



Department of  
Housing Preservation  
& Development  
nyc.gov/hpd

December 1, 2023

Office of Asset & Property  
Management  
Division of Housing Supervision  
100 Gold Street  
New York, N.Y. 10038

ADOLFO CARRIÓN JR.  
Commissioner

Vacant  
Deputy Commissioner

JULIE WALPERT  
Assistant Commissioner

Eugene F. Getty  
Kellner Herlihy Getty & Friedman, LLP  
470 Park Avenue South, 7<sup>th</sup> Floor  
New York, NY 10016

Re: Chinatown Apartments, Inc.  
Café Diem Chinatown, Inc.  
Lease Agreement

Dear Mr. Getty:

HPD has reviewed and approved the lease agreement between Chinatown Apartments, Inc. and Café Diem Chinatown, Inc.

The lease agreement is for a (5) five -year period commencing November 1, 2023 and terminating October 31, 2028. The annual rent payable in equal monthly installments shall be as follows:

- November 1, 2023 to October 31, 2024 \$2,333.68
- November 1, 2024 to October 31, 2025 \$2,403.69
- November 1, 2025 to October 31, 2026 \$2,475.80
- November 1, 2026 to October 31, 2027 \$2,550.08
- November 1, 2027 to October 31, 2028 \$2,626.58

If you have any questions, you may contact HPD's Portfolio Analyst, Deandra Beach by email at [beachd@hpd.nyc.gov](mailto:beachd@hpd.nyc.gov) or at 212 863-8115.

Sincerely,

*Carl Hicks*

Carl Hicks – Director  
Mitchell-Lama Portfolio

cc: Julie Walpert      Deandra Beach      Wendy Yuan  
Peter Donohue      Board of Directors



**STANDARD FORM OF STORE LEASE**  
The Real Estate Board of New York, Inc.

**Agreement of Lease**, made as of this 1st day of November in the year 2023, between  
CHINATOWN APARTMENTS, INC., a New York Corporation  
party of the first part, hereinafter referred to as OWNER, and  
CAFE DIEM CHINATOWN, INC., a New York Corporation with offices at 37 Bowery, NY, NY 10002  
party of the second part, hereinafter referred to as TENANT,

**Witnesseth:** Owner hereby leases to Tenant and Tenant hereby hires from Owner approximately 1,129 square feet of store space known as store C-101 and also known as 37 Bowery

in the building known as Confucius Plaza, 33 Bowery  
in the Borough of Manhattan, City of New York, for the term of Five Years

(or until such term shall sooner cease and expire as hereinafter provided) to commence on the  
1st day of November in the year 2023, and to end on the  
31st day of October in the year 2028, and  
both dates inclusive, at the annual rental rate of as set forth in paragraph 40 of the attached

**Rider.**

which Tenant agrees to pay in lawful money of the United States which shall be legal tender in payment of all debts and dues, public and private, at the time of payment, in equal monthly installments in advance on the first day of each month during said term, at the office of Owner or such other place as Owner may designate, without any setoff or deduction whatsoever, except that Tenant shall pay the first monthly installment(s) on the execution hereof (unless this lease be a renewal).

In the event that, at the commencement of the term of this lease, or thereafter, Tenant shall be in default in the payment of rent to Owner pursuant to the terms of another lease with Owner or with Owner's predecessor in interest, Owner may at Owner's option and without notice to Tenant add the amount of such arrears to any monthly installment of rent payable hereunder and the same shall be payable to Owner as additional rent.

The parties hereto, for themselves, their heirs, distributees, executors, administrators, legal representative, successors and assigns, hereby covenant as follows:

- Rent: 1. Tenant shall pay the rent as above and as hereinafter provided.  
Occupancy: 2. Tenant shall use and occupy the demised premises for

and for no other purpose. Tenant shall at all times conduct its business in a high grade and reputable manner, shall not violate Article 37 hereof, and shall keep show windows and signs in a neat and clean condition.

**Alterations:** 3. Tenant shall make no changes in or to the demised premises of any nature without Owner's prior written consent. Subject to the prior written consent of Owner, and to the provisions of this article, Tenant, at Tenant's expense, may make alterations, installations, additions or improvements which are non-structural and which do not affect utility services or plumbing and electrical lines, in or to the interior of the demised premises by using contractors or mechanics first approved in each instance by Owner. Tenant shall, before making any alterations, additions, installations or improvements, at its expense, obtain all permits, approvals and certificates required by any governmental or quasi-governmental bodies and (upon completion) certificates of final approval thereof, and shall deliver promptly duplicates of all such permits, approvals and certificates to Owner, and Tenant agrees to carry, and will cause Tenant's contractors and sub-contractors to carry, such worker's compensation, commercial general liability, personal and property damage insurance as Owner may require. If an mechanic's lien is filed against the demised premises, or the building of which the same forms a part, for work claimed to have been done for, or materials furnished to, Tenant, whether or not done pursuant to this article, the same shall be discharged by Tenant within 30 days thereafter, at Tenant's expense, by payment or filing a bond as permitted by law. All fixtures and all paneling, partitions, railings and like installations, installed in the demised premises at any time, either by Tenant or by Owner on Tenant's behalf, shall, upon installation, become the property of Owner and shall remain upon and be surrendered with the demised premises unless Owner, by notice to Tenant no later than twenty days prior to the date fixed as the termination of this lease, elects to relinquish Owner's rights thereto and to have them removed by Tenant, in which event, the same shall be removed from the demised premises by Tenant prior to the expiration of the lease, at Tenant's expense. Nothing in this article shall be construed to give Owner title to, or to prevent Tenant's removal of, trade fixtures, moveable office furniture and equipment, but upon removal of same from the demised premises or upon removal of other installations as may be required by Owner, Tenant shall immediately and at its expense, repair and restore the demised premises to the condition existing prior to any such installations, and repair any damage to the demised premises or the building due to such removal. All property permitted or required to be removed by Tenant at the end of the term remaining in the demised premises after Tenant's removal shall be deemed abandoned and may, at the election of Owner, either be retained as Owner's property or may be removed from the demised premises by Owner at Tenant's expense.

**Repairs:** 4. Owner shall maintain and repair the public portions of the building, both exterior and interior, except that if Owner allows Tenant to erect on the outside of the building a sign or signs, or a hoist, lift or sidewalk elevator for the exclusive use of Tenant, Tenant shall maintain such exterior installations in good appearance, shall cause the same to be operated in a good and workmanlike manner, shall make all repairs thereto necessary to keep same in good order and condition, at Tenant's own cost and expense, and shall cause the same to be covered by the insurance provided for hereafter in Article 8. Tenant shall, throughout the term of the lease, take good care of the demised premises (including, without limitation, the storefront) and

the fixtures and appurtenances therein, and the sidewalks adjacent thereto, and at its sole cost and expense, make all non-structural repairs thereto as and when needed to preserve them in good working order and condition, reasonable wear and tear, obsolescence and damage from the elements, fire or other casualty, excepted. If the demised premises be or become infested with vermin, Tenant shall at Tenant's expense, cause the same to be exterminated from time to time to the satisfaction of Owner. Except as specifically provided in Article 9 or elsewhere in this lease, there shall be no allowance to the Tenant for the diminution of rental value and no liability on the part of Owner by reason of inconvenience, annoyance or injury to business arising from Owner, Tenant or others, making or failing to make any repairs, alterations, additions or improvements in or to any portion of the building, including the erection or operation of any crane, derrick or sidewalk shed, or in or to the demised premises or the fixtures, appurtenances or equipment thereof. It is specifically agreed that Tenant shall be not entitled to any set off or reduction of rent by reason of any failure of Owner to comply with the covenants of this or any other article of this lease. Tenant agrees that Tenant's sole remedy at law in such instance will be by way of an action for damages for breach of contract. The provisions of this Article 4 with respect to the making of repairs shall not apply in the case of fire or other casualty, which are dealt with in Article 9 hereof.

**Window Cleaning:** 5. Tenant will not clean nor require, permit, suffer or allow any window in the demised premises to be cleaned from the outside in violation of Section 202 of the New York State Labor law or any other applicable law or of the Rules of the Board of Standards and Appeals, or of any other Board or body having or asserting jurisdiction.

**Requirements of Law, Fire Insurance:** 6. Prior to the commencement of the lease term, if Tenant is then in possession, and at all times thereafter, Tenant, at Tenant's sole cost and expense, shall promptly comply with all present and future laws, orders and regulations of all state, federal, municipal and local governments, departments, commissions and boards and any direction of any public officer pursuant to law, and all orders, rules and regulations of the New York Board of Fire Underwriters or the Insurance Services Office, or any similar body which shall impose any violations, order or duty upon Owner or Tenant with respect to the demised premises, and with respect to the portion of the sidewalk adjacent to the demised premises, if the demised premises are on the street level, 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 or the building (including the use permitted under the lease). Except as provided in Article 29 hereof, nothing herein shall require Tenant to make structural repairs or alterations unless Tenant has by its manner of use of the demised premises or method of operation therein, violated any such laws, ordinances, orders, rules, regulations or requirements with respect thereto. 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 Owner, or

which shall or might subject Owner to any liability or responsibility to any person, or for property damage. Tenant shall pay all costs, expenses, fines, penalties or damages, which may be imposed upon Owner by reason of Tenant's failure to comply with the provisions of this article. If the fire insurance rate shall, at the beginning of the lease, or at any time thereafter, be higher than it otherwise would be, then Tenant shall reimburse Owner, as additional rent hereunder, for that portion of all fire insurance premiums thereafter paid by Owner which shall have been charged because of such failure by Tenant, to comply with the terms of this article. In any action or proceeding wherein Owner and Tenant are parties, a schedule or "make-up" of rate for the building or the demised premises issued by a body making fire insurance rates applicable to said demised premises shall be conclusive evidence of the facts therein stated and of the several items and charges in the fire insurance rate then applicable to said demised premises.

**Subordination:** 7. This lease is subject and subordinate to all ground or underlying leases and to all mortgages which may now or hereafter affect such leases or the real property of which the demised premises are a part, and to all renewals, modifications, consolidations, replacements and extensions of any such underlying leases and mortgages. This clause shall be self-operative and no further instrument of subordination shall be required by any ground or underlying lease or by any mortgage, affecting any lease or the real property of which the demised premises are a part. In confirmation of such subordination, Tenant shall from time to time execute promptly any certificate that Owner may request.

**Tenant's Liability Insurance Property Loss, Damage, Indemnity:** 8. Owner or its agents shall not be liable for any damage to property of Tenant or of others entrusted to employees of the building, nor for loss of, or damage to, any property of Tenant by theft or other wise, nor for any injury or damage to persons or property resulting from any cause of whatsoever nature, unless caused by or due to the negligence of Owner, its agents, servants or employees. Owner or its agents will not be liable for any such damage caused by other tenants or persons in, upon or about said building, or caused by operations in construction of any private, public or quasi public work. Tenant agrees, at Tenant's sole cost and expense, to maintain commercial general liability insurance in standard form in favor of Owner and Tenant against claims for bodily injury or death or property damage occurring in or upon the demised premises, effective from the date Tenant enters into possession of the demised premises and during the term of this lease. Such insurance shall be in an amount and with carriers acceptable to the Owner. Such policy or policies shall be delivered to the Owner. On Tenant's default in obtaining or delivering any such policy or policies or failure to pay the charges therefor, Owner may secure or pay the charges for any such policy or policies and charge the Tenant as additional rent therefor. Tenant shall indemnify and save harmless Owner against and from all liabilities, obligations, damages, penalties, claims, costs and expenses for which Owner shall not be reimbursed by insurance, including reasonable attorneys' fees, paid, suffered or incurred as a result of any breach by Tenant, Tenant's agent, contractors, employees, invitees, or licensees, of any covenant on condition of this lease or by the carelessness, negligence or improper conduct of the Tenant, Tenant's agents, contractors, employees, invitees or licensees. Tenant's liability under this lease extends to the acts and omissions of any subtenant, and any agent, contractor, employee, invitee or licensee of any subtenant. In case any action or proceeding is brought against Owner by reason of any such claim, Tenant, upon written notice from Owner, will, at Tenant's expense, resist or defend such action or proceeding by counsel approved by Owner in writing, such approval not to be unreasonably withheld.

