

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU-----X
NYMP ACQUISITION, LLC as acquirer of
substantially all of the assets of
NEW YORK MERCHANTS PROTECTIVE CO., INC.,

Plaintiff,

-against-

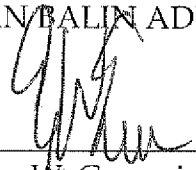
33 UNION SQUARE WEST, INC. d/b/a
UNION SQUARE WINE & SPIRIT and
UNION SQUARE WINES & SPIRITS, and
"XYZ CORP.," the name of said defendant being
fictitious and unknown to plaintiff, person
intended being as described herein,Defendants.
-----X

To the above named Defendants:

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 within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (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: East Meadow, New York
October 25, 2012

CERTILMAN BALIN ADLER & HYMAN, LLP

By:  _____

Anthony W. Cummings, Esq.

Attorneys for Plaintiff

90 Merrick Avenue - 9th Floor
East Meadow, New York 11554
(516) 296-7000

Index No.

Dated Filed: _____

SUMMONSPlaintiff designates
Nassau County as the
place of trialPlaintiff's place of
business:393 Jericho Tpke
Suite 104
Mineola, NY 11501

Defendants' Addresses:

33 Union Square West, Inc. d/b/a
Union Square Wine & Spirit and
Union Square Wines & Spirits
140 4th Avenue
New York, NY 10003

"XYZ CORP."
c/o 33 Union Square West, Inc.
140 4th Avenue
New York, NY 10003

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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NYMP ACQUISITION, LLC as acquirer of
substantially all of the assets of
NEW YORK MERCHANTS PROTECTIVE CO., INC.,

Index No.:

VERIFIED COMPLAINT

Plaintiff,

-against-

33 UNION SQUARE WEST, INC. d/b/a
UNION SQUARE WINE & SPIRIT and
UNION SQUARE WINES & SPIRITS,
"XYZ CORP.," the name of said defendant being
fictitious and unknown to plaintiff, person
intended being as described herein,

Defendant.
-----X

Plaintiff, NYMP ACQUISITION, LLC, by its attorneys, Certilman Balin Adler &
Hyman, LLP, as and for verified complaint ("Complaint") against the defendant 33
UNION SQUARE WEST, INC. d/b/a UNION SQUARE WINE & SPIRIT and UNION
SQUARE WINES & SPIRITS, and "XYZ CORP.," sets forth as follows:

PARTIES

1. Plaintiff is a domestic limited liability company existing under the laws of
the State of New York with offices located in Nassau County, State of New York.

2. Defendant 33 UNION SQUARE WEST, INC. d/b/a UNION SQUARE
WINE & SPIRIT and UNION SQUARE WINES & SPIRITS is a domestic business
corporation existing under the laws of the State of New York with offices located in
New York County, State of New York.

3. Defendant "XYZ CORP.," the name of said defendant being fictitious and unknown to plaintiff, person intended being as described herein, is upon information and belief a domestic corporation transacting business in the State of New York.

4. On February 24, 2012 plaintiff acquired certain of the assets of New York Merchants Protective Co., Inc. (referred to sometimes hereinafter as "NYMP"), a domestic business corporation existing under the laws of the State of New York, engaged in the business of providing security alarm, fire alarm, and life-safety alarm monitoring as well as other related services within the State of New York. The assets acquired by plaintiff included accounts, customer lists, contracts, furniture, inventory and certain intangible assets used in the regular course of NYMP's business.

FACTUAL SUMMARY

5. This is a cause of action for breach of contract relative to a written service and lease agreement entered into between the plaintiff's predecessor, New York Merchants Protective Co., Inc., as set forth above and defendant.

6. The written service and lease agreement between the aforesaid parties is dated April 24, 2006 (the "Commercial Security Equipment Lease") and was for a term of ten (10) years expiring in 2016 concerning certain personal property, the necessary security system equipment and associated central office monitoring, guard response and related services at the premises located at 140 4th Avenue, New York, New York (the "subject premises").

7. The Commercial Security Equipment Lease provided, among other things,

for central station monitoring as aforesaid and that the security equipment system which was installed at the subject premises pursuant to the lease agreement, remains the personal property of NYMP.

8. As set forth further below, defendant has failed to meet its obligations under the Commercial Security Equipment Lease Agreement although central office monitoring, guard response and related services have at all relevant times been provided to defendant as agreed.

9. For all of the reasons set forth below, plaintiff, as acquirer of substantially all of the assets of NYMP, is entitled to a money judgment against the defendants for unpaid rent, late charges and attorney fees as well as an order of replevin directing the return to plaintiff of the personal property at issue.

