

*Conced*  
At a Term, Part *44* of the Supreme Court of the State of New York, held in and for the County of Suffolk, at 210 Center Drive, Riverhead, New York 11501, on the *21<sup>st</sup>* day of *March* ~~June, 2009~~ *2011*

**HON. ELIZABETH HAZLITT EMERSON**

PRESENT: Hon. \_\_\_\_\_ Justice.

**HON. WILLIAM B. REBOLINI**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

-----X  
Deer Park Enterprise, LLC,

Index No.: *11-7719*

Plaintiff,

**ORDER TO SHOW CAUSE  
AND TEMPORARY  
RESTRAINING ORDER**

-against-

DNA 2050 Outlet, LLC,

Defendant.

MOTION/CROSS/OSC  
FEE PAID  
Judith A. Pascale  
Suffolk County Clerk

-----X

Plaintiff Deer Park Enterprise, LLC, ("DPE"), by their attorneys Simmons Jannace, LLP, having duly moved pursuant to C.P.L.R. § 6301 et seq. for: (i) a temporary restraining order restraining defendant DNA 2050 Outlet, LLC ("DNA") from transferring, selling, removing, detaching, disconnecting, altering, replacing, pledging, assigning or otherwise disposing of any fixture and/or other Improvement located in, attached to, or otherwise a part of, the premises located at the The Tanger Outlet Center at The Arches, in the City of Deer Park, County of Suffolk, State of New York, more particularly described in Exhibit "A" attached hereto ("the Premises"); an order requiring defendant to show cause why a preliminary injunction should not issue to restrain DNA from transferring, selling, removing, detaching, disconnecting, altering, replacing, pledging, assigning or otherwise disposing of any fixture and other

Improvement located in, attached to, or otherwise a part of, the Premises; and for such other and further relief as this Court deems just and proper.

Now, upon the annexed affirmation of Adam M. Levy, dated March 9, 2011; the affidavit of David Blumenfeld, sworn to on March 9, 2011; plaintiff's summons and complaint, dated March 9, 2011; and the Attorney Certification of Adam M. Levy, dated March 9, 2011, all exhibits annexed thereto, and on all pleadings and proceedings previously had,

**LET DEFENDANT DNA SHOW CAUSE** before this Court, at a Term, Part \_\_\_\_\_, Room \_\_\_\_\_ thereof, at the courthouse located at ~~400~~ ONE COURT STREET ~~Supreme Court Drive~~, in the Town of Riverhead, County of Suffolk, State of New York, on March 24, 2011, at 9:45 AM or as soon thereafter as counsel can be heard, why an Order should not be made, pending determination of this action, restraining DNA from transferring, selling, removing, detaching, disconnecting, altering, replacing, pledging, assigning or otherwise disposing of any fixture and/or other Improvement located in, attached to, or otherwise a part of, the premises located at the Premises; and granting DPE such other and further relief as this Court deems just and proper.

*Returned date*  
**IT IS HEREBY ORDERED** that pending the ~~hearing and determination~~ of this application, DNA <sup>is</sup> ~~having been given sufficient and reasonable notification of plaintiffs' application for this Order to Show Cause and Temporary Restraining Order, are~~ enjoined and restrained from transferring, selling, removing, detaching, disconnecting, altering, replacing, pledging, assigning or otherwise disposing of ~~any~~ <sup>the 3</sup> fixture <sup>1</sup> located in, attached to, or otherwise a part of, the Premises *for which the plaintiff paid pursuant to § 4(c) of the parties' lease.*

*ETC  
BC*

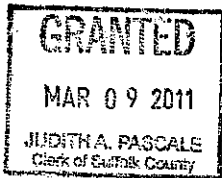
?  
~~IT IS FURTHER ORDERED that oral argument shall be required on the return date of this motion.~~

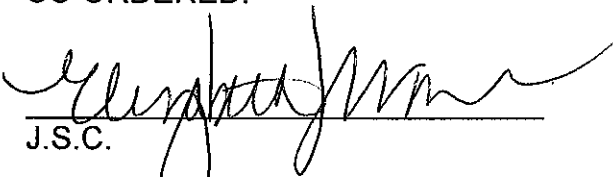
*personal service pursuant to CPLR 311-a*  
*personally*  
IT IS FURTHER ORDERED that ~~service~~ of this order, the papers upon which it is based, and the summons and complaint, be made by *personally* serving a copy of this order, supporting documents, and a copy of the summons and complaint on DNA on or before March 14, 2011, at their address located at 3238 Prospect Street, N.W. Washington, D.C. 20007, ~~via facsimile or overnight mail~~ *AND* and same shall constitute proper and valid service.

*CHS JSC*  
~~IT IS FURTHER ORDERED that proof of service of a copy of this order and the papers upon which it is based and the summons and complaint must be filed with the Clerk of the Court before or on the above scheduled return date of this Order to Show Cause.~~

*CHS JSC*  
~~IT IS FURTHER ORDERED that the defendant shall serve plaintiffs with opposition papers at least three (3) days prior to the return date of this Order.~~

Dated: March 9, 2011 SO ORDERED:



*cf*  
  
J.S.C.  
HON. ELIZABETH HAZLITT EMERSON

\_\_\_\_\_  
Clerk

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

-----X  
Deer Park Enterprise, LLC,

Plaintiff,

-against-

DNA 2050 Outlet, LLC,

Defendant.  
-----X

INDEX NO.:

**AFFIDAVIT IN SUPPORT**

State of New York )  
                                  ss.:  
County of Nassau )

David Blumenfeld, being duly sworn, deposes and says:

1. I am Vice President of BDG Deer Park Associates, the managing member of DPE Mezz, LLC, which is the sole member of plaintiff Deer Park Enterprise, LLC ("DPE"), a domestic limited liability company with an office located at 200 Robbins Lane, Syosset, New York 11791. As such, I am competent to make this affidavit on DPE's behalf.

2. I have personal knowledge of the facts set forth herein based on personal observations and/or my review of the business records of DPE, which records were made by, or from information transmitted by, a person with knowledge of the events described therein, at or near the time of the event described, and are kept in the ordinary course of the regularly conducted business activity of such person at DPE, and it is the regular practice of DPE to make such records.

3. I make this affidavit in support of DPE's Order to Show Cause pursuant to CPLR § 6301 et seq. for: (i) a temporary restraining order restraining defendant DNA 2050 Outlet, LLC ("DNA") from transferring, selling, removing, detaching, disconnecting, altering, replacing, pledging, assigning or otherwise disposing of any fixture and/or other Improvement located in, attached to, or otherwise a part of, the premises located at the The Tanger Outlet Center at The Arches, in the City of Deer Park, County of Suffolk, State of New York, more particularly described in the lease annexed hereto as Exhibit "A" ("the Premises"); (ii) an order requiring defendant to show cause why a preliminary injunction should not be issued to restrain DNA from transferring, selling, removing, detaching, disconnecting, altering, replacing, pledging, assigning or otherwise disposing of any fixture and/or other Improvement located in, attached to, or otherwise a part of, the Premises; and for such other and further relief as this Court deems just and proper.

4. DPE is a landlord/lessor of the Premises.

5. DNA is the lessee of the Premises pursuant to a lease entered into by the parties on or around September 23, 2009 (the "Lease").

6. The term of the Lease is 10 years (the "Term").

7. Pursuant to Section 4(e) of the Lease, DPE paid for the initial costs to construct the Premises. Section 4(e) provides as follows:

Tenant Allowance. Landlord agrees to pay the cost of Tenant's Initial Work (including the cost of Tenant's architectural drawings and permit fees) in amount not to exceed One Hundred Twenty Dollars and 00/100 (\$120.00) per square foot of Rentable Area of the Premises (the

"Tenant Allowance"). If the aggregate cost of Tenant's Initial Work shall exceed the Tenant Allowance, such extra cost shall be paid by Tenant. Disbursements of the Tenant Allowance shall be made in such amounts and at such times as are requested by Tenant pursuant to an itemized statement of Tenant setting forth the amounts sought, in the form approved by Landlord (an "Allowance Disbursement Request"). Each Allowance Disbursement Request shall (i) be duly executed by the Tenant, (ii) be submitted to Landlord not less than seven (7) business days prior to the proposed date for such advance, (iii) specify the specific items and costs of Tenant's Initial Work theretofore performed by Tenant to be paid or reimbursed with the proceeds of the requested advance, and (iv) be accompanied by waivers of lien by the Tenant's contractor and all subcontractors and materialmen, covering all work, labor and materials, including equipment and fixtures of all kinds, done, performed or furnished at, for or to the Premises and which were the subject of any prior disbursement. (Disbursements shall be made no more often than twice per month.) A 10% retainage will be retained by Landlord from each disbursement. Such retainage will be disbursed only upon the final completion of Tenant's Initial Work and receipt of all applicable governmental approvals and final lien waivers with respect to such Tenant's Initial Work, and upon Tenant opening for business in the Premises. Once commenced, Tenant shall not abandon or cease any of Tenant's Initial Work, unless such cessation results from causes beyond the control of Tenant (but Tenant promptly shall complete Tenant's Initial Work upon the resumption of its ability to do so). All materials, equipment, fixtures, or any other item comprising Tenant's Initial Work shall be constructed, installed or completed, as applicable, by Tenant free and clear of all mechanics', materialmans' or other liens. Landlord's approval of any plans for Tenant's Initial Work, release of funds from the Tenant Allowance, inspection of the Premises, or other acknowledgment of completion of any Tenant's Initial Work shall not be deemed an acknowledgment, representation or warranty to any person or entity that the Tenant's Initial Work has been completed adequately or in accordance with applicable laws. All

provisions of this Lease requiring Landlord's consent, approval, inspection, review or verification are for the sole benefit of Landlord.

Landlord shall be the legal title and beneficial owner of all alterations, additions, fixtures, equipment and other items in or about the Premises (collectively "Improvements") which were purchased with (directly or by reimbursement) the Tenant Allowance, regardless of who performed or initially paid for such installation or acquisition. The Tenant Allowance may not be used to purchase inventory or merchandise for sale by Tenant. All items purchased with (directly or by reimbursement) the Tenant Allowance, including any of Tenant's trade fixtures, furniture, point of sale system, or other personal property shall remain Landlord's Property and shall be surrendered by Tenant upon the expiration or other termination of this Lease. Each party shall prepare its federal, state and local income tax forms and schedules, and calculate taxable income, in a manner consistent with Landlord's ownership of such property for all taxable years.

(emphasis added)

8. DPE spent approximately \$333,000 improving the Premises in accordance with Section 4(e) of the Lease.

9. On or around March 4, 2011 and prior to the end of the Term, DNA began vacating the Premises in breach of the Lease.

10. DNA did not give DPE specific notice that it intended to vacate the Premises.

11. DPE has since learned that DNA is advertising via a sign located in the window of the Premises that the fixtures in the Premises are for sale.

12. Pursuant to Section 4(e) of the Lease, among other provisions, DPE has legal title to, and is the beneficial owner of, fixtures and all other improvements to the Premises, many of which may be unique. Also, the removal of these fixtures and other improvements may result in damage to the Premises.

13. Accordingly, DNA, as evidenced by its advertisement, is selling DPE's fixtures and/or other property.

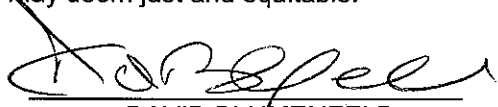
14. With this motion, DPE seeks to maintain the *status quo* to prevent immediate and irreparable injury, loss and/or damage to its real and personal property. DPE therefore respectfully requests that DNA be immediately restrained from selling DPE's property. Indeed, the underlying complaint seeks to recover based upon DNA's breach of the Lease and asserts causes of action based on, among other claims, conversion of the property that may be affixed to realty. As such, money damages may not be suitable to fully compensate DPE.

15. The equities certainly balance in DPE's favor since DPE spent approximately \$333,000 improving the Premises for DNA's use during the Term. DNA, in attempting to vacate the Premises without specific notice to DPE while selling DNA's property, is not only breaching the Lease, but is acting in an inequitable manner.

16. There is no adequate remedy at law. No request for the same or similar relief has previously been sought. ✓

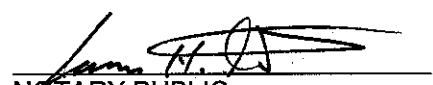


WHEREFORE, your deponent prays that the relief requested herein be granted in its entirety, together with such other and further relief as this Court may deem just and equitable.

  
DAVID BLUMENFELD

STATE OF NEW YORK )  
COUNTY OF NASSAU ) ss:

On March 9, 2011, before me personally came DAVID BLUMENFELD, to me known, who, by me duly sworn, did depose and say that deponent is a \_\_\_\_\_ of \_\_\_\_\_ as servicer for \_\_\_\_\_ described in, and which executed the foregoing Affidavit, and that deponent signed deponent's name by like order.

  
NOTARY PUBLIC

JAMES DECURTIS  
Notary Public State of New York  
NO. 02DE6183087  
Qualified in Nassau County  
My Commission Expires March 10, 2012

**Exhibit A**

LEASE AGREEMENT  
BETWEEN  
DNA 2050 OUTLET, LLC  
AND  
DEER PARK ENTERPRISE, LLC  
FOR THE  
TANGER OUTLET CENTER  
AT  
THE ARCHES  
IN  
DEER PARK, NEW YORK



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STATE OF NEW YORK  
COUNTY OF SUFFOLK

LEASE AGREEMENT  
DEER PARK, NEW YORK

THIS LEASE AGREEMENT is entered into <sup>effective</sup> September 23rd of 2009, (the "Lease") by and between DEER PARK ENTERPRISE, LLC, a New York limited liability company having an office or located at 3200 Northline Avenue, Suite 360, Greensboro, North Carolina 27408 (hereinafter referred to as "Landlord") and DNA 2050 OUTLET, LLC, a \_\_\_\_\_ limited liability company, having an office at 3238 Prospect Street, N.W., Washington, DC 20007 (hereinafter referred to as "Tenant") doing business as DNA 2050 OUTLET.

#### DATA SUMMARY

The following references furnish data to be incorporated in the specified Sections of this Lease and shall be construed to incorporate the entire Section:

(1) **Location of Premises** (Section 1):

City: Deer Park  
State: New York

Suite number: 1397

Size of Premises: consisting of approximately 2,779 square feet of leasable area

(2) **Length of Term** (Section 2): Ten (10) Lease Years

(3) **Fixed Rent:** None.

(4) **Percentage Factor** (Section 3(b)): Ten Percent (10%)

(5) **Security Deposit:** None

(6) **Projected Delivery Date:** Thirty (30) days following the full execution and delivery of this Lease (Section 4(b))

(7) **Outside Delivery Date:** the date which is two (2) years following the date this Lease is fully executed by both parties (Section 2(a))

(8) **Permitted Use:** only for the retail sale of men's and women's apparel and (as an incidental use only) directly related accessories, provided same are typically sold in the majority of stores operating under the DNA 2050 or G Star trade names, or such other name as Tenant shall be operating under in accordance with the terms hereof, and for no other purpose whatsoever (subject to Section 7(a)).

Permitted Trade Name: DNA 2050 OUTLET, or such other name as may be approved by Landlord in writing; Landlord's approval of a change in Tenant's trade name will not be unreasonably withheld.

- (9) **Exterior Sign** (subject to Landlord's Sign Criteria and Section 7(i))
- (10) **Retail Restriction Limit**: Fifteen (15) miles of the perimeter of the Shopping Center in which the Premises is located (subject to the conditions set forth in Section 37)
- (11) **Tenant's Notice Address** (see Section 19)
- (12) **Tenant's Billing Address** (see Section 19)
- (13) **Guarantor(s) Name and Address** (see Section 40)

IN CONSIDERATION of Ten Dollars (\$10.00) and other good and valuable consideration and the mutual covenants contained herein and intending to be legally bound hereby, Landlord and Tenant hereby agree with each other as follows:

1. Premises. Landlord leases to Tenant and Tenant leases from Landlord, upon and subject to the terms and conditions and provisions hereof, the premises (herein the "Premises") which is described in Section 1 of the Data Summary, and located in the shopping center shown on the Site Plan attached hereto as EXHIBIT "A" and made a part hereof.

The Premises is located on property identified in Section 1 of the Data Summary, said property being more fully described on EXHIBIT "B" attached hereto and made a part hereof (the "Site" or "Shopping Center"). It is understood and agreed that all other parcels shown on the Site Plan are shown for the sole purpose of locating and designating such parcels for the purposes of Section 6 hereof.

2. Term.

(a) The term of this Lease shall be as stated in the Data Summary beginning upon the date on which Landlord delivers possession of the Premises to Tenant with Landlord's Work having been Substantially Completed, such date being hereinafter referred to as the "Commencement Date". Unless terminated by Landlord as hereinafter provided, the term of this Lease shall end on the last day of the last consecutive full lease year thereafter, as said term "lease year" is defined in Section 2(b) hereof (the day on which the term ends is referred to as the "Termination Date"); provided, however, that if the Landlord has not given the notice that the Premises are ready for occupancy as provided above on or before the Outside Delivery Date set forth in the Data Summary,



then upon written notice of termination by either party delivered prior to such notice of ready for occupancy, this Lease shall become null and void and both parties hereto shall be relieved of all obligations hereunder.

