

**LANDLORD-ORIENTED “KILLER” LEASE**  
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**FORM 1-4**

**LANDLORD-ORIENTED "KILLER" LEASE**

LEASE, dated \_\_\_\_\_, 200\_, between \_\_\_\_\_, a \_\_\_\_\_ limited partnership having an office \_\_\_\_\_ (hereinafter called "Landlord") and \_\_\_\_\_, a \_\_\_\_\_ corporation having an office at \_\_\_\_\_ (herein called "Tenant").

**WITNESSETH:**

**ARTICLE 1**

**Premises, Term and Fixed Rent**

1.01 Landlord hereby leases to Tenant, and Tenant hereby hires from Landlord, upon and subject to the terms, covenants, provisions and conditions of this lease, the premises described in Section 1.02 in the building (herein called "Building") known as \_\_\_\_\_ in the City, County and State of \_\_\_\_\_, on the land (herein called "Land") described in Exhibit A attached hereto and made a part hereof.

1.02 The premises (herein called the "Premises") leased to Tenant are located on the seventeenth (17th) floor of the Building, substantially as shown hatched on the floor plan attached hereto as Exhibit B and made a part hereof.

1.03 The term of this lease (a) shall commence on the Commencement Date (as defined in Section 1.05 hereof) and (b) shall end at 11:59 p.m. on the last day of the month in which the tenth (10th) anniversary of the day preceding the Commencement Date occurs (herein called "Expiration Date") or on such earlier date upon which the term of this lease shall expire or be cancelled or terminated pursuant to any of the conditions or covenants of this lease or pursuant to law.

1.04 The rents shall be and consist of (a) fixed rent (herein called "Fixed Rent") at the rate per annum of \_\_\_\_\_ 00/100 Dollars (\$\_\_\_\_\_) per annum for the period from the Rent Commencement Date (hereinafter defined) to the day immediately preceding the fifth (5th) anniversary of the Commencement Date; and 00/100 Dollars (\$\_\_\_\_\_) per annum for the period from the fifth (5th) anniversary of the Commencement Date to the Expiration Date, which shall be payable commencing on the Rent Commencement Date and thereafter in equal monthly installments in advance on the first day of each and every calendar month during the term of this lease, and (b) additional rent (herein called "Additional Charges") consisting of Tax Payments (hereinafter defined) and Operating Payments (hereinafter defined), which Tax Payments and Operating Payments shall be payable commencing on the Rent Commencement Date, and all other sums of money as shall become due from and payable by Tenant to Landlord hereunder; all to be paid in lawful money of the United States to Landlord at its office, or such other place, or to Landlord's agent and at such other place, as Landlord shall designate by notice to Tenant.

1.05 (a) The “Commencement Date” shall be the day on which the work and improvements described on Schedule A attached hereto (herein called “Landlord’s Work”) shall be, or, but for Tenant’s Delay (as defined in the workletter annexed hereto as Exhibit D and made a part hereof (the “Workletter”)) should have been substantially completed as set forth in the Workletter and Landlord shall, or should have delivered possession of the Premises to Tenant. Landlord shall send Tenant a notice setting forth the Commencement Date, which notice shall be sent to Tenant not sooner than five (5) days prior to the date set forth therein as the Commencement Date. Tenant shall, upon the demand of Landlord, execute, acknowledge and deliver to Landlord an instrument in form reasonably satisfactory to Landlord confirming the Commencement Date and Expiration Date of this lease; Tenant’s failure to execute, acknowledge and deliver such instrument shall not affect the validity of the Commencement Date.

(b) The “Rent Commencement Date” shall be the first anniversary of the Commencement Date.

1.06 Tenant covenants and agrees to pay Fixed Rent and Additional Charges. Tenant shall pay the Fixed Rent and Additional Charges promptly when due without notice or demand therefor and without any abatement, deduction or setoff for any reason whatsoever, except as may be expressly provided in this lease. Unless otherwise instructed by Landlord, Fixed Rent and recurring Additional Charges shall be paid by wire transfer of immediately available federal funds to Landlord or its designee, and all other Additional Charges shall be paid by good and sufficient check (subject to collection) drawn on a New York City bank that is a member of the New York Clearing House Association or a successor thereto.

1.07 If the Rent Commencement Date occurs on a day other than the first day of a calendar month, the Fixed Rent for the partial calendar month in which the Rent Commencement Date occurs shall be prorated and the Fixed Rent for the partial calendar month in which the Rent Commencement Date occurs shall be paid on the Rent Commencement Date.

1.08 No payment by Tenant or receipt or acceptance by Landlord of a lesser amount than the correct Fixed Rent or Additional Charges shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed on accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord’s right to recover the balance or pursue any other remedy in this lease or at law provided.