AS AND FOR A FIRST CAUSE OF ACTION

10. Plaintiff repeats, reiterates and realleges each and every allegation set forth above as if stated at length herein.

11. Defendant took possession of the personal property at issue pursuant to the aforesaid written lease agreement (the "Commercial Security Equipment Lease") on or about April 24, 2006, the commencement date. *A true copy of said lease is annexed hereto as Exhibit "A".*

12. The Commercial Security Equipment Lease Agreement provides at paragraph 1:

**SECURITY EQUIPMENT SYSTEM IS LEASED AND
REMAINS PERSONAL PROPERTY OF NYMP: NYMP shall**

lease, install and service on the premises of the Lessee, a security system, described herein, including all necessary devices and equipment, for the duration of this agreement, with the understanding that the entire system, including all apparatus, equipment, instruments, foil and wire installed or connected with the security equipment system is and shall always remain the sole personal property of NYMP . . .

13. Paragraph 3B of the Commercial Security Equipment Lease Agreement, **MONTHLY RENTAL PAYMENTS**, provides that the monthly rental payments for the rental and servicing of the security equipment system for the term of the agreement shall be \$604.64, plus applicable taxes.

14. Under the Commercial Security Equipment Lease Agreement, the Lessee agreed to pay late charges as follows ("Late Charges"):

3D. LATE CHARGES: Lessee agrees to pay late charges as agreed herein on any unpaid charges as of the 5th of every month, from previous months invoice, as follows:
On any balance, less then [sic] \$10.00, owed prior to the 5th of the month, and not paid, the minimum charge is \$1.00. On balances of \$10.01 to \$250.00, minimum charge is \$5.00, and on balances over \$250.00, the charge is 2% of the outstanding balance. All late charges are compounded monthly.

15. Paragraph 4 of the Commercial Security Equipment Lease Agreement, **TERM OF AGREEMENT: RENEWALS**, provides that "The term of this agreement shall be for a period of ten (10) years.

16. Under the plain terms of the Commercial Security Equipment Lease Agreement defendant's obligations were clear and bargained for. However, defendant failed to live up to its promises in that this defendant failed to pay the rent as agreed.

17. On or about January 28, 2012 defendant purported to terminated the

Commercial Security Equipment Lease Agreement.

18. Thereafter defendant defaulted in paying rent due each month as well as applicable Late Charges.

19. At all times relevant hereto plaintiff preserved and reserved its rights and did not waive, release or excuse defendant from its obligation to perform as required under the agreement.

20. Damages suffered by plaintiff by reason of this defendant's conduct continue to accrue and such amount will be determined at the time of trial

21. Although demand has duly been made for the payment of the amount due, defendant has failed to remit or pay any part of the amount due plaintiff.

22. By reason of the foregoing plaintiff is entitled to a money judgment in an amount to be determined at trial.

AS AND FOR A SECOND CAUSE OF ACTION

23. Plaintiff repeats, reiterates and realleges each and every allegation set forth above as if stated at length herein.

24. Paragraph 18 of the Commercial Security Equipment Lease Agreement, **LEGAL ACTION**, provides:

Should NYMP prevail in any litigation between the parties
Lessee shall pay NYMP's legal fees.

25. By reason of the foregoing each defendant is obligated to pay plaintiff reasonable attorney fees, legal costs and reasonable expenses associated with the instant action in an amount to be determined at trial.

AS AND FOR A THIRD CAUSE OF ACTION

26. Plaintiff repeats, reiterates and realleges each and every allegation set forth above as if stated at length herein.

27. Paragraph 17 of the Commercial Security Equipment Lease Agreement, **REMOVAL OF SECURITY EQUIPMENT SYSTEM**, provides:

Upon termination of this agreement NYMP shall be permitted to remotely delete programming and allowed access to Lessee's premises to remove the security equipment system.

28. Plaintiff has demanded the return of the personal property at issue.

29. Despite due demand therefore, defendant has refused to return said property.

30. Defendant's willful conduct results in interference and harm to the plaintiff's materially valuable interest in the physical condition, quality, or value of the personal property.

31. Plaintiff has been deprived of the use of the personal property for a substantial time.

32. By reason of the foregoing, plaintiff is entitled to the return of the personal property at issue.

AS AND FOR A FOURTH CAUSE OF ACTION

33. Plaintiff repeats, reiterates and realleges each and every allegation set forth above as if stated at length herein.

34. Upon information and belief defendant "XYZ CORP." is providing

monitoring, guard response and related services at the subject premises.