(b) The term "lease year" as used herein shall mean a period of twelve (12) consecutive full calendar months during the Term of this Lease, provided, however, that the first lease year shall begin on the Commencement Date and shall end on the last day of the month in which the first anniversary of the Rent Commencement Date occurs. The "Rent Commencement Date" shall be the earlier of (i) the date on which Tenant shall first open the Premises for business to the public or (ii) February 1, 2010 (provided, however, that if Landlord does not deliver possession of the Premises to Tenant by the Projected Delivery Date, such February 1, 2010 date shall be extended on a day for day basis for each day after the Projected Delivery Date until Landlord shall have delivered possession of the Premises to Tenant, excluding the number of days of Tenant Delay (as hereinafter defined)).

(c) At the time that the Commencement Date and the Rent Commencement Date are established and upon the request of either party, Landlord and Tenant will promptly execute a Memorandum of Lease prepared by Landlord stipulating the Commencement Date, the Rent Commencement Date and the expiration date of the term of this Lease as provided herein, referring to this Lease, and describing the property herein leased but containing no other terms or provisions hereof, which terms and provisions shall be deemed incorporated into the Memorandum of Lease. Tenant shall not have the right to record this Lease. Either party shall have the right to record the Memorandum of Lease at such party's own expense.

### 3. Rent.

(a) Fixed Rent. There shall be no fixed rent payable pursuant to this Lease.

(b) Percentage Rent. Tenant shall and will pay to Landlord at the time and in the manner herein specified, an amount equal to the Percentage Factor stated in the Data Summary of the amount of Tenant's gross sales made in, upon or from the Premises during each lease year of the term hereof ("Percentage Rent").

(i) Percentage Rent Payment. The Percentage Rent shall be paid as follows: Within ten (10) days after the end of each calendar month of the term hereof, commencing with the tenth (10<sup>th</sup>) day of the second month of the first lease year, Tenant shall furnish to Landlord a statement, certified by Tenant to be correct, showing the total gross sales made in, upon, or from the Premises during the preceding calendar month, Tenant shall accompany each





such statement with a payment to Landlord equal to the Percentage Factor stated in the Data Summary of the total gross sales less the amount of the Percentage Rent previously paid for such lease year.

Within twenty (20) days after the end of each lease year of the term hereof, Tenant shall furnish to Landlord a statement in writing, certified by a Certified Public Accountant (or by the chief financial officer of Tenant if approved by Landlord), showing the total gross sales by months made in, upon, or from the Premises during the preceding lease year, at which time an adjustment shall be made between Landlord and Tenant to the end that the total Percentage Rent paid for each such lease year shall be a sum equal to the Percentage Factor stated in the Data Summary of the total gross sales for that lease year so that the Percentage Rent, although payable monthly shall be computed and adjusted on an annual basis.

(ii) Books of Accounts. Tenant agrees to keep on the Premises or at its principal office accurate books and records of the sales made on the Premises, which books and records shall be kept in accordance with accepted accounting practice, and shall be open at all reasonable times to Landlord or its representative for the purpose of examining the same to determine the accuracy of the statements of the gross sales submitted by Tenant as aforesaid. The books and records of account shall also include all federal, state and local tax returns of Tenant relating to Tenant's sales. In the event an examination of the records of Tenant shall disclose that gross sales as reported in the aforesaid statements were less, by one percent (1%) or more, than the gross sales actually made by Tenant during any lease year, Tenant agrees to pay to Landlord the reasonable cost of any such audit. Any additional Percentage Rent found due and owing as a result of any audit shall immediately become due and payable. Landlord shall have the right to inspect the records of Tenant in connection with sales made by Tenant from other stores operated by it, but only in the event such examination becomes necessary to ascertain the gross sales made by Tenant from the Premises.

(iii) Gross Sales. The term "gross sales" as used in this Lease shall be deemed to mean the aggregate gross amount of all sales of merchandise made and all charges for services performed by Tenant or any persons, firms or corporations on its behalf, or any tenants or concessionaires of Tenant, from, in or upon the Premises, including orders taken upon the Premises for delivery from sources other than the Premises, and whether wholesale or retail, and whether cash or credit, less refunds for merchandise returned for which cash has been refunded or credit given. Landlord and Tenant agree that in the event that Tenant has in the Premises a computer, portal or machine set up through which customers of Tenant may access Tenant's website on the world wide

web, any sales made through such access shall be included in gross sales. Gross sales shall also include the value of any consideration other than money, as well as money, received by Tenant or by subtenants, concessionaires or other persons firms or corporations under subleases or arrangements of any nature for the right to occupy or to transact business upon the Premises. The amount of any sales and excise taxes whatsoever, and however imposed, computed or paid for sales from, in, or upon the Premises, shall, to the extent included in sales, be deducted when determining gross sales.

In the event that Tenant shall fail to operate its business in the Premises in the manner and on each day as required pursuant to Section 7 hereof, then, for purposes of computing the Percentage Rent for such lease year affected by Tenant's failure to so operate, Tenant's gross sales for such lease year shall be adjusted by multiplying Tenant's gross sales for such lease year by a fraction, the numerator of which shall be the number "365" and the denominator of which shall be the actual number of days in such lease year during which Tenant was open for business and operating in accordance with Section 7.

(c) Late Rental Payments. For each payment required hereunder that is not received on or before the fifth (5<sup>th</sup>) day after the same is due, Tenant shall immediately pay, as additional rent, a service charge equal to four percent (4%) of the amount overdue. Notwithstanding the foregoing, such late charge shall not be imposed the first time it would otherwise be due during any twelve (12) month period, provided Tenant shall make such payment within ten (10) days after notice from Landlord that payment has not been timely received. This Section 3(c), however, shall not be construed to extend the date for any payment required hereunder, and notwithstanding the imposition of such service charge Landlord shall retain all of its rights under Section 17 hereof if any payment required to be made by Tenant is not made when due, and neither the demand for, nor collection by, Landlord of such charge shall be construed as a cure of such failure by Tenant. It is agreed that such service charge is a fair and reasonable charge under the circumstances and shall not be construed as interest on a debt payment. In the event any charge imposed hereunder or under any other section of this Lease is determined by a court of competent jurisdiction to be interest, then no such interest charge shall be calculated at a rate which is higher than the maximum rate which is allowed under the usury laws of the State in which the Premises is located, which maximum rate of interest shall be substituted for the rate in excess thereof, if any, computed pursuant to this Lease. In addition, in the event that any check received by Landlord from Tenant in payment of any amounts payable by Tenant under this Lease is returned unpaid by Tenant's bank or other financial institution, then Tenant shall pay to Landlord an

amount equal to maximum fee allowed by law as a service processing fee.

(d) If Tenant's gross sales (as hereinafter defined) for the fifth (5<sup>th</sup>) lease year of the Term hereof are less than the sum of One Million Dollars (\$1,000,000.00) (which sum shall be adjusted to reflect any portion of such Lease Year when Tenant was not open and operating its business), Tenant shall have the right to terminate this Lease. If Tenant exercise such right of termination, it must do so by giving notice to Landlord not later than fifteen (15) days after the earlier of (i) the date that Tenant delivers to Landlord Tenant's annual statement of gross sales for such fifth (5<sup>th</sup>) lease year, prepared in accordance with Section 3(b) above, or (ii) the date that Tenant is required to deliver such statement. Such statement may, at Landlord election, be subject to audit by Landlord in accordance with Section 3(b)(ii) above. Such notice shall fix a termination date for the Lease (the "Early Termination Date") which shall not be less than one hundred twenty (120) nor more than one hundred fifty (150) days following the giving of such notice. Tenant's rights under this paragraph shall not apply if Tenant shall not have operated its business under the Tenant's Trade Name throughout the Term of this Lease (except only for temporary closures due to casualty or other circumstances beyond Tenant's reasonable control or as otherwise permitted under the terms of this Lease). For purposes of this paragraph, Tenant's gross sales shall include any sales which are deemed to be included in Tenant's gross sales pursuant to the provisions of Section 37, below.

#### 4. Construction of Premises.

(a) Construction. Landlord agrees to construct the building in which the Premises shall be located. Landlord agrees to prepare the interior of the Premises for occupancy by Tenant in accordance with EXHIBIT "C" ("Landlord's Work") attached hereto and made a part hereof. Except for the work set forth in EXHIBIT "C", Landlord shall deliver, and Tenant shall accept, the Premises in its present "as is" condition and Landlord shall have no obligations whatsoever to furnish, render or supply any work, labor, services, materials, fixtures, furniture, equipment or decorations to ready the Premises for Tenant's occupancy. If the Tenant desires additional installations that vary from or are in excess of those indicated on EXHIBIT "C", Tenant will pay for those items and their installation upon terms agreed upon by Landlord and Tenant.

(b) Completion Date. Landlord agrees that Landlord's Work and Tenant's Initial Work shall be substantially completed on, or about, the later of the two following dates, that is (i) the



Projected Delivery Date stated in the Data Summary, or (ii) the expiration of such period after such date specified in clause (i) as shall equal the aggregate period or periods of delay (hereinafter referred to as "unavoidable delays"), if any, in construction of the Premises in consequence of any acts of God, strikes, labor disputes, inability to obtain material or labor on reasonable terms, governmental laws, regulations or restrictions, acts of a public enemy, or any cause whatever beyond the control of Landlord. In the event that Landlord has reasonable knowledge or belief that the Premises will not be substantially completed on or before the date specified in clause (i) above, then Landlord shall give Tenant at least thirty (30) days written notice of the revised date prior to which the Premises will be substantially completed, subject to such unavoidable delays. Under no circumstances shall Landlord be liable to Tenant in damages for any delay in commencing or completing the Premises or for a total failure to complete same.

(c) Tenant's Initial Work. All work (other than Landlord's Work) necessary for Tenant to open for business, including the complete construction and fitting out of the Premises, installation of all furniture, equipment, fixtures, signage, security systems, computer system and other equipment (collectively, "Tenant's Initial Work") shall be performed by Tenant in accordance with the terms and conditions hereof, at Tenant's cost and expense, subject, however, to Landlord's obligation to pay the Tenant Allowance (as hereinafter defined). Tenant shall provide Landlord with Tenant's proposed drawings, plans and specifications and any other information pertaining to Tenant's Initial Work ("Tenant's Initial Work Plans") for Landlord's approval not later than November 1, 2009. If Landlord does not approve of Tenant's Initial Work Plans as initially submitted to Landlord (or as may be resubmitted to Landlord), Landlord shall advise Tenant of the respects in which Tenant's Initial Work Plans are not acceptable to Landlord and Tenant shall, within ten (10) days thereafter, revise and resubmit Tenant's Initial Work Plans to address Landlord's concerns. Tenant's Initial Work Plans shall be drawn by an architect licensed in the state in which the Premises is located, and shall be in compliance with all applicable local, municipal, state, federal or other governmental rules, ordinances, regulations and laws including without limitation, the requirements of the Americans with Disabilities Act of 1990 as amended ("ADA"). Tenant shall file Tenant's Initial Work Plans with the applicable governing authorities within ten (10) days following Landlord's approval thereof, and Tenant shall diligently pursue the issuance of each permit and approval required for the performance of Tenant's Initial Work at its expense. Landlord (at no out of pocket cost to Landlord) will cooperate with Tenant and will execute any properly completed necessary applications for such permits. Promptly upon the issuance of such permits and approvals, Tenant shall commence



and diligently prosecute the performance of Tenant's Initial Work. Tenant's Initial Work shall be performed in a good and workmanlike manner in compliance with all applicable laws, in compliance with Tenant's Initial Work Plans as approved by Landlord, and free and clear of any and all mechanics' or other liens. All contractors performing any part of Tenant's Initial Work shall be subject to Landlord's prior written approval. Tenant shall diligently prosecute the performance of Tenant's Initial Work so as to complete Tenant's Initial Work and open for business in the Premises not later than February 1, 2010.

(d) Ready for Occupancy. In the event a dispute occurs as to whether or not Landlord's Work has been substantially completed, the certification of Landlord's architect that Landlord's Work has been substantially completed shall be conclusive and binding upon the parties hereto. The acceptance of possession by Tenant of the Premises shall be deemed conclusive that the Premises, driveways, parking areas, and sidewalks were substantially completed and in good order and condition at the commencement of the lease term, and that Tenant accepted delivery of the Premises as substantially completed. If Tenant has taken possession of the Premises as substantially completed, Landlord agrees that it will diligently carry forward the construction of the Premises to final completion.

(e) Tenant Allowance. Landlord agrees to pay the cost of Tenant's Initial Work (including the cost of Tenant's architectural drawings and permit fees) in amount not to exceed One Hundred Twenty Dollars and 00/100 (\$120.00) per square foot of Rentable Area of the Premises (the "Tenant Allowance"). If the aggregate cost of Tenant's Initial Work shall exceed the Tenant Allowance, such extra cost shall be paid by Tenant. Disbursements of the Tenant Allowance shall be made in such amounts and at such times as are requested by Tenant pursuant to an itemized statement of Tenant setting forth the amounts sought, in the form approved by Landlord (an "Allowance Disbursement Request"). Each Allowance Disbursement Request shall (i) be duly executed by the Tenant, (ii) be submitted to Landlord not less than seven (7) business days prior to the proposed date for such advance, (iii) specify the specific items and costs of Tenant's Initial Work theretofore performed by Tenant to be paid or reimbursed with the proceeds of the requested advance, and (iv) be accompanied by waivers of lien by the Tenant's contractor and all subcontractors and materialmen, covering all work, labor and materials, including equipment and fixtures of all kinds, done, performed or furnished at, for or to the Premises and which were the subject of any prior disbursement. (Disbursements shall be made no more often than twice per month.) A 10% retainage will be retained by Landlord from each disbursement. Such retainage will be disbursed only upon the final completion of Tenant's Initial Work and receipt of all applicable governmental approvals and final lien waivers with respect to such Tenant's Initial Work,

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and upon Tenant opening for business in the Premises. Once commenced, Tenant shall not abandon or cease any of Tenant's Initial Work, unless such cessation results from causes beyond the control of Tenant (but Tenant promptly shall complete Tenant's Initial Work upon the resumption of its ability to do so). All materials, equipment, fixtures, or any other item comprising Tenant's Initial Work shall be constructed, installed or completed, as applicable, by Tenant free and clear of all mechanics', materialmans' or other liens. Landlord's approval of any plans for Tenant's Initial Work, release of funds from the Tenant Allowance, inspection of the Premises, or other acknowledgment of completion of any Tenant's Initial Work shall not be deemed an acknowledgment, representation or warranty to any person or entity that the Tenant's Initial Work has been completed adequately or in accordance with applicable laws. All provisions of this Lease requiring Landlord's consent, approval, inspection, review or verification are for the sole benefit of Landlord.

Landlord shall be the legal title and beneficial owner of all alterations, additions, fixtures, equipment and other items in or about the Premises (collectively "Improvements") which were purchased with (directly or by reimbursement) the Tenant Allowance, regardless of who performed or initially paid for such installation or acquisition. The Tenant Allowance may not be used to purchase inventory or merchandise for sale by Tenant. All items purchased with (directly or by reimbursement) the Tenant Allowance, including any of Tenant's trade fixtures, furniture, point of sale system, or other personal property shall remain Landlord's Property and shall be surrendered by Tenant upon the expiration or other termination of this Lease. Each party shall prepare its federal, state and local income tax forms and schedules, and calculate taxable income, in a manner consistent with Landlord's ownership of such property for all taxable years.

5. Installations by Tenant. Landlord may, prior to notifying Tenant that the Premises are ready for occupancy as provided in Section 2(a) hereof, make the Premises available to Tenant for the installation of its merchandise at Tenant's sole risk, so long as such installation does not interfere with the Landlord's work on the interior of the Premises, but the Commencement Date shall nevertheless be determined as provided in Section 2 hereof. Tenant shall observe and perform all of its obligations under this Lease (except its obligations to pay Fixed Rent, Percentage Rent, or Additional Rent) from the date that the Premises are so made available to Tenant for its work and installations until the Commencement Date, as defined in Section 2 hereof, in the same manner as though the lease began when the Premises were so made available to Tenant. All work, including construction performed by or for Tenant in the Premises shall be in accordance with applicable laws and building codes; shall be

performed in a good and workmanlike manner; and shall be performed by a commercial general contractor acceptable to Landlord and licensed in the state in which the Premises is located.

6. Use of Parking Areas and Walkways.

(a) Common Areas. Landlord covenants and agrees that during the term of this Lease, and subject to the provisions hereinafter set forth in Sections 6(b), 6(c), 7(g), 8(e) and 8(f) hereof, Tenant and its officers, employees, agents, customers, business visitors, business guests, licensees and invitees shall be entitled to the non-exclusive use of the parking areas, driveways and walkways within the Site (hereinafter referred to as "Common Areas"), but such use shall be in common with Landlord and all others to whom Landlord has or may hereafter grant similar nonexclusive rights to use the same, including, but not limited to, the owners and tenants of the Site and any lands added thereto, and the officers, employees, agents, customers, business visitors, business guests, licensees and invitees of such owners and tenants, their successors and assigns; provided, however, that such use by Tenant shall be subject to such rules and regulations as Landlord may from time to time adopt governing the same; and provided, further, that Landlord shall at all times have full control, management and direction of said Common Areas, and that Landlord shall have the right at any time to change the layout thereof, including the right to reasonably add to or subtract from their shape and size, as well as to alter their location.