1.09 If any of the Fixed Rent or Additional Charges payable under the terms and provisions of this lease shall be or become uncollectible, reduced or required to be refunded because of any act or law enacted by a governmental authority, Tenant shall enter into such agreement(s) and take such other steps (without additional expense to Tenant) as Landlord may request and as may be legally permissible to permit Landlord to collect the maximum rents that from time to time during the continuance of such legal rent restriction may be legally permissible (but not in excess of the amounts reserved therefor under this lease). Upon the termination of such legal rent restriction, (a) the Fixed Rent and/or Additional Charges shall become and thereafter be payable in accordance with the amounts reserved herein for the periods following such termination, and (b) Tenant shall pay to Landlord promptly upon being billed, to the maximum extent legally permissible, an amount equal to (i) the Fixed Rent and/or Additional Charges that would have been paid pursuant to this lease but for such legal rent restrictions less (ii) the rents paid by Tenant during the period such legal rent restriction was in effect.

1.10 Additional Charges shall be deemed to be rent and Tenant's failure to pay Additional Charges shall be considered a failure to pay rent hereunder and Landlord shall be entitled to all rights and remedies provided herein, including, but not limited to, pursuant to the provisions of Articles 22, 23 and 24 hereof, or by law in connection therewith.

## **ARTICLE 2**

### **Use of Premises**

2.01 Tenant shall use and occupy the Premises for first-class executive offices for a financial advisory business and for no other purpose.

2.02 If any governmental license or permit (other than a Certificate of Occupancy for the entire Building) shall be required for the proper and lawful conduct of Tenant's business in the Premises or any part thereof, Tenant, at its expense, shall duly procure and thereafter maintain such license or permit and submit a true photocopy of the same to Landlord for its files. Tenant shall at all times comply with the terms and conditions of each such license or permit. Additionally, should Alterations (hereinafter defined) or Tenant's use of the Premises require any modification or amendment of any Certificate of Occupancy for the Building Tenant shall, at its expense, take all actions requested by Landlord in order to procure any such modification or amendment and shall reimburse Landlord (as Additional Charges) for all costs and expenses Landlord incurs in effecting said modifications or amendments. The foregoing provisions are not intended to be deemed Landlord's consent to any Alterations or to a use of the Premises not otherwise permitted hereunder nor to require Landlord to effect such modifications or amendments of any Certificate of Occupancy.

2.03 Tenant shall not at any time use or occupy the Premises or the Building, or suffer or permit anyone to use or occupy the Premises or the Building, or do anything in the Premises or the Building, or suffer or permit anything to be done in, brought into or kept on the Premises, that in any manner in the sole discretion of Landlord (a) violates the Certificate of Occupancy for the Premises or for the Building; (b) causes or is liable to cause injury to the Premises or the Building or any equipment, facilities or systems therein; (c) constitutes a violation of the laws and requirements of any public authorities or the requirements of insurance bodies; (d) impairs or tends to impair the character, reputation or appearance of the Building as a first-class office building; (e) impairs or tends to impair the proper and economic maintenance, operation and repair of the Building and/or its equipment, facilities or systems; (f) annoys or inconveniences or tends to annoy or inconvenience other tenants or occupants of the Building; (g) constitutes a nuisance, public or private; (h) makes unobtainable from reputable insurance companies authorized to do business in New York State all risk property insurance, or liability, elevator, boiler or other insurance at standard rates required to be furnished by Landlord under the terms of any mortgages covering the Premises; or (i) discharges objectionable fumes, vapors or odors into the Building's flues or vents or otherwise.

2.04 Tenant shall not use, or suffer or permit anyone to use, the Premises or any part thereof, for (a) a banking, trust company, or safe deposit business, (b) a savings bank, a savings and loan association, or a loan company, (c) the sale of travelers' checks and/or foreign exchange, (d) a stock brokerage office or for stock brokerage purposes, (e) a restaurant and/or bar and/or the sale of confectionery and/or soda and/or beverages and/or sandwiches and/or ice cream and/or baked goods (f) the business of photographic reproductions and/or offset printing (except that Tenant may use part of the Premises for photographic reproductions and/or offset printing in connection with, either directly or indirectly, its own business and/or activities), (g) an employment or travel agency, (h) a school or classroom, (i) medical or psychiatric offices, (j) conduct of an action, (k) gambling activities, (l) the conduct of obscene, pornographic or similar disreputable activities, or (m) the sale of animals or any other business for which animals would be required in the Building. Further, the Premises may not be used by (i) an agency, department or bureau of the United States Government, any state or municipality within the United States or any foreign government, or any political subdivision of any of them, including, but not limited to, the government of South Africa or any political subdivision thereof, (ii) any charitable, religious, union or other not-for-profit organization or (iii) any tax exempt entity within the meaning of Section 168(h)(2) of the Internal Revenue Code of 1986, as amended, or any successor or substitute statute, or rule or regulation applicable thereto (as same may be amended).

### **ARTICLE 3**

#### **Escalations**

3.01 The terms defined below shall for the purposes of this lease have the meanings herein specified:

(a) "Landlord's Statement" shall mean an instrument or instruments setting forth the Operating Payment (hereinafter defined) payable by Tenant for a specified Operating Year pursuant to this Article 3.

