance, and each party, to such extent permitted, for itself and its insurers waives all such insured claims against the other party. If the payment of an additional premium is required for the inclusion of such waiver of subrogation provisions or consent to a waiver of right of recovery, each party shall advise the other of the amount of any such additional premiums by written notice and the other party shall pay the same or shall be deemed to have agreed that the party obtaining the insurance coverage in question shall be free of any further obligations under the provisions hereof relating to such waiver or consent.

12. **EMINENT DOMAIN.** If Tenant's use of the Premises is materially affected due to the taking by eminent domain of (a) the Premises or any part thereof or-any estate therein; or (b) any other part of the Building, then, in either event, this Lease shall terminate on the date when title vests pursuant to such taking. The rent, and any Additional Rent, shall be apportioned as of said termination date and any basic and Additional Rent paid for any period beyond said date shall be repaid to Tenant. Tenant shall not be entitled to any part of the award for such taking or any payment in lieu thereof, but Tenant may file a separate claim for any taking of fixtures and improvements owned by Tenant which have not become the Landlord's property, and for moving expenses, provided the same shall in no way affect or diminish Landlord's award. In the event of a partial taking which does not effect a termination of this Lease but does deprive Tenant of the use of a portion of the Demised Premises, there shall be an abatement or an equitable reduction of the Base Rent and Additional Rent, depending on the period for which and the extent to which the Premises so taken are not reasonably usable for the purpose for which they are leased hereunder.

13. **INSOLVENCY OF TENANT.** Either (a) the appointment of a receiver to take possession of all or substantially all of the assets of Tenant, or (b) a general assignment by Tenant for the benefit of creditors, or (c) any action taken or suffered by Tenant under any insolvency or bankruptcy act, shall constitute a default of this Lease by Tenant (provided that in the case of an involuntary proceeding against Tenant, such proceeding shall not constitute a default if dismissed by a court of competent jurisdiction within 90 days of inception), and Landlord may terminate this Lease forthwith and upon notice of such termination Tenant's right to possession of the Demised Premises shall cease, and Tenant shall then quit and surrender the Premises to Landlord but Tenant shall remain liable as hereinafter provided in Section 15 hereof.

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14. LANDLORD'S REMEDIES ON DEFAULT. If Tenant defaults in the payment of Base Rent or any Addition or defaults in the performance of any of the other covenants and conditions hereof, Landlord may give Tenant n such default, and if Tenant does not cure any default in the payment of Base Rent or Additional Rent within three (3) days, or does not cure any other default within ten (10) days, after the giving of such notice (or if such default, not relating to the payment of money, is of such nature that it cannot be completely cured within such period, if Tenant does not commence such curing within such ten (10) days and thereafter proceed with reasonable diligence and in good faith, subject to force majeure, to cure such default), then Landlord may terminate this Lease on not less than ten (10) days' notice to Tenant, and on the date specified in said notice, Tenant's right to possession of the Demised Premises shall cease, and Tenant shall then quit and surrender the Premises to Landlord, but Tenant shall remain liable as hereinafter provided. If this Lease shall have been so terminated by Landlord pursuant to Sections 13 or 14 hereof, Landlord may at any time thereafter resume possession of the Premises by any lawful means and remove Tenant or other occupants and their effects. The Tenant shall be responsible for the reasonable cost of Landlord's legal fees incurred in connection with enforcing any of the provisions of this Lease.

15. DEFICIENCY. In any case where Landlord has recovered possession of the Premises by reason of Tenant's default, Landlord may, at Landlord's option, occupy the Premises or cause the Premises to be redecorated reasonably, altered, divided, consolidated with other adjoining premises, or otherwise changed or prepared for reletting, and may relet the Premises or any part thereof as agent of Tenant or otherwise, for a term or terms to expire prior to, at the same time as, or subsequent to, the original expiration of this Lease, at Landlord's option, and receive the rent therefor. Rent so received shall be applied first to the payment of such expenses as Landlord may have incurred in connection with the recovery of possession, redecorating, altering, dividing, consolidating with other adjoining premises, or otherwise changing or preparing for reletting, and the reletting, including brokerage and reasonable attorney's fees, and then to the payment of damages in amounts equal to the rent hereunder and to the costs and expenses of performance of the other covenants of Tenant as herein provided. Tenant agrees, in any such case, whether or not Landlord has relet the Premises, to pay to Landlord damages equal to the basic and Additional Rent and other sums herein agreed to be paid by Tenant, less the net proceeds of the reletting, if any, as ascertained from time to time, and the same shall be payable by Tenant on the several rent days above specified. Tenant shall not be entitled to any surplus accruing as a result of any such reletting. In reletting the Premises as aforesaid, Landlord may grant reasonable rent concessions, and Tenant shall not be credited therewith. No such reletting shall constitute a surrender and acceptance or be deemed evidence thereof but to the extent of rents actually collected by Landlord same shall be deemed in mitigation of Landlord's damages hereunder. If Landlord elects, pursuant hereto, actually to occupy and use the Premises or any part thereof during any part of the balance of the term as originally fixed or since extended, there shall be allowed against Tenant's obligation for rent or damages as herein defined, during the period of Landlord's occupancy, the reasonable value of such occupancy, not to exceed in any event the basic and Additional Rent herein reserved and such occupancy shall not be construed as a release of Tenant's liability hereunder. Any action taken by Landlord hereunder shall be commercially reasonable, and Landlord shall use its best efforts to relet the Premises.

Tenant hereby waives all right of redemption to which Tenant or any person under Tenant might be entitled by any law now or hereafter in force.

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Landlord's remedies hereunder are in addition to any remedy allowed by law.

16. **SUBORDINATION OF LEASE.** This Lease shall, at Landlord's option, or at the option of any holder of any underlying lease or any mortgage or deed of trust affect the real property of which the Building is a part ("Underlying Mortgage"), be subject and subordinate to any such Underlying Mortgage which may now or hereafter affect the real property of which the Premises form a part, and also to all renewals, modifications, consolidations and replacements of any such Underlying Mortgage. Although no instrument or act on the part of Tenant shall be necessary to effectuate such subordination, Tenant will, nevertheless, execute and deliver such further instruments confirming such subordination of this Lease as may be desired by the holder of any Underlying Mortgage. Upon request of Tenant, Landlord agrees to use its best efforts to obtain for Tenant a nondisturbance agreement from the holder of any Underlying Mortgage. If any underlying lease to which this Lease is subject terminates, Tenant shall, on timely request, attorn to the Landlord of the reversion. In addition, Tenant shall attorn to the holder of any Underlying Mortgage if such holder succeeds to the interest of Landlord in the Building, the Demised Premises or any part or parts thereof by foreclosure proceedings or as a result of any conveyance in lieu of foreclosure proceedings.