35. In order to provide said services, defendant "XYZ CORP." is using the security equipment system which was installed at the subject premises by NYMP and owned by plaintiff.

36. Defendant "XYZ CORP." is using plaintiff's personal property without plaintiff's permission and to the exclusion of plaintiff.

37. Defendant "XYZ CORP." is using plaintiff's personal property without fair compensation to plaintiff.

38. Defendant "XYZ CORP." use of plaintiff's property results in unjust enrichment to defendant "XYZ CORP."

39. By reason of the foregoing, defendant "XYZ CORP." should be required to disgorge and pay over to plaintiff any profit derived from the unjust use of the personal property at issue.

WHEREFORE, plaintiff respectfully demands judgment on the Complaint as follows:

- a) on its First Cause of Action against defendant 33 UNION SQUARE WEST, INC. a money judgment in the amount to be determined at trial;
- b) on its Second Cause of Action against defendant 33 UNION SQUARE WEST, INC. attorneys fees, legal costs and expenses incurred herein in an amount to be determined at trial;
- c) on its Third Cause of Action against defendant 33 UNION SQUARE WEST, INC. an order directing the return of the personal property at issue;
- d) on its Fourth Cause of Action against defendant "XYZ CORP." an order

that defendant disgorge and pay over to plaintiff any profit derived by reason of the conduct complained of herein

- e) the costs and disbursements incurred herein; and
- f) such other, further, and different relief as to the Court seems just and proper.

Dated: East Meadow, New York
October 25, 2012

CERTILMAN BALIN ADLER & HYMAN, LLP

By: _____

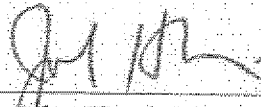

Anthony W. Cummings, Esq.
Attorneys for Plaintiff
90 Merrick Avenue, 9th Floor
East Meadow, New York 11554
(516) 296-7000

VERIFICATION

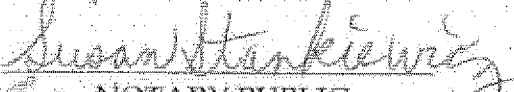
STATE OF New Jersey)
COUNTY OF Essex) ss.:

John Hopkins, being duly sworn, deposes and says:

1. I am an officer of the plaintiff in the within action.
2. I have read the foregoing COMPLAINT and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true. This verification is made by me because the above party is a limited liability company and I am an officer thereof. The grounds of my belief as to all matters not stated upon my own knowledge are as follows: books, records, papers, and documents maintained by the limited liability company.


John Hopkins

Sworn to before me this
25th day of October, 2012


NOTARY PUBLIC

SUSAN STANKIEWICZ
NOTARY PUBLIC OF NEW JERSEY
ID# 2185821
COMMISSION EXP. FEB. 15, 2016

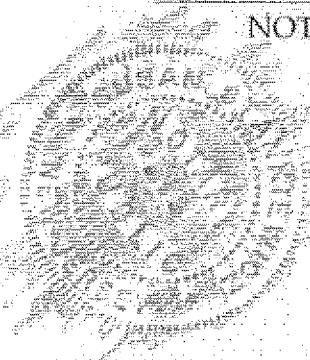


EXHIBIT "A"



New York Merchants Protective Company, Inc.

ENTERED
N.Y.C.

P.O. BOX 1712 FREEPORT, NEW YORK 11520-0712
(516) 561-6210 • (888) NYMP-911

① LISTED CERTIFIED CENTRAL STATION

New York State License # 12000035004

New Jersey Burglar Alarm License # 34BA00145300 New Jersey Fire Alarm License # 34FA00115500

COMMERCIAL SECURITY EQUIPMENT LEASE

Agreement made this 24 day of April, 2006, by and between NEW YORK MERCHANTS PROTECTIVE CO., INC. (hereinafter referred to as "NYMP" or "Lessor") and

LESSEE:

Name Union Square Wine & Spirits
(hereafter referred to as "Lessee")
Address 146 4th Avenue
City NY State NY Zip 10003
Cross Street 13th Street
Floor _____
Phone 212 675 8100 Ext. _____
Fax _____
E-Mail _____

The parties hereto agree that:

1. SECURITY EQUIPMENT SYSTEM IS LEASED AND REMAINS PERSONAL PROPERTY OF NYMP: NYMP shall lease, install and service on the premises of the Lessee, a security system, described herein, including all necessary devices and equipment, for the duration of this agreement, with the understanding that the entire system, including all apparatus, equipment, instruments, foil and wire installed or connected with the security equipment system is and shall always remain the sole personal property of NYMP and shall not be considered a fixture or a part of the realty, and Lessee shall not permit the attachment thereto of any apparatus not furnished by NYMP. Lessee acknowledges that NYMP has offered additional and more sophisticated equipment at a higher rental and service charge.