(b) "Operating Expenses" shall mean all expenses paid or incurred by Landlord and/or Landlord's affiliates and/or on their behalf in respect of the repair, replacement, maintenance, operation and/or security of the Real Property (hereinafter defined), including, without limitation, (i) salaries, wages, medical, surgical, insurance (including, without limitation, group life and disability insurance), union and general welfare benefits, pension payments, severance payments, sick day payments and other fringe benefits of employees of Landlord, Landlord's affiliates and their respective contractors engaged in such repair, replacement, maintenance, operation and/or security; (ii) payroll taxes, worker's compensation, uniforms and related expenses (whether direct or indirect) for such employees; (iii) the cost of fuel, gas, steam, electricity, heat, ventilation, air-conditioning and chilled or condenser water, water, sewer and other utilities, together with any taxes and surcharges on, and fees paid in connection with the calculation and billing of, such utilities; (iv) the cost of painting and/or decorating all areas of the Real Property, excluding, however, any space contained therein that is demised to tenant(s); (v) the cost of casualty, liability, fidelity, rent and all other insurance regarding the Real Property and/or any property on, below or above the Real Property and any insurance required to be carried by Landlord under any Superior Instruments (hereinafter defined); (vi) the cost of repair, replacement, maintenance, operation and/or security of the Real Property and all supplies, tools, materials and equipment, whether by purchase or rental, used in the repair, replacement, maintenance, operation and/or security of the Real Property, and any sales and other taxes thereon; (vii) the rental value of the Landlord's Building office and any other premises in the Real Property utilized by the personnel of either Landlord or Landlord's affiliates, Landlord's agents or Landlord's contractors, in connection with the repair, replacement, maintenance, operation and/or security thereof, and all office expenses, such as telephone, utility, stationery and similar expenses incurred in connection therewith; (viii) the cost of cleaning, janitorial and security services, including, without limitation, glass and window cleaning, snow and ice removal and garbage and waste collection and/or disposal; (ix) the cost of all interior and exterior landscaping and all temporary exhibitions located at or within the Real Property; (x) the cost of alterations and improvements made at any time following the calendar year in which the date of this lease occurs by reason of the laws and requirements of any public authorities or the requirements of insurance bodies and all tools and equipment related thereto; (xi) the cost of all other alterations, repairs, replacements and/or improvements made at any time following the calendar year in which the date of this lease occurs by Landlord or Landlord's affiliates, at their respective expense, whether structural or non structural, ordinary or extraordinary, foreseen or unforeseen, and whether or not required by this lease, and all tools and equipment related thereto; provided, however, that if under generally accepted accounting principles consistently applied, any of the costs referred to in this clause (xi) are required to be capitalized, then such capitalized costs (and, at Landlord's option, any other costs included under clauses (x) and (xi)), together with interest thereon at the Interest Rate (as defined in Section 35.05(j) of this lease) in effect on December 31 of the Operating Year in which such costs were incurred shall be amortized or depreciated, as the case may be, over a period of time that shall be the shorter of: (A) the useful life of the item in question, as reasonably determined by Landlord; or (B) ten (10) years provided however that with respect to any capital improvement and/or any machinery or equipment that is made or

becomes operational, as the case may be, after the calendar year in which the date of this lease occurs, and that has the effect of reducing the expenses that otherwise would be included in Operating Expenses, the amount included in Operating Expenses in any Operating Year until such improvement and/or machinery or equipment has been fully amortized or depreciated, as the case may be, shall be an amount that is the greater of: (X) the amortization or depreciation, as the case may be, of such capital improvement and/or machinery or equipment, that would have been included in Operating Expenses pursuant to the foregoing provisions; or (Y) the amount of savings, as reasonably estimated by Landlord, resulting from the installation and operation of such improvement and/or machinery or equipment; (xii) all Impositions (as hereinafter defined); (xiii) all costs and expenses incurred by Landlord in fulfilling its obligations under the Restrictive Declaration (hereinafter defined), other than any obligations it may have thereunder to construct the Building; (xiv) management fees; (xv) all reasonable costs and expenses of legal, bookkeeping, accounting and other professional services; (xvi) fees, dues and other contributions paid by or on behalf of Landlord or Landlord's affiliates to civic or other real estate organizations; and (xvii) all other fees, costs, charges and expenses properly allocable to the repair, replacement, maintenance, operation and/or security of the Real Property, in accordance with then prevailing customs and practices of the real estate industry in the Borough of Manhattan, City of New York. The term "Operating Expenses," as used and defined under this subsection (e), shall not, however, include the following items: (1) depreciation and amortization (except as provided above in this subsection); (2) interest on and amortization of debts (except as provided above in this subsection); (3) the cost of tenant improvements made for new tenant(s) of the Building; (4) brokerage commissions; (5) financing or refinancing costs; (6) the cost of any work or services performed for any tenant(s) of the Building (including Tenant), whether at the expense of Landlord or Landlord's affiliates or such tenant(s), to the extent that such work or services are in excess of the work or services that Landlord or Landlord's affiliates are required to furnish Tenant under this lease, at the expense of Landlord or Landlord's affiliates; (7) the cost of any electricity consumed in the Premises or any other space in the Building demised to tenant(s); and (8) Taxes. Landlord shall have the right to utilize its own employees for the purpose of performing any services or furnishing any goods in connection with the repair, replacement, maintenance, operation and/or security of the Real Property. In addition, Landlord shall have the right to employ its affiliates for the purpose of performing any services or furnishing any goods in connection with the repair, replacement, maintenance, operation and/or security of the Real Property; provided, however, that Operating Expenses shall not include the amount of any overhead or profit increment paid to an affiliate of Landlord to the extent the same exceeds the overhead or profit increment that would be paid in the absence of such affiliation.