17. **RIGHT TO CURE TENANT'S BREACH.** If Tenant breaches any covenant or condition of this Lease, Landlord may, on reasonable notice to Tenant (except that no notice need be given in case of emergency), cure such breach at the expense of Tenant; and the reasonable amount of all expenses, including reasonable attorney's fees, incurred by Landlord in so doing (whether paid by Landlord or not) shall be deemed Additional Rent payable on demand.

18. **MECHANIC'S LIENS.** Tenant shall, within ten (10) days after notice from Landlord, discharge or satisfy by bonding or otherwise any mechanic's liens for materials or labor claimed to have been furnished to the Premises on Tenant's behalf. Notwithstanding anything the contrary contained herein, any expense suffered by Landlord (including its legal fees) as a result of a mechanic's lien having been filed on the Landlord's property for materials or labor claimed to have been furnished to the Premises on Tenant's behalf shall be reimbursed by Tenant immediately upon demand. Landlord shall have the right, but no obligation, to pay the amount of such lien to cause its release, and the costs thereof shall be considered an advance by Landlord of amounts due from Tenant under this Lease which shall be paid by Tenant upon demand from Landlord, with interest at a rate of the greater of 18% per annum or the maximum permitted under the law from the date of Landlord's payment satisfying such lien.

19. **RIGHT TO INSPECT AND REPAIR.** Landlord may enter the Premises but shall not be obligated to do so (except as, required by any specific provision of this Lease) at any reasonable time on reasonable notice to Tenant (and except that no notice need be given in case of emergency) for the purpose of inspection or the making of such repairs, replacement or additions, in, to, on and about the Premises or the Building, as Landlord deems necessary or desirable. Tenant shall have no claims or cause of action against Landlord by reason thereof. In no event shall Tenant have any claim against Landlord for interruption to Tenant's business for more than 48 hours, however occurring, except as specifically provided in this Lease.

20. **BUILDING SERVICES; LANDLORD'S EXCULPATION.** Landlord reserves the right to stop service of the heating, plumbing and electric systems, when necessary, by reason of accident or emergency, or for repairs, alterations,

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replacements or improvements, which in the judgment of Landlord are desirable or necessary to be made, until s repairs, alterations, replacements or improvements shall have been completed Notwithstanding the requirements section or any other provision of this Lease, Landlord shall not be liable for failure to furnish any of the aforesaid services when such failure is due to force majeure, as defined in Section 4l(C). Landlord shall not be liable, under any circumstances, including its negligence, for any loss of or injury to Tenant or to any property however occurring, through or in connection with or incidental to the furnishing of, or failure to furnish, any of the aforesaid services or for any interruption to Tenant's business however occurring, including, but not limited to, that arising from Landlord's negligence.

21. **REFUSE AND TRASH**. Tenant shall contract for and pay it's own cost of removal of any and all of Tenant's refuse and rubbish from the Building.

a) Compliance by Tenant. Tenant covenants and agrees at its sole cost and expense to comply with all present and future laws, orders and regulars of all state federal, municipal and local governments, departments, commissions, boards regarding the collection, sorting, separation, and recycling of waste products, garbage, refuse and trash. Tenant shall sort and separate such waste products, garbage, refuse and trash into such categories as provided by law. Each separately sorted category of waste products, garbage, refuse and trash shall be placed in separate receptacles reasonably approved by the Landlord. At Tenant's sole cost, Tenant shall remove, or cause it to be removed by a contractor acceptable to Landlord at Landlord's sole discretion, such items as Landlord may expressly designate. Notwithstanding anything to the contrary, Tenant shall make diligent efforts to insure that rubbish which is discarded by Tenant's customers shall be placed in proper containers and carted away at the sole cost of the Tenant.

b) Landlord's Rights in Event of Non-Compliance. Tenant shall pay all costs, expenses, fines, penalties or damages that may be imposed on Landlord or Tenant by reason of Tenant's failure to comply with the provisions of this paragraph and at Tenant's sole cost and expense, shall indemnify, defend and hold Landlord harmless (including reasonable legal fees and expenses) from and against any actions, claims and suits arising from such noncompliance, utilizing counsel reasonably satisfactory to Landlord.

22. **ADDITIONAL RENT.** Tenant agrees to pay, and shall pay as hereinbelow provided, in addition to the Rent provided in Section 3 above, an Additional Rental to cover Tenant's proportionate share, as defined in Section 4l(A), of the increased cost to Landlord for each of the categories of costs enumerated in this paragraph (i.e., Operating Expenses, and Real Estate Taxes) over the "Base Period Costs" (as hereinafter defined) for said categories.

(A) **Operating Cost Escalation**. If the Operating Costs incurred for the Building for any calendar year or proportionate part thereof during the Lease Term shall be greater than the Base Operating Costs (adjusted proportionately for periods less than a lease year), then Tenant shall pay to Landlord, as Additional Rent, its proportionate share, as hereinafter defined, of all of such excess Operating Costs. Operating Costs shall include, by way of illustration and not of limitation, all costs of labor, including all wages and salaries, social security taxes, and other taxes which may be levied against Landlord upon such wages and salaries; supplies; interior and exterior cleaning; fuel, common area electric, repairs (net of insurance or other reimbursements) and maintenance; maintenance and service contracts; property management and administrative contracts; painting; wall and window washing; laundry and towel service; tools and equipment (which are not required to be capitalized for Federal income tax purposes); fire, rent interruption, liability and other insurance;

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extermination services; trash removal; plant and lawn care; snow removal; security services; and all other items constituting direct operating costs according to standard accounting practices (hereinafter collectively referred to "Operating Costs"), but not including depreciation of Building or equipment; interest or principal payments; finance or mortgage charges; ground rent; bad debts owed to Landlord; income or excess profits taxes; costs of maintaining the Landlord's legal form of organization; franchise taxes; electric survey costs, leasing commissions; legal expenses; any amounts referred to in subparagraphs (B) and (C) below; or any expenditures required to be capitalized for Federal income tax purposes, unless said expenditures are for the purpose of reducing operating costs within the Building, in which event the costs thereof shall be included. As used in this Section 22(A), the Base Operating Costs shall be those costs incurred during **calendar year 2009.** Operating Costs shall not include: (a) capital improvements; (b) the costs of repairs, alterations and general maintenance to the extent necessitated by the willful misconduct of Landlord or its agents, employees or contractors; or (c) the costs of repair, replacement or restoration work occasioned by any fire or other casualty. As used herein, the Base Operating Costs shall be those costs incurred during calendar year 2009.