(b) Changes by Landlord. It is understood that EXHIBIT "A" indicates, in general, the proposed plan for development of the Site of which the Premises are a part; that Landlord, in building and operating the improvements on the Site, may (in addition to any specific rights to amend the same elsewhere reserved in this Lease) make such other reasonable departures from said plan as Landlord, in its sole discretion, may from time to time find proper. Landlord may, in its discretion, change the location of other tenants and the nature of any occupancy of any store unit at any time, except only as otherwise provided in this Lease. Tenant understands and agrees that Landlord may from time to time make, anywhere within the Site, alterations or additions to the building on the Site or any lands added thereto, construct additional buildings or improvements and make alterations thereto. It is further understood and agreed that EXHIBIT "A" indicates only a proposed plan of development for the Site. There is no obligation upon Landlord to complete the improvements shown on EXHIBIT "A" other than the improvements necessary to Tenant's use of the Premises.



Further, Landlord reserves and is hereby granted the right, upon ninety (90) days written notice to Tenant (a "Relocation Notice"), to relocate Tenant and to substitute for the Premises hereunder other premises within the Shopping Center for the premises originally leased hereunder for all uses and purposes as though originally leased to Tenant at the time of the execution hereof; provided, however, the substitute premises shall not contain an area that is ten percent (10%) greater or less than the square footage contained in the original leased Premises, and shall not have frontage that is less than ninety percent (90%) of the frontage of the original leased Premises. All rent and other charges under the Lease shall be adjusted in accordance with the square footage contained in the substitute premises. Landlord agrees to pay the expense reasonably incurred by Tenant incidental to such substitution of premises, including but not limited to moving expenses. Landlord agrees to furnish the substitute premises with decoration and improvements similar to those in the original leased Premises. If Landlord shall give a Relocation Notice, Tenant shall have the right, by notice given to Landlord within fifteen (15) days after Landlord shall have given Tenant such Relocation Notice, to terminate this Lease effective as of the ninetieth (90<sup>th</sup>) day after Landlord shall have given Tenant such Relocation Notice, provided, however, that if Tenant shall give such notice to Landlord that Tenant is electing to terminate this Lease, Landlord shall have the right, for a period of fifteen (15) days after Tenant shall have given such termination notice, to give notice to Tenant that Landlord is withdrawing the Relocation Notice, in which event Tenant's termination notice shall be void and of no force or effect.

(c) Right to Close Common Areas. Landlord shall have the right to close any or all portions of the Common Areas to such extent as may, in the opinion of Landlord's counsel, be legally sufficient to prevent a dedication thereof or the accrual of any rights to any person or to the public therein and to close temporarily, if necessary, any part of the Common Areas in order to discourage non-customer parking. All space, areas, and facilities within the Site are to be used and occupied under a license, and if the amount of such space, areas and facilities are diminished, this Lease shall remain in full force and effect and Landlord shall not be subject to any liability nor will Tenant be entitled to any compensation or diminution of rent, nor shall diminution of such space, areas and facilities be deemed constructive or actual eviction.

## 7. Use and Care of Premises by Tenant

(a) Tenant's Use of Premises. Tenant shall use the Premises only for the Permitted Use stated in the Data Summary. Tenant shall sell merchandise from the Premises at discount prices, namely



prices that are at least thirty percent (30%) less than the prices charged by the majority of the other retailers in the metropolitan area in which the Site is located that sell the same or substantially the same merchandise at full retail mark-up, provided, however, that not more than thirty percent (30%) of the merchandise sold in the Premises may be sold at full retail price. Tenant shall operate its business in the Premises as a manufacturer's factory direct outlet selling its merchandise at discount prices. Tenant agrees that it will not use, or permit or suffer the use of, the Premises, or any part thereof, for any other business or purpose. Tenant shall operate and advertise the Premises under a name of which the Tradename designated on the Data Summary is the primary component. Products manufactured by or bearing the label(s) of any other tenant in the Shopping Center whose lease predates the date of this Lease shall not be sold in, from or upon the Premises unless such other tenant shall have consented thereto in writing.

Notwithstanding any other provision of this Lease, in no event whatsoever shall Tenant, its affiliates, successors, licensees, sublessees, assignees or any other occupant, be permitted to operate a business within the Premises for the purposes of (i) a discount/value hard goods retail store; or (ii) any store primarily offering kitchenware and/or giftware and/or interior or exterior home furnishings and/or Christmas and seasonal decorations; or (iii) an off-price variety store selling majority of items for One Dollar (\$1.00) or less; or (iv) any store primarily selling ice cream; or (v) any store having its principle business as the retail sale of coffee or espresso based beverages; or (vi) any business operating under the name "Dunkin Donuts".

(b) Nature of Use. Tenant shall use and occupy the Premises in a careful, safe and proper manner and shall keep the Premises in a clean and safe condition in accordance with applicable laws, regulations and ordinances and the lawful directions of proper public officers and shall not do, or fail to do, anything within the Premises to increase the obligations or liabilities of the Landlord under any applicable laws, regulations and ordinances. Tenant shall use and maintain the Premises consistent with present reasonable standards of good shopping center operations, and Tenant shall not permit solicitations, demonstrations, itinerant vending or any other activities inconsistent with such standards. Tenant shall not use any space in the Shopping Center outside of the Premises for sale, storage or any other undertaking. Tenant shall keep the temperature within the Premises at such levels so as to prevent freezing of water in pipes and fixtures. Tenant shall not move any safe or any other heavy or bulky equipment or fixtures into or out of the Premises without Landlord's prior written consent which shall not be unreasonably withheld. Tenant agrees that it will not place a load on any floor exceeding the floor load

per square foot which such floor was designed to carry, and will not install, operate or maintain in the Premises any heavy equipment except in such manner as to achieve a proper distribution of weight.

(c) Reputation of the Site. Tenant shall not use, or allow the Premises to be used, for any purpose other than as specified herein and shall not use nor permit the Premises to be used for any unlawful, disreputable or immoral purpose or in any way that will injure the reputation of the building in which the Premises are situated, nor permit the Premises to be occupied in whole or in part by any other person except as otherwise provided herein.

(d) Extra Hazardous Activity. Tenant agrees that it will not do or suffer to be done, or keep or suffer to be kept, anything in, upon or about the Premises which will contravene Landlord's policies insuring against loss or damage by fire or other hazards, or which will prevent Landlord from procuring such policies in companies acceptable to Landlord; and if anything done, omitted to be done or suffered to be done by Tenant, or kept, or suffered by Tenant to be kept, in, upon or about the Premises shall cause the rate of fire or other insurance on the Premises or other property of Landlord to be increased beyond the rate from time to time applicable to the Premises for use for the purposes permitted under this Lease or to such other property for the use or uses made thereof, Tenant will pay the amount of such increase promptly upon Landlord's demand.

(e) Painting and Decorating. Tenant will not paint or decorate any part of the exterior of the Premises, or change the architectural treatment thereof, without first obtaining Landlord's written approval of such painting or decoration; and Tenant will remove promptly upon order of Landlord any paint or any such decoration which has been so applied or installed without Landlord's prior written approval, or take such action with reference thereto as Landlord may direct.

(f) Snow and Ice. Landlord shall remove snow and ice from areas contiguous to the Premises and from the roof of the Premises and shall maintain the same unobstructed.

(g) Rubbish and Trash. Tenant shall not permit the accumulation of rubbish, trash, garbage and other refuse (collectively "Refuse") in and around the Premises, will remove same at Tenant's expense, and will keep such Refuse in proper containers on the interior of the Premises until removal by Tenant into the appropriate containers in the collection area designated by Landlord. In the event Tenant fails to remove any accumulation of Refuse within three (3) days after notice by Landlord to remove the same, Landlord shall have the right to remove the same in which

event the cost thereof shall be paid by Tenant as additional rent for the following month except that Landlord shall at no time be obligated to remove the same but may cancel this Lease if continual violations occur. In the event the City or Town in which the Shopping Center of which the Premises is a part is located, or other governmental authority or service provider, levies a service fee or other charge for the collection and removal of Tenant's refuse, Tenant shall pay promptly when due said fee or charge for such service.

Landlord at its sole option and upon notice to Tenant may designate a provider (or if Landlord itself elects to act as the provider) for Refuse collection and removal services to be used by tenants of the Shopping Center, and Tenant agrees to use only the provider designated by Landlord, provided the cost to Tenant therefor is no greater than the cost Tenant would incur if Tenant contracted directly with a reputable independent trash removal contractor providing the same service [including all costs of initiating and maintaining service, leasing containers, pad rental charges (if available) and the costs of removal]. Tenant shall pay the designated provider a monthly fee for such services, which amount shall not be increased more than once per calendar year. In addition, Tenant shall pay to such designated provider the cost of removal of any of Tenant's excessive Refuse or Refuse which requires special handling out of the ordinary course of waste disposal.

(h) Indemnification by Tenant. Tenant will indemnify Landlord and hold Landlord harmless against all claims, demands, and judgments for loss, damage, or injury to property or person, resulting or occurring by reason of the use and occupancy of the Premises by Tenant and the exercise of Landlord's rights under Section 11 hereof. Landlord may recover any and all costs and expenses incurred by Landlord, including, without limitation, court costs and reasonable attorneys' fees, in enforcing any of its rights or remedies under this Lease.

(i) Signs. Tenant will place, erect and maintain at its sole expense on the exterior surface of the Premises a sign as designated in and in compliance with Landlord's Sign Criteria, to be located in a place and to be of a style, color and size that conforms with all applicable governmental ordinances and is approved in advance in writing by the Landlord. The sign shall include the Tradename designated on the Data Summary as a primary component. Such sign as approved by Landlord shall be installed by Tenant on or prior to the date which is fifteen (15) days following the Commencement Date of this Lease. Failure to comply with the installation requirements as set forth herein shall constitute a default under this Lease. Tenant shall maintain any sign permitted hereunder in a good state of repair and shall save the Landlord



harmless from any loss, cost or damage as a result of the maintenance of or existence of the same, and shall repair any damage which may have been caused by the maintenance of same. Landlord may, in its reasonable business judgment as it deems necessary, erect or replace an under-soffit sign, a front door logo and a back door sign consistent with Landlord's signage for the Shopping Center of a size and a style similar and equivalent in quality to signs then being used in the Shopping Center. The cost expended by Landlord for such signs shall be additional rent and shall be due and payable with the next installment of rent thereafter due under this Lease.

Landlord may provide at Tenant's sole cost and expense a "Coming Soon Sign" which will be displayed in the store front window of the Premises. The Tenant permitted tradename, in vinyl block letters, will appear in a professionally created poster identifying the Tenant and the Shopping Center. The cost of said sign shall be \$50.00. The Tenant may request additional signs from the Landlord at its sole cost and expense. Landlord will bill Tenant for the cost of the sign on Tenant's first rental invoice as a separate line item and Tenant will pay the same along with its first payment of rent.

(j) Waste. During the term of this Lease, or any renewal or extension thereof, Tenant shall permit no waste, damage or injury to the Premises and Tenant shall initiate and carry out a program of regular maintenance and repair of the Premises so as to impede, to the extent possible, deterioration by ordinary wear and tear.

#### 8. Operation of Business.

(a) Open for Business. Tenant agrees to occupy the Premises and open its store for business fully fixtured, stocked and staffed not later than February 1, 2010, and thereafter to continuously conduct in one hundred percent (100%) of the space within the Premises the business permitted under Section 7 hereof on all business days, except only as otherwise provided in Sections 8(b) and 8(d) hereof; this covenant by Tenant is a material consideration to Landlord hereunder in order that Tenant might produce the maximum gross sales possible from the Premises during the lease term. Tenant further agrees to refer to the Shopping Center by name whenever designating the location of the Premises in all advertising, billboards, stationery and other local media.

(b) Business Hours. Tenant will keep its store in the Premises open for business with the public in accordance with the hours established by Landlord, but not less than the minimum hours set forth in Landlord's shopping center handbook as provided to Tenant's store manager by Landlord's shopping center management at



the time of orientation as may be revised from time to time (the "Required Store Hours").

Except as it may be necessary that the Premises be closed on account of the order of any duly constituted authority, or for the purpose of making repairs or improvements, or during the period of strikes, lockouts, emergencies or other causes beyond Tenant's control, Tenant shall maintain the Required Store Hours.

(c) Landlord Approval of Advertising. Tenant will not place or suffer to be placed, or maintain on the interior surface of any display windows or doors of the Premises any sign or advertising matter or other thing of any kind without first obtaining Landlord's written approval thereof. Tenant will not place anything or allow anything to be placed near the glass of any door, partition, wall or window which may be unsightly from outside the Premises. Any sign or display visible from outside the Premises which does not meet the above criteria may be removed at any time by Landlord without Landlord incurring any liability therefor.

(d) Use of Space. Tenant agrees to carry sufficient merchandise in the Premises at all times, but to warehouse, store and/or stock only such quantities of goods, wares and merchandise as are reasonably required by Tenant for sale at retail at, in, on or from the Premises. Tenant agrees to fully and adequately staff the Premises with sufficient employees for the purpose of selling said merchandise and to use for office, clerical or other non-selling purposes only such space in the Premises as is reasonably required for Tenant's business therein, not including any other business of Tenant in locations other than the Premises.

(e) Character of Operations. Tenant will not conduct any auction, fire, bankruptcy, store closing, liquidation, going out of business or closeout sales, provided, however, that this provision shall not preclude the conduct of periodic seasonal promotional or clearance sales. Tenant will not utilize any unethical method of business operation. Tenant will not use or permit the use of any apparatus for sound reproduction or transmission of any musical instrument in such manner that the sounds so reproduced transmitted or procured shall be unreasonably audible beyond the interior of the Premises; will not cause or permit objectionable odors to emanate or be unreasonably dispelled from the Premises; and will use its best efforts to prevent the parking or standing, outside of the Premises, of trucks, trailers, or other vehicles or equipment except when actually engaged in loading or unloading.

Tenant will immediately notify Landlord of the occurrence, or threat, of any picketing, hand billing, protest, boycott of any kind whatsoever with respect to the Premises and Tenant will cooperate with Landlord as may be necessary to prevent, stop or

avoid any picketing, hand billing, protest, boycott within the Premises or in the Common Areas of the Shopping Center. Tenant will immediately notify Landlord of any complaint, charge, petition or claim filed against Tenant with any federal, state or local court or governmental authority which under reasonable commercial standards creates any adverse effect on Landlord's operations.

(f) General Covenants of Tenant. Tenant will keep the inside and outside of all glass in the doors and windows of the Premises clean and free of blinds, shades, awnings, draperies or other forms of inside or outside window and door coverings except to the extent, if any, that the character, shape, color, material and make thereof is approved by Landlord; will not place or maintain any merchandise or other thing of any kind in the entry of the Premises or on the sidewalks adjacent thereto or elsewhere on the exterior of the Premises, except such signs as are permitted under Section 7(i) hereof; will maintain the Premises at its own expense in a clean, orderly and sanitary condition and free of insects, rodents, vermin, and other pests; will, at Tenant's sole cost and expense, comply with all laws and ordinances and all valid rules, regulations and requirements of the government of all county, municipal, state, federal and other governmental authorities, including but not limited to zoning and restrictions on the property, now in force or which may hereafter be in force, pertaining to the Premises; and will comply with all recommendations of any public or private agency having authority over insurance rates with respect to the use or occupancy of the Premises by Tenant; will not park, and will require its employees to refrain from parking, any vehicle on Landlord's land except in such places as may be designated from time to time by Landlord for the use of Tenant and its employees; and will conduct business in the Premises in all respects in a dignified manner and in accordance with high standards of store operation.

(g) Insurance. Tenant, at its sole cost and expense, shall maintain in effect continuously throughout the term of this Lease and any extensions or renewals hereof, commencing upon Tenant's possession of the Premises, insurance policies providing for the following coverages:

**Personal Property Insurance.** Tenant's merchandise, trade fixtures, furnishings, equipment, plate glass and all items of personal property of Tenant located on or in the Premises, in an amount not less than the full replacement value thereof. Any and all proceeds of such insurance, so long as the Lease is in effect, shall be used only to repair or replace or pay for the items so insured.

**Liability Insurance.** Comprehensive general liability insurance covering the Premises and Tenant's use thereof, in



domestic U.S. companies licensed and admitted in the state where the Premises are located and rated at least an "A/Class VII" by A.M. Best Company (or at Landlord's discretion, an equivalent rating bureau) and in a form satisfactory to Landlord, with minimums of \$5,000,000.00 (such minimum coverage may from time to time, at Landlord's option, be increased to an amount determined by Landlord to be consistent with industry standards) in the aggregate combined single limit for bodily injury and property damage.

**Products Liability Insurance.** Products liability insurance for merchandise offered for sale or lease from the Premises of not less than \$2,000,000.00 for personal injury and death and not less than \$500,000.00 for property damage.

With respect to each insurance policy required above, Tenant shall deposit said policy, policies, or certificate(s) thereof with Landlord prior to the date of any use or occupancy of the Premises by Tenant; said policy, policies, and/or certificate(s) shall specifically name the Landlord (and the entity providing management for the Shopping Center and any mortgagee, if the names of such entity and/or mortgagee have been provided to Tenant) by policy endorsement as an additional insured and shall protect Tenant and Landlord, as their interests may appear. The certificate required by this Section must be in the form of a Certificate of Insurance executed by an insurer authorized to do business in the state where the Premises is located and countersigned by an insurance agent licensed in said state. Upon Landlord's written request, Tenant shall provide certified copies of insurance policies to Landlord. Said policies shall be submitted within thirty (30) days of Landlord's request. Throughout the lease term and any extension and/or renewal thereof, insurance certificates evidencing renewals of each policy of insurance shall be delivered to Landlord at least fifteen (15) days prior to the expiration dates of the respective policies. Should Tenant at any time, fail to carry, neglect, refuse to procure, or renew such general liability insurance or any part thereof, Landlord may at its option (but shall not be required so to do) cause such insurance as aforesaid to be issued, and in such event Tenant agrees to pay the premium for such insurance promptly upon Landlord's demand. However, Tenant acknowledges and agrees it cannot operate its business in the Premises to the public without current active coverage, and failure to carry the required insurance is a material default under this Lease. Such insurance policy or policies shall bear endorsements to the effect that the insurer agrees to notify Landlord not less than thirty (30) days in advance of modification or cancellation thereof. Neither the issuance of any insurance policy required hereunder, nor the minimum limits specified herein, shall be deemed to limit or restrict in any way Tenant's liability arising under or out of this Lease, or shall cause any insurance or self-insurance programs maintained by Landlord be called upon to contribute to a loss.