(c) "Operating Year" shall mean each calendar year in which occurs any part of the term of this lease.



(d) "Real Property" shall mean, collectively, the Building (together with all personal property located therein and all fixtures, facilities, machinery and equipment used in the operation thereof, including, but not limited to, all cables, fans, pumps, boilers, heating and cooling equipment, wiring and electrical fixtures and metering, control and distribution equipment, component parts of the HVAC, electrical, plumbing, elevator and any life or property protection systems (including, without limitation, sprinkler systems), window washing equipment and snow removal equipment, telephone, television, radio or other communications equipment), the Land, any property beneath the Land, the curbs, sidewalks and plazas immediately adjoining the Land, and all easements, air rights, development rights and other appurtenances to the Building and/or the Land.

(e) "Taxes" shall mean for purposes of this lease, the amount of "Base Rent," as defined in and payable pursuant to the provisions of the \_\_\_\_\_ Lease (hereinafter defined). Landlord and Tenant hereby acknowledge that rather than being obligated to pay any real estate taxes that may be due and payable with respect to the Land or the Building, under the \_\_\_\_\_ Lease, Landlord (as tenant thereunder) has agreed to pay sums denominated as "Base Rent" thereunder, which sums shall, for purposes of this lease, be referred to as "Taxes."

(f) "Tax Year" shall mean the period of twelve (12) calendar months beginning on July 1st of any calendar year and ending the following June 30th, all or any part of which period occurs during the term of this lease.

(g) "Tenant's Share" shall mean 1.8%.

3.02 (a) (i) Tenant shall pay to Landlord, as Additional Charges for the Premises for each Tax Year, from and including the Tax Year in which the Rent Commencement Date occurs, an amount equal to Tenant's Share of the Taxes for such Tax Year. Any payments to be made by Tenant to Landlord pursuant to this Section 3.02(a) are herein referred to as "Tax Payments."

(b) The Tax Payment for each Tax Year shall be due and payable in equal monthly installments on the first day of each calendar month during the term of this lease, commencing on the first day of the month following the Rent Commencement Date. Landlord shall furnish to Tenant a statement, prior to the commencement of each Tax Year, from and including the Tax Year in which the Rent Commencement Date occurs, setting forth the amount of Tenant's Tax Payment for such Tax Year. The statement to be rendered by Landlord shall set forth in reasonable detail the computation of the particular Tax Payment being billed.

(c) If Landlord shall receive a refund of Taxes for any Tax Year as to which Tenant made a Tax Payment, Landlord shall either pay to Tenant, or credit against subsequent Fixed Rent and Additional Charges under this lease, Tenant's Share of the net refund (after deducting from such total refund the costs and expenses of obtaining the same, including, but not limited to, appraisal, accounting and legal fees); provided, however, such payment or credit to Tenant shall in no event exceed Tenant's Tax Payment paid for such Tax Year.

(d) Nothing contained in this lease shall obligate Landlord to bring any application or proceeding seeking a reduction in real estate taxes, Taxes or assessed valuation. Tenant, for itself and its immediate and remote subtenants and successors in interest hereunder, hereby waives, to the extent permitted by law, any right Tenant may now or in the future have to protest or contest any real estate taxes, Taxes or the assessed valuation of the Land or the Building or to bring any application or proceeding seeking a reduction in real estate taxes, Taxes or assessed valuation or otherwise challenging the determination thereof, and Tenant hereby irrevocably constitutes and appoints Landlord as Tenant's attorney-in-fact, such appointment being coupled with an interest, in Tenant's name, place and stead, and on Tenant's behalf, to initiate, pursue, withdraw, settle or compromise any such application, proceeding or challenge that Tenant has or may have the right to bring.

(e) In respect of any Tax Year that begins prior to the Rent Commencement Date or terminates after the Expiration Date, the Tax Payment in respect of each such Tax Year or tax refund pursuant to subdivision (c) above therefor shall be prorated to correspond to that portion of such Tax Year occurring within the term of this lease.

3.03 (a) Tenant shall pay to Landlord, as Additional Charges for the Premises for each Operating Year from and including the Operating Year in which the Rent Commencement Date occurs, an amount (herein called "Operating Payment") equal to Tenant's Share of the Operating Expenses for such Operating Year.

(b) If during any relevant period (i) any rentable space in the Building shall be vacant or unoccupied, and/or (ii) the tenant or occupant of any space in the Building undertook to perform work or services therein in lieu of having Landlord (or Landlord's affiliates) perform the same and the cost thereof would have been included in Operating Expenses, then, in any such event(s), the Operating Expenses for such period shall be adjusted to reflect the Operating Expenses that would have been incurred if such space had been occupied or if Landlord (or Landlord's affiliates) had performed such work or services, as the case may be.