**Destruction, Fire, and Other Casualty:** 9. (a) If the demised premises or any part thereof shall be damaged by fire or other casualty, Tenant shall give immediate notice thereof to Owner and this lease shall continue in full force and effect except as hereinafter set forth. (b) If the demised premises are partially damaged or rendered partially unusable by fire or other casualty, the damages thereto shall be repaired by and at the expense of Owner, and the rent and other items of additional rent, until such repair shall be substantially completed, shall be apportioned from the day following the casualty according to the part of the demised premises which is usable. (c) If the demised premises are totally damaged or rendered wholly unusable by fire or other casualty, then the rent and other items of additional rent as hereinafter expressly provided shall be proportionately paid up to the time of the casualty and thenceforth shall cease until the date when the demised premises shall have been repaired and restored by Owner (or sooner reoccupied in part by the Tenant then rent shall be apportioned as provided in subsection (b) above), subject to Owner's right to elect not to restore the same as hereinafter provided. (d) If the demised premises are rendered wholly unusable or (whether or not the demised premises are damaged in whole or in part) if the building shall be so damaged that Owner shall decide to demolish it or to rebuild it, then, in any of such events, Owner may elect to terminate this lease by written notice to Tenant given within 90 days after such fire or casualty, whichever is sooner, specifying a date for the expiration of the lease, which date shall not be more than 60 days after the giving of such notice, and upon the date specified in such notice the term of this lease shall expire as fully and completely as if such date were the date set forth above for the termination of this lease and Tenant shall forthwith quit, surrender and vacate the demised premises without prejudice however, to Owner's rights and remedies against Tenant under the lease provisions in effect prior to such termination, and any rent owing shall be paid up to such date and any payments of rent made by Tenant which were on account of any period subsequent to such date shall be returned to Tenant. Unless Owner shall serve a termination notice as provided for herein, Owner shall make the repairs and restorations under the conditions of (b) and (c) hereof, with all reasonable expedition subject to delays due to adjustment of insurance claims, labor troubles and causes beyond Owner's control. After any such casualty, Tenant shall cooperate with Owner's restoration by removing from the premises as promptly as reasonably possible, all of Tenant's salvageable inventory and movable equipment, furniture, and other property. Tenant's liability for rent shall resume five (5) days after written notice from Owner that the demised premises are substantially ready for Tenant's occupancy. (e) Nothing contained hereinabove shall relieve Tenant from liability that may exist as a result of damage from fire or other

casualty. Notwithstanding anything contained to the contrary in subdivisions (a) through (e) hereof, including Owner's obligation to restore under subparagraph (b) above, each party shall look first to any insurance in its favor before making any claim against the other party for recovery for loss or damage resulting from fire or other casualty, and to the extent that such insurance is in force and collectible, and to the extent permitted by law, Owner and Tenant each hereby releases and waives all right of recovery with respect to subparagraphs (b), (d) and (e) above, against the other, or any one claiming through or under each of them by way of subrogation or otherwise. The release and waiver herein referred to shall be deemed to include any loss or damage to the demised premises and/or to any personal property, equipment, trade fixtures, goods and merchandise located therein. The foregoing release and waiver shall be in force only if both releasors' insurance policies contain a clause providing that such a release or waiver shall not invalidate the insurance. Tenant acknowledges that Owner will not carry insurance on Tenant's furniture and/or furnishings or any fixtures or equipment, improvements, or appurtenances removable by Tenant, and agrees that Owner will not be obligated to repair any damage thereto or replace the same. (f) Tenant hereby waives the provisions of Section 227 of the Real Property Law and agrees that the provisions of this article shall govern and control in lieu thereof.

**Eminent Domain:** 10. 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, then and in that event, the term of this lease shall cease and terminate from the date of title vesting in such proceeding, and Tenant shall have no claim for the value of any unexpired term of said lease. Tenant shall have the right to make an independent claim to the condemning authority for the value of Tenant's moving expenses and personal property, trade fixtures and equipment, provided Tenant is entitled pursuant to the terms of the lease to remove such property, trade fixtures and equipment at the end of the term, and provided further such claim does not reduce Owner's award.

**Assignment, Mortgage, Etc.:** 11. Tenant, for itself, its heirs, distributees, executors, administrators, legal representatives, successors and assigns expressly covenants that it shall not assign, mortgage or encumber this agreement, nor underlet, or suffer or permit the demised premises or any part thereof to be used by others, without the prior written consent of Owner in each instance. Transfer of the majority of the stock of a corporate tenant or the majority interest in any partnership or other legal entity which is tenant shall be deemed an assignment. If this lease be assigned, or if the demised premises or any part thereof be underlet or occupied by anybody other than Tenant, Owner may, after default by Tenant, collect rent from the assignee, under-tenant or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, underletting or occupancy or collection shall be deemed a waiver of the covenant, or the acceptance of the assignee, under-tenant or occupant as tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained. The consent by Owner to an assignment or underletting shall not in any way be construed to relieve Tenant from obtaining the express consent in writing of Owner to any further assignment or underletting.

**Electric Current:** 12. Rates and conditions in respect to submetering or rent inclusion, as the case may be, to be added in RIDER attached hereto. Tenant covenants and agrees that at all times his use of electric current shall not exceed the capacity of existing feeders to the building or the risers or wiring installation, and Tenant may not use any electrical equipment which, in Owner's opinion, reasonable exercised, will overload such installations or interfere with the use thereof by other tenants of the building. The change at any time of the character of electric service shall in no way make Owner liable or responsible to Tenant, for any loss, damages or expenses which Tenant may sustain.

**Access to Premises:** 13. Owner or Owner's agents shall have the right (but shall not be obligated) to enter the demised premises in any emergency at any time, and, at other reasonable times, to examine the same and to make such repairs, replacements and improvements as Owner may deem necessary and reasonably desirable to any portion of the building or which Owner may elect to perform. In the demised premises, following Tenant's failure to make repairs or perform any work which Tenant is obligated to perform under this lease, or for the purpose of complying with laws, regulations and other directions of governmental authorities. Tenant shall permit Owner to use and maintain and replace pipes and conduits in and through the demised premises and to erect new pipes, ducts, and conduits therein, provided they are concealed within the walls, floors or ceiling, wherever practicable. Owner may, during the progress of any work in the demised premises, take all necessary materials and equipment into said premises without the same constituting an eviction, nor shall the Tenant be entitled to any abatement of rent while such work is in progress, nor to any damages by reason of loss or interruption of business or otherwise. Throughout the term hereof Owner shall have the right to enter the demised premises at reasonable hours for the purpose of showing the same to prospective purchasers or mortgagees of the building, and during the last six months of the term for the purpose of showing the same to prospective tenants, and may, during said six months period, place upon the demised premises the usual notice "to Let" and "For Sale", which notices Tenant shall permit to remain thereon without molestation. If Tenant is not present to open and permit an entry into the demised premises, Owner or Owner's agents may enter the same whenever such entry may be necessary or permissible, by master key or forcibly, and provided reasonable care is exercised to safeguard Tenant's property, such entry shall not render Owner or its agents liable therefor, nor in any event shall the obligations of Tenant hereunder be affected. If during the last month of the term Tenant shall have removed all or substantially all of Tenant's property therefrom, Owner may immediately enter, alter, renovate or redecorate the demised premises without limitation or abatement of rent, or incurring liability to Tenant for any compensation, and such act shall have no effect on this lease or Tenant's obligations hereunder. Owner shall have the right at any time, without the same constituting an eviction and without incurring liability to Tenant therefore, to change the arrangement and/or location of public entrances, passageways, doors, doorways, corridors, elevators, stairs, toilets, or other

**Vault, Vault Space, Area:** 14. No vaults, vault space or area, whether or not enclosed or covered, not within the property line of the building, is leased hereunder, anything contained in or indicated on any sketch, blue print or plan, or anything contained elsewhere in this lease to the contrary notwithstanding. Owner makes no representation as to the location of the property line of the building. All vaults and vault space and all such areas not within the property line of the building, which Tenant may be permitted to use and/or occupy, is to be used and/or occupied under a revocable license, and if any such license is revoked, or if the amount of such space or area be diminished or required by any federal, state or municipal authority or public utility, Owner shall not be subject to any liability, nor shall Tenant be entitled to any compensation or diminution or abatement of rent, nor shall such revocation, diminution or requisition be deemed constructive or actual eviction. Any tax, fee or charge of municipal authorities for such vault area shall be paid by Tenant.

**Occupancy:** 15. Tenant will not at any time use or occupy the demised premises in violation of Articles 2 or 37 hereof, or of the certificate of occupancy issued for the building of which the demised premises are a part. Tenant has inspected the demised premises and accepts them "as-is", subject to the riders annexed hereto with respect to Owner's work; if any, in any event, Owner makes no representation as to the condition of the demised premises, and Tenant agrees to accept the same subject to violations, whether or not of record.

**Bankruptcy:** 16. (a) Anything elsewhere in this lease to the contrary notwithstanding, this lease may be cancelled by Landlord by the sending of a written notice to Tenant within a reasonable time after the happening of any one or more of the following events: (1) the commencement of a case in bankruptcy or under the laws of any state naming Tenant (or a guarantor of any of Tenant's obligations under this lease) as the debtor; or (2) the making by Tenant (or a guarantor of any of Tenant's obligations under this lease) of an assignment or any other arrangement for the benefit of creditors under any state statute. Neither Tenant nor any person claiming through or under Tenant, or by reason of any statute or order of court, shall thereafter be entitled to possession of the premises demised but shall forthwith quit and surrender the demised premises. If this lease shall be assigned in accordance with its terms, the provisions of this Article 16 shall be applicable only to the party then owning Tenant's interest in this lease.

(b) It is stipulated and agreed that in the event of the termination of this lease pursuant to (a) hereof, Owner shall forthwith, notwithstanding any other provisions of this lease to the contrary, be entitled to recover from Tenant, as and for liquidated damages, an amount equal to the difference between the rent reserved hereunder for the unexpired portion of the term demised and the fair and reasonable rental value of the demised premises for the same period. In the computation of such damages the difference between any installment of rent becoming due hereunder after the date of termination and the fair and reasonable rental value of the demised premises for the period for which such installment was payable shall be discounted to the date of termination at the rate of four percent (4%) per annum. If the demised premises, or any part thereof, be re-let by the Owner for the unexpired term of said lease, or any part thereof, before presentation of proof of such liquidated damages to any court, commission or tribunal, the amount of rent reserved upon such re-letting shall be deemed to be the fair and reasonable rental value for the part or the whole of the demised premises so re-let during the term of the re-letting. Nothing herein contained shall limit or prejudice the right of the Owner to prove for and obtain as liquidated damages, by reason of such termination, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater, equal to, or less than the amount of the difference referred to above.

**Default:** 17. (1) If Tenant defaults in fulfilling any of the covenants of this lease other than the covenants for the payment of rent or additional rent; or if the demised premises become vacant or deserted; or if any execution or attachment shall be issued against Tenant or any of Tenant's property, whereupon the demised premises shall be taken or occupied by someone other than Tenant; or if this lease be rejected under Section 365 of Title 11 of the U.S. Code (Bankruptcy Code); or if Tenant shall have failed, after five (5) days written notice, to redeposit with Owner any portion of the security deposit hereunder which Owner has applied to the payment of any rent and additional rent due and payable hereunder, or if Tenant shall be in default with respect to any other lease between Owner and tenant; or if Tenant shall fail to move into or take possession of the demised premises within thirty (30) days after the commencement of the term of this lease, of which fact Owner shall be the sole judge; then, in any one or more of such events, upon Owner serving a written fifteen (15) day notice upon Tenant specifying the nature of said default, and upon the expiration of said fifteen (15) days, if Tenant shall have failed to comply with or remedy such default, or if the said default or omission complained of shall be of a nature that the same cannot be completely cured or remedied within said fifteen (15) day period, and if Tenant shall not have diligently commenced curing such default within such fifteen (15) day period, and shall not thereafter with reasonable diligence and in good faith proceed to remedy or cure such default, then Owner may serve a written five (5) days notice of cancellation of this lease upon Tenant, and upon the expiration of said five (5) days, this lease and the term thereunder shall end and expire as fully and completely as if the expiration of such five (5) day period were the day herein definitely fixed for the end and expiration of this lease and the term thereof and Tenant shall then quit and surrender the demised premises to Owner; but Tenant shall remain liable as hereinafter provided.

(2) If the notice provided for in (1) hereof shall have been given, and the term shall expire as aforesaid; or if Tenant shall make default in the payment of the rent reserved herein, or any item of additional rent herein mentioned, or any part of either, or in making any other payment herein required; then, and in any of such events, Owner may without notice, re-enter the demised premises either by force or otherwise, and dispossess Tenant by summary proceedings or otherwise, and the legal representative of Tenant or other occupant of the demised premises, and remove their effects and hold the demised premises as if this lease had not been made, and Tenant hereby waives the service of notice of intention to re-enter or to institute legal proceedings in that end.

