

(and is not on credit- watch with negative implications), and has combined capital, surplus and undivided profits of not less than \$500,000,000. The Letter of Credit shall (i) name Landlord as beneficiary, (ii) be in the amount of the Security Deposit, (iii) have a term of not less than one year, (iv) permit multiple drawings, (v) be fully transferable by Landlord multiple times without the consent of Tenant (provided that Tenant shall pay any fee in connection therewith not more than once in any 12 month period), (vi) be payable to Landlord or an authorized representative of Landlord upon presentation of only the Letter of Credit and a sight draft and shall not contain as a condition to a draw the requirement of Landlord's certification or other statement as to the existence of Tenant's default, and (vii) otherwise be in form and content satisfactory to Landlord; *provided, however*, that Landlord shall in no event be obligated to accept a Letter of Credit for any amount less than \$50,000. If upon any transfer of the Letter of Credit, any fees or charges shall be so imposed, then such fees or charges shall be payable solely by Tenant and the Letter of Credit shall so specify. The Letter of Credit shall provide that it shall be deemed automatically renewed, without amendment, for consecutive periods of one year each thereafter during the Term through the date that is at least 60 days after the Expiration Date, unless the Issuing Bank sends a notice (the "Non-Renewal Notice") to Landlord by certified mail, return receipt requested, not less than 60 days prior to the then-current expiration date of the Letter of Credit, stating that the Issuing Bank has elected not to renew the Letter of Credit. Landlord shall have the right, upon receipt of a Non-Renewal Notice, to draw the full amount of the Letter of Credit, by sight draft on the Issuing Bank, and shall thereafter hold or apply the cash proceeds of the Letter of Credit pursuant to the terms of this Article 34. The Letter of Credit shall state that drafts drawn under and in compliance with the terms of the Letter of Credit will be duly honored upon presentation to the Issuing Bank at an office location in New York City. The Letter of Credit shall be subject in all respects to the International Standby Practices 1998, International Chamber of Commerce Publication No. 590. Tenant shall cooperate, at Tenant's expense, with Landlord to promptly execute and deliver to Landlord any and all modifications, amendments, and replacements of the Letter of Credit, as Landlord may reasonably request to carry out the intent, terms and conditions of this Article 34.

**Section 34.3 Application of Security.** If Tenant defaults in the payment or performance of any of the terms, covenants or conditions of this Lease, including the payment of Rent, Landlord may use, apply or retain the whole or any part of the cash Security Deposit or may notify the Issuing Bank and thereupon receive all or a portion of the Security Deposit represented by the Letter of Credit, and use, apply, or retain the whole or any part of such proceeds, as the case may be, to the extent required for the payment of any Rent or any other sum as to which Tenant is in default, including (i) any sum which Landlord may expend or may be required to expend by reason of Tenant's default, and (ii) any damages or Deficiency to which Landlord is entitled pursuant to this Lease or applicable Requirements, whether such damages or Deficiency accrue before or after summary proceedings or other reentry by Landlord. If Landlord uses, applies or retains any part of the Security Deposit, Tenant, upon demand, shall deposit with Landlord the amount so applied or retained so that Landlord shall have the full Security Deposit on hand at all times during the Term. If Tenant shall fully and faithfully comply with all of the terms, covenants and conditions of this Lease, the Security Deposit (or so much thereof as remains) shall be returned to Tenant after the Expiration Date and after delivery of possession of the Premises to Landlord in the manner required by this Lease. Tenant

expressly agrees that Tenant shall have no right to apply any portion of the Security Deposit against any of Tenant's obligations to pay Rent hereunder.

**Section 34.4 Transfer.** Upon a sale of the Building or the Real Property or a leasing of the Building, or any financing of Landlord's interest therein, Landlord shall have the right to transfer the cash Security Deposit or the Letter of Credit, as applicable, to the vendee, lessee or lender. With respect to the Letter of Credit, within 20 days after Landlord has given notice to Tenant of any such anticipated sale, leasing or financing, Tenant, at its sole cost, shall arrange for the transfer of the Letter of Credit to the new landlord or lender, as designated by Landlord in the foregoing notice, or to have the Letter of Credit reissued in the name of the new landlord or lender. Tenant shall look solely to the new landlord or lender for the return of such cash Security Deposit or Letter of Credit, and the provisions of this Section 34.4 shall apply to every transfer or assignment made of the Security Deposit to a new landlord. Tenant will not assign or encumber, or attempt to assign or encumber, the cash Security Deposit or Letter of Credit, and neither Landlord nor its successors or assigns shall be bound by any such actual or attempted assignment or encumbrance.