(c) Landlord may furnish to Tenant, prior to the commencement of each Operating Year a written statement setting forth Landlord's reasonable estimate of the Operating Payment for such Operating Year (an "Operating Estimate"). Tenant shall pay to Landlord on the first day of each month during the Operating Year in which the Operating Payment will be due, an amount equal to one-twelfth (1/12th) of the Operating Estimate for such Operating Year. If, however, Landlord shall not furnish any such Operating Estimate for an Operating Year subsequent to the commencement thereof, then (i) until the first day of the month following the month in which such Operating Estimate is furnished to Tenant, Tenant shall pay to Landlord on the first day of each month an amount equal to the monthly sum payable by Tenant to Landlord under this article in respect of the last month of the preceding Operating Year; (ii) after such Operating Estimate is furnished to Tenant, Landlord shall give notice to Tenant stating whether the installments of the Operating Payment previously made for such Operating Year were greater or less than the installments of the Operating Payment to be made for the Operating Year in which the Operating Payment will be due in accordance with such Operating Estimate, and (A) if there shall be a deficiency, Tenant shall pay the full amount thereof within ten (10) days after demand therefor, or (B) if there shall have been an overpayment, Landlord shall refund to Tenant the amount thereof; and (iii) on the first day of the month following the month in which such Operating Estimate is furnished to Tenant and monthly thereafter throughout the remainder of such Operating Year Tenant shall pay to Landlord an amount equal to one-twelfth (1/12th) of the Operating Payment shown on such Operating Estimate. Landlord may, at any time during each Operating Year, furnish to Tenant a revised Operating Estimate for such Operating Year, and in such case, the Operating Payment for such Operating Year shall be adjusted and paid or refunded or credited as the case may be, substantially in the same manner as provided in the preceding sentence.

(d) Landlord shall furnish to Tenant a Landlord's Statement for each Operating Year as to which an Operating Payment is due hereunder (and shall endeavor to do so within one hundred eighty (180) days after the end of each such Operating Year). If Landlord's Statement shall show that the sums paid by Tenant, if any, under Section 3.03(c) exceeded the Operating Payment to be paid by Tenant for the Operating Year for which such Landlord's Statement is furnished, Landlord shall refund to Tenant the amount of such excess; and if Landlord's Statement for such Operating Year shall show that the sums so paid by Tenant were less than the Operating Payment to be paid by Tenant for such Operating Year, Tenant shall pay the amount of such deficiency within ten (10) days after demand therefor.

3.04 (a) In any case provided in this article in which Tenant is entitled to a refund, Landlord may, in lieu of allowing such refund, credit against future installments of Fixed Rent and Additional Charges any amounts to which Tenant shall be entitled. Nothing in this article shall be construed so as to result in a decrease in the Fixed Rent hereunder. If this lease shall expire before any such credit shall have been fully applied, then (provided Tenant is not in default hereunder) Landlord shall refund to Tenant the unapplied balance of such credit.

(b) The expiration or termination of this lease during any Tax Year or Operating Year (for any part or all of which there is a Tax Payment or Operating Payment under this article) shall not affect the rights or obligations of the parties hereto respecting such payment and any Landlord's Statement or tax bill, as the case may be, relating to such payment may be sent to Tenant subsequent to, and all such rights and obligations shall survive, any such expiration or termination. Any payments due under such Landlord's Statement or tax bill, as the case may be, shall be payable within twenty (20) days after such statement or bill is sent to Tenant.

(c) The parties agree that the computations under this article are intended to constitute a formula for agreed rental escalation and may or may not constitute an actual reimbursement to Landlord for Taxes and Operating Expenses paid by Landlord with respect to the Real Property.

3.05 Landlord's failure to render or delay in rendering a Landlord's Statement with respect to any Operating Year or any component of the Operating Payment shall not prejudice Landlord's right to thereafter render a Landlord's Statement with respect to any such Operating Year or any such component, nor shall the rendering of a Landlord's Statement for any Operating Year prejudice Landlord's right to thereafter render a corrected Landlord's Statement for such Operating Year. Landlord's failure to render or delay in rendering a bill with respect to any installment of Taxes shall not prejudice Landlord's right to thereafter render such a bill for such installment, nor shall the rendering of a bill for any installment prejudice Landlord's right to thereafter render a corrected bill for such installment.