(B) **Intentionally Deleted**

(C) (C) **Tax Escalation**. If the Real Estate Taxes for the Building for any lease year or proportionate part thereof during the Lease Term shall be greater than the Base Real Estate Taxes (adjusted proportionately for periods less than a lease year), then Tenant shall pay to Landlord as Additional Rent its proportionate share, as hereinafter defined, of all such excess Real Estate Taxes.

As used in this Section 22(C) the words and terms which follow mean and include the following:

(i) **"Base Real Estate Taxes" shall mean those real estate taxes imposed on the Building for calendar year 2009**

(ii) "Real Estate Taxes" shall mean the property taxes and assessments (not including any penalty payments) imposed upon the Building or upon the rent, as such, payable by the Landlord. If due to a future change in the method of taxation any franchise, income or profit tax shall be levied against Landlord in substitution for, or in lieu of, or in addition to, any tax which would otherwise constitute a Real Estate Tax, such franchise, income or profit tax shall be deemed to be a Real Estate Tax for the purposes hereof; conversely, any additional real estate tax hereinafter imposed in substitution for, or in lieu of, any franchise, income or profit tax (which is not in substitution, for, or in lieu of, or in addition to, a Real Estate Tax as hereinbefore provided) shall not be deemed a Real Estate Tax for the purposes hereof.

(D) **Lease Year**. As used in this Section 22, Lease Year shall mean the twelve (12) month period commencing when possession is delivered, and each twelve (12) month period thereafter. If any lease period for which excess costs may be calculated as provided in this paragraph shall be less than twelve (12) months, then the Base Period Costs for the categories listed above shall be adjusted to equal the proportion that such lease period bears to twelve (12) months, and Tenant shall pay to Landlord as Additional Rent for such period, an amount equal to Tenant's proportionate share, as hereinafter defined, of the excess for such period over the adjusted Base Period Costs with respect to each of the aforesaid categories of costs.

(E) **Payment**. At any time and from time to time after the establishment of the Base Period Costs for each of the categories referred to above, Landlord shall advise the Tenant in writing of Tenant's proportionate share with respect to each of the

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categories of costs as provided in this paragraph, both as already incurred and as estimated for the unexpired por the current twelve (12) month period (and for each succeeding twelve (12) month period or proportionate part th the last period prior to the lease's termination is less than twelve(12) months) and then known to the Landlord, and thereafter the Tenant shall pay as Additional Rent its proportionate share, as hereinafter defined, of such costs already incurred in a single lump sum or at Tenant's election in equal monthly payments, and of such costs for the unexpired portion of the then current period (as the same may be periodically revised by Landlord as additional costs are incurred) in equal monthly installments. Tenant agrees that Landlord may adjust from time to time the Additional Rent payable with respect to any months for which the rental shall have already been paid which are affected by the Operating Cost Escalation and/or Real Estate Tax Escalation Costs above referred to, as well as with respect to the unexpired months of the current period and any subsequent periods.

Notwithstanding anything herein contained to the contrary, in the event the last period prior to the termination of this lease is less than twelve (12) months, the Base Period Costs shall be proportionately reduced to correspond to the duration of the final period.

For the purposes of this Section 22 the term(s)"building" and/or "property" (where used) are deemed to include 432-446 Fore Street, 9 Union and 40-52 Wharf Street, Portland Maine.

23. INTENTIONALLY DELETED

24. TENANT'S ESTOPPEL. Each of Landlord and Tenant shall, from time to time, on not less than ten (10) days' prior written request by the other part, execute, acknowledge, and deliver to the other party a written statement certifying that the Lease is unmodified and in full force and effect, or that the Lease is in full force and effect as modified and listing the instruments or modification; the dates to which the rents and charges have been paid; whether or not to the best of the certifying party's knowledge the other party is in default hereunder, and if so, specifying the nature of the default; and any other matters which may reasonably and customarily be covered in a Landlord's or Tenant's estoppel certificate. It is intended that any such statement required by Landlord to be delivered by Tenant pursuant to this Section 24 may be relied on by a prospective purchaser of Landlords interest or mortgagee of Landlord's interest or assignee of any mortgage of Landlord's interest.

25. HOLDOVER TENANCY. Unless, otherwise agreed between Landlord and Tenant, if Tenant holds possession of the Premises after the term of this Lease, Tenant shall become a Tenant from month to month under the provisions herein provided, but at a monthly basic rental of One hundred seventy five (175%) percent of the Base Rent and Additional Rent for the last month of the term or any renewal term, payable in advance on the first day of each month, and such tenancy shall continue until terminated by Landlord, or until Tenant shall have given to Landlord a written notice at least sixty (60) days prior to the intended date of termination, of intent to terminate such tenancy.

26. SECURITY DEPOSIT. Tenant shall at all times maintain on deposit with Landlord cash in the amount equivalent to 2 times the next monthly installment of Base Rent, to be used as a lease security deposit for the performance of Tenant's obligations under this Lease, including without limitation, the surrender of possession of the Premises to Landlord as

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herein provided and may be drawn down and applied in accordance with all the provisions of the Lease. If Land applies any part of such deposit to cure any default of Tenant, Tenant shall on demand deposit with Landlord the so applied so that Landlord shall have the full deposit on hand at all times during the term of this Lease. Landlord, in the event that the Demised Premises are sold, shall transfer and deliver the security, as such, to the purchaser of the Demised Premises and shall notify Tenant thereof, and thereupon Landlord shall be discharged from any further liability in reference thereto. Landlord need not pay interest thereon to the Tenant.

