

# LEASE AGREEMENT

**THIS AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ between

**DONALD C. GREENE doing business as DCG DEVELOPMENT CO.**, with a business address at 240 Clifton Corporate Parkway, Clifton Park, New York 12065, as *Landlord*, and

\_\_\_\_\_, with a business address of \_\_\_\_\_, \_\_\_\_\_, NY \_\_\_\_\_ as *Tenant*.

**WITNESSETH:** Landlord is the owner of land and improvements commonly known and numbered as follows (the "Building"): **Towne Center, 1603 Route 9, Town of Halfmoon, Saratoga County, New York**. Landlord makes available for lease space #, consisting of \_\_\_\_\_ square feet of space (the "Premises").

Landlord agrees to lease the Premises to the Tenant under the following covenants, conditions and provisions:

## 1. Commencement and Expiration of Term

A. The Term of this Lease Agreement and the fixed annual rental payable under this Lease Agreement (Rent) shall commence on \_\_\_\_\_, \_\_\_\_\_.

B. Expiration Date: The Term of this Lease Agreement shall end \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ (\_\_) year(s) from the Commencement Date or shall end on such earlier date upon which the Term may expire or be canceled or terminated pursuant to any of the conditions or covenants of this Lease Agreement or pursuant to law.

## 2. Base Rent

Tenant shall pay the Term Base Rent of \$\_\_\_\_\_.\_\_\_\_\_, to be paid in equal monthly payments in advance on the first day of each and every month during the term, as follows: Monthly installment of \$\_\_\_\_\_ on the first day of each month for the first calendar year. The rental payment amount for any partial calendar months included in the Lease Term shall be prorated on a daily basis.

## 3. Late Payment Charges

Failure to pay monthly rent in full by the 10th day of the month will result in a late charge of two percent (2%) per month of the unpaid amount being added to the balance due.

## 4. Use

The Premises to be used and occupied are to be used only for a \_\_\_\_\_ and related items and for no other use or purpose without Landlord's prior written consent, which shall not be unreasonably withheld. Tenant shall continuously use the premises for the uses specified in this Lease Agreement.

Tenant shall comply with all Federal, State and Local regulations, including occupational licensing and zoning regulations. Notwithstanding the foregoing, Tenant shall not use the

Premises for storing, manufacturing or selling any explosives, flammables or other inherently dangerous substance, chemical, thing or device.

**5. All Sums Shall Be Additional Rent**

Any and all sums due pursuant to this Lease Agreement shall be deemed Additional Rent and shall be payable monthly as billed by Landlord, and shall be in addition to the Rent. Landlord may estimate such charges on generally accepted accounting practices, and Tenant shall pay bills for such estimates within fifteen (15) days. At the end of each calendar year, Landlord shall send Tenant a revised bill for Tenant's actual pro rata costs, and issue Tenant an appropriate credit or debit. In the event Tenant has paid in advance for any real estate taxes, services or supplies under any part of this Lease Agreement relating to Common Area Charges, such payment shall be adjusted annually and as of the date the Lease Agreement is terminated.

**6. Preparation for Occupancy and Possession**

Tenant agrees to take possession of Premises in "as is" condition.

**7. Security Deposit**

Tenant shall pay to Landlord a "Security Deposit" in the amount of \$\_\_\_\_\_. upon the execution of this Lease Agreement.

The Security Deposit shall be held by Landlord, without liability for interest and as security for the performance by Tenant of Tenant's covenants and obligations under this Lease Agreement, it being expressly understood that the Security Deposit shall not be considered an advance payment of rental or a measure of Landlord's damages in case of default by Tenant. Landlord may commingle the Security Deposit with Landlord's other funds. Landlord may, from time to time, without prejudice to any other remedy, use the Security Deposit to the extent necessary to make good any arrearages of rent or to satisfy any other covenant or obligation of Tenant hereunder. Following any such application of the Security Deposit, Tenant shall pay to Landlord on demand the amount so applied in order to restore the Security Deposit to its original amount. If Tenant is not in default at the Termination of this Lease Agreement, the balance of the Security Deposit remaining after any such application shall be returned by Landlord to Tenant. If Landlord transfers its interest in the Premises during the Term of this Lease Agreement, Landlord may assign the Security Deposit to the transferee and thereafter shall have no further liability for the return of such Security Deposit. **Under no circumstances may Tenant use this deposit to pay rent, including rent for the last month of this lease.** The rent must be paid on or before the tenth day of each month, *including the last month of occupancy.*

**8. Taxes**

A. In addition to the Rent, Tenant agrees to pay to Landlord as Additional Rent its proportionate share of all real property taxes, water and sewer rents, rates and charges, and assessments, including the cost of any contest of any assessment by Landlord, which may be levied or assessed against the Building of which the Premises form a part, by any lawful authority for the period of the term of this Lease Agreement. Tenant's proportionate share shall be equal to the product obtained by multiplying the amount of taxes and assessments by a fraction, the numerator of which shall be the number of square feet of floor area in the demised premises and the denominator of which shall be the total number of square feet of

leaseable floor area in the Building, of which the Premises is a part, as of the day of assessment. A good faith estimate of these charges to Tenant for the Term is approximately \_\_\_\_\_ and /100 Dollars (\$\_\_\_\_\_.\_\_) annually, or approximately \$\_\_\_\_. \_\_ per month, based upon \$ \_\_\_\_ per square foot.