**Waiver of Redemption:** proceedings or otherwise, (a) the rent, and additional rent, shall become due thereupon and be paid up to the time of such re-entry, dispossession and/or expiration, (b) Owner may re-let the demised premises or any part or parts thereof, either in the name of Owner or otherwise, for a term or terms, which may at Owner's option be less than or exceed the period which would otherwise have constituted the balance of the term of this lease, and may grant concessions or free rent or charge a higher rental than that in this lease, and/or (c) Tenant or the legal representatives of Tenant shall also pay Owner, as liquidated damages, for the failure of Tenant to observe and perform said Tenant's covenants herein contained, any deficiency between the rent hereby reserved and/or covenanted to be paid and the net amount, if any, of the rents collected on account of the subsequent lease or leases of the demised premises for each month of the period which would otherwise have constituted the balance of the term of this lease. The failure of Owner to re-let the demised premises or any part or parts thereof shall not release or affect Tenant's liability for damages. In computing such liquidated damages there shall be added to the said deficiency such expenses as Owner may incur in connection with re-letting, such as legal expenses, reasonable attorney's fees, brokerage, advertising and for keeping the demised premises in good order, or for preparing the same for re-letting. Any such liquidated damages shall be paid in monthly installments by Tenant on the rent day specified in this lease. Owner, in putting the demised premises in good order or preparing the same for re-rental may, at Owner's option, make such alterations, repairs, replacements, and/or decorations in the demised premises as Owner, in Owner's sole judgment, considers advisable and necessary for the purpose of re-letting the demised premises, and the making of such alterations, repairs, replacements, and/or decorations shall not operate or be construed to release Tenant from liability. Owner shall in no event be liable, in any way whatsoever, for failure to re-let the demised premises, or in the event that the demised premises are re-let, for failure to collect the rent thereof under such re-letting, and in no event shall Tenant be entitled to receive any excess, if any, of such net rent collected over the sums payable by Tenant to Owner hereunder. In the event of a breach or threatened breach by Tenant of any of the covenants or provisions hereof, Owner shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings and other remedies were not herein provided for. Mention in this lease of any particular remedy, shall not preclude Owner from any other remedy, in law or in equity. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws.

**Fees and Expenses:** 19. If Tenant shall default in the observance or performance of any term or covenant on Tenant's part to be observed or performed under, or by virtue of, any of the terms or provisions in any article of this lease, after notice if required, and upon expiration of any applicable grace period if any, (except in an emergency), then, unless otherwise provided elsewhere in this lease, Owner may immediately, or at any time thereafter, and without notice, perform the obligation of Tenant thereunder, and if Owner, in connection therewith or in connection with any default by Tenant in the covenant to pay rent hereunder, makes any expenditures or incurs any obligations for the payment of money, including but not limited to reasonable attorney's fees, in instituting, prosecuting or defending any actions or proceeding, and prevails in any such action or proceeding, such sums so paid or obligations incurred with interest and costs shall be deemed to be additional rent hereunder and shall be paid by Tenant to Owner within ten (10) days of rendition of any bill or statement to Tenant therefore, and if Tenant's lease term shall have expired at the time of making of such expenditures or incurring of such obligations, such sums shall be recoverable by Owner as damages.

**No Representations by Owner:** 20. Neither Owner nor Owner's agent have made any representations or promises with respect to the physical condition of the building, the land upon which it is erected or the demised premises, the rents, leases, expenses of operation, or any other matter or thing affecting or related to the demised premises, except as herein expressly set forth, and no rights, easements or licenses are acquired by Tenant by implication or otherwise, except as expressly set forth in the provisions of this lease. Tenant has inspected the building and the demised premises and is thoroughly acquainted with their condition, and agrees to take the same "as-is", and acknowledges that the taking of possession of the demised premises by Tenant shall be conclusive evidence that the said premises and the building of which the same form a part were in good and satisfactory condition at the time such possession was so taken, except as to latent defects. All understandings and agreements heretofore made between the parties hereto are merged in this contract, which alone fully and completely expresses the agreement between Owner and Tenant, and any executory agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of it in whole or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought.

**End of Term:** 21. Upon the expiration or other termination of the term of this lease, Tenant shall quit and surrender to Owner the demised premises, "broom-clean", in good order and condition, ordinary wear excepted, and Tenant shall remove all its property. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of this lease. If the last day of the term of this lease or any renewal thereof, falls on Sunday, this lease shall expire at noon on the preceding Saturday, unless it be a legal holiday, in which case it shall expire at noon on the preceding business day.

**Quiet Enjoyment:** 22. Owner covenants and agrees with Tenant that upon Tenant paying the rent and additional rent and observing and performing all the terms, covenants and conditions, on Tenant's part to be observed and performed, Tenant may peaceably and quietly enjoy the premises hereby demised, subject, nevertheless, to the terms and conditions of this lease including, but not limited to, Article 33 hereof and to the ground leases, underlying leases and mortgages heretofore mentioned.

**Possession:** commencement of the term hereof, because of the holding-over or retention of possession of any tenant, undertenant or occupants, or if the demised premises are located in a building being constructed, because such building has not been sufficiently completed to make the demised premises ready for occupancy, or because of the fact that a certificate of occupancy has not been procured, or for any other reason, Owner shall not be subject to any liability for failure to give possession on said date and the validity of the lease shall not be impaired under such circumstances, nor shall the same be construed in any way to extend the term of this lease, but the rent payable hereunder shall be abated (provided Tenant is not responsible for the inability to obtain possession or complete construction) until after Owner shall have given Tenant written notice that the Owner is able to deliver possession in the condition required by this lease. If permission is given to Tenant to enter into the possession of the demised premises or to occupy premises other than the demised premises prior to the date specified as the commencement of the term of this lease, Tenant covenants and agrees that such possession and/or occupancy shall be deemed to be under all the terms, covenants, conditions and provisions of this lease, except the obligation to pay the fixed annual rent set forth in page one of this lease. The provisions of this article are intended to constitute "an express provision to the contrary" within the meaning of Section 223-a of the New York Real Property Law.

**No Waiver:** 24. The failure of Owner to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this lease or of any of the Rules or Regulations set forth or hereafter adopted by Owner, shall not prevent a subsequent act which would have originally constituted a violation from having all the force and effect of an original violation. The receipt by Owner of rent and/or additional rent with knowledge of such breach of any covenant of this lease shall not be deemed a waiver of such breach, and no provision of this lease shall be deemed to have been waived by Owner unless such waiver be in writing signed by Owner. No payment by Tenant or receipt by Owner of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement of any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Owner may accept such check or payment without prejudice to Owner's right to recover the balance of such rent or pursue any other remedy in this lease provided. No act or thing done by Owner or Owner's agents during the term hereby demised shall be deemed in acceptance of a surrender of the demised premises and no agreement to accept such surrender shall be valid unless in writing signed by Owner. No employee of Owner or Owner's agent shall have any power to accept the keys of the demised premises prior to the termination of the lease, and the delivery of keys to any such agent or employee shall not operate as a termination of the lease or a surrender of the demised premises.

**Waiver of Trial by Jury:** 25. It is mutually agreed by and between Owner and Tenant that the respective parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other (except for personal injury or property damage) on any matters whatsoever arising out of, or in any way connected with, this lease, the relationship of Owner and Tenant, Tenant's use of or occupancy of the demised premises, and any emergency statutory or any other statutory remedy. It is further mutually agreed that in the event Owner commence any proceeding or action for possession, including a summary proceeding for possession of the demised premises, Tenant will not interpose any counterclaim of whatever nature or description in any such proceeding, including a counterclaim under Article 4, except for statutory mandatory counterclaims.

**Inability to Perform:** 26. This lease and the obligation of Tenant to pay rent hereunder and perform all of the other covenants and agreements hereunder on part of Tenant to be performed shall in no way be affected, impaired or excused because Owner is unable to fulfill any of its obligations under this lease, or to supply, or is delayed in supplying, any service expressly or impliedly to be supplied, or is unable to make, or is delayed in making, any repair, additions, alterations or decorations, or is unable to supply, or is delayed in supplying, any equipment, fixtures or other materials, if Owner is prevented or delayed from so doing by reason of strike or labor troubles, government preemption or restrictions, or by reason of any rule, order or regulation of any department or subdivision thereof of any government agency, or by reason of the conditions of which have been or are affected, either directly or indirectly, by war or other emergency, or when, in the judgment of Owner, temporary interruption of such services is necessary by reason of accident, mechanical breakdown, or to make repairs, alterations or improvements.

**Bills and Notices:** 27. Except as otherwise in this lease provided, any notice, statement, demand or other communication required or permitted to be given, rendered or made by either party to the other, pursuant to this lease or pursuant to any applicable law or requirement of public authority, shall be in writing (whether or not so stated elsewhere in this lease) and shall be deemed to have been properly given, rendered or made, if sent by registered or certified mail (express mail, if available), return receipt requested, or by courier guaranteeing overnight delivery and furnishing a receipt in evidence thereof, addressed to the other party at the address hereinabove set forth (except that after the date specified as the commencement of the term of this lease, Tenant's address, unless Tenant shall give notice to the contrary, shall be the building), and shall be deemed to have been given, rendered or made (a) on the date delivered, if delivered to Tenant personally, (b) on the date delivered, if delivered by overnight courier or (c) on the date which is two (2) days after being mailed. Either party may, by notice as aforesaid, designate a different address or addresses for notices, statements, demand or other communications intended for it. Notices given by Owner's managing agent shall be deemed a valid notice if addressed and set in accordance with the provisions of this Article. At Owner's option, notices and bills to Tenant may be sent by hand delivery.

purposes (or which fact Tenant constitutes Owner to be the sole judge) Owner may install a water meter and thereby measure Tenant's water consumption for all purposes. Tenant shall pay Owner for the cost of the meter and the cost of the installation thereof, and throughout the duration of the Tenant's occupancy Tenant shall keep said meter and installation equipment in good working order and repair at Tenant's own cost and expense. Tenant agrees to pay for water consumed, as shown on said meter, as and when bills are rendered. Tenant covenants and agrees to pay the sewer rent, charge or any other tax, rent, levy or charge which now or hereafter is assessed, imposed or a lien upon the demised premises or the realty of which they are part pursuant to law, order or regulation made or issued in connection with the use, consumption, maintenance or supply of water, water system or sewage or sewerage connection or system. The bill rendered by Owner shall be payable by Tenant as additional rent. If the building or the demised premises, or any part thereof, be supplied with water through a meter through which water is also supplied to other premises, Tenant shall pay to Owner as additional rent, on the first day of each month,

$\frac{\%}{\$}$  of the total meter charges, as Tenant's portion. Independently of, and in addition to, any of the remedies reserved to Owner hereinabove or elsewhere in this lease, Owner may sue for and collect any monies to be paid by Tenant or paid by Owner for any of the reasons or purposes hereinabove set forth.

**Sprinklers:** 29. Anything elsewhere in this lease to the contrary notwithstanding, if the New York Board of Fire Underwriters or the Insurance Services Office, or any bureau, department or official of the federal, state or city government, require or recommend the installation of a sprinkler system or that any change, modifications, alterations, or additional sprinkler heads or other equipment be made or supplied in an existing sprinkler system by reason of Tenant's business, or the location of partitions, trade fixtures, or other contents of the demised premises, or for any other reason, or if any such sprinkler system installations, changes, modifications, alterations, additional sprinkler heads or other such equipment, become necessary to prevent the imposition of a penalty or charge against the full allowance for a sprinkler system in the fire insurance rate set by any said Exchange or by any fire insurance company, Tenant shall, at Tenant's expense, promptly make such sprinkler system installations, changes, modifications, alterations, and supply additional sprinkler heads or other equipment as required, whether the work involved shall be structural or non-structural in nature. Tenant shall pay to Owner as additional rent the sum of \$ on the first day of each month during the term of this lease, as Tenant's portion of the contract price for sprinkler supervisory service.

**Elevators, Heat, Cleaning:** 30. As long as Tenant is not in default under any of the covenants of this lease beyond the applicable grace period provided in this lease for the curing of such defaults, Owner shall, if and insofar as existing facilities permit, furnish heat to the demised premises, when and as required by law, on business days from 8:00 a.m. to 6:00 p.m. and on Saturdays from 8:00 a.m. to 1:00 p.m. Tenant shall at Tenant's expense, keep the demised premises clean and in order, to the satisfaction of Owner, and if the demised premises are situated on the street floor, Tenant shall, at Tenant's own expense, make all repairs and replacements to the sidewalks and curbs adjacent thereto, keep said sidewalks and curbs free from snow, ice, dirt and rubbish and maintain said sidewalks in a reasonably safe condition in compliance with requirements of law. Tenant shall pay to Owner the cost of removal of any of Tenant's refuse and rubbish from the building. Bills for the same shall be rendered by Owner to Tenant at such times as Owner may elect, and shall be due and payable when rendered, and the amount of such bills shall be deemed to be, and be paid as, additional rent. Tenant shall, however, have the option of independently contracting for the removal of such rubbish and refuse in the event that Tenant does not wish to have same done by employees of Owner. Under such circumstances, however, the removal of such refuse and rubbish by others shall be subject to such rules and regulations as, in the judgment of Owner, are necessary for the proper operation of the building.

