

Negotiating Commercial Office Leases

by

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I. INTRODUCTION

A. Context of Lecture

1. Two overriding concerns of every lease negotiation:
 - (a) costs of occupancy and cost (and rate of return) of management, operation and ownership
 - (b) control - use of the space and tenancy, and manner of operation of the building
2. Small Tenant - Costs and control are predetermined. Tenant unwilling or unable to expend large sums prior to or during negotiation. Landlord thresholds limited.
3. Major Tenant - Has power to reorder standard negotiation with respect to cost and control issue.
 - (a) Involves experts in defining costs and control parameters:
 - (i) Architects and Designers - design, “work letter,” tenant improvement allowance
 - (ii) Engineers - inspection and evaluation of physical plant, electrical capacity, air conditioning, access to supplementary power
 - (iii) Contractor - physical construction of premises
 - (iv) Attorneys - negotiate legal documents and provide advice
 - (v) Brokers - define business deal, analysis competing transactions
 - (vi) Construction Consultants; and
 - (vii) Other consultants such as insurance consultant, environmental consultant and IT consultant
 - (b) Identify space and competitive buildings, analysis competing deals, determine effective economic deal:
 - (i) scheduling, time line, understanding that time equals money, understanding delays and impact thereof, including holdover as to existing space and economic and physical impact on new premises
 - (c) Evaluation and negotiation of “hidden costs” of lease, such as escalation clauses, added charges related to Tenant’s use of facilities (overtime services, freight elevator, cleaning, and electricity), advance changes and physical work to the building necessary to meet Tenant’s special needs. Loss Factor - Can make rent look better but how are building changes increased?
 - (d) Control and use of space:

- (i) Assignment and subletting rights
- (ii) Renewal option
- (iii) Expansion rights
- (e) Possibility of controlling costs:
 - (i) Understanding physical attributes of business and the operation of tenant's business
 - (ii) Landlord Services - HVAC specifications, cleaning specifications, elevators, supplementary air conditioning
 - (iii) Availability and cost of overtime services
 - (iv) Ability and right to make initial alterations as well as possibility of future changes in space to meet changing needs
 - (v) Physical layout of space - Electrical capacity, computers, libraries (floor load)

4. Areas effected by cost and control issues:

- (a) Rent, escalations, electricity and building services
- (b) Assignment, subletting, renewals and expansion
- (c) Alterations, work letters, tenant improvement / allowances; and fees
- (d) Lender considerations; and
- (e) Restoration

II. IDENTIFYING THE SPACE

- A. Rentable v. Useable or Carpetable Area - Loss factors, add on factor, number of employees per square foot, occupancy thresholds
- B. Third Party Determination - Architect, engineer or broker.

III. ASSIGNMENT, SUBLETTING, RENEWAL AND EXPANSION

- A. Allows for control and reduction of costs and provides flexibility if business changes (both expansion and contraction) over life of long-term lease.
- B. Subletting & Assignment must accommodate Tenant's corporate, business and structural changes:
 - 1. Affiliates, Subsidiaries
 - 2. Mergers and Acquisitions

- C. Economic benefits of assignment & subletting; possibility of tenant profiting from subletting or assignment by reason of taking advantage of a rising rental market.
- D. Different occupancy and identity of Tenant through assignment and subletting conflicts with Landlord's right to control, quality and character of tenants, quality of services in the building and leasing market for building.
 - 1. Can be addressed by defining standard of reasonableness of Landlord's consent:
 - (a) limitations on advertising, negotiations and sublease rental rate prevents competition with Landlord,
 - (b) financial standing of sublessee
 - (c) limitation on use
 - (d) limitations on amount of space that may be sublet
 - (e) can space be subdivided for maximum flexibility
- E. Landlord's participation in profits derived from sublease space
 - 1. Sublease Profits:
 - (a) profits to include sale of Tenant's property in space and services provided to subtenants such as telecommunication service
 - (b) Profit - net concept after permitting Tenant to recoup costs of subleasing
- F. Recapture by Landlord of space proposed to be assigned or sublet:
 - 1. Landlord's right of first refusal vs. right of first offer, prior notice
 - 2. No default and release of Tenant from liability by reason of Landlord recapture of proposed sublet space
 - 3. Protection of Tenant if Landlord recaptures via sublease (as opposed to terminating the lease in whole or in part)
- G. Renewal or Expansion Space:
 - 1. Expansion - Provides for additional space if business grows. Eliminates need for new search, moving costs and disruption of business.
 - 2. Definition of Fair Market Rent:
 - (a) determination to account for:
 - (i) continuation of same escalations at same base years
 - (ii) "highest and best use" or present use, subject to the terms of the lease, and

- (iii) # all relevant factors
 - (b) Rent as a function of percentage of fair market rent, benefits to both Tenant and Landlord
 - (c) Arbitration to determine FMV - baseball arbitration or other mechanism, criteria for arbitrators
3. Options vs. ROFO and ROFR

IV. WORK LETTER & TENANT IMPROVEMENT ALLOWANCE

A. Work Letter prepared by Landlord and reviewed by Tenant's Architect and incorporates items to be provided by Landlord as part of base building and Tenant's supplemental work.

1. Landlord's Work:

- (a) Building Standard Items - Partitions, doors, outlets, HVAC plumbing, etc.
- (b) Satisfaction of code requirements
- (c) Lobby, elevators, loading docks and other non-tenable areas of the building
- (d) Credit to Tenant for unused building standard items; may be applied to above building standard items or Tenant's supplemental work

2. Tenant's Responsibilities:

- (a) Submission of plans and specs by certain date in order to enable Landlord to complete Landlord's Work
- (b) Specification of above building standard improvements to be built at Tenant's expense
 - (i) Submission of bid by Landlord
 - (ii) Tenant right to perform work itself with own contractors
 - (iii) Unit prices

B. Areas of Concern

1. Delays:

- (a) Caused by late submission of plans
- (b) Extras and change orders
- (c) Long lead items

- (d) Who is responsible?
 - (i) Failure to document
 - (ii) Mitigation of delay
 - (iii) Determination by neutral party-arbitrator
- (e) Force majeure - Who bears risk; Equitable allocation of risk?
- (f) Delays affect commencement date, commencement of rent and may cause incurrence of additional costs

- 2. Defining Substantial Completion
- 3. Outside Date for Commencement of Term
- 4. Consequences for failure to perform, i.e., termination, free rent, acceleration of rent commencement

C. Guaranties

- 1. Who is guarantor and what is the scope of guaranty. [**Good Guy Guaranty vs. Full Guaranty of Tenant's obligations, including damages arising from a default**]

D. Tenant Improvement Allowance in lieu of Work Letter

- 1. Places responsibility of construction time and cost on Tenant
- 2. May eliminate disputes concerning delays or extras and force majeure
- 3. Disbursement of funds either advanced against costs incurred or advanced pari passu - to assure payment of work by Tenant
- 4. Tax Considerations - Disbursement of Tenant Allowance directly to Tenant may result in income to Tenant, disbursement directly to contractor
- 5. Conditions and requirements to disburse Tenant Allowance

V. LENDER CONSIDERATIONS

- A. Tenant control over space limited by present or future mortgagees of building
- B. Lender will require lease to be subordinate to lien of the mortgage
- C. Tenant may require "nondisturbance" agreement as condition to subordination
- D. Assures Tenant of continued leasehold estate upon foreclosure by lender
- E. Nondisturbance "carve outs"

1. Not liable for acts of prior landlord
 2. Not subject to defenses or offsets against prior landlord [**What if landlord does not disburse Tenant Allowance?**]
 3. Not bound by rent paid in advance of due date
 4. Not bound by obligation of previous landlord
- F. Other provisions subject to Lender's review
1. Offsets, rent credits
 2. Lease cancellation rights
 3. Restoration of premises and cancellation rights in event of casualty
 4. Security Deposit
 5. Landlord's repair obligations and any tenant self help rights

VI. CONCLUSION

- A. Many other parts of lease concern cost and control not covered:
1. Insurance coverage
 2. Restoration after destruction - walk dates - rent abatement
 3. Dispute Resolution - expedited arbitration for consent, waiver of jury trial
 4. Waiver of damage claim against landlord and non-recourse liability for landlord
- B. Only by completing a thorough review of building (plans and specs, layout, design, electricity, escalations) can Tenant assure itself that it has received benefit of bargain with respect to costs and physical aspects of the proposed building and premises.
- C. Requires reliance on architect, engineer, lawyer, broker, construction consultant, electrical auditor and other consultants.
- D. Control requires knowledge of future needs (renewals and expansion) and foresight to build in "exit strategy" provisions (assignment, sublet).
- E. All of the above tempered by understanding that Landlord can provide the services most efficiently and will insist on trade-offs with respect to costs and control.

**THIS IS A FORM – DO NOT CHANGE
COPY TO CREATE A NEW LEASE**

LEASE

Landlord

and

a _____

Tenant

for

New York, New York

_____, 20__

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Exhibit B	Definitions
Exhibit C	Landlord’s Work
Exhibit D	Intentionally Omitted [Design Standards]
Exhibit E	Cleaning Specifications
Exhibit F	Rules and Regulations

LEASE

THIS LEASE is made as of the ____ day of _____, 20__ (“**Effective Date**”), between _____ (“**Landlord**”), a _____, and _____ (“**Tenant**”), a _____.

Landlord and Tenant hereby agree as follows:

ARTICLE 1

BASIC LEASE PROVISIONS

PREMISES	[A portion of the] [The entire] _____ floor[s] of the Building, as more particularly shown on Exhibit A .
BUILDING	The building, fixtures, equipment and other improvements and appurtenances now located or hereafter erected, located or placed upon the land known as _____, New York, New York.
REAL PROPERTY COMMENCEMENT DATE	The Building, together with the plot of land upon which it stands. [_____] [The date of execution and delivery of this Lease by both Landlord and Tenant.] [The date which is the earlier to occur of (a) the date upon which Landlord’s Work shall be Substantially Completed in accordance with the terms of this Lease, and (b) the date Tenant (or any person or entity claiming by, through or under Tenant) occupies any part of the Premises for the conduct of its business.] [The date upon which Landlord tenders possession of the Premises to Tenant in accordance with the terms of this Lease.]
RENT COMMENCEMENT DATE	As defined in Section 2.5 hereof.
EXPIRATION DATE	If the Commencement Date shall be the first day of a calendar month, then the date which is the day immediately preceding the _____ anniversary of the Commencement Date, or if the Commencement Date shall be other than the first day of a calendar month then the date which is the last day of the month in which the _____ anniversary of the Commencement Date occurs [, or the last day of any renewal or extended term, if the Term of this Lease is extended in accordance with any express provision hereof] .
TERM	The period commencing on the Commencement Date and ending on the Expiration Date.
PERMITTED USES	Executive and general offices

BASE TAX YEAR The Tax Year commencing on July 1, 20__ and ending on June 30, 20__.

BASE EXPENSE YEAR Calendar year 20__.

TENANT'S PROPORTIONATE SHARE In respect of Taxes, __ percent and, in respect of Operating Expenses, __ percent.

AGREED AREA OF BUILDING In respect of Taxes, _____ rentable square feet and, in respect of Operating Expenses, _____ rentable square feet, as mutually agreed by Landlord and Tenant.

AGREED AREA OF PREMISES _____ rentable square feet, as mutually agreed by Landlord and Tenant.

FIXED RENT Period Per Annum Per Month

Lease Years 1 –
Lease Years

ADDITIONAL RENT All sums other than Fixed Rent payable by Tenant to Landlord under this Lease, including Tenant's Tax Payment, Tenant's Operating Payment, late charges, overtime or excess service charges, damages, and interest and other costs related to Tenant's failure to perform any of its obligations under this Lease.

RENT Fixed Rent and Additional Rent, collectively.

INTEREST RATE The lesser of (i) 4% per annum above the then-current Base Rate, and (ii) the maximum rate permitted by applicable law.

LETTER OF CREDIT \$_____.

[ELECTRICAL INCLUSION FACTOR \$_____.]

TENANT'S ADDRESS FOR NOTICES Until Tenant commences business operations from the Premises:

Thereafter:

**LANDLORD'S ADDRESS
FOR NOTICES**

Copies to:

TENANT'S BROKER

_____.

LANDLORD'S AGENT

_____ or any other person or entity designated at any time and from time to time by Landlord as Landlord's Agent.

**[LANDLORD'S
CONTRIBUTION**

\$ _____.]

[GUARANTOR

\$ _____.]

All capitalized terms used in this Lease without definition are defined in Exhibit B.

ARTICLE 2

PREMISES, TERM, RENT

Section 2.1 Lease of Premises. Subject to the terms of this Lease, Landlord leases to Tenant and Tenant leases from Landlord the Premises for the Term. In addition, Landlord grants to Tenant the right to use, on a non-exclusive basis and in common with other tenants, the Common Areas.

Section 2.2 Commencement Date. Upon the Effective Date, the terms and provisions hereof shall be fully binding on Landlord and Tenant prior to the occurrence of the Commencement Date. The Term of this Lease shall commence on the Commencement Date and, unless sooner terminated or extended as hereinafter provided, shall end on the Expiration Date. If Landlord does not tender possession of the Premises to Tenant on or before any specified date, for any reason whatsoever, Landlord shall not be liable for any damage thereby, this Lease shall not be void or voidable thereby, and the Term shall not commence until Landlord tenders possession of the Premises to Tenant. Landlord shall be deemed to have tendered possession of the Premises to Tenant upon the giving of notice by Landlord to Tenant stating that the Premises are vacant, in the condition required by this Lease and available for

Tenant's occupancy. No failure to tender possession of the Premises to Tenant on or before any specified date shall affect any other obligations of Tenant hereunder. **[There shall be no postponement of the Commencement Date (or the Rent Commencement Date) for (i) any delay in the delivery of possession of the Premises which results from Tenant Delay or (ii) any delay by Landlord in the performance of any Punch List Items relating to Landlord's Work.]** Once the Commencement Date is determined, Landlord and Tenant shall execute an agreement stating the Commencement Date, Rent Commencement Date and Expiration Date, but the failure to do so will not affect the determination of such dates. For purposes of determining whether Tenant has accepted possession of the Premises, Tenant shall be deemed to have done so when Tenant first moves Tenant's Property and/or any of its personnel into the Premises and/or commences construction, except to the extent that Tenant is authorized in this Lease or by Landlord's agreement to do any of the foregoing without being deemed to have accepted possession of the Premises. The provisions of this **Section 2.2** are intended to constitute "an express provision to the contrary" within the meaning of Section 223-a of the New York Real Property Law or any successor Requirement.

Section 2.3 Payment of Rent. Tenant shall pay to Landlord, without notice or demand, and without any set-off, counterclaim, abatement or deduction whatsoever, except as may be expressly set forth in this Lease, in lawful money of the United States by good check (subject to collection) drawn on a New York Clearinghouse Bank (or other financial institution approved by Landlord) provided upon Landlord's request Tenant shall make all Fixed Rent payments by wire transfer from such approved financial institution by wire transfer of funds, (i) Fixed Rent in equal monthly installments, in advance, on the first day of each month during the Term, commencing on the Rent Commencement Date, and (ii) Additional Rent, at the times and in the manner set forth in this Lease.

Section 2.4 First Month's Rent. Tenant shall pay one month's Fixed Rent upon the execution of this Lease ("**Advance Rent**"). If the Rent Commencement Date is on the first day of a month, the Advance Rent shall be credited towards the first month's Fixed Rent payment. If the Rent Commencement Date is not the first day of a month, then on the Rent Commencement Date Tenant shall pay Fixed Rent for the period from the Rent Commencement Date through the last day of such month, and the Advance Rent shall be credited towards Fixed Rent for the next succeeding calendar month.

Section 2.5 [Credit. Notwithstanding any provision of this Lease to the contrary and provided this Lease is in full force and effect and no Event of Default then exists, the Fixed Rent [(other than any portion thereof which constitutes the Electrical Inclusion Factor)] shall be a abated for a period (the "Free Rent Period") of ___ months commencing on the Commencement Date (subject to any reduction of such Free Rent Period due to any such Event of Default by Tenant). The day immediately following the last day of the Free Rent Period shall be referred to in this Lease as the "Rent Commencement Date" or, if Tenant shall have no right to any such abatement, the Rent Commencement Date shall be the Commencement Date.]

ARTICLE 3

USE AND OCCUPANCY

Tenant shall use and occupy the Premises for the Permitted Uses and for no other purpose. Tenant shall not use or occupy or permit the use or occupancy of any part of the

Premises in a manner constituting a Prohibited Use. If Tenant uses the Premises for a purpose constituting a Prohibited Use, violating any Requirement, or causing the Building to be in violation of any Requirement, then Tenant shall promptly discontinue such use upon notice of such violation. Tenant, at its expense, shall procure and at all times maintain and comply with the terms and conditions of all licenses and permits required for the lawful conduct of the Permitted Uses in the Premises.

ARTICLE 4

CONDITION OF THE PREMISES

Section 4.1 Condition. Tenant has inspected the Premises and agrees (a) to accept possession of the Premises in the condition existing on the Commencement Date “as is”, **[and (b) except for Landlord’s Contribution and except for Landlord’s Work described in Exhibit C attached hereto]**, Landlord has no obligation to perform any work, supply any materials, incur any expense or make any alterations or improvements to prepare the Premises for Tenant’s occupancy. Any work to be performed by Tenant in connection with Tenant’s initial occupancy of the Premises shall be hereinafter referred to as the “**Initial Installations**”. Tenant’s occupancy of any part of the Premises shall be conclusive evidence, as against Tenant, that **[Landlord has Substantially Completed any work to be performed by Landlord under this Lease,]** Tenant has accepted possession of the Premises in its then current condition and at the time such possession was taken, the Premises and the Building were in a good and satisfactory condition as required by this Lease.

OPTIONAL SECTION

Section 4.2 Landlord’s Contribution. (a) Landlord shall pay to Tenant an amount not to exceed Landlord’s Contribution toward the cost of the Initial Installations (excluding any “soft costs” and Tenant’s Property), provided that as of the date on which Landlord is required to make payment thereof pursuant to **Section 4.2(b)**: (i) this Lease is in full force and effect, and (ii) no Event of Default then exists. Tenant shall pay all costs of the Initial Installations in excess of Landlord’s Contribution. Landlord’s Contribution shall be payable solely on account of labor directly related to the Initial Installations and materials delivered to the Premises in connection with the Initial Installations (excluding any “soft costs” and Tenant’s Property) **[except that Tenant may apply up to 10% of Landlord’s Contribution to pay “soft cost” incurred in connection with the Initial Installations, which shall be limited to the actual architectural, consulting and engineering fees incurred by Tenant in connection therewith].** Tenant shall not be entitled to receive any portion of Landlord’s Contribution not actually expended by Tenant in the performance of the Initial Installations, nor shall Tenant have any right to apply any unexpended portion of Landlord’s Contribution as a credit against Rent or any other obligation of Tenant hereunder. Upon the completion of the Initial Installations and satisfaction of the conditions set forth in this **Section 4.2**, or upon the occurrence of the date which is 12 months after the Commencement Date **[(which date shall be extended by reason of strikes, labor trouble or any other similar cause beyond Tenant’s control in performing the Initial Installations)]**, whichever first occurs, any amount of Landlord’s Contribution which has not been previously disbursed shall be retained by Landlord **[:provided, however, the applicable portion of such retained amounts shall continue to be held for the benefit of Tenant by Landlord if Tenant delivers a notice to Landlord prior to satisfaction of the conditions set forth in this Section 4.2 that it is in dispute with any contractors,**

subcontractors, vendors or other providers of service and refuses to make payments at such time or if any contracts provide for retainage which has not then been finally paid.]

OPTIONAL [b

[For Single Payment of Landlord's Contribution.] (b) Landlord shall pay Landlord's Contribution to Tenant following commencement of Tenant's business operations at the Premises and the final completion of the Initial Installations, within 30 days after submission by Tenant to Landlord of a requisition therefor, signed by the chief financial officer of Tenant and accompanied by (i) copies of paid invoices covering all of the Initial Installations, (ii) a certification from Tenant's architect stating that (A) the Initial Installations described on such invoices have been completed in accordance with the plans and specifications approved by Landlord, (B) such work has been paid in full by Tenant and (C) all contractors, subcontractors and material suppliers have delivered to Tenant waivers of lien with respect to such work (copies of which shall be included with such architect's certification), (iii) proof of the satisfactory completion of all required inspections and the issuance of any required approvals and sign-offs by Governmental Authorities with respect thereto, (iv) final "as-built" plans and specifications for the Initial Installations as required pursuant to **Section 5.1(c)**, (v) final lien waivers from all contractors, subcontractors and material suppliers covering all of the Initial Installations, and (vi) such other documents and information as Landlord may reasonably request, including title drawdowns and endorsements. The right to receive Landlord's Contribution is for the exclusive benefit of Tenant, and in no event shall such right be assigned to or be enforceable by or for the benefit of any third party, including any contractor, subcontractor, materialman, laborer, architect, engineer, attorney or other person or entity.]

[For Periodic Payments of Landlord's Contribution]. [(b) Landlord shall make progress payments to Tenant on a monthly basis, for the work performed during the previous month, up to 90% of Landlord's Contribution. Each of Landlord's progress payments shall be limited to an amount equal to the aggregate amounts theretofore paid by Tenant (as certified by the chief financial officer of Tenant and by Tenant's independent architect) to Tenant's contractors, subcontractors and material suppliers which have not been subject to previous disbursements from Landlord's Contribution multiplied by a fraction, the numerator of which is the amount of Landlord's Contribution, and the denominator of which is the total contract price (or, if there is no specified or fixed contract price for the Initial Installations, then Landlord's reasonable estimate thereof) for the performance of all of the Initial Installations shown on all plans and specifications approved by Landlord, provided that in no event shall such fraction be greater than one. Provided that Tenant delivers requisitions to Landlord on or prior to the 10th day of any month, such progress payments shall be made within 30 days next following the delivery to Landlord of requisitions therefor, signed by the chief financial officer of Tenant, and shall be accompanied by (i) with the exception of the first requisition, copies of partial waivers of lien from all contractors, subcontractors, and material suppliers covering all work and materials which were the subject of previous progress payments by Landlord and Tenant, (ii) a certification from Tenant's architect that the work for which the requisition is being made has been completed substantially in accordance with the plans and specifications approved by Landlord and (iii) such other documents and information as Landlord may reasonably request. Any requisitions made following the 10th day of any month shall be paid no later than the last day of the month following the month in which such requisitions are made. Landlord shall disburse any amount retained by it hereunder upon submission by Tenant to Landlord of Tenant's requisition therefor accompanied by all documentation required under this **Section 4.2(b)**, together with (A) proof of the satisfactory completion of all required inspections and issuance of any required approvals, permits and sign-offs for the Initial Installations by

Governmental Authorities having jurisdiction thereover, (B) final “as-built” plans and specifications for the Initial Installations as required pursuant to **Section 5.1(c)** and (C) issuance of final lien waivers by all contractors, subcontractors and material suppliers covering all of the Initial Installations. The right to receive Landlord’s Contribution is for the exclusive benefit of Tenant, and in no event shall such right be assigned to or be enforceable by or for the benefit of any third party, including any contractor, subcontractor, materialman, laborer, architect, engineer, attorney or other person or entity.]

Section 4.3 Landlord’s Work. Landlord will commence the performance of the work described in **Exhibit C (“Landlord’s Work”)** reasonably promptly following the Commencement Date [the date hereof] and, subject to Tenant’s compliance with the provisions of this **Section 4.3**, will complete Landlord’s Work in a good and workmanlike manner consistent with the standards applicable to the Building. Landlord and its employees, contractors and agents shall have access to the Premises at all reasonable times for the performance of Landlord’s Work and for the storage of materials reasonably required in connection therewith, and Tenant will use all commercially reasonable efforts to avoid any interference with the performance of Landlord’s Work. Landlord shall use reasonable efforts to minimize interference with Tenant’s use and occupancy of the Premises during the performance of Landlord’s Work. There shall be no Rent abatement or allowance to Tenant for a diminution of rental value, no actual or constructive eviction of Tenant, in whole or in part, no relief from any of Tenant’s other obligations under this Lease, and no liability on the part of Landlord, by reason of inconvenience, annoyance or injury to business arising from the performance of Landlord’s Work or the storage of any materials in connection therewith.

ARTICLE 5

ALTERATIONS

Section 5.1 Tenant’s Alterations. (a) Tenant shall not make any alterations, additions or other physical changes in or about the Premises (collectively, “**Alterations**”) other than decorative Alterations such as painting, wall coverings and floor coverings (collectively, “**Decorative Alterations**”), without Landlord’s prior consent, which consent shall not be unreasonably withheld if such Alterations (i) are non-structural and do not affect any Building Systems, (ii) affect only the Premises and are not visible from outside of the Premises, (iii) do not affect the certificate of occupancy issued for the Building or the Premises, and (iv) do not violate any Requirement.

(a) **Plans and Specifications.** Prior to making any Alterations, Tenant, at its expense, shall (i) submit to Landlord for its approval, detailed plans and specifications (“**Plans**”) of each proposed Alteration (other than Decorative Alterations), and with respect to any Alteration affecting any Building System, evidence that the Alteration has been designed by, or reviewed and approved by, Landlord’s designated engineer for the affected Building System, (ii) obtain all permits, approvals and certificates required by any Governmental Authorities, (iii) furnish to Landlord duplicate original policies or certificates of worker’s compensation (covering all persons to be employed by Tenant, and Tenant’s contractors and subcontractors in connection with such Alteration) and commercial general liability (including property damage coverage) insurance and Builder’s Risk coverage (as described in **Article 11**) all in such form, with such companies, for such periods and in such amounts as Landlord may reasonably require, naming Landlord, Landlord’s Agent, any Lessor and any Mortgagee as additional

insureds, and (iv) furnish to Landlord reasonably satisfactory evidence of Tenant's ability to complete and to fully pay for such Alterations (other than Decorative Alterations). Tenant shall give Landlord not less than 5 Business Days' notice prior to performing any Decorative Alteration, which notice shall contain a description of such Decorative Alteration.

(b) **Governmental Approvals.** Tenant, at its expense, shall, as and when required, promptly obtain certificates of partial and final approval of such Alterations required by any Governmental Authority and shall, within 30 days after completion of any Alterations, furnish Landlord with copies thereof, together with "as-built" Plans for such Alterations prepared on an AutoCAD Computer Assisted Drafting and Design System (or such other system or medium as Landlord may accept), using naming conventions issued by the American Institute of Architects in June, 1990 (or such other naming conventions as Landlord may accept) and magnetic computer media of such record drawings and specifications translated in DWG format or another format acceptable to Landlord.

Section 5.2 Manner and Quality of Alterations. All Alterations shall be performed (a) in a good and workmanlike manner and free from defects, (b) substantially in accordance with the Plans, and by contractors approved by Landlord, (c) in compliance with all Requirements, the terms of this Lease and all construction procedures and regulations then prescribed by Landlord, and (d) at Tenant's expense. All materials and equipment shall be of first quality and at least equal to the applicable standards for the Building then established by Landlord, and no such materials or equipment (other than Tenant's Property) shall be subject to any lien or other encumbrance.