Landlord agrees to carry throughout the term of this Lease public liability insurance with respect to the Common Areas on the Site with a minimum combined coverage for bodily injury and property damage of \$5,000,000.00, and workman's compensation insurance on personnel at the Site. Such coverage may from time to time, at Landlord's option, be increased to an amount determined by Landlord to be consistent with industry standards.

(h) Payment of Personal Property Taxes. Tenant further covenants and agrees (1) to pay promptly when due all taxes assessed against Tenant's fixtures, furnishings, equipment and stock in trade placed in or on the Premises during the term of this Lease, and (2) to pay with each monthly installment of rent any "rent tax" or similar tax levied by any local or state taxing authority against or with respect to rent paid by Tenant to Landlord pursuant to the terms of this Lease.

(i) Tenant's Exclusive. Landlord agrees that, provided Tenant is not in default under this Lease beyond any applicable grace, notice or cure period and is operating its business in the Premises for the Permitted Use, Landlord shall not enter into any new lease with any tenant for space in the designer wing of the Shopping Center which shall allow such tenant to use more than 70% of the selling area of its premises for the sale of multiple brands (i.e., five or more different brands) of luxury designer jeans. The foregoing shall not be applicable to (i) any tenant (or the assignee or subtenant of a tenant) whose lease predates the date of this Lease, (ii) any tenant selling fewer than five different brands of jeans (each brand may include multiple styles or product lines by a single manufacturer), or (iii) any tenant whose premises exceeds 10,000 square feet. In addition, nothing herein shall restrict Landlord from entering leases with tenants that sell multiple brands of jeans provided same are not predominantly luxury designer jeans.

#### 9. Utilities.

(a) Installation. Landlord shall provide, or cause to be provided, as part of the original installations in the Premises, the necessary mains, conduits and facilities in order that all utility services initially required in connection with installations to be provided by Landlord, as specified in EXHIBIT "C" may be furnished to the Premises. Tenant shall provide or cause to be provided all other mains, conduits and facilities necessary to provide utility services to the Premises.

(b) Gas, Electricity, Water and Sewer, Lights, Heat, Power and Telephone Charges. The Tenant shall pay all charges for gas, electricity, water and sewer, light, heat, power and telephone or



other communication service used, rendered or supplied upon or in connection with the Premises and shall indemnify the Landlord against any liability or damages on such account.

Landlord at its sole option and upon notice to Tenant may provide the electrical service to the Premises, and in such event Tenant shall pay Landlord for such service provided however (a) the cost to Tenant shall not exceed the cost of such service if rendered by a local public utility providing the same service; (b) service may be temporarily interrupted for emergency repairs, alteration, replacements or improvements; (c) Landlord shall have no responsibility or liability for failure to supply electric service when prevented from so doing by strikes, power failure, accidents, emergencies, repairs, alterations, replacements, improvements or by laws, orders or regulations of any governmental authority or inability by exercise of reasonable diligence to obtain suitable electrical supply, or by any other similar or dissimilar cause beyond Landlord's control. Landlord shall bill Tenant monthly for such electric service and Tenant agrees to pay such bill rendered by Landlord within fifteen (15) days after the mailing thereof by Landlord. Landlord shall provide to Tenant a reasonably detailed itemization of such charge. In the event Tenant fails to pay timely for such service and Landlord delivers written notice to Tenant of such failure, then if Tenant fails to pay within ten (10) days of receipt of Landlord's notice, then to the fullest extent permitted by applicable law and upon notice to Tenant, Landlord may discontinue service to the Premises.

Notwithstanding the above, if any utility is on a "master meter" and individual meters are not provided and the bill is tendered to Landlord, Tenant shall reimburse Landlord for Tenant's Pro Rata Share of such utility.

(c) Advances by Landlord. Any amounts paid by Landlord for Tenant's account as herein provided and any amounts paid by Landlord to keep the Premises in a clean, safe and healthy condition, as herein specified, or to make up any default on Tenant's part, or to fulfill Tenant's covenants herein written, are hereby agreed and declared to be so much additional rent and shall be due and payable with the next installment of rent thereafter due under this Lease.

10. Alterations or Improvements by Tenant. (a) Tenant shall have the right during the continuance of this Lease to make such alterations or improvements in the Premises, excepting structural alterations or improvements, as may be proper and necessary for the conduct of its business and for the full beneficial use of the Premises permitted herein, provided Tenant shall pay all costs, expenses and charges thereof, shall make such alterations and improvements in accordance with applicable laws and building codes;



in a good and workmanlike manner; and performed by a licensed contractor acceptable to Landlord, and Tenant shall fully and completely indemnify Landlord against any mechanic's lien or other liens or claims in connection with the making of such alterations and improvements. Tenant shall not make, nor permit to be made, any alterations, additions or improvements of a structural nature to the interior, exterior or store front of the Premises, or to the plumbing, heating or air conditioning systems. Tenant shall promptly repair any damages to the Premises, or to the building of which the Premises are a part, caused by any alterations, additions or improvements of the Premises by Tenant.

(b) With respect to work performed at the Premises and/or Tenant's obligation under this Lease including its rights under Sections 4, 5 and 10(a) hereof, Tenant agrees that it will not, at any time prior to or during the term of this Lease (including any extension thereof), directly, or indirectly, employ or permit the employment of any contractor, subcontractor, mechanic or laborer or permit any materials in the Premises, if the use of such contractor, subcontractor, mechanic, laborer, or materials would, in Landlord's reasonable opinion, create any difficulty, strike or jurisdictional dispute by other contractor, subcontractor, mechanic, or laborers engaged by Tenant or Landlord or others, or would in any way disturb the construction, maintenance, cleaning, repair, management, security or operation of the Premises or any part thereof or the Shopping Center. In the event of any interference, difficulty or conflict, Tenant, upon demand of Landlord, shall cause all contractors, or subcontractors, mechanics or laborers and/or all material causing such interference, difficulty or conflict, to leave or be removed from the Premises immediately. All contractors engaged by Tenant shall be bondable, licensed contractors, possessing good labor relations, capable of performing quality workmanship and working in harmony with Landlord's general contractor and other contractors on the job. All work performed by or for Tenant during the term of the Lease (including, but not limited to, Tenant's Initial Work) shall be performed so as to cause a minimum of interference with other tenants and the operation for the project.

11. Removal of Improvements. Tenant shall vacate the Premises in broom-clean condition with all systems (including but not limited to HVAC, plumbing and electrical) servicing the Premises in good working order pursuant to Tenant's repair and maintenance obligations as set forth in this Lease. Tenant shall remove all alterations, improvements, furnishings and other equipment installed in the Premises by or for Tenant, as well as any and all fixtures, inventory or other personal property (collectively the "Personal Property"). Except as otherwise hereinafter provided, all such Personal Property shall remain the property of Tenant and shall be removed by Tenant upon the



termination of this Lease. In the event any Personal Property is affixed to the Premises, Tenant shall repair any and all damage caused by such Personal Property or its removal. If the Tenant fails to remove Personal Property from the Premises prior to the date of termination of this Lease, then Landlord may immediately remove such Personal Property and dispose of it at Landlord's sole discretion without liability to Tenant or to any third parties claiming an interest in such Personal Property, repair any damage caused by Personal Property or their removal and the cost of removal and repair plus a 15% service fee shall be charged to Tenant who shall make payment to Landlord within ten (10) days of demand therefor.

On the Termination Date of this Lease, as such date may be extended pursuant to Tenant's exercise of any option provided in Section 2(d) hereof, Tenant's right of possession of the Premises shall terminate and Tenant shall vacate the Premises as set forth herein and Landlord shall have immediate right to control and possession of the Premises.

Notwithstanding the above, Tenant shall remove the signage permitted by Section 7(i) hereof no later than the Termination Date of this Lease, and shall repair any and all damage caused by such signage or its removal. Upon removal of Tenant's signage, Tenant shall ensure that all existing electric wires at the junction box shall be terminated with wire nuts, and have an appropriate junction box cover plate installed. Such removal and repair shall be performed by a Landlord approved certified Exterior Insulated Finishing System (EIFS) contractor and such contractor shall restore the fascia (or replace if fascia is vinyl siding) to substantially the condition at the time of commencement of this Lease, and such activity shall be at the sole cost and expense of the Tenant. In the event Tenant fails to remove such signage and make such repairs by the end of the last day of the term of this Lease (or the date Tenant vacates the Premises, whichever date is later), Landlord may immediately remove the signage and dispose of it at Landlord's sole discretion, and repair any damage caused by such removal and the cost of removal and repair plus a 15% service fee shall be charged to Tenant who shall make payment to Landlord within ten (10) days of demand.

12. Access to Premises. Landlord may have free access to the Premises at all reasonable times for the purpose of examining the same or making any alterations or repairs to the Premises that Landlord may deem necessary for its safety or preservation, and also during the last three (3) months of the term of this Lease for the purpose of exhibiting the Premises and putting up the usual notice "to Rent", which notice shall not be removed, obliterated or hidden by Tenant; provided, however, that any such action by Landlord shall cause as little inconvenience as reasonably



practicable. Such action shall not be deemed an eviction or disturbance of Tenant nor shall Tenant be allowed any abatement of rent, or damages for any injury or inconvenience occasioned thereby.

13. Repairs by Landlord.

Landlord shall provide for the care, maintenance and repair of the Common Areas on the Site including but not limited to repairing, replacing and restriping paved parking areas when needed, keeping Common Areas reasonably clear of litter, snow and ice, maintaining any plantings and landscaped areas and keeping Common Areas reasonably lighted at times when substantially all of the stores on the Site are open for business. Landlord shall keep and maintain the foundation, roof and structural portions of the walls of the building in which the Premises are located in good condition and repair. The provisions of this Section shall not apply in the case of damage or destruction by fire or other casualty or by Eminent Domain, in which events the obligations of Landlord shall be controlled by either Section 20 or Section 22 hereof.

14. Reservation of Landlord. Landlord reserves the right to place, maintain, repair and replace such utility lines, pipes, tunneling, and the like, in, under, over and upon the Premises as may be reasonably necessary or advisable for the servicing of the Premises or of other portions of the Site of which the Premises are a part. Landlord reserves the right of use of the roof and exterior walls of the Premises and of the building or buildings of which the Premises are a part.

15. Liability. Unless any of the same shall be caused by the willful misconduct or gross negligence of Landlord or Landlord's officers, directors, shareholders, agents, servants or employees, Landlord shall not be liable for, and Tenant and all persons claiming under Tenant, hereby release Landlord and Landlord's officers, directors, shareholders, agents, servants and employees from all claims for damage to person or property (including loss or interruption of business) sustained by Tenant, or any person claiming through Tenant, resulting from (a) fire, accident or occurrences or conditions in or upon the Premises or the building in which the Premises is located; (b) inconvenience or annoyance arising from the necessity of repairing any portion of the Premises or the building of which the Premises is a part; (c) the interruption for any reason in the use of the Premises; or (d) the termination of this Lease by reason of the destruction of the Premises or the building in which the Premises is located. This limitation shall include, but not be limited to, such claims for damage resulting from (i) any defect or shortcoming in or failure of plumbing, heating or air conditioning or ventilation systems,



elevators, electric wiring or installation thereof, water pipes, stairs, railings of walks; (ii) any equipment or appurtenances becoming out of repair, (iii) the bursting, leaking or running of any tubing, radiant panel, fire sprinkler system, electric fixture, valve, fitting, tank, washstand, water closet, waste pipe, drain or any other pipe or tank or any other water and/or moisture related release and/or condition and any and all consequences and/or conditions relating from same, upon or about the Premises or of the building in which the Premises is located; (iv) the backing up of any sewer pipe or downspout; (v) the escape of steam, hot or cold water; (vi) water, snow or ice being upon or coming through the roof of the building in which the Premises is located or any other place upon or near the Premises otherwise; (vii) the failing of any fixture, brick, plaster or stucco; (viii) broken glass; (ix) any act or omission of cotenants or other occupants of the building; (x) the exercise of any rights by Landlord under this Lease; or (xi) any act or omission of parties other than Landlord, its employees, agents, officers, directors, shareholders and servants. In any events, Landlord shall not be liable for any damage to Tenant's leasehold improvements, fixtures, or merchandise resulting from fire or other insurable hazards, regardless of the cause thereof, and Tenant hereby releases Landlord from all liability for such damage. Under no circumstances whatsoever shall Landlord ever be liable for consequential damages or special damages.

16. Repairs by Tenant / HVAC Contract.

(a) Repairs by Tenant. Tenant, at its sole cost and expense, shall perform the repairs/maintenance set forth in this Section. Tenant shall keep and maintain the Premises and any fixtures, facilities or equipment contained therein, in good condition and repair and shall make all replacements thereof, including, but not limited to, the heating, air conditioning, electrical, plumbing and sewer systems. Tenant shall install and maintain fire extinguishers and other fire protection devices as may be required from time to time by any agency having jurisdiction or the underwriters insuring the Premises. If any bureau, department or official of the Federal, State or local government requires or recommends the installation of any changes, modifications or alterations in the sprinkler system (if the Premises have a sprinkler system) or additional sprinkler heads or other equipment (hereinafter collectively "changes") by reason of Tenant's business or the location of partitions, trade fixtures, or other contents of the Premises, or for any other reason, or if any such changes become necessary to prevent the imposition of a penalty or charge against the full allowance for a sprinkler system in the fire insurance rates set by any fire insurance company, Tenant shall promptly make such changes as required or reimburse Landlord its costs for making such required changes. In addition, Tenant shall maintain, repair and replace as necessary the exterior doors, door frames and window



frames and shall repair or replace all broken and cracked glass as may become necessary during the term of this Lease or any renewal or extension thereof, excepting, however, such repairs and replacements as are the obligation of Landlord under Section 13 hereof, and excepting any repairs made necessary by reason of damage due to fire or other casualty covered by standard fire and extended coverage insurance. If Tenant refuses or neglects to commence or complete repairs promptly and adequately, Landlord may, but shall not be required to do so, make or complete said repairs and Tenant shall pay the cost thereof to Landlord upon demand.

(b) HVAC Contract. During the term of this Lease, Tenant agrees to employ, pursuant to written contract running to the benefit of the Landlord, a contractor acceptable to Landlord to perform Tenant's obligations for the regular factory recommended maintenance and service of the heating, cooling and ventilating units serving the Premises. Prior to the Commencement Date, Tenant shall deliver a fully executed copy of the contract to the Landlord. Such maintenance program shall include all regular factory recommended maintenance and service and at least semiannual inspections, filter replacements, and cleaning of said units and systems, together with such adjustments and servicing as each inspection discloses to be required or reasonably recommended and, in addition, all repairs, testing and servicing as shall be necessary or reasonably required by Landlord or Landlord's insurance underwriter.

Tenant warrants that the HVAC system servicing the Premises will be in good working order on the date Tenant surrenders the Premises to Landlord, and the parties agree to have the HVAC inspected on such date. In the event such inspection determines that repairs are necessary in order that the HVAC system be in good working order, then Tenant shall reimburse Landlord the reasonable costs incurred for such repairs.

17. Default by Tenant. This Lease is made upon the condition that the Tenant shall punctually and faithfully perform all of the covenants and agreements by it to be performed as herein set forth, and if any of the following events of default shall occur, to-wit: (a) any installment of Fixed Rent, Percentage Rent, Additional Rent or any other sums required to be paid by the Tenant hereunder, or any part thereof, shall at any time be in arrears and unpaid, or (b) Tenant fails to strictly comply with the provisions of Item 8(a), 8(b), 8(d), 8(e) or 8(f) hereof and such failure continues after five (5) days written notice thereof and/or such failure, whether or not previously timely cured, re-occurs more than three (3) times within any lease year; or (c) at the election of Landlord there be a default by Tenant beyond any applicable cure period under any other lease between Landlord and Tenant or an affiliate, subsidiary, parent or other related entity of Tenant; or (d) there



be any default on the part of the Tenant in the observance or performance of any of the other covenants, agreements, or conditions of this Lease on the part of the Tenant to be kept and performed, and said default shall continue for a period of fifteen (15) days after written notice thereof from Landlord to Tenant (unless such default cannot reasonably be cured within fifteen (15) days and Tenant shall have commenced to cure said default within said fifteen (15) days and continues diligently to pursue the curing of the same), or (e) the Tenant shall file a petition in bankruptcy or be adjudicated a bankrupt, or file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future Federal, State or other statute, law or regulation, or make an assignment for the benefit of creditors, or (f) any trustee, receiver or liquidator of Tenant or of all or any substantial part of its properties or of the Premises shall be appointed in any action, suit or proceeding by or against Tenant and such proceeding or action shall not have been dismissed within thirty (30) days after such appointment, or (g) the leasehold estate hereby created shall be taken on execution or by other process of law, or (h) Tenant shall vacate or abandon the Premises, then and in any of said cases, the Landlord at its option may terminate this Lease and re-enter upon the Premises and take possession thereof with full right to sue for and collect all sums or amounts with respect to which Tenant may then be in default and accrued up to the time of such entry, including damages to the Landlord by reason of any breach or default on the part of the Tenant, or the Landlord may, if he elects so to do, bring suit for collection of such rents and damages without entering into possession of the Premises or avoiding this Lease.