2. SCHEDULE OF INSTALLATION:

2A. DESCRIPTION OF SYSTEM:

- ☒ Burglar ☒ Hold-up ☐ Fire ☒ C.C.T.V.
☐ Other _____
☒ Opening/Closing Monitoring
☐ Supervision ☐ Issue Reports
Fax# _____
☒ Guard Response

U.L. Listed ☐ Yes ☒ No

Grade _____ Extent _____

Class _____

2B. EQUIPMENT VALUE:

The Lessee Hereby Agrees That The Value Of The Equipment Installed is

\$13,200.00

The List Of Equipment Is Contained On The Schedule Of Installation On Page 3.

3. PAYMENT DUE UNDER THIS AGREEMENT:

3A. INSTALLATION CHARGES & PAYMENTS:

Installation Charges \$ 4150.00 Plus Tax
(Allocated To Offset NYMP's Labor For Installation Of Equipment)

Down Payment \$ 2000.00 cash

(Due Upon Signing)

Progress Payment \$ _____

(Due Upon Commencement Of Installation)

The balance of payments for the term of this agreement is due upon execution of this agreement. For the convenience of the parties and so long as there is no default on payments, Lessee may make the payments provided as in 3B.

3B. MONTHLY RENTAL PAYMENTS:

Monthly Charge \$ 604.64 Plus Tax, Per Month

Payable:

- ☒ Quarterly
☐ Semi-Annual
☐ Annual,

In advance for the rental and servicing of the security equipment system for the term of this agreement.

3C. INSTALLATION, RENTAL, AND SERVICE CHARGES LESSEE'S DEFAULT: Payment is due commencing monthly on the first day of the month next succeeding the date hereof, and continuing monthly thereafter, all payments being due on the first day of the month.

3D. LATE CHARGES: Lessee agrees to pay late charges as agreed herein on any unpaid charges as of the 5th of every month, from previous month's invoice, as follows:

On any balance, less than \$10.00, owed prior to the 5th of the month, and not paid, the minimum charge is \$1.00. On balances of \$10.01 to \$250.00, minimum charge is \$5.00, and on balances over \$250.00, the charge is 2% of the outstanding balance. All late charges are compounded monthly.

4. TERM OF AGREEMENT: RENEWALS: The term of this agreement shall be for a period of ten (10) years. This agreement shall renew itself on a month to month basis thereafter under the same terms and conditions, unless either party gives written notice to the other by certified mail, return receipt requested, of their intention not to renew the contract at least 30 days prior to the expiration of any term, and the Lessee shall be relieved of any obligation to pay any charge after the end of the term of the agreement.

5. INCREASES OF MONTHLY CHARGE: LESSOR'S OPTION TO TERMINATE AGREEMENT: Lessee agrees that at any time following the expiration of the first twelve (12) months of this agreement, NYMP may increase the monthly charge specified in paragraph 3B, annually, for the balance of the term and any renewal thereof. Lessee agrees to pay the full amount of such increase which does not exceed a nine (9) percent increase over the previous twelve (12) months charges, and the Lessee agrees to pay such increase without option to terminate. In the event NYMP increases the monthly charge by an amount greater than nine (9) percent herein agreed to, and if Lessee is unwilling to pay such increased charge, NYMP shall be

permitted, at its option, upon written notice to Lessee, to terminate this agreement as if the term had expired and NYMP shall be permitted access to Lessee's premises to remove its security equipment system, and Lessee shall be relieved of any obligation to pay any monthly charge, after said system is removed. Lessee's failure to object to any such increase within ten (10) days of notification thereof shall be deemed an acceptance of said increase.