**Security:** 31. Tenant has deposited with Owner the sum of \$ 7,001.04 as security for the faithful performance and observance by Tenant of the terms, provisions and conditions of this lease; it is agreed that in the event Tenant defaults in respect of any of the terms, provisions and conditions of this lease, including, but not limited to, the payment of rent and additional rent, Owner may use, apply or retain the whole or any part of the security so deposited to the extent required for the payment of any rent and additional rent, or any other sum as to which Tenant is in default, or for any sum which Owner may expend or may be required to expend by reason of Tenant's default in respect of any of the terms, covenants and conditions of this lease, including but not limited to, any damages or deficiency in the reletting of the demised premises, whether such damages or deficiency accrued before or after summary proceedings or other re-entry by Owner. In the case of every such use, application or retention, Tenant shall, within five (5) days after demand, pay to Owner the sum so used, applied or retained which shall be added to the security deposit so that the same shall be replenished to its former amount. In the event that Tenant shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this lease, the security shall be returned to Tenant after the date fixed as the end of the lease and after delivery of entire possession of the demised premises to Owner. In the event of a sale of the land and building or leasing of the building, of which the demised premises form a part, Owner shall have the right to transfer the security to the vendee or lessee and Owner shall thereupon be released by Tenant from all liability for the return of such security, and Tenant agrees to look to the new Owner solely for the return of said security; and it is agreed that the provisions hereof shall apply to every transfer or assignment made of the security to a new Owner. Tenant further covenants that it will not assign or encumber or attempt to assign or encumber the monies deposited herein as security, and that neither Owner nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

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**Captions:** 32. The Captions are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this lease nor the intent of any provision thereof.

**Definitions:** 33. The term "Owner" as used in this lease means only the Owner, or the mortgagee in possession, for the time being of the land and building (or the Owner of a lease of the building or of the land and building) of which the demised premises form a part, so that in the event of any sale or sale or conveyance, assignment or transfer of said land and building or of said lease, or in the event of a lease of said building, or of the land and building, the said Owner shall be and hereby is entirely freed and relieved of all covenants and obligations of Owner hereunder, and it shall be deemed and construed without further agreement between the parties or their successors in interest, or between the parties and the purchaser, grantee, assignee or transferee at any such sale, or the said lessee of the building, or of the land and building, that the purchaser, grantee, assignee or transferee at any such sale, or the said lessee of the building, has assumed and agreed to carry out any and all covenants and obligations of Owner hereunder. The words "re-enter" and "re-entry" as used in this lease are not restricted to their technical legal meaning. The term "business days" as used in this lease shall exclude Saturdays, Sundays and all days designated as holidays by the applicable building service union employees service contract or by the applicable Operating Engineers contract with respect to HVAC service. Wherever it is expressly provided in this lease that consent shall not be unreasonably withheld, such consent shall not be unreasonably delayed.

**Adjacent Excavation-Shoring:** 34. If an excavation shall be made upon land adjacent to the demised premises, or shall be authorized to be made, Tenant shall afford to the person causing or authorized to cause such excavation, a license to enter upon the demised premises for the purpose of doing such work, as said person shall deem necessary, to preserve the wall or the building of which the demised premises form a part from injury or damage and to support the same by proper foundations, without any claim for damages or indemnity against Owner, or diminution or abatement of rent.

**Rules and Regulations:** 35. Tenant and Tenant's servants, employees, agents, visitors, and licensees shall observe faithfully, and comply strictly with the Rules and Regulations and such other and further reasonable Rules and Regulations as Owner or Owner's agents may from time to time adopt. Notice of any additional rules or regulations shall be given in such manner as Owner may elect. In case Tenant disputes the reasonableness of any additional Rule or Regulation hereafter made or adopted by Owner or Owner's agents, the parties hereto agree to submit the question of the reasonableness of such Rule or Regulation for decision to the New York office of the American Arbitration Association, whose determination shall be final and conclusive upon the parties hereto. The right to dispute the reasonableness of any additional Rule or Regulation upon Tenant's part shall be deemed waived unless the same shall be asserted by service of a notice, in writing, upon Owner, within fifteen (15) days after giving of notice thereof. Nothing in this lease contained shall be construed to impose upon Owner any duty or obligation to enforce the Rules and Regulations or terms, covenants or conditions in any other lease, as against any other tenant, and Owner shall

not be liable to Tenant for violation of the same by any other tenant, its servants, employees, agents, visitors or licensees.

**Glass:** 36. Owner shall replace, at the expense of Tenant, any and all plate and other glass damaged or broken from any cause whatsoever in and about the demised premises. Owner may insure, and keep insured, at Tenant's expense, all plate and other glass in the demised premises for and in the name of Owner. Bills for the premiums therefore shall be rendered by Owner to Tenant at such times as Owner may elect, and shall be due from, and payable by, Tenant when rendered, and the amount thereof shall be deemed to be, and be paid as, additional rent.

**Pornographic Uses Prohibited:** 37. Tenant agrees that the value of the demised premises and the reputation of the Owner will be seriously injured if the demised premises are used for any obscene or pornographic purposes or any sort of commercial sex establishment. Tenant agrees that Tenant will not bring or permit any obscene or pornographic material on the demised premises, and shall not permit or conduct any obscene, nude, or semi-nude live performances on the demised premises, nor permit use of the demised premises for nude modeling, rap sessions, or as a so called rubber goods shop, or as a sex club of any sort, or as a "massage parlor." Tenant agrees further that Tenant will not permit any of these uses by any sublessee or assignee of the demised premises. This Article shall directly bind any successors in interest to the Tenant. Tenant agrees that if at any time Tenant violates any of the provisions of this Article, such violation shall be deemed a breach of a substantial obligation of the terms of this lease and objectionable conduct. Pornographic material is defined for purposes of this Article as any written or pictorial matter with prurient appeal, or any objects of instrument that are primarily concerned with lewd or prurient sexual activity. Obscene material is defined here as it is in Penal Law §235.00.

**Estoppel Certificate:** 38. Tenant, at any time, and from time to time, upon at least 10 days prior notice by Owner, shall execute, acknowledge and deliver to Owner, and/or to any other person, firm or corporation specified by Owner, a statement certifying that this lease 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), stating the dates which the rent and additional rent have been paid, stating whether or not there exists any default by owner under this lease, and, if so, specifying each such default and such other information as shall be required of Tenant.

**Successors and Assigns:** 39. The covenants, conditions and agreements contained in this lease shall bind and inure to the benefit of Owner and Tenant and their respective heirs, distributees, executors, administrators, successors, and except as otherwise provided in this lease, their assigns. Tenant shall look only to Owner's estate and interest in the land and building for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) against Owner in the event of any default by Owner hereunder, and no other property or assets of such Owner (or any partner, member, officer or director thereof, disclosed or undisclosed), shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under, or with respect to, this lease, the relationship of Owner and Tenant hereunder, or Tenant's use and occupancy of the demised premises.

SEE ATTACHED RIDER FORMING A PART OF THIS LEASE AND CONTAINING PARAGRAPHS 40 THROUGH 79

In Witness Whereof, Owner and Tenant have respectively signed and sealed this lease as of the day and year first above written.

CHINATOWN APARTMENTS, INC.

Witness for Owner:

Witness for Tenant:

CAFE DIEM CHINATOWN, INC.

#### ACKNOWLEDGEMENT

STATE OF NEW YORK,

SS.:

COUNTY OF

On the \_\_\_\_\_ 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), or the person upon behalf of which the individual(s) acted, executed the instrument.

NOTARY PUBLIC

Business Address

**RIDER ANNEXED TO AND MADE PART OF LEASE  
DATED AS OF NOVEMBER 1, 2023 BETWEEN  
CHINATOWN APARTMENTS, INC., AS LANDLORD,  
AND CAFÉ DIEM CHINATOWN INC., AS TENANT**

40. Tenant shall pay fixed rent at the following annual rental rates (the "Fixed Rent"):

- (a) for the period commencing November 1, 2023 through and including the October 31, 2024 \$28,004.16 per annum, payable in equal monthly installments of \$2,333.68; then
- (b) for the period commencing November 1, 2024 through and including the October 31, 2025 \$28,844.28 per annum, payable in equal monthly installments of \$2,403.69; then
- (c) for the period commencing November 1, 2025 through and including the October 31, 2026 \$29,709.60 per annum, payable in equal monthly installments of \$2,475.80; then
- (d) for the period commencing November 1, 2026 through and including the October 31, 2027 \$30,600.96 per annum, payable in equal monthly installments of \$2,550.08; then
- (e) for the period commencing November 1, 2027 through and including the October 31, 2028 \$31,518.96 per annum, payable in equal monthly installments of \$2,626.58.

(f) Provided Tenant is not then in breach or default under any of the terms, covenants or conditions on Tenant's part to observe or perform under the Lease beyond notice and the expiration of any applicable cure period, Tenant shall not be obligated to pay Fixed rent for the Period beginning November 1, 2023 and ending January 31, 2023 (totaling \$7,001.04) payable by Tenant to Landlord under Article 40 of this Lease.

(d) (If Landlord is unable to obtain the required consent from the New York City Department of Housing Preservation and Development or otherwise deliver possession to Tenant on November 1, 2023, the free rent period referenced in subparagraph (c) above shall be extended for each month or partial month from November 1, 2023 until the Landlord is able to deliver possession of the Demised Premises to Tenant.

**LATE PAYMENT CHARGES**

41. If Tenant shall fail to pay when due (i) any installment of Fixed Rent or (ii) any adjustment or other item of additional rent and such failure shall continue for



ten (10) days, then Tenant shall pay Landlord, upon demand, as additional rent, a late charge equal to four (4%) percent of such installment or payment as an agreed liquidated amount as compensation for Landlord's additional administrative expenses relating to such late payment. The provisions of this Paragraph 41 are in addition to other remedies available to Landlord for non-payment of Fixed Rent or additional rent.

### **REAL ESTATE AND OTHER TAXES**

42. A. Tenant acknowledges that (i) Landlord is a Limited Profit Mutual Housing Company under Article II of the Private Housing Finance Law of the State of New York ("PHFL") and as such obtains a tax exemption pursuant to PHFL §33, (ii) Tenant's occupancy is commercial in nature and not residential as contemplated by the PHFL, (iii) the additional rent due under this paragraph shall be calculated without regard for any real estate tax exemption or abatement, and (iv) Tenant shall pay, as additional rent, an amount calculated in accordance with this Paragraph 42.

#### **B. Definitions.**

1. The term "Project" shall mean the property owned by Chinatown Apartments, Inc., and designated on the Tax Map for the City of New York, Borough of Manhattan as Block 289, Lot 9001.

2. The term "Real Estate Taxes" shall mean the product of (x) the Assessed Valuation, without regard to any exemption or abatement, for the Project as recorded in the Annual Record of Assessed Valuations for the year concerned and (y) the Real Property Tax Rate for a Class II Property as set by the New York City Board of Estimates for the year concerned, provided, however, that if the New York City Department of Taxation shall use a tax rate greater than the Class II Tax Rate to calculate the real estate taxes on the commercial portion of the Project for any year, then such higher rate shall be the Tax Rate. The term "Other Taxes" shall mean all assessments, governmental levies, municipal taxes, county taxes or any other governmental charge, general or special, ordinary or extraordinary, unforeseen as well as foreseen, of any kind or nature whatsoever, that are or may be assessed, levied or imposed upon all or any part of the building or land on which the building in which the Demised Premises is located (the "Property"), and the sidewalks, arcades, plazas, alleys or streets in front of or adjacent thereto, including any tax, excise or fee measured by or payable with respect to any rent or mortgage and levied against Landlord and/or the Property, and/or against the holder of any mortgage affecting the Property, under the laws of the United States, the State of New York, or any political subdivision thereof, or by the City of New York, (but excluding any income, franchise, corporate, estate, inheritance, succession, capital stock, transfer or mortgage recording tax levied on Landlord or the holder of any such mortgage). If, due to a future change in the method of taxation or in the taxing authority, a new or additional real estate tax, or a franchise, income, transit, profit or other tax or governmental imposition, however designated, shall be levied against Landlord, and/or the Land and/or the sidewalks, arcades, plazas,

alleys or streets in front of or adjacent thereto, in addition to, or in substitution in whole or in part for any tax which would constitute "Real Estate Taxes", or in lieu of additional taxes, such tax or imposition shall be deemed for the purposes hereof to be included within the term "Other Taxes".

3. "Base Year Tax" shall mean the Real Estate Taxes for the 2022/2023 tax year.

4. "Tenant's Percentage" shall mean 0 and 17/100 Percent (0.17%).

5. The term "Tax Year" shall mean any twelve month period commencing July 1st and ending June 30th which covers any portion of the term of this Lease.

C. (i) In the event that the Real Estate Taxes for any Tax Year subsequent to the 2022/2023 tax year shall exceed the Base Year Tax, the Tenant shall pay, as additional rent, an amount equal to the Tenant's Percentage of the excess.

(ii) In addition to Tenant's share of the Real Estate Taxes, Tenant shall pay Landlord an amount equal to the product of (x) Tenant's Percentage and (y) the total amount of the Other Taxes.

(iii) In the event an increase in the Real Estate Taxes is attributable to any improvements, revisions, extensions or other changes made by Tenant to the Demised Premises, Tenant shall pay the entire amount of the tax increase(s) attributable to such work.