Further, in the event Tenant should incur three (3) events of monetary default (as defined in this Section 17) during any consecutive twelve (12) month period (herein deemed a "chronic default"), then Landlord shall be entitled to, in addition to any and all other rights and remedies of Landlord in law or in equity, in its sole discretion, terminate this Lease by written notice to Tenant, such termination effective ten (10) days following Landlord's notice of termination to Tenant.

In addition to, but not in limitation of, any of the remedies set forth in this Lease or given to the Landlord by law or in equity, the Landlord shall also have the right and option, in the event of any default by the Tenant under this Lease and the continuance of such default after the period of notice above provided, to retake possession of the Premises from the Tenant by summary proceedings or otherwise, and it is agreed that the commencement and prosecution of any action by the Landlord in forcible entry and detainer, ejectment or otherwise, or any execution of any judgment or decree obtained in any action to



recover possession of the Premises, shall not be construed as an election to terminate this Lease unless the Landlord expressly exercises its option hereinbefore provided to declare the term hereof ended, whether or not such entry or re-entry be had or taken under summary proceedings or otherwise, and shall not be deemed to have absolved or discharged the Tenant from any of its obligations and liabilities for the remainder of the term of this Lease, and the Tenant shall, notwithstanding such entry or re-entry, continue to be liable for the payment of the rents and the performance of the other covenants and conditions hereof and shall pay to the Landlord all monthly deficits after any such re-entry in monthly installments as the amounts of such deficits from time to time are ascertained and, if in the event of any such ouster, the Landlord rents or leases the Premises to some other person, firm or corporation (whether for a term greater, less than or equal to the unexpired portion of the term created hereunder) for an aggregate rent during the portion of such new lease co-extensive with the term created hereunder which is less than the rent and other charges which the Tenant would pay hereunder for such period, Landlord may immediately upon the making of such new lease or the creation of such new tenancy sue for and recover the difference between the aggregate rental provided for in said new lease for the portion of the term co-extensive with the term created hereunder and the rent which Tenant would pay hereunder for such period, together with any expense to which the Landlord may be put for brokerage commission, placing the Premises in tenantable condition or otherwise. In determining the rent payable by Tenant hereunder, the Percentage Rent shall be deemed to be equal to the highest amount of Percentage Rent paid by Tenant to the Landlord pursuant to the provisions of Section 3(b) hereof for any lease year since the Commencement Date of this Lease, provided, however that if Tenant shall not have paid Percentage Rent for an entire lease year, then the Percentage Rent shall be deemed to be \$45.00 per square foot per annum. If such new lease or tenancy is made for a shorter term than the balance of the term of this Lease, any such action brought by the Landlord to collect the deficit for that period shall not bar the Landlord from thereafter suing for any loss accruing during the balance of the unexpired term of this Lease. If Tenant at any time shall fail to pay any taxes, assessments, or liens, to make any payment or perform any act required by this Lease to be made or performed by it, Landlord, without waiving or releasing Tenant from any obligation or default under this Lease, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of Tenant. All sums so paid by Landlord and all costs and expenses so incurred, together with interest thereon at the rate of twelve percent (12%) per annum from the date of payment or incurring thereof, shall constitute additional rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand. All rights and remedies of Landlord herein



enumerated shall be cumulative, and none shall exclude any other remedies allowed at law or in equity.

Further, in addition to, but not in limitation of any of the remedies otherwise available to Landlord, in the event (a) Tenant should fail to take possession of the Premises within ten (10) days of the date possession is tendered by Landlord to Tenant (such failure herein referred to as the "Failure to Take Possession") or (b) Tenant should fail to perform Tenant's Initial Work and fully fixture, stock and staff the Premises and open the Premises for business to the public on or before February 1, 2010 (such failure herein referred to as the "Failure to Operate"), or (c) Tenant should fail to comply with the provisions of Section 10(b) (such failure referred to as "Contractor Failure") then Landlord shall have the right at its option to treat such Failure to Take Possession, Failure to Operate and/or Contractor Failure as a default within the meaning of this Lease the remedy for which default shall be any and all remedies available to Landlord at law and in equity including, but not limited to, the remedy that at the option of Landlord the Lease shall be forfeited by Tenant and thereby become null and void *ab initio* (the "Forfeiture Option"). The Forfeiture Option shall be exercised by Landlord in writing to Tenant, and upon delivery of such notice of exercise of option this Lease shall be forfeited and this Lease shall be void, and possession of Premises shall be in Landlord and not in Tenant and Tenant shall immediately vacate the Premises and upon failure to so vacate may be ousted by Landlord. In the event Landlord exercises the Forfeiture Option, notwithstanding any provision in this Lease to the contrary, Landlord shall have the absolute right to retain the full amount of any Security and such Security shall be forfeited by Tenant.

In the event the Premises are not open for business to the public on the date specified herein and Landlord does not exercise its option to have the Lease forfeited by Tenant as set forth in the preceding paragraph, or in the event after opening for business the Premises are not operated each day thereafter in accordance with the provisions of Section 7 hereof, then as liquidated damages (and not as a penalty) in order to compensate Landlord for its loss of Percentage Rent that might have been earned which the parties agree cannot be accurately calculated), Tenant shall pay to Landlord as Percentage Rent on a per diem basis an amount equal to two (2) times the Fixed Rent until Tenant shall open its store for business and operate in accordance with Section 7. This remedy shall be in addition to any and all other remedies provided for in this Lease.

18. Rent Demand. Every demand for rent due wherever and whenever made shall have the same effect as if made on the due date stated in the Lease and at the place of payment stated in the



Lease. After the service of any notice or commencement of any suit, or final judgment therein, Landlord may receive and collect any rent due, and unless the sum received and collected by Landlord is the entire sum due and payable, such collection or receipt of a portion of the sum due and payable shall not operate as a waiver of nor affect such notice, suit or judgment.

19. Notices / Time.

(a) Notices. All notices, consents or other instruments or communications provided for under this Lease shall be in writing and shall be deemed properly given and received as follows: (i) if delivered in person, then when actually delivered and received, or (ii) if sent by registered or certified mail, return receipt requested, postage prepaid, then when delivered (or when delivery is refused, as indicated on the receipt), or (iii) if sent by a nationally recognized overnight or ground courier service, receipt requested, then the next business day after being sent provided verification of actual delivery on such next business day is made by such courier service. The addresses of the parties for the purpose of sending such notices and communications shall be as follows:

If to Landlord:

DEER PARK ENTERPRISE, LLC  
c/o Tanger Outlet Centers  
3200 Northline Avenue, Suite 360  
Greensboro, NC 27408  
Attention: Legal Department  
Phone: 336-292-3010  
Fax: 336-852-1407

With a copy to:

DPSW Deer Park, LLC  
Apollo Real Estate Advisors  
1301 Avenue of the Americas, 38<sup>th</sup> Floor  
New York, NY 10019  
Fax: 212-515-3284  
Attention: Richard Mack

Tanger Deer Park, LLC  
c/o Stanley K. Tanger  
3200 Northline Avenue, Suite 360  
Greensboro, NC 27408  
Phone: 336-292-3010  
Fax: 336-852-2560

BDG Deer Park Associates, LLC  
c/o Blumenfeld Development Group, Ltd.  
6800 Jericho Turnpike



Syosset, NY 11791  
Attention: David Blumenfeld  
Fax: 516-921-0053

If to Tenant: DNA 2050 Outlet, LLC  
3238 Prospect Street, N.W.  
Washington, D.C. 20007  
Attention: Iraklis Karabassis  
Phone: (202) 333-9792  
Fax: (202) 298-7229

It being understood and agreed that each party will use reasonable efforts to send copies of any notices, consents or other instruments or communications (herein collectively referred to as "Notice") to the addressees marked "With copy to" (herein referred to as "Additional Notice Parties") hereinabove set forth; provided, however, the failure to deliver such copy or copies shall have no consequence whatsoever to the effectiveness of any notice made to the Tenant or to the Landlord provided such Notice to the Additional Notice Parties was sent in accordance with the provisions of this Section.

**Tenant shall remit all rent and other payments due under this Lease to Landlord at the following address:**

DEER PARK ENTERPRISE, LLC  
P.O. Box 415380  
Boston, Massachusetts 02241-5380

**Landlord shall submit all invoices and other billing statements to Tenant at the following address:**

DNA 2050 Outlet, LLC  
3238 Prospect Street, N.W.  
Washington, D.C. 20007

Each party shall have the right to designate other or additional addresses for the delivery of Notices, rent payments and invoices by giving notice thereof in the manner set forth above (such other or additional addresses beginning effective from and after the date of receipt of notice thereof by the other party).

(b) Time. Time is of the essence in performance of all obligations and exercise of all rights under this Lease.

20. Damage and Destruction. In the event the Premises are damaged by fire, explosion or other casualty or occurrence to an extent which is less than twenty-five percent (25%) of the cost of replacement of the Premises, the damage shall promptly be repaired



by Landlord, at Landlord's expense, provided that Landlord shall not be obligated to expend for such repairs an amount in excess of the insurance proceeds recovered as a result of such damage and that in no event shall Landlord be required to repair or replace Tenant's stock in trade, fixtures, furniture, furnishings, or floor coverings and equipment. In the event of such damage and (a) Landlord is not required to repair as hereinabove provided, or (b) the Premises are damaged by fire, explosion or any other casualty or occurrence to the extent of twenty-five percent (25%) or more of the cost of replacement of the Premises, or (c) the building of which the Premises are a part is damaged to the extent of fifty percent (50%) or more of the cost of replacement, Landlord may elect either to repair or rebuild the Premises, or the building of which the Premises are a part, as the case may be, or to terminate this Lease upon giving notice of such election in writing to Tenant within ninety (90) days after the happening of the event causing the damage. If the casualty, repairing, or rebuilding shall render the Premises untenable, in whole or in part, a proportionate abatement of the Fixed Rent shall be allowed beginning seventy-two (72) hours after the occurrence of the event causing such damage until the date Landlord completes the repairs or rebuilding, said proportion to be computed on the basis of the relation which the gross square foot floor area of the space rendered untenable bears to the gross square foot area of the Premises. If Landlord is required or elects to repair the Premises as herein provided, Tenant shall repair or replace its stock in trade, fixtures, furniture, furnishings, floor coverings and equipment.

21. Mortgage Subordination. (a) This Lease, and all rights of Tenant hereunder, are and shall be subject and subordinate to all ground or underlying leases of the Site and/or the building of which the Premises is a part ("Building") now or hereafter existing, including, without limitation, the Lease Agreement dated September 29, 2006 (the "IDA Lease") between Town of Babylon Industrial Development Agency ("Agency"), as lessor, and Landlord, as lessee, with the Memorandum of Lease Agreement recorded November 20, 2006 in Liber 12479, Page 556 of the Suffolk County Clerk's Office and to all mortgages which may now or hereafter affect the Site and/or the Building and/or any of such leases, whether or not such mortgages shall also cover other lands and/or buildings and/or leases, to each and every advance made or hereafter to be made under such mortgages, and to all renewals, modifications, replacements and extensions of such leases and such mortgages and spreaders and consolidations of such mortgages, and to all matters which such leases and mortgages are subject to and subordinate. This Section shall be self operative and no further instrument of subordination shall be required. In confirmation of such subordination, Tenant shall promptly execute, acknowledge and deliver, within five (5) days of Landlord's request, any instrument that Landlord, the lessor under any such lease or the holder of any



such mortgage or any of their respective successors in interest may reasonably request to evidence such subordination. Any lease to which this Lease is, at the time referred to, subject and subordinate (including, without limitation, the IDA Lease) is herein sometimes called a "Superior Lease" and the lessor of a Superior Lease or its successor in interest, at the time referred to (including, without limitation, the Agency), is herein sometimes called a "Superior Lessor"; and any mortgage to which this Lease is, at the time referred to, subject and subordinate is herein called "Superior Mortgage" and the holder of a Superior Mortgage is herein called "Superior Mortgagee". Notwithstanding the foregoing, the holder of any Mortgage may elect that this Lease shall have priority over its mortgage and upon notification of Tenant by such holder, this Lease shall be deemed to have priority over such Mortgage regardless of the date of this Lease.

(b) In the event of a termination of any Superior Lease, or if the interest of Landlord under this Lease is transferred by reason of, or is assigned in lieu of, foreclosure or other proceedings for enforcement of any Superior Mortgage, then Tenant will, if requested in writing by such Superior Lessor, Superior Mortgagee or purchaser, assignee or lessee, as the case may be (each of which is referred to as "Purchaser" for purposes of this Section 21, (i) attorn to the Purchaser and will perform for the Purchaser's benefit all the provisions of this Lease to be performed by Tenant with the same force and effect as if the Purchaser were the Landlord originally named in this Lease, or, (ii) if the Purchaser alternatively requests, enter into a new lease with the Purchaser, as Landlord, for the remaining term on the same terms and conditions as this Lease. The foregoing provisions of clause (i) of this Section 21 shall inure to the benefit of the Purchaser, shall be self-operative if the Purchaser elects to make such a request, and no further instrument shall be required to give effect to those provisions. Upon demand of the Purchaser, Tenant will execute, from time to time, instruments in confirmation of the foregoing provisions of this Section 21, satisfactory to the Purchaser, acknowledging such attornment and setting forth the terms and conditions of its tenancy.

22. Eminent Domain. In the event the Premises or any part thereof shall be taken or condemned either permanently or temporarily for any public or quasi public use or purpose by any competent authority in appropriation proceedings or by any right of eminent domain, the entire compensation award therefor, including, but not limited to, all damages as compensation for diminution in value of the leasehold, reversion, and fee, shall belong to the Landlord without any deduction therefrom or any present or future estate of Tenant, and Tenant hereby assigns to Landlord all its right, title and interest to any such award. Although all damages in the event of any condemnation are to belong to the Landlord, whether such

damages are awarded as compensation for diminution in value of the leasehold, reversion or to the fee of the Premises, Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all damage to Tenant's business by reason of the condemnation and for or on account of any cost or loss to which Tenant might be put in removing Tenant's merchandise, furniture, fixtures, leasehold improvements and equipment.

If the whole of the Premises shall be taken by any public authority under the power of eminent domain, this Lease shall terminate as of the day possession shall be taken by such public authority, and Tenant shall pay rent up to that date with an appropriate refund by Landlord of such rent as shall have been paid in advance for a period subsequent to the date of the taking. If less than twenty-five percent (25%) of the floor space of the Premises shall be so taken, this Lease shall terminate only with respect to the parts so taken as of the day possession shall be taken by such public authority, and Tenant shall pay rent up to that day with an appropriate refund by Landlord of such rent as may have been paid in advance for a period subsequent to the date of the taking and, thereafter, the Fixed Rent shall be equitably adjusted, and Landlord shall at its expense make all necessary repairs or alterations to the basic building and exterior work so as to constitute the remainder of the Premises a complete architectural unit. If more than twenty-five percent (25%) of the floor space of the Premises shall be so taken, then this Lease shall terminate with respect to the part so taken from the day possession shall be taken by such public authority, and Tenant shall pay rent up to that day with an appropriate refund by Landlord of such rent as may have been paid in advance for a period subsequent to the date of the taking, and either party shall have the right to terminate this Lease upon notice in writing within thirty (30) days after such taking of possession; in the event that Tenant remains in possession, and if Landlord does not so terminate, all of the terms herein provided shall continue in effect except that the rent shall be equitably abated, and Landlord shall make all necessary repairs or alterations to the basic building and exterior work so as to constitute the remaining premises a complete architectural unit. If more than fifty percent (50%) of the floor space of the building in which the Premises are located shall be taken under the power of eminent domain, Landlord may, by notice in writing to Tenant delivered on or before the day of surrendering possession to the public authority, terminate this Lease, and rent shall be paid or refunded as of the date of termination.

23. Assignment and Subletting.



(a) Tenant shall not sublet said Premises or any part thereof nor assign this Lease, without in each case the prior written consent of Landlord. Any transfer of this Lease from Tenant by merger, consolidation, liquidation or otherwise by operation of law shall constitute an assignment for the purpose of this Lease and shall require the written consent of Landlord. Any transfer, sale or other disposition of the controlling stock of the Tenant and/or of substantially all of the assets of Tenant shall be deemed an assignment of this Lease requiring the Landlord's written consent; provided, however, that if the stock of such corporation is regularly traded on any recognized securities market, the transfer of stock will not be prohibited hereby. Tenant shall not permit any business to be operated in or from the Premises by any concessionaire or licensee without the prior written consent of Landlord. Any consent by Landlord to any assignment or subletting, or to the operation by a concessionaire or licensee, shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting, or operation by a concessionaire or licensee. In the event that Tenant shall at any time, during the term of this Lease, sublet all or any part of said Premises or assign this Lease, either with the consent of Landlord as hereinbefore provided or without the consent of Landlord, then, and in such event, it is hereby mutually agreed that Tenant shall nevertheless remain fully liable under all of the terms, covenants and conditions of this Lease. If this Lease be assigned, or if the Premises or any part thereof be subleased or occupied by anybody other than Tenant, Landlord may collect from the assignee, subtenant or occupant any rent or other charges payable by Tenant under this Lease, and apply the amount collected to the rent and other charges herein reserved, but such collection by Landlord shall not be deemed an acceptance of the assignee, subtenant or occupant as a tenant nor a release of Tenant from the performance by Tenant under this Lease. Tenant shall not advertise the Lease for assignment nor shall Tenant advertise the Premises or any part thereof for sublease in any trade magazine, newspaper, or in any other printed publication, document or sign, or in any audio, video, or magnetic medium, digital, electronic or internet source.