#### **ARTICLE 4**

#### **Intentionally Deleted**

#### **ARTICLE 5**

#### **Subordination, Notice to Superior Lessors and Mortgagees**

5.01 This lease, and all rights of Tenant hereunder, are and shall be subject and subordinate to all ground leases, overriding leases and underlying leases of the Land and/or the Building and/or that portion of the Building of which the Premises are a part, now or hereafter existing, including, without limitation, the \_\_\_\_\_ Leases (hereinafter defined) and to all mortgages that may now or hereafter affect the Land and/or the Building and/or that portion of the Building of which the Premises are a part and/or any of such leases, whether or not such mortgages shall also cover other lands and/or buildings and/or leases, to each and every advance made or hereafter to be made under such mortgages, and to all renewals, modifications, replacements and extensions of such leases and such mortgages and spreaders and consolidations of such mortgages and to the Restrictive Declaration. This section shall be self-operative and no further instrument of subordination shall be required. In confirmation of such subordination, Tenant shall promptly execute, acknowledge and deliver any instrument that Landlord, the lessor under any such lease or the holder of any such mortgage or any of their respective successors in interest may reasonably request to evidence such subordination and if Tenant fails to execute, acknowledge or deliver any such instruments within ten (10) days after request therefor, Tenant hereby irrevocably constitutes and appoints Landlord as Tenant's attorney-in-fact, coupled with an interest, to execute and deliver any such instruments for and on behalf of Tenant. Any lease to which this lease is, at the time referred to, subject and subordinate is herein called "Superior Lease" and the lessor of a Superior Lease or its successor in interest, at the time referred to, is herein called "Superior Lessor"; and any mortgage to which this lease is, at the time referred to, subject and subordinate is herein called "Superior Mortgage" and the holder of a Superior Mortgage is herein called "Superior Mortgagee." Superior Leases, Superior Mortgages and any other agreement, restriction, covenant or condition to which this lease is subordinate, including, but not limited to the Restrictive Declaration are herein collectively referred to as "Superior Instruments" and Superior Lessors, Superior Mortgagees and the beneficiary of any such other agreement, restriction, covenant or condition are herein collectively referred to as "Superior Parties."

5.02 If any act or omission of Landlord would give Tenant the right, immediately or after lapse of a period of time, to cancel or terminate this lease, or to abate or offset against the payment of rent or to claim a partial or total eviction, Tenant shall not exercise such right (a) until it has given written notice of such act or omission to Landlord and each Superior Mortgagee and each Superior Lessor whose name and address shall previously have been furnished to Tenant, and (b) until a reasonable period for remedying such act or omission shall have elapsed following the giving of such notice and following the time when such Superior Mortgagee or Superior Lessor shall have become entitled under such Superior Mortgage or Superior Lease, as the case may be to remedy the same (which reasonable period shall in no event be less than the period to which Landlord would be entitled under this lease or otherwise, after similar notice, to effect such remedy plus thirty (30) days), provided such Superior Mortgagee or Superior Lessor shall with due diligence give Tenant notice of intention to, and commence and continue to, remedy such act or omission.

5.03 If any Superior Party, or any designee of any Superior Party, shall succeed to the rights of Landlord under this lease, whether through possession or foreclosure action or delivery of a new lease or deed, then at the request of such party so succeeding to Landlord's rights (herein called "Successor Landlord") and upon such Successor Landlord's written agreement to accept Tenant's attornment, Tenant shall attorn to and recognize such Successor Landlord as Tenant's landlord under this lease and shall promptly execute and deliver any instrument that such Successor Landlord may reasonably request to evidence such attornment. Upon such attornment this lease shall continue in full force and effect as a direct lease between the Successor Landlord and Tenant upon all of the terms, conditions and covenants as set forth in this lease, except that the Successor Landlord shall not be (a) liable for any previous act or omission of Landlord (or its predecessors in interest); (b) responsible for any monies owing by Landlord to the credit of Tenant; (c) subject to any credits, offsets, claims, counterclaims, demands or defenses that Tenant may have against Landlord (or its predecessors in interest); (d) bound by any payments of rent or other payment for more than the then current month that Tenant might have made to Landlord (or its predecessors in interest); (e) bound by any covenant to undertake or complete any construction of the Premises or any portion thereof; (f) required to account for any security deposit other than any security deposit actually delivered to the Successor Landlord; (g) bound by any obligation to make any payment to Tenant or grant or be subject to any credits, except for services, repairs, maintenance and restoration provided for under this lease to be performed after the date of attornment and that landlords of like properties ordinarily perform at the landlord's expense, it being expressly understood, however, that the Successor Landlord shall not be bound by an obligation to make payment to Tenant with respect to construction performed by or on behalf of Tenant at the Premises; (h) bound by any modification of this lease, including without limitation, any modification that reduces the Fixed Rent or Additional Charges or other charges payable under this lease, or shortens the term thereof, or otherwise materially adversely affects the rights of the lessor thereunder, made without the written consent of the Successor Landlord; or (i) required to remove any person occupying the Premises or any part thereof.

## **ARTICLE 6**

### **Quiet Enjoyment**

6.01 So long as Tenant pays all of the Fixed Rent and Additional Charges and observes and performs all of Tenant's other obligations hereunder, Tenant shall peaceably and quietly have, hold and enjoy the Premises without hindrance, ejection or molestation by Landlord or any person lawfully claiming through or under Landlord, subject, nevertheless, to the provisions of this lease and to Superior Leases and Superior Mortgages. This covenant shall be construed as a covenant running with the Land, and is not, nor shall it be construed as, a personal covenant of Landlord, except to the extent of Landlord's interest in the Real Property and only so long as such interest shall continue, and thereafter Landlord shall be relieved of all liability hereunder and this covenant shall be binding only upon subsequent successors in interest of Landlord's interest in this lease, to the extent of their respective interests, as and when they shall acquire the same, and so long as they shall retain such interest.

## ARTICLE 7

### **Assignment, Subletting and Mortgaging**

7.01 Tenant shall not, whether voluntarily, involuntarily, or by operation of law or otherwise (a) assign in whole or in part or otherwise transfer in whole or in part this lease or the term and estate hereby granted, or offer or advertise to do so, (b) sublet the Premises or any part thereof, or offer or advertise to do so, or allow the same to be used, occupied or utilized by anyone other than Tenant, (c) mortgage, pledge, encumber or otherwise hypothecate this lease or the Premises or any part thereof in any manner whatsoever or (d) permit the Premises or any part thereof to be occupied, or used for desk space, mailing privileges or otherwise, by any person other than Tenant, without in each instance obtaining the prior written consent of Landlord.