**Section 34.5 Guaranty.** Simultaneously with the execution and delivery of this Lease by Tenant, and as a condition to the effectiveness hereof, Tenant has caused the Guaranty of Lease in the form annexed as Exhibit G (the "Guaranty") to be executed and delivered to Landlord by Roberto Ruggeri and Claudia Ruggeri (collectively, the "Guarantor").

## ARTICLE 35

### MISCELLANEOUS

**Section 35.1 Delivery.** This Lease shall not be binding upon Landlord unless and until Landlord shall have executed and delivered a fully executed copy of this Lease to Tenant.

**Section 35.2 Transfer of Real Property.** Landlord's obligations under this Lease shall not be binding upon the Landlord named herein after the sale, conveyance, assignment, transfer or lease of Landlord's interest (collectively, a "Transfer") by Landlord (or upon any subsequent landlord after the Transfer by such subsequent landlord) of its interest in the Building or the Real Property, as the case may be, and in the event of any such Transfer, Landlord (and any such subsequent landlord) shall be entirely freed and relieved of all covenants and obligations of Landlord hereunder thereafter arising, and the transferee of Landlord's interest (or that of such subsequent landlord) in the Building or the Real Property, as the case may be, shall be deemed to have assumed all obligations under this Lease.

**Section 35.3 Limitation on Liability.** The liability of Landlord for Landlord's obligations under this Lease shall be limited to Landlord's interest from time to time in the Real Property and Tenant and any Tenant Party shall not look to any other property or assets of Landlord or the property or assets of any of the Indemnitees in seeking either to enforce Landlord's obligations under this Lease or to satisfy a judgment for Landlord's failure to perform

such obligations; and none of the Indemnitees shall be personally liable for the performance of Landlord's obligations under this Lease.

**Section 35.4 Rent.** Notwithstanding anything to the contrary contained in this Lease, all amounts payable by Tenant to or on behalf of Landlord under this Lease, whether or not expressly denominated Fixed Rent, Tenant's Tax Payment, Additional Rent or Rent, shall constitute rent for the purposes of Section 502(b)(6) of the United States Bankruptcy Code and other Requirements.

**Section 35.5 Entire Agreement.** This Lease (including any Schedules and Exhibits referred to herein and all supplementary agreements provided for herein) contains the entire agreement between the parties and all prior negotiations and agreements are merged into this Lease. All of the Schedules and Exhibits attached hereto are incorporated in and made a part of this Lease, provided that, in the event of any inconsistency between the terms and provisions of this Lease and the terms and provisions of the Schedules and Exhibits hereto, the terms and provisions of this Lease shall control. All Article and Section references set forth herein shall, unless the context otherwise requires, be deemed references to the Articles and Sections of this Lease.

**Section 35.6 Governing Law.** This Lease shall be governed in all respects by the laws of the State of New York.

**Section 35.7 Partial Unenforceability.** If any provision of this Lease, or its application to any Person or circumstance, shall ever be held to be invalid or unenforceable, then in each such event the remainder of this Lease or the application of such provision to any other Person or any other circumstance (other than those as to which it shall be invalid or unenforceable) shall not be thereby affected, and each provision hereof shall remain valid and enforceable to the fullest extent permitted by law.

**Section 35.8 Consent to Jurisdiction.** (a) Except as expressly provided to the contrary in this Lease, Tenant and any Tenant Party agree that all disputes arising, directly or indirectly, out of or relating to this Lease, and all actions to enforce this Lease, shall be dealt with and adjudicated in the state courts of the State of New York or the federal courts for the Southern District of New York; and for that purpose Tenant and any Tenant Party expressly and irrevocably submit themselves to the jurisdiction of such courts. Tenant and any Tenant Party agree that so far as is permitted under applicable law, this consent to personal jurisdiction shall be self-operative and no further instrument or action, other than service of process in one of the manners specified in this Lease, or as otherwise permitted by law, shall be necessary in order to confer jurisdiction upon it in any such court. Tenant and any Tenant Party further agree that judgment against them in any such action or proceeding shall be conclusive and, to the extent permitted by applicable law, may be enforced in any other jurisdiction within or outside the United States of America by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the fact and of the amount of its indebtedness.

(b) To the extent that Tenant and any Tenant Party have or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, Tenant irrevocably waives such immunity in respect of its obligations under this Lease.