27. **LEASEHOLD IMPROVEMENTS AND LANDLORD WORK ALLOWANCE.** Tenant agrees to take possession of the Premises (including its occupancy of the Subleased Premises on the Expansion Date as herein provided) in 'as is' where is condition with all faults and defects. All renovation work done by the Tenant must comply with all applicable building codes and be performed by licensed and insured contractors. Plans must be submitted to the Landlord for its review and consent which consent may not be unreasonably withheld or delayed prior to the commencement of construction.

Tenant acknowledges that a) Landlord has made no representations and Tenant is not relying on any representations about the leased premises, their suitability for any particualr use and/or the physical condition thereof; and b) the Tenant has conducted its own due diligence inquires with respect to the leased Premises.

28. **RIGHT TO SHOW PREMISES.** Landlord may show the Premises to prospective purchasers and mortgagees; and, during the nine (9) months prior to termination of this Lease, to prospective Tenants, during business hours on reasonable notice to Tenant.

29. **WAIVER OF TRIAL BY JURY.** To the extent such waiver is permitted by law, the parties waive trial by jury in any action or proceeding brought in connection with this Lease or the Premises.

30. **LATE CHARGE.** Anything in this Lease to the contrary notwithstanding at Landlord's option, Tenant shall pay a Late Charge of six (6%) percent per month of any outstanding balance of Rent or Additional Rent paid more than ten (10) days after the due date thereof, to cover the extra expense involved in handling delinquent payments.

31. **NO OTHER REPRESENTATIONS.** No representations or promises shall be binding on the parties hereto except those representations and promises contained herein or in some future writing signed by the party making such representation(s) or promise(s).

32. **QUIET ENJOYMENT.** Landlord covenants that if, and as long as, Tenant pays the rent, and any Additional Rent as herein provided, and performs the covenants hereof, Landlord shall do nothing to affect Tenant's right to peaceably and quietly have, hold and enjoy the Premises for the term herein mentioned, subject to the provisions of this Lease.

33. **TENANT'S INSURANCE.** Tenant, at its own cost and expense, shall maintain at all times during the term of this Lease, public liability insurance in respect of the Demised Premises and the conduct or operation of business therein, with Landlord and its managing agent, if any, and each mortgagee whose respective name(s) and address(s) shall previously have been furnished to Tenant reasonably in advance, as additional named insured, with limits of not less than

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$1,000,000 per occurrence with a $2,000,000 umbrella policy for bodily injury or death to one or more persons a $2,000,000.00 for property damage. Tenant shall deliver to Landlord and any additional named insured such full policies or certificates of insurance, in form and substance satisfactory to Landlord, issued by the insurance company or its authorized agent, on or before the execution and delivery of this lease. Tenant shall procure and pay for renewals of such insurance from time to time before the expiration thereof and Tenant shall deliver to Landlord and any additional insured a renewal policy or certificate thereof at least thirty (30) days before the expiration of any existing policy. All such policies shall be issued by companies of recognized responsibility licensed to do business the State of Maine, and all such policies shall contain a provision whereby the same cannot be canceled or modified unless Landlord and any additional insured are given at least thirty (30) days prior written notice of such cancellation or modification (which provision shall also appear on the certificates delivered to Landlord hereunder). Landlord may from time to time require that the amount of the insurance to be maintained by Tenant under this paragraph be increased, so that the amount thereof adequately protects Landlord's interest. Further, Tenant covenants and agrees to promptly pay to Landlord as Additional Rent, upon demand, the full amount of any increase in the insurance premium paid by Landlord on the Premises or on any part thereof that results by reason of Tenant's act(s) or intended use including the serving of alcohol. Further, Tenant shall obtain coverage or endorsements necessary in Landlord's sole discretion for:

(i) insurance against loss or damage by fire and such other risks and hazards (including burglary, theft, vandalism, sprinkler leakage, breakage of glass within the Premises and, if the Premises are located at or below grade, broad form floor insurance) as are insurable under the available standard forms of ' 'all risk" insurance policies, to Tenant's personal property and business equipment and fixtures (hereinafter, "Tenant's Property") and, whether or not such alterations or Tenant improvements had been paid for or performed by Tenant, any alterations Tenant improvements in and to the Premises (hereinafter "Tenant's Work") for the full replacement cost value thereof(with such policy having a deductible not in excess of any amount to be determined by Landlord in the exercise of Landlord's commercially reasonable discretion) protecting Tenant, Landlord's employees and agents, and any mortgagees or Landlords having an interest in the Real Property; and

(ii) Business interruption insurance in an amount sufficient to prevent Tenant from becoming a co-insurer. Notwithstanding the foregoing, Tenant shall have the right to elect not to purchase such business interruption insurance provided Tenant shall self-insure the risks which would have been covered by such insurance if purchased, and provided, further, that Landlord shall have no liability to Tenant for any loss which would have been within the coverage of such insurance.

(a) Prior to the time such insurance is first required to be carried by Tenant and thereafter, at least thirty (30) days prior to the expiration or other termination of any such policies, Tenant agrees to deliver to Landlord evidence of payment for the policies and true and complete copies of the actual policies together with certificates evidencing such insurance. All such policies shall contain endorsements that (a) such insurance may not be modified or canceled or allowed to lapse except upon thirty (30) days' written notice to Landlord by certified mail, return receipt requested, containing the policy number and the names of the insured and the certificate holder, and (b) Tenant shall be solely responsible for payment of all premiums under such policies and Landlord shall have no obligation for the payment thereof notwithstanding that Landlord is or may be named as an

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additional insured. Tenant's failure to provide and keep in force the aforementioned insurance shall be regarded as a default hereunder, entitling Landlord to exercise any or all of the remedies as provided in this Lease in the event of T default Tenant shall not carry separate or additional insurance, whether concurrent or contributing, in the event of any loss or damage, with any insurance required to be obtained by Tenant under this Lease.

(b) The parties hereto shall procure an appropriate clause in, or endorsement on, any "all risk or fire or extended coverage insurance covering the Premises, the Building, the personal property, fixtures or equipment located thereon or therein, pursuant to which the insurance companies waive subrogation or consent to a waiver of right of recovery by the insured prior to any loss. The waiver of subrogation or permission for waiver of the right of recovery in favor of Tenant shall also extend to all other persons or entities occupying or using the Premises in accordance with the terms of the Lease. If the payment of an additional premium is required for the inclusion of such waiver of subrogation provisions or consent to a waiver of right of recovery, each party shall advise the other of the amount of any such additional premiums by written notice and the other party shall pay the same or shall be deemed to have agreed that the party obtaining the insurance coverage in question shall be free of any further obligations under the provisions hereof relating to such waiver or consent. It is expressly understood and agreed that Landlord will not be obligated to carry insurance on Tenant's Property or Tenant' Work or insurance against interruption of Tenant's business.