Section 5.3 Removal of Tenant's Property. Tenant's Property shall remain the property of Tenant and Tenant may remove the same at any time on or before the Expiration Date. On or prior to the Expiration Date, Tenant shall, at Tenant's expense, remove all of Tenant's Property and, unless otherwise directed by Landlord, any Specialty Alterations from the Premises and close up any slab penetrations in the Premises. Tenant shall repair and restore, in a good and workmanlike manner, any damage to the Premises or the Building caused by Tenant's removal of any Alterations or Tenant's Property or by the closing of any slab penetrations, and upon default thereof, Tenant shall reimburse Landlord for Landlord's cost of repairing and restoring such damage. Any Specialty Alterations or Tenant's Property not so removed shall be deemed abandoned and Landlord may retain or remove and dispose of same, and repair and restore any damage caused thereby, at Tenant's cost and without accountability to Tenant. All other Alterations shall become Landlord's property upon termination of this Lease.

Section 5.4 Mechanic's Liens. Tenant, at its expense, shall discharge any lien or charge recorded or filed against the Real Property in connection with any work done or claimed to have been done by or on behalf of, or materials furnished or claimed to have been furnished to, Tenant, within 10 days after Tenant's receipt of notice thereof by payment, filing the bond required by law or otherwise in accordance with law.

Section 5.5 Labor Relations. Tenant shall not employ, or permit the employment of, any contractor, mechanic or laborer, or permit any materials to be delivered to or used in the Building, if, in Landlord's sole judgment, such employment, delivery or use will interfere or cause any conflict with other contractors, mechanics or laborers engaged in the construction, maintenance or operation of the Building by Landlord, Tenant or others. If such interference or conflict occurs, upon Landlord's request, Tenant shall cause all contractors, mechanics or laborers causing such interference or conflict to leave the Building immediately.

Section 5.6 Tenant's Costs. Tenant shall pay to Landlord, upon demand, all out-of-pocket costs actually incurred by Landlord in connection with Tenant's Alterations, including costs incurred in connection with (a) Landlord's review of the Alterations (including review of requests for approval thereof) and (b) the provision of Building personnel during the performance of any Alteration, to operate elevators or otherwise to facilitate Tenant's Alterations. In addition, Tenant shall pay to Landlord, upon demand, an administrative fee in an amount equal to 5% of the total cost of such Alterations (**including Landlord's Work ***). Tenant shall, upon request, provide Landlord with reasonable evidence of all amounts expended by it for Alterations (including any "soft costs").

Section 5.7 Tenant's Equipment. Tenant shall provide notice to Landlord prior to moving any heavy machinery, heavy equipment, freight, bulky matter or fixtures (collectively, "**Equipment**") into or out of the Building and shall pay to Landlord any costs actually incurred by Landlord in connection therewith. If such Equipment requires special handling, Tenant agrees (a) to employ only persons holding all necessary licenses to perform such work, (b) all work performed in connection therewith shall comply with all applicable Requirements and (c) such work shall be done only during hours designated by Landlord.

Section 5.8 Legal Compliance. The approval of Plans, or consent by Landlord to the making of any Alterations, does not constitute Landlord's representation that such Plans or Alterations comply with any Requirements. Landlord shall not be liable to Tenant or any other party in connection with Landlord's approval of any Plans, or Landlord's consent to Tenant's performing any Alterations. If any Alterations made by or on behalf of Tenant, require Landlord to make any alterations or improvements to any part of the Building in order to comply with any Requirements, Tenant shall pay all costs and expenses incurred by Landlord in connection with such alterations or improvements.

Section 5.9 Floor Load. Tenant shall not place a load upon any floor of the Premises that exceeds 50 pounds per square foot "live load". Landlord reserves the right to reasonably designate the position of all Equipment which Tenant wishes to place within the Premises, and to place limitations on the weight thereof.

ARTICLE 6

REPAIRS

Section 6.1 Landlord's Repair and Maintenance. Landlord shall operate, maintain and, except as provided in **Section 6.2** hereof, make all necessary repairs (both structural and nonstructural) to (i) the Building Systems, and (ii) the Common Areas, in conformance with standards applicable to Comparable Buildings.

Section 6.2 Tenant's Repair and Maintenance. Tenant shall promptly, at its expense and in compliance with **Article 5**, make all nonstructural repairs to the Premises and the fixtures, equipment and appurtenances therein (including all electrical, plumbing, heating, ventilation and air conditioning, sprinklers and life safety systems in and serving the Premises from the point of connection to the Building Systems) (collectively, "**Tenant Fixtures**") as and

* Include if Landlord builds out space under a workletter.

when needed to preserve the Premises in good working order and condition, except for reasonable wear and tear and damage for which Tenant is not responsible. All damage to the Building or to any portion thereof, or to any Tenant Fixtures requiring structural or nonstructural repair caused by or resulting from any act, omission, neglect or improper conduct of a Tenant Party or the moving of Tenant's Property or Equipment into, within or out of the Premises by a Tenant Party, shall be repaired at Tenant's expense by (i) Tenant, if the required repairs are nonstructural in nature and do not affect any Building System, or (ii) Landlord, if the required repairs are structural in nature, involve replacement of exterior window glass or affect any Building System. All Tenant repairs shall be of good quality utilizing new construction materials.

Section 6.3 Restorative Work. Landlord reserves the right to make all changes, alterations, additions, improvements, repairs or replacements to the Building and Building Systems, including changing the arrangement or location of entrances or passageways, doors and doorways, corridors, elevators, stairs, toilets or other Common Areas (collectively, "**Restorative Work**"), as Landlord deems necessary or desirable, and to take all materials into the Premises required for the performance of such Restorative Work provided that (a) the level of any Building service shall not decrease in any material respect from the level required of Landlord in this Lease as a result thereof (other than temporary changes in the level of such services during the performance of any such Restorative Work) and (b) Tenant is not deprived of access to the Premises. Landlord shall use reasonable efforts to minimize interference with Tenant's use and occupancy of the Premises during the performance of such Restorative Work. There shall be no Rent abatement or allowance to Tenant for a diminution of rental value, no actual or constructive eviction of Tenant, in whole or in part, no relief from any of Tenant's other obligations under this Lease, and no liability on the part of Landlord by reason of inconvenience, annoyance or injury to business arising from Landlord, Tenant or others performing, or failing to perform, any Restorative Work.

ARTICLE 7

INCREASES IN TAXES AND OPERATING EXPENSES

Section 7.1 Definitions. For the purposes of this **Article 7**, the following terms shall have the meanings set forth below:

(a) "**Assessed Valuation**" shall mean the amount for which the Real Property is assessed pursuant to the applicable provisions of the City Charter and the Administrative Code of New York, or any successor Requirements, for the purpose of imposition of Taxes.

(b) "**Base Operating Expenses**" shall mean the Operating Expenses for the Base Expense Year.

(c) "**Base Taxes**" shall mean the Taxes payable for the Base Tax Year.

(d) "**Comparison Year**" shall mean (i) with respect to Taxes, each calendar year commencing subsequent to the first day of the Base Tax Year, and (ii) with respect to Operating Expenses, each calendar year commencing subsequent to the first day of the Base Expense Year.

(e) **“Operating Expenses”** shall mean the aggregate of all costs and expenses paid or incurred by or on behalf of Landlord in connection with the ownership, operation, repair and maintenance of the Real Property, including the rental value of Landlord’s Building office and capital improvements incurred after the Base Expense Year only if such capital improvement either (i) is reasonably intended to result in a reduction in Operating Expenses (as for example, a labor-saving improvement) provided, the amount included in Operating Expenses in any Comparison Year shall not exceed an amount equal to the savings reasonably anticipated to result from the installation and operation of such improvement, and/or (ii) is made during any Comparison Year in compliance with Requirements. Such capital improvements shall be amortized (with interest at the Base Rate) on a straight-line basis over such period as Landlord shall reasonably determine, and the amount included in Operating Expenses in any Comparison Year shall be equal to the annual amortized amount. Operating Expenses shall not include any Excluded Expenses. If during all or part of the Base Expense Year or any Comparison Year, Landlord shall not furnish any particular item(s) of work or service (which would otherwise constitute an Operating Expense) to any leasable portions of the Building for any reason, then, for purposes of computing Operating Expenses for such period, the amount included in Operating Expenses for such period shall be increased by an amount equal to the costs and expenses that would have been reasonably incurred by Landlord during such period if Landlord had furnished such item(s) of work or service to such portion of the Building. In determining the amount of Operating Expenses for the Base Expense Year or any Comparison Year, if less than 100% of the Building rentable area is occupied by tenants at any time during the Base Expense Year or any such Comparison Year, Operating Expenses shall be determined for the Base Expense Year or such Comparison Year to be an amount equal to the like expenses which would normally be expected to be incurred had such occupancy been 100% throughout the Base Expense Year or such Comparison Year.

(f) **“Statement”** shall mean a statement containing a comparison of (i) the Base Taxes and the Taxes for any Comparison Year, or (ii) the Base Operating Expenses and the Operating Expenses for any Comparison Year.

(g) **“Tax Year”** shall mean the twelve month period from July 1 through June 30 (or such other period as hereinafter may be duly adopted by the City of New York as its fiscal year for real estate tax purpose).

(h) **“Taxes”** shall mean (i) all real estate taxes, assessments (including assessments made as a result of the Building being within a business improvement district), and other governmental levies, impositions or charges, whether general, special, ordinary, extraordinary, foreseen or unforeseen, which may be assessed, levied or imposed upon all or any part of the Real Property, and (ii) all expenses (including reasonable attorneys’ fees and disbursements and experts’ and other witnesses’ fees) incurred in contesting any of the foregoing or the Assessed Valuation of the Real Property (but such expenses shall not be included in the Base Taxes if incurred during the Base Tax Year). Taxes shall not include (x) interest or penalties incurred by Landlord as a result of Landlord’s late payment of Taxes, or (y) franchise, transfer, gift, inheritance, estate, net income, or similar taxes or charges imposed upon Landlord. If Landlord elects to pay any assessment in annual installments, then (i) such assessment shall be deemed to have been so divided and to be payable in the maximum number of installments permitted by law, and (ii) there shall be deemed included in Taxes for each Comparison Year the installments of such assessment becoming payable during such Comparison Year, together with interest payable during such Comparison Year on such installments and on all installments thereafter becoming due as provided by law, all as if such assessment had been so divided. If at any time the methods of taxation prevailing on the

Commencement Date shall be altered so that in lieu of or as an addition to the whole or any part of Taxes, there shall be assessed, levied or imposed (1) a tax, assessment, levy, imposition or charge based on the income or rents received from the Real Property whether or not wholly or partially as a capital levy or otherwise, (2) a tax, assessment, levy, imposition or charge measured by or based in whole or in part upon all or any part of the Real Property and imposed upon Landlord, (3) a license fee measured by the rents, or (4) any other tax, assessment, levy, imposition, charge or license fee however described or imposed, then all such taxes, assessments, levies, impositions, charges or license fees or the part thereof so measured or based shall be deemed to be Taxes.

Section 7.2 Tenant's Tax Payment. (a) If the Taxes payable for any Tax Year after the Base Tax Year exceed the Base Taxes, Tenant shall pay to Landlord Tenant's Proportionate Share of such excess ("**Tenant's Tax Payment**"). For each Comparison Year in which any such Tax Year commences, Landlord shall furnish to Tenant a statement setting forth Landlord's reasonable estimate of Tenant's Tax Payment for such Tax Year (the "**Tax Estimate**"). Tenant shall pay to Landlord on the 1st day of each month during such Comparison Year an amount equal to 1/12th of the Tax Estimate for such Tax Year. If Landlord furnishes a Tax Estimate for a Comparison Year subsequent to the commencement thereof, then (i) until the 1st day of the month following the month in which the Tax Estimate is furnished to Tenant, Tenant shall pay to Landlord on the 1st day of each month an amount equal to the monthly sum payable by Tenant to Landlord under this **Section 7.2(a)** for the last month of the preceding Comparison Year; (ii) promptly after the Tax Estimate is furnished to Tenant or together therewith, Landlord shall give notice to Tenant stating whether the installments of the Tax Estimate previously made for such Comparison Year were greater or less than the installments of the Tax Estimate to be made for such Comparison Year in accordance with the Tax Estimate, and (x) if there shall be a deficiency, Tenant shall pay the amount thereof within 10 Business Days after demand, or (y) if there shall have been an overpayment, Landlord shall credit the amount thereof against subsequent payments of Rent next coming due hereunder ; and (iii) on the 1st day of the month following the month in which the Tax Estimate is furnished to Tenant, and on the 1st day of each month thereafter throughout the remainder of such Comparison Year, Tenant shall pay to Landlord an amount equal to 1/12th of the Tax Estimate. Landlord may, during each Comparison Year, furnish to Tenant a revised Tax Estimate for such Comparison Year, and in such case, Tenant's Tax Payment for such Comparison Year shall be adjusted and any deficiencies paid or overpayments credited, as the case may be, substantially in the same manner as provided in the preceding sentence. After the end of each Comparison Year, Landlord shall furnish to Tenant a Statement of Taxes applicable to Tenant's Tax Payment payable for such Comparison Year and (A) if such Statement shall show that the sums so paid by Tenant were less than Tenant's Tax Payment due for such Comparison Year, Tenant shall pay to Landlord the amount of such deficiency within 10 Business Days after delivery of the Statement to Tenant, or (B) if such Statement shall show that the sums so paid by Tenant were more than such Tenant's Tax Payment, Landlord shall credit such overpayment against subsequent payments of Rent next coming due. If there shall be any increase in the Taxes for any Tax Year, whether during or after such Tax Year, or if there shall be any decrease in the Taxes for any Tax Year, Tenant's Tax Payment for such Comparison Year shall be appropriately adjusted and any deficiencies paid or overpayments credited, as the case may be, substantially in the same manner as provided in the preceding sentence.

(b) Only Landlord may institute proceedings to reduce the Assessed Valuation of the Real Property and the filings of any such proceeding by Tenant without Landlord's consent shall constitute an Event of Default. If the Base Taxes are reduced, the Additional Rent previously paid or payable on account of Tenant's Tax Payment hereunder for

all Comparison Years shall be recomputed on the basis of such reduction, and Tenant shall pay to Landlord, within 10 Business Days after demand therefor, any deficiency between the amount of such Additional Rent previously computed and paid by Tenant to Landlord, and the amount due as a result of such recomputation. If the Base Taxes are increased, then Landlord shall either pay to Tenant, or at Landlord's election, credit against subsequent payments of Rent due, the amount by which such Additional Rent previously paid on account of Tenant's Tax Payment exceeds the amount actually due as a result of such recomputation. If Landlord receives a refund of Taxes for any Comparison Year, Landlord shall, at its election, either pay to Tenant, or credit against subsequent payments of Rent due hereunder, an amount equal to Tenant's Proportionate Share of the refund, net of any expenses incurred by Landlord in achieving such refund, which amount shall not exceed Tenant's Tax Payment paid for such Comparison Year. Landlord shall not be obligated to file any application or institute any proceeding seeking a reduction in Taxes or the Assessed Valuation. The benefit of any exemption or abatement relating to all or any part of the Real Property shall accrue solely to the benefit of Landlord and Taxes shall be computed without taking into account any such exemption or abatement.

(c) Tenant shall be responsible for any applicable occupancy or rent tax now in effect or hereafter enacted and, if such tax is payable by Landlord, Tenant shall promptly pay such amounts to Landlord, upon Landlord's demand.

(d) Tenant shall be obligated to make Tenant's Tax Payment regardless of whether Tenant may be exempt from the payment of any taxes as the result of any reduction, abatement, or exemption from Taxes granted or agreed to by any Governmental Authority, or by reason of Tenant's diplomatic or other tax exempt status.

Section 7.3 Tenant's Operating Payment. (a) If the Operating Expenses payable for any Comparison Year exceed the Base Operating Expenses, Tenant shall pay to Landlord Tenant's Proportionate Share of such excess ("**Tenant's Operating Payment**"). For each Comparison Year, Landlord shall furnish to Tenant a statement setting forth Landlord's reasonable estimate of Tenant's Operating Payment for such Comparison Year (the "**Expense Estimate**"). Tenant shall pay to Landlord on the 1st day of each month during such Comparison Year an amount equal to 1/12 of the Expense Estimate. If Landlord furnishes an Expense Estimate for a Comparison Year subsequent to the commencement thereof, then (i) until the 1st day of the month following the month in which the Expense Estimate is furnished to Tenant, Tenant shall pay to Landlord on the 1st day of each month an amount equal to the monthly sum payable by Tenant to Landlord under this **Section 7.3** during the last month of the preceding Comparison Year, (ii) promptly after the Expense Estimate is furnished to Tenant or together therewith, Landlord shall give notice to Tenant stating whether the installments of Tenant's Operating Payment previously made for such Comparison Year were greater or less than the installments of Tenant's Operating Payment to be made for such Comparison Year in accordance with the Expense Estimate, and (A) if there shall be a deficiency, Tenant shall pay the amount thereof within 10 Business Days after demand therefor, or (B) if there shall have been an overpayment, Landlord shall credit the amount thereof against subsequent payments of Rent due hereunder, and (iii) on the 1st day of the month following the month in which the Expense Estimate is furnished to Tenant, and on the 1st day of each month thereafter throughout the remainder of such Comparison Year, Tenant shall pay to Landlord an amount equal to 1/12 of the Expense Estimate.

(b) After the end of each Comparison Year, Landlord shall furnish to Tenant a Statement for the immediately preceding Comparison Year. If the Statement shows that the sums paid by Tenant under **Section 7.3(a)** exceeded the actual amount of Tenant's Operating

Payment for such Comparison Year, Landlord shall credit the amount of such excess against subsequent payments of Rent due hereunder. If the Statement shows that the sums so paid by Tenant were less than Tenant's Operating Payment for such Comparison Year, Tenant shall pay the amount of such deficiency within 10 Business Days after delivery of the Statement to Tenant.

Section 7.4 Non-Waiver; Disputes. (a) Landlord's failure to render any Statement on a timely basis with respect to any Comparison Year shall not prejudice Landlord's right to thereafter render a Statement with respect to such Comparison Year or any subsequent Comparison Year, nor shall the rendering of a Statement prejudice Landlord's right to thereafter render a corrected Statement for that Comparison Year.

(b) Each Statement sent to Tenant shall be conclusively binding upon Tenant unless Tenant (i) pays to Landlord when due the amount set forth in such Statement, without prejudice to Tenant's right to dispute such Statement, and (ii) within 60 days after such Statement is sent, sends a notice to Landlord objecting to such Statement and specifying the reasons therefor. Tenant agrees that Tenant will not employ, in connection with any dispute under this Lease, any person or entity who is to be compensated in whole or in part, on a contingency fee basis. If the parties are unable to resolve any dispute as to the correctness of such Statement within 30 days following such notice of objection, either party may refer the issues raised to a nationally recognized independent public accounting firm selected by Landlord and reasonably acceptable to Tenant, and the decision of such accountants shall be conclusively binding upon Landlord and Tenant. In connection therewith, Tenant and such accountants shall execute and deliver to Landlord a confidentiality agreement, in form and substance reasonably satisfactory to Landlord, whereby such parties agree not to disclose to any third party any of the information obtained in connection with such review. Tenant shall pay the fees and expenses relating to such procedure[, **unless such accountants determine that Landlord overstated Operating Expenses by more than 5% for such Comparison Year, in which case Landlord shall pay such fees and expenses**]. Except as provided in this Section, Tenant shall have no right whatsoever to dispute by judicial proceeding or otherwise the accuracy of any Statement.

Section 7.5 Proration. If the Commencement Date is not January 1, the Additional Rent for the applicable Comparison Year shall be apportioned on the basis of the number of days in the year from the Commencement Date to the following December 31. If the Expiration Date occurs on a date other than December 31, any Additional Rent under this **Article 7** for the Comparison Year in which such Expiration Date occurs shall be apportioned on the basis of the number of days in the year from January 1 to the Expiration Date. Upon the expiration or earlier termination of this Lease, any Additional Rent under this Article 7 shall be adjusted or paid within 30 days after submission of the Statement for the last Comparison Year.

Section 7.6 No Reduction in Rent. In no event shall any decrease in Operating Expenses or Taxes in any Comparison Year below the Base Operating Expenses or Base Taxes, as the case may be, result in a reduction in the Fixed Rent or any other component of Additional Rent payable hereunder.

ARTICLE 8

REQUIREMENTS OF LAW

Section 8.1 Compliance with Requirements.

(a) **Tenant's Compliance.** Tenant, at its expense, shall comply with all Requirements applicable to the Premises and/or Tenant's use or occupancy thereof, provided, however, that Tenant shall not be obligated to comply with any Requirements requiring any structural alterations to the Building unless the application of such Requirements arises from (i) the specific manner and nature of Tenant's use or occupancy of the Premises, as distinct from general office use, (ii) Alterations made by Tenant, or (iii) a breach by Tenant of any provisions of this Lease. Any repairs or alterations required for compliance with applicable Requirements shall be made at Tenant's expense (1) by Tenant in compliance with **Article 5** if such repairs or alterations are nonstructural and do not affect any Building System and to the extent such repairs or alterations do not affect areas outside the Premises, or (2) by Landlord if such repairs or alterations are structural or affect any Building System or to the extent such repairs or alterations affect areas outside the Premises. If Tenant obtains knowledge of any failure to comply with any Requirements applicable to the Premises, Tenant shall give Landlord prompt notice thereof.

(b) **Hazardous Materials.** Tenant shall not cause or permit (i) any Hazardous Materials to be brought into the Building, (ii) the storage, disposal or use of Hazardous Materials in or about the Building or the Premises (subject to the second sentence of this **Section 8.1(b)**), in any manner other than in full compliance with any Requirements, or (iii) the escape, spill or release of any Hazardous Materials within or in the vicinity of the Building. Nothing herein shall be deemed to prevent Tenant's use of any Hazardous Materials customarily used in the ordinary course of office work, provided such use is in accordance with all Requirements. Tenant shall be responsible, at its expense, for all matters directly or indirectly based on, or arising or resulting from the presence of Hazardous Materials in the Building which is caused or permitted by a Tenant Party. Tenant shall provide to Landlord copies of all communications received by Tenant with respect to any Requirements relating to Hazardous Materials, and/or any claims, assertions, allegations, or demands made in connection therewith. Landlord or its agents may perform environmental inspections of the Premises at any time.

(c) **Landlord's Compliance.** Landlord shall comply with (or cause to be complied with) all Requirements applicable to the Building which are not the obligation of Tenant, to the extent that non-compliance would materially impair Tenant's use and occupancy of the Premises for the Permitted Uses.

(d) **Landlord's Insurance.** Tenant shall not cause or permit any action or condition that would (i) invalidate, compromise or conflict with Landlord's insurance policies, (ii) violate applicable rules, regulations and guidelines of the Fire Department, Fire Insurance Rating Organization or any other authority having jurisdiction over the Building, (iii) cause an increase in the premiums of insurance for the Building over that payable with respect to Comparable Buildings, or (iv) result in Landlord's insurance companies' refusing to insure the Building or any property therein in amounts and against risks as reasonably determined by Landlord. If insurance premiums increase as a result of Tenant's failure to comply with the provisions of this **Section 8.1**, Tenant shall promptly cure such failure and shall reimburse Landlord for the increased insurance premiums paid by Landlord as a result of such failure by

Tenant. If, after receiving written notice from Landlord, Tenant has not rectified the condition causing Landlord's insurer to refuse to insure the Building or property within 5 Business Days, after receiving such notice, Landlord shall have the right to enter the Premises and rectify the condition at Tenant's expense. Landlord shall not be responsible for, and Tenant shall release and hold harmless Landlord and its contractors, from all loss, cost, damages and expense incurred by Tenant as a result of damage to the furniture, fixtures, assets, inventory, leasehold improvements and all other items of Tenant while Landlord is rectifying the cause of the insurers refusal to insure the Building or any property therein. Landlord shall not be deemed to have entered the Premises and taken back possession should it rectify the condition.

(e) **Fire and Life Safety; Sprinkler.** Tenant shall **[install and thereafter]** maintain in good order and repair **[a]** the sprinkler, fire-alarm and life-safety system in the Premises in accordance with this Lease, the Rules and Regulations and all Requirements **[, if and to the extent such system has not been installed in the Premises prior to the Commencement Date]**. If the Fire Insurance Rating Organization or any Governmental Authority or any of Landlord's insurers requires or recommends any modifications and/or alterations be made or any additional equipment be supplied in connection with the sprinkler system or fire alarm and life-safety system serving the Building by reason of Tenant's business, any Alterations performed by Tenant or the location of the partitions, Tenant's Property, or other contents of the Premises, Landlord (to the extent outside of the Premises) or Tenant (to the extent within the Premises) shall make such modifications and/or Alterations, and supply such additional equipment, in either case at Tenant's expense.

(f) **REIT status.** Tenant acknowledges that Landlord's parent company, _____, intends to be taxable as a real estate investment trust ("**REIT**") under Sections 856-859 of the Code. It is the intent of the parties hereto that all amounts designated as Rent under this Lease are intended to qualify as "rents from real property" under Section 856(d) of the Code. The parties hereto will report all such amounts consistent with this intent. Tenant shall not do anything that would affect Invesco's status as a REIT. Tenant hereby agrees to modifications of this Lease which do not materially adversely affect Tenant's rights and liabilities if such modification are required to retain or clarify Invesco's status as a REIT.

ARTICLE 9

SUBORDINATION

Section 9.1 Subordination and Attornment. (a) This Lease is subject and subordinate to all Mortgages and Superior Leases, and, at the request of any Mortgagee or Lessor, Tenant shall attorn to such Mortgagee or Lessor, its successors in interest or any purchaser in a foreclosure sale.

(b) If a Lessor or Mortgagee or any other person or entity shall succeed to the rights of Landlord under this Lease, whether through possession or foreclosure action or the delivery of a new lease or deed, then at the request of the successor landlord and upon such successor landlord's written agreement to accept Tenant's attornment and to recognize Tenant's interest under this Lease, Tenant shall be deemed to have attorned to and recognized such successor landlord as Landlord under this Lease. The provisions of this **Section 9.1** are self-operative and require no further instruments to give effect hereto; provided, however, that Tenant shall promptly execute and deliver any instrument that such successor landlord may

reasonably request (i) evidencing such attornment, (ii) setting forth the terms and conditions of Tenant's tenancy, and (iii) containing such other terms and conditions as may be required by such Mortgagee or Lessor, provided such terms and conditions do not increase the Rent, materially increase Tenant's other obligations or materially and adversely affect Tenant's rights under this Lease. Upon such attornment this Lease shall continue in full force and effect as a direct lease between such successor landlord and Tenant upon all of the terms, conditions and covenants set forth in this Lease except that such successor landlord shall not be

(A) liable for any act or omission of Landlord (except to the extent such act or omission continues beyond the date when such successor landlord succeeds to Landlord's interest and Tenant gives notice of such act or omission);

(B) subject to any defense, claim, counterclaim, set-off or offset which Tenant may have against Landlord;

(C) bound by any prepayment of more than one month's Rent to any prior landlord;

(D) bound by any obligation to make any payment to Tenant which was required to be made prior to the time such successor landlord succeeded to Landlord's interest;

(E) bound by any obligation to perform any work or to make improvements to the Premises except for (x) repairs and maintenance required to be made by Landlord under this Lease, and (y) repairs to the Premises as a result of damage by fire or other casualty or a partial condemnation pursuant to the provisions of this Lease, but only to the extent that such repairs can reasonably be made from the net proceeds of any insurance or condemnation awards, respectively, actually made available to such successor landlord;

(F) bound by any modification, amendment or renewal of this Lease made without successor landlord's consent;

(G) liable for the repayment of any security deposit or surrender of any letter of credit, unless and until such security deposit actually is paid or such letter of credit is actually delivered to such successor landlord; or

(H) liable for the payment of any unfunded tenant improvement allowance, refurbishment allowance or similar obligation.