D. If (i) the Base Year Tax or (ii) the Real Estate Taxes for any Tax Year for which Tenant paid additional rent pursuant to this Paragraph 42, shall be adjusted, corrected or reduced, whether as the result of protest of any assessment, or by means of any agreement, or as the result of legal proceedings, or on account of any action taken by the taxing authority, the additional rent due for such Tax Year and, in the case of a change in the Base Year Tax, for all Tax Years in which the unchanged Base Year Tax was used to determine Tenant's additional rent payable pursuant to this Paragraph 42, shall be determined or redetermined, as the case may be, on the basis of said corrected, adjusted or reduced Real Estate Taxes or Base Year Tax, as the case may be. If Tenant shall have paid any additional rent pursuant to this Paragraph 42 for such Tax Year prior to any such adjustment, Landlord shall, at Landlord's option, credit or refund to Tenant any excess amount thus paid as reflected by said adjusted Real Estate Taxes, less Tenant's Percentage of any cost, expense or fees (including experts' and attorneys' fees) incurred by Landlord in obtaining such tax adjustment, or, in the event of an increase in Real Estate Taxes or reduction in the Base Year Tax, Tenant shall pay Landlord within five (5) days after rendition of an Escalation Statement any additional amount due to the Landlord. If a tax adjustment shall occur prior to Tenant's payment of Real Estate Taxes which are due hereunder as additional rent and are affected by the adjustment, Tenant

shall pay, as additional rent, Tenant's Percentage of any cost, expense or fees (including experts' and attorneys' fees) incurred by Landlord in obtaining such tax adjustment. Only Landlord shall have the right to institute tax reduction or other proceedings to reduce the assessed valuation of the Project.

E. Landlord shall render to Tenant a tax escalation statement (the "Escalation Statement") which reflects Tenant's share of the Real Estate Taxes and the amount of the Other Taxes due and payable by Tenant. Tenant shall pay the amount shown on the Escalation Statement within thirty (30) days after the date of the Escalation Statement. Each Escalation Statement shall be conclusive and binding upon Tenant unless within thirty (30) days after the date of the Escalation Statement Tenant shall notify Landlord in writing that it disputes the correctness of such Escalation Statement, specifying the particular respects in which such Escalation Statement is claimed to be incorrect.

F. Landlord's failure to render an Escalation Statement with respect to any tax year shall not prejudice Landlord's right thereafter to render an Escalation Statement with respect thereto or with respect to any subsequent tax year.

G. Payments shall be made pursuant to this Paragraph 42 notwithstanding the fact that an Escalation Statement is furnished to Tenant after the expiration or other termination of the term of this Lease.

H. Tenant's obligation to pay any and all additional rent shall survive the expiration or other termination of the term of this Lease.

I. In no event shall the Fixed Rent be reduced by operation of this Paragraph 42. Notwithstanding any expiration or termination of this Lease prior to the Lease expiration date, Tenant's obligation to pay Fixed Rent and the adjustment under this Paragraph 42 shall continue and shall cover all periods up to the Lease expiration date, and shall survive any expiration or termination of this Lease.

J. In the event an increase in the Real Estate Taxes is attributable to any improvements, revisions, extensions or other changes made by Tenant to the Demised Premises, Tenant shall pay the entire amount of the tax increase(s) attributable to such work.

K. Notwithstanding anything to the contrary contained herein, in the event the Demised Premises at any time during the term of this Lease become separately assessed by the taxing authorities, the Tenant shall pay to Landlord, in accordance with this Paragraph 42, or directly to the taxing authorities if so notified in writing by Landlord, the total amount of the Real Estate Taxes and Other Taxes assessed against the Demised Premises.

L. Tenant shall pay to Landlord upon demand, as additional rent, any occupancy tax, rent tax and any other tax of similar nature or intent now in effect

or hereafter enacted, if payable by Landlord in the first instance or hereafter required to be paid by Landlord.

M. So long as the Landlord's Real Estate Tax obligation for both the residential and commercial portions of the Project are calculated at ten (10%) percent of Shelter Rent pursuant to PHFL §33, Landlord, in its sole discretion, may elect to calculate the escalation due under this Paragraph 42 as ten (10%) percent of the increase in fixed rent for any year over the amount of the fixed in the first year of the Lease Term.

N. Notwithstanding anything to the contrary contained herein, in the event the the commercial space at any time during the term of this Lease become separately assessed and billed by the taxing authorities, the Tenant's Percentage shall mean 1 and 80/100 (1.80%) percent; the term Real Estate Taxes shall mean the amount of real estate taxes and "Other Taxes" as defined above levied or imposed against the commercial portion of the Project; and the term Base Year Tax shall mean the amount of real estate taxes attributable to the commercial portion of the Project for the 2022/23 tax year.

### **INSURANCE**

43. A. Tenant covenants and agrees to obtain and, at all times during the term of this Lease, keep in force at Tenant's own expense insurance of every kind which may be required by any federal, state or local statute or ordinance of any governmental body having jurisdiction in connection with the operation of Tenant's business at the Demised Premises and also carry, at Tenant's own expense, with responsible, solvent insurance companies licensed to do business in the State of New York, and reasonably satisfactory to Landlord, policies of personal injury liability and property damage liability insurance which insurance shall be maintained in such amount as Landlord shall, from time to time, require of Tenant. As of the date hereof, Landlord requires limits of liability in an amount not less than TWO MILLION (\$2,000,000.00) DOLLARS for any injury to an individual with aggregate limits of FIVE MILLION (\$5,000,000.00) DOLLARS in the case of injury or death and in an amount not less than FIVE HUNDRED THOUSAND (\$500,000.00) DOLLARS for property damage; said policies will include Landlord and its managing agent, if any, the City of New York, The New York City Department of Housing Preservation and Development, the City of New York Housing Development Corporation, the New York City Educational Construction Fund, and the United States Department of Housing and Urban Development as parties insured, and any other party Landlord may ask Tenant to include on the policies, and will under no circumstances be considered anything other than primary insurance on a non-contributory basis. Tenant shall include in such insurance policy or policies appropriate clauses pursuant to which the insurance company or companies (i) waive the right of subrogation against Landlord with respect to losses payable under such policy or policies and/or (ii) agree that such policy or policies shall not be invalidated should the insured waive in writing prior to a loss any or all right of recovery against any party for losses covered by such policy or policies. Tenant will furnish Landlord with either the original policies of the insurance so carried by Tenant, or original certificates of insurance with respect to such insurance policies. Tenant shall deliver to Landlord and any additional insured, at least ten (10) days prior to the

commencement date hereof, such fully paid for policies or certificates of insurance, in form reasonably satisfactory to Landlord, issued directly by the insurance company and not by an insurance broker or agent, with a receipt from the insurance company showing that Tenant has paid the premiums for the insurance for the first twelve (12) months of the Lease term; in the event only a certificate of insurance is available at that time, within sixty (60) days after the commencement date, Tenant shall furnish to Landlord complete, original insurance policies. Such insurance coverage may be blanket policies of Tenant. The renewals of any such insurance coverage with proof of payment of the annual premium shall be delivered to Landlord at least thirty (30) days before the expiration of any existing policy. All policies of insurance shall provide that they shall not be canceled, terminated or materially altered without thirty (30) days' prior written notice to Landlord. In the event of Tenant's failure to comply with the provisions of this Paragraph, Landlord may cause the same to be done for Tenant's account and the costs thereof shall be deemed immediately payable to Landlord by Tenant upon the rendering of bills for the same as additional rent.

B. Tenant shall maintain plate glass insurance in an amount and with a company reasonably satisfactory to Landlord throughout the term of this Lease insuring the plate glass in the Demised Premises. Tenant shall deliver a copy of such insurance policy with a receipt showing payment of the premiums due thereon to Landlord and shall deliver certificates of renewal and receipts for payment of premiums thereof at least thirty (30) days prior to the expiration of any existing policy. Should the Tenant fail to take out, pay for, maintain or deliver such insurance policy, then Landlord may obtain such insurance coverage and pay the premiums therefor and all sums so paid by Landlord shall be deemed additional rent hereunder and shall be payable five (5) days after the submission of a statement therefor.

### **CLEANING AND MAINTENANCE**

44. Tenant covenants and agrees to clean and maintain at its sole cost and expense the outside portion of the Demised Premises including, without limitation, painting of the security gate cover, if any, and repairing the molding framing the Demised Premises and will keep all glass and metal portions thereof in good condition and repair, and shall generally maintain the Demised Premises in a neat, attractive and orderly manner. Tenant shall, at its sole cost and expense, keep the Demised Premises clean and in order, to the satisfaction of Landlord. Tenant shall maintain during the term of this Lease and keep in working order, at its sole cost and expense, all electrical, gas, water, heating, air conditioning, and plumbing equipment and appliances, and any other equipment and appliances or utility systems, pipes or conduits which may be servicing the Demised Premises exclusively or which may be located within any portion of the Demised Premises.

### **"AS IS" CONDITION**

45. A. Tenant agrees to accept the Demised Premises "as is" in their condition existing on the date of the commencement of this Lease. Tenant understands and agrees that no materials whatsoever are to be furnished by Landlord and no work whatsoever is to be performed by Landlord in connection with the Demised Premises or any part thereof.

B. The Tenant shall, at its own cost and expense, completely paint and decorate the Demised Premises, furnish all electrical fixtures and equipment, do all structural work which may be necessary for the Demised Premises to support and accommodate Tenant's fixtures, equipment and appliances and do all other work and furnish all other materials and fixtures, which may be necessary to fully complete and equip the Demised Premises and enable tenant to obtain all licenses required to operate an office at the Demised Premises, and Tenant shall keep and hold the Landlord free and clear and harmless from any liability or expense therefor. All such work shall be performed in accordance with the terms and provisions in Paragraph 46 of this Lease. At all times the said fixtures shall be the property of the Tenant.

### ALTERATIONS

46. A. In connection with any alterations requested by Tenant, Tenant shall provide Landlord with plans for such proposed revisions, architect's or engineer's letters which may be requested by Landlord and any other documents reasonably requested by Landlord to properly review and assess the proposed alterations and the impact on the Demised Premises and the surrounding building(s).

Any subsequent authorization and permission to make alterations or perform work at the Demised Premises shall not be deemed to be a consent of the Landlord within the meaning of the lien law of the State of New York in favor of any contractor, subcontractor, material man, or any others. No mechanic's lien or other lien for such work or services, or for any other work or services performed by or on behalf of Tenant during the term of this Lease, shall be valid against the Landlord, and any contract or agreement for performance of any work ordered by the Tenant shall contain a provision to that effect. In the event of a filing of such lien, Tenant shall cause the same to be discharged of record within fifteen (15) days after notice, by payment, deposit or bond; during said fifteen (15) days Tenant will immediately commence to resolve any dispute which resulted in the filing of such lien and diligently pursue a final and satisfactory disposition of the lien. All such work shall be performed by fully licensed, insured contractors and shall be made diligently and in a good and workmanlike manner. At Landlord's request, Tenant shall provide Landlord with copies of each such contractor's license, insurance policies and proof the same are in full force and effect and all premiums paid thereon through the anticipated date of completion of any work. Any damage to Landlord's property shall be properly repaired by the Tenant at its own cost. Before commencing any work, Tenant shall submit a plan of the alteration work and any other documents requested by Landlord to the Landlord and obtain Landlord's written approval, which shall not be unreasonably withheld.

B. In the event of Tenant's failure to release of record any such lien within the aforesaid period, Landlord may remove such lien by paying the full amount thereof or by bonding or in any other manner Landlord deems appropriate without investigating the validity thereof and irrespective of the fact that Tenant may contest the propriety or the amount thereof. Any amount paid or deposited by Landlord for any of the aforesaid purposes, and all legal and other expenses of Landlord, including



attorneys' fees, in defending any such action or in procuring the discharge of such lien, with all necessary disbursements in connection therewith, together with interest thereon from the date of such payments at the Interest Rate, as defined in Paragraph 65, shall be paid by Tenant to Landlord within ten (10) days after demand therefor.

C. All permits which may be required by governmental agencies having jurisdiction thereover shall be obtained by Tenant at Tenant's sole cost and expense and any plans which may be required in connection with such permits, shall be prepared and filed by the Tenant at its sole cost and expense.

D. Certificates approving the use of the installation to be made by Tenant shall be obtained by Tenant upon completion of the work.

E. Upon completion of any work, Tenant, at its sole cost and expense, shall remove all debris and rubbish from the Demised Premises and clean the same and shall remove all debris and rubbish outside the surrounding area and the Confucius Plaza Complex, as defined in Paragraph 73, caused by such work.

F. In the event that a violation is placed against the Demised Premises or any other part of the Confucius Plaza Complex by reason of any alterations and improvements made by Tenant and Tenant fails to cure same within three (3) days after notice that such violation exists or, in the event such violation cannot be cured within three (3) days, Tenant shall have failed to commence curing such violation within three (3) days after notice of the existence of such violation or to diligently pursue a final and satisfactory disposition thereof, Landlord may enter upon the Demised Premises and perform any work necessary to cure such violation and all of Landlord's expenses incurred in connection therewith plus interest thereon at the Interest Rate shall be deemed to be additional rent and be immediately due and payable and collectible as such.

G. Any alterations made by Tenant with the consent of the Landlord shall be subject to the approval of the New York City Department of Housing Preservation and Development ("HPD") and the New York City Housing Development Corporation ("HDC").