6. CENTRAL OFFICE MONITORING: Upon receipt of an alarm signal, NYMP or its designee communication center, shall make every reasonable effort to notify Lessee and the appropriate municipal police or fire department. Lessee acknowledges that signals transmitted from Lessee's premises directly to municipal police or fire departments are not monitored by personnel of NYMP or NYMP's designee communication center and NYMP does not assume any responsibility for the manner in which such signals are monitored or the response, if any, to such signals. Lessee acknowledges that signals which are transmitted over telephone lines, wire, internet, air waves or other modes of communication pass through communication networks wholly beyond the control of NYMP and are not maintained by NYMP and, therefore, NYMP shall not be responsible for any equipment failure which prevents transmission signals from reaching the central office monitoring center or damages arising therefrom. Lessee agrees to furnish NYMP with a written list of names and telephone numbers of those persons Lessee wishes to receive notification of alarm signals. All changes and revisions shall be supplied to NYMP in writing. Lessee authorizes NYMP to access the control panel to input or delete data and programming. If Lessee requests NYMP to remotely activate or deactivate the system, change combinations, openings or closings, or re-program system functions, Lessee shall pay NYMP \$50.00 for each such service.

7. GUARD RESPONSE: If guard response is specified under the schedule of installation as a service to be provided, upon receipt of a burglar alarm signal, NYMP or its subcontractor shall as soon as may be practical send one or more of its guards to the lessee's premises. The guard shall wait up to 15 minutes for the municipal police department personnel or lessee to arrive at the premises and if permitted by the police shall assist in making a search of the premises to determine the cause of the burglar alarm condition. If provided with keys to the premises the guard shall endeavor to secure the premises and repair the security equipment system. However, lessee acknowledges that the guard is not required to enter the premises or to render any service to the security equipment and shall not be required to remain stationed at lessee's premises for more than 15 minutes after his initial arrival. Lessee authorizes the guard to take such action the guard deems necessary to secure the premises and effect repairs, though lessee acknowledges that the guard may not be able to or may not have sufficient time to secure the premises or repair the security equipment system and put same in working order. If Lessee requests NYMP to station its guard at the premises for more than 30 minutes, and NYMP has sufficient personnel to provide such service, and NYMP makes no such representation that its personnel will be available, then lessee agrees to pay NYMP \$95.00 per hour plus tax for such service. Lessee agrees to confirm the request to NYMP to provide extended guard service by sending a telegram to NYMP at the time request is made and NYMP is authorized to ignore any request not confirmed within 15 minutes by telegram by Western Union or Teletax. In the event NYMP responds to a false alarm condition occasioned by Lessee's negligence, Lessee shall pay NYMP \$95.00 for each such response.

8. LESSEE'S CARE OF EQUIPMENT: REPAIRS AND ADDITIONS: Lessee agrees not to tamper with, remove or otherwise interfere with the security equipment system. The equipment shall remain in the same location as installed and Lessee agrees to bear the cost of repairs, replacement, relocation or additions to the system made necessary as a result of any painting, alteration, remodeling or damage, including damage caused by unauthorized intrusion to the premises, lightning or electrical surge, except for ordinary wear and tear, in which event repair or replacement shall be made by NYMP without additional charge.

9. ALTERATION OF PREMISES FOR INSTALLATION: NYMP is authorized to make preparations such as drilling holes, driving nails, making attachments or doing any other thing necessary in NYMP's sole discretion for the installation and service of the security equipment system, and NYMP shall not be responsible for any condition created thereby as a result of such installation, service, or removal of the security equipment system. NYMP shall not be responsible for the condition of the premises upon removal of the security equipment system and Lessee represents that the owner of the premises, if other than Lessee, authorizes the installation of the security equipment system under the terms of this agreement.

10. LESSEE'S DUTY TO SUPPLY ELECTRIC AND TELEPHONE SERVICE: Lessee agrees to furnish, at Lessee's expense, all 110 Volt AC power and electrical outlets and receptacles, telephone hook-ups, RJ31x Block or equivalent, as deemed necessary by NYMP in its sole discretion. NYMP does not recommend VOIP.

11. DELAY IN INSTALLATION: NYMP shall not be liable for any damage or loss sustained by Lessee as a result of delay in installation of equipment, equipment failure, or for interruption of service due to electric failure, strikes, walk-outs, war, acts of God, or other causes, including NYMP's negligence in the performance of this agreement, and Lessee shall not be relieved from payments due under this agreement for such period.