(c) Tenant shall from time to time within 10 days of request from Landlord execute and deliver any documents or instruments that may be reasonably required by any Mortgagee or Lessor to confirm any subordination.

Section 9.2 Mortgage or Superior Lease Defaults. Any Mortgagee may elect that this Lease shall have priority over the Mortgage and, upon notification to Tenant by such Mortgagee, this Lease shall be deemed to have priority over such Mortgage, regardless of the date of this Lease. In connection with any financing of the Real Property, Tenant shall consent to any reasonable modifications of this Lease requested by any lending institution, provided such modifications do not increase the Rent, materially increase the other obligations, or materially and adversely affect the rights, of Tenant under this Lease.

Section 9.3 Tenant's Termination Right. As long as any Superior Lease or Mortgage exists, Tenant shall not seek to terminate this Lease by reason of any act or omission of Landlord until (a) Tenant shall have given notice of such act or omission to all Lessors and/or Mortgagees, and (b) a reasonable period of time shall have elapsed following the giving of notice of such default and the expiration of any applicable notice or grace periods (unless such act or omission is not capable of being remedied within a reasonable period of time), during which period such Lessors and/or Mortgagees shall have the right, but not the obligation, to remedy such act or omission and thereafter diligently proceed to so remedy such act or omission. If any Lessor or Mortgagee elects to remedy such act or omission of Landlord, Tenant shall not seek to terminate this Lease so long as such Lessor or Mortgagee is proceeding with reasonable diligence to effect such remedy.

Section 9.4 Provisions. The provisions of this **Article 9** shall (a) inure to the benefit of Landlord, any future owner of the Building or the Real Property, Lessor or Mortgagee and any sublessor thereof and (b) apply notwithstanding that, as a matter of law, this Lease may terminate upon the termination of any such Superior Lease or Mortgage.

Section 9.5 Future Condominium Declaration. This Lease and Tenant's rights hereunder are and will be subject and subordinate to any condominium declaration, by-laws and other instruments (collectively, the "**Declaration**" which may be recorded in order to subject the Building to a condominium form of ownership pursuant to Article 9-B of the New York Real Property Law or any successor Requirement, provided that the Declaration does not by its terms increase the Rent, materially increase Tenant's non-Rent obligations or materially and adversely affect Tenant's rights under this Lease. At Landlord's request, and subject to the foregoing proviso, Tenant will execute and deliver to Landlord an amendment of this Lease confirming such subordination and modifying this Lease to conform to such condominium regime.

OPTIONAL PROVISION:

Section 9.6 Non-Disturbance Agreements. [Landlord hereby agrees to use reasonable efforts to obtain for Tenant, at no cost to Landlord, a subordination, non-disturbance and attornment agreement (an "**SNDA**") from all existing [future] Mortgagees, in the standard form customarily employed by such Mortgagees, provided that Landlord shall have no liability to Tenant, and the subordination of this Lease to any Mortgage shall not be affected, in the event that it is unable to obtain any such agreements. Tenant shall reimburse Landlord, within 30 days after demand therefor, for Landlord's out-of-pocket costs, including reasonable attorney's fees and disbursements, incurred in connection with such efforts.] [As a condition to Tenant's agreement hereunder to subordinate Tenant's interest in this Lease to any future Mortgage or future Superior Lease made between Landlord and any Mortgagee or Lessor, as the case may be, Landlord shall obtain for signature by Tenant from each such future Mortgagee and Lessor, as the case may be, a subordination and non-disturbance agreement in the standard form customarily employed by such Mortgagee or Lessor, as the case may be. Any agreement substantially in the form of a subordination and non-disturbance agreement previously executed by Tenant in connection with this Lease shall be deemed satisfactory to Tenant. If Tenant shall fail or refuse, for any reason, to execute and deliver to Landlord a subordination and non-disturbance agreement in proper form within 10 days after delivery thereof to Tenant, then Tenant's interest under this Lease shall be subordinate to the future Mortgage or future Superior Lease in question.] [As a condition to Tenant's agreement hereunder to subordinate Tenant's interest in this Lease to any future Mortgage and/or any Superior Lease made between Landlord and such Mortgagee and/or Lessor, Landlord shall obtain from each Mortgagee an

agreement, in recordable form and in the standard form customarily employed by such Mortgagee, pursuant to which such Mortgagee shall agree that if and so long as no Event of Default hereunder shall have occurred and be continuing, the leasehold estate granted to Tenant and the rights of Tenant pursuant to this Lease to quiet and peaceful possession of the Premises shall not be terminated, modified, affected or disturbed by any action which such Mortgagee may take to foreclose any such Mortgage, or which such Lessor shall take to terminate such Superior Lease, as applicable, and that any successor landlord shall recognize this Lease as being in full force and effect as if it were a direct lease between such successor landlord and Tenant upon all of the terms, covenants, conditions and options granted to Tenant under this Lease, except as otherwise provided in **Section 9.1(b)** hereof.]

Optional Provision

Section 9.7 Approval. Notwithstanding anything to the contrary contained herein, this Lease is subject to any rights of approval hereof of _____ and this Lease shall not be effective unless and until all such required approvals have been obtained. If _____ fails to approve this Lease within forty-five days after the execution and delivery thereof by Landlord and Tenant, this Lease shall become null and void.]

ARTICLE 10

SERVICES

Section 10.1 Electricity. (a) Landlord shall redistribute or furnish electricity to or for the use of Tenant in the Premises for the operation of Tenant's electrical systems and equipment in the Premises, at a level sufficient to accommodate [a demand load of six (6) watts per usable square foot of office space in the Premises]. [Subject to the next to last sentence of this **Section 10.1**, Tenant shall from and after the Commencement Date pay to Landlord, on demand from time to time, but not more frequently than monthly, for its consumption of electricity, a sum equal to 110% of the product of (x) the Cost Per Kilowatt Hour, multiplied by (y) the actual number of kilowatt hours of electric current consumed by Tenant in such billing period. Landlord shall install a meter or meters, at Tenant's expense, to measure Tenant's consumption of electricity, which meters shall be maintained by Landlord. Where more than one meter measures Tenant's consumption of electricity in the Premises, the electricity measured by each meter shall be computed and billed at the same time in accordance with the provisions set forth above. The rate to be paid by Tenant for submetered electricity shall include any taxes or other charges in connection therewith. If any tax is imposed upon Landlord's receipts from the sale or resale of electricity to Tenant, Tenant shall reimburse Landlord for such tax, if and to the extent permitted by Requirements. For any period during which such meter or meters are not installed or are not operational in the Premises, Tenant shall pay for electricity monthly an amount equal to the product of (A) \$0.2917, subject to adjustment for any increases in electric rates or taxes, and (B) the number of rentable square feet in the Premises.] [An estimated charge for such electricity (the "**Electrical Inclusion Factor**") is included in Fixed Rent on a so-called "rent inclusion" basis; however, the value to Tenant of such service may not be fully reflected in Fixed Rent. Accordingly, Tenant agrees that following the commencement of Tenant's ordinary business activities in the Premises, Landlord may cause an independent electrical engineer or electrical consulting firm selected by Landlord ("**Landlord's Consultant**") to make a determination, certified in writing to Landlord and Tenant, of the full value of the electrical service supplied to Tenant, based upon a survey

indicating the lighting load, office equipment and all other electrical usage by Tenant. Thereafter, Landlord may, at any time and from time to time, at its sole option, cause Landlord's Consultant to make subsequent determinations of the then full value of the electrical service supplied to Tenant on the basis set forth in the immediately preceding sentence. If Landlord's Consultant determines that the full value of the electrical service supplied to Tenant exceeds the Electrical Inclusion Factor, as increased from time to time in accordance with this **Section 10.1**, then, upon notice to Tenant, Fixed Rent and the Electrical Inclusion Factor shall be increased to reflect the full value, on an annual basis, of such increased electrical usage by Tenant. Any increase in Fixed Rent and the Electrical Inclusion Factor shall be effective as of the date of the increase in Tenant's electrical usage, as determined by the survey, and Tenant's liability therefor shall be retroactive to such date. The computation of the Electrical Inclusion Factor under this **Article 10** is intended to constitute a formula for an agreed rental adjustment and may or may not constitute an actual reimbursement to Landlord for the electrical service supplied to Tenant pursuant to this Lease. If any tax is imposed on Landlord's receipts or income from the redistribution, furnishing, or sale of electricity to Tenant as provided for above (other than a general tax on corporate income not specific to the provision of electricity), whether based on the Electrical Inclusion Factor or any increase therein provided for above, or otherwise, Tenant shall reimburse Landlord for such tax, if and to the extent permitted by law. Notwithstanding any provision of this Lease to the contrary, Tenant shall pay to Landlord the Electrical Inclusion Factor (which is included in Fixed Rent) from and after the Commencement Date even if Fixed Rent (other than the Electrical Inclusion Factor) is not otherwise payable hereunder until the Rent Commencement Date, which payment shall be made at the same time and in the same manner as Fixed Rent (whether or not then payable).] All electricity used during the performance of cleaning services, or the making of any Alterations or Restorative Work in the Premises, or the operation of any supplemental or special air-conditioning systems serving the Premises, shall be paid for by Tenant.

OPTIONAL PROVISION: [(b)

(b) **Survey by Tenant.** Wherever in this **Section 10.1** Landlord is given the right to cause Landlord's Consultant to make a determination of the full value of the annual electric services supplied to Tenant, Tenant shall have the right (i) to dispute such determination by notice delivered to Landlord within 20 days after notice to Tenant of such determination (time being of the essence as to such date), and (ii) to designate in such notice an independent electrical engineer or electrical consulting firm ("**Tenant's Consultant**") to make, at Tenant's sole cost and expense, a determination of Tenant's electrical usage at the Premises, using the same method used by Landlord's Consultant as set forth in **Section 10.1(a)**. If Tenant's Consultant determines that Tenant's electrical usage at the Premises is less than that determined by Landlord's Consultant (or if Tenant's Consultant otherwise disputes the conclusions of Landlord's Consultant) and such consultants are unable to reach agreement within 10 days following notice to Landlord of the determination by Tenant's Consultant, then Landlord's Consultant and Tenant's Consultant shall jointly appoint a third electrical engineer or consulting firm to conduct a survey to determine Tenant's electrical usage. The determination by such third electrical engineer or consulting firm shall be final and the costs of such determination shall be borne by the unsuccessful party (and if both parties are partially successful, the third electrical engineer shall apportion the costs between the parties based on the degree of success of each party). Pending such final determination, Tenant shall pay to Landlord the Electrical Inclusion Factor determined by Landlord's Consultant. Following a final determination pursuant to the terms hereof, Tenant shall pay to Landlord the amount of any underpayment by Tenant, or Landlord shall credit to Tenant the amount of any overpayment by Tenant. If Tenant shall fail to dispute the initial determination of Landlord's Consultant within the

above-described 20-day period, then such determination shall be deemed to be final and binding on Landlord and Tenant.]

[(c) **Electricity Rates.** If Landlord's cost of electricity increases or decreases after the Commencement Date for any reason whatsoever, then the Electrical Inclusion Factor shall be increased or decreased, as the case may be, in the same percentage for the remainder of the Term. Landlord's Consultant shall determine the percentage for the changes in the Electrical Inclusion Factor resulting from any change in Landlord's cost of electricity. Landlord shall notify Tenant of any such changes and any such increase or decrease in Fixed Rent and the Electrical Inclusion Factor shall be effective as of the date of such increase or decrease in Landlord's cost of electricity, and Tenant's liability therefor shall be retroactive to such date. Notwithstanding anything set forth herein to the contrary, the Electrical Inclusion Factor shall in no event be decreased below the amount set forth in **Article 1** of this Lease.]

[(d) **Submetering Option.** Landlord shall have the option at any time after the Commencement Date of installing submeters in the Premises at Tenant's expense to measure Tenant's electrical consumption. If Landlord exercises such option, Fixed Rent shall be reduced by an amount equal to the Electrical Inclusion Factor in effect as of commencement of the operation of such submeters, and Tenant shall pay to Landlord, from time to time, but no more frequently than monthly, for its consumption of electricity at the Premises, a sum equal to 110% of the product obtained by multiplying (i) the Cost Per Kilowatt Hour, and (ii) the actual number of kilowatt hours of electric current consumed by Tenant in such billing period. If any tax is imposed upon Landlord's receipts from the sale or resale of electricity to Tenant, Tenant shall pay such tax if and to the extent permitted by law as if Tenant were the ultimate consumer of such electricity. Where more than one meter measures the electricity to Tenant, the electricity measured by each meter shall be computed and billed separately in accordance with the provisions set forth above. Bills for such amounts shall be rendered to Tenant at such times as Landlord may elect.]

IF ELECTRICITY IS FURNISHED ON A RENT INCLUSION BASIS, ADD:

[(e) **Data Center Submetering.** Notwithstanding anything to the contrary contained in this Section 10.1, if, at any time during the Term, Tenant maintains a centralized computer network server or mainframe facilities and/or facilities that are supported by a UPS (uninterruptable power supply (a "**Data Center**") in the Premises, Landlord shall install submeters in the Premises, at Tenant's expense, to measure Tenant's electrical consumption solely with respect to the Data Center. Upon installation of such submeters, Fixed Rent shall be reduced by an amount equal to the product obtained by multiplying (i) the quotient of the then current Electrical Inclusion Factor in effect as of commencement of the operation of such submeters, divided by the number of rentable square feet in the Premises and (ii) the number of rentable square feet in the Data Center. Tenant shall pay to Landlord, from time to time, but no more frequently than monthly, for its consumption of electricity in the Data Center, a sum equal to 110% of the product obtained by multiplying (i) the Cost Per Kilowatt Hour, and (ii) the actual number of kilowatt hours of electric current consumed by Tenant in such billing period in the Data Center and otherwise in accordance with Section 10.1(d).]

(b) **Compliance.** Tenant shall at all times comply with the rules and regulations of the utility company supplying electricity to the Building. Tenant shall not use any electrical equipment which, in Landlord's reasonable judgment, would exceed the capacity of the electrical equipment serving the Premises. If Landlord determines that Tenant's electrical requirements necessitate installation of any additional risers, feeders or other electrical

distribution equipment (collectively, “**Electrical Equipment**”), or if Tenant provides Landlord with evidence reasonably satisfactory to Landlord of Tenant’s need for excess electricity and requests that additional Electrical Equipment be installed, Landlord shall, at Tenant’s expense, install such additional Electrical Equipment, provided that Landlord, in its sole judgment, determines that (i) such installation is practicable and necessary, (ii) such additional Electrical Equipment is permissible under applicable Requirements, and (iii) the installation of such Electrical Equipment will not cause permanent damage to the Building or the Premises, cause or create a hazardous condition, entail excessive or unreasonable alterations, interfere with or limit electrical usage by other current or future tenants or occupants of the Building or exceed the limits of the switchgear or other facilities serving the Building, or require power in excess of that available from the utility serving the Building.

(c) **Direct Metering.** Provided that it is physically possible for Tenant to receive the electric service described in Section 10.01(a) above directly from one or more of the utility companies then serving the area in which the Building is located, Landlord may elect to discontinue the aforesaid service upon thirty (30) days’ notice to Tenant without being liable to Tenant therefor and without in any way affecting this Lease or the liability of Tenant hereunder, and the same shall not be deemed to be a lessening or diminution of services within the meaning of any laws and/or requirements of public authorities. In the event that Landlord exercises its rights under this Section **[10.01(c)]**, then: (a) Tenant shall contract for such electrical service directly with the said utility company for all of Tenant’s electric current requirements and (b) Landlord shall have no obligation to furnish electric current to Tenant or the Premises. Provided Tenant is diligently and in good faith arranging to obtain electricity directly from said utility company, Landlord may not discontinue the electric service to the Premises until Tenant is able to contract directly for, and actually receive, such electric service. All meters and all additional panel boards, feeders, risers, wiring and other conductors and equipment which may be required to obtain electricity, of substantially the same quantity, quality and character as Landlord is obligated to furnish under Section 10.01(a), shall be installed by Landlord: (1) at Landlord’s expense, if Landlord shall have discontinued furnishing electricity to the Premises voluntarily, or (2) at Tenant’s expense, if Landlord shall have been compelled to discontinue furnishing electricity to the Premises by reason of any act or omission of Tenant, or (3) at the equal expense of Landlord and Tenant if such discontinuance shall have been by compulsion of law or of any rule or regulation and not by reason of any act or omission of Tenant.

Section 10.2 Elevators. Landlord shall provide passenger elevator service to the Premises 24 hours per day, 7 days per week; provided, however, Landlord may limit passenger elevator service during times other than Ordinary Business Hours. Landlord shall provide at least one freight elevator serving the Premises available upon Tenant’s prior request, on a non-exclusive “first come, first serve” basis with other Building tenants, on all Business Days from 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m., which hours of operation are subject to change.

Section 10.3 Heating, Ventilation and Air Conditioning. Landlord shall furnish to the Premises heating, ventilation and air-conditioning (“**HVAC**”) as reasonably determined by Landlord during Ordinary Business Hours throughout the year during the respective heating and cooling seasons as reasonably determined by Landlord, subject to change as may be reasonably required by Landlord from time to time. Landlord shall have access to all air-cooling, fan, ventilating and machine rooms and electrical closets and all other mechanical installations of Landlord (collectively, “**Mechanical Installations**”), and Tenant shall not construct partitions or other obstructions which may interfere with Landlord’s access thereto or the moving of

Landlord's equipment to and from the Mechanical Installations. No Tenant Party shall at any time enter the Mechanical Installations or tamper with, adjust, or otherwise affect such Mechanical Installations. Use of the Premises, or any part thereof, in a manner exceeding the design conditions (including occupancy and connected electrical load) specified for any of the systems, or rearrangement of partitioning which interferes with normal operation of the air-conditioning, ventilating or heating service in the Premises, may require changes in the systems. Such changes, so occasioned, shall be made by Tenant, at its expense, subject to Landlord's prior approval of such changes, which approval may be withheld in Landlord's sole discretion. Tenant shall install, if missing, blinds or shades on all windows, which blinds and shades shall be subject to Landlord's approval, and shall keep all of the operable windows in the Premises closed, and lower the blinds when necessary because of the sun's position, whenever the HVAC System is in operation or as and when required by any Requirement. Tenant shall cooperate with Landlord and shall abide by the rules and regulations which Landlord may reasonably prescribe for the proper functioning and protection of the HVAC System.

[ALTERNATIVE (IF ATTACHING HVAC SPECS TO LEASE): Landlord shall furnish to the Premises heating, ventilation and air-conditioning (“**HVAC**”) in accordance with the Design Standards set forth in **Exhibit D** during Ordinary Business Hours. Landlord shall have access to all air-cooling, fan, ventilating and machine rooms and electrical closets and all other mechanical installations of Landlord (collectively, “**Mechanical Installations**”), and Tenant shall not construct partitions or other obstructions which may interfere with Landlord's access thereto or the moving of Landlord's equipment to and from the Mechanical Installations. No Tenant Party shall at any time enter the Mechanical Installations or tamper with, adjust, or otherwise affect such Mechanical Installations. Landlord shall not be responsible if the HVAC System fails to provide cooled or heated air, as the case may be, to the Premises in accordance with the Design Standards by reason of (i) any equipment installed by, for or on behalf of Tenant, which has an electrical load in excess of the average electrical load and human occupancy factors for the HVAC System as designed, or (ii) any rearrangement of partitioning or other Alterations made or performed by, for or on behalf of Tenant. Tenant shall install, if missing, blinds or shades on all windows, which blinds and shades shall be subject to Landlord's approval, and shall keep all of the operable windows in the Premises closed, and lower the blinds when necessary because of the sun's position, whenever the HVAC System is in operation or as and when required by any Requirement. Tenant shall cooperate with Landlord and shall abide by the rules and regulations which Landlord may reasonably prescribe for the proper functioning and protection of the HVAC System.]

Section 10.4 Overtime Freight Elevators and HVAC. The Fixed Rent does not include any charge to Tenant for the furnishing of any freight elevator service or HVAC to the Premises during any periods other than the hours set forth in **Sections 10.2 and 10.3** (“**Overtime Periods**”). If Tenant desires any such services during Overtime Periods, Tenant shall deliver notice to the Building office requesting such services at least 24 hours prior to the time Tenant requests such services to be provided; provided, however, that Landlord shall use reasonable efforts to arrange such service on such shorter notice as Tenant shall provide. **OPTIONAL PROVISION:** [On a single weekend during which Tenant initially moves into the Premises for the conduct of its business, upon 5 days' prior notice from Tenant to Landlord, Landlord shall make available to Tenant freight elevator service in accordance with Landlord's then current rules and regulations applicable thereto from 9:00 p.m. on the "move-in" Friday until 7:00 p.m. on Sunday at no cost to Tenant.] If Landlord furnishes freight elevator or HVAC

service during Overtime Periods, Tenant shall pay to Landlord the cost thereof at the then established rates for such services in the Building.

Section 10.5 Cleaning. Landlord shall cause the Premises (excluding any portions thereof used for the storage, preparation, service or consumption of food or beverages, as an exhibition area or classroom, for storage, as a shipping room, mail room or similar purposes, for private bathrooms, showers or exercise facilities, as a trading floor, or primarily for operation of computer, data processing, reproduction, duplicating or similar equipment) to be cleaned, substantially in accordance with the standards set forth in **Exhibit E**. Any areas of the Premises which Landlord is not required to clean hereunder or which require additional cleaning shall be cleaned, at Tenant's expense, by Landlord's cleaning contractor, at rates which shall be competitive with rates of other cleaning contractors providing comparable services to Comparable Buildings. Landlord's cleaning contractor and its employees shall have access to the Premises at all times except between 8:00 a.m. and 5:00 p.m. on weekdays which are not Observed Holidays.

Section 10.6 Water. Landlord shall provide cold water in the core lavatories on each floor of the Building. If Tenant requires water for any additional purposes, Tenant shall pay for the cost of bringing water to the Premises and Landlord may install a meter to measure the water. Tenant shall pay the cost of such installation and for all maintenance, repairs and replacements thereto, and for the reasonable charges of Landlord for the water consumed.

Section 10.7 Refuse Removal. Landlord shall provide refuse removal services at the Building for ordinary office refuse and rubbish. Tenant shall pay to Landlord Landlord's reasonable charge for such removal to the extent that the refuse generated by Tenant exceeds the refuse customarily generated by general office tenants. Tenant shall not dispose of any refuse in the Common Areas, and if Tenant does so, Tenant shall be liable for Landlord's reasonable charge for such removal.

OPTIONAL PROVISION:

[Section 10.8 Condenser Water. Landlord shall provide condenser water in connection with Tenant's independent supplemental air-conditioning units, which shall not exceed ___ tons in the aggregate and which shall be installed in accordance with the provisions of **Article 5**. Tenant shall pay Landlord an annual charge for such condenser water at Landlord's then established rate for condenser water, which charge shall be payable annually in advance in a lump sum initially for the remainder of the first calendar year of this Lease at the same time that Tenant makes its first payment of Fixed Rent hereunder (whether or not such Fixed Rent is abated pursuant to **Section 2.5**) and thereafter for each calendar year at the same time that Tenant makes its first payment of Fixed Rent in such calendar year, and shall be payable whether or not Tenant utilizes such amount of condenser water. [If Tenant fails to utilize any quantity of condenser water for one year or more, Landlord shall have the right upon notice to Tenant to irrevocably reduce the number of tons of condenser water to which Tenant is entitled by the number of such unutilized tons (unless Tenant notifies Landlord within 10 days after delivery of such notice to Tenant that it anticipates utilizing a portion or all of such unutilized tons of condenser water, in which case Landlord shall only have the right to reduce the number of tons of condenser water to which Tenant is then entitled by such number as Tenant does not anticipate utilizing, provided, however, that Landlord shall have the right upon further notice to Tenant to reduce the number of tons of condenser water to which Tenant is then entitled by any number of tons of condenser water that Tenant has reserved in its notice to Landlord if Tenant fails to utilize any such reserved tons **[or otherwise fails to demonstrate**

that it has increased the size of its supplemental air conditioning system within 180 days after] [prior to the expiration of the cooling season (i.e., May 1 to September 30) next following] delivery of the first notice to Tenant), in which case Landlord shall only charge Tenant for such lower number of tons of condenser water.] In addition to the foregoing charges there shall be a one-time fee of \$[] per ton of unit capacity, payable within 15 days after rendition of a bill therefor.

Section 10.9 Telecommunications. If Tenant requests that Landlord grant access to the Building to a telecommunications service provider designated by Tenant for purposes of providing telecommunications services to Tenant, Landlord shall use its good faith efforts to respond to such request within 30 days. Tenant acknowledges that nothing set forth in this **Section 10.9** shall impose any affirmative obligation on Landlord to grant such request and that Landlord, in its sole discretion, shall have the right to determine which telecommunications service providers shall have access to Building facilities.

Section 10.10 Service Interruptions. Landlord reserves the right to suspend any service when necessary, by reason of Unavoidable Delays, accidents or emergencies, or for Restorative Work which, in Landlord's reasonable judgment, are necessary or appropriate until such Unavoidable Delay, accident or emergency shall cease or such Restorative Work is completed and Landlord shall not be liable for any interruption, curtailment or failure to supply services. Landlord shall use reasonable efforts to minimize interference with Tenant's use and occupancy of the Premises as a result of any such interruption, curtailment or failure of or defect in such service, or change in the supply, character and/or quantity of electrical service, and to restore any such services, remedy such situation and minimize any interference with Tenant's business. The exercise of any such right or the occurrence of any such failure by Landlord shall not constitute an actual or constructive eviction, in whole or in part, entitle Tenant to any compensation, abatement or diminution of Rent, relieve Tenant from any of its obligations under this Lease, or impose any liability upon Landlord or any Indemnitees by reason of inconvenience to Tenant, or interruption of Tenant's business, or otherwise.