Notwithstanding the foregoing, provided that Tenant shall not then be in default (after notice and the expiration of the applicable cure period) with respect to any of Tenant's obligations under this Lease, Tenant may assign or transfer this Lease or Tenant's interest herein, or the stock or ownership interest in Tenant, and may sublet the Premises or any part thereof, without Landlord's consent, but upon at least ten (10) days prior notice to Landlord, (a) to a parent, subsidiary, or other entity under common control as Tenant, or (b) in connection with a merger, acquisition, reorganization or consolidation of Tenant or in connection with the sale of all or substantially all of Tenant's corporate stock or ownership interests or assets provided that, in each case, such

merger, consolidation, acquisition or sale, as the case may be, shall be made for a good business purpose other than (and not principally for) the purpose of transferring the leasehold estate created hereby (each of the foregoing shall be deemed a "Permitted Transfer"). Notwithstanding the foregoing, if, because of a confidentiality requirement or a legal proscription, Tenant shall not be able to disclose in advance to Landlord the occurrence of a transaction described in clause (b) of this paragraph, Tenant may effectuate such transaction prior to notifying Landlord thereof, provided that Tenant shall comply in all other respects with the requirements of this Section 23 (as applicable) and shall submit all required information to Landlord not later than the tenth (10th) day following the effective date of such transaction. If for any reason whatsoever Tenant shall not comply with all of said requirements within such time period, said transaction shall be deemed a default under this Lease.

Without conferring any rights onto Tenant not otherwise provided in this Section, one-half (1/2) of all rent or other payment accruing to Tenant as the result of any assignment, transfer, sublease or other occupancy arrangement with respect to the Premises or any part thereof, including any lump sum or periodic payment in any manner, which exceeds the rent calculated on a per square foot basis then payable by Tenant under this Lease shall be paid by Tenant to Landlord monthly as Additional Rent. At Landlord's request from time to time, Tenant shall deliver to Landlord a certificate specifying the full amount of any such payment of whatsoever nature. This paragraph shall not be applicable to any assignment, transfer, sublease or other occupancy arrangement which is a Permitted Transfer.

Any costs and expenses, including attorney's fees (which shall include the cost of any time expended by Landlord's attorneys including in-house counsel) incurred by Landlord in connection with any proposed or purported assignment, transfer, or sublease shall be paid by Tenant as Additional Rent. It is understood and agreed that the restrictions set forth in this Section are of primary importance in enabling Landlord to control the mix of tenants in the Shopping Center.

(b) If Landlord should sell or otherwise transfer its interest in the Premises upon an undertaking by the purchaser or transferee to be responsible for all of the covenants and undertakings of Landlord, Tenant agrees that Landlord shall thereafter have no liability to Tenant under this Lease or any modification or amendments thereof, or extensions or renewals thereof, except for such liabilities which might have accrued prior to the date of such sale or transfer of Landlord's interest.





24. Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than the rental herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided for in this Lease or available at law or in equity.

25. Estoppel Certificates. At any time and from time to time, Tenant agrees, upon request in writing from Landlord, to promptly without delay execute, acknowledge and deliver to Landlord a statement in writing 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) and the dates to which the Percentage Rent, Additional Rent, and other charges hereunder have been paid. In addition, Tenant agrees to furnish Landlord, upon request and after Tenant has opened its doors for business in the Premises, a letter addressed to Landlord's mortgagee or financial institution, giving the following information or any part thereof requested by Landlord: (i) that the Premises have been completed on or before the date of such letter and that all conditions precedent to the lease taking effect have been carried out; (ii) that Tenant has accepted possession, that the lease term has commenced, that Tenant is occupying the Premises and that Tenant knows of no default under the lease by the Landlord; (iii) the actual commencement date of the lease and the expiration date of the lease; and (iv) that the Tenant's store is open for business. In the event the Tenant fails to provide such letter as above-described within ten (10) days after Landlord's written request therefor, Tenant does hereby make, constitute and irrevocably appoint Landlord as its attorney-in-fact and in its name, place and stead so to do.

26. Waiver. No waiver of any condition or legal right or remedy shall be implied by the failure of Landlord to declare a forfeiture, or for any other reason, and no waiver of any condition or covenant shall be valid unless it be in writing signed by Landlord. No waiver by Landlord in respect to one tenant of the building in which the Premises are located shall constitute a waiver in favor of any other tenant, nor shall the waiver of a breach of any condition be claimed or pleaded to excuse a future breach of the same condition or covenant. The mention in this Lease of any specific right or remedy shall not preclude Landlord from exercising any other right or from having any other remedy or from maintaining any action to which it may be otherwise entitled either at law or in equity; and for the purpose of any suit by Landlord brought or based on this Lease, this Lease shall be construed to be a divisible contract, to the end that successive

actions may be maintained as successive periodic sums shall mature under this Lease and it is further agreed that failure to include in any suit or action any sum or sums then matured shall not be a bar to the maintenance of any suit or action for the recovering of said sum or sums so omitted.

27. Quiet Enjoyment. Landlord hereby covenants and agrees that if Tenant shall perform all the covenants and agreements herein stipulated to be performed on Tenant's part, Tenant shall at all times during the continuance hereof have the peaceable and quiet enjoyment and possession of the Premises without any manner of hindrance from Landlord or any person or persons lawfully claiming the Premises.

28. Interpretation. Wherever either the word "Landlord" or "Tenant" is used in this Lease, it shall be considered as meaning "Landlords" or "Tenants", respectively, wherever the context permits or requires, and when the singular and/or neuter pronouns are used herein, the same shall be construed as including all persons and corporations designated respectively as Landlord or Tenant in the heading of this instrument wherever the context requires.

29. No Partnership. Landlord does not, in any way or for any purpose, become a partner of Tenant in the conduct of its business, or otherwise, or joint venturer or a member of a joint enterprise with Tenant.

30. Exceptions to Demise. Notwithstanding anything to the contrary herein contained, this Lease is subject to utility easements, both recorded and unrecorded.

31. Paragraph Headings. The paragraph headings are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Lease nor in any way affect this Lease.

32. Lease Inures to Benefit of Assignees. This Lease and all the covenants, provisions and conditions herein contained shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns, respectively, of the parties hereto, provided, however, that no assignment by, from, through or under Tenant in violation of the provisions hereof shall vest in the assigns any right, title or interest whatsoever.

33. Entire Agreement / Severability.

(a) Entire Agreement. This Lease and the exhibits attached hereto, and any Rider attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and



understandings between Landlord and Tenant concerning the Premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. This Lease shall not be orally amended, modified or terminated, nor shall any obligation hereunder be waived orally. No subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless and until reduced to writing and signed by them and by any lender to Landlord if such consent is required as a condition of financing to Landlord. Tenant agrees that Landlord and its agents have made no representations or promises with respect to the Premises or the building or property of which the same are a part except as herein expressly set forth.

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

(c) No Option. The submission of this Lease to Tenant for examination does not constitute a reservation of or option for the Premises and this Lease becomes effective only upon execution by Landlord and Tenant.

34. Surrender and Holding Over. Tenant shall deliver up and surrender to Landlord possession of the Premises upon the expiration of the Lease, or its termination in any way, broom clean and in as good condition and repair as the same shall be at the commencement of said term (damage by fire and ordinary wear and decay only excepted), and shall deliver the keys at the office of Landlord or Landlord's agent. As provided in Section 11 of this Lease Tenant shall remove all signage and shall repair any damage caused by the removal of such signage. Should Tenant or any party claiming under Tenant remain in possession of the Premises, or any part thereof, after any termination of this Lease, no tenancy or interest in the Premises shall result therefrom but such holding over shall be an unlawful detainer and all such parties shall be subject to immediate eviction and removal, and Tenant shall upon demand pay to Landlord, as liquidated damages, a sum equal to Additional Rent plus double the Fixed Rent as specified herein for any period during which Tenant shall hold the Premises after the stipulated term of this Lease may have terminated.

35. Liability of Landlord. If Landlord shall fail to perform any covenant, term or condition of this Lease upon Landlord's part to be performed and, as a consequence of such default, Tenant shall



recover a money judgment against Landlord, such judgment shall be satisfied only out of the proceeds of sale received upon execution of such judgment and levy thereon against the right, title and interest of Landlord in the Site and out of rents or other income from such property receivable by Landlord or out of the consideration received by Landlord from the sale or other disposition of all or any part of Landlord's right, title and interest in the Site, and neither the Landlord nor any member or employee of the limited liability company designated herein of the Landlord, nor any partner of the Landlord, nor any owner of any partner of the Landlord, nor any employee or agent of any of them shall be liable for any deficiency.

This Agreement and all documents, agreements, understandings and arrangements relating to this transaction have been negotiated, executed and delivered on behalf of DEER PARK ENTERPRISE, LLC, by its authorized agent or by BDG DEER PARK ASSOCIATES, LLC, or by BDG ASSET MANAGEMENT, INC., or by DPSW DEER PARK LLC, or by WRS DEER PARK LLC, or by WRS ADVISORS III, LLC, or by TANGER DEER PARK, LLC, or by TANGER DEVCO, LLC, or their officers or managers thereof in their representative capacity and not individually, and bind only DEER PARK ENTERPRISE, LLC and no employee, agent, officer, partner or shareholder of any of the entities hereinabove referenced shall be bound or held to any personal liability in connection with the obligations of DEER PARK ENTERPRISE, LLC thereunder, and any person or entity dealing with DEER PARK ENTERPRISE, LLC in connection therewith shall look solely to DEER PARK ENTERPRISE, LLC for the payment of any claim or for the performance of any obligation thereunder. The foregoing shall also apply to any future documents, agreements, understandings, and arrangements which may relate to this transaction.

36. Waiver of Subrogation. Landlord and Tenant hereby release the other from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation or otherwise for any loss or damage to property caused by fire or any of the extended coverage or supplementary contract casualties, even if such fire or other casualty shall have been caused by the fault or negligence of the other party, or any one for whom such party may be responsible, provided, however, that this release shall be applicable and in force and effect only with respect to loss or damage occurring during such time as the releasor's policies shall contain a clause or endorsement to the effect that any such release shall not adversely affect or impair said policies or prejudice the right of the releasor to recover thereunder.

Each party shall request its insurance carriers to include a waiver of subrogation clause in all insurance policies which relate to the Premises or use of the Premises so long as such clause is

obtainable without extra cost, or, if extra cost shall be charged therefor, so long as the other party pays such entire cost. If extra cost shall be charged therefor, each party shall advise the other thereof and of the amount of the extra cost, and the other party, at its election, may pay the same, but shall not be obligated to do so.

37. Retail Restriction Limit. During the term of this Lease (including any extension or renewal thereof) and for a period of one year thereafter, Tenant shall not, within the radius stated in the Data Summary, directly or indirectly (a) own, operate or be financially interested in, either by itself or with others, a business like or similar to the business permitted to be conducted in the Premises, or (b) license its product or tradename for use by a business to be conducted within such radius if such business is like or similar to the business permitted to be conducted in the Premises, provided, however, that this restriction shall not apply to any full price store or to any wholesale accounts or departments within department stores in which Tenant's products are sold. This provision shall apply to any principal or partner of Tenant, if Tenant is a partnership or joint venture, and to any officer, director or shareholder owning more than ten percent (10%) of the capital stock of Tenant, if Tenant be a corporation and to any manager or member owning more than ten percent (10%) of the membership interests of Tenant if Tenant is a limited liability company. Landlord, for breach of this covenant and in addition to any other remedy otherwise available, may require that all sales from any such competing business be included within the gross sales as defined in Section 3(b)(iii) hereof as though such sales had actually been made from the Premises.

38. Financial Statements. At the request of Landlord, Tenant shall, not later than ninety (90) days following the close of each fiscal year of Tenant during the term of this Lease, furnish to Landlord a balance sheet of Tenant as of the end of such fiscal year and a statement of income and expense for the fiscal year then ended, prepared in conformity with generally accepted accounting principles consistently applied and fairly presenting the financial condition and results of operations of Tenant as of and for the period covered.

39. Attorneys' Fees. In the event either party hereto brings an action or proceeding to enforce the terms and provisions of this Lease or any other action arising out of this Lease or the transactions contemplated hereby, or in the event that any party is in default of its obligations pursuant hereto, whether or not suit is filed or prosecuted to final judgment, the prevailing party shall be entitled to recover from the non-prevailing party (in addition to any other damages or relief awarded) all court costs and expenses (including, without limitation, all reasonable



attorneys' fees whether or not a law suit was actually filed) incurred by the prevailing party in connection with such enforcement of the terms and provisions of this Lease.

Tenant hereby agrees that if Tenant does not timely pay rental amounts due under this Lease after written notice to Tenant of such failure to pay and the lapse of any applicable cure period, then Tenant shall pay to Landlord in addition to all other amounts payable hereunder a collection fee of Five Hundred Dollars (\$500.00) per occurrence, such fee to partially compensate Landlord for its administrative costs incurred, whether direct or indirect, in providing any necessary notices and instituting collection actions.

40. Guaranty Agreement. As a condition precedent to Landlord's execution of this Lease, a lease guaranty in form provided by Landlord must be executed by IK DNA 2050, INC. and delivered to Landlord.

41. Waiver of Trial by Jury. It is mutually agreed by and between Landlord 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 on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, and/or any claim of injury or damage, or for the enforcement of any remedy under any statute, law, rule, regulation or otherwise. It is further mutually agreed that in the event Landlord commences any summary proceeding (whether for nonpayment of rent or because Tenant continues in possession of the Premises after the expiration or termination of the Term), Tenant will not interpose any counterclaim (except for mandatory or compulsory counterclaims) of whatever nature or description in any such proceeding.

42. Environmental Matters.

(a) Hazardous Materials. Landlord represents and warrants that to the best of its knowledge, the Premises are free of all asbestos, asbestos containing materials and other hazardous or toxic materials in violation of applicable environmental laws ("Hazardous Materials").

Tenant shall not cause or permit any Hazardous Materials to be used, stored, generated, released or disposed of on, in or from the Premises by Tenant, Tenant's agents, employees, contractors or invitees.

If any Hazardous Materials are present in the Premises at the time the Premises are redelivered to Landlord, Tenant shall



reimburse Landlord the cost for removal of any and all such Hazardous Materials.

(b) Asbestos Certification by Tenant. During the final calendar month of the term of this Lease, as such term may have been extended, Tenant shall deliver to Landlord a certification prepared by a licensed asbestos inspector that any materials used in Tenant's initial buildout of the Premises or any subsequent remodeling or renovation during the term of this Lease or any extension thereof, are free of asbestos and asbestos containing products. All certifications delivered by Landlord or Tenant to the other party shall expressly provide that such certification is being issued for the benefit of and can be relied upon by Landlord or Tenant and by any successor tenant with respect to the Premises. In the event Tenant fails to provide such inspection report to Landlord on or prior to the last two (2) weeks of such final month, then Landlord shall be entitled to have such inspection performed on behalf of Tenant and Tenant agrees to pay Landlord the costs for such inspection within ten (10) days of receipt of Landlord's invoice or statement.

(c) Moisture. Tenant shall undertake whatever actions are necessary to prevent mold from forming in the Premises by taking the following action when required: (i) Tenant shall be cognizant in the case of any and all water leaks. Plumbing leaks, roof leaks, foundations leaks or any other source of water that penetrates into the Premises shall be reported to Landlord immediately. Tenant is obligated and required to so report any and all such leak(s) by phone or fax communication and failure to make such a report shall be deemed a default under this Lease; (ii) Tenant shall control the air conditioning in the Premises such that when the humidity is 80% or higher and temperatures are 90 degrees Fahrenheit or higher, Tenant shall use its air conditioning system to remove excessive humidity from the Premises; (iii) Tenant shall regularly mop and/or vacuum Tenant's restroom in the Premises as is required and is responsible for removing all standing water in the Premises; and (iv) in the event Tenant becomes aware of any mold growth, Tenant shall immediately, within twenty-four (24) hours, notify the Landlord in writing so that Landlord can have the growth examined for the purposes of determining the cause of such growth and effect proper remedy, and Tenant shall reimburse Landlord for the cost thereof. Should Tenant fail to so notify Landlord as herein required, then Tenant shall be responsible for any and all additional costs and other damages that may result from any such growth of mold that may occur as a result thereof.

43. Due Authority of Tenant. If the Tenant is a partnership, corporation, limited liability company, or other entity, the persons executing this Lease on behalf of Tenant hereby covenant, represent and warrant that Tenant is duly organized, in good



standing and authorized to do business in its state of formation, and that Tenant is qualified, in good standing and authorized to do business in the state in which the Premises is located, and that the persons executing this Lease on behalf of Tenant are managing partners, officers, or agents of Tenant and that as such managing partners, officers, or agents they are duly authorized to execute, acknowledge and deliver this Lease to Landlord, and that this is valid and enforceable against Tenant in accordance with its terms. The persons executing this Lease hereby indemnify and hold harmless Landlord from all cost, expense, and loss sustained by Landlord arising out of the covenants, representations and warranties in this Paragraph being untrue, inaccurate or misleading in any material way.