### **INDEMNIFICATION**

47. Tenant covenants and agrees that to the fullest extent permitted by law, and regardless of negligence, Tenant will and shall indemnify, defend and save Landlord harmless from and against all claims, losses, actions, damages, costs and expenses, including, without limitation, reasonable attorneys' fees, arising out of or resulting from any loss, damage or liability on account of injury or death of any person or persons or damage to any property, in or about the Demised Premises in any way connected with, related to, or arising out of the use, condition or occupation of the Demised Premises.

### **INCREASE IN INSURANCE PREMIUMS**

48. If the rate for the Fire Insurance applicable to the building in which the Demised Premises are located or any building adjacent thereto or connected therewith shall be increased by reason of the Tenant's occupancy or use of the Demised Premises, the Tenant hereby agrees to pay to the Landlord, on demand, as additional rent hereunder such additional sums of money which shall have been charged by the insurance company, and the Landlord shall have the same rights and remedies for the collection of same as if same were additional rent. All of the other provisions and covenants in Paragraph "6" of this Lease shall apply and be included in this Paragraph.

### **ASSIGNMENT AND SUBLETTING**

49. A. Tenant may not assign this Lease or sublet the entire Demised Premises or any portion of the Demised Premises without Landlord's prior written consent. Landlord may withhold its consent to any such request for any reason and any consent Landlord may grant shall be on such terms and conditions as Landlord may require, including, but not limited to, payment by Tenant of any sublet or assignment fee(s) or payment(s). Tenant shall be responsible for payment of any and all costs and expenses including, but not limited to, legal fees, incurred by Landlord in connection with any such assignment or sublet.

B. Tenant, for itself, its heirs, distributees, executors, administrators, legal representatives, successors and assigns, expressly covenants that it shall not assign, mortgage or encumber this Lease, nor underlet, nor suffer, nor permit the Demised Premises, or any part thereof, to be used or occupied by others.

C. Tenant covenants that notwithstanding the acceptance of rent by Landlord from an assignee or sublessee or other party, in the event of any assignment or transfer in violation of the provisions of this Lease, Tenant shall remain fully and primarily liable for the payment of Fixed Rent and additional rent due and to become due under this Lease and for the performance of all of the covenants, agreements, terms, provisions and conditions of this Lease on the part of Tenant to be performed or observed.

D. Any assignment of this Lease or sublet of the Demised Premises shall be subject to the approval of HPD and HDC.

### **STOCK TRANSFERS, MERGERS AND RELATED TRANSACTIONS**

50. Supplementing Paragraph 11 of the Lease, Tenant hereby agrees that the transfer of a majority of the membership interest of tenant or subtenant of this Lease or of a majority of the total interest in any partnership tenant, however accomplished, whether in a single transaction or in a series of related or unrelated transactions, or the creation of membership interest or partnership interests by which an aggregate of more than 50% of Tenant's membership or partnership interests shall be vested in a party or parties who are nonmembers or nonpartners as of the date hereof, whether any such transfers are effected by operation of law or otherwise, shall be deemed an assignment of the Lease or a sublease of the Demised Premises. Within twenty (20) days after

written request by Landlord at any time during the term of this Lease, Tenant, if Tenant is a limited liability company, shall deliver to Landlord a complete list of all the members of Tenant containing such information as Landlord may reasonably request including, but not limited to, the amount of membership interest held by each member broken down by class and type of interest, the date or dates on which each members acquired his/her interest as well as the percentage interest acquired on such date(s) and the purchase price(s) thereof.

Tenant hereby represents and warrants that ownership of all the shares of stock of the Tenant is as follows:

Chun Nam Kong	33 1/3%
Raymond Tsang	33 1/3%
Ai Xia Lam	33 1/3%

### **FLAMMABLE AND HAZARDOUS MATERIALS**

51. The Tenant shall not store any inflammable or combustible liquids or materials or hazardous materials on the Demised Premises unless same is approved by the Landlord and its insurance carrier and the various departments of the City and State of New York, having jurisdiction over same and such liquids or materials are customarily maintained at a pharmacy and are at all times stored in the manner required by law and the Landlord's insurance carrier.

### **MACHINERY, EQUIPMENT AND APPLIANCES**

52. A. The Tenant shall not install or maintain, at the Demised Premises, any machinery, equipment or appliances without Landlord's prior written approval. Upon the request of the Landlord, Tenant shall promptly deliver to Landlord a complete list of all equipment, machinery and appliances maintained at the Demised Premises. Any machinery, equipment or appliances maintained by Tenant at the Demised Premises, shall be installed and maintained in such a manner as to comply with all applicable government laws, rules, ordinances and regulations, and to prevent the transmission of objectionable noise, vibrations, fumes, odors, dust, heat, effluence or by-products. Upon the request of the Landlord or any governmental entity Tenant shall promptly make any necessary alterations to said machinery or equipment to eliminate any noise, vibrations, fumes, odors, dust, heat, effluence or by-products deemed by the Landlord or any government entity to be objectionable. Failure to comply with this provision of the Lease shall constitute a material breach of the terms of the same, entitling the Landlord to all the remedies heretofore set forth with respect to breach of the covenants of the Lease including, but not limited to, remedying such condition as Landlord deems appropriate, at the sole expense of Tenant.

B. If Tenant desires to install or alter any machinery, equipment or appliance at the Demised Premises, the machinery, equipment or appliance, or alteration must first be approved by Landlord. Tenant shall give the Landlord sixty (60) days' prior written notice of any such proposed alteration or installation. Such notice shall include a plan which sets forth the machine to be installed or altered, the proposed

location for installation and the method of installation or alteration. The Landlord within forty-five (45) days after receipt of said notice and plan of installation shall report in writing to the Tenant on whether such proposed installation or alteration is acceptable to the Landlord with regard to noise, vibration, odors, fumes, heat, effluence or by-products. In the event that the proposed installation or alteration is unacceptable to the Landlord, Landlord shall in its report set forth any modifications deemed necessary to make the installation or alteration acceptable, provided modifications can make such installation or alterations acceptable. If the Landlord's proposed modifications are accepted by the Tenant, then the Tenant may proceed in accordance with the Landlord's recommendations. Notwithstanding anything contained herein to the contrary, receipt by Tenant of approval from the Landlord shall not be required for the repair or replacement of parts for machinery, equipment or appliances which are being used by Tenant in its present business operations. Any approval given by Landlord hereunder shall in no way bar or constitute a waiver by Landlord of its right to demand that Tenant modify, replace or cease use of any machinery, equipment or appliance or alteration to the same previously approved.

### **FLUES AND OPENINGS**

53. Tenant acknowledges that the flues and openings in the walls of the Demised Premises and building, if any, of which the Demised Premises are a part, are not included within the definition of the term "Demised Premises." Tenant acknowledges that Landlord has not granted or created, nor shall Landlord be deemed to have granted or created, an easement for the benefit of Tenant with respect to the placement, construction, maintenance or use of such openings and flues.

### **REAL ESTATE BROKER**

54. Tenant represents and warrants to Landlord that Tenant has not dealt with any real estate broker, organization, person, firm, corporation or other entity who may claim a commission or fee by reason of having dealt with Tenant in connection with the Lease. Tenant hereby agrees to indemnify the Landlord and hold Landlord harmless from and against any and all claims, liabilities, expenses or damages arising from or in connection with any claims of any broker, person, firm, corporation or other entity, other than the broker, if any, specified above, for brokerage commissions or other compensation who asserts to have dealt with the Tenant in connection with the Lease.

### **SIGNS, AWNINGS AND ADVERTISING**

55. A. Tenant has been advised that Landlord will in no event consent to the installation of any awnings, canopies or protruding signs, except of the business sign on the walls outside the Demised Premises in the same location and of the same character as the existing sign from the former tenant of the Demised Premises or in accordance with a plan adopted by the Landlord for the size, style and placement of signs for the commercial tenants provided said plan is equally applicable to all tenants facing the Bowery roadway, and further provided same fully comply with all governmental requirements and requirements or recommendations of Landlord's

insurance company in effect as of the date of this Lease or enacted or implemented at any time during the term of this Lease and, provided further, that Tenant submits to Landlord written plans which indicate, among other things Landlord may reasonably require, the exact dimensions and location of the proposed signs. Tenant shall make any modifications to such plan which Landlord may require.

B. Tenant shall place no advertisements or displays in the windows of the Demised Premises without the Landlord's prior written consent. All window advertisements and displays which have been approved by Landlord shall at all times be in full compliance with any and all present and future governmental laws, ordinances, rules and regulations relating to such window displays, and any rules and recommendations of the Fire Department and Landlord's and Tenant's insurance carriers. Tenant agrees that if Landlord in its reasonable judgment considers any window advertisements or displays to be unsightly, Tenant shall, within seven (7) days after notice from Landlord, implement Landlord's recommendations for any changes to Tenant's window advertising or display including, but not limited to, removal of the objectionable advertisements or display. Tenant agrees that at no time shall it block or otherwise cover the display windows.

#### **REFUSE DISPOSAL**

56. Tenant agrees that all garbage containers of Tenant shall be emptied by the Tenant at least once in every twenty-four (24) hours. The said garbage containers shall at all times be kept within the Demised Premises and shall at no time be placed on the sidewalk or walkway in front of the Demised Premises or at the location designated by Landlord for disposal of garbage, except immediately prior to collection of the trash. Such garbage or other refuse shall be carted away from the Demised Premises daily at Tenant's own cost and expense. Tenant shall post the name of the carting company on the entrance door of the Demised Premises and a certificate from such company certifying that a contract for the collection of refuse from the Demised Premises is in effect shall be delivered to Landlord.

## **NOISE, MUSIC, LIGHT AND ODORS**

57. A. Tenant shall not allow any disturbing noise or music or light in the Demised Premises which shall be reasonably objectionable to the Landlord or to the other tenants of the building of which the Demised Premises are a part or to the occupants or owner of any adjacent or neighboring building(s). Tenant shall not maintain any loudspeakers or lighting devices or fixtures (e.g., spotlights, strobe lights), in or outside the Demised Premises, which may be heard or seen, as the case may be, from outside the Demised Premises nor permit any other sounds or light to emanate from, and be heard outside, the Demised Premises.

Tenant agrees that throughout the term of this Lease it shall implement and adopt any means or measures requested by Landlord to eliminate noise or light emitted from the Demised Premises and deemed in Landlord's sole discretion to be offensive to the residents of the Confucius Plaza Complex.

B. Tenant agrees that at all times during the term of this Lease and any renewal thereof, it shall install all equipment and implement any measures believed by Landlord to be necessary to prevent the emission from the Demised Premises of odors or smoke which Landlord, in its sole discretion, deems objectionable or a nuisance to any of the tenants of the Confucius Plaza Complex. Tenant shall promptly comply with all requirements of any government entity or Tenant's insurance carrier with respect to limiting or fully abating the emission of any smoke, odors or any other effluence from the Demised Premises.

C. Upon the request of the Landlord, Tenant shall immediately cease and desist from any action which shall cause a violation of the aforesaid provisions. Failure to comply with this provision of the Lease shall constitute a material breach of the terms of the same entitling the Landlord to all the remedies heretofore set forth with respect to breach of the covenants of the Lease.

## **MORTGAGE FINANCING; SUBORDINATION**

58. Supplementing Paragraph 7 of this Lease.

A. If in connection with obtaining financing or refinancing for the building(s) of which the Demised Premises form a part, a banking, insurance or other institutional lender shall request modification of this Lease as a condition to such financing or refinancing, Tenant will not withhold, delay or defer its consent to a modification which provides that Tenant may be required to give notices of any defaults by Landlord to such lender and/or permit the curing of such defaults by such lender.

B. This Lease is and shall be subject and subordinate to all present and future ground or underlying leases and to all mortgages, options and building loan agreements that may now or hereafter affect such leases or the real property of which the Demised Premises are a part and to all renewals, modifications, consolidations, replacements and extensions of any such ground or underlying leases, options and mortgages.



C. Tenant, without charge, at any time and from time to time, within ten (10) days after request by Landlord, shall deliver an estoppel letter, provided to Tenant by Landlord, to Landlord or any other person, firm or corporation specified by Landlord, duly completed, executed and acknowledged. If Tenant fails to deliver the estoppel letter to Landlord or Landlord's designee within the ten (10) days then Landlord is hereby authorized by Tenant, as Tenant's lawful and irrevocable attorney-in-fact, to complete, acknowledge and submit such estoppel letter and Tenant shall be bound by the contents thereof.

D. Lessee specifically acknowledges that (1) this Lease is subordinate to the liens of those certain mortgages dated as of September 1, 2005 by and between Lessor and the New York City Housing Development Corporation as same may have been assigned to FANNIE MAE; (2) the Tenant shall attorn to Lenders and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Mortgaged Property by any purchaser at a foreclosure sale or by Lenders in any manner; (3) the Tenant agrees to execute such further evidences of attornment as Lenders or any purchaser at a foreclosure sale may from time to time request; (4) the Lease shall not be terminated by foreclosure or any other transfer of the Mortgaged Property; (5) after a foreclosure sale of the Mortgaged Property, Lender or any other purchaser at such foreclosure sale may, at Lender's or such purchaser's option, accept or terminate such Lease; (6) Tenant shall be entitled to remain in possession undisturbed so long as tenant performs all of its obligations under the Lease; and; (7) the Tenant shall, upon receipt after the occurrence of an Event of Default of a written request from Lenders, pay all Rents payable under the Lease to Lenders.