7.02 (a) If Tenant, or any subtenant, is a corporation, the provisions of subdivision (a) of Section 7.01 shall apply to a transfer (by one or more transfers) of stock or any other mechanism (such as, by way of example, the issuance of additional stock, a stock voting agreement or change in classes of stock) that results in a change of control of Tenant (or such subtenant) or, in the event of a transfer permitted pursuant to subclauses (x), (y) or (z) below, transfers of stock that result in a change of control of such transferee, as if such transfer of stock that results in a change of control of Tenant or such transferee were an assignment of this lease, and if Tenant or such transferee is a partnership or joint venture, said provisions shall apply with respect to a transfer (by one or more transfers) of an interest in the distributions of profits and losses of such partnership or joint venture or other mechanism (such as, by way of example, the creation of additional general partnership or limited partnership interests) that results in a change of control of such partnership or joint venture, as if such transfer of an interest in the distributions of profits and losses of such partnership or joint venture that results in a change of control of such partnership or joint venture were an assignment of this lease; but said provisions shall not apply to (x) transactions with a corporation in to or with which Tenant is merged or consolidated, (y) transactions with a corporation or partnership to which substantially all of Tenant's assets are transferred or (z) transfers to any corporation that controls or is controlled by Tenant or is under common control with Tenant, provided that in any of such events set forth in subclauses (x), (y) or (z) above (i) the successor to Tenant or transferee is a reputable entity of good character and has a net worth computed in accordance with generally accepted accounting principals at least equal to the greater of (1) the net worth of Tenant immediately prior to such merger, consolidation or transfer, or (2) the net worth of the Tenant herein named on the date of this lease, (ii) proof satisfactory to Landlord of such net worth shall have been delivered to Landlord at least ten (10) business days prior to the effective date of any such transaction, (iii) a duplicate original instrument of assignment and any ancillary documents related thereto, all in form and substance satisfactory to Landlord, duly executed by Tenant, shall have been delivered to Landlord at least ten (10) business days prior to the effective date of any such transaction, (iv) an instrument in form and substance satisfactory to Landlord, duly executed by the assignee, in which such assignee assumes (as of the Commencement Date) observance and performance of, and agrees to be personally bound by, all of the terms, covenants and conditions of this lease on Tenant's part to be performed and observed shall have been delivered to Landlord at least ten (10) business days prior to the effective date of any such transaction and (v) such merger, consolidation or transfer shall be for a good business purpose and, in Landlord's sole judgment, not principally for the purpose of transferring this lease. For purposes of this Section 7.02, the term "control" shall mean, in the case of a corporation, ownership or voting control, directly or indirectly, of at least fifty percent (50%) of all the voting stock, and in case of a joint venture or partnership or similar entity, ownership, directly or indirectly, of at least fifty percent (50%) of all the general or other partnership (or similar) interests therein. Any agreement pursuant to which (x) Tenant is relieved from the obligation to pay, or a third party agrees to pay on Tenant's behalf, all or a part of Fixed Rent or Additional Charges under this lease, and (y) such third party undertakes or is granted any right to assign or attempt to assign this lease or sublet or attempt to sublet



all or any portion of the Premises, shall be deemed an assignment of this lease and subject to the provisions of Section 7.01.

(b) The terms and provisions of Section 7.02(a) above shall be deemed to apply to, and restrict transfers by, any permitted sublessee or assignee of Tenant.

7.03 If this lease be assigned, whether or not in violation of the provisions of this lease, Landlord may collect rent from the assignee. If the Premises or any part thereof are sublet or used or occupied by anybody other than Tenant, whether or not in violation of this lease, Landlord may, after default by Tenant, and expiration of Tenant's time to cure such default, collect rent from the subtenant or occupant. In either event, Landlord may apply the net amount collected to the Fixed Rent and Additional Charges herein reserved, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of any of the provisions of Section 7.01, or the acceptance of the assignee, subtenant or occupant as tenant, or a release of Tenant from the performance by Tenant of Tenant's obligations under this lease. The consent by Landlord to a particular assignment, mortgaging or subletting or use or occupancy by others not expressly permitted by this article. References in this lease to use or occupancy by others (that is, anyone other than Tenant) shall not be construed as limited to subtenants and those claiming under or through subtenants but shall also include licensees and others claiming under or through Tenant, immediately or remotely.

7.04 Any assignment or transfer, whether made with Landlord's consent pursuant to Sections 7.01 or 7.10 or without Landlord's consent pursuant to Section 7.02, shall be made only if, and shall not be effective until, the assignee shall execute, acknowledge and deliver to Landlord an agreement in form and substance satisfactory to Landlord whereby the assignee shall assume the obligations of this lease on the part of Tenant to be performed or observed and whereby the assignee shall agree that the provisions in Section 7.01 shall, notwithstanding such assignment or transfer, continue to be binding upon it in respect of all future assignments and transfers. The original named Tenant covenants that, notwithstanding any assignment or transfer, whether or not in violation of the provisions of this lease, and notwithstanding the acceptance of Fixed Rent and/or Additional Charges by Landlord from an assignee, transferee, or any other party, the original named Tenant shall remain fully liable for the payment of the Fixed Rent and Additional Charges and for the performance and observance of other obligations of this lease on the part of Tenant to be performed or observed.