ARTICLE 11

INSURANCE; PROPERTY LOSS OR DAMAGE

Section 11.1 Tenant's Insurance. (a) Tenant, at its expense, shall obtain and keep in full force and effect during the Term:

(i) a policy of commercial general liability insurance on an occurrence basis against claims for personal injury, bodily injury, death and/or property damage occurring in or about the Building, under which Tenant is named as the insured and Landlord, Landlord's Agent and any Lessors and any Mortgagees whose names have been furnished to Tenant are named as additional insureds (the "**Insured Parties**"). Such insurance shall provide primary coverage without contribution from any other insurance carried by or for the benefit of the Insured Parties, and Tenant shall obtain blanket broad-form contractual liability coverage to insure its indemnity obligations set forth in **Article 25**. The minimum limits of liability applying exclusively to the Premises shall be a combined single limit with respect to each occurrence in an amount of not less than \$5,000,000; provided, however, that Landlord shall retain the right to require Tenant to increase such coverage from time to time to that amount of insurance which in Landlord's reasonable judgment is then being customarily required by landlords for similar office

space in Comparable Buildings. The self insured retention for such policy shall not exceed \$25,000;

(ii) insurance against loss or damage by fire, and such other risks and hazards as are insurable under then available standard forms of "Special Form Causes of Loss" or "All Risk" property insurance policies with extended coverage, insuring Tenant's Property and all Alterations and improvements to the Premises (including the Initial Installations) on a replacement cost basis, and such policy shall not contain a co-insurance provision. **[ALTERNATIVE: Should there be a co-insurance provision, Tenant shall maintain adequate insurance limits so as to prevent the application of the co-insurance clause.]** The deductible amount, if any, shall not be in excess of \$25,000;

(iii) during the performance of any Alteration, until completion thereof, Builder's Risk insurance on an "all risk" basis and on a completed value form including a Permission to Complete and Occupy endorsement, for full replacement value covering the interest of Landlord and Tenant (and their respective contractors and subcontractors) in all work incorporated in the Building and all materials and equipment in or about the Premises;

(iv) Workers' Compensation Insurance, as required by law;

(v) Business Interruption Insurance covering a minimum of one year of anticipated gross income;

(vi) if applicable, boiler and machinery insurance on a repair or replace basis with limits sufficient to replace Tenant's Property and all Alterations and Improvements in the Premises; and

(vii) such other insurance in such amounts as the Insured Parties may reasonably require from time to time.

(b) All insurance required to be carried by Tenant (i) shall contain a provision that (x) with respect to the interests of the Landlord, no act or omission of Tenant shall affect or limit the obligation of its insurance company to pay the amount of any loss sustained, and (y) such insurance shall be noncancellable and/or no material change in coverage shall be made thereto unless the Insured Parties receive 30 days' prior notice of the same, by certified mail, return receipt requested, and (ii) shall be effected under valid and enforceable policies issued by reputable insurers admitted to do business in the State of New York and rated in Best's Insurance Guide, or any successor thereto as having a "Best's Rating" of "A-" or better and a "Financial Size Category" of at least "X" or better or, if such ratings are not then in effect, the equivalent thereof or such other financial rating as Landlord may at any time consider appropriate.

(c) On or prior to the Commencement Date, Tenant shall deliver to Landlord appropriate policies of insurance, including evidence of waivers of subrogation required to be carried pursuant to this **Article 11** and that the Insured Parties are named as additional insureds (the "**Policies**"). Evidence of each renewal or replacement of the Policies shall be delivered by Tenant to Landlord at least 10 days prior to the expiration of the Policies. In lieu of the Policies, Tenant may deliver to Landlord a certification from Tenant's insurance company (on the form currently designated "Acord 27" (Evidence of Property Insurance) and "Acord 25-S" (Certificate of Liability Insurance), or the equivalent, provided that attached thereto is an endorsement to Tenant's commercial general liability policy naming the Insured Parties as additional insureds,

which endorsement is at least as broad as ISO policy form “CG2011 Additional Insured – Managers or Lessors of Premises” (pre-1999 edition) and which endorsement expressly provides coverage for the negligence of the additional insureds, which certification shall be binding on Tenant’s insurance company, and which shall expressly provide that such certification (i) conveys to the Insured Parties all the rights and privileges afforded under the Policies as primary insurance, and (ii) contains an unconditional obligation of the insurance company to advise all Insured Parties in writing by certified mail, return receipt requested, at least 30 days in advance of any termination of or change to the Policies that would affect the interest of any of the Insured Parties.

Section 11.2 Waiver of Subrogation. Landlord and Tenant shall each procure an appropriate clause in or endorsement to any physical damage insurance covering the Real Property and personal property, fixtures and equipment located therein, wherein the insurer waives subrogation or consents to a waiver of right of recovery, and Landlord and Tenant each release and hold the other harmless and agree not to make any claim against, or seek to recover from, the other for any loss or damage to its property or the property of others resulting from fire or other hazards. Tenant acknowledges that Landlord shall not carry insurance on, and shall not be responsible for, (i) damage to any Alterations, (ii) Tenant’s Property, and (iii) any loss suffered by Tenant due to interruption of Tenant’s business.

Section 11.3 Restoration. If the Premises are damaged by fire or other casualty, or if the Building is damaged such that Tenant is deprived of reasonable access to the Premises, the damage shall be repaired by Landlord, to substantially the condition of the Premises prior to the damage, subject to the provisions of any Mortgage or Superior Lease, but Landlord shall have no obligation to repair or restore (i) Tenant’s Property, or (ii) any Alterations or improvements to the Premises. So long as Tenant is not in default beyond applicable grace or notice provisions in the payment or performance of its obligations under this **Section 11.3**, then until the Building restoration affecting Tenant’s occupancy of the Premises required to be performed by Landlord pursuant to the terms hereof is Substantially Completed or would have been Substantially Completed but for Tenant Delay or Tenant’s occupancy of the affected portion of the Premises, whichever is the first to occur, Fixed Rent, Tenant’s Tax Payment and Tenant’s Operating Payment shall be reduced in the proportion by which the area of the part of the Premises which is not usable (or accessible) and is not used by Tenant bears to the total area of the Premises. This **Article 11** constitutes an express agreement governing any case of damage or destruction of the Premises or the Building by fire or other casualty, and Section 227 of the Real Property Law of the State of New York, which provides for such contingency in the absence of an express agreement, and any other law of like nature and purpose now or hereafter in force, shall have no application in any such case.

Section 11.4 Landlord’s Termination Right. Notwithstanding anything to the contrary contained in **Section 11.3**, if (a) the Premises are totally damaged or are rendered wholly untenable, (b) the Building shall be so damaged that, in Landlord’s reasonable opinion, substantial alteration, demolition, or reconstruction of the Building shall be required (whether or not the Premises are so damaged or rendered untenable), (c) any Mortgagee shall require that the insurance proceeds or any portion thereof be used to retire the Mortgage debt or any Lessor shall terminate the Superior Lease, as the case may be, or (d) the damage is not fully covered, except for deductible amounts, by Landlord’s insurance policies, then in any of such events, Landlord may, not later than 60 days following the date of the damage, terminate this Lease by notice to Tenant[, **provided that if the Premises are not damaged, Landlord may not terminate this Lease unless Landlord similarly terminates the leases of other tenants in the Building aggregating at least 50% of the portion of the Building occupied for office**

purposes immediately prior to such damage]. If this Lease is so terminated, (a) the Term shall expire upon the 30th day after such notice is given, (b) Tenant shall vacate the Premises and surrender the same to Landlord, (c) Tenant's liability for Rent shall cease as of the date of the damage, and (d) any prepaid Rent for any period after the date of the damage shall be refunded by Landlord to Tenant.

Section 11.5 Tenant's Termination Right. If the Premises are totally damaged and are thereby rendered wholly untenable, or if the Building shall be so damaged that Tenant is deprived of reasonable access to the Premises, and if Landlord elects to restore the Premises, Landlord shall, within 60 days following the date of the damage, cause a contractor or architect selected by Landlord to give notice (the "**Restoration Notice**") to Tenant of the date by which such contractor or architect estimates the restoration of the Premises required to be performed by Landlord, if any, shall be Substantially Completed. If such date, as set forth in the Restoration Notice, is more than 18 months from the date of such damage, then Tenant shall have the right to terminate this Lease by giving notice (the "**Termination Notice**") to Landlord not later than 30 days following delivery of the Restoration Notice to Tenant. If Tenant delivers a Termination Notice, this Lease shall be deemed to have terminated as of the date of the giving of the Termination Notice, in the manner set forth in the second sentence of **Section 11.4**.

Section 11.6 Final 18 Months. Notwithstanding anything to the contrary in this **Article 11**, if any damage during the final 18 months of the Term renders the Premises wholly untenable, either Landlord or Tenant may terminate this Lease by notice to the other party within 30 days after the occurrence of such damage and this Lease shall expire on the 30th day after the date of such notice. For purposes of this **Section 11.6**, the Premises shall be deemed wholly untenable if Tenant shall be precluded from using more than 50% of the Premises for the conduct of its business and Tenant's inability to so use the Premises is reasonably expected to continue for more than 90 days.

Section 11.7 Landlord's Liability. Any Building employee to whom any property shall be entrusted by or on behalf of Tenant shall be deemed to be acting as Tenant's agent with respect to such property and neither Landlord nor its agents shall be liable for any damage to such property, or for the loss of or damage to any property of Tenant by theft or otherwise. None of the Insured Parties shall be liable for any injury or damage to persons or property or interruption of Tenant's business resulting from fire or other casualty, any damage caused by other tenants or persons in the Building or by construction of any private, public or quasi-public work, or any latent defect in the Premises or in the Building (except that Landlord shall be required to repair the same to the extent provided in **Article 6**). No penalty shall accrue for delays which may arise by reason of adjustment of fire insurance on the part of Landlord or Tenant, or for any Unavoidable Delays arising from any repair or restoration of any portion of the Building, provided that Landlord shall use reasonable efforts to minimize interference with Tenant's use and occupancy of the Premises during the performance of any such repair or restoration.

ARTICLE 12

EMINENT DOMAIN

Section 12.1 Taking.

(a) **Total Taking.** If all or substantially all of the Real Property, the Building or the Premises shall be acquired or condemned for any public or quasi-public purpose (a “**Taking**”), this Lease shall terminate and the Term shall end as of the date of the vesting of title and Rent shall be prorated and adjusted as of such date.

(b) **Partial Taking.** Upon a Taking of only a part of the Real Property, the Building or the Premises then, except as hereinafter provided in this **Article 12**, this Lease shall continue in full force and effect, provided that from and after the date of the vesting of title, Fixed Rent and Tenant’s Proportionate Share shall be modified to reflect the reduction of the Premises and/or the Building as a result of such Taking.

(c) **Landlord’s Termination Right.** Whether or not the Premises are affected, Landlord may, by notice to Tenant, within 60 days following the date upon which Landlord receives notice of the Taking of all or a portion of the Real Property, the Building or the Premises, terminate this Lease[, **provided that Landlord elects to terminate leases (including this Lease) affecting at least 50% of the rentable area of the Building.**]

(d) **Tenant’s Termination Right.** If the part of the Real Property so Taken contains more than 20% of the total area of the Premises occupied by Tenant immediately prior to such Taking, or if, by reason of such Taking, Tenant no longer has reasonable means of access to the Premises, Tenant may terminate this Lease by notice to Landlord given within 30 days following the date upon which Tenant is given notice of such Taking. If Tenant so notifies Landlord, this Lease shall end and expire upon the 30th day following the giving of such notice. If a part of the Premises shall be so Taken and this Lease is not terminated in accordance with this **Section 12.1** Landlord, without being required to spend more than it collects as an award, shall, subject to the provisions of any Mortgage or Superior Lease, restore that part of the Premises not so Taken to a self-contained rental unit substantially equivalent (with respect to character, quality, appearance and services) to that which existed immediately prior to such Taking, excluding Tenant’s Property and any Tenant Alterations.

(e) **Apportionment of Rent.** Upon any termination of this Lease pursuant to the provisions of this **Article 12**, Rent shall be apportioned as of, and shall be paid or refunded up to and including, the date of such termination.

Section 12.2 Awards. Upon any Taking, Landlord shall receive the entire award for any such Taking, and Tenant shall have no claim against Landlord or the condemning authority for the value of any unexpired portion of the Term or Tenant’s Alterations; and Tenant hereby assigns to Landlord all of its right in and to such award. Nothing contained in this **Article 12** shall be deemed to prevent Tenant from making a separate claim in any condemnation proceedings for the then value of any Tenant’s Property for any moving expenses, provided any such award is in addition to, and does not result in a reduction of, the award made to Landlord.

Section 12.3 Temporary Taking. If all or any part of the Premises is Taken temporarily during the Term for any public or quasi-public use or purpose, Tenant shall give prompt notice to Landlord and the Term shall not be reduced or affected in any way and Tenant shall continue to pay all Rent payable by Tenant without reduction or abatement and to perform all of its other obligations under this Lease, except to the extent prevented from doing so by the condemning authority, and Tenant shall be entitled to receive any award or payment from the condemning authority for such use, which shall be received, held and applied by Tenant as a trust fund for payment of the Rent falling due.

ARTICLE 13

ASSIGNMENT AND SUBLETTING

Section 13.1 Consent Requirements.

(a) **No Transfers.** Except as expressly set forth herein, Tenant shall not assign, mortgage, pledge, encumber, or otherwise transfer this Lease, whether by operation of law or otherwise, and shall not sublet, or permit, or suffer the Premises or any part thereof to be used or occupied by others (whether for desk space, mailing privileges or otherwise), without Landlord's prior consent in each instance. Any assignment, sublease, mortgage, pledge, encumbrance or transfer in contravention of the provisions of this **Article 13** shall be void and shall constitute an Event of Default.

(b) **Collection of Rent.** If, without Landlord's consent, this Lease is assigned, or any part of the Premises is sublet or occupied by anyone other than Tenant or this Lease is encumbered (by operation of law or otherwise), Landlord may collect rent from the assignee, subtenant or occupant, and apply the net amount collected to the Rent herein reserved. No such collection shall be deemed a waiver of the provisions of this **Article 13**, an acceptance of the assignee, subtenant or occupant as tenant, or a release of Tenant from the performance of Tenant's covenants hereunder, and in all cases Tenant shall remain fully liable for its obligations under this Lease.

(c) **Further Assignment/Subletting.** Landlord's consent to any assignment or subletting shall not relieve Tenant from the obligation to obtain Landlord's consent to any further assignment or subletting. In no event shall any permitted subtenant assign or encumber its sublease or further sublet any portion of its sublet space, or otherwise suffer or permit any portion of the sublet space to be used or occupied by others.

Section 13.2 Tenant's Notice. If Tenant desires to assign this Lease or sublet all or any portion of the Premises, Tenant shall give notice thereof to Landlord, which shall be accompanied by (a) with respect to an assignment of this Lease, a fully-executed copy of the assignment and assumption agreement, and (b) with respect to a sublet of all or a part of the Premises, a description of the portion of the Premises to be sublet, and a copy of the fully-executed sublease agreement. Such notice shall be deemed an irrevocable offer from Tenant to Landlord of the right, at Landlord's option, (1) to terminate this Lease with respect to such space as Tenant proposes to sublease (the "**Partial Space**"), upon the terms and conditions hereinafter set forth, or (2) if the proposed transaction is an assignment of this Lease or a subletting of 50% or more of the rentable square footage of the Premises, to terminate this Lease with respect to the entire Premises. Such option may be exercised by notice from Landlord to Tenant within 45 days after delivery of Tenant's notice along with the applicable documentation and information stated above. If Landlord exercises its option to terminate all or a portion of this Lease, (a) this Lease shall end and expire with respect to all or a portion of the Premises, as the case may be, on the date that such assignment or sublease was to commence, provided that such date is in no event less than 90 days after the date of the above notice unless Landlord agrees to an earlier date, (b) Rent shall be apportioned, paid or refunded as of such date, (c) Tenant, upon Landlord's request, shall enter into an amendment of this Lease ratifying and confirming such total or partial termination, and setting forth any appropriate modifications to the terms and provisions hereof, and (d) Landlord shall be free to lease the Premises (or any part thereof) to Tenant's prospective assignee or subtenant. Tenant shall pay

all costs to make the Partial Space a self-contained rental unit and install any required Building corridors.

Section 13.3 (a) Landlord's Leaseback. If Landlord receives a notice from Tenant as described in **Section 13.2** with respect to a sublease for less than the remainder of the Term, Landlord or its designee may, at its option, in lieu of exercising the option described in **Section 13.2** but subject to the same 45-day period, sublease from Tenant the space described in Tenant's notice (such space being hereafter referred to as the "**Leaseback Space**"). If Landlord exercises its option to sublet the Leaseback Space, such sublease shall be at a rental rate equal to the product of the lesser of (x) the rent per rentable square foot then payable pursuant to this Lease, and (y) the rent per rentable square foot contained in the proposed and executed sublease agreement, **multiplied** by the rentable square foot area of the Leaseback Space; shall be for the same term as that of the proposed sublease; and shall:

(i) be expressly subject to all of the covenants, terms and conditions of this Lease except such as are irrelevant or inapplicable, and except as expressly set forth in this **Article 13** to the contrary;

(ii) give the subtenant the unqualified and unrestricted right, without Tenant's consent, to assign such sublease or any interest therein and/or to sublet all or any portion of the space covered by such sublease and to make alterations and improvements in the space covered by such sublease;

(iii) provide that any assignee or further subtenant of Landlord or its designee, may, at Landlord's option, be permitted to make alterations and decorations in such space and that any or all of such alterations and decorations may be removed by such assignee or subtenant, at its option, prior to or upon the expiration or other termination of such sublease, provided that such assignee or subtenant shall, at its expense, repair any damage caused by such removal; and

(iv) provide that (A) the parties to such sublease expressly negate any intention that the sublease estate be merged with any other estate held by either of such parties, (B) any assignment or sublease by Landlord or its designee (as the subtenant) may be for any purpose or purposes that Landlord, in its sole discretion, shall deem appropriate, (C) Tenant shall, at its sole cost and expense, at all times provide and permit reasonably appropriate means of ingress to and egress from such space so sublet by Tenant to Landlord or its designee, (D) Landlord may, at Tenant's expense, make such alterations as may be required or deemed necessary by Landlord to physically separate the Leaseback Space from the balance of the Premises and to comply with any Requirements or insurance requirements relating to such separation, and (E) at the expiration of the term of such sublease, Tenant will accept the Leaseback Space in its then existing condition, subject to the obligations of the subtenant to make such repairs as may be necessary to preserve such premises in good order and condition.

(b) **Obligations Re: Leaseback Space.** If Landlord exercises its option to sublet the Leaseback Space:

(i) Performance by Landlord, or its designee, under a sublease of the Leaseback Space shall be deemed performance by Tenant of any similar obligation under this Lease and Tenant shall not be liable for any default under this Lease or deemed to be in default

hereunder if such default is occasioned by or arises from any act or omission of the subtenant pursuant such sublease;

(ii) Tenant shall have no obligation, at the expiration or earlier termination of the Term, to remove any alteration, installation or improvement made in the Leaseback Space by Landlord (or Landlord's designee); and

(iii) Any consent required of Tenant, as Landlord under the sublease, shall be deemed granted if consent with respect thereto is granted by Landlord under this Lease, and any failure of Landlord (or its designee) to comply with the provisions of the sublease other than with respect to the payment of Rent shall not constitute a default thereunder or hereunder if Landlord shall have consented to such non-compliance.

Section 13.4 Conditions to Assignment/Subletting. (a) If Landlord does not exercise either of Landlord's options provided under **Sections 13.2** and **13.3**, and provided no Event of Default then exists, Landlord's consent to the proposed assignment or subletting shall not be unreasonably withheld or delayed. Such consent shall be granted or denied within 60 days after delivery to Landlord of (i) the documentation and information required under **Section 13.2**, (ii) a true and complete statement reasonably detailing the identity of the proposed assignee or subtenant ("**Transferee**"), the nature of its business and its proposed use of the Premises, (iii) current financial information with respect to the Transferee, including its most recent financial statements, and (iv) any other information Landlord may reasonably request, provided that:

(A) in Landlord's reasonable judgment, the Transferee is engaged in a business or activity, and the Premises will be used in a manner, which (1) is in keeping with the then standards of the Building, (2) is for the Permitted Uses, and (3) does not violate any restrictions set forth in this Lease, any Mortgage or Superior Lease or any negative covenant as to use of the Premises required by any other lease in the Building;

(B) the Transferee is reputable with sufficient financial means to perform all of its obligations under this Lease or the sublease, as the case may be;

(C) if Landlord has, or reasonably expects to have within 6 months after the proposed effective date of the assignment or commencement date of the sublease, as the case may be, comparable space available in the Building, neither the Transferee nor any person or entity which, directly or indirectly, controls, is controlled by, or is under common control with, the Transferee is then an occupant of the Building;

(D) the Transferee is not a person or entity (or affiliate of a person or entity) with whom Landlord is then or has been within the prior 6 months negotiating in connection with the rental of space in the Building;

(E) there shall be not more than 2 subtenants in each floor of the Premises;

(F) the aggregate consideration to be paid by the Transferee under the terms of the proposed sublease shall not be less than 90% of the fixed rent at which Landlord is then offering to lease other space in the Building (the "**Market Sub-rent**") determined as though the Premises were vacant and taking into account (1) the length of the

term of the proposed sublease, (2) any rent concessions granted to Transferee, and (3) the cost of any Alterations being performed for the Transferee;

(G) Tenant shall, upon demand, reimburse Landlord for all reasonable expenses incurred by Landlord in connection with such assignment or sublease, including any investigations as to the acceptability of the Transferee and all legal costs reasonably incurred in connection with the granting of any requested consent;

(H) Tenant shall not list the Premises to be sublet or assigned with a broker, agent or other entity or otherwise offer the Premises for subletting at a rental rate less than the Market Sub-rent; and

(I) the Transferee shall not be entitled, directly or indirectly, to diplomatic or sovereign immunity, regardless of whether the Transferee agrees to waive such diplomatic or sovereign immunity, and shall be subject to the service of process in, and the jurisdiction of the courts of, the City and State of New York.

(b) With respect to each and every subletting and/or assignment approved by Landlord under the provisions of this Lease:

(i) the form of the proposed assignment or sublease shall be reasonably satisfactory to Landlord;

(ii) no sublease shall be for a term ending later than one day prior to the Expiration Date;

(iii) if an Event of Default occurs prior to the effective date of such assignment or subletting, then Landlord's consent thereto, if previously granted, shall be immediately deemed revoked without further notice to Tenant, and if such assignment or subletting would have been permitted without Landlord's consent pursuant to **Section 13.8**, such permission shall be void and without force and effect, and in either such case, any such assignment or subletting shall constitute a further Event of Default hereunder; and

(iv) each sublease shall be subject and subordinate to this Lease and to the matters to which this Lease is or shall be subordinate; and Tenant and each Transferee shall be deemed to have agreed that upon the occurrence and during the continuation of an Event of Default hereunder, Tenant has hereby assigned to Landlord, and Landlord may, at its option, accept such assignment of, all right, title and interest of Tenant as sublandlord under such sublease, together with all modifications, extensions and renewals thereof then in effect and such Transferee shall, at Landlord's option, attorn to Landlord pursuant to the then executory provisions of such sublease, except that Landlord shall not be (A) liable for any previous act or omission of Tenant under such sublease, (B) subject to any counterclaim, offset or defense not expressly provided in such sublease, which theretofore accrued to such Transferee against Tenant, (C) bound by any previous modification of such sublease not consented to by Landlord or by any prepayment of more than one month's rent, (D) bound to return such Transferee's security deposit, if any, except to the extent Landlord shall receive actual possession of such deposit and such Transferee shall be entitled to the return of all or any portion of such deposit under the terms of its sublease, or (E) obligated to make any payment to or on behalf of such Transferee, or to perform any work in the subleased space or the Building, or in any way to prepare the subleased space for occupancy, beyond Landlord's obligations under this Lease. The provisions of this **Section 13.4(b)(iv)** shall be self-operative,

and no further instrument shall be required to give effect to this provision, provided that the Transferee shall execute and deliver to Landlord any instruments Landlord may reasonably request to evidence and confirm such subordination and attornment.

Section 13.5 Binding on Tenant; Indemnification of Landlord. Notwithstanding any assignment or subletting or any acceptance of rent by Landlord from any Transferee, Tenant and any guarantor shall remain fully liable for the payment of all Rent due and for the performance of all the covenants, terms and conditions contained in this Lease on Tenant's part to be observed and performed, and any default under any term, covenant or condition of this Lease by any Transferee or anyone claiming under or through any Transferee shall be deemed to be a default under this Lease by Tenant. Tenant shall indemnify, defend, protect and hold harmless Landlord from and against any and all Losses resulting from any claims that may be made against Landlord by the Transferee or anyone claiming under or through any Transferee or by any brokers or other persons or entities claiming a commission or similar compensation in connection with the proposed assignment or sublease, irrespective of whether Landlord shall give or decline to give its consent to any proposed assignment or sublease, or if Landlord shall exercise any of its options under this **Article 13**.

Section 13.6 Tenant's Failure to Complete. If Landlord consents to a proposed assignment or sublease and such assignment or sublease fails to become effective within 90 days after giving of such consent, then Tenant shall again comply with all of the provisions and conditions of **Sections 13.2, 13.3** and **13.4** before assigning this Lease or subletting all or part of the Premises.

Section 13.7 Profits. If Tenant enters into any assignment or sublease permitted hereunder or consented to by Landlord, Tenant shall, within 60 days of Landlord's consent to such assignment or sublease (or if such assignment or sublease is permitted hereunder without Landlord's prior consent, within 60 days of the effective date of such assignment or sublease), deliver to Landlord a list of Tenant's reasonable third-party brokerage fees, legal fees and architectural fees paid or to be paid in connection with such transaction and, in the case of any sublease, any actual costs incurred by Tenant in separately demising the sublet space (collectively, "**Transaction Costs**"), together with a list of all of Tenant's Property to be transferred to such Transferee. The Transaction Costs shall be amortized, on a straight-line basis, over the term of any sublease. Tenant shall deliver to Landlord evidence of the payment of any Transaction Costs within 30 days after the same are paid (and if Tenant shall fail to do so, no such fees or costs for which Tenant shall have failed to provide evidence of payment shall qualify as Transaction Costs). In consideration of such assignment or subletting, Tenant shall pay to Landlord:

(a) In the case of an assignment, on the effective date of the assignment, 50% of all sums and other consideration paid to Tenant by the Transferee for or by reason of such assignment (including key money, bonus money and any sums paid for services rendered by Tenant to the Transferee in excess of the fair market value for such services and sums paid for the sale or rental of Tenant's Property, less the then fair market or rental value thereof, as reasonably determined by Landlord) after first deducting the Transaction Costs; or

(b) In the case of a sublease, 50% of any consideration payable under the sublease to Tenant by the Transferee which exceeds on a per square foot basis the Fixed Rent and Additional Rent accruing during the term of the sublease in respect of the sublet space (together with any sums paid for services rendered by Tenant to the Transferee in excess of the fair market value for such services and sums paid for the sale or rental of Tenant's Property,

less the then fair market or rental value thereof, as reasonably determined by Landlord) after first deducting the monthly amortized amount of Transaction Costs. The sums payable under this clause shall be paid by Tenant to Landlord monthly as and when paid by the subtenant to Tenant.