**Section 35.9 Survival.** All obligations and liabilities of Landlord or Tenant to the other which accrued before the expiration or other termination of this Lease, and all such obligations and liabilities which by their nature or under the circumstances can only be, or by the provisions of this Lease may be, performed after such expiration or other termination, shall survive the expiration or other termination of this Lease. Without limiting the generality of the foregoing, the rights and obligations of the parties with respect to any indemnity under this Lease, and with respect to Fixed Rent, Tenant's Tax Payment and any other amounts payable under this Lease, shall survive the expiration or other termination of this Lease.

**Section 35.10 Estoppels.** (a) Within 14 days following request from Landlord, any Mortgagee or any Lessor, Tenant shall deliver to Landlord a statement executed and acknowledged by Tenant, in form satisfactory to Landlord, (i) stating the Commencement Date, the Rent Commencement Date and the Expiration Date, and that this Lease is then in full force and effect and has not been modified (or if modified, setting forth all modifications), (ii) setting forth the date to which Fixed Rent and any Additional Rent have been paid, together with the amount of monthly Fixed Rent and Tenant's Tax Payment then payable, (iii) stating whether or not, to the best of Tenant's knowledge, Landlord is in default under this Lease, and, if Tenant asserts that Landlord is in default, setting forth the specific nature of any such defaults, (iv) stating whether Landlord has failed to complete any work required to be performed by Landlord under this Lease, (v) stating whether there are any sums payable to Tenant by Landlord under this Lease, (vi) stating the amount of the Security Deposit, if any, under this Lease, (vii) stating whether there are any subleases affecting the Premises, (viii) stating the address of Tenant to which all notices and communications under this Lease shall be sent, and (ix) responding to any other matters reasonably requested by Landlord, such Mortgagee or such Lessor. Tenant acknowledges that any statement delivered pursuant to this Section 35.10 may be relied upon by any purchaser or owner of the Real Property or the Building, or all or any portion of Landlord's interest in the Real Property or the Building or under any Superior Lease, or by any Mortgagee or assignee thereof, or by any Lessor or assignee thereof.

(b) Within 14 days following request from Tenant (but in no event more than once in any twelve month period), Landlord shall deliver to Tenant a statement executed and acknowledged by Landlord, in form reasonably satisfactory to Tenant, (i) stating the Commencement Date, the Rent Commencement Date and the Expiration Date, and that this Lease is then in full force and effect and has not been modified (or if modified, setting forth all modifications), (ii) setting forth the date to which Fixed Rent and any Additional Rent have been paid, together with the amount of monthly Fixed Rent and Tenant's Tax Payment, Tenant's Operating Payment then payable and (iii) stating whether or not, to Landlord's knowledge, Tenant is in default under this Lease, and, if Landlord asserts that Tenant is in default, setting forth in reasonable specificity the nature of any such defaults.

**Section 35.11 Certain Rules of Interpretation.** For purposes of this Lease, whenever the words “include”, “includes”, or “including” are used, they shall be deemed to be followed by the words “without limitation”, and, whenever the circumstances or the context requires, the singular shall be construed as the plural, the masculine shall be construed as the feminine and/or the neuter and vice versa. This Lease shall be interpreted and enforced without the aid of any canon, custom or rule of law requiring or suggesting construction against the party drafting or causing the drafting of the provision in question.

**Section 35.12 Captions.** The captions in this Lease are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Lease or the intent of any provision hereof.

**Section 35.13 Parties Bound.** The terms, covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and, except as otherwise provided in this Lease, to their respective legal representatives, successors, and assigns.

**Section 35.14 Recording.** Neither this Lease nor any memorandum of this Lease shall be recorded.

**Section 35.15 Counterparts.** This Lease may be executed in duplicate counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

**Section 35.16 Tax and Energy Incentive Program.** Should Landlord, in its sole discretion, elect to apply for benefits under (i) the Industrial and Commercial Incentive Program of New York City (the “ICIP”) and/or any other incentive programs in which Landlord shall, in its discretion, elect to participate (collectively with the ICIP, the “Incentive Programs”):

(a) Tenant shall, in order to assist Landlord in obtaining any incentives, abatements, exemptions, subsidies, energy discounts, refunds or payments that may be available to Landlord in connection with the Incentive Programs with respect to the entire Building or any portion thereof, including, without limitation, the Premises, (i) promptly execute and file any necessary applications, certifications or other documents, and (ii) follow all required procedures within any applicable time limitations, and Tenant shall provide Landlord with such further cooperation as may reasonably be requested by Landlord.