B. Tenant's proportionate share of all real property taxes and assessments during the term shall be paid in monthly installments on or before the first day of each calendar month, in advance, in an amount estimated by Landlord, provided that in the event Landlord is required under a mortgage covering the Building or Buildings to escrow real estate taxes, Landlord may, but shall not be obligated to, use the amount required to be escrowed as a basis for his estimate of the monthly installment due from Tenant.

C. Landlord shall furnish Tenant with a written statement of the actual amount of Tenant's proportionate share of the taxes and assessments of such year. If the total amount paid by Tenant under this Article during any calendar year shall be less than the actual amount due from Tenant for such year, as shown on such statement, Tenant shall pay to Landlord the deficiency within fifteen (15) days after demand by Landlord, and if the total amount paid by Tenant for any such calendar year shall exceed such amount due from Tenant for such calendar year, Tenant shall be entitled to offset the excess against payments next becoming due under this Article. For the calendar year in which this Lease Agreement terminates, the provisions of this Article shall apply and Tenant's liability for its proportionate share of any taxes and assessments for any such year shall be subject to a pro rate adjustment based on the number of days of any such year during which the term of this Lease Agreement is in effect. Any overage remaining as of the Lease Agreement Termination Date shall be refunded to Tenant subject to satisfaction of any other remaining balances.

**9. Common Area Charges:**

A. The term "Common Areas" means the parking areas, roadways, pedestrian sidewalks, driveways, sidewalks, mall, whether open or closed, delivery areas, trash removal areas, landscaped areas, security areas, public washrooms, and all other areas or improvements that may be provided by Landlord for the common use of the tenants in the Shopping Center.

B. Landlord grants Tenant and Tenant's customers and invitees the nonexclusive right to use the Common Areas, in common with others to whom the Landlord has granted or will grant a similar right.

C. Landlord reserves these rights with respect to the Common Areas:

(a) To establish reasonable rules and regulations for the use of the Common Areas (including without limitation the delivery of goods and the disposal of trash);

(b) To use or permit the use of such Common Areas by others to whom Landlord may grant or may have granted such rights in such manner as Landlord may from time to time designate, including but not limited to truck and trailer sales and special promotional events;

(c) To close all or any portion of the Common Areas to make repairs or changes, to prevent a dedication of the Common Areas or the accrual of any rights to any person or the public, or to discourage noncustomer use or parking;

(d) To construct additional buildings in the Common Areas and to change the layout

of such Common Areas, including the right to add to or subtract from their shape and size, whether by the addition or relocation of buildings, improvements or otherwise;

(e) To enter into operating agreements with respect to the Common Areas; and

(f) To do such other acts in and to the Common Areas as in Landlord's judgment may be desirable.

D. Tenant will pay Landlord as a Common Area Charge Tenant's proportionate share of all costs paid or incurred by Landlord in operating and maintaining the Common Areas, including without limitation: cleaning, window washing, landscaping, lighting, heating, air conditioning, maintaining, painting, repairing, and replacing (except to the extent proceeds of insurance or condemnation awards are available) the enclosed malls and other enclosed Common Areas; maintaining, repairing, replacing, cleaning, lighting, removing snow and ice from, painting, and landscaping all vehicle parking areas and other outdoor Common Areas, including any Shopping Center pylon and sign; providing security; seasonal holiday decorations; removing trash from the Common Areas; total compensation and benefits (including premiums for workmen's compensation and other insurance) paid to or on behalf of employees; personal property taxes; supplies; fire protection and fire hydrant charges; steam, water, and sewer charges; gas, electricity, and telephone utility charges; licenses and permit fees; supplying music to the common areas; reasonable depreciation of equipment used in operating and maintaining the Common Areas and rent paid for leasing such equipment; and administrative costs equal to 15% of all Common Area costs and expenses.

E. 1) Tenant's Common Area Charge will be determined by multiplying the total cost incurred by Landlord by a fraction, the numerator of which is the number of square feet of floor area within the Premises and the denominator of which is the total number of square feet of floor area leased and occupied within all the buildings in the Shopping Center.