12. TESTING AND SERVICE OF SECURITY EQUIPMENT SYSTEM: The parties hereto agree that the security equipment system, once installed, is in the exclusive possession and control of the Lessee, and it is Lessee's sole responsibility to test the operation of the security equipment system and to notify NYMP in writing if it is in need of repair. NYMP shall not be required to service the security equipment system unless it has received written notice from Lessee, and upon such notice, NYMP shall service the equipment to the best of its ability within 36 hours, exclusive of Saturday, Sunday and legal holidays, during the business hours of 9 a.m. and 5 p.m., Monday through Friday. In the event Lessee complies with the terms of this agreement and NYMP fails to repair the equipment within 36 hours after notice is given, excluding Saturdays, Sundays, and legal holidays, Lessee agrees to send written notice that the security equipment system is in need of repair to NYMP by certified or registered mail, return receipt requested. If NYMP fails to repair the security equipment system within 48 hours after receipt of said written notice, Lessee shall not be obligated to pay any amount for service from date said written notice is given, until the security equipment system is restored to working order. In any lawsuit between the parties in which the condition or operation of the security equipment is in issue, the Lessee shall be precluded from raising the issue that the security equipment was not operating unless Lessee can produce a post office certified or registered receipt, signed by NYMP, evidencing that service was requested by Lessee.

13. LESSEE TO INSURE SECURITY EQUIPMENT: Lessee shall insure NYMP's security equipment against fire and casualty and Lessee agrees to name NYMP in said insurance policy as "loss payee" to the extent of the value of the equipment as set forth hereinabove. Lessee shall be responsible for any loss occasioned by fire or casualty and the cost of replacing or restoring the security equipment system. Notwithstanding the condition of Lessee's premises, or NYMP's impossibility of performance occasioned by condition of Lessee's premises, Lessee shall remain liable for monthly payments for the term of this agreement without offset or reduction.

14. INSURANCE: The Lessee shall maintain a policy of public liability, property damage, burglary and theft insurance under which NYMP is named as additional insured, and under which the insurer agrees to indemnify and hold NYMP harmless from and against all costs, expenses including attorney's fees and liability arising out of or based upon any and all claims, injuries and damages arising under this agreement, including, but not limited to, those claims, injuries and damages contributed to by NYMP's negligent performance to any degree or its failure to perform any obligation. The minimum limits of liability of such insurance shall be one million dollars for any injury or death, and property damage, burglary and theft coverage in an amount necessary to indemnify Lessee for property on its premises. NYMP shall not be responsible for any portion of any loss or damage which is recovered or recoverable by the Lessee from insurance covering such loss or damage or for such loss or damage against which the Lessee is indemnified or insured.

15. ASSIGNMENTS/WAIVER OF SUBROGATION RIGHTS: Lessee shall not be permitted to assign this agreement without written consent of NYMP. Any such assignment without prior approval shall be deemed a breach of this agreement. NYMP shall have the right to assign this contract and shall be relieved of any obligations created herein upon such assignment. Lessee on its behalf and any insurance carrier waives any right of subrogation Lessee's insurance carrier may otherwise have against NYMP or NYMP's subcontractors arising out of this agreement or the relation of the parties hereto.

16. INDEMNITY: Lessee agrees to and shall indemnify and hold harmless NYMP, its employees, agents and subcontractors, from and against all claims, lawsuits, including reasonable attorneys' fees, and losses asserted against and alleged to be caused by NYMP's performance, negligent performance or failure to perform its obligations under this agreement. Parties agree that there are no third party beneficiaries of this contract.

17. REMOVAL OF SECURITY EQUIPMENT SYSTEM: Upon termination of this agreement NYMP shall be permitted to remotely delete programming and allowed access to Lessee's premises to remove the security equipment system.

SCOPE OF WORK TO BE PERFORMED

AS OUTLINED BELOW

System Installation for Burglar Alarm & CCTV System

The installation is \$300.00 price per month \$258.81

1/2 installation will be paid up front \$450.00 - 2000 deposit

Balance of installation to be paid upon completion & Quarterly charge
the \$450.00 is to be spread in monthly payments $258.81 + 345.83 = 604.64$ to be paid instead of the

\$258.81

OPEN/CLOSE

TIMES MONDAY TUESDAY WEDNESDAY THURSDAY FRIDAY SATURDAY SUNDAY

OPEN

CLOSE

VERBAL
PASS CODE

Wade Mitch

SUBSCRIBER NOTIFICATION LIST:

NAME	ADDRESS	PHONE NUMBER	(TYPE - C, H, W)
1. KATHERINE		212, 545 7238	
2. Bob Green		212, 777 2345	
3. MITCHELL cell	917-834-7776	()	
4. house	212 426 5644	()	
5.		()	

ALARM KEYPAD
COMBOS

Approved

By X

LESSEE'S SIGNATURE

TITLE

DATE

PRINT NAME

MITCHELL SODRAK

18. LEGAL ACTION The parties agree that due to the nature of the services to be provided by NYMP the payments to be made by Lessee for the term of this agreement are an integral part of NYMP's anticipated profits, and in the event of Lessee's breach of this agreement it would be difficult if not impossible to reasonably estimate NYMP's actual damages. Therefore, in the event of Lessee's default of this agreement Lessee shall pay to NYMP 60% of the balance due for the term of this agreement as liquidated damages. Additionally, in the event of Lessee's breach of this agreement NYMP may, at its option, either remove its equipment or deem same sold to Lessee for 80% the amount specified as the value of the equipment.