The amount payable under this **Section 13.7** with respect to any particular Transfer is sometimes referred to herein as the "Transfer Premium." Landlord or its authorized representatives shall have the right at all reasonable times to audit the books, records and papers of Tenant relating to any Transfer, and shall have the right to make copies thereof. If the Transfer Premium respecting any Transfer shall be found understated, such event shall, at Landlord's option, be deemed to be an Event of Default and Tenant shall, within 30 days after demand, pay the deficiency, and if understated by more than 2%, Landlord's costs of such audit. **[ADD WHEN THERE'S LANDLORD CONTRIBUTION:** Notwithstanding the foregoing, Tenant hereby agrees that the costs incurred by Tenant in the performance of Tenant's Initial Installations in any portion(s) of the Premises that Tenant sublets (to the extent paid or reimbursed out of Landlord's Contribution (which for purposes of this **Section 13.7** shall be deemed to be \$___ per rentable square foot of any such sublet portion of the Premises initially demised hereunder)) shall not in any case be deemed a component of Transaction Costs.]

Section 13.8 Transfers.

(a) **Related Entities.** If Tenant is a legal entity, the transfer (by one or more transfers), directly or indirectly, by operation of law or otherwise, of a majority of the stock or other beneficial ownership interest in Tenant or of all or substantially all of the assets of Tenant (collectively "**Ownership Interests**") shall be deemed a voluntary assignment of this Lease; provided, however, that the provisions of this **Article 13** shall not apply to the transfer of Ownership Interests in Tenant if and so long as Tenant is publicly traded on a nationally recognized stock exchange. For purposes of this Article, the term "transfers" shall be deemed to include (x) the issuance of new Ownership Interests which results in a majority of the Ownership Interests in Tenant being held by a person or entity which does not hold a majority of the Ownership Interests in Tenant on the Effective Date, (y) the sale or mortgage of more than 50% of Tenant's net assets, and (z) except as provided below, the sale or transfer of all or substantially all of the assets of Tenant in one or more transactions and the merger, consolidation or conversion of Tenant into or with another business entity. The provisions of **Section 13.1** shall not apply to transactions with a business entity into or with which Tenant is merged, consolidated or converted or to which all or substantially all of Tenant's assets are transferred so long as (i) such transfer was made for a legitimate independent business purpose and not for the purpose of transferring this Lease, (ii) the successor to Tenant has a tangible net worth computed in accordance with generally accepted accounting principles consistently applied that is sufficient to meet the obligations of Tenant under this Lease and is at least equal to the net worth of Tenant immediately prior to such merger, consolidation, conversion or transfer, (iii) proof satisfactory to Landlord of such net worth is delivered to Landlord at least 10 days prior to the effective date of any such transaction, (iv) any such transfer shall be subject and subordinate to all of the terms and provisions of this Lease, and the Transferee shall assume, in a written document reasonably satisfactory to Landlord and delivered to Landlord upon or prior to the effective date of such transfer, all the obligations of Tenant under this Lease, (v) Tenant and any guarantor shall remain fully liable for all obligations to be performed by Tenant under this Lease, and (vi) such transfer does not cause Landlord to be in default under any existing lease at the Real Property. Tenant may also, upon prior notice to Landlord, permit any business entity which controls, is controlled by, or is under common control with the original named Tenant (a "**Related Entity**") to sublet all or part of the Premises for any

Permitted Use, provided the Related Entity is in Landlord's reasonable judgment of a character and engaged in a business which is in keeping with the standards for the Building and for so long as such entity remains a Related Entity. Such sublease shall not be deemed to vest in any such Related Entity any right or interest in this Lease nor shall it relieve, release, impair or discharge any of Tenant's obligations hereunder. For the purposes hereof, "control" shall be deemed to mean ownership of not less than 50% of all of the Ownership Interests of such corporation or other business entity. Notwithstanding the foregoing, Tenant shall have no right to assign this Lease or sublease all or any portion of the Premises without Landlord's consent pursuant to this **Section 13.8** if Tenant is not the initial Tenant herein named or a person or entity who acquired Tenant's interest in this Lease in a transaction approved by Landlord, or if an Event of Default exists under this Lease.

(b) **Applicability.** The limitations set forth in this **Section 13.8** shall apply to Transferee(s) and guarantor(s) of this Lease, if any, and any transfer by any such entity in violation of this **Section 13.8** shall be a transfer in violation of **Section 13.1**.

(c) **Modifications, Takeover Agreements.** Any modification, amendment or extension of a sublease and/or any other agreement by which a landlord of a building other than the Building (or its affiliate) agrees to assume the obligations of Tenant under this Lease shall be deemed a sublease for the purposes of **Section 13.1** hereof.

Section 13.9 Assumption of Obligations. No assignment or transfer shall be effective unless and until the Transferee executes, acknowledges and delivers to Landlord an agreement in form and substance reasonably satisfactory to Landlord whereby the assignee (a) assumes Tenant's obligations under this Lease and (b) agrees that, notwithstanding such assignment or transfer, the provisions of **Section 13.1** hereof shall be binding upon it in respect of all future assignments and transfers.

Section 13.10 Tenant's Liability. The joint and several liability of Tenant and any successors-in-interest of Tenant and the due performance of Tenant's obligations under this Lease shall not be discharged, released or impaired by any agreement or stipulation made by Landlord, or any grantee or assignee of Landlord, extending the time, or modifying any of the terms and provisions of this Lease, or by any waiver or failure of Landlord, or any grantee or assignee of Landlord, to enforce any of the terms and provisions of this Lease.

Section 13.11 Listings in Building Directory. The listing of any name other than that of Tenant on the doors of the Premises, the Building directory or elsewhere shall not vest any right or interest in this Lease or in the Premises, nor be deemed to constitute Landlord's consent to any assignment or transfer of this Lease or to any sublease of the Premises or to the use or occupancy thereof by others. Any such listing shall constitute a privilege revocable in Landlord's discretion by notice to Tenant.

Section 13.12 Lease Disaffirmance or Rejection. If at any time after an assignment by Tenant named herein, this Lease is not affirmed or is rejected in any bankruptcy proceeding or any similar proceeding, or upon a termination of this Lease due to any such proceeding, Tenant named herein, upon request of Landlord given after such disaffirmance, rejection or termination (and actual notice thereof to Landlord in the event of a disaffirmance or rejection or in the event of termination other than by act of Landlord), shall (a) pay to Landlord all Rent and other charges due and owing by the assignee to Landlord under this Lease to and including the date of such disaffirmance, rejection or termination, and (b) as "tenant," enter into a new lease of the Premises with Landlord for a term commencing on the effective date of such

disaffirmance, rejection or termination and ending on the Expiration Date, at the same Rent and upon the then executory terms, covenants and conditions contained in this Lease, except that (i) the rights of Tenant named herein under the new lease shall be subject to the possessory rights of the assignee under this Lease and the possessory rights of any persons or entities claiming through or under such assignee or by virtue of any statute or of any order of any court, (ii) such new lease shall require all defaults existing under this Lease to be cured by Tenant named herein with due diligence, and (iii) such new lease shall require Tenant named herein to pay all Rent which, had this Lease not been so disaffirmed, rejected or terminated, would have become due under the provisions of this Lease after the date of such disaffirmance, rejection or termination with respect to any period prior thereto. If Tenant named herein defaults in its obligations to enter into such new lease for a period of 10 days after Landlord's request, then, in addition to all other rights and remedies by reason of default, either at law or in equity, Landlord shall have the same rights and remedies against Tenant named herein as if it had entered into such new lease and such new lease had thereafter been terminated as of the commencement date thereof by reason of Tenant's default thereunder.

Section 13.13 General Prohibition. Notwithstanding anything to the contrary contained herein, Tenant shall not, and Tenant shall not permit any other party permitted to occupy the Premises in accordance with this Lease to, (i) enter into any lease, sublease, license, concession or other agreement for use or occupancy of the Premises or any portion thereof which provides for a rental or other payment for such use or occupancy based in whole or in part on the net income or profits derived by any Person from the property leased, occupied or used, or which would require the payment of any consideration that would not qualify as "rents from real property," as that term is defined in Section 856(d) of the Code, or (ii) permit the Premises, or any portion thereof, to be used or occupied by or for the benefit of any Person that the Office of Foreign Assets Control of the United States Department of the Treasury has listed on its list of Specially Designated Nationals and Blocked Persons.

OPTIONAL PROVISION:

Section 13.14 Permitted Users. (a) Tenant has advised Landlord that one or more [clients of Tenant, service providers to Tenant and _____] (each a "Permitted User") may from time to time be using space in the Premises. Notwithstanding anything to the contrary in this **Article 13** each Permitted User shall be allowed such use, without Landlord's consent, but upon at least 10 days' prior notice to Landlord upon the following conditions: (i) Landlord or Landlord's Agent shall not be litigating against such proposed Permitted User within the prior 12 months, (ii) the Permitted User shall not be entitled, directly or indirectly, to diplomatic or sovereign immunity and shall be subject to service of process in, and the jurisdiction of the court of, the State of New York, (iii) there will be no separate entrances and demising walls for the Permitted User, (iv) the total number of Permitted Users using desk space pursuant to this **Section 13.14** shall not exceed __ at any one time, (v) the aggregate number of rentable square feet used by all Permitted Users at any one time shall not exceed __% of the then rentable square footage of the Premises and (vi) Tenant shall receive no rent, payment or other consideration in connection with such occupancy in respect of such space other than nominal rent payments (in no event greater per rentable square foot than the Fixed Rent, Tenant's Operating Payment and Tenant's Tax Payment payable hereunder per rentable square foot) or other consideration for actual services rendered or provided by or for such occupant.

(b) With respect to each and every Permitted User, the following shall apply:
(i) each Permitted User shall have no privity of contract with Landlord and therefore shall have

no rights under this Lease, and Landlord shall have no liability or obligation to the Permitted User under this Lease for any reason whatsoever in connection with such use or occupancy, which use and occupancy shall be subject and subordinate to this Lease (including, without limitation, **Article 9**), (ii) each Permitted User shall use the Premises in conformity with all applicable provisions of this Lease, including **Article 3**, and (iii) Tenant shall be liable for the acts of such Permitted User in the Premises.

ARTICLE 14

ACCESS TO PREMISES

Section 14.1 Landlord's Access. (a) Landlord, Landlord's agents and utility service providers servicing the Building may erect, use and maintain concealed ducts, pipes and conduits in and through the Premises provided such use does not cause the usable area of the Premises to be reduced beyond a de minimis amount. Landlord shall promptly repair any damage to the Premises caused by any work performed pursuant to this **Article 14**.

(b) Landlord, any Lessor or Mortgagee and any other party designated by Landlord and their respective agents shall have the right to enter the Premises at all reasonable times, upon reasonable notice (which notice may be oral) except in the case of emergency, to examine the Premises, to show the Premises to prospective purchasers, Mortgagees, Lessors or tenants and their respective agents and representatives or others and to perform Restorative Work to the Premises or the Building.

(c) All parts (except surfaces facing the interior of the Premises) of all walls, windows and doors bounding the Premises, all balconies, terraces and roofs adjacent to the Premises, all space in or adjacent to the Premises used for shafts, stacks, stairways, mail chutes, conduits and other mechanical facilities, Building Systems, Building facilities and Common Areas are not part of the Premises, and Landlord shall have the use thereof and access thereto through the Premises for the purposes of Building operation, maintenance, alteration and repair.

Section 14.2 Building Name. Landlord has the right at any time to change the name, number or designation by which the Building is commonly known.

Section 14.3 Light and Air. If at any time any windows of the Premises are temporarily darkened or covered over by reason of any Restorative Work, any of such windows are permanently darkened or covered over due to any Requirement or there is otherwise a diminution of light, air or view by another structure which may hereafter be erected (whether or not by Landlord), Landlord shall not be liable for any damages and Tenant shall not be entitled to any compensation or abatement of any Rent, nor shall the same release Tenant from its obligations hereunder or constitute an actual or constructive eviction.

ARTICLE 15

DEFAULT

Section 15.1 Tenant's Defaults. Each of the following events shall be an "Event of Default" hereunder:

(a) Tenant fails to pay when due any installment of Rent and such default shall continue for 5 days after notice of such default is given to Tenant, except that if Landlord shall have given two such notices of default in the payment of any Rent in any 12-month period, Tenant shall not be entitled to any further notice of its delinquency in the payment of any Rent or an extended period in which to make payment until such time as 12 consecutive months shall have elapsed without Tenant having failed to make any such payment when due, and the occurrence of any default in the payment of any Rent within such 12-month period after the giving of 2 such notices shall constitute an Event of Default; or

(b) Tenant fails to observe or perform any other term, covenant or condition of this Lease and such failure continues for more than 30 days (10 days with respect to a default under **Article 3**) after notice by Landlord to Tenant of such default, or if such default (other than a default under **Article 3**) is of a nature that it cannot be completely remedied within 30 days, failure by Tenant to commence to remedy such failure within said 30 days, and thereafter diligently prosecute to completion all steps necessary to remedy such default, provided in all events the same is completed within 90 days; or

(c) if Landlord applies or retains any part of the security held by it hereunder, and Tenant fails to deposit with Landlord the amount so applied or retained by Landlord, or to provide Landlord with a replacement Letter of Credit (as hereinafter defined), if applicable, within 5 days after notice by Landlord to Tenant stating the amount applied or retained; or

(d) Tenant defaults in the observance or performance of any term, covenant or condition on Tenant's part to be observed or performed under any other lease with Landlord or Landlord's predecessor-in-interest for space in the Building and such default shall continue beyond any grace period set forth in such other lease for the remedying of such default; or

(e) Tenant files a voluntary petition in bankruptcy or insolvency, or is adjudicated a bankrupt or insolvent, or files any petition or answer seeking any reorganization, liquidation, dissolution or similar relief under any present or future federal bankruptcy act or any other present or future applicable federal, state or other statute or law, or makes an assignment for the benefit of creditors or seeks or consents to or acquiesces in the appointment of any trustee, receiver, liquidator or other similar official for Tenant or for all or any part of Tenant's property; or

(f) a court of competent jurisdiction shall enter an order, judgment or decree adjudicating Tenant bankrupt, or appointing a trustee, receiver or liquidator of Tenant, or of the whole or any substantial part of its property, without the consent of Tenant, or approving a petition filed against Tenant seeking reorganization or arrangement of Tenant under the bankruptcy laws of the United States, as now in effect or hereafter amended, or any state thereof, and such order, judgment or decree shall not be vacated or set aside or stayed within sixty (60) days from the date of entry thereof. [;or]

OPTIONAL [g and h if Guarantor shall fail to perform any of its obligations when due under the Guaranty of Lease from the Guarantor in favor of Landlord, guarantying the payment and performance by Tenant of its obligations under this Lease; or

(h) Guarantor generally does not, or is unable to, or admits in writing its inability to, pay its debts as they become due or is subject to the filing of a petition, case or proceeding in bankruptcy.]

Upon the occurrence of any one or more of such Events of Default, Landlord may, at its sole option, give to Tenant 3 days' notice of cancellation of this Lease (or of Tenant's possession of the Premises), in which event this Lease and the Term (or Tenant's possession of the Premises) shall terminate (whether or not the Term shall have commenced) with the same force and effect as if the date set forth in the notice was the Expiration Date stated herein; and Tenant shall then quit and surrender the Premises to Landlord, but Tenant shall remain liable for damages as provided in this **Article 15**. Any notice of cancellation of the Term (or Tenant's possession of the Premises) may be given simultaneously with any notice of default given to Tenant.

Section 15.2 Landlord's Remedies.

(a) **Possession/Reletting.** If any Event of Default occurs and this Lease and the Term, or Tenant's right to possession of the Premises, terminate as provided in **Section 15.1**:

(i) **Surrender of Possession.** Tenant shall quit and surrender the Premises to Landlord, and Landlord and its agents may immediately, or at any time after such termination, re-enter the Premises or any part thereof, without notice, either by summary proceedings, or by any other applicable action or proceeding, or by force (to the extent permitted by law) or otherwise in accordance with applicable legal proceedings (without being liable to indictment, prosecution or damages therefor), and may repossess the Premises and dispossess Tenant and any other persons or entities from the Premises and remove any and all of their property and effects from the Premises.

(ii) **Landlord's Reletting.** Landlord, at Landlord's option, may relet all or any part of the Premises from time to time, either in the name of Landlord or otherwise, to such tenant or tenants, for any term ending before, on or after the Expiration Date, at such rental and upon such other conditions (which may include concessions and free rent periods) as Landlord, in its sole discretion, may determine. Landlord shall have no obligation to accept any tenant offered by Tenant and shall not be liable for failure to relet or, in the event of any such reletting, for failure to collect any rent due upon any such reletting; and no such failure shall relieve Tenant of, or otherwise affect, any liability under this Lease. Landlord, at Landlord's option, may make such alterations, decorations and other physical changes in and to the Premises as Landlord, in its sole discretion, considers advisable or necessary in connection with such reletting or proposed reletting, without relieving Tenant of any liability under this Lease or otherwise affecting any such liability.

(b) **Tenant's Waiver.** Tenant, on its own behalf and on behalf of all persons or entities claiming through or under Tenant, including all creditors, hereby waives all rights which Tenant and all such persons or entities might otherwise have under any Requirement (i) to the service of any notice of intention to re-enter or to institute legal proceedings, (ii) to redeem, or to re-enter or repossess the Premises, or (iii) to restore the operation of this Lease,

after (A) Tenant shall have been dispossessed by judgment or by warrant of any court or judge, (B) any re-entry by Landlord, or (C) any expiration or early termination of the term of this Lease, whether such dispossession, re-entry, expiration or termination shall be by operation of law or pursuant to the provisions of this Lease. The words "re-enter," "re-entry" and "re-entered" as used in this Lease shall not be deemed to be restricted to their technical legal meanings.

(c) **Tenant's Breach.** Upon the breach or threatened breach by Tenant, or any persons or entities claiming through or under Tenant, of any term, covenant or condition of this Lease, Landlord shall have the right to enjoin such breach and to invoke any other remedy allowed by law or in equity as if re-entry, summary proceedings and other special remedies were not provided in this Lease for such breach. The rights to invoke the remedies set forth above are cumulative and shall not preclude Landlord from invoking any other remedy allowed at law or in equity.

Section 15.3 Landlord's Damages.

(a) **Amount of Damages.** If this Lease and the Term, or Tenant's right to possession of the Premises, terminate as provided in **Section 15.1**, then:

(i) Tenant shall pay to Landlord all items of Rent payable under this Lease by Tenant to Landlord prior to the date of termination;

(ii) Landlord may retain all monies, if any, paid by Tenant to Landlord, whether as prepaid Rent, a security deposit or otherwise, which monies, to the extent not otherwise applied to amounts due and owing to Landlord, shall be credited by Landlord against any damages payable by Tenant to Landlord;

(iii) Tenant shall pay to Landlord, in monthly installments, on the days specified in this Lease for payment of installments of Fixed Rent, any Deficiency; it being understood that Landlord shall be entitled to recover the Deficiency from Tenant each month as the same shall arise, and no suit to collect the amount of the Deficiency for any month, shall prejudice Landlord's right to collect the Deficiency for any subsequent month by a similar proceeding; and

(iv) whether or not Landlord shall have collected any monthly Deficiency, Tenant shall pay to Landlord, on demand, in lieu of any further Deficiency and as liquidated and agreed final damages, a sum equal to the amount by which the Rent for the period which otherwise would have constituted the unexpired portion of the Term (assuming the Additional Rent during such period to be the same as was payable for the year immediately preceding such termination or re-entry, increased in each succeeding year by 4% (on a compounded basis)) exceeds the then fair and reasonable rental value of the Premises, for the same period (with both amounts being discounted to present value at a rate of interest equal to 2% below the then Base Rate) less the aggregate amount of Deficiencies theretofore collected by Landlord pursuant to the provisions of **Section 15.3(a)(iii)** for the same period. If, before presentation of proof of such liquidated damages to any court, commission or tribunal, the Premises, or any part thereof, shall have been relet by Landlord for the period which otherwise would have constituted the unexpired portion of the Term, or any part thereof, the amount of rent reserved upon such reletting shall be deemed *prima facie*, to be the fair and reasonable rental value for the part or the whole of the Premises so relet during the term of the reletting.

(b) **Reletting.** If the Premises, or any part thereof, shall be relet together with other space in the Building, the rents collected or reserved under any such reletting and the expenses of any such reletting shall be equitably apportioned for the purposes of this **Section 15.3**. Tenant shall not be entitled to any rents collected or payable under any reletting, whether or not such rents exceeds the Fixed Rent reserved in this Lease. Nothing contained in **Article 15** shall be deemed to limit or preclude the recovery by Landlord from Tenant of the maximum amount allowed to be obtained as damages by any Requirement, or of any sums or damages to which Landlord may be entitled in addition to the damages set forth in this **Section 15.3**.

Section 15.4 Late Charge. If Tenant shall fail to pay in full any payment of Fixed Rent or Additional Rent when due under this lease (without taking into account any cure period that may be applicable thereto) then (i) Tenant shall pay to Landlord as additional rent, upon Landlord's demand therefor, a late charge equal to the greater of (A) \$250 or (B) five (5%) percent of the amount of the payment that is not paid when so due, and (ii) for so long as such amount remains outstanding on the first day of each calendar month thereafter, Tenant shall pay a monthly late charge equal to the greater of (A) \$250 or (B) five (5%) of said outstanding amount for each such month not paid, until the outstanding Rent has been fully paid. Nothing herein contained shall be intended to violate any applicable law, code or regulation and in all instances all such late charges shall be automatically reduced to any maximum applicable legal charge or rate allowable. The provisions of this Section are in addition to all other rights and remedies available to Landlord for nonpayment of Fixed Rent or Additional Rent.

Section 15.5 Other Rights of Landlord. If Tenant fails to pay any Additional Rent when due, Landlord, in addition to any other right or remedy, shall have the same rights and remedies as in the case of a default by Tenant in the payment of Fixed Rent. If Tenant is in arrears in the payment of Rent, Tenant waives Tenant's right, if any, to designate the items against which any payments made by Tenant are to be credited, and Landlord may apply any payments made by Tenant to any items Landlord sees fit, regardless of any request by Tenant. Landlord reserves the right, without liability to Tenant and without constituting any claim of constructive eviction, to suspend furnishing or rendering to Tenant any property, material, labor, utility or other service, whenever Landlord is obligated to furnish or render the same at the expense of Tenant, in the event that (but only for so long as) Tenant is in arrears in paying Landlord for such items for more than 5 days after notice from Landlord to Tenant demanding the payment of such arrears.

ARTICLE 16

LANDLORD'S RIGHT TO CURE; FEES AND EXPENSES

If Tenant defaults in the performance of its obligations under this Lease, Landlord, without waiving such default, may perform such obligations at Tenant's expense: (a) immediately, and without notice, in the case of emergency or if the default (i) materially interferes with the use by any other tenant of the Building, (ii) materially interferes with the efficient operation of the Building, (iii) results in a violation of any Requirement, or (iv) results or will result in a cancellation of any insurance policy maintained by Landlord, and (b) in any other case if such default continues after 10 days from the date Landlord gives notice of Landlord's intention to perform the defaulted obligation. All costs and expenses incurred by Landlord in connection with any such performance by it and all costs and expenses, including reasonable counsel fees and disbursements, incurred by Landlord as a result of any default by Tenant

under this Lease or in any action or proceeding (including any unlawful detainer proceeding) brought by Landlord or in which Landlord is a party to enforce any obligation of Tenant under this Lease and/or right of Landlord in or to the Premises, shall be paid by Tenant to Landlord on demand, with interest thereon at the Interest Rate from the date incurred by Landlord. Except as expressly provided to the contrary in this Lease, all costs and expenses which, pursuant to this Lease are incurred by Landlord and payable to Landlord by Tenant, and all charges, amounts and sums payable to Landlord by Tenant for any property, material, labor, utility or other services which, pursuant to this Lease or at the request and for the account of Tenant, are provided, furnished or rendered by Landlord, shall become due and payable by Tenant to Landlord within 10 Business Days after receipt of Landlord's invoice for such amount.

ARTICLE 17

NO REPRESENTATIONS BY LANDLORD; LANDLORD'S APPROVAL

Section 17.1 No Representations. Except as expressly set forth herein, Landlord and Landlord's agents have made no warranties, representations, statements or promises with respect to the Building, the Real Property or the Premises and no rights, easements or licenses are acquired by Tenant by implication or otherwise. Tenant is entering into this Lease after full investigation and is not relying upon any statement or representation made by Landlord not embodied in this Lease.

Section 17.2 No Money Damages. Wherever in this Lease Landlord's consent or approval is required, if Landlord refuses to grant such consent or approval, whether or not Landlord expressly agreed that such consent or approval would not be unreasonably withheld, Tenant shall not make or exercise, and Tenant hereby waives, any claim for money damages (including any claim by way of set-off, counterclaim or defense) and/or any right to terminate this Lease based upon Tenant's claim or assertion that Landlord unreasonably withheld or delayed its consent or approval. Tenant's sole remedy shall be an action or proceeding to enforce such provision, by specific performance, injunction or declaratory judgment. In no event shall Landlord be liable for, and Tenant, on behalf of itself and all other Tenant Parties, hereby waives any claim for, any indirect, consequential or punitive damages, including loss of profits or business opportunity, arising under or in connection with this Lease.

Section 17.3 Reasonable Efforts. For purposes of this Lease, "reasonable efforts" by Landlord shall not include an obligation to employ contractors or labor at overtime or other premium pay rates or to incur any other overtime costs or additional expenses whatsoever.

ARTICLE 18

END OF TERM

Section 18.1 Expiration. Upon the expiration or other termination of this Lease, Tenant shall quit and surrender the Premises to Landlord vacant, broom clean and in good order and condition, ordinary wear and tear and damage for which Tenant is not responsible under the terms of this Lease excepted, and Tenant shall remove all of Tenant's Property and Specialty Alterations as may be required pursuant to **Article 5**.

Section 18.2 Holdover Rent. Landlord and Tenant recognize that Landlord's damages resulting from Tenant's failure to timely surrender possession of the Premises may be substantial, may exceed the amount of the Rent payable hereunder, and will be impossible to accurately measure. Accordingly, if possession of the Premises is not surrendered to Landlord on the Expiration Date or sooner termination of this Lease, in addition to any other rights or remedies Landlord may have hereunder or at law, Tenant shall (a) pay to Landlord for each month (or any portion thereof provided a holdover for only a portion of a month shall at Landlord's election be deemed a holding over for the entire month) during which Tenant holds over in the Premises after the Expiration Date or sooner termination of this Lease, a sum equal to the greater of (i) 2 times the Rent payable under this Lease for the last full calendar month of the Term, and (ii) 2 times the rent Landlord is then asking for comparable space in the Building or, if no comparable space is then available in the Building, the fair market rental value of the Premises for such month (as reasonably determined by Landlord), (b) be liable to Landlord for (i) any payment or rent concession which Landlord may be required to make to any tenant obtained by Landlord for all or any part of the Premises (a "**New Tenant**") in order to induce such New Tenant not to terminate its lease by reason of the holding-over by Tenant, and (ii) the loss of the benefit of the bargain if any New Tenant shall terminate its lease by reason of the holding-over by Tenant, and (c) indemnify Landlord against all claims for damages by any New Tenant. No holding-over by Tenant, nor the payment to Landlord of the amounts specified above, shall operate to extend the Term hereof. Nothing herein contained shall be deemed to permit Tenant to retain possession of the Premises after the Expiration Date or sooner termination of this Lease, and no acceptance by Landlord of payments from Tenant after the Expiration Date or sooner termination of this Lease shall be deemed to be other than on account of the amount to be paid by Tenant in accordance with the provisions of this **Section 18.2**.