(b) Tenant and Landlord hereby acknowledge that, notwithstanding anything to the contrary obtained herein or in the Incentive Programs, all or any portion of the benefit from the ICIP actually received by or credited to Landlord in connection with this Lease as shall be required to be forwarded to Tenant pursuant to such Incentive Program shall be the property of Tenant (regardless of whether or not such benefits are larger or smaller than anticipated), it being agreed by the parties hereto that the foregoing shall be effected by a deduction from Taxes pursuant to Section 8.1(b) of the amount of any refund, abatement or exemption of Taxes, if any, received by or credited to Landlord pursuant to the ICIP.

(c) Notwithstanding anything to the contrary contained herein or in the Incentive Programs, Landlord has made no representations to Tenant with respect to the Incentive Programs, and Landlord shall have no liability or responsibility to Tenant if all or any portion of any benefits from the ICIP are not received by or credited to Landlord or are received by or credited to Landlord and are thereafter revoked for any reason other than Landlord's failure to comply with the provisions of this Section 35.16.

(d) With respect to any Alterations, and in connection with Landlord's ICIP application, Tenant, at its sole cost and expense, shall be obligated to timely and fully comply with the requirements of (i) Executive Order No. 50 of 1980; (ii) Executive Order No. 108 of 1986; (iii) Section 11-260 of the Administrative Code of the City of New York; (iv) Article 22 of the ICIP Regulations; (v) the New York City Charter; (vi) Section 489 (aaa) et seq. of the Real Property Tax Law; (vii) General City Law Section 2-i; and (viii) any amendments or modifications thereto or other additional or successor executive orders, statutes, rules or regulations bearing on Landlord's ICIP application. Such compliance shall include the filing with the Department of Labor Services ("DLS") of Construction Employment Reports, Supply and Service Construction Employment Reports, Less Than \$750,000 Subcontract Certificates, and certified payroll records. Tenant shall also be solely responsible for the compliance of any contractor, subcontractor, consultant, agent or party employed by Tenant in connection with Alterations. Copies of all such filings shall be sent by Tenant to Landlord. Tenant, as well as any contractor, subcontractor, construction manager, general contractor, consultant, agent or any party employed by Tenant in connection with any Alterations, shall cooperate with Landlord and shall supply such information and comply with such reporting requirements as Landlord indicates to Tenant are reasonably necessary to comply with the ICIP, and Tenant shall assist Landlord in connection with maintaining its eligibility under the ICIP. Tenant also agrees that at the commencement of any Alterations, and as such Alterations progress, Tenant (or its agent) shall provide Landlord with the names of all contractors or subcontractors retained by Tenant with respect to the Alterations, as well as the dollar value of each contract or subcontract. Tenant further agrees that with respect to any contractors or subcontractors performing work pursuant to a contract or subcontract with a value of \$750,000 or more, a retainage in the amount of 10% of the value of said contract or subcontract shall be withheld until DLS gives written approval that final payment may be released to said contractor or subcontractor.

(e) It is further understood and agreed that (in order to enable Landlord to comply with certain requirements of the ICIP):

(i) Landlord is seeking or has obtained benefits under the ICIP;

(ii) Tenant shall not be required to pay taxes or charges which become due because of the willful neglect or fraud by Landlord in connection with the ICIP, or to otherwise relieve or indemnify Landlord from any personal liability arising under Section 11-265 of the New York City Administrative Code and Charter, except where imposition of such taxes, charges or liability is occasioned by the actions of Tenant in violation of this Lease;

(iii) Tenant agrees to report to Landlord the number of workers permanently engaged in employment in the Premises, the nature of each worker's employment and the New York City residency of each worker; and

(iv) Tenant agrees to provide access to the Premises by employees and agents of the New York City Department of Finance at all reasonable times as may be requested by Landlord.

(f) Notwithstanding anything to the contrary set forth in this Section 35.16, Tenant shall be required to comply with the specific requirements set forth in Section 35.16(e) only if, to the extent and for so long as, such compliance on the part of tenants is expressly mandated by laws or regulations governing or applicable to the Incentive Programs.