### EXTERMINATION

59. Tenant, at its own cost and expense, shall use all possible diligence, in accordance with the acceptable prevailing methods and all health and other applicable regulations governing or pertaining to the prevention and extermination of vermin, insects, rats or mice in the Demised Premises, and if, in the reasonable judgment of the Landlord, Tenant shall fail to do so or shall fail to adopt and employ the acceptable prevailing methods therefor within two (2) days from receipt of a written notice from Landlord, Landlord shall have the right to incur any disbursements reasonably necessary or advisable, in its sole judgment, to effect such purpose, and any sums so disbursed by Landlord shall be repayable to it by Tenant in accordance with statements thereof to be rendered by Landlord to Tenant, and upon failure to pay the same within ten (10) days after presentation thereof, the same shall be added to and form a part of the next or any subsequently accruing installment of rent, and shall be collectible as such. Tenant shall have the Demised Premises exterminated no less than once each month during the term of this Lease. Tenant shall not utilize "bug bombs" or similar devices without prior notice to and approval of Landlord. Such devices, if Landlord consents to their use, may not be used except under the care and supervision of a licensed professional exterminator.

### **ILLEGAL OR OBJECTIONABLE USE**

60. As an inducement for Landlord to enter into the Lease with Tenant, Tenant expressly covenants and agrees that:

A. Tenant will not utilize the Demised Premises in any manner nor in any way permit the utilization of the Demised Premises for the sale, rental, exchange, trade or distribution of pornographic or sexually oriented material, video cassettes or books, or other pornographic or sexually oriented goods of any type.

B. Tenant will not utilize the Demised Premises in any manner nor in any way permit the utilization thereof so as to be in breach or violation of any ordinance, rule or regulation relating to operation and maintenance of a acupuncture and physical therapy center.

C. Tenant will not utilize the Demised Premises or permit their utilization in any way in violation of any local, state or federal criminal statute.

D. Tenant will not maintain or operate at the Demised Premises any gambling device, lottery device, game of chance, video or game machine or any similar type machine or mechanical device or apparatus.

E. Tenant will maintain an establishment that shall be open to the public during normal business hours for at least eight (8) hours per day, six days per week, save holidays, and during such hours Tenant agrees that the display windows shall not be covered by bars, security grates or otherwise covered so as to give the appearance, in the Landlord's judgment, that the Demised Premises is not open for business to the general public.

F. Tenant shall comply, and use its best effort to have its vendors and delivery services comply with all parking, standing and traffic ordinances in effect in front of and adjacent to the Demised Premises and in no event shall Tenant or its delivery services or vendors block the sidewalk adjacent to the Demised Premises.

G. Tenant shall not leave cartons or other debris in the aisles of the Demised Premises. Tenant shall promptly store debris and items in its storage space or in another appropriate place so that they are not sitting in the common areas or the walkways or passageways of the Confucius Plaza Complex where they may pose a safety hazard to pedestrians. Tenant shall implement all reasonable measures to promote safety in the store including, but not limited to, arranging to receive deliveries and stock the store shelves in the evenings when the store is closed, at all times complying with the requirements not to disturb the residents of the Confucius Plaza Complex, or when there are very few customers in the store.

H. Tenant shall not use more than rear most twenty (20%) percent of the floor space of the Demised Premises for storage or for wholesale trade and affirmatively agrees that the Demised premises shall be used in accordance with Paragraph 2 of this Lease.

In the event of Tenant's failure to comply with and fulfill the foregoing covenants at any time during the term of this Lease, Landlord shall, after notice of default and failure to cure same within the period otherwise permitted under this Lease, have the right, upon written notice to Tenant, to terminate this Lease and thereupon this Lease shall terminate as of the date set forth in such notice to Tenant with the same force and effect as if such date was the expiration date set forth in this Lease.

### **DESTRUCTION, FIRE AND OTHER CASUALTIES**

61. A. Notwithstanding Paragraph 9 of the Lease, if the Demised Premises are damaged through no fault of Tenant by fire or other cause so that the same shall be wholly or substantially untenable or that Tenant shall be unable to carry on Tenant's business therein, and if repairs to the Demised Premises are not substantially completed within two hundred-seventy (270) days (plus such period of delay as is caused by the acts or omissions of Tenant, its agents, contractors or employees, acts of God or other unforeseen circumstances), after the fire or other casualty referred to, the Lease may be terminated, but only upon the giving of written notice of an intention to terminate by the Tenant to the Landlord within thirty (30) days after the end of such two hundred-seventy (270) day period but in no event later than the date the Demised Premises is restored. Nothing herein shall be deemed to require the Landlord to repair or replace or to prevent the Landlord from giving the expiration notice provided in Paragraph 9 of the Lease.

B. No damages, compensation or claim shall be payable by Landlord for inconvenience, loss of business or annoyance arising from any repair or restoration of any portion of the Demised Premises or of the Building pursuant to Article 9 and Landlord shall bear no responsibility for delay in completing repairs or restoration which may arise by reason of adjustment of insurance, labor troubles or other causes beyond Landlord's reasonable control.

### **REMOVAL OF FIXTURES**

62. Tenant shall have the right to remove at the expiration of the Lease, Tenant's trade fixtures, provided Tenant shall repair, at Tenant's sole cost and expense, any and all damage to the Demised Premises so as to restore same to its original condition.

## CERTIFICATE OF OCCUPANCY

63. Tenant will not at any time use or occupy the Demised Premises in violation of the Certificate of Occupancy for the building in which the Demised Premises are located or any applicable zoning regulations or classifications. Landlord makes no representations that Tenant's intended use of the Demised Premises is permitted under the Certificate of Occupancy, if any. Tenant acknowledges having received and reviewed a copy of the Certificate of Occupancy, if any.

### UTILITIES

64. A. Electric and Water usage at the demised premises is sub-metered and Tenant agrees to pay Landlord the charges for such usage as additional rent. Such electric energy may be furnished to Tenant by means of the then existing building system feeders, risers and wiring to the extent that the same are, in Landlord's sole judgment, available, suitable and safe for such purposes. All meters and additional panel boards, feeders, risers, wiring and other conductors and equipment that may be required to obtain electric energy directly from such public utility company shall be installed and maintained by Tenant at its expense.

B. Tenant's use of electric energy in the Demised Premises shall not at any time exceed the capacity of any of the electrical conductors, machinery and equipment in or otherwise serving the Demised Premises. In order to insure that such capacity is not exceeded and to avert possible adverse effect upon the building's electric service, Tenant shall not connect any additional fixtures, machinery, appliances or equipment to the building's electric distribution system or make any alteration or addition to Tenant's machinery, appliances or equipment, or the electric system of the Demised Premises existing on the date hereof, without Landlord's prior written consent in each instance. Should Landlord grant such consent, all additional risers or other equipment required therefor shall be provided by Landlord and the cost thereof shall be paid by Tenant upon Landlord's demand, or, at Landlord's election, Landlord may require Tenant to make such installations at Tenant's sole cost and expense.

C. Landlord shall not be liable in any way to Tenant for any failure or defect in the supply or character of electric energy furnished to the Demised Premises by reason of any requirement, act or omission of the public utility serving the Demised Premises or the building in which the Demised Premises are located or for any other reason not attributable to Landlord. Landlord makes no representation that the quality, character or amount of electric current is adequate or suited for Tenant's needs.

D. Tenant shall furnish and install all lighting fixtures, tubes, lamps, bulbs and ballasts required in or about the Demised Premises, at Tenant's sole cost and expense.

E. Landlord reserves the right, without any liability to Tenant, to stop service of any of the heating, ventilating, electric, sanitary, elevator or other building systems serving the Demised Premises, or the rendition of any of the other services, if any, required of Landlord under this Lease, whenever and for so long as

may be necessary, by reason of accidents, emergencies, strikes or the making of repairs or changes which Landlord is required by this Lease or by law to make good or in good faith deems necessary, or by reason of difficulty in securing proper supplies of fuel, steam, water, electricity, labor or supplies, or by reason of any other cause beyond Landlord's reasonable control. Interruption or curtailment of any utility or building service for any reason whatsoever, shall not constitute an actual or constructive or partial eviction, nor entitle Tenant to any compensation or abatement or diminution of rent, nor impose any liability upon Landlord or its agents by reason of inconvenience or annoyance to Tenant, or injury to or interruption of Tenant's business, or otherwise. The Landlord shall not be liable to Tenant for failure to provide heat on account of any failure by Con Edison or any successor utility company to supply electricity.

F. Landlord makes no representations, warranties or statements that the electric capacity available to the Demised Premises is adequate for Tenant's needs and requirements. Tenant acknowledges that it has conducted all necessary inspections and investigations of the electrical system prior to executing this Lease, and satisfied itself as to the adequacy of the same for Tenant's proposed business operations.

G. Water usage to the Demised Premises is sub-metered and Tenant agrees to pay Landlord the charges for such usage as additional rent.

H. Tenant's obligation to pay any and all additional rent or other obligations referred to in this Paragraph 64 shall survive any expiration or termination of this Lease.

#### **INTEREST RATE**

65. Wherever used in this Lease, the term "Interest Rate" shall mean a rate per annum equal to the lesser of (a) 3% above the commercial lending rate announced from time to time by JP Morgan Chase (New York, New York), as its prime rate for ninety (90) day unsecured loans, or (b) the maximum rate allowed by law.

#### **SECURITY DEPOSIT**

66. Supplementing Paragraph 31: At any time during the term of this Lease that Landlord applies or retains any portion or all of the security deposited or that the monthly Fixed Rent increases Tenant shall, forthwith, pay to Landlord an amount so that at all times the amount deposited exclusive of any interest earned thereon shall be equal to three (3) months' rent at the then current amount of rent. Interest, if any, earned on the security deposit shall be remitted to Tenant if and when Tenant is entitled to the return of its security deposit.

#### **HOLDING OVER**

67. Any holding over for a period after the expiration of the term hereof shall be construed to be a tenancy from month-to-month at a rental factor equal to:

A. The then current market value of the Demised Premises, as determined by an independent expert in the real estate business selected by Landlord; and

B. All additional rentals, as specified herein (prorated), on a monthly basis and shall otherwise be on the terms and conditions herein specified so far as the same are applicable.

The parties agree that the fair market value of the Demised Premises during such holdover period shall in no event be less than two (2) times the Fixed Rent being charged Tenant during the last year of the term hereof.

### **YELLOWSTONE INJUNCTION**

68. Tenant waives its right to bring a declaratory judgment action with respect to any provisions of this Lease, or with respect to any notice sent pursuant to the provisions of this Lease, and expressly agrees not to seek injunctive relief which would stay, extend or otherwise toll any of the time limitations or provisions of this Lease, or any notice sent thereto. Any breach of this paragraph shall constitute a breach of a substantial obligation of the tenancy, and shall be grounds for the immediate termination of this Lease. It is further agreed that in the event injunctive relief is sought, or if a "Yellowstone" injunction (First National Stores, Inc. v. Yellowstone Shopping Centers, Inc., 21 N.Y. 2d 630) is sought, such relief shall be denied, and the Landlord shall be entitled to recover the costs of opposing such an application or action, including its attorneys' fees actually incurred. In the event that the Tenant disputes its Lease and the Civil Court determines that the Landlord is entitled to possession due to the Tenant's failure to cure by entering a final judgment of possession in favor of the Landlord, the Tenant shall have ten (10) days from the date of such judgment in which to cure the default. In the event of the completion of such a timely cure, the Tenant may apply to the court for a permanent stay of eviction of the warrant of eviction based upon such default.

### **COMPLIANCE WITH LAWS**

69. Except to the extent of Landlord's obligations expressly set forth herein, Tenant shall, at its sole cost and expense, comply with and cause the Demised Premises to comply with (i) all applicable local, State or Federal laws, municipal ordinances or regulations, orders, determinations, rules or requirements of any Federal, State or municipal department or agency having jurisdiction over or affecting the Demised Premises, or the repair, maintenance, operation, use, improvement, or occupancy thereof, including, without limitation, the Zoning Resolution of the City of New York, the Administrative Code of the City of New York and all building, health and environmental laws, regulations and ordinances (collectively, the "Legal Requirements"), applicable to the Demised Premises or the repair, maintenance, operation, use and occupancy thereof, and (ii) all contracts (including insurance policies), agreements, covenants, conditions and restrictions (collectively, the "Contracts"), currently applicable to the Demised Premises or the repair, maintenance, operation, occupancy or use thereof.