(c) As to each party hereto, provided such party's right of full recovery under the applicable policy is not adversely affected, such party hereby releases the other (along with its servants, agents, employees and invites) with respect to any claim (including a claim for negligence) which it might otherwise have against the other party for loss, damage or destruction with respect to its property by fire or other casualty i.e., in the case of Landlord, as to the Building, and, in the case of Tenant, as to Tenant's Property and Tenant's Work (including rental value or business interruption, as the case may be) occurring during the Term of this Lease.

(d) Nothing in this Article 33 shall prevent Tenant from taking out insurance of the kind and in the amounts provided for under this Article 33, insurance policy or policies covering other property as well as the Premises provided however, that any such policy or policies of blanket insurance (i) shall specify therein, or Tenant shall furnish Landlord with a written statement from the insurers under such policy or policies specifying, the amount of the total insurance allocated to the Premises, which amounts shall not be less than the amounts required by this Article 33, and (ii) such amounts so specified shall be sufficient to prevent Tenant from becoming a co-insurer within the terms of the applicable policy or policies, and provided further, however, that any such policy or policies of blanket insurance shall, as to the Premises, otherwise comply as to the endorsements and coverage with the provisions of this Article 33.

(e) Notwithstanding the limits of insurance specified in this Article 33, Tenant agrees to indemnify Landlord against all damage, loss or liability resulting from its use and occupancy of the Demised Premises. Such indemnification shall operate whether or not Tenant has placed and maintained the insurance specified in this Article 33, and whether or not such insurance, having been placed and maintained, proceeds from such insurance actually are collectible from one or more of the insurance companies; provided, however, that Tenant shall be relieved of its obligations of indemnity herein pro tanto of the amount

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actually recovered from one or more of the insurance companies by reason of injury or damage to, or loss sustained Premises.

34. **PARAGRAPH HEADINGS.** The paragraph headings in this Lease and position of its provisions are intended for convenience only and shall not be taken into consideration in any construction or interpretation of this Lease or any of its provisions.

35. **APPLICABILITY TO HEIRS AND ASSIGNS.** The provisions of this Lease shall apply to, bind and inure to the benefit of Landlord and Tenant, and their respective heirs, successors, legal representatives and assigns. It is understood that the term "Landlord" as used in this Lease means only the Landlord, a mortgagee in possession or a term Tenant of the Building, so that in the event of any sale of the Building or of the Premises, the Landlord named herein shall be and hereby is entirely freed and relieved of all covenants and obligations of Landlord hereunder accruing thereafter, and it shall be deemed without further agreement that the purchaser, the term Tenant of the Building, or the mortgagee in possession has assumed and agreed to carry out any and all covenants and obligations of Landlord hereunder. If TENANT is more than one person or party, TENANT'S obligations shall be joint and several.

36. **INTENTIONALLY DELETED**

37. **BROKER.** Each party represents and warrants to the other that **CBRE/THE BOULOS CO** is/are the only broker(s) with which Tenant has negotiated in bringing about this Lease and agrees to indemnify and hold the other harmless from any and all claims of any other brokers and expenses in connection therewith arising out of or in connection with the negotiation of or the entering into this Lease by Landlord and Tenant. Landlord agrees to pay such broker a commission in connection with this Lease pursuant to a separate agreement with such broker.

38. **PERSONAL LIABILITY.** Notwithstanding anything to the contrary provided in this Lease, it is specifically understood and agreed, such agreement being a primary consideration for the execution of this Lease by Landlord, that there shall be absolutely no personal liability on the part of Landlord or any of its partners, or its or their successors, assigns or any mortgagee in possession (for the purposes of this paragraph, collectively referred to as "Landlord"), with respect to any of the terms, covenants and conditions of this Lease, and that Tenant shall look solely to the equity and income of Landlord in the real property which includes the Building for the satisfaction of each and every remedy of Tenant in the event of any breach by Landlord of any of the terms, covenants and conditions of this Lease to be performed by Landlord, such exculpation of liability to be absolute and without any exceptions whatsoever.

39. **NO OPTION.** The submission of this Lease Agreement for examination does not constitute a reservation of, or option for, the Premises, and this Lease Agreement becomes effective as a Lease Agreement only upon execution and delivery thereof by Landlord and Tenant. LANDLORD and TENANT agree that this Lease shall not be recordable but each party hereto agrees, on request of the other, to execute a Memorandum of Lease in recordable form and mutually satisfactory to the parties.

40. **NON-LIABILITY OF LANDLORD.** It is expressly understood and agreed by and between the parties to this agreement that, except as hereinafter set forth, Tenant shall assume all risk of damage and casualty to its property, equipment and fixtures occurring in or about the Premises, except to the extent caused by the acts or omissions of

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Landlord, or its agents, employees or servants, whatever the cause of such damage or casualty. It is further unde and agreed that, in any event, Landlord in its capacity as Landlord and, if applicable, as builder or general contr the Building or Premises and Landlord's agents, servants and employees shall not be liable to Tenant, Tenant's agents, employees, contractors, invitees or any other occupant of the Premises for any damage or injury to person or property or for any inconvenience or annoyance to Tenant or any other occupant of the Premises or injury to or interruption of Tenant's or such other occupant's business, arising out of or attributable to (i) the design and construction of the Premises or the Building, (ii) any maintenance, repairs, replacements, additions, alterations, substitutions and installations made to the Premises or the Building, (iii) the failure of Landlord or others to perform any such maintenance or to make any such repairs, replacements, additions, alterations, substitutions and installations to the Premises and the Building or to provide any utilities or services, (iv) the acts or omissions of any Tenant or other occupants of any space adjacent to or adjoining the Premises, (v) steam, electricity, gas, water, rain, ice or snow, or any leak or flow from or into the Premises or Building and (vi) any other cause or happening whatsoever, except the gross negligence of Landlord and/or Landlord's agents, servants and employees with respect to any of the events or occurrences referred to in subdivisions (i) through (vi) hereof to the extent in connection with any affirmative duty of Landlord provided b *y* this Lease. Notwithstanding anything to the contrary provided herein, the terms of this section are hereby made specifically subject to the waiver of subrogation provisions of Section 11.