2) Tenant shall pay to Landlord an amount estimated by Landlord to be Tenant's share of Common Area Charges in advance on the first day of each month, commencing on the date the term commences, or on the first day of the month following the month the term commences if the term commences on a day other than the first day of a month, as the case may be, and continuing during the term. A good faith estimate of these charges to Tenant for the Term is approximately \_\_\_\_\_ and \_\_\_/100 Dollars (\$\_\_\_\_.\_\_) annually, or approximately \$\_\_\_\_. per month, based upon \$\_\_\_\_. per square foot.

F. Landlord can adjust the monthly Common Area Charges charge at the end of each lease year on the basis of Landlord's reasonably anticipated costs for the following lease year. Landlord shall furnish to Tenant a statement showing the total Common Area Expenses, and Tenant's share of common area costs for the lease year, and the payments made by Tenant with respect to each lease year within sixty (60) days after the end of each lease year covering the lease year just ended.

G. If Tenant's share of Common Area Charges for the lease year exceeds the payments made by Tenant, Tenant shall pay Landlord for the deficiency within fifteen (15) days after receipt of the statement. If Tenant's payments made during the lease year exceed Tenant's share of Common Area Expenses, the excess shall be applied against the next payment due to Landlord, except that if any unused excess exists at the expiration of the term of the Lease

Agreement, the sum of the unused excess shall be paid to Tenant.

#### 10. Insurance

Tenant at its own expense shall maintain public liability insurance insuring Tenant and Landlord with minimum coverage as follows:

Property Damage:	\$ 300,000
Public Liability:	\$1,000,000

Tenant shall provide Landlord with a certificate of insurance from an insurance company qualified to do business in the State of New York that is reasonably acceptable to Landlord evidencing the existence of the foregoing insurance.

Tenant shall name Landlord as an additional insured on a primary, non-contributory basis. Endorsements are to include a thirty (30) day prior written notice of cancellation or non-renewal of Tenant's insurance.

Landlord shall maintain on the building and other improvements in which the Premises are located, a policy of standard fire and extended coverage insurance and public liability protection, with vandalism and malicious mischief endorsements, to the extent of at least eighty percent (80%) of their insurable value.

Tenant shall reimburse Landlord for Tenant's proportionate share of any increase in the premiums paid by Landlord for maintaining insurance required by the preceding paragraph. Reimbursement shall be made by Tenant within fifteen (15) days after Tenant receives a copy of the notice. Tenant's proportionate share of any increase in insurance premiums over the Term shall be the ratio of the total premium that the total number of square feet in the Premises bears to the total number of leasable square feet in the building in which the premises are located. Tenant's obligation to pay the insurance costs shall be prorated for any partial year of the commencement and expiration of the term of this Lease Agreement. A good faith estimate of the Insurance charges to Tenant for the Term is approximately \_\_\_\_\_ and \_\_\_/100 Dollars (\$\_\_\_\_\_) annually, or approximately \$\_\_\_\_ per month, based upon \$0.\_\_\_\_ per square foot.

#### 11. Utilities

A. Landlord shall provide and maintain the necessary wiring, ducts and conduits in order to bring electricity, gas, heat, telephone service and other utilities to the Premises, as more fully described in the attachments hereto.

B. Tenant's utilities shall be separately metered for services supplied to the Premises. Tenant shall pay all charges for gas, electricity, light, heat, power, water, telephone services and other utilities supplied to and used upon the premises.

#### 12. Rubbish Removal

Tenant agrees to be responsible for the removal of Tenant's ordinary rubbish, pursuant to the Rules and Regulations in Schedule C.

### 13. **Assignment of this Lease**

Tenant, successors, heirs, executors or administrators shall not assign this agreement, or underlet or under-lease the premises, or any part thereof, or make any alterations on the premises, without the Landlord's consent in writing.

Tenant shall have the right with Landlord's consent, to assign this lease to a corporation with which Tenant may merge or consolidate, to any subsidiary of Tenant, to any corporation under common control with Tenant, or to a purchaser of substantially all of Tenant's assets. Such consent shall not be unreasonably withheld or delayed.

### 14. **Premises Relocation**

Landlord reserves the right from time to time to substitute for the Premises other premises ("New Premises") at the Building so long as (a) the new premises are similar to the Premises in square footage; (b) Landlord gives Tenant at least thirty (30) days notice before making such change; (c) if Tenant has already taken possession of the Premises, Landlord pays reasonable direct out-of-pocket expenses of Tenant in moving from the Premises to the New Premises, and Landlord improves the New Premises to a condition substantially similar to the Premises (exclusive of trade fixtures, personal property, inventory and equipment). Landlord will not have any liability to Tenant for the loss or damage of Tenant's property or business arising in connection with moving to the New Premises. At Landlord's request, Tenant will execute and deliver to Landlord an amendment to the Lease Agreement confirming the change of the Premises, and, if necessary, adjusting the Monthly Rent.