44. Construction. Landlord and Tenant have participated jointly in the negotiation and drafting of this Lease Agreement. In the event an ambiguity or question of intent or interpretation arises, this Lease Agreement shall be construed as if drafted jointly by the Landlord and Tenant and no presumption or burden of proof shall arise favoring or disfavoring either by virtue of the authorship of any of the provisions of this Lease Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word "including" shall mean including without limitation.

**[Signature Page(s) Follow]**





IN TESTIMONY WHEREOF, the Landlord and Tenant have caused this Lease to be signed in duplicate as of the day and year first above written.

LANDLORD: DEER PARK ENTERPRISE, LLC

BY: BDG DEER PARK ASSOCIATES, LLC,  
a New York limited liability company

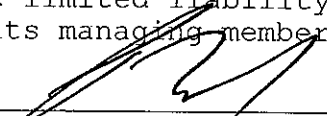
BY: BDG Asset Management, Inc.,  
a New York corporation, its  
General Manager

By:   
Name: David Blumenfeld  
Title: Vice President

BY: DPSW DEER PARK LLC,  
a New York limited liability company

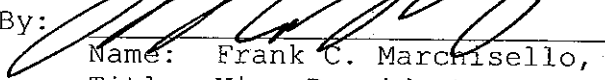
BY: WRS Deer Park, LLC,  
a New York limited liability company,  
its managing member

By: WRS Advisors III, LLC,  
a Delaware limited liability  
company, its managing member

By:   
Name: Richard Mack  
Title: \_\_\_\_\_

BY: TANGER DEER PARK, LLC,  
a North Carolina limited liability company

BY: Tanger Devco, LLC,  
a North Carolina limited liability  
company, its Manager

By:   
Name: Frank C. Marchisello, Jr.  
Title: Vice President  
*Executive*

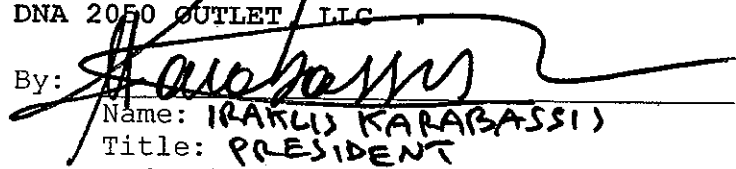
[Signatures Continue on Following Page]



TENANT:

DNA 2050 OUTLET LLC

By:



Name: IRAKLIS KARABASSIS

Title: PRESIDENT

Federal Taxpayer ID No. \_\_\_\_\_

Witness:

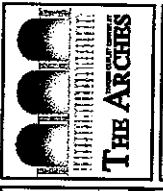
\_\_\_\_\_  
Print Name:



**EXHIBIT "A"**

**SITE PLAN**





**DEER PARK ENTERPRISE**  
 300 Robbins Lane  
 Syosset, New York 11791

**RMS ENGINEERING**  
 Civil Engineer  
 350 New York Avenue,  
 Syosset, New York 11791

**FREDERICK P. CLARK**  
 Planning / Development / Environmental / Transportation  
 825 New York Avenue,  
 Syosset, New York 11791

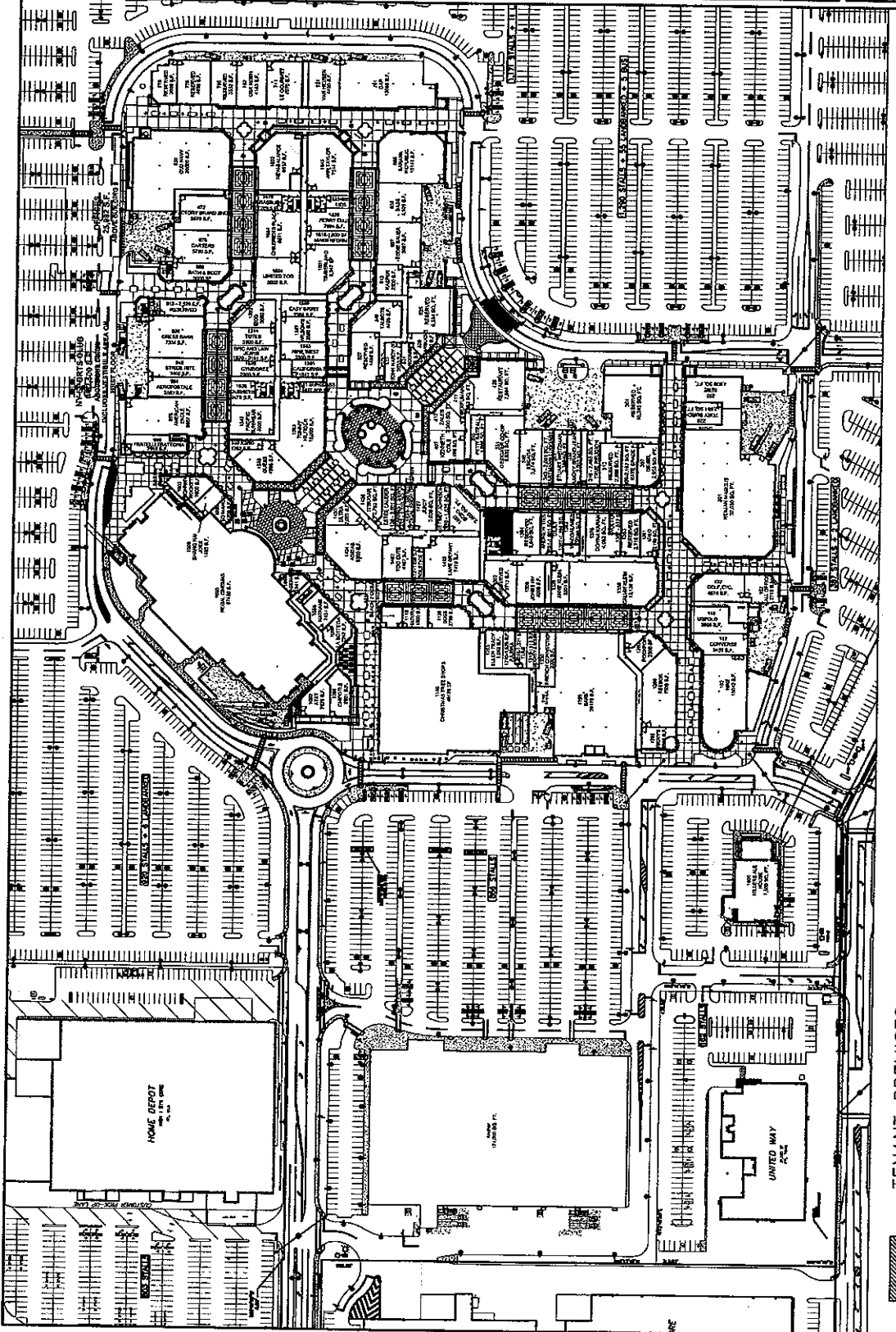


Project:	TANGER OUTLET CENTER
Client:	DEER PARK ENTERPRISE
Architect:	ADAM-AMORAN ARCHITECTURE
Engineer:	RMS ENGINEERING
Planner:	FREDERICK P. CLARK
Scale:	AS SHOWN
Date:	7/21/05
Sheet:	1 of 1

**TANGER OUTLET CENTER**  
**THE ARCHES**  
 455 CONNORCK ROAD  
 SYOSSET, N.Y. 11791

**LEASE EXHIBIT**

**EXHIBIT EX-A**



**Lease Exhibit "A" - Site Plan**

TENANT PREMISES  
 2,779 Sq. Ft.



**EXHIBIT "B"**

**Legal Description**

All that certain plot, piece or parcel of land, situate, lying and being in Deer Park, Town of Babylon, County of Suffolk, State of New York, being more particularly bounded and described as follows:

BEGINNING at a point on the Easterly side of Commack Road (CR 4), said point being 1,432.42 feet Northerly from the extreme Northerly end of a curve connecting the Easterly side of Commack Road and the Northerly side of Grand Boulevard.

RUNNING THENCE, from said POINT or PLACE of BEGINNING along a curve bearing to the left having a radius of 50.00 feet, with an arc length of 107.86 feet (MAP 107.90');

THENCE the following fifteen (15) courses:

1. North 73 deg. 18 min. 50 sec. East, 410.84 feet;
2. South 16 deg. 41 min. 10 sec. East, 4.00 feet;
3. North 73 deg. 19 min. 10 sec. East, 508.99 feet;
4. North 16 deg. 40 min. 50 sec. East, 549.91 feet;
5. North 73 deg. 19 min. 10 sec. East, 1,839.82 feet;
6. South 18 deg. 15 min. 25 sec. East, 1,698.10 feet;
7. South 71 deg. 44 min. 35 sec. West, 754.59 feet;
8. South 15 deg. 00 min. 08 sec. East, 208.53 feet to the northerly line of Grand Boulevard;
9. North 80 deg. 48 min. 20 sec. West, 949.35 feet;
10. South. 73 deg. 18 min. 50 sec. West, 304.97 feet;
11. North 16 deg. 41 min. 10 sec. West, 313.83 feet;
12. South 73 deg. 18 min. 50 sec. West, 475.88 feet;
13. North 16 deg. 41 min. 10 sec. West, 582.67 feet;
14. South 73 deg. 18 min. 50 sec. West, 550.60 feet to the easterly line of Commack Road;
15. North 16 deg. 54 min. 48 sec. East, 177.32 feet to the POINT or PLACE of BEGINNING

**EXHIBIT "C"**

**Landlord's Work**

**LANDLORD SHALL PROVIDE A BASIC BUILDING AND THE PREMISES COMPLETED TO THE EXTENT DEFINED BELOW:**

**1. EXTERIOR SIGNAGE**

Landlord shall provide a demarcated area above Tenant's storefront to receive signage compliant with the criteria set forth by Landlord.

All signage materials, costs and construction to be provided by Tenant. Power to sign will be connected by Tenant to its electrical panel. Tenant shall be permitted only one (1) penetration through the Storefront in order to provide electric service to Exterior Signage. Tenant to connect signage to a time clock if required by landlord.

(1) One tenant blade sign to be provided by landlord at a location by landlord. Tenant may be asked to provide camera ready artwork to landlord for this signage.

Refer to Tenant Signage Handbook for more information on all tenant related signage.

**2. BUILDING SHELL**

Landlord shall provide a basic building containing the Premises including compacted sub-grade, 8 inches below finished floor, perimeter walls, storefront and egress doors, and unfinished roof/ceiling assembly.

Perimeter walls to be finished on the exterior by the Landlord to comply with the overall building design parameters; interior face of exterior walls to be drywall, taped and spackled, ready to receive paint (paint to be provided by Tenant).

Tenant's design must coordinate with Landlord's structural engineering design, and approved by Landlord.

**3. PERMITS AND APPROVALS**

Tenant shall be responsible for obtaining all permits and approvals necessary for Tenant's Initial Work and for Tenant to receive a Certificate of Occupancy for the Permitted Use as specified in the lease. Tenant, at its sole cost and expense, shall use Landlord's approved expeditor for all matters necessary for Tenant to receive permits, approvals and a Certificate of Occupancy.

**4. FLOORS**

Landlord shall provide smooth finished, flat, uncolored concrete floors to support a minimum live load of 150 psf. Any Slab leave-out areas required by the tenant to be approved by landlord prior to slab being poured. If Landlord provides slab leave out areas for tenant, tenant will be responsible to pour all concrete in slab leave-outs to landlord specifications.

If slab is in place, prior to getting landlord approval, tenant will be responsible to cut and replace concrete floor as required to landlord specifications.

All floor finishes to be provided by Tenant.

5. **DEMISING PARTITIONS**

Landlord shall provide metal frame partitions with drywall, taped and spackled, ready to receive paint. The demising partitions shall be fire rated to meet all code requirements.

All walls other than the demising partitions to be provided by Tenant. In addition, all finishes to the walls within the Premises (including demising partitions), to be provided by Tenant.

6. **CEILINGS**

Landlord shall provide exposed structure, as required by code.

Finished ceilings and support components, all interior lighting, HVAC equipment, grilles and diffusers, vapor and sound dampening material (as required), to be provided by Tenant and installed within the Premises.

7. **HVAC**

All HVAC equipment exclusively servicing the Tenant's space shall be located within or directly above the Premises. Landlord will install one (1) six (6) ton unit and one (1) three (3) ton unit to service the space. The Tenant will furnish and install all equipment, associated piping, ductwork, controls and other equipment necessary to complete the HVAC system within the Premises. Tenant to furnish all additional structural framing required for HVAC equipment.

(Gas service will be provided for building areas 1-12 only) All HVAC to be connected to 480v service.

**8. ELECTRICAL**

Landlord Provided Conduit for 277/480 volt service to be based on the following criteria:

Building Areas 1-12		277/480V		Tenant to provide all panels, L.L. to provide conduit only for main 277/480 panel Step down transformers and 120/208v service will be determined and Provided by Tenant.
	(Gas Heat)	Assumed Panel Size (Amps)	(Conduit Only)	
0	up to sq/ft	1,500	100	
1,501	up to sq/ft	3,000	200	
3,001	up to sq/ft	6,500	400	
6,501	up to sq/ft	10,000	600	
10,001	up to sq/ft	14,000	800	

Building Areas 13-16		277/480V		Tenant to provide all panels, L.L. to provide conduit only for main 277/480 panel Step down transformers and 120/208v service will be determined and Provided by Tenant.
	(Electric Heat)	Assumed Panel Size (Amps)	(Conduit Only)	
0	up to sq/ft	1,000	100	
1,001	up to sq/ft	3,000	200	
3,001	up to sq/ft	4,500	400	
4,501	up to sq/ft	6,000	400	
6,001	up to sq/ft	9,000	600	
9,001	up to sq/ft	12,000	800	

**9. FIRE ALARM**

Fire alarm system within the Demised Premises to be designed, furnished, and installed by Tenant and tied to the Building's central system at Tenant's sole cost and expense.

All installation costs for integration with the Building's central system required by code are the responsibility of the Tenant. Tenant, at its sole cost and expense, shall use Landlord's fire alarm vendor for the building in connection with such installation.

**10. TELEPHONE**

Landlord will provide a central main service panel location with one (1) 3/4" conduit stub at a location within the Premises, as designated by Tenant on Tenant's Plans and Specifications, as approved by Landlord. The telephone system within the Premises including conduit, draglines & raceways, outlets & cover plates, telephone backboard, phone system equipment and components will be the responsibility of Tenant.

**11. SERVICE ACCESS**

The trash disposal area will be located in an area designated by Landlord.





12. **REAR EGRESS**

All rear egress doors (if such egress is required) and related hardware that serve the Premises to be specified, provided and installed by Landlord.

13. **STOREFRONT**

A standard storefront including, glazing and entrance doors to be provided and installed by Landlord.

14. **WATER/FIRE PROTECTION**

Landlord shall provide a sprinkler system designed for ordinary hazard group 2. All heads will be turned up in an open ceiling configuration. All additional sprinkler system modifications necessary for tenant's upfit to be done by tenant at tenant's cost.

15. **WATER/DOMESTIC**

Landlord will provide a 2" main for tenant tie-in within tenant premises at a location to be determined by Landlord. Tenant will provide all interior piping within the Premises as required by their tenant upfit.

Tenant shall be responsible for installing a sub-meter for water usage. Said sub-meter shall be in the back of the store at a location easily accessible to Landlord to allow for monthly meter readings. Tenant shall pay for all metering fees and other hookup charges.

16. **SANITARY SEWER**

Landlord to provide one sanitary waste line for tenant tie-in at a location designated by Landlord.

Restaurant and food service Tenant's shall be provided one additional kitchen waste line (tied into Landlord supplied grease interceptor) capped to the Premises, at a location designated by Landlord.

All branch piping, vents, and stubs through the floor slab and ceilings will be by Tenant.



EXHIBIT "D"

Brands Currently Sold by Tenant



## LEASE GUARANTY

FOR VALUE RECEIVED AND IN CONSIDERATION FOR and as an inducement to **DEER PARK ENTERPRISE, LLC**, (hereinafter "Landlord"), to enter into a Lease Agreement on or about the date hereof (the "Subject Lease") with **DNA 2050 OUTLET, LLC** (hereinafter ("Tenant"), covering real property located in Deer Park, New York the undersigned Guarantor, **IK DNA 2050, INC.**, unconditionally guarantees the full performance and observance of all the covenants, conditions and agreements therein provided to be performed and observed by Tenant and Tenant's successors and assigns, and expressly agrees that the validity of this Agreement and the obligations of the Guarantor hereunder (the "Obligations") shall not be terminated, affected or impaired by reason of the granting by Landlord of any indulgences to Tenant or by reason of the assertion by Landlord against Tenant of any of the rights or remedies reserved to Landlord pursuant to the provisions of the Subject Lease or by the release of Tenant from any of Tenant's obligations under the Lease, by operation of law or otherwise (including, but without limitation to, the rejection of the Lease in connection with proceedings under the bankruptcy laws now or hereinafter enacted); the undersigned Guarantor hereby waiving all suretyship defenses.