41. DEFINITIONS.

(A) Proportionate Share. Tenant's Proportionate Share, wherever that phrase is used shall be 4.47 % from the Commencement Date until the Expansion Date and thereafter it shall be increased to become 22.81%, calculated by using Tenant's gross rentable square footage as the numerator, and the total gross rentable retail square footage in the combined properties of the Old Port Retail Portfolio which notwithstanding anything to the contrary contained herein, and only for the specific purposes where used herein, consist of: 40-52 Wharf Street & 9 Union Street & 432-446 Fore Street, as the denomenator. For purposes of this Lease the parties each agree that the gross rentable retail square footage number as used in the denomenator shall be 33,600rsf.

(B) Patio. Intentionally Deleted

(C) Force Majeure. Force majeure shall mean and include those situations beyond Landlord's control, including by way of example and not by way of limitation, acts of God; accidents; repairs outside Landlord's control; strikes; shortages of labor, supplies or materials; or inclement weather.

42. INTENTIONALLY DELETED

43. NOTICES. All notices by either party to the other shall be in writing and shall be deemed to have been duly given only if delivered personally or sent registered mail or major overnight courier (DHL, FedEx or UPS) or certified mail in a postpaid envelope addressed, if to Tenant, at the above described Building (with a copy, by regular first class mail, to Adam S. Taylor, Esq., Taylor, McCormack & Frame, LLC, 4 Milk Street, Suite 103, Portland, Maine 04101; if to Landlord, at Landlord's address as first set forth above in this Lease; or, to either at such other address as Tenant or

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Landlord, respectively, may designate in writing. Notice shall be deemed to have been duly given, if delivered personally, on delivery thereof and if mailed, upon receipt thereof.

44. All negotiations, considerations, representations and understandings between Landlord and Tenant are incorporated herein and no prior agreements or understandings, written or oral, shall be effective for any purpose. No provision of this Lease may be modified or altered except by agreement in writing between Landlord and Tenant, and no act or omission of any employee or agent of Landlord shall alter, change, or modify any of the provisions hereof. Time is of the essence of this agreement. This Lease shall be governed exclusively by the provisions hereof and by the laws of the State of Maine.

45. **ACCORD AND SATISFACTION.** No payment by Tenant or receipt by Landlord of a Landlord amount than the rent and additional charges payable hereunder shall be deemed to be other that a payment on account of the earliest stipulated Rent and Additional Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment for Base Rent or Additional Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent and Additional Rent or to pursue any other remedy provided herein or by law.

46. **INTENTIONALLY DELETED**

47. **DUE AUTHORIZATION.** Each of Landlord and Tenant hereby represents and warrants to the other that the person executing this Lease on its behalf is duly authorized to do so and that when fully executed and delivered by both Landlord and Tenant this lease shall be an obligation fully binding on it, enforceable in accordance with all the terms and provisions hereof.

48. **INTENTIONALLY DELETED**

49. **REQUIREMENTS OF LAW, FIRE INSURANCE, FLOOR LOADS.** Prior to the commencement of the Lease term, if Tenant is then in possession, and at all times thereafter Tenant shall, at Tenant's sole cost and expense, promptly comply with all present and future laws, orders and regulations of all state, federal, municipal and local government, departments, commissions and boards and any directive of any public officer pursuant to law, and all orders, rules and regulations of the governing bodies or any similar body which shall impose any violation, order to duty upon Landlord or Tenant with respect to the Demised Premises whether or not arising out of Tenant's use or manner of use thereof, or with respect to the Building if arising out of Tenant's use or manner of use of the Demised Premises of the Building (including the use permitted under the lease). Tenant shall not do or permit any act or thing to be done in or to the Demised Premises which is contrary to law, or which will invalidate or be in conflict with public liability, fire or other policies of insurance at any time carried by or for the benefit of Landlord. Tenant shall not keep anything in the demised premises except as now or hereafter permitted by the Fire Department, Board of Fire Underwriters, Fire Insurance Rating Organization and other authority having jurisdiction, and then only in such manner and such quantity so as not to increase the rate for fire insurance applicable to the Building not use the Demised Premises in a manner which will increase the insurance rate for the Building or any property located therein over that in effect prior to the commencement of Tenant's

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occupancy. If by reason of failure to comply with the foregoing the fire insurance rate shall, at the beginning of or at any time thereafter, be higher than if otherwise would be, then Tenant shall reimburse Landlord, as Additio hereunder, for that portion of all fire insurance premiums thereafter pair by Landlord which shall have been charged because of such failure by Tenant. In any action or proceeding wherein Landlord and Tenant are parties, a schedule or make-up or rate for the Building or Demised Premises issued by a body making fire insurance rates applicable to said premises shall be conclusive evidence of the facts therein stated and of the several items and charges in the fire insurance rates then applicable to said premises. Tenant shall not place a load upon any floor of the Demised Premises exceeding the floor load per square foot area (including human occupancy) which it was designed to carry and which is allowed by law. Landlord reserves the right to prescribe the weight and position of all safes, business machines and mechanical equipment. Such installations shall be placed and maintained by Tenant at Tenant's expense in settings sufficient in Landlord's judgment to absorb and prevent vibration, noise and annoyance. Landlord shall retain the right throughout the term of this Lease to require that all cooking equipment, machinery and mechanical equipment installed by Tenant be fitted at Tenant's expense with noise/ odor and/or venting and/or vibration dampeners to prohibit any vibration, noise/ odor or annoyance to any other Tenant of the Building of which the Premises are apart. Landlord maintains the right throughout the term of this Lease to restrict use and access to the Patio areas as first described herein.

50. INTENTIONALLY DELETED

51. INTENTIONALLY DELETED

52. PARTIAL INVALIDITY. If any of the provisions of this Lease, or the application thereof to any person or circumstances, shall to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of this lease shall be valid and enforceable to the fullest extent permitted by law.