The parties waive trial by jury in any action between them. In any action commenced by NYMP against Lessee, Lessee shall not be permitted to interpose any counterclaim. Any action by Lessee against NYMP must be commenced within one year of the accrual of the cause of action or shall be barred. All actions or proceedings against NYMP must be based on the provisions of this agreement. Any other action that Lessee may have or bring against NYMP in respect to other services rendered in connection with this agreement shall be deemed to have merged in and be restricted to the terms and conditions of this agreement. Should NYMP prevail in any litigation between the parties Lessee shall pay NYMP's legal fees. Any action or dispute between the parties, including issues of arbitrability, shall, at the option of either party, be determined by arbitration administered by the National Arbitration Association under its Commercial Arbitration Rules. www.natarb.com.

19. ADDITIONAL PAYMENTS. In addition to the payments set forth herein, Lessee agrees to be liable for and pay to NYMP any excise, sales, property, or other tax, telephone line charges, and any increases thereof, which may be imposed upon NYMP because of this agreement. Should NYMP be required by existing or hereinafter enacted law to perform any service or furnish any material not specifically covered by the terms of this agreement Lessee agrees to pay NYMP for such service or material.

20. FALSE ALARMS - POLICE RESPONSE. NYMP shall have no liability for false alarms, false alarm fines, police response, or the refusal of the police to respond. In the event of termination of police response by the municipal police this contract shall nevertheless remain in full force and Lessee shall remain liable for all payments provided for herein. Lessee shall indemnify and hold NYMP harmless for all false alarm fines, alarm permit fees or other charges imposed by any municipality, including NYMP's attorney fees, arising out of the alarm system or NYMP's services related thereto, excluding sales or income tax, if any.

21. NYMP'S RIGHT TO SUBCONTRACT SPECIAL SERVICES: Lessee agrees that NYMP is authorized and permitted to subcontract any services to be provided by NYMP to third parties who may be independent of NYMP, and that NYMP shall not be liable for any loss or damage sustained by Lessee by reason of fire, theft, burglary or any other cause whatsoever caused by the negligence of third parties. Lessee acknowledges that this agreement, and particularly those paragraphs relating to NYMP's disclaimer of warranties, exemption from liability, even for its negligence, limitation of liability and third party indemnification, inure to the benefit of and are applicable to any assignee, subcontractors and communication centers of NYMP.

22. NO WARRANTIES OR REPRESENTATIONS: LESSEE'S EXCLUSIVE REMEDY: NYMP does not represent nor warrant that the security equipment system will prevent any loss, damage or injury to person or property, by reason of burglary, theft, hold-up, fire or other cause, or that the security equipment system will in all cases provide the protection for which it is installed or intended. Lessee acknowledges that NYMP is not an insurer, and that Lessee assumes all risk for loss or damage to Lessee's premises or its contents. NYMP has made no representations or warranties, and hereby disclaims any warranty of merchantability or fitness for any particular use. Lessee's exclusive remedy for NYMP's default hereunder is to require NYMP to repair or replace, at NYMP's option, any equipment or part of the security equipment system which is non-operational.

23. EXCULPATORY CLAUSE: The parties agree that NYMP is not an insurer and no insurance coverage is offered herein. Lessee's payments to NYMP are for the installation, rental and service of a security equipment system designed to reduce certain risks of loss, though NYMP does not guarantee that no loss will occur. NYMP is not assuming liability and therefore shall not be liable to Lessee for any loss or damages sustained by Lessee as a result of burglary, theft, hold-up, fire, smoke, equipment failure, or any other cause whatsoever, regardless of whether or not such loss or damage was caused by or contributed to by NYMP's negligent performance to any degree or failure to perform any obligation. Lessee releases NYMP from any claims for contribution or indemnity.