Section 18.3 Waiver of Stay. Tenant expressly waives, for itself and for any person or entity claiming through or under Tenant, any rights which Tenant or any such person or entity may have under the provisions of Section 2201 of the New York Civil Practice Law and Rules and of any successor Requirement of like import then in force, in connection with any holdover summary proceedings which Landlord may institute to enforce the foregoing provisions of this **Article 18**.

ARTICLE 19

QUIET ENJOYMENT

Provided this Lease is in full force and effect and no Event of Default then exists, Tenant may peaceably and quietly enjoy the Premises without hindrance by Landlord or any person lawfully claiming through or under Landlord, subject to the terms and conditions of this Lease and to all Superior Leases and Mortgages.

ARTICLE 20

NO SURRENDER; NO WAIVER

Section 20.1 No Surrender or Release. No act or thing done by Landlord or Landlord's agents or employees during the Term shall be deemed an acceptance of a surrender of the Premises, and no provision of this Lease shall be deemed to have been waived by Landlord, unless such waiver is in writing and is signed by Landlord.

Section 20.2 No Waiver. The failure of either party to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Lease, or any of the Rules and Regulations, shall not be construed as a waiver or relinquishment for the future performance of such obligations of this Lease or the Rules and Regulations, or of the right to exercise such election but the same shall continue and remain in full force and effect with respect to any subsequent breach, act or omission. The receipt by Landlord of any Rent payable pursuant to this Lease or any other sums with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly Rent herein stipulated shall be deemed to be other than a payment on account of the earliest stipulated Rent, or as Landlord may elect to apply such payment, 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 in this Lease.

ARTICLE 21

WAIVER OF TRIAL BY JURY; COUNTERCLAIM

Section 21.1 Jury Trial Waiver. LANDLORD AND TENANT HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER ON ANY MATTERS IN ANY WAY ARISING OUT OF OR CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES, OR THE ENFORCEMENT OF ANY REMEDY UNDER ANY STATUTE, EMERGENCY OR OTHERWISE.

Section 21.2 Waiver of Counterclaim. If Landlord commences any summary proceeding against Tenant, Tenant will not interpose any counterclaim of any nature or description in any such proceeding (unless failure to interpose such counterclaim would preclude Tenant from asserting in a separate action the claim which is the subject of such counterclaim), and will not seek to consolidate such proceeding with any other action which may have been or will be brought in any other court by Tenant.

ARTICLE 22

NOTICES

Except as otherwise expressly provided in this Lease, all consents, notices, demands, requests, approvals or other communications given under this Lease shall be in writing and shall be deemed sufficiently given or rendered if delivered by hand (provided a signed receipt is obtained) or if sent by registered or certified mail (return receipt requested) or by a nationally recognized overnight delivery service making receipted deliveries, addressed to Landlord and Tenant as set forth in **Article 1**, and to any Mortgagee or Lessor who shall require copies of notices and whose address is provided to Tenant, or to such other address(es) as Landlord, Tenant or any Mortgagee or Lessor may designate as its new address(es) for such purpose by notice given to the other in accordance with the provisions of this **Article 22**. Any such approval, consent, notice, demand, request or other communication shall be deemed to have been given on the date of receipted delivery, refusal to accept delivery or when delivery is first attempted but cannot be made due to a change of address for which no notice is given or 3 Business Days after it shall have been mailed as provided in this **Article 22**, whichever is earlier.

ARTICLE 23

RULES AND REGULATIONS

All Tenant Parties shall observe and comply with the Rules and Regulations, as supplemented or amended from time to time. Landlord reserves the right, from time to time, to adopt additional Rules and Regulations and to amend the Rules and Regulations then in effect. Nothing contained in this Lease shall impose upon Landlord any obligation to enforce the Rules and Regulations or terms, covenants or conditions in any other lease against any other Building tenant, and Landlord shall not be liable to Tenant for violation of the same by any other tenant, its employees, agents, visitors or licensees, provided that Landlord shall enforce any of the Rules and Regulations against Tenant in a non-discriminatory fashion.

ARTICLE 24

BROKER

Landlord has retained _____ (“_____”) as leasing agent in connection with this Lease and Landlord will be solely responsible for any fee that may be payable to _____. **[Landlord agrees to pay a commission to Tenant’s Broker pursuant to a separate agreement.]** Each of Landlord and Tenant represents and warrants to the other that neither it nor its agents have dealt with any broker in connection with this Lease other than _____ **[and Tenant’s Broker]**. Each of Landlord and Tenant shall indemnify, defend, protect and hold the other party harmless from and against any and all Losses which the indemnified party may incur by reason of any claim of or liability to any broker, finder or like agent (other than _____ **[and Tenant’s Broker]**) arising out of any dealings claimed to have occurred between the indemnifying party and the claimant in connection with this Lease, and/or the above representation being false.

ARTICLE 25

INDEMNITY

Section 25.1 Tenant's Indemnity. Tenant shall not do or permit to be done any act or thing upon the Premises or the Building which may subject Landlord to any liability or responsibility for injury, damages to persons or property or to any liability by reason of any violation of any Requirement, and shall exercise such control over the Premises as to fully protect Landlord against any such liability. Tenant shall indemnify, defend, protect and hold harmless each of the Indemnitees from and against any and all Losses [**ALTERNATIVE (IF MODIFICATION REQUESTED BY TENANT): as a result of bodily injury, including death and damage to property, including loss of use, of any person firm or corporation (excluding Landlord)**], resulting from any claims (i) against the Indemnitees arising from any act, omission or negligence of (A) all Tenant Parties or (B) both Landlord and Tenant, provided, however, that Tenant's liability hereunder with respect to matters judicially determined to have arisen out of the negligence of Landlord, which determination shall not be subject to appeal, shall be limited to the amount of insurance coverage carried by Tenant pursuant to **Article 11**, (ii) against the Indemnitees arising from any accident, injury or damage whatsoever caused to any person or to the property of any person and occurring in or about the Premises, and (iii) against the Indemnitees resulting from any breach, violation or nonperformance of any covenant, condition or agreement of this Lease on the part of Tenant to be fulfilled, kept, observed or performed.

Section 25.2 Landlord's Indemnity. Landlord shall indemnify, defend and hold harmless Tenant from and against all Losses incurred by Tenant arising from any accident, injury or damage caused to any person or the property of any person in or about the Common Areas (specifically excluding the Premises) to the extent attributable to the gross negligence or willful misconduct of Landlord or its employees or agents.

Section 25.3 Defense and Settlement. If any claim, action or proceeding is made or brought against any Indemnitee, then upon demand by an Indemnitee, Tenant, at its sole cost and expense, shall resist or defend such claim, action or proceeding in the Indemnitee's name (if necessary), by attorneys approved by the Indemnitee, which approval shall not be unreasonably withheld (attorneys for Tenant's insurer shall be deemed approved for purposes of this **Section 25.3**). Notwithstanding the foregoing, an Indemnitee may retain its own attorneys to participate or assist in defending any claim, action or proceeding involving potential liability in excess of the amount available under Tenant's liability insurance carried under **Section 11.1** for such claim and Tenant shall pay the reasonable fees and disbursements of such attorneys. If Tenant fails to diligently defend or if there is a legal conflict or other conflict of interest, then Landlord may retain separate counsel at Tenant's expense. Notwithstanding anything herein contained to the contrary, Tenant may direct the Indemnitee to settle any claim, suit or other proceeding provided that (a) such settlement shall involve no obligation on the part of the Indemnitee other than the payment of money, (b) any payments to be made pursuant to such settlement shall be paid in full exclusively by Tenant at the time such settlement is reached, (c) such settlement shall not require the Indemnitee to admit any liability, and (d) the Indemnitee shall have received an unconditional release from the other parties to such claim, suit or other proceeding.

ARTICLE 26

MISCELLANEOUS

Section 26.1 Delivery. This Lease shall not be binding upon Landlord or Tenant unless and until Landlord shall have executed and delivered a fully executed copy of this Lease to Tenant.

Section 26.2 Transfer of Real Property. Landlord's obligations under this Lease shall not be binding upon the Landlord named herein after the sale, conveyance, assignment or transfer (collectively, a "**Transfer**") by such 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 arising from and after the date of Transfer, 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 arising from and after the date of Transfer.

Section 26.3 Limitation on Liability. The liability of Landlord for Landlord's obligations under this Lease shall be limited to Landlord's interest in the Real Property and Tenant shall not look to any other property or assets of Landlord or the property or assets of any direct or indirect partner, member, manager, shareholder, director, officer, principal, employee or agent of Landlord (collectively, the "**Parties**") 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 Parties shall be personally liable for the performance of Landlord's obligations under this Lease.

Section 26.4 Rent. 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, Tenant's Operating Payment, Additional Rent or Rent, shall constitute rent for the purposes of Section 502(b)(6) of the United States Bankruptcy Code and "rents from real property" for purposes of Section 856(d) of the Code.

Section 26.5 Entire Document. 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.

Section 26.6 Governing Law. This Lease shall be governed in all respects by the laws of the State of New York.

Section 26.7 Unenforceability. If any provision of this Lease, or its application to any person or entity 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 entity 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 26.8 Lease Disputes. (a) Tenant agrees 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 hereby expressly and irrevocably submits itself to the jurisdiction of such courts. Tenant agrees 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.

(b) To the extent that Tenant has 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 26.9 Landlord's Agent. Unless Landlord delivers notice to Tenant to the contrary, Landlord's Agent is authorized to act as Landlord's agent in connection with the performance of this Lease, and Tenant shall be entitled to rely upon correspondence received from Landlord's Agent. Tenant acknowledges that Landlord's Agent is acting solely as agent for Landlord in connection with the foregoing; and neither Landlord's Agent nor any of its direct or indirect partners, members, managers, officers, shareholders, directors, employees, principals, agents or representatives shall have any liability to Tenant in connection with the performance of this Lease, and Tenant waives any and all claims against any and all of such parties arising out of, or in any way connected with, this Lease, the Building or the Real Property.

Section 26.10 Estoppel. Within 7 days following request from Landlord, any Mortgagee or any Lessor, Tenant shall deliver to Landlord a statement executed and acknowledged by Tenant, in form reasonably satisfactory to Landlord, (a) 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), (b) setting forth the date to which the Fixed Rent and any Additional Rent have been paid, together with the amount of monthly Fixed Rent and Additional, Rent then payable, (c) stating whether or not, to the best of Tenant's knowledge, Landlord is in default under this Lease, and, if Landlord is in default, setting forth the specific nature of all such defaults, (d) stating the amount of the security, if any, under this Lease, (e) stating whether there are any subleases or assignments affecting the Premises, (f) stating the address of Tenant to which all notices and communications under the Lease shall be sent, and (g) responding to any other matters reasonably requested by Landlord, such Mortgagee or such Lessor. Tenant acknowledges that any statement delivered pursuant to this **Section 26.10** 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 any Superior Lease, or by any Mortgagee, or assignee thereof or by any Lessor, or assignee thereof.

Section 26.11 Certain Interpretational Rules. 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. 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 26.12 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 26.13 Memorandum of Lease. This Lease shall not be recorded; however, at Landlord's request, Landlord and Tenant shall promptly execute, acknowledge and deliver a memorandum with respect to this Lease sufficient for recording and Landlord may record the memorandum. Within 10 days after the end of the Term, Tenant shall enter into such documentation as is reasonably required by Landlord to remove the memorandum of record.

Section 26.14 Counterparts. This Lease may be executed in 2 or more counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute but one instrument.

Section 26.15 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 any Rent and any other amounts payable under this Lease, shall survive the expiration or other termination of this Lease.

Section 26.16 Inability to Perform. This Lease and the obligation of Tenant to pay Rent and to perform all of the other covenants and agreements of Tenant hereunder shall not be affected, impaired or excused by any Unavoidable Delays. Landlord shall use reasonable efforts to promptly notify Tenant of any Unavoidable Delay which prevents Landlord from fulfilling any of its obligations under this Lease.

Section 26.17 Vault Space. Notwithstanding anything contained in this Lease or indicated on any sketch, blueprint or plan, no vaults, vault space or other space outside the boundaries of the Real Property are included in the Premises. Landlord makes no representation as to the location of the boundaries of the Real Property. All vaults and vault space and all other space outside the boundaries of the Real Property which Tenant may be permitted to use or occupy are to be used or occupied under a revocable license. If any such license shall be revoked, or if the amount of such space shall be diminished as required by any Governmental Authority or by any public utility company, such revocation, diminution or requisition shall not (a) constitute an actual or constructive eviction, in whole or in part, (b) entitle Tenant to any abatement or diminution of Rent, (c) relieve Tenant from any of its obligations under this Lease, or (d) impose any liability upon Landlord. Any fee, tax or charge imposed by any Governmental Authority for any such vaults, vault space or other space occupied by Tenant shall be paid by Tenant.

Section 26.18 Adjacent Excavation; Shoring. If an excavation shall be made, or shall be authorized to be made, upon land adjacent to the Real Property, Tenant shall, upon notice, afford to the person or entity causing or authorized to cause such excavation license to enter upon the Premises for the purpose of doing such work as such person or entity shall deem

necessary to preserve the wall of the Building from injury or damage and to support the same by proper foundations. In connection with such license, Tenant shall have no right to claim any damages or indemnity against Landlord, or diminution or abatement of Rent, provided that Tenant shall continue to have access to the Premises.

Section 26.19 No Development Rights. Tenant acknowledges that it has no rights to any development rights, air rights or comparable rights appurtenant to the Real Property and Tenant consents, without further consideration, to any utilization of such rights by Landlord. Tenant shall promptly execute and deliver any instruments which may be requested by Landlord, including instruments merging zoning lots, evidencing such acknowledgment and consent. The provisions of this **Section 26.19** shall be construed as an express waiver by Tenant of any interest Tenant may have as a "party in interest" (as such term is defined in Section 12-10 of Zoning Lot of the Zoning Resolution of the City of New York) in the Real Property.

Section 26.20 Financial Statements. Tenant shall from time to time, within 10 Business Days after request by Landlord, deliver to Landlord financial statements (including balance sheets and income/expense statements) for Tenant's then most recent full and partial fiscal years immediately preceding such request, certified by an independent certified public accountant or Tenant's chief financial officer and in form reasonably satisfactory to Landlord.

ARTICLE 27

SECURITY DEPOSIT

Section 27.1 Security Deposit. Simultaneously with the execution of this Lease by Tenant, Tenant shall deliver to Landlord, and Tenant shall maintain in effect at all times during the Term, as security for the full and faithful performance and observance by Tenant of Tenant's covenants and obligations under this Lease, the amount of \$[] (the "**Security Deposit Amount**") in the form of either a cash deposit (the "**Cash Security**"), or, at Landlord's election, an unconditional, irrevocable, absolutely "clean" letter of credit (the "**Letter of Credit**"), substantially in a form approved by Landlord and complying with the terms of this Article 27 and otherwise satisfactory to Landlord in all respects, in Landlord's sole discretion, which Letter of Credit shall be issued by and drawn upon a commercial bank which is a member of the New York Clearing House Association and which maintains offices for the purpose of drawing on the Letter of Credit in the City of New York, and which commercial bank has a minimum rating of Aaa (Moody's), AAA (Fitch Ratings) or AAA (S&P), and which is otherwise acceptable to Landlord, in Landlord's sole discretion (the "**Issuing Bank**"). Such Letter of Credit shall (a) have an expiration date no earlier than the first anniversary of the date of issuance thereof; (b) be for the account of Landlord; and (c) permit partial drawings.

Section 27.2 Letter of Credit.

(a) The Letter of Credit shall provide that:

(1) The Issuing Bank shall pay to Landlord or its duly authorized representative an amount up to the face amount of the Letter of Credit upon presentation of only the Letter of Credit and a sight draft in the amount to be drawn;

(2) The Letter of Credit shall be deemed to be automatically renewed, without amendment and without any final expiration date, for consecutive periods of one year each (and in no event shall the Letter of Credit expire prior to the 60th day following the Expiration Date), unless the Issuing Bank sends written notice (hereinafter called the "**Non-Renewal Notice**") to Landlord by certified or registered mail, return receipt requested, not less than sixty (60) days next preceding the then expiration date of the Letter of Credit, that it elects not to have such Letter of Credit renewed; and

(3) The Letter of Credit shall be fully transferable by the beneficiary thereof, without charge to the beneficiary, and that any failure to pay the transfer charges shall not affect the beneficiary's ability to transfer the Letter of Credit; the Letter of Credit may be transferred as aforesaid from time to time, by the then beneficiary under the Letter of Credit; to effectuate a transfer under the Letter of Credit, the beneficiary must notify the Issuing Bank in a writing signed by an authorized signatory of beneficiary, of the name and address of the transferee and of the effective date of the transfer; and upon the Issuing Bank's receipt of such writing, the Issuing Bank will issue an amendment to the Letter Credit that changes the name and address of the beneficiary hereof and shall deliver the original of such amendment to the new beneficiary/transferee and a copy thereof to the prior beneficiary/transferor.

(b) Landlord, after its receipt of the Non-Renewal Notice, shall have the right, exercisable by a sight draft only, to receive the moneys represented by the Letter of Credit, which moneys shall be held by Landlord as a cash deposit pursuant to the terms of this Article pending the replacement of such Letter of Credit.

(c) For the purposes of this Article, the "**Existing L/C**" shall mean the Letter of Credit then being held by Landlord under this Article, and a "**Replacement L/C**" shall mean any other Letter of Credit which satisfies the requirements set forth in this **Article 27**, including the requirements with respect to the Issuing Bank.

(d) If Landlord has received the moneys represented by a Letter of Credit pursuant to subsection (b) above, and Landlord receives a Replacement L/C, then, provided there exists no uncured default under any of the terms, covenants and conditions of this lease on Tenant's part to observe, perform or comply with, that portion, if any, of the cash security not used, applied or retained shall be returned to Tenant and Landlord shall hold the Replacement L/C as the Letter of Credit security deposit under this Article. Notwithstanding anything in this lease to the contrary, Landlord, after its receipt of the Non-Renewal Notice, shall have the right, at its option and in lieu of exercising its rights under Section (b) above, to give to Tenant notice demanding that Tenant replace the Existing L/C with a Replacement L/C. If Landlord receives a Replacement L/C from Tenant, then Landlord shall forthwith return the Existing L/C to Tenant. The failure of Landlord to receive a Replacement L/C within ten (10) days after the giving of such demand notice to Tenant shall be an Event of Default under this lease, entitling Landlord to exercise any or all of its rights and remedies hereunder, at law and in equity, including receiving all or a portion of the monies represented by the Existing L/C and using, applying, or retaining the whole or any part of such proceeds pursuant to this Article.

Section 27.3 Application of Security Deposit. In the event that Tenant defaults under any of the terms, covenants or conditions in this lease on Tenant's part to observe, perform or comply with (including, without limitation, the payment of any installment of fixed rent or any amount of additional rent), **[and fails to cure such default after the giving of any required notice under this lease of such default and the expiration of any applicable**

cure period], then, to the extent required for the payment of any Fixed Rent, Additional Rent, or any other sums as to which Tenant is in default, or for any sum that Landlord may expend or may be required to expend by reason of any such default (including any damages or deficiency accrued before or after summary proceedings or other re-entry by Landlord), (a) Landlord may notify the Issuing Bank and thereupon receive all or a portion of the monies represented by the Letter of Credit and use, apply, or retain the whole or any part of such proceeds, or (b) in the event that Landlord is holding the Cash Security, Landlord may use, apply, or retain the whole or any part of the Cash Security. In the event that Landlord uses, applies or retains any portion or all of the proceeds of such Letter of Credit or of the Cash Security, or both, as the case may be, the amount not so used, applied or retained shall continue to be treated as Tenant's security deposit, and Tenant shall restore the amount so used, applied or retained within five (5) days after Landlord's demand therefor, so that, at all times, the amount deposited shall be equal to the Security Deposit Amount. In the case where Landlord was holding a Letter of Credit, to restore the amount so used, applied or retained, Tenant shall, within such five (5) day period, deliver to Landlord an amendment to said Letter of Credit, in form and content reasonably satisfactory to Landlord, which restores the amount of said Letter of Credit to the Security Deposit Amount (but which does not otherwise amend or modify said Letter of Credit). In the case where Landlord was holding a Cash Security, to restore the amount so used, applied or retained, Tenant shall, within such five (5) day period, deliver to Landlord an unendorsed bank or certified check in an amount necessary to restore the amount of security being held by Landlord under this Article to the Security Deposit Amount. While Landlord holds any funds hereunder as Cash Security, Landlord shall have no obligation to pay interest on the same and shall have the right to commingle the same with Landlord's other funds. In the event that Tenant shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this lease, that portion, if any, of the Cash Security or Letter of Credit, or both, as the case may be, not used, applied or retained shall be returned to Tenant after the Expiration Date and after delivery of possession of the entire Premises to Landlord, in accordance with, and subject to, the applicable provisions of this Lease.

Section 27.4 Transfer. Upon a sale or other transfer of the Real Property or the Building, Landlord shall transfer the Letter of Credit or the cash proceeds to its transferee. With respect to the Letter of Credit, within 5 days after notice of such transfer, Tenant, at its sole cost, shall (if required by Landlord) arrange for the transfer of the Letter of Credit to the new landlord, as designated by Landlord in the foregoing notice or have the Letter of Credit reissued in the name of the new landlord. Upon such transfer, Tenant shall look solely to the new landlord for the return of the Letter of Credit or the cash proceeds and thereupon Landlord shall without any further agreement between the parties be released by Tenant from all liability therefor, and it is agreed that the provisions hereof shall apply to every transfer or assignment made of the Letter of Credit or the cash proceeds to a new landlord. Tenant shall not assign or encumber or attempt to assign or encumber the Letter of Credit or the cash proceeds and neither Landlord nor its successors or assigns shall be bound by any such action or attempted assignment, or encumbrance.

Section 27.5 Issuing Bank. In the event that at any time after the date of this lease Landlord believes that circumstances have occurred indicating that the Issuing Bank of the Existing L/C may be incapable of, unable to, hindered or prohibited from honoring the then Existing L/C in accordance with the terms thereof (which shall include, without limitation, (i) a declaration by the FDIC or otherwise that the Issuing Bank of the Existing L/C is insolvent or not capable of honoring its obligations, (ii) the Issuing Bank is in receivership, is controlled by the government, or is the subject of a closure, merger, consolidation or nationalization, or (iii) Landlord's belief, in Landlord's sole discretion, that any of the foregoing may be likely in the

foreseeable future), then Landlord may send notice to Tenant (hereinafter referred to as the "**Replacement Notice**") requiring Tenant within ten (10) Business days after the giving of the Replacement Notice to replace the Existing L/C with a Replacement L/C from an issuing bank meeting the requirements set forth in this Article. If Landlord receives a Replacement L/C in a form and from an issuing bank acceptable to Landlord, then Landlord shall forthwith return the Existing L/C to Tenant. The failure of Landlord to receive a Replacement L/C within such ten (10) Business Day period shall be an Event of Default under this lease, entitling Landlord to exercise any or all of its rights and remedies hereunder, at law and in equity, including receiving all or a portion of the monies represented by the Existing L/C and using, applying, or retaining the whole or any part of such proceeds pursuant to the terms hereof. Notwithstanding the foregoing, Landlord may at anytime after delivery of a Replacement Notice or at anytime Landlord believes a Diminished Credit Rating (as hereinafter defined) has occurred, draw down the Existing L/C and the proceeds thereof shall be held by Landlord in accordance with the terms hereof subject, however, to Tenant's obligation (or right, as hereinafter provided), to replace such cash security with a Replacement L/C. If Landlord has received the moneys represented by a Letter of Credit pursuant to this Section, and Landlord receives a Replacement L/C, then, provided there exists no uncured default under any of the terms, covenants and conditions of this Lease on Tenant's part to observe, perform or comply with in respect of which a notice has been given to Tenant, and provided further that no Event of Default exists, that portion, if any, of the cash security not used, applied or retained shall be returned to Tenant and Landlord shall hold the Replacement L/C as the Letter of Credit security deposit under this Article. If Landlord has so received the moneys represented by a Letter of Credit, but Landlord has not received a Replacement L/C, then, the failure of Landlord to receive a Replacement L/C within ten (10) days after Landlord gives to Tenant notice demanding that Tenant replace the moneys so received by Landlord with a Replacement L/C shall be an Event of Default under this Lease, entitling Landlord to exercise any or all of its rights and remedies hereunder, at law and in equity, including receiving all or a portion of the monies represented by the Existing L/C and using, applying, or retaining the whole or any part of such proceeds pursuant to the terms hereof. In addition to all Landlord's rights under this Article, and notwithstanding anything to the contrary contained herein, if any of the following occurs, or Landlord believes in its sole discretion, is likely to occur ("**Diminished Credit Rating**") (i) the credit rating of the Issuing Bank of the Existing L/C shall be downgraded below the credit ratings specified in the terms hereof, or (ii) the Federal Deposit Insurance Corporation ("**FDIC**"), or any successor thereto, shall issue a warning to the Issuing Bank of the Existing L/C indicating that it is undercapitalized, significantly undercapitalized or critically undercapitalized, or if the Issuing Bank shall appear on any problem list or watch list, then Tenant shall, within ten (10) business days following the earlier of such events, replace the Existing L/C with a Replacement L/C from an issuing bank meeting the requirements set forth in this Article. In the event that Tenant shall fail to so deliver a Replacement L/C within such ten (10) business day period, then Landlord may send notice to Tenant (hereinafter referred to as the "**FDIC Warning Replacement Notice**") requiring Tenant, within five (5) business days after the giving of the FDIC Warning Replacement Notice, to replace the Existing L/C with a Replacement L/C from an issuing bank meeting the requirements set forth in this Article and acceptable to Landlord, in its sole discretion. If Landlord receives a Replacement L/C in a form and from an issuing bank acceptable to Landlord, then Landlord shall forthwith return the Existing L/C to Tenant. The failure of Landlord to receive a Replacement L/C within such five (5) business day period shall be an Event of Default under this lease, entitling Landlord to exercise any or all of its rights and remedies hereunder, at law and in equity, including, without limitation, receiving all or a portion of the monies represented by the Existing L/C and using, applying, or retaining the whole or any part of such proceeds pursuant to the Sections above.