53. INTENTIONALLY DELETED

54. SIGNAGE. If Tenant shall desire to place a sign on the exterior portion of in which the demised premises is located, or on the interior portion of the demised premises facing outward toward the public view, the design and specifications of such signage must be submitted to the Landlord in writing for its consent which may not be unreasonable withheld provided the character of such sign is consistent with the overall character of the building and the surrounding neighborhood. In addition, Landlord shall have the right to approve any signage as to size, shape, content and location and placement of said sign(s). Tenant understands and acknowledges that all exterior signs, logos and the like are in all cases subject to approval by the Landlord and that all costs entailed in the design, preparation, erection, maintenance and obtaining of approvals therefor are the sole obligation of Tenant.

55. INTENTIONALLY DELETED

SIGNATURE PAGE FOLLOWS

Reviewed for Code Compliance
Inspections Division
Approved with Conditions
Date: 04/18/17

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals lay and year first abc written.

Old Port Retail Holdings, LLC

As Landlord

By:_____

As Member

The Blazin' Ace LLC

As Tenant

BY: Christopher P. Blake

Print name: CHR. B

Title: owner

BY: Seth Dfetrantoins

Print name: Seth Dfetr

Title: owner

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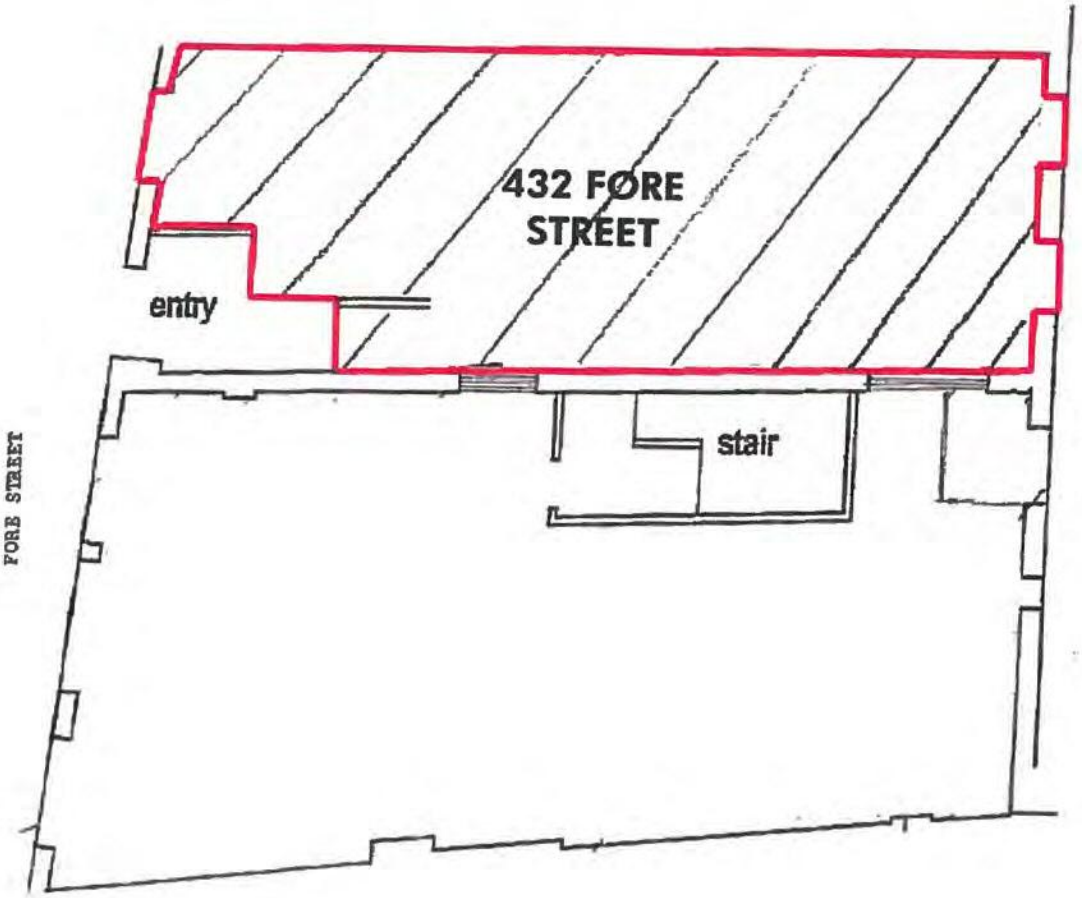
EXHIBIT "A" SPACE PLAN

*(*not to scale)*



CITY OF PORTLAND, MAINE
RESURGAM
Reviewed for Code Compliance
Inspections Division
Approved with Conditions
Date: 04/18/17

Exhibit B

Guaranty Agreement

This Guaranty Agreement is made as of this 3 day of ~~February~~ June 2009 by **Seth DiPietrantonio**, an individual at 4 Picnic Hill Freeport ME with a SS# of 005 86 5481 and by **Christopher Blake**, an individual residing at 29 Dunkerrin Way, Apt R2, Falmouth with a SS# of 004 80 2809 (hereinafter, "Guarantor(s)" or "Guarantor") to and in favor of Old Port Retail Holdings, LLC (hereinafter "Landlord").

WITNESSETH:

NOW, THEREFORE, in order to induce Landlord to enter into an amendment to the Lease Agreement and for other good and valuable consideration, the undersigned Guarantor(s) hereby agrees as follows:

1. Guarantor(s) hereby absolutely, unconditionally, and irrevocably jointly and severally guarantees to Landlord the full and prompt payment of the Obligations and hereby further guarantees the full and timely performance and observance of all of the covenants, terms, conditions and agreements provided for by the Lease. In the event of a default under the Lease, Guarantor(s) hereby covenants and agrees with Landlord: (i) to make the due and full punctual payment of all Obligations payable by the Tenant under the Lease; (ii) to effect prompt and complete performance of all and each of the Obligations; and (iii) to indemnify and save harmless Landlord from any loss, costs or damages arising out of any failure by the Tenant to pay or perform any Obligation including, without limitation, attorneys' fees and costs of collection. This Guaranty is a continuing guaranty of payment and performance and is not conditional or contingent upon any attempt to collect from the Tenant or upon any other condition or contingency.