### 15. **Tenant Responsibilities**

#### A. *Care of Premises*

Tenant shall take good care of the Premises and shall, at Tenant's own cost and expense, make all repairs and at the end or other expiration of the term, shall deliver up the demised premises in good order or condition, damages by the elements excepted.

#### B. *Damage & Destruction to Premises: Tenant's Duty to Notify Landlord.*

1. Tenant must give Landlord prompt notice of fire, accident, damage or dangerous or defective condition. If the Premises cannot be used because of fire or other casualty, Tenant is not required to pay rent for the time the Premises are unusable. If part of the Premises cannot be used, Tenant must pay rent for the usable part. Landlord shall have the right to decide which part of the Premise is usable. Landlord need only repair the damaged structural parts of the Premises. Landlord is not required to repair or replace any equipment, fixtures, furnishings or decorations unless originally installed by Landlord. Landlord is not responsible for delays due to settling insurance claims, obtaining estimates, labor and supply problems or any other cause not fully under Landlord's control.

2. If the fire or other casualty is caused by an act or neglect of Tenant, Tenant's employees or invitees, or at the time of the fire or casualty Tenant is in default in any term of this Lease Agreement, then all repairs will be made at Tenant's expense and Tenant must pay the full rent with no adjustment. The cost of the repairs will be Added Rent.

3. Landlord has the right to demolish or rebuild the Building if there is substantial damage by fire or other casualty. Landlord may cancel this Lease Agreement within thirty

(30) days after substantial fire or casualty by giving Tenant notice of Landlord's intention to demolish or rebuild. The Lease Agreement will end thirty (30) days after Landlord's cancellation notice to Tenant. Tenant must deliver the Premises to Landlord on or before the cancellation date in the notice and pay all rent due to the date of the fire or casualty. If the Lease Agreement is cancelled Landlord is not required to repair the Premises or Building. The cancellation does not release Tenant of liability in connection with the fire or casualty. This Section is intended to replace the terms of New York Real Property Law Section 227.

C. *Compliance With Governmental Orders.* Tenant shall promptly execute and comply with all statutes, ordinances, rules, orders, regulations and requirements of any government body applicable to the Premises, during said Term; and shall also promptly comply with and execute all rules, orders and regulations of the New York Board of Fire Underwriters, or any other similar body, at Tenant's own cost and expense.

D. *Tenant Continuing Liability.* In the event that the relation of Landlord and Tenant may cease or Terminate by reason of re-entry of Landlord under the Terms and covenants contained in this lease or by ejectment of Tenant by summary proceedings or otherwise, or after abandonment of the Premises by Tenant, it is hereby agreed that Tenant shall remain liable and pay in monthly payments the rent which occurs subsequent to the re-entry by Landlord, and Tenant expressly agrees to pay as damages for the breach of the covenants herein, the difference between the rent reserved and the rent collected and received, if any, by Landlord during the remainder of the unexpired Term, such difference or deficiency between the rent herein reserved and the rent collected, if any, shall become due and payable in monthly payments during the remainder of the unexpired Term, as the amounts of such difference or deficiency shall from time to time be ascertained; and it is mutually agreed between Landlord and Tenant that the respective parties hereto shall and hereby do waive trial by jury in any action, proceeding or counterclaim brought by either party against the other on any matters arising out of or in any way connected with this lease, Tenant's use or occupancy of the Premises, and/or any claim of injury or damage.

## 16. **Landlord's Rights and Responsibilities**

A. *Landlord's Warranty.* Landlord represents and warrants to Tenant that on the date of delivery of possession of the Premises to Tenant the Premises will be in compliance with all laws, ordinances, orders, rules, regulations, and other governmental requirements relating to the use, condition, and occupancy of the Premises for the purposes allowed by this Lease Agreement including, without limitation, the certificate of occupancy for the Premises and building of which they are a part, and the Americans with Disabilities Act of 1990, and all rules, orders, regulations, and requirements of the board of fire underwriters or insurance service office, or any similar body having jurisdiction over the Premises and the Building, and that on that date there are no conditions that after discovery or notice or the passage of time would not be in compliance with all laws, ordinances, orders, rules, regulations and other governmental requirements.

B. *Landlord's Right of Entry.* Tenant agrees that the Landlord and the Landlord's agents and other representatives shall have the right to enter into and upon the premises, at all reasonable hours for the purpose of examining the premises, or making repairs or alterations as may be necessary for the safety and preservation of the Premises. Tenant

agrees that Landlord shall have the right to enter the premises in any emergency at any time, to examine the premises and make such repairs as necessary to the emergency.

C. *Landlord Right to Show Premises.* Tenant agrees to permit the Landlord or the Landlord's agents to show the premises to persons wishing to hire or purchase the same; and the Tenant further agrees that on and after the beginning of the 8th month, next preceding the expiration of the term hereby granted, the Landlord or the Landlord's agents shall have the right to place notices on the front of said premises, or any part thereof, offering the premises "To Let" or "For Sale", and the Tenant hereby agrees to permit the same to remain thereon without hindrance or molestation with the last ninety (90) days of the lease term.