Section 27.6 Security Net Rent. Neither the Letter of Credit, any proceeds therefrom or the Cash Security, if any, shall be deemed an advance rent deposit or an advance payment of any other kind, or a measure or limitation of Landlord's damages or constitute a bar or defense to any of the Landlord's other remedies under this Lease or at law or in equity upon Tenant's default. As a material inducement to Landlord to enter into this Lease, Tenant hereby acknowledges and agrees that the Letter of Credit and the proceeds thereof (including any Cash Security created by the draw down of all or any portion of the Letter of Credit) and the obligation to make available or pay to Landlord all or a portion thereof in satisfaction of any obligation of Tenant under this Lease, shall be deemed third-party obligations and not the obligation of Tenant hereunder and, accordingly, (A) shall not be subject to any limitation on damages contained in Section 502(b)(6) of Title 11 of the United States Code or any other limitation on damages that may apply under any applicable laws and/or requirements of public authorities in connection with a bankruptcy, insolvency or other similar proceeding by, against or on behalf of Tenant, (B) shall not diminish or be offset against any amounts that Landlord would be able to claim against Tenant pursuant to 11 U.S.C. §502(b)(6) as if no Letter of Credit existed, and (C) may be relied on by Landlord in the event of an assignment of this Lease that is not expressly in accordance with the terms of this Lease even if such assignment has been authorized and approved by a court exercising jurisdiction in connection with a bankruptcy, insolvency or other similar proceeding by, against or on behalf of Tenant.

OPTIONAL PROVISION:

Section 27.7 Reduction. If (a) Tenant has not previously defaulted in its obligation to pay Rent to Landlord within the time periods set forth in this Lease and (b) no Event of Default then exists, then, provided that Tenant complies with the provisions of this Section 27.7, (i) on the ___ anniversary of the [Rent] Commencement Date, the amount of the Letter of Credit or cash proceeds of the Letter of Credit shall be reduced to \$_____, (ii) provided the amount of the Letter of Credit or cash proceeds of the Letter of Credit shall have previously been reduced pursuant to the preceding clause (i), on the ___ anniversary of the [Rent] Commencement Date the amount of the Letter of Credit or cash proceeds of the Letter of Credit shall be reduced to \$_____, (iii) provided the amount of the Letter of Credit or cash proceeds of the Letter of Credit shall have previously been reduced pursuant to the preceding clauses (i) and (ii), on the ___ anniversary of the [Rent] Commencement Date the amount of the Letter of Credit or cash proceeds of the Letter of Credit shall be reduced to \$___ and (iv) provided the amount of the Letter of Credit or cash proceeds of the Letter of Credit shall have previously been reduced pursuant to the preceding clauses (i) through (iii), on the ___ anniversary of the [Rent] Commencement Date the amount of the Letter of Credit or cash proceeds of the Letter of Credit shall be reduced to \$_____. The Letter of Credit or cash proceeds of the Letter of Credit shall be reduced as follows: (A) if in the form of cash proceeds, Landlord shall, within 10 Business Days following notice by Tenant to Landlord that Tenant is entitled to reduce the amount thereof pursuant to this Section 27.7, deliver to Tenant the amount by which the cash proceeds are reduced, or (B) if in the form of a Letter of Credit, Tenant shall either (x) deliver to Landlord a consent to an amendment to the Letter of Credit (which amendment must be reasonably acceptable to Landlord in all respects), reducing the amount of the Letter of Credit by the amount of the permitted reduction, and Landlord shall execute such consent and such other documents as are reasonably necessary to reduce the amount of the Letter of Credit in accordance with the terms hereof, or (y) deliver a substitute Letter of Credit in compliance with this Article 27 which Landlord will simultaneously exchange for the existing Letter of Credit and Landlord shall consent to the cancellation of such existing Letter of Credit. If Tenant delivers to Landlord a consent to an amendment to the Letter of Credit in accordance with the terms hereof, Landlord shall, within 10 Business Days after delivery of such consent, either (1) provide

its reasonable objections to such amendment or (2) execute such consent in accordance with the terms hereof.]

ARTICLE 28

SUBSTITUTE SPACE

Section 28.1 At any time and from time to time whether before or after the Commencement Date, Landlord shall have the right to substitute other space in the Building ("**Substitute Space**") for the Premises by notice (a "**Substitution Notice**") given to Tenant designating the space so substituted for the Premises. The Substitute Space shall have a rentable area substantially similar to the Premises. Tenant shall cooperate with Landlord in effectuating the substitution of space contemplated by this Article. Notwithstanding such substitution of space, this Lease and all the terms, provisions, covenants and conditions contained in this Lease shall remain and continue in full force and effect, except that the Premises shall be and be deemed to be the Substitute Space, with the same force and effect as if the Substitute Space were originally specified in this Lease as the Premises demised hereunder.

Section 28.2 In the event of the substitution of space as provided in **Section 28.1** the following provisions (a) through (d) shall apply:

(a) If the Substitute Space has a rentable area greater or less than the Agreed Area of Premises, the Fixed Rent and the Additional Rent payable under this Lease, effective on the date the Substitute Space is available for occupancy by Tenant (the "**Substitution Date**"), shall be increased or decreased appropriately.

(b) Landlord shall, at Landlord's expense, prepare the Substitute Space in substantially the same manner as the Premises were prepared for Tenant's initial occupancy. Landlord shall have the right to move any millwork, floor covering, cabinet work, and any other decoration as well as telephone lines and any other communication line and other reusable items, from the Premises to the Substitute Space.

(c) As soon as Landlord has Substantially Completed preparing the Substitute Space as set forth in **Section 28.2(b)**, Tenant, upon 10 days' prior written notice, shall move to the Substitute Space at Landlord's reasonable cost and expense, and upon failure of Tenant so to move to the Substitute Space, Landlord, as Tenant's agent, may remove Tenant from the Premises to the Substitute Space. The failure of Tenant to move to the Substitute Space pursuant to this **Article 28** within 5 days after the expiration of such 10 days' notice may, at Landlord's election, be an Event of Default, and Tenant shall pay Rent with respect to both the Premises (pursuant to **Section 18.2**) and Substitute Space until Tenant has moved to the Substitute Space.

(d) Promptly after Tenant shall enter into occupancy of the Substitute Space, Landlord shall reimburse Tenant for Tenant's reasonable, direct, out-of-pocket moving expenses, unless Landlord moved Tenant into the Substitute Space pursuant to Section (c) above. Upon request from Landlord, Tenant shall supply Landlord with satisfactory evidence of direct out-of-pocket expenses incurred by Tenant in moving from the Premises to the Substitute Space.

Section 28.3 Following any substitution of space pursuant to this **Article 28**, Landlord and Tenant, promptly at the request of either party, shall execute and deliver a supplementary agreement setting forth such substitution of space, the Substitution Date and the change (if any) in the Fixed Rent and Additional Rent.

OPTIONAL ARTICLE

ARTICLE 29

RENEWAL TERM

Section 29.1 Renewal Term. Tenant shall have the right to renew the Term for all of the Premises for one renewal term of ___ years (the “**Renewal Term**”) commencing on the day after the expiration of the initial Term (the “**Renewal Term Commencement Date**”) and ending on the day preceding the _ anniversary of the Renewal Term Commencement Date, unless the Renewal Term shall sooner terminate pursuant to any of the terms of this Lease or otherwise. The Renewal Term shall commence only if (a) Tenant notifies Landlord (the “**Exercise Notice**”) of Tenant’s exercise of such renewal right not later than one year prior to the Expiration Date, (b) at the time of the exercise of such right and immediately prior to the Renewal Term Commencement Date, no Event of Default shall have occurred and be continuing hereunder, and (c) the Tenant named herein (i.e., _____) and/or Related Entities occupy **[the entire] [at least [__]% of the]** Premises (the “**Occupancy Threshold**”) at the time the Exercise Notice is given. Time is of the essence with respect to the giving of the Exercise Notice. The Renewal Term shall be upon all of the agreements, terms, covenants and conditions of this Lease, except that (w) the Fixed Rent shall be determined as provided in **Section 29.2**, (x) Tenant shall have no further right to renew the Term, (y) the Base Tax Year shall be the Tax Year commencing on the July 1st of the calendar year in which the Renewal Term Commencement Date occurs, and (z) the Base Expense Year shall be the calendar year commencing on the January 1st of the calendar year in which the Renewal Term Commencement Date occurs. Upon the commencement of the Renewal Term, (1) the Renewal Term shall be added to and become part of the Term, (2) any reference to “this Lease”, to the “Term”, the “term of this Lease” or any similar expression shall be deemed to include the Renewal Term, and (3) the expiration of the Renewal Term shall become the Expiration Date. Any termination, cancellation or surrender of the entire interest of Tenant under this Lease at any time during the Term shall terminate any right of renewal of Tenant hereunder. Notwithstanding anything to the contrary contained in this **Section 29.1**, if at any time during the Term, Tenant shall not satisfy the Occupancy Threshold by virtue of a sublease or license of all or a portion of the Premises to one or more third parties for a term (or terms, as the case may be) expiring during the last 24 months of the Term, Tenant’s right to renew the Term pursuant to this **Article 29** shall immediately terminate and be of no further force and effect.

Section 29.2 Renewal Term Rent. The annual Fixed Rent payable during the Renewal Term shall be equal to **[the Electrical Inclusion Factor then in effect at the expiration of the initial term of this Lease plus]** the greater of (a) the annual Fair Market Value (as hereinafter defined) as of the Renewal Term Commencement Date and (b) the annual Fixed Rent **[(less such Electrical Inclusion Factor)]**, Tenant’s Tax Payment and Tenant’s Operating Payment then in effect at the expiration of the initial term of this Lease. “**Fair Market Value**” shall mean the fair market annual rental value of the Premises as of the Renewal Term Commencement Date for a term equal to the Renewal Term, based on comparable space in the

Building, or on comparable space in Comparable Buildings, including all of Landlord's services provided for in this Lease, and with (i) the Premises considered as vacant, and in "as is" condition existing on the Renewal Term Commencement Date, (ii) the Base Tax Year being the Tax Year commencing on the July 1st of the calendar year in which the Renewal Term Commencement Date occurs, and (iii) the Base Expense Year being the calendar year commencing on the January 1st of the calendar year in which the Renewal Term Commencement Date occurs. The calculation of Fair Market Value shall also take into account all other relevant factors. Landlord shall advise Tenant (the "**Rent Notice**") of Landlord's determination of Fair Market Value prior to the Renewal Term Commencement Date. If Tenant disputes Landlord's determination of Fair Market Value, the dispute shall be resolved by arbitration as provided in **Section 29.3**. If the Fixed Rent payable during the Renewal Term is not determined prior to the Renewal Term Commencement Date, Tenant shall pay Fixed Rent in an amount equal to the Fair Market Value for the Premises as determined by Landlord (the "**Interim Rent**"). Upon final determination of the Fixed Rent for the Renewal Term, Tenant shall commence paying such Fixed Rent as so determined, and within 10 days after such determination Tenant shall pay any deficiency in prior payments of Fixed Rent or, if the Fixed Rent as so determined shall be less than the Interim Rent, Tenant shall be entitled to a credit against the next succeeding installments of Fixed Rent in an amount equal to the difference between each installment of Interim Rent and the Fixed Rent as so determined which should have been paid for such installment until the total amount of the over payment has been recouped.

Section 29.3 Arbitration. If Tenant disputes Landlord's determination of Fair Market Value pursuant to **Section 29.2**, Tenant shall give notice to Landlord of such dispute within 10 Business Days after delivery of the Rent Notice, and such dispute shall be determined by arbitration in accordance with the then prevailing Expedited Procedures of the Arbitration Rules for the Real Estate Industry of the American Arbitration Association or its successor for arbitration of commercial disputes, except that the rules shall be modified as follows:

(a) In its demand for arbitration Tenant shall specify the name and address of the person to act as the arbitrator on Tenant's behalf. The arbitrator shall be a real estate broker with at least 10 years full-time commercial brokerage experience who is familiar with the fair market value of first-class office space in the Borough of Manhattan, City of New York, New York. Failure on the part of Tenant to make the timely and proper demand for such arbitration shall constitute a waiver of the right thereto and the Fixed Rent shall be as set forth in the Rent Notice. Within 10 Business Days after the service of the demand for arbitration, Landlord shall give notice to Tenant specifying the name and address of the person designated by Landlord to act as arbitrator on its behalf, which arbitrator shall be similarly qualified. If Landlord fails to notify Tenant of the appointment of its arbitrator within such 10 Business Day period, and such failure continues for 3 Business Days after Tenant delivers a second notice to Landlord, then the arbitrator appointed by Tenant shall be the arbitrator to determine the Fair Market Value for the Premises.

(b) If two arbitrators are chosen pursuant to **Section 29.3(a)**, the arbitrators so chosen shall meet within 10 Business Days after the second arbitrator is appointed and shall seek to reach agreement on Fair Market Value. If within 20 Business Days after the second arbitrator is appointed the two arbitrators are unable to reach agreement on Fair Market Value then the two arbitrators shall appoint a third arbitrator, who shall be a competent and impartial person with qualifications similar to those required of the first two arbitrators pursuant to **Section 29.3(a)**. If they are unable to agree upon such appointment within 5 Business Days after expiration of such 20 Business Day period, the third arbitrator shall be selected by the

parties themselves. If the parties do not agree on the third arbitrator within 5 Business Days after expiration of the foregoing 5 Business Day period, then either party, on behalf of both, may request appointment of such a qualified person by the then president of the Real Estate Board of New York. The third arbitrator shall decide the dispute, if it has not been previously resolved, by following the procedures set forth in **Section 29.3(c)**. Each party shall pay the fees and expenses of its respective arbitrator and both shall share the fees and expenses of the third arbitrator. Attorneys' fees and expenses of counsel and of witnesses for the respective parties shall be paid by the respective party engaging such counsel or calling such witnesses.

(c) Fair Market Value shall be fixed by the third arbitrator in accordance with the following procedures. Concurrently with the appointment of the third arbitrator, each of the arbitrators selected by the parties shall state, in writing, his or her determination of the Fair Market Value supported by the reasons therefor. The third arbitrator shall have the right to consult experts and competent authorities for factual information or evidence pertaining to a determination of Fair Market Value, but any such determination shall be made in the presence of both parties with full right on their part to cross-examine. The third arbitrator shall conduct such hearings and investigations as he or she deem appropriate and shall, within 30 days after being appointed, select which of the two proposed determinations most closely approximates his or her determination of Fair Market Value. The third arbitrator shall have no right to propose a middle ground or any modification of either of the two proposed determinations. The determination he or she chooses as that most closely approximating his or her determination of the Fair Market Value shall constitute the decision of the third arbitrator and shall be final and binding upon the parties. The third arbitrator shall render the decision in writing with counterpart copies to each party. The third arbitrator shall have no power to add to or modify the provisions of this Lease. Promptly following receipt of the third arbitrator's decision, the parties shall enter into an amendment to this Lease evidencing the extension of the Term for the Renewal Term and confirming the Fixed Rent for the Renewal Term, but the failure of the parties to do so shall not affect the effectiveness of the third arbitrator's determination.

(d) In the event of a failure, refusal or inability of any arbitrator to act, his or her successor shall be appointed by him or her, but in the case of the third arbitrator, his or her successor shall be appointed in the same manner as that set forth herein with respect to the appointment of the original third arbitrator.

OPTIONAL ARTICLE:

ARTICLE 30

RIGHT OF FIRST OFFER

Section 30.1 Exercise of Right. If at any time prior to the last 24 months of the Term (as the same may be extended) all or any portion of the rentable area of the ____ floor of the Building that is not subject to this Lease (each such space being hereinafter referred to as an "**Expansion Space**") is, or Landlord reasonably believes the same is to become, Available (as hereinafter defined) and Landlord proposes to lease such Expansion Space, Landlord shall deliver notice thereof to Tenant (an "**Expansion Notice**") setting forth a description of the Expansion Space in question, the rentable square footage of such Expansion Space, Landlord's determination of the Expansion Space Fair Market Value (as hereinafter defined) for such Expansion Space and the date Landlord reasonably anticipates that such Expansion Space will

become Available (the “**Anticipated Expansion Space Commencement Date**”). Provided that all of the conditions precedent set forth in this **Article 30** are satisfied by Tenant, Tenant shall have the option (an “**Expansion Option**”), exercisable by Tenant delivering irrevocable notice to Landlord (an “**Acceptance Notice**”) within 10 days of the giving by Landlord of the applicable Expansion Notice, time being of the essence, to lease the Expansion Space described in the related Expansion Notice upon the terms and conditions set forth in this **Article 30**. An Expansion Option may be exercised only with respect to all of the Expansion Space that is the subject of an applicable Expansion Notice. If Tenant fails to timely give an Acceptance Notice with respect to any Expansion Space, Tenant shall be deemed to have rejected Landlord’s offer to lease the applicable Expansion Space and Landlord shall have no further obligation and Tenant shall have no further rights with respect to that particular Expansion Space during the Term.

Section 30.2 Definitions. (a) “**Available**” shall mean that at the time in question (i) no person or entity leases or occupies the Expansion Space that is the subject of an Expansion Notice, whether pursuant to a lease or other agreement, and (ii) no person or entity holds any option or right to lease or occupy such Expansion Space, or to renew its lease or right of occupancy thereof. So long as a tenant or other occupant leases or occupies a portion of the applicable Expansion Space, Landlord shall be free to extend any such tenancy or occupancy, whether or not pursuant to a lease or other agreement, and such space shall not be deemed to be Available. In no event shall Landlord be liable to Tenant for any failure by any then existing tenant or occupant to vacate any of the Expansion Space. From and after the date hereof, Landlord shall not grant any rights to any tenant or other occupant of the Building with respect to any Expansion Space unless such rights are subordinate to the rights granted Tenant hereunder, except to tenants and other occupants leasing or occupying the applicable Expansion Space as of the date hereof or to new tenants or occupants of a portion of the Expansion Space after Landlord shall have duly offered such portion of the Expansion Space to Tenant pursuant to this **Article 30**.

(b) “**Expansion Space Fair Market Value**,” with respect to each Expansion Space, shall mean the fair market annual rental value of such Expansion Space at the commencement of the leasing of such Expansion Space for a term commencing on the applicable Expansion Space Commencement Date (as hereinafter defined) and ending on the Expiration Date **[(provided that if the then remaining Term is less than 10 years, such term shall be deemed to be 10 years for the purposes of determining the Expansion Space Fair Market Value in question)]**, as determined by Landlord based on comparable space in the Building, including all of Landlord’s services provided for in the Lease and with (i) such Expansion Space considered as vacant and in the “as is” condition which same shall be in on the applicable Expansion Space Commencement Date, (ii) the Base Tax Year being the Tax Year commencing on the July 1st of the calendar year in which the applicable Expansion Space Commencement Date occurs and (iii) the Base Expense Year being the calendar year commencing on the January 1st of the calendar year in which the applicable Expansion Space Commencement Date occurs. The calculation of Expansion Space Fair Market Value shall also take into account any other relevant factors.

Section 30.3 Conditions to Exercise. Tenant shall have no right to exercise an Expansion Option unless all of the following conditions have been satisfied on the date the applicable Acceptance Notice is delivered to Landlord and on the Expansion Space Commencement Date:

- (a) No Event of Default shall have occurred and be continuing;

(b) The tenant named herein (i.e., _____) shall not have assigned this Lease and shall be in occupancy of 100% of the rentable area of the Premises; and

(c) There shall not have occurred any material adverse change in the financial condition of Tenant from the condition described on the financial statements submitted by Tenant to Landlord in connection with this Lease.

Section 30.4 Incorporation of Expansion Space. Effective as of the date on which Landlord delivers vacant possession of an Expansion Space to Tenant (with respect to each such Expansion Space, the “**Expansion Space Commencement Date**”):

(a) Fixed Rent for such Expansion Space shall be the Expansion Space Fair Market Value as determined in accordance with this **Article 30**.

(b) Tenant shall pay Tenant’s Tax Payment and Tenant’s Operating Payment with respect to such Expansion Space in accordance with the provisions of **Article 7**, except that (i) the Base Tax Year shall be the Tax Year commencing on the July 1st of the calendar year in which the applicable Expansion Space Commencement Date occurs, (ii) the Base Expense Year shall be the calendar year commencing on the January 1st of the calendar year in which the applicable Expansion Space Commencement Date occurs, and (iii) the Agreed Area of Premises shall be increased by the rentable square footage of such Expansion Space set forth in the applicable Expansion Notice;

(c) The rentable square footage of the Expansion Space shall be as set forth in the applicable Expansion Notice (which the parties agree shall be the rentable square footage of such Expansion Space for all purposes of this Lease) and Tenant’s Proportionate Share shall be appropriately adjusted;

(d) The applicable Expansion Space shall be delivered in its “as is” condition, and Landlord shall not be obligated to perform any work with respect thereto or make any contribution to Tenant to prepare such Expansion Space for Tenant’s occupancy;

(e) The Letter of Credit shall be increased by an amount equal to (i) the then existing amount of the Letter of Credit then required pursuant to **Article 27**, divided by the number of rentable square feet then contained in the Premises, multiplied by (ii) the number of rentable square feet contained in such Expansion Space; and

OPTIONAL [

(f) Landlord shall provide electricity to the applicable Expansion Space on an electric inclusion basis in accordance with **Section 10.1** and the Fixed Rent applicable to such Expansion Space shall be increased annually by the product of (x) the rentable square footage of such Expansion Space set forth in the applicable Expansion Notice and (y) the cost per rentable square foot Landlord is then charging for electricity pursuant to **Section 10.1.**]

(g) The applicable Expansion Space shall be added to and be deemed to be a part of the Premises for all purposes of this Lease (except as otherwise provided in this **Section 30**).

OPTIONAL [

(h) If Tenant shall not lease the entirety of a floor of the Building, then upon the exercise of an Expansion Option and if Tenant shall thereafter lease the remainder of such floor hereunder, the Premises shall, from and after Tenant's leasing of the remainder of such floor, include the common corridors and lavatories on such floor.]

Section 30.5 Possession. In no event shall Landlord be obligated to incur any fee, cost, expense or obligation, nor to prosecute any legal action or proceeding, in connection with the delivery of any Expansion Space to Tenant nor shall Tenant's obligations under this Lease with respect to the Premises or such Expansion Space be affected thereby. Landlord shall not be subject to any liability and this Lease shall not be impaired if Landlord shall be unable to deliver possession of any Expansion Space to Tenant on any particular date. Tenant hereby waives any right to rescind this Lease or any Acceptance Notice under the provisions of Section 223-a of the Real Property Law of the State of New York, and agrees that the provisions of this **Section 30.5** are intended to constitute "an express provision to the contrary" within the meaning of said Section 223-a. Landlord agrees that it shall not waive any rights it may have against any person or entity holding over in the Expansion Space, without any obligation to enforce any such rights.

Section 30.6 Arbitration. If Tenant disputes Landlord's determination of the Expansion Space Fair Market Value for any Expansion Space pursuant to **Section 30.1**, Tenant shall give notice to Landlord of such dispute within 10 Business Days after delivery of the Expansion Notice, and such dispute shall be determined by arbitration in accordance with the then prevailing Expedited Procedures of the Arbitration Rules for the Real Estate Industry of the American Arbitration Association or its successor for arbitration of commercial disputes, except that the rules shall be modified as follows:

(a) In its demand for arbitration Tenant shall specify the name and address of the person to act as the arbitrator on Tenant's behalf. The arbitrator shall be a real estate broker with at least 10 years full-time commercial brokerage experience who is familiar with the fair market value of first-class office space in the Borough of Manhattan, City of New York, New York. Failure on the part of Tenant to make the timely and proper demand for such arbitration shall constitute a waiver of the right thereto and the Fixed Rent in respect of the Expansion Space in question shall be as set forth in the Expansion Notice applicable thereto. Within 10 Business Days after the service of the demand for arbitration, Landlord shall give notice to Tenant specifying the name and address of the person designated by Landlord to act as arbitrator on its behalf, which arbitrator shall be similarly qualified. If Landlord fails to notify Tenant of the appointment of its arbitrator within such 10 Business Day period, and such failure continues for 3 Business Days after Tenant delivers a second notice to Landlord, then the arbitrator appointed by Tenant shall be the arbitrator to determine the Expansion Space Fair Market Value for the Expansion Space in question.

(b) If two arbitrators are chosen pursuant to **Section 30.6(a)**, the arbitrators so chosen shall meet within 10 Business Days after the second arbitrator is appointed and shall seek to reach agreement on the Expansion Fair Market Value of the applicable Expansion Space. If within 20 Business Days after the second arbitrator is appointed the two arbitrators are unable to reach agreement on such Expansion Space Fair Market Value then the two arbitrators shall appoint a third arbitrator, who shall be a competent and impartial person with qualifications similar to those required of the first two arbitrators pursuant to **Section 30.6(a)**. If they are unable to agree upon such appointment within 5 Business Days after expiration of such 20 Business Day period, the third arbitrator shall be selected by the parties themselves. If the parties do not agree on the third arbitrator within 5 Business Days after expiration of the

foregoing 5 Business Day period, then either party, on behalf of both, may request appointment of such a qualified person by the then president of the Real Estate Board of New York. The third arbitrator shall decide the dispute, if it has not been previously resolved, by following the procedures set forth in **Section 30.6(c)**. Each party shall pay the fees and expenses of its respective arbitrator and both shall share the fees and expenses of the third arbitrator. Attorneys' fees and expenses of counsel and of witnesses for the respective parties shall be paid by the respective party engaging such counsel or calling such witnesses.

(c) The Expansion Space Fair Market Value of the applicable Expansion Space shall be fixed by the third arbitrator in accordance with the following procedures. Concurrently with the appointment of the third arbitrator, each of the arbitrators selected by the parties shall state, in writing, his or her determination of the Expansion Space Fair Market Value in respect of the applicable Expansion Space supported by the reasons therefor. The third arbitrator shall have the right to consult experts and competent authorities for factual information or evidence pertaining to a determination of such Expansion Space Fair Market Value, but any such determination shall be made in the presence of both parties with full right on their part to cross-examine. The third arbitrator shall conduct such hearings and investigations as he or she deem appropriate and shall, within 30 days after being appointed, select which of the two proposed determinations most closely approximates his or her determination of such Expansion Space Fair Market Value. The third arbitrator shall have no right to propose a middle ground or any modification of either of the two proposed determinations. The determination the third arbitrator chooses as that most closely approximating his or her determination of the Expansion Space Fair Market Value in respect of the applicable Expansion Space shall constitute his or her decision and shall be final and binding upon the parties. The third arbitrator shall render the decision in writing with counterpart copies to each party. The third arbitrator shall have no power to add to or modify the provisions of this Lease. Promptly following receipt of the third arbitrator's decision, the parties shall enter into an amendment to this Lease evidencing the expansion of the Premises and confirming the Fixed Rent for the Expansion Space in question, but the failure of the parties to do so shall not affect the effectiveness of the third arbitrator's determination.

(d) In the event of a failure, refusal or inability of any arbitrator to act, his or her successor shall be appointed by him or her, but in the case of the third arbitrator, his or her successor shall be appointed in the same manner as that set forth herein with respect to the appointment of the original third arbitrator.