**Section 35.17 Embargoed Person.** Tenant represents as of the date of this Lease, and Tenant covenants that throughout the term of this Lease: (a) Tenant is not, and shall not be, an Embargoed Person, (b) none of the funds or other assets of Tenant are or shall constitute property of, or are or shall be beneficially owned, directly or indirectly, by any Embargoed Person; (c) no Embargoed Person shall have any interest of any nature whatsoever in Tenant, with the result that the investment in Tenant (whether directly or indirectly), is or would be prohibited by law or this Lease is or would be in violation of law and (d) none of the funds of Tenant are or shall be derived from any unlawful activity with the result that the investment in Tenant (whether directly or indirectly) is or would be prohibited by law or this Lease is or would be in violation of law. "Embargoed Person" means a person, entity or government (i) identified on the Specially Designated Nationals and Blocked Persons List maintained by the United States Treasury Department Office of Foreign Assets Control and/or any similar list maintained pursuant to any authorizing statute, executive order or regulation and/or (ii) subject to trade restrictions under United States law, including, without limitation, the International Emergency Economic Powers Act, 50 U.S.C. § 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated under any such laws, with the result that the investment in Tenant (whether directly or indirectly), is or would be prohibited by law or this Lease is or would be in violation of law.

**Section 35.18 Consents.** No consent or approval requested from Landlord shall be deemed given unless such consent or approval shall be provided for in a written instrument executed and delivered by Landlord to Tenant in advance of the action as to which such consent or approval shall have been requested. Such consent, once given in the manner set forth in the preceding sentence, shall not be revoked, amended or modified by Landlord.

**Section 35.19 Attorney's Fees.** Subject to Section 21.2, If any lawsuit or other legal proceeding is commenced with respect to this Lease, the prevailing party shall be reimbursed by the losing party, within 30 days after demand, for the prevailing party's reasonable, out-of-pocket attorneys' fees and disbursements and court costs incurred in connection with such lawsuit or other legal proceeding.

## ARTICLE 36

### LICENSE AREA

**Section 36.1 License Area.** Landlord hereby grants to Tenant a license, revocable as set forth below in whole or in part by Landlord upon twenty (20) days' prior written notice to Tenant, to use the area hatch-marked on Exhibit H attached hereto and made a part hereof (the "License Area").

**Section 36.2 Terms of License.** Use of the License Area shall be upon all of the terms, covenants, conditions and provisions of this Lease (including, without limitation, Section 3.4 above, but subject, however, to the additional restrictions in this Article 36), as though the License Area were part of the Premises, for the sole purpose of locating free-standing tables and chairs in connection with Tenant's operation of the Premises for the Primary Use; provided, that Tenant shall not use, or suffer or permit anyone to use, the License Area for any purpose whatsoever during hours in which the Premises is not open and operating as a restaurant. Tenant shall not install railings, planters or other type of border or any signs in or around the perimeter of the License Area, except with the prior written approval of Landlord, which may be withheld in Landlord's sole discretion for any or no reason. Landlord shall have the right, in its sole and absolute discretion, at Landlord's expense, to install decorative planters or other decorative effects in or around the License Area. Tenant shall operate the License Areas in keeping with the standards of a first-class, high quality white tablecloth (or equivalent) restaurant in a first-class office building in midtown Manhattan both in terms of quality of food and service, and also in appearance of the License Area and Tenant's personnel serving same and the decorum of Tenant's personnel.

**Section 36.3 Revocation of License.** Landlord shall have the right, in its sole and absolute discretion, to revoke the license granted herein in whole or in part (a) in the event of any default under this Lease which remains uncured beyond any applicable grace period; (b) for Tenant's failure to operate or maintain the License Area in a first-class manner and in compliance with the other provisions of this Lease; provided that Landlord shall notify Tenant of any such failure (which notice may be oral) and Tenant shall have 2 Business Days after notice to cure such failure to Landlord's reasonable satisfaction; (c) if necessitated by any requirements of any Governmental Authority having jurisdiction over the Premises; or (d) if Tenant or if Tenant's use of the Premises or of the License Area causes any manner of labor problem or dispute. In the event that this license is revoked in whole or in part, Tenant shall remove all of its fixtures and other property located within the License Area within the twenty (20) day period set forth in the first sentence of this Article and shall repair and restore any damage which may have been caused by the installation or use of Tenant's fixtures and personal property or the removal thereof. If Landlord revokes this license, (i) Fixed Rent hereunder shall not be affected in any manner whatsoever, and Tenant's Proportionate Share, as defined in Article 1 hereof, shall not be reduced and (ii) Landlord shall not use the License Area or permit the License Area to be used for any purpose during the remainder of the Term hereof.



**Section 36.4 Additional Requirements.** In addition to all other obligations arising under this lease, Landlord shall, at Tenant's expense, maintain and clean the License Area and the areas of the Building immediately surrounding the License Area in a manner consistent with the maintenance approved by Landlord for the Building. The coverage provided by the liability insurance that Tenant must maintain in accordance with the terms of Section 13.1 hereof shall extend to the License Area.