D. *Landlord Rights on Default.* If the premises shall be deserted or become vacant during the term, or if any default be made in the payment of the rent or any part of the rent, or if any default be made in the performance of any of the covenants in this Agreement, Landlord or representatives may re-enter the premises by force, summary proceedings or otherwise, and remove all persons, without being liable to prosecution, and the Tenant hereby expressly waives the service of any notice in writing of intention to re-enter, and Tenant shall pay at the same time as the rent becomes payable under this Agreement a sum equivalent to the rent reserved, and Landlord may rent the premises on behalf of Tenant, reserving the right to rent the premises for a longer period of time than fixed in the original lease without releasing the original Tenant from any liability, applying any moneys collected, first to the expense of resuming or obtaining possession, second to restoring the premises to a rentable condition, and then to the payment of the rent and all other charges due and to grow due to the Landlord, any surplus to be paid to Tenant, who shall remain liable for any deficiency.

E. *Landlord Right to Re-enter.* If Tenant defaults in performance of any of the covenants in this Agreement, it shall be lawful for Landlord to re-enter the premises, and the same to have again, re-possess and enjoy. Tenant hereby expressly waives the service of any notice in writing of intention to re-enter.

F. *Landlord's Liability.* Tenant shall look solely to the interest of Landlord in the Building or Buildings for satisfaction of Tenant's remedies, and no other property or assets of the Landlord shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies.

## 17. **Default**

A. If Tenant shall default at any time in the payment of rent due to Landlord, and if said default shall continue for five (5) days after written notice shall have been given to Tenant by Landlord;

B. Or if default shall be made in any of the other covenants or conditions to be kept, observed and performed by Tenant, and such default shall continue for fifteen (15) days after notice thereof in writing to Tenant by Landlord without correction thereof then having been commenced and thereafter diligently prosecuted; then



C. Landlord may declare the Term of this Lease Agreement ended and Terminated by giving Tenant written notice of such intention, and if possession of the Premises is not surrendered, Landlord may reenter said premises. Landlord shall have, in addition to the remedy above provided, any other right or remedy available to Landlord on account of any Tenant default, either in law or equity.

**18. Signage**

All signage to be used on the Premises shall be approved by Landlord. Any governmental approvals, fees, and charges required to place or replace Tenant signage on the Premises will be the responsibility of Tenant.

**19. Indemnity**

Tenant shall protect, indemnify and hold harmless Landlord, Landlord's agents, employees, licensees and invitees from and against any and all claims of loss or damage to property and of injury to or death of persons arising out of or in connection with the acts or negligence of Tenant, its agents, licensees or invitees in or about the leased premises.

**20. No Lien on Premises**

This instrument shall not be a lien against the premises in respect to any mortgages that are now on or that hereafter may be placed against the premises, and the recording of a mortgage or mortgages shall have preference and precedence and be superior and prior to the lien of this lease, irrespective of the date of recording, and Tenant agrees to execute without cost, any such instrument which may be deemed necessary or desirable to further effect the subordination of this lease to any such mortgage or mortgages, and a refusal to execute such instrument shall entitle Landlord, or the Landlord's assigns and legal representatives to cancel this lease without incurring any expense or damage and the term hereby granted is expressly limited accordingly.

**21. Estoppel Certificate**

Tenant agrees, at any time and from time to time, as requested by Landlord, upon not less than ten (10) days' prior notice, to execute and deliver without cost or expense to Landlord a statement certifying that this Lease Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), certifying the dates to which the rent and additional rent have been paid, stating whether or not, to the best knowledge of Tenant, Landlord is in default in performance of any of its obligations under this Lease Agreement, and, if so, specifying each such default of which Tenant may have knowledge, and stating any other information reasonably requested by Landlord, it being intended that any such statement delivered pursuant thereto may be relied upon by any other person with whom Landlord may be dealing.

**22. Financing Modifications**

If, in connection with obtaining, continuing or renewing financing for which the Building or Buildings, land or a leasehold or any interest therein represents collateral in whole or in part, a banking, insurance or other lender shall request modifications of this Lease Agreement as a condition of such financing, Tenant will not unreasonably withhold, delay or defer its consent thereto, provided that such modifications do not increase the obligations of Tenant hereunder or adversely affect Tenant's leasehold interest hereby created.