7.05 The joint and several liability of Tenant and any immediate or remote successor in interest of Tenant and the due performance of the obligations of this lease on Tenant's part to be performed or observed shall not be discharged, released or impaired in any respect by any agreement or stipulation made by landlord extending the time of, or modifying any of the obligations of, this lease, or by any waiver or failure of Landlord to enforce any of the obligations of this lease.

7.06 The listing of any name other than that of Tenant, whether on the doors of the Premises or the Building directory, or otherwise, shall not operate to vest any right or interest in this lease or in the Premises, nor shall it be deemed to be the consent of Landlord to any assignment or transfer of this lease or to any sublease of the Premises or to the use or occupancy thereof by others.

7.07 Notwithstanding anything to the contrary contained in this article, if Tenant shall at any time or times during the term of this lease desire to assign this lease or sublet all (but not less than all) of the Premises, Tenant shall give notice thereof to Landlord, which notice shall be accompanied by (a) a conformed or photostatic copy of the proposed assignment or sublease, the effective or commencement date of which shall be at least 60 days after the giving of such notice, (b) a statement setting forth in reasonable detail the identity of the proposed assignee or subtenant, the nature of its business and its proposed use of the Premises, (c) current financial information with respect to the proposed assignee or subtenant, including, without limitation, its most recent financial report and (d) such other information as Landlord may reasonably request. Except for any assignment or sublease that does not require Landlord's consent pursuant to Section 7.02 hereof such notice shall be deemed an offer from Tenant to Landlord whereby Landlord (or Landlord's designee) may, at its option, (1) sublease the Premises from Tenant upon the terms and conditions hereinafter set forth (if the proposed transaction is a sublease of all of the Premises), or (ii) terminate this lease (if the proposed transaction is an assignment or a sublease of all of the Premises). Said option may be exercised by Landlord by notice to Tenant at any time within 60 days after receipt of such notice, together with all other documentation and information required pursuant to this Section 7.07, has been given by Tenant to Landlord; and during such 60-day period Tenant shall not assign this lease or sublet the Premises to any person.

7.08 If Landlord exercises its option to terminate this lease in the case where Tenant desires either to assign this lease or sublet all of the Premises, then, this lease shall end and expire on the date that such assignment or sublet was to be effective or commence, as the case may be, and the Fixed Rent and Additional Charges shall be paid and apportioned to such date. Tenant agrees to execute such documentation as Landlord may reasonably request in order to effectuate the same and to pay any taxes payable by either party in connection therewith. Tenant shall not be entitled to any consideration or payment from Landlord in connection with any such termination. If the proposed assignee or sublessee was to receive any consideration or concessions from Tenant in connection with the proposed assignment or sublease, then Tenant shall pay such consideration or the value of such concessions to Landlord on the date of the expiration of this lease.

7.09 If Landlord exercises its option to sublet the Premises, such sublease to Landlord or its designee (as subtenant) shall be at the lower of (i) the Fixed Rent and Additional Charges then payable pursuant to this lease or (ii) the rentals set forth in the proposed sublease, and shall be for the same term as that of the proposed subletting, and:

(a) The sublease shall be expressly subject to all of the covenants, agreements, terms, provisions and conditions of this lease except such as are irrelevant or inapplicable, and except as otherwise expressly set forth to the contrary in this section;

(b) Such sublease shall be upon the same terms and conditions as those contained in the proposed sublease, except such as are irrelevant or inapplicable and except as otherwise expressly set forth to the contrary in this section;

(c) Such sublease shall give the sublessee the unqualified and unrestricted right, without Tenant's permission, to assign such sublease or any interest therein and/or to sublet the Premises or any part or parts thereof and to make any and all changes, alterations, and improvements in the Premises;

(d) Such sublease shall provide that any assignee or further subtenant of Landlord or its designee, may, at the election of Landlord, be permitted to make alterations, decorations and installations in the Premises or any part thereof and shall also provide in substance that any such alterations, decorations and installations in the Premises made by any assignee or subtenant of Landlord or its designee may be removed, in whole or in part, 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, at its expense, shall repair any damage and injury to the Premises caused by such removal; and

(e) Such sublease shall also provide that (i) the parties to such sublease expressly negate any intention that any estate created under such sublease be merged with any other estate held by either of said parties, (ii) any assignment or subletting by Landlord or its designee (as the subtenant) may be for any purpose or purposes that Landlord, in Landlord's uncontrolled discretion, shall deem suitable or appropriate, and (iii) that at the expiration of the term of such sublease, Tenant will accept the Premises in its then existing condition, subject to the obligations of the sublessee to make such repairs thereto as may be necessary to preserve the Premises in good order and condition.

7.10 In the event Landlord does not exercise its options pursuant to Section