24. LIMITATION OF LIABILITY: The parties agree that the security equipment system is not designed or guaranteed to prevent any loss by burglary, theft and other illegal acts of third parties, or loss by fire, smoke, water or any other cause. If, notwithstanding the terms of this agreement, there should arise any liability on the part of NYMP as a result of burglary,

theft, hold-up, fire, smoke, equipment failure, or any other cause whatsoever, regardless of whether or not such loss, damage, or personal injury was caused by or contributed to by NYMP's negligence to any degree or failure to perform any obligation, such liability will be limited to an amount equal to six (6) times the monthly payment paid by the Lessee to NYMP at the time such liability is fixed, or to the sum of \$250.00, whichever is greater. If Lessee wishes to increase NYMP's maximum amount of such limitation of liability, Lessee may, as a matter of right, at any time, by entering into a supplemental agreement, obtain from NYMP a higher limit by paying an additional amount consonant with the increase of liability. This shall not be construed as insurance coverage.

25. CONFLICTING DOCUMENTS. Should there arise any conflict between this agreement and Lessee's purchase order or other document, this agreement will govern, whether such purchase order or document is prior to or subsequent to this agreement, except that in the event NYMP issues a UL certificate to Lessee, NYMP will comply with Underwriters Laboratory Inc. requirements regarding items of protection provided for in this agreement.

26. FULL AGREEMENT/SEVERABILITY. This agreement constitutes the full understanding of the parties and may not be amended or modified or cancelled except in writing signed by both parties. Should any provision of this agreement be deemed void, the remaining parts shall not be affected except that in the event NYMP issues a UL certificate to Lessee, NYMP will comply with Underwriters Laboratory Inc. requirements regarding items of protection provided for in this agreement.

27. LESSEE'S DECLINATION OF ADDITIONAL SERVICES

The lessee acknowledges that higher degrees of security are advisable from NYMP i.e.: U.L. Approved Systems, Guard Response, and Radio Back Up in the event of telephone line failure or cut. Two Way Voice Verification and Lessee's determination not to take these services are based solely upon monetary circumstances and these services if requested are available for additional installation and monthly charges.

Declined By: X [Signature]

NOTICE TO THE LESSEE (1) DO NOT SIGN THIS LEASE BEFORE YOU THOROUGHLY READ IT OR IF IT HAS ANY BLANK SPACE TO BE FILLED IN; (2) YOU HAVE THE RIGHT TO GET A FILLED-IN COPY OF THIS LEASE. THE LESSEE STATES THAT HE HAS READ ALL SIDES OF THIS LEASE AND THAT HE HAS BEEN GIVEN A FILLED-IN COPY OF THE LEASE AT THE TIME HE SIGNS IT. IF THE LESSEE BELIEVES ANY PROMISES OR AGREEMENTS WERE MADE BY NYMP OR ANY OF ITS EMPLOYEES THAT ARE NOT SET FORTH IN THIS LEASE, THE LESSEE SHOULD NOT SIGN THIS LEASE.

Lessee: UNION SQUARE WINE &

By: X [Signature]

Title: Pres

MITCHEN SQUADAK

Printed Name of Signer

Date: 4/24/06

The undersigned personally guarantees Lessee's performance of this agreement.

X

Print Name as Above.

NYMP Representative: X [Signature]

FOR OFFICE USE ONLY

Installer: JOAO

Started: 5-19-06

Completed: _____

Acct.#: M1247

NYMP ACQUISITION, LLC as acquirer of substantially all of the assets of
NEW YORK MERCHANTS PROTECTIVE CO., INC.,

Plaintiff,

-against-

33 UNION SQUARE WEST, INC. d/b/a UNION SQUARE WINE & SPIRIT and UNION
SQUARE WINES & SPIRITS, and "XYZ CORP.",

Defendants,

SUMMONS AND VERIFIED COMPLAINT

CERTILMAN BALIN ADLER & HYMAN, LLP
Attorney(s) for **Plaintiff**

Office and Post Office Address, Telephone

90 MERRICK AVENUE, 9TH FLOOR
EAST MEADOW, NEW YORK 11554
(516) 296-7000
FAX (516) 296-7111

To

To the best of the undersigned's knowledge,
information and belief, formed after an inquiry
reasonable under the circumstances, the within
documents and contentions contained herein are
not frivolous as defined in 22 NYCRR 130-1.1-a.

Dated:

Attorney(s) for

PLEASE TAKE NOTICE:

☐ NOTICE OF ENTRY

that the within is a (*certified*) true copy of a
duly entered in the office of the clerk of the within named court on

☐ NOTICE OF SETTLEMENT

that an order
will be presented for settlement to the HON.
within named Court, at
on

of which the within is a true copy
one of the judges of the

at M.

Dated,

Yours, etc.

2565004.1

CERTILMAN BALIN ADLER & HYMAN, LLP