### **23. Subordination**

Tenant accepts this Lease Agreement subject and subordinate to any mortgage, deed of trust or other lien presently existing or hereafter arising upon the Premises, or upon the Building and to any renewals, refinancing and extensions thereof, but Tenant agrees that any such mortgagee shall have the right at any time to subordinate such mortgage, deed of trust or other lien to this Lease Agreement on such Terms and subject to such conditions as such mortgagee may deem appropriate in its discretion. Landlord is hereby irrevocably vested with full power and authority to subordinate this Lease Agreement to any mortgage, deed of trust or other lien now existing or hereafter placed upon the Premises of the Building, and Tenant agrees upon demand to execute such further instruments subordinating this Lease Agreement or attorning to the holder of any such liens as Landlord may request. In the event that Tenant should fail to execute any instrument of subordination herein required to be executed by Tenant promptly as requested, Tenant hereby irrevocably constitutes Landlord as its attorney-in-fact to execute such instrument in Tenant's name, place and stead, it being agreed that such power is one coupled with an interest. Tenant agrees that it will from time to time upon request by Landlord execute and deliver to such persons as Landlord shall request a statement in recordable form certifying that this Lease Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified), stating the dates to which rent and other charges payable under this Lease Agreement have been paid, stating that Landlord is not in default hereunder (or if Tenant alleges a default stating the nature of such alleged default) and further stating such other matters as Landlord shall reasonably require.

### **24. Attornment**

If the holder of any mortgage, indenture, deed of trust, or other similar instrument described in paragraph 24 succeeds to Landlord's interest in the Premises, Tenant will pay to it all Rents and Additional Rent subsequently payable under this Lease. Tenant will, upon request of any one succeeding to the interest of Landlord, automatically become the tenant of, and attorn to, the successor without change in this Lease. The successor will not be bound by (i) any payment of Rent for more than one month in advance, or (ii) any amendment or modification of this Lease made without its written consent, or (iii) any claim against Landlord arising prior to the date that the successor succeeded to Landlord's interest, or (iv) any claim or offset of Rent against Landlord. Upon request by the successor and without cost to Landlord or the successor, Tenant will execute, acknowledge, and deliver documents confirming the attornment. The document of attornment will also provide that the successor will not disturb Tenant in its use of the Premises in accordance with this Lease. If Tenant fails or refuses to execute, acknowledge, and deliver those documents within twenty (20) days after written demand, the successor will be entitled to execute, acknowledge, and deliver those documents on behalf of Tenant as Tenant's attorney-in-fact. Tenant constitutes and irrevocably appoints the successor as Tenant's attorney-in-fact to execute, acknowledge, and deliver those documents on behalf of tenant.

### **25. No Waiver**

Failure of Landlord to insist upon a strict performance of any of the terms, conditions and covenants in this lease shall not be deemed a waiver of any rights or remedies that Landlord may have, and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained. This instrument may not be changed, modified, discharged or terminated orally.

**26. Eminent Domain**

If the whole or any part of the demised premises shall be acquired or condemned by Eminent Domain for any public or quasi public use or purpose, the term of this lease shall cease and terminate from the date of title vesting in such proceeding, and Tenant shall have no claim against Landlord for the value of any unexpired term of said lease. No part of any award shall belong to the Tenant.

**27. Fixtures**

If after default in payment of rent or violation of any other provision of this lease, or upon the expiration of the lease, Tenant moves out or is dispossessed and fails to remove any trade fixtures or other property prior to such said default, removal, expiration of lease, or prior to the issuance of the final order or execution of the warrant, the fixtures and property shall be deemed abandoned by Tenant and shall become the property of Landlord.

**28. Right to Redeem**

Tenant waives all rights to redeem under any law of the State of New York.

**29. Force Majeure**

This lease and the obligation of Tenant to pay rent and perform all of the covenants and agreements on part of Tenant to be performed shall in nowise be affected, impaired or excused because Landlord is unable to supply or is delayed in supply any service expressly or impliedly to be supplied or is unable to make, or is delayed in making any repairs, additions, alterations or decorations or is unable to supply or is delayed in supplying any equipment or fixtures if Landlord is prevented or delayed from so doing by reason of governmental preemption in connection with a National Emergency or in connection with any governmental agency or by reason of the condition of supply and demand which have been or are affected by war or other emergency.

**30. Interruption of Services**

No diminution or abatement or other compensation, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the building or to its appliances, nor for any space taken to comply with any law, ordinance or order of a governmental authority. In respect to the various "services," if any, herein expressly or impliedly agreed to be furnished by Landlord to Tenant, it is agreed that there shall be no diminution or abatement of the rent, or any other compensation, for interruption or curtailment of such "service" when such interruption or curtailment shall be due to accident, alterations or repairs desirable or necessary to be made or to inability or difficulty in securing supplies or labor for the maintenance of such "service" or to some other cause, not gross negligence on the part of Landlord. No such interruption or curtailment of any such "service" shall be deemed a constructive eviction. Landlord shall not be required to furnish, and Tenant shall not be entitled to receive, any of such "services" during any time wherein Tenant shall be in default in payment of rent. Neither shall there be any abatement or diminution of rent because of making of repairs, improvements or decorations to the premises after the Commencement Date, it being understood that rent shall, in any event, commence to run at such date.