Section 30.7 Agreement of Terms. Landlord and Tenant, at either party's request, shall promptly execute and exchange an appropriate agreement evidencing the leasing of each Expansion Space and the terms thereof in a form reasonably satisfactory to both parties, but no such agreement shall be necessary in order to make the provisions hereof effective.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

LANDLORD:

TENANT:

a _____

_____,
a _____

By: _____

By: _____

Its: _____

Its: _____

By: _____

Its: _____

ACKNOWLEDGMENT

STATE OF NEW YORK)
) s.s.:
COUNTY OF NEW YORK)

On this ____ day of _____, in the year 20__ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

EXHIBIT A
FLOOR PLAN

The floor plan which follows is intended solely to identify the general location of the Premises, and should not be used for any other purpose. All areas, dimensions and locations are approximate, and any physical conditions indicated may not exist as shown.

See Attached

EXHIBIT B

DEFINITIONS

Base Rate: The annual rate of interest publicly announced from time to time by Citibank, N.A., or its successor, in New York, New York as its “base rate” (or such other term as may be used by Citibank, N.A., from time to time, for the rate presently referred to as its “base rate”).

Building Systems: The mechanical, electrical, plumbing, sanitary, sprinkler, heating, ventilation and air conditioning, security, life-safety, elevator and other service systems or facilities of the Building up to the point of connection of localized distribution to the Premises (excluding, however, supplemental HVAC systems of tenants, sprinklers and the horizontal distribution systems within and servicing the Premises and by which mechanical, electrical, plumbing, sanitary, heating, ventilating and air conditioning, security, life-safety and other service systems are distributed from the base Building risers, feeders, panelboards, etc. for provision of such services to the Premises).

Business Days: All days, excluding Saturdays, Sundays and Observed Holidays.

Code: The Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, as amended.

Common Areas: The lobby, plaza and sidewalk areas and other similar areas of general access and the areas on individual multi-tenant floors in the Building devoted to corridors, elevator lobbies, restrooms, and other similar facilities serving the Premises.

Comparable Buildings: First-class office buildings of comparable age and quality in midtown Manhattan.

Cost Per Kilowatt Hour: (a) The total cost for electricity incurred by Landlord to service the Building during a particular billing period (including energy charges, demand charges, surcharges, time-of-day charges, fuel adjustment charges, rate adjustment charges, taxes, rebates and any other factors used by the public utility company or other provider in computing its charges to Landlord) during such period, divided by (b) the total kilowatt hours purchased by Landlord to provide electricity to the Building during such period.

Deficiency: The difference between (a) the Fixed Rent and Additional Rent for the period which otherwise would have constituted the unexpired portion of the Term (assuming the Additional Rent for each year thereof to be the same as was payable for the year immediately preceding such termination or re-entry), and (b) the net amount, if any, of rents collected under any reletting effected pursuant to the provisions of the Lease for any part of such period (after first deducting from such rents all expenses incurred by Landlord in connection with the termination of this Lease, Landlord’s re-entry upon the Premises and such reletting, including repossession costs, brokerage commissions, attorneys’ fees and disbursements, and alteration costs).

Excluded Expenses: (a) Taxes; (b) franchise or income taxes imposed upon Landlord; (c) mortgage amortization and interest; (d) leasing commissions; (e) the cost of tenant installations and decorations incurred in connection with preparing space for any Building

tenant, including workletters and concessions; (f) fixed rent under Superior Leases, if any; (g) management fees to the extent in excess of the greater of (A) 3% of the gross rentals and other revenues collected for the Real Property (plus reimbursable expenses payable in connection with property management services) and (B) fees charged by Landlord or related entities for the management by any of them of other first class properties in the area of the Building; (h) wages, salaries and benefits paid to any persons above the grade of property manager or chief engineer and their immediate supervisor; (i) legal and accounting fees relating to (A) disputes with tenants, prospective tenants or other occupants of the Building, (B) disputes with purchasers, prospective purchasers, mortgagees or prospective mortgagees of the Building or the Real Property or any part of either, or (C) negotiations of leases, contracts of sale or mortgages; (j) costs of services provided to other tenants of the Building on a "rent-inclusion" basis which are not provided to Tenant on such basis; (k) costs that are reimbursed out of insurance, warranty or condemnation proceeds, or which are reimbursed by Tenant or other tenants other than pursuant to an expense escalation clause; (l) costs in the nature of penalties or fines; (m) costs for services, supplies or repairs paid to any related entity in excess of costs that would be payable in an "arm's length" or unrelated situation for comparable services, supplies or repairs; (n) allowances, concessions or other costs and expenses of improving or decorating any demised or demisable space in the Building; (o) appraisal, advertising and promotional expenses in connection with leasing of the Building; (p) the costs of installing, operating and maintaining a specialty improvement, including a cafeteria, lodging or private dining facility, or an athletic, luncheon or recreational club unless Tenant is permitted to make use of such facility without additional cost (other than payments for key deposits, use of towels or other incidental items) or on a subsidized basis consistent with other users; (q) any costs or expenses (including fines, interest, penalties and legal fees) arising out of Landlord's failure to timely pay Operating Expenses or Taxes; (r) costs incurred in connection with the removal, encapsulation or other treatment of asbestos or any other Hazardous Materials (classified as such on the Effective Date) existing in the Premises as of the date hereof, and (s) the cost of capital improvements other than those expressly included in Operating Expenses pursuant to **Section 7.1**.

Governmental Authority: The United States of America, the City of New York, County of New York, or State of New York, or any political subdivision, agency, department, commission, board, bureau or instrumentality of any of the foregoing, now existing or hereafter created, having jurisdiction over the Real Property.

Hazardous Materials: Any substances, materials or wastes currently or in the future deemed or defined in any Requirement as "hazardous substances," "toxic substances," "contaminants," "pollutants" or words of similar import.

HVAC System: The Building System designed to provide heating, ventilation and air conditioning.

Indemnitees: Landlord, Landlord's Agent, each Mortgagee and Lessor, and each of their respective direct and indirect partners, officers, shareholders, directors, members, managers, trustees, beneficiaries, employees, principals, contractors, servants, agents, and representatives.

Lease Year: The first Lease Year shall commence on the Commencement Date and shall end on the last day of the calendar month preceding the month in which the first anniversary of the Commencement Date occurs. Each succeeding Lease Year shall commence

on the day following the end of the preceding Lease Year and shall extend for twelve consecutive months; provided, however, that the last Lease Year shall expire on the Expiration Date.

Lessor: A lessor under a Superior Lease.

Losses: Any and all losses, liabilities, damages, claims, judgments, fines, suits, demands, costs, interest and expenses of any kind or nature (including reasonable attorneys' fees and disbursements) incurred in connection with any claim, proceeding or judgment and the defense thereof, and including all costs of repairing any damage to the Premises or the Building or the appurtenances of any of the foregoing to which a particular indemnity and hold harmless agreement applies.

Mortgage(s): Any mortgage, trust indenture or other financing document which may now or hereafter affect the Premises, the Real Property, the Building or any Superior Lease and the leasehold interest created thereby, and all renewals, extensions, supplements, amendments, modifications, consolidations and replacements thereof or thereto, substitutions therefor, and advances made thereunder.

Mortgagee(s): Any mortgagee, trustee or other holder of a Mortgage.

Observed Holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day plus days observed by the State of New York, the City of New York and the labor unions servicing the Building as holidays.

Ordinary Business Hours: 8:00 a.m. to 8:00 p.m. on weekdays and 8:00 a.m. to 1:00 p.m. on Saturdays, excluding Observed Holidays.

Prohibited Use: Any use or occupancy of the Premises that in Landlord's reasonable judgment would: (a) cause damage to the Building or any equipment, facilities or other systems therein; (b) impair the appearance of the Building; (c) interfere with the efficient and economical maintenance, operation and repair of the Premises or the Building or the equipment, facilities or systems thereof; (d) adversely affect any service provided to, and/or the use and occupancy by, any Building tenant or occupants; (e) violate the certificate of occupancy issued for the Premises or the Building; (f) materially and adversely affect the first-class image of the Building or (g) result in protests or civil disorder or commotions at, or other disruptions of the normal business activities in, the Building. Prohibited Use also includes the use of any part of the Premises for: (i) a restaurant or bar; (ii) the preparation, consumption, storage, manufacture or sale of food or beverages (except in connection with vending machines (provided that each machine, where necessary, shall have a waterproof pan thereunder and be connected to a drain) and/or warming kitchens installed for the use of Tenant's employees only), liquor, tobacco or drugs; (iii) the business of photocopying, multilith or offset printing (except photocopying in connection with Tenant's own business); (iv) a school or classroom; (v) lodging or sleeping; (vi) the operation of retail facilities (meaning a business whose primary patronage arises from the generalized solicitation of the general public to visit Tenant's offices in person without a prior appointment) of a savings and loan association or retail facilities of any financial, lending, securities brokerage or investment activity; (vii) a payroll office; (viii) a barber, beauty or manicure shop; (ix) an employment agency or similar enterprise; (x) offices of any Governmental Authority, any foreign government, the United Nations, or any agency or department of the foregoing; (xi) the manufacture, retail sale, storage of merchandise or auction

of merchandise, goods or property of any kind to the general public which could reasonably be expected to create a volume of pedestrian traffic substantially in excess of that normally encountered in the Premises; (xii) the rendering of medical, dental or other therapeutic or diagnostic services; or (xiii) any illegal purposes or any activity constituting a nuisance.

Requirements: All present and future laws, rules, orders, ordinances, regulations, statutes, requirements, codes and executive orders, extraordinary and ordinary of (i) all Governmental Authorities, including, without limitation, (A) the Americans With Disabilities Act, 42 U.S.C. §12101 (et seq.), New York City Local Law 58 of 1987, and (B) any law of like import, and all rules, regulations and government orders with respect thereto, and any of the foregoing relating to Hazardous Materials, environmental matters, public health and safety matters, and landmarks preservation, (ii) any applicable fire rating bureau or other body exercising similar functions, affecting the Real Property or the maintenance, use or occupation thereof, or any street, avenue or sidewalk comprising a part of or in front thereof or any vault in or under the same, (iii) all requirements of all insurance bodies affecting the Premises, (iv) utility service providers, and (v) Mortgagees or Lessors. "Requirements" shall also include the terms and conditions of any certificate of occupancy issued for the Premises or the Building, and any other covenants, conditions or restrictions affecting the Building and/or the Real Property from time to time.

Rules and Regulations: The rules and regulations annexed to and made a part of this Lease as **Exhibit F**, as they may be modified from time to time by Landlord.

Specialty Alterations: Alterations which are not standard office installations such as kitchens, executive bathrooms, raised computer floors, computer room installations, supplemental HVAC equipment, safe deposit boxes, vaults, libraries or file rooms requiring reinforcement of floors, internal staircases, slab penetrations, conveyors, dumbwaiters, and other Alterations of a similar character.

Substantial Completion: As to any construction performed by any party, "**Substantial Completion**" or "**Substantially Completed**" means that such work has been completed, as reasonably determined by Landlord's architect, in accordance with (a) the provisions of this Lease applicable thereto, (b) the plans and specifications for such work, and (c) all applicable Requirements, except for minor details of construction, decoration and mechanical adjustments, if any, the noncompletion of which does not materially interfere with Tenant's use of the Premises or which in accordance with good construction practice should be completed after the completion of other work in the Premises or the Building ("**Punch List Items**").

Superior Lease(s): Any ground or underlying lease of the Real Property or any part thereof heretofore or hereafter made by Landlord and all renewals, extensions, supplements, amendments, modifications, consolidations, and replacements thereof.

Tenant Delay: Any delay which results from any act or omission of any Tenant Party, including delays due to changes in or additions to, or interference with any work to be done by Landlord, or delays by Tenant in submission of information approving working drawings or estimates or giving authorizations or approvals.

Tenant Party: Tenant and any subtenants and occupants of the Premises and their respective agents, contractors, subcontractors, employees, invitees or licensees.

Tenant's Property: Tenant's movable fixtures and movable partitions, telephone and other equipment, computer systems, telecommunications data and other cabling, trade fixtures, furniture, furnishings, and other items of personal property which are removable without material damage to the Building.

Unavoidable Delays: Landlord's inability to fulfill or delay in fulfilling any of its obligations under this Lease expressly or impliedly to be performed by Landlord or Landlord's inability to make or delay in making any repairs, additions, alterations, improvements or decorations or Landlord's inability to supply or delay in supplying any equipment or fixtures, if Landlord's inability or delay is due to or arises by reason of strikes, labor troubles or by accident, or by any cause whatsoever beyond Landlord's reasonable control, including governmental preemption in connection with a national emergency, Requirements or shortages, or unavailability of labor, fuel, steam, water, electricity or materials, or delays caused by Tenant or other tenants, mechanical breakdown, acts of God, enemy action, civil commotion, fire or other casualty.

EXHIBIT C

LANDLORD'S WORK

The following work (unless otherwise specifically provided herein) shall be of material, manufacture, design, capacity, quality, finish and color of the standard adopted by Landlord for the Building and, where quantities are hereinafter specified, such quantities shall include any existing installations to the extent useable and used in the performance of such work.

See Attached

EXHIBIT D
INTENTIONALLY OMITTED
[DESIGN STANDARDS
[SEE ATTACHED]]

EXHIBIT E

CLEANING SPECIFICATIONS

GENERAL CLEANING NIGHTLY

General Offices:

1. Hard surfaced flooring to be swept using approved dust down preparation.
2. Carpet sweep carpets, moving only light furniture (desks, file cabinets, etc. not to be moved).
3. Hand dust and wipe clean furniture, fixtures and windowsills.
4. Empty waste receptacles and remove wastepaper.
5. Wash clean Building water fountains and coolers.

Base Building Core Lavatories:

1. Sweep and wash floors, using proper disinfectants.
2. Wash and polish mirrors, shelves, bright work and enameled surfaces.
3. Wash and disinfect basins, bowls and urinals.
4. Wash toilet seats.
5. Hand dust and clean partitions, tile walls, dispensers and receptacles in lavatories and restrooms.
6. Empty paper receptacles, fill receptacles and remove wastepaper.
7. Fill toilet tissue holders.
8. Empty and clean sanitary disposal

WEEKLY

1. Vacuum carpeting and rugs.
2. Dust door louvers and other ventilating louvers within a person's normal reach.

QUARTERLY

High dust premises complete including the following:

1. Dust pictures, frames, charts, graphs and similar wall hangings not reached in nightly cleaning.
2. Dust vertical surfaces, such as walls, partitions, doors, doorframes and other surfaces not reached in nightly cleaning.
3. Dust Venetian blinds.

WINDOW WASHING

Wash building windows three (3) times per year interior & exteriors.

EXHIBIT F

RULES AND REGULATIONS

1. Nothing shall be attached to the outside walls of the Building. Other than Building standard blinds, no curtains, blinds, shades, screens or other obstructions shall be attached to or hung in or used in connection with any exterior window or entry door of the Premises, without the prior consent of Landlord.

2. No sign, advertisement, notice or other lettering visible from the exterior of the Premises shall be exhibited, inscribed, painted or affixed to any part of the Premises without the prior written consent of Landlord. All lettering on doors shall be inscribed, painted or affixed in a size, color and style acceptable to Landlord.

3. The grills, louvers, skylights, windows and doors that reflect or admit light and/or air into the Premises or Common Areas shall not be covered or obstructed by Tenant, nor shall any articles be placed on the window sills, radiators or convectors.

4. Landlord shall have the right to prohibit any advertising by any Tenant which, in Landlord's opinion, tends to impair the reputation of the Building, and upon written notice from Landlord, Tenant shall refrain from or discontinue such advertising.

5. The Common Areas shall not be obstructed or encumbered by any Tenant or used for any purposes other than ingress of egress to and from the Premises and for delivery of merchandise and equipment in a prompt and efficient manner, using elevators and passageways designated for such delivery by Landlord.

6. Except in those areas designated by Tenant as "security areas," all locks or bolts of any kind shall be operable by the Building's Master Key. No locks shall be placed upon any of the doors or windows by Tenant, nor shall any changes be made in locks or the mechanism thereof which shall make such locks inoperable by the Building's Master Key. Tenant shall, upon the termination of its Lease, deliver to Landlord all keys of stores, offices and lavatories, either furnished to or otherwise procured by Tenant and in the event of the loss of any keys furnished by Landlord, Tenant shall pay to Landlord the cost thereof.

7. Tenant shall keep the entrance door to the Premises closed at all times.

8. All movement in or out of any freight, furniture, boxes, crates or any other large object or matter of any description must take place during such times and in such elevators as Landlord may prescribe. Landlord reserves the right to inspect all articles to be brought into the Building and to exclude from the Building all articles which violate any of these Rules and Regulations or the Lease. Landlord may require that any person leaving the public areas of the Building with any article to submit a pass, signed by an authorized person, listing each article being removed, but the establishment and enforcement of such requirement shall not impose any responsibility on Landlord for the protection of any Tenant against the removal of property from the Premises.

9. All hand trucks shall be equipped with rubber tires, side guards and such other safeguards as Landlord may require.

10. No Tenant Party shall be permitted to have access to the Building's roof, mechanical, electrical or telephone rooms without permission from Landlord.

11. Tenant shall not permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the Building by reason of noise, odors, vibrations or interfere in any way with other tenants or those having business therein.

12. Tenant shall not employ any person or persons other than the janitor of Landlord for the purpose of cleaning the Premises, unless otherwise agreed to by Landlord. Tenant shall not cause any unnecessary labor disturbance by reason of such Tenant's carelessness or indifference in the preservation of good order and cleanliness.

13. Tenant shall store all its trash and recyclables within its Premises. No material shall be disposed of which may result in a violation of any Requirement. All refuse disposal shall be made only through entry ways and elevators provided for such purposes and at such times as Landlord shall designate. Tenant shall use the Building's hauler.

14. Tenant shall not deface any part of the Building. No boring, cutting or stringing of wires shall be permitted, except with prior consent of Landlord, and as Landlord may direct.

15. The water and wash closets, electrical closets, mechanical rooms, fire stairs and other plumbing fixtures shall not be used for any purposes other than those for which they were constructed and no sweepings, rubbish, rags, acids or other substances shall be deposited therein. All damages resulting from any misuse of the fixtures shall be borne by Tenant where a Tenant Party caused the same.

16. Tenant, before closing and leaving the Premises at any time, shall see that all lights, water faucets, etc. are turned off. All entrance doors in the Premises shall be kept locked by Tenant when the Premises are not in use.

17. No bicycles, in-line roller skates, vehicles or animals of any kind (except for seeing eye dogs) shall be brought into or kept by any Tenant in or about the Premises or the Building.

18. Canvassing or soliciting in the Building is prohibited.

19. Employees of Landlord, Landlord's Managing Agent, or Landlord's Broker shall not perform any work or do anything outside of the regular duties, unless under special instructions from the office of Landlord or in response to any emergency condition.

20. Tenant is responsible for the delivery and pick up of all mail from the United States Post Office.

21. Landlord reserves the right to exclude from the Building during other than Ordinary Business Hours all persons who do not present a valid Building pass. Tenant shall be responsible for all persons for whom a pass shall be issued at the request of Tenant and shall be liable to Landlord for all acts of such persons.

22. Landlord shall not be responsible to Tenant or to any other person or entity for the non-observance or violation of these Rules and Regulations by any other tenant or other person or entity. Tenant shall be deemed to have read these Rules and Regulations and to have agreed to abide by them as a condition to its occupancy of the Premises.

23. The review/alteration of Tenant drawings and/or specifications by Landlord's Broker or Landlord's Managing Agent and any of its representatives is not intended to verify Tenant's engineering or design requirements and/or solutions. The review/alteration is performed to determine compatibility with the Building Systems and lease conditions. Tenant renovations must adhere to the Building's applicable Standard Operating Procedures and be compatible with all Building Systems.

24. Tenant shall provide notice to Landlord prior to moving any heavy machinery, heavy equipment, freight, bulky matter or fixtures (collectively, "**Equipment**") into or out of the Building and shall pay to Landlord any costs actually incurred by Landlord in connection therewith. If such Equipment requires special handling, Tenant agrees (a) to employ only persons holding all necessary licenses to perform such work, (b) all work performed in connection therewith shall comply with all applicable Requirements and (c) such work shall be done only during hours designated by Landlord.

25. No Smoking in the Building or within one hundred (100) feet of any entrance to the Building.

26. Tenant shall comply with Building standard move out rules.

27. The use of burning fluid, camphene, benzene, kerosene, propane, candles of any kind, or any gas for lighting the Premises, is prohibited. No offensive gases or liquids will be permitted.

28. If Tenant desires blinds, coverings, (i.e., window film), or drapes over the windows, they must be of such shape, color and material as may be prescribed by Landlord, and shall be installed only with Landlord's reasonable consent and at the expense of Tenant. No awnings shall be placed on the Building without Landlord's permission. (This is also stated in Section 10.3 regarding blinds and shades, but window film coverings and drapes are not covered).

29. No antenna, satellite dish, or cabling shall be installed on the roof or exterior walls of the Building without written permission from the Landlord.

30. If the premises demised to any tenant become infested with vermin, such tenant, at its sole cost and expense, shall cause its premises to be exterminated, from time to time, to the satisfaction of Landlord and shall employ such exterminators therefor as shall be approved by Landlord.

31. Landlord reserves the right to make such other and reasonable rules and regulations as in its judgment may from time to time be needed for the safety, care and cleanliness of the Building and for the preservation of good order therein.

EXHIBIT G
CONTRACTOR'S INSURANCE REQUIREMENTS

1.0 Indemnification.

1.1 To the fullest extent permitted by law, Tenant shall compel its General Contractor/Construction Manager (all to be referenced "GC/CM") and every tier of Contractor or Sub-Contractor (collectively, "CONTRACTOR") to execute an Indemnification and Hold Harmless Agreement, pursuant to which GC/CM and CONTRACTOR shall indemnify and hold harmless Tenant, 450 Property Owner (US), LLC, Jones Lang LaSalle Americas Inc., Jones Lang LaSalle Services, Inc., New York Life Real Estate Investors, and all affiliated and subsidiary limited partnerships, limited liability companies, and other entities thereof as may now or may hereafter exist, including nominees or trusts, and the shareholders, partners, directors, officers, employees, members and agents of any such limited liability company, corporation, person or entity (collectively, "450 Park Avenue Indemnified Parties") from and against any and all loss or damage, claim, demand, suit or action (collectively, a "CLAIM") or judgment for damages on account of or by reason of bodily injury, including death, damage to property, and from all costs and expenses incurred on account of any such CLAIM, including, without limitation, attorney's fees and disbursements, caused by or directly or indirectly arising out of or claimed to have been caused by or to have directly or indirectly arisen out of, (i) any purchase order (as same may be modified), or (ii) any work done or performed by GC/CM and/or CONTRACTOR or (iii) GC/CM and/or CONTRACTOR'S failure to do or perform any work required to be done, or (iv) the negligence or willful misconduct of GC/CM and/or CONTRACTOR, its agents, servants or employees, or (v) GC/CM and/or CONTRACTOR'S failure to comply with any applicable law, rule, regulation or permit, and GC/CM and/or CONTRACTOR shall, at its own cost and expense, defend any such CLAIM which may be asserted or commenced against 450 Park Avenue Indemnified Parties, by reason thereof or in connection therewith, and CONTRACTOR shall pay and satisfy any and all judgments which may be recovered in any such CLAIM and defray or reimburse any and all expenses, including costs and reasonable attorney's fees, which may be incurred in or by reason of such CLAIM, and shall keep the property of 450 Park Avenue Indemnified Parties, free and unencumbered of any charge or lien of any kind.

2.0 Insurance.

2.1 "GC/CM" shall secure, and keep in full force and effect, and shall cause its "CONTRACTORS" to secure, and keep in full force and effect throughout the term of the project at the Building, the following Insurance coverage at the sole cost and expense of GC/CM. Such Insurance shall be primary, notwithstanding any other insurance that might be in effect for the indemnified parties:

- (a) Commercial General Liability Insurance, including Contractual Liability (to specifically include coverage for the indemnification and hold harmless clause of this Exhibit), Products & Completed Operations Liability (including XCU coverage where appropriate), Broad Form Property Damage, Contractor's Liability, Personal Injury Liability and Advertising Injury Liability, written on an occurrence form, and contain a gross liability and severability of interests clause, with combined bodily injury and property damage limits of liability of no less than

\$5,000,000 per occurrence, \$5,000,000 per location general aggregate, \$5,000,000 Personal & Advertising Injury and \$5,000,000 Products and Completed Operations liability with \$5,000,000 aggregate limit per project. CG/CM agrees to maintain completed operations coverage, including the indemnified parties as additional insureds for two years following completion of the work. The limits of liability can be provided in a combination of a Commercial General Liability policy and an Umbrella Liability policy, which is written on a no less than follow-form basis of the General Liability policy. Such policies shall contain no exclusions, other than those in the basic policy form, that will in any way negatively affect coverage provided to the indemnified parties. Notwithstanding above, the GC/CM shall maintain limits of \$25,000,000.

(b) Worker's Compensation Insurance providing statutory benefits and Employer's Liability coverage in an amount that is no less than \$500,000;

(c) Automobile Liability Insurance, including owned, non-owned and hired car liability insurance for combined limits of liability of \$5,000,000 per occurrence. The limits of liability can be provided in a combination of an Automobile Liability policy and an Umbrella Liability policy, which is written on a no less than follow-form basis of the automobile policy:

2.2 All required insurance policies and bonds shall be maintained with insurance companies licensed within the State of New York and holding an AM Best rating of no less than A-, X. Said policies shall contain a provision that coverage will not be canceled, non-renewed or materially changed, until at least thirty (30) days' prior written notice has been provided to Landlord or its agent.

2.3 GC/CM agrees to waive its rights of subrogation against 450 Park Avenue Indemnified Parties and shall have included in each of the above policies, and shall cause its CONTRACTORS to have included in each of the above policies, a waiver of the insurer's right of subrogation against LANDLORD.

2.4 LANDLORD and any managing agent of LANDLORD, along with their subsidiaries and affiliated entities, now or hereafter formed, all as their interests may appear, and such other parties in interest as LANDLORD or its managing agent may designate in writing from time to time, shall be named as additional insured.

2.5 Certificates in the customary form, i.e., Acord 25, evidencing all terms of this Exhibit, shall be delivered to the LANDLORD or its agent, prior to commencement of work. Similar certificates shall be delivered evidencing the renewal or replacement of such insurance, at least thirty (30) days prior to the effective date of such renewal or change of insurer.

2.6 GC/CM shall not, and not allow its CONTRACTORS to commence or proceed with any work until all required insurance has been obtained and acceptable certificates of such insurance and indemnification have been delivered to Landlord. If insurance, as required herein, is canceled, non-renewed or materially changed within thirty (30) days of the required notification as noted in Section 2.5 above, all work shall cease and desist until the required insurance is in place and revised certificates of insurance, if applicable, are provided to Landlord.

2.7 If work must be performed in premises other than Tenant's own Premises or LANDLORD's common areas, then GC/CM, CONTRACTORS and Tenant will be required to provide Certificates of Insurance for the same limits and shall hold harmless and indemnify the entity in whose space such work takes place, naming said entity as the certificate holder as an additional insured and shall name the LANDLORD and its designees as additional insureds for such work.