The undersigned Guarantor further covenants and agrees that this Lease Guaranty shall remain and continue in full force and effect as to any renewal, modification or extension of the Subject Lease, whether or not the undersigned Guarantor shall have received any notice of or consented to such renewal, modification or extension. The undersigned Guarantor further agrees that its liability under this Lease Guaranty shall be primary, and that in any right of action which shall accrue to Landlord under the Subject lease, the Landlord may, at Landlord's option, proceed against the undersigned Guarantor and Tenant, jointly or severally, and may proceed against the undersigned Guarantor without having commenced any action against or having obtained any judgment against Tenant.

Any notice or consent required to be given by or on behalf of either party to the other shall be in writing and shall be given by mailing such notice or consent by certified mail, return receipt requested, addressed to Landlord or by Federal Express or comparable overnight air courier service - Next Day - Morning Delivery addressed to Landlord at 3200 Northline Avenue, Suite 360, Greensboro, North Carolina 27408 (Telephone: 336-292-3010), Attn: Legal Department, and to the Guarantor at the address set forth on the signature page of this Lease Guaranty, or such other address as either party may from time to time designate as its notice address



by notifying the other party thereof. Notice so sent shall be deemed given (a) when personally delivered, or (b) on the first business day following deposit with Federal Express or a comparable overnight air courier service providing written evidence of next day delivery, such notice or consent not to be included with any other items being transmitted to Landlord, Guarantor, or any other party, or (c) five (5) business days following deposit in the United States mail, if notice is sent by certified mail, with return receipt requested, first class postage prepaid.

It is agreed that the failure of Landlord to insist in any one or more instances upon a strict performance or observance of any of the terms, provisions or covenants of the Subject Lease or to exercise any right therein contained shall not be construed or deemed to be a waiver or relinquishment for the future of such term, provision, covenant or right but the same shall continue and remain in full force and effect. Receipt by Landlord of rent with knowledge of the breach of any provision of the Subject Lease shall not be deemed a waiver of such breach.

No subletting, assignment or other transfer of the Subject Lease or any interest therein shall operate to extinguish or diminish the liability of the undersigned Guarantor under this Lease Guaranty; and wherever reference is made to the liability of Tenant named in the Subject Lease, such reference shall be deemed likewise to refer to the undersigned Guarantor.

If there is a default by Tenant in the payment of any amounts due to Landlord under the Subject Lease, this Lease Guaranty shall constitute an evidence of the Guarantor's indebtedness to Landlord for such amounts. In addition to all amounts owed by Tenant to Landlord pursuant to the Subject Lease, Guarantor shall pay the Landlord an amount equal to the reasonable attorney fees incurred by Landlord in exercising or enforcing any of Landlord's rights and remedies under the Subject Lease and/or this Lease Guaranty.

The Obligations shall not be considered fully paid, performed and discharged unless and until all payments by Tenant to Landlord are no longer subject to any right on the part of any person, including (not limited to) Tenant, Tenant as debtor-in-possession, and/or any trustee in bankruptcy, to set aside such payments or seek to recoup the amount of such payments or any part thereof, the foregoing shall include, by way of example and not by way of limitation, all rights to recover preferences voidable under Title 11 of the United States code, entitled Bankruptcy, 1 U.S.C. Section 101, et seq., as amended. In the event that any of such payments by Tenant to Landlord are set aside after the making thereof, in whole or in part, Guarantor shall be liable for the full amount Landlord is required to repay plus the costs, interest, attorneys'



fees, and other expenses that Landlord would be entitled to collect under the Subject Lease (but for Tenant's bankruptcy).

At the request of Landlord, Guarantor shall, not later than ninety (90) days following the close of each fiscal year of Guarantor during the term of this Lease, furnish to Landlord a balance sheet of Guarantor as of the end of such fiscal year and a statement of income and expense for the fiscal year then ended, prepared in conformity with generally accepted accounting principles consistently applied and fairly presenting the financial condition and results of operations of Guarantor as of and for the period covered.

IT IS FURTHER AGREED that all of the terms and provisions hereof shall inure to the benefit of the successors and assigns of the Landlord.

**[Signature Page To Follow]**



IN WITNESS WHEREOF, the undersigned Guarantor has executed this Lease Guaranty as of \_\_\_\_\_, 2009.

**GUARANTOR:**

**IK DNA 2050, INC.**

(Corporate  
Seal)

By:   
President/Vice President

Address: 3238 Prospect Street, N.W.  
Washington, DC 20007

Telephone: (202) 333-9792

Facsimile: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary/Assistant Sec.



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

-----X  
Deer Park Enterprise, LLC,

Plaintiff,

-against-

DNA 2050 Outlet, LLC,

Defendant.  
-----X

INDEX NO.:

**AFFIRMATION  
PURSUANT TO  
22 NYCRR § 202.7(f)  
AND IN SUPPORT OF  
ORDER TO SHOW  
CAUSE**

ADAM M. LEVY, an attorney duly admitted to practice law before the courts of the State of New York, hereby affirms the following under the penalties of perjury:

1. I am an associate of the firm of SIMMONS JANNACE, LLP, attorneys for plaintiff Deer Park Enterprise, LLC ("DPE"). Upon review of the file maintained by this office, I am fully familiar with the facts and circumstances surrounding this case.

2. This affirmation is submitted in support of DPE's show cause application pursuant to CPLR § 6301 et seq. for: (i) a temporary restraining order restraining defendant DNA 2050 Outlet, LLC ("DNA") from transferring, selling, removing, detaching, disconnecting, altering, replacing, pledging, assigning or otherwise disposing of any fixture and/or other Improvement located in, attached to, or otherwise a part of, the premises located at the The Tanger Outlet Center at The Arches, in the City of Deer Park, County of Suffolk, State of New York, more particularly described in the lease annexed hereto as Exhibit "A" ("the Premises"); (ii) an order requiring defendant to show cause why a preliminary injunction should not issue to restrain DNA from transferring, selling, removing, detaching, disconnecting, altering, replacing, pledging, assigning or otherwise disposing of any fixture and/or other Improvement located in, attached to, or

otherwise a part of, the Premises; and (iii) for such other and further relief as this Court deems just and proper.

3. As is set forth in greater detail in the Affidavit of David Blumenfeld, which is fully incorporated by reference. DPE, the landlord/lessor, and DNA, the lessee, entered an agreement (the "Lease") for the lease of the Premises for a term of 10 years (the "Term").

4. Pursuant to the Lease, DPE paid for the initial costs to construct the Premises. DPE spent approximately \$333,000 improving the Premises.

5. Section 4(e) of the Lease provides that DPE is "the legal title and beneficial owner of all alterations, additions, fixtures, equipment and other items in or about the Premises (collectively "Improvements")."

6. On or around March 4, 2011 and prior to the end of the Term, DNA began vacating the Premises in breach of the Lease without notice to DPE and is advertising via a sign located in the window of the Premises that the fixtures in the Premises are for sale.

7. Accordingly, DNA intends to sell DPE's fixtures and/or other property.

8. With this motion, DPE seeks to maintain the *status quo* to prevent immediate and irreparable injury, loss and/or damage to its real and personal property. DPE therefore respectfully requests that DNA be immediately restrained from selling DPE's property. Indeed, the underlying complaint seeks to recover based upon DNA's breach of the Lease and asserts causes of action based on, among other claims, conversion of the property that may be affixed to realty. As such, money damages may not be suitable to fully compensate DPE.



9. The equities certainly balance in DPE's favor since DPE spent approximately \$333,000 improving the Premises for DNA's use during the Term. DNA, in attempting to vacate the Premises without specific notice to DPE while selling DNA's property, is not only breaching the Lease, but is also acting in an inequitable manner.

10. There is no adequate remedy at law.

11. Your affirmitant states that on March 9, 2011 DPE sent DNA notification that plaintiffs intended to file and appear on the Motion on March 9, 2011. Notification was sent via facsimile. Attached as Exhibit "B" is a copy of the letter sent on March 9, 2011.

12. Attached as Exhibit "C" is a copy of the Summons and Complaint DPE intends to file in this action.

13. No prior provisional remedy has been requested or secured against defendants and no previous application has been made for the relief sought.

Dated: Syosset, New York  
March 9, 2011

**SIMMONS JANNACE, LLP**

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

ADAM M. LEVY

Attorneys for Plaintiffs

**Office & P.O. Address:**

115 Eileen Way, Suite 103

Syosset, New York 11791

(516) 802-0630

**Exhibit B**

**SIMMONS JANNACE, LLP**

ATTORNEYS AT LAW

115 EILEEN WAY, SUITE 103  
SYOSSET, NEW YORK 11791-5314

(516) 802-0630

FAX (516) 802-0631

Counsel

Susan B. Jannace  
Ross M. Chinitz

\*Also Admitted NJ  
ΔAlso Admitted CT  
≈Also Admitted DC

Kevin P. Simmons  
Steven D. Jannace  
Sal F. DeLucaΔ

Hsiuen (Jeffrey) F. Chen\*  
William T. Collins, III  
Jason W. Creech  
George C. Fontana, Jr.  
Michael D. KernaΔ  
Allison C. Leibowitz  
Adam M. Levy  
Ryan S. Napolitano\*≈  
Marvin N. Romero\*  
J. Daniel VelezaΔ

March 9, 2011

**VIA FACSIMILE (202) 572-1251**

DNA 2050 Outlet, LLC  
3238 Prospect Street, NW  
Washington DC 20007

Attn: Iraklis Karabasis

Re: The Lease between DNA 2050 Outlet, LLC and Deer Park  
Enterprise, LLC for the Tanger Outlet Center at the  
Arches

Dear Mr. Karabasis:

This firm has been retained to represent Deer Park Enterprise, LLC with respect to the above referenced matter. It has come to our attention that you are attempting to sell fixtures and/or other property that rightfully belongs to Deer Park Enterprise, LLC, in violation of your lease agreement dated September 23, 2009.

Please be advised that we will be seeking a Temporary Restraining Order at or around 3:00 p.m. this afternoon in the Supreme Court, Suffolk County located at 310 Centre Drive, Riverhead, New York 11901, to prevent the improper sale or removal of any such fixtures.

Please contact me if you would like to discuss this matter.

Very truly yours,

  
Adam M. Levy

SDJ/ar  
Karabasis ltr

\*\*\*\*\*  
 \*\*\* TX REPORT \*\*\*  
 \*\*\*\*\*

TRANSMISSION OK

TX/RX NO 0586  
 CONNECTION TEL 625\*12025721251  
 CONNECTION ID  
 ST. TIME 03/09 11:58  
 USAGE T 01'06  
 PGS. SENT 1  
 RESULT OK

## SIMMONS JANNACE, LLP

ATTORNEYS AT LAW  
 115 EILEEN WAY, SUITE 103  
 SYOSSET, NEW YORK 11791-5314  
 (516) 802-0630  
 FAX (516) 802-0631

Counsel

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March 9, 2011

VIA FACSIMILE (202) 572-1251

DNA 2050 Outlet, LLC  
 3238 Prospect Street, NW  
 Washington DC 20007

Attn: Iraklis Karabasis

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 Arches

Dear Mr. Karabasis:

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Please be advised that we will be seeking a Temporary

**Exhibit C**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

-----X  
Deer Park Enterprises, LLC,

Plaintiff,

-against-

DNA 2050 Outlet, LLC,

Defendant.

Index No.:  
Date Filed.:

**SUMMONS**

Plaintiff designates  
Suffolk County as  
the place of trial

The basis of venue is  
location of leased real property

-----X  
To the above named Defendant:

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Syosset, New York  
March 9, 2011

Yours, etc.

SIMMONS JANNACE LLP

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

Adam M. Levy

Attorneys for Plaintiff

**Office & P.O. Address:**

115 Eileen Way, Suite 103

Syosset, New York 11791

(516) 802-0630

TO: DNA 2050 Outlet, LLC  
3238 Prospect Street, N.W.  
Washington, DC 20007

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

-----X  
Deer Park Enterprise, LLC,

Plaintiff,

-against-

DNA 2050 Outlet, LLC,

Defendant.  
-----X

INDEX NO.:

**COMPLAINT**

Plaintiff Deer Park Enterprise, LLC ("DPE"), by its attorneys Simmons Jannace, LLP, as and for its Complaint against the DNA 2050 Outlet, LLC ("DNA"), hereby alleges as follows:

1. At all times herein, DPE is New York limited liability company with offices located in the County of Suffolk, State of New York.
2. DPE is an owner of The Tanger Outlet Center at The Arches, in the City of Deer Park, County of Suffolk, State of New York, more particularly described in the lease annexed hereto as Exhibit "A" (the "Premises").
3. At all times herein, DNA is a Delaware limited liability company with offices located at 3238 Prospect Street, N.W., Washington, D.C. 20007.
4. On or about September 23, 2009, DPE and DNA entered into a lease agreement (the "Lease") pursuant to which DPE agreed to lease the Premises to DNA. See Exhibit "A".
5. The term of the Lease is ten (10) years. Id.
6. Under Section 4(e) of the Lease, DPE paid for DNA's initial costs to construct the Premises.

7. Upon information and belief, DPE spent approximately \$333,000 improving the Premises in accordance with Section 4(e) of the Lease.

8. Upon information and belief, DNA took possession of the Premises pursuant to the Lease at or around the beginning of the Term.

9. On or around March 4, 2011 and prior to the end of the Term, DNA began vacating the Premises.

10. DNA did not give DPE specific notice that it intended to vacate the Premises.

11. Moreover, DNA is advertising that the fixtures located within the Premises are for sale.

12. Under Section 4(e) of the Lease, among other provisions, DPE has legal title to, and is the beneficial owner of alterations, additions, fixtures, equipment and other improvements to the Premises (the "Improvements").

13. Upon information and belief, DNA is selling fixtures and other improvements to which DPE has legal title.

#### **AS AND FOR A FIRST CAUSE OF ACTION**

14. DPE reasserts and realleges the allegations contained in previous paragraphs as if more fully set forth herein.

15. DNA's sale of the fixtures and other improvements constitutes a breach of the Lease Agreement.

16. DNA's sale of the fixtures and other improvements constitutes conversion.

17. DPE has been, and will continue to be, damaged as a result of DNA's sale of the fixtures and other Improvements.



18. DNA is liable to DPE in an amount to be determined at trial.

**AS AND FOR A SECOND CAUSE OF ACTION**

19. DPE reasserts and realleges the allegations contained in previous paragraphs as if more fully set forth herein.

20. DNA's advertisement of the sale of the fixtures and other Improvements represents its clear intent to wrongfully remove and convert DPE's property.

21. The sale of such fixtures and other Improvements is imminent.

22. DNA's removal, sale and conversion of the fixtures and other Improvements will irreparably damage DPE.

23. DNA's removal, sale and conversion of the fixtures and other Improvements will irreparably damage the Premises.

24. If DNA is not enjoined from selling DPE's fixtures and Improvements, DPE will continue to be irreparably injured.

25. Damages alone will not be sufficient to repair the injuries caused by DPE because, among other things, the full extent and monetary value of the damage incurred will be unknowable and damages may not be recoverable as the financial state of DNA is suspect and unknown.

26. It will also be difficult to calculate damages attributable to the unauthorized sale of the Improvements because the current condition and value of the Improvements is unknown as they are in DNA's possession.

27. Additionally, damages attributable to the unauthorized sale of the Improvements will also be difficult to calculate because it is presently unclear what impact the loss the Improvements will have on the value of the Premises, DPE's ability

to lease the Premises to a new tenant, and the rent DPE will be able to charge a new tenant.

28. DPE has no adequate remedy at law.

29. Therefore, DNA should be permanently enjoined from selling the Improvements.

**WHEREFORE**, DPE respectfully requests that this Court enter judgment in it favor against DNA for the following relief:

1. Permanently enjoining defendant from transferring, selling, removing, detaching, disconnecting, altering, replacing, pledging, assigning or otherwise disposing of any fixture located in, attached to, or otherwise a part of, the Premises;

2. Awarding DPE damages for DNA's breaches of the Lease and for conversion of the fixtures and other Improvements;

3. Awarding DPE its costs, fees (including reasonable attorneys' fees) and disbursements related this action; and awarding such other and further relief as this Court deems just and proper.

Dated: Syosset, New York  
March 9, 2011

**SIMMONS JANNACE, LLP**

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

Adam M. Levy

Attorneys for Plaintiff

**Office & P.O. Address:**

115 Eileen Way, Suite 103

Syosset, New York 11791

(516) 802-0630

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

-----X  
Deer Park Enterprise, LLC,

Index No.:

Plaintiff,

**ATTORNEY'S CERTIFICATION**

-against-

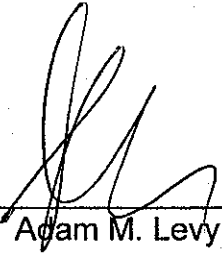
DNA 2050 Outlet, LLC,

Defendant.

-----X

Pursuant to 22 NYCRR 130-1.1-a the undersigned, an attorney admitted to practice in the Courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed documents are not frivolous.

Dated: Syosset, New York  
March 9, 2011

  
\_\_\_\_\_  
Adam M. Levy

Attorney's Certification

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

-----X  
Deer Park Enterprise, LLC,

Index No.:

Plaintiff,  
-against-

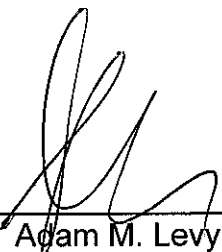
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Dated: Syosset, New York  
March 9, 2011

  
\_\_\_\_\_  
Adam M. Levy

Attorney's Certification

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