**31. Waiver of Subrogation**

All insurance policies of property insurance carried by Landlord or Tenant in covering the Premises, its contents, and the property of either of them in the Premises will waive any right of the insurer to subrogation against the other to the extent permitted by law. Landlord and Tenant agree that their policies will include such a waiver or an endorsement to them so long as the waiver or endorsement is available without cost. If a cost is imposed, the one whose insurer imposes it will advise the other of the cost and its amount and the other may pay it but will not be obligated to do so. The failure of any insurance policy to include such a waiver or endorsement will not affect this Lease Agreement.

**32. Holding Over**

If Tenant remains in possession of the Premises at the end of this Lease Agreement, Tenant will occupy the Premises as a Tenant from month to month, subject to all conditions, provisions, and obligations of this Lease Agreement in effect on the last day of the Term, with the exception that the then current monthly rental payment will be increased by fifty percent (50%) for each month or part month during which the Tenant holds over.

**33. Notice**

Both Tenant and Landlord agree that the Notice required under this lease will be in writing, certified mail, return receipt requested, at the above-mentioned addresses or at any other address that the parties may direct.

**34. Time Is Of the Essence**

Time is of the essence of each and every provision of this Lease Agreement.

**35. Joint and Several Liability**

If Tenant is composed of more than one signatory to this Lease Agreement, each signatory will be jointly and severally liable with each other signatory for payment and performance according to this Lease Agreement.

**36. Severability**

If any provision of this Lease Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Lease Agreement will not be affected, and in lieu of each provision that is found to be illegal, invalid, or unenforceable, provision will be added as a part of this Lease Agreement that is as similar to the illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

**37. Authority**

If Tenant signs this lease as a corporation, each of the persons executing this Lease Agreement on behalf of Tenant warrants to Landlord that Tenant is a duly authorized and existing corporation, that Tenant is qualified to do business in the state in which the Premises are located, that Tenant has full right and authority to enter into this Lease Agreement, and that each and every person signing on behalf of Tenant is authorized to do so. Upon Landlord's request, Tenant will provide evidence satisfactory to Landlord confirming these representations.

**38. Waiver of Jury Trial**

Landlord and Tenant waive trial by jury in any action, proceeding or counterclaim brought by either of them against the other on all matters arising out of this Lease Agreement or the use and occupancy of the Premises (except claims for personal injury or property damage). If Landlord commences any summary proceeding for nonpayment of rent, Tenant will not interpose (and waives the right to interpose) any counterclaim in any such proceeding.

**39. Governing Law and Venue**

This Lease Agreement will be governed by the law of the State of New York and will be construed and interpreted according to that law. Venue on any action arising out of this Lease Agreement will be proper only in Saratoga County, State of New York

**40. Entire Agreement**

This Lease Agreement contains the entire agreement between Landlord and Tenant with respect to its subject matter and may be amended only by subsequent written agreement between them. Except for those that are set forth in this Lease Agreement and its attached Schedules, no representations, warranties, or agreements have been made by Landlord or Tenant to one another with respect to this Lease Agreement.

**41. Peaceful Enjoyment**

Landlord covenants that Tenant, on paying the yearly rent, and additional rent, and performing the covenants herein, shall and may peacefully and quietly have, hold and enjoy the Premises for the Term, provided, however, that this covenant shall be conditioned upon the retention of title to the Premises by Landlord.

AND IT IS MUTUALLY UNDERSTOOD AND AGREED that the covenants and agreements contained in this Lease Agreement shall be binding upon the parties hereto and upon their respective successors, heirs, executors and administrators.

IN WITNESS WHEREOF, the parties have interchangeably set their hands and seals to be hereby affixed this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Signed and delivered in the presence of

**LANDLORD**

**TENANT**

**DONALD C. GREENE doing business as  
DCG DEVELOPMENT CO.**

\_\_\_\_\_

\_\_\_\_\_  
A. Rick Eaglestone  
Authorized Representative

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Print Title: \_\_\_\_\_

**ACKNOWLEDGEMENTS**

State of New York,  
County of Saratoga ) ss:

On this \_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, the undersigned, a Notary Public in and for said state, personally appeared **A. Rick Eaglestone**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

State of New York  
County of Saratoga ) ss:

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

\_\_\_\_\_  
Notary Public

## SCHEDULE C

### RULES AND REGULATIONS

1. **Signs:** No sign, advertisement or notice shall be inscribed, printed or otherwise affixed on any part of the outside or inside of any building comprising the Center (including any window or door thereof) without prior written permission from the Landlord; and in case such written permission is given and the sign advertisement or notice shall require the permission of any official or board of the Town of Malta, then the Tenant shall, at Tenant's sole cost and expense, and after notice to the Landlord, make application to the Town of Malta. Once signage has been approved by the Town, and Landlord has received proposed sign and approved same, Tenant may proceed to put up the sign.
2. **Displays or Exhibits:** Tenant shall not place any window or other display or exhibits in or about the Premises to which the Landlord may reasonably object.
3. **Premises:** Tenant agrees, at its own expense, to keep Premises in a clean and neat condition (including, without limitation, exterior and interior portions of all windows, doors and all other glass).
4. **Comply with Laws:** Tenant agrees to promptly comply with all laws, ordinances, rules and regulations or governmental authorities (including zoning laws and building codes) and insurance underwriters, and any other organization exercising similar functions, affecting the Premises.
5. **Labor Regulations:** Tenant agrees to take no action which would violate Landlord's union contracts, if any, affecting the Center, nor create any work stoppage, picketing, labor disruption or dispute, or any interference with the business of the Landlord or any tenant or occupant in the Center or with the rights and privileges of any customer or other person(s) lawfully in and upon the Center, nor cause any impairment or reduction of the good will of the Center.
6. **Pay Taxes:** Tenant agrees to pay all taxes, assessments and public charges levied, assessed or imposed upon Tenant's business or upon Tenant's fixtures, furnishings or equipment in the Premises.
7. **Pay License Fees:** Tenant agrees to pay all license fees, permit fees and charges of any similar nature for the conduct by Tenant or any subtenant, concessionaire, or licensee of any business or undertaking authorized hereunder to be conducted in the Premises, when they become due.
8. **Tenant's Fixtures:** Tenant agrees to operate its business in the Premises with adequate equipment and trade fixtures. The fixtures, when initially installed, shall be new, functional, sufficient and/or first-class workmanship. Tenant shall have the right to remove all fixtures installed.
9. **Garbage:** Tenant agrees to handle and dispose of all rubbish, garbage and waste from Tenant's operations and not permit the accumulation or burning of any garbage in, on or about any part of the Center. Tenant also agrees not to permit any garbage or rubbish to be collected or disposed of from the Premises except by a party approved in advance by the Landlord.
10. **Vermin:** Tenant agrees to keep the Premises free of vermin infestation. If the Premises becomes infested with vermin, Tenant, at its own expense, shall cause the vermin to be exterminated from time to time to the satisfaction of Landlord. Tenant also agrees to seek prior approval from the Landlord before employing any exterminators, or exterminator companies.
11. **Exterior Architecture:** Tenant agrees, that without first obtaining Landlord's approval, it may not change (whether by alteration, replacement, rebuilding or otherwise) the exterior color and/or architectural treatment of the Premises or of the building in which the same are located.
12. **Sidewalks:** Tenant agrees not to use, or permit to be used, the sidewalk adjacent to, or any other space outside, for any undertaking other than what has been approved by Landlord.
13. **Plumbing Facilities:** Tenant agrees not to use the plumbing facilities for any purpose other than that

for which they were constructed, or dispose of any garbage or other foreign substance therein, whether through the utilization of so-called "disposal" or similar units.

14. **Liens:** Tenant agrees not to subject any fixtures, furnishings, leasehold improvements, or equipment in or on the Premises and affixed to the realty, to any mortgage, liens, conditional sales agreement or any other encumbrances.

15. **Damage to the Premises:** Tenant agrees not to perform any act or carry on any practice which may damage, mar or deface the Premises or any other part of the Center.

16. **Awnings:** Tenant agrees not to install any awnings in or on the Premises which are visible to the public view outside the Premises other than those pre-approved by Landlord.

17. **Cleaning Services:** Tenant agrees that they will not permit window cleaning or other exterior maintenance and janitorial services in and for the Premises to be performed, without the prior approval of Landlord.

18. **Freight Handling Equipment:** Tenant agrees not to use any fork-lift truck, tow truck or any other machine for handling freight in the interior delivery system, if any, except for the truck passageway portion of the Center, or in the Premises, unless the same is powered by electricity.

19. **Floor Loads:** Tenant agrees not to place a load on any floor in the interior delivery system, if any, or in the Premises exceeding the floor load per square foot which such floor was designated to carry. Additionally, Tenant agrees not to install, operate or maintain therein any heavy item of equipment except in such manner as to achieve a proper distribution of the weight.

20. **Electrical Load:** Tenant agrees not to install, operate or maintain in the Premises any electrical equipment which will overload the electrical system therein, or any part thereof, beyond its reasonable capacity for proper and safe operation, or which does not bear underwriters' approval, as determined by Landlord. Landlord will determine electrical capacity based upon the over-all system requirements for the Center.

21. **Nuisance:** Tenant agrees not to suffer, permit or commit any waste or any nuisance or other thing in the Premises which may disturb any other tenant or occupant in the Center or use or permit or suffer the use of any machines or equipment in the Premises which cause vibration or noise that may be transmitted to or heard in the Center or in any part of the common area.