## HAZARDOUS SUBSTANCES

70. A. Tenant hereby represents, warrants and agrees that Tenant shall comply with all applicable Hazardous Substance Laws relating to or affecting the Demised Premises or the property on which the Demised Premises is located, and Tenant shall keep the property and the Demised Premises free and clear of any liens imposed pursuant to any applicable Hazardous Substance Laws, all at Tenant's sole cost and expense; and Tenant will, at all times, obtain and/or maintain all licenses, permits and/or other governmental or regulatory authorizations and approvals necessary to comply with applicable Hazardous Substance Laws relating to or affecting the property, Demised Premises or Tenant's use of the Demised Premises (the "Permits"), and the Tenant is and will continue to be and at all times remain in full compliance with the terms and provisions of the Permits.

B. Tenant hereby agrees to indemnify Landlord and hold Landlord harmless from and against any and all losses, liabilities (including strict liability), damages, injuries, expenses (including reasonable attorneys' fees), costs of any settlement or judgment suffered by, or asserted against, Landlord by any person or entity or governmental agency for, with respect to, or as a result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from, the property or the Demised Premises of any Hazardous Substance (including, without limitation, any losses, liabilities (including strict liability), damages, injuries, expenses (including reasonable attorneys' fees), costs of any settlement or judgment or claims, asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any so called federal, state or local "Superfund" or "Superlien" laws, and any statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability, including strict liability, or standards of conduct concerning any Hazardous Substance.

C. For purposes of this Lease, "Hazardous Substances" shall mean and include those elements or compounds which are contained in the list of hazardous substances adopted by the United States Environmental Protection Agency ("EPA") or by the New York Department of Environmental Conservation ("DEC") or the list of toxic pollutants designated by Congress, the EPA or DEC or which are defined as hazardous, toxic, pollutant, infectious or radioactive by any other Federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect (for purposes of this paragraph, the "Hazardous Substance Laws").

D. If Tenant receives any notice of (i) the happening of any event involving the use, spill, release, leak, seepage, discharge or cleanup of any Hazardous Substance on the property or the Demised Premises or in connection with Tenant's operations thereon, or (ii) any complaint, order, citation or notice with regard to air emissions, water discharges, or any other environmental, health or safety manner affecting Tenant (an "Environmental Complaint") from any person or entity (including, without limitation, the EPA or DEC), the Tenant shall immediately notify Landlord orally and in writing of said notice.

E. Landlord shall have the right, but not the obligation, at its sole discretion, and without limitation of rights under this Lease, to enter onto the Demised Premises or to take such other actions as it deems necessary or advisable, to cleanup, remove, resolve or minimize the impact of, or otherwise deal with, any such Hazardous Substance or Environmental Complaint following receipt of any notice from any person or entity (including, without limitation, the EPA or DEC), asserting the existence of any Hazardous Substance or any Environmental Complaint pertaining to the property or the Demised Premises or any part thereof which, if true, could result in an order, suit, lien or other action against Tenant or Landlord and/or which, in the sole opinion of Landlord, could otherwise jeopardize Landlord's interests in the property or the Demised Premises.

F. Any breach of any warranty or representation or any material breach of any covenant contained in this paragraph, shall be an event of default hereunder and shall entitle Landlord to exercise any and all remedies provided in this Lease.

### **TENANT COVENANTS**

71. A. Tenant, at its sole cost and expense, shall keep the Demised Premises and sidewalks and walkways adjacent to the Demised Premises clean and orderly and make all repairs and replacements to the sidewalks and walkways adjacent thereto, if said repair or replacement is necessitated by Tenant or tenant's employees, agents, vendors or delivery persons, and keep said sidewalks and walkways free from snow, ice, dirt and rubbish. All such repairs and replacements shall be in quality and class equal to the original work or installations. Tenant acknowledges that it is prohibited from placing any property on the sidewalks and walking adjacent to the Demised Premises including, but not limited to, tables or chairs.

B. As soon as practicable and in any event within twenty-four (24) hours after any exterior glass in the Demised Premises is broken or cracked Tenant, at its expense, shall replace such glass with glass of the same kind and quality and, as may be necessary or desirable in connection with such replacement, repair or replace the frames for such glass, and if Tenant fails to replace such glass and fails to repair or replace such frames, if necessary, within two (2) days after Landlord makes written demand upon Tenant to do so, then Landlord any time thereafter, may replace the glass and, if necessary, may repair or replace such frames on Tenant's behalf and Tenant promptly shall pay to Landlord as additional rent the costs incurred by Landlord in so doing. Notwithstanding anything herein to the contrary, Tenant shall take all safety measures and repair or replace any cracked, broken or damaged glass in accordance with the provisions of any law, ordinance, rule or regulation governing the operation and maintenance of a restaurant.

C. Tenant may not open the Demised Premises before 8:00 A.M. or keep the Demised Premises open after 11:00 P.M., without Landlord's prior written consent and, if Landlord grants such consent during the term of this Lease it may revoke such consent at any time upon written notice to Tenant.

D. Tenant agrees that it shall utilize all efforts and promptly comply with all requests of Landlord to eliminate any noise, odor or other disturbances to the residential tenants of the Confucius Plaza Complex which may be caused by any reason including, but not limited to, the activities of Tenant's customers or employees or by anyone else congregating at any time at or about the Demised Premises. If people are congregating about the Demised Premises Tenant agrees that it shall, among other things, request that the people remove themselves from the Confucius Plaza Complex, consult with Landlord and, if suggested or requested by Landlord, file a report with the local police precinct and take any other actions requested by Landlord to eliminate or try to eliminate any such disturbance.

E. Tenant agrees that at all times no bicycles, motor scooters, delivery equipment, cartons, advertising flyers, tables, chairs or other personal property, objects or materials shall be placed, left or kept on the walkways or sidewalks or areas adjacent to the Demised Premises.

F. Tenant agrees that it shall promptly provide Landlord with a copy of its operating permit or license and any and all other permits, certificates or documents issued or required to be issued by the buildings department, health department, fire department or any other government agency or entity involved in the regulation of pharmacies or medical supply facilities. Tenant further agrees that it shall provide Landlord with copies of all renewals of such permits, certificates of other documents prior to their expiration.

G. Tenant, upon request from Landlord, shall provide Landlord with a complete list of all employees of Tenant working at the Demised Premises, containing the employee's full name and position and Tenant shall promptly notify Landlord in writing of all modifications, amendments and additions to such list. Tenant shall inform all its employees that they are not to enter the residential part of the buildings at the Confucius Plaza Complex, unless to deliver a purchase which was ordered by a tenant at the Confucius Plaza Complex.

H. Tenant shall not place or cause to be placed any advertisements or flyers in the lobby, doorways or doors of any of the buildings at the Confucius Plaza Complex.

I. Tenant agrees that at no time shall firearms of any type be permitted on or near the Demised Premises. Any security shall be handled by a fully licensed, insured security service and Tenant shall provide Landlord and Landlord's managing agent with the name of such service, a copy of the signed security service contract, telephone number and name of person in charge of such service and a copy of such security service's license and insurance certificate.

J. Tenant shall fully abate the emission of any undesirable odors, smoke or other effluence from the Demised Premises and adopt or implement all measures or devices in connection therewith as may be required pursuant to the terms and provisions of this Lease.

K. Tenant acknowledges that each covenant contained in this Paragraph 71 is a material provision of this Lease and that Landlord refused to enter into this Lease unless Tenant agreed to be bound by each of these covenants and conditions. Tenant acknowledges that any breach of any of these covenants and conditions may be the basis for termination of this Lease in the manner provided in Paragraph 17 or elsewhere in this Lease.

### **SPRINKLER SYSTEM**

72. If any Legal Requirement shall require or recommend the installation of fire extinguishers, a "sprinkler system," fire detection and prevention equipment (including, but not limited to, smoke detectors and heat sensors), or any changes, modifications, alterations, or the installation of additional sprinkler heads or other equipment for any existing sprinkler, fire extinguishing system, and/or fire detection system, then Tenant shall, at Tenant's sole cost and expense, promptly make such installations within the Demised Premises and make such changes, modifications, alterations, or the installation of additional sprinkler heads or other required or recommended equipment. Tenant shall be responsible, at its sole cost and expense, for making all repairs to any sprinkler system servicing the Demised Premises.

" Legal Requirements" shall mean (i) laws, statutes and ordinances (including building codes and zoning regulations and ordinances) and the orders, rules, regulations, directives and requirements of all federal, state, county, city and borough departments, bureaus, board, agencies, offices, commissions and other subdivisions thereof, or of any official thereof, or of any other governmental public or quasi-public authority, whether now or hereafter in force, which may be applicable to the Demised Premises or any part thereof, or the sidewalks, curbs, buildings and (ii) all requirements, obligations, recommendations and conditions imposed or suggested by the carrier of Landlord's or Tenant's insurance policy for the Demised Premises or building in which the Demised Premises are located.

### **DEFINITIONS**

73. The term "Confucius Plaza Complex" shall mean 33 Bowery and the areas between and surrounding said buildings.

### **HEADINGS**

74. Any headings in this Lease are for convenience only and shall not be construed to modify, amend or otherwise alter the terms and provisions of this Lease.

### **BINDING EFFECT**

75. A. This Lease, and the terms, covenants, conditions and provisions hereof, shall not be binding on the part of Landlord unless and until a duplicate original thereof, duly executed by both parties, is delivered by Landlord to Tenant.

B. Anything in this Lease to the contrary notwithstanding, this Lease and any amendment to this Lease shall not be deemed to take effect until it has been approved in writing by the New York Department of Housing Preservation and Development ("HPD"). Landlord makes no representation that this Lease will be approved by HPD, and should HPD fail to approve this Lease or the parties fail to enter into a lease for the Demised Premises, for any reason whatsoever, Landlord shall not be responsible for reimbursing Tenant for any costs or expenses it incurred in connection with reviewing and negotiating the terms and provisions of this Lease or performing or preparing to perform any work at the Demised Premises.

C. Neither the Landlord, the Tenant nor the successors or assigns of either of them will in any way modify this Lease or any extension or renewal hereof so as to:

- (i) reduce the rent or any additional rent payable thereunder;
- (ii) reduce the term of years granted by this Lease; or
- (iii) surrender or accept a surrender of this Lease or otherwise extinguish the leasehold estate,

except in accordance with the terms of this Lease, without first obtaining the written consent of HPD and HDC, and any such purported reduction, modification or surrender thereof, without HPD and HDC's written consent, shall be void as against HPD and HDC or its designee.

#### **LIMITED PROFIT HOUSING COMPANY**

76. This Lease is subject to the powers, rights and privileges and the restrictions and limitations thereon on the Landlord as a limited-profit housing company under the supervision and control of the Commissioner of HPD pursuant to the Limited-Profit Housing Companies Law and the rights and powers of the Commissioner under said law or any amendments thereto.

#### **LIMITED PERSONAL GUARANTY**

77. In order to induce Owner to enter into this Lease, Chun Nam Kong and Raymond Tsang, have agreed to execute and deliver to Owner their personal guaranty of performance of Tenant's obligations under this Lease. A copy of the limited personal guaranty to be executed by Chun Nam Kong and Raymong Tsang is attached as Exhibit A. Nothing contained in the guaranty shall limit the Tenant's liability in the event of a breach of the terms and provisions of this Lease.

#### **NOTICES**

78. Any notice, demand, consent, approval, disapproval, or statement (collectively, "Notices"), from Landlord to Tenant or from Tenant to Landlord shall be in writing and shall be deemed duly given (i) if mailed by certified mail, postage prepaid, return receipt requested, (ii) if delivered by personal delivery, or (iii) only in the case of

Notices that are Real Estate tax statements or bills for additional rent, if mailed by first class mail, postage prepaid, to the address(es) for Notices set forth in this Paragraph 78.

Notices to Tenant shall be sent (i) to the address set forth on page 1 of this Lease until Tenant shall be in occupancy of the Demised Premises and, thereafter, to the Demised Premises.

Notices to Landlord shall be sent to the address of Landlord set forth on page 1 of this Lease or to such other address as Landlord shall have last designated in writing to Tenant, with a copy sent by certified mail, return receipt requested to Landlord's attorneys:

Kellner Herlihy Getty & Friedman, LLP  
470 Park Avenue South, 7<sup>th</sup> Floor N.  
New York, New York 10016  
Attention: Eugene F. Getty, Esq.

Notice shall be deemed served three (3) days after deposit in an official depository of the United States Postal Service or, if given by personal delivery, upon delivery.

Either Landlord or Tenant may, from time to time, change its address to which Notices are to be sent by written Notice to the other party given in accordance with the terms and provisions of this Paragraph 78.

#### **GENERAL**

79. In the event of any inconsistency between the provisions of this Rider and those contained in the Standard Form of Store Lease to which this Rider is annexed, the provisions of this Rider shall govern and be binding.

**Chinatown Apartments, Inc.**

**Café Diem Chinatown Inc.**

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

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

Name:

Name:

Title:

Title:



## EXHIBIT A

**SCHEDULE B**  
**TENANT'S INITIAL ALTERATIONS**

**SCHEDULE C**

**MACHINERY, EQUIPMENT AND APPLIANCES TO BE INSTALLED  
BY TENANT TO PREPARE DEMISED PREMISES FOR OPERATIONS**