2. In the event of a default under the Lease, Guarantor waives any right to require Landlord to first: (i) proceed against the Tenant or pursue any rights or remedies with respect to the Lease Agreement; (ii) proceed against or exhaust any security that Landlord holds from the Tenant; or (iii) pursue any other remedy whatsoever. Landlord shall have the right to enforce this Guaranty regardless of the acceptance of additional security from the Tenant and regardless of the release or discharge of the Tenant or any guarantor by Landlord or by others, or by operation of law. The existence of any additional security deposit or collateral which may inure to the benefit of the Landlord shall not be applied to mitigate the amount which Guarantor is liable for under this Guarantee.

3. Guarantor hereby expressly waives: (a) any right of setoff, counterclaim or deduction against amounts due under this Guaranty; (b) notice of the acceptance of this Guaranty and notice of default under the Lease; and (c) the right to interpose all substantive and procedural defenses of the law of guaranty, indemnification and suretyship, except the defenses of prior payment or prior performance.

4. Without limiting the generality of the foregoing, the liability of Guarantor under this Guaranty shall not be deemed to have been waived, released, discharged, impaired or affected by: (a) reason of any waiver or failure to enforce or delay in enforcing any of the Obligations; or (b) the granting of any indulgence or extension of time to the Tenant; or (c) the expiration of the term of the Lease; or (d) any merger or reorganization or the release or discharge of the Tenant or any other guarantor in any voluntary or involuntary receivership, bankruptcy, winding-up or other creditors' proceedings; or (e) the rejection, disaffirmance or disclaimer of the Lease Agreement by any party in any action or proceeding; or (f) the release of any collateral or security deposit held for the Obligations or the release of any Guarantor or any other guarantor. The liability of the Guaranty shall not be affected by any repossession, re-entry or re-letting of the Premises by Landlord.

5. Guarantor shall pay Landlord's reasonable attorneys' fees and all costs and other expenses incurred in any collection of this Guaranty or in any negotiations relative to the Obligations guaranteed under this Guaranty whether or not a lawsuit is commenced. All rights and remedies of Landlord under this Guaranty shall be cumulative and may be exercised singly or concurrently.

6. This Guaranty shall remain in full force and effect until the payment or performance of all Obligations and other amounts payable under this Guaranty (whether or not the Lease Agreement shall have been terminated or the Lease vacated).

7. This instrument may not be changed, modified, discharged or terminated orally or in any manner other than by an agreement in writing signed by Guarantor and Landlord.

8. All of the terms, agreements and conditions of this Guaranty shall extend to and be binding upon Guarantor, and the heirs, executors, personal administrators, and/or successors and assigns of Guarantor and shall inure to the benefit of and may

be enforced by Landlord, its successors and assigns.

9. The use of the singular herein shall include the plural and the use of any gender shall include all genders or r the case may be. This Guaranty is entered into in the State of Maine and shall be governed by and construed in acc with the law of the State of Maine.

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10. All notices under this Guaranty shall be delivered by certified mail, return receipt requested, or via facsimile to the address of the Guarantor as set forth above and to Bernstein Shur, attn: Nathan Smith, Esquire, 100 Middle Street, Portland, Maine 04101.

11. If any provision of this Guaranty or the application thereof to any person or circumstances shall for any reason and to any extent, be invalid or unenforceable, the remainder of this Guaranty and the application of that provision to other persons or circumstances shall not be affected but rather shall be enforced to the extent permitted by law. This Guaranty shall be construed without regard to any presumption or other rule requiring construction against the party causing this Guaranty to be drafted.

12. Landlord expressly reserves its rights and remedies, including its rights and remedies arising under the Lease and nothing set forth herein shall be deemed to constitute a waiver of those rights and remedies.

IN WITNESS WHEREOF, GUARANTOR has executed this Guaranty this 3 day of ~~February~~ June, 2009.

GUARANTOR:

Seth Dilietrantonio
Legal Name of Guarantor

Signature

Witness to Guarantor

owner
NAME/TITLE

GUARANTOR:

Christopher P. Blake
Legal Name of Guarantor

Signature

Witness to Guarantor

owner
NAME/TITLE

Reviewed for Code Compliance
Inspections Division
Approved with Conditions
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EXHIBIT C

RULES AND REGULATIONS

Tenant and Tenant's servants, employees, agents, visitors and licenses shall observe faithfully and comply strictly with the Rules and Regulations annexed hereto and such other and further reasonable Rules and Regulations as Landlord or Landlord's agents may from time to time adopt Notice of any additional Rules and Regulations shall be given in such manner as Landlord may elect. Nothing in this lease contained shall be construed to impose upon Landlord any duty or obligations to enforce the Rules and Regulations or terms, covenants or conditions in any other lease, as against any other Tenant, and Landlord shall not be liable to Tenant for violation of the same by any other Tenant, its servants, employees, agents visitors or licenses.

1. No Tenant shall encumber or obstruct, or permit the encumbrance or obstruction of any of the sidewalks, plazas, entrances, corridors, escalators, elevators, fire exists or stairways of the Building. The Landlord reserves the right to control and operate the public portions of the Building and the public facilities, as well as facilities furnished for the common use of the Tenants, in such manner as it deems best for the benefit of the Tenants generally.

2. The cost of repairing any damage to the public portions of the Building or the public facilities or to any facilities used in common with other Tenants, caused by the negligence of Tenant or the employees, licensees or invitees of the Tenant, shall be paid by such Tenant.

3. No dangerous, inflammable, combustible or explosive object of material shall be brought into the Building by any Tenant or with the permission of any Tenant. Any cuspidors or similar containers or receptacles used in any Tenant's premises shall be cared for and cleaned by and at the expense of the Tenant.

4. No acids, vapors or other materials shall be discharged or permitted to be discharged into the waste lines, vents or flues of the Building which may damage them. The water and wash closets and other plumbing fixtures in or serving any Tenant's premises shall not be used for any purpose other than the purpose for which they were designed or constructed, and no sweepings, rubbish, rags, acids or other foreign substances shall be deposited therein.

5. The Landlord reserves the right to rescind, alter or waive any rule or regulation at any time prescribed for the Building when, in its judgment, it deems it necessary, desirable or proper for its best interest and for the best interests of the Tenants, and no alteration or waiver of any rule or regulation in favor of one Tenant shall operate as an alteration or waiver in favor of any other Tenant. The Landlord shall not be responsible to any Tenant for the non-observance or violation by any other Tenant of any of the rules and regulations at any time prescribed by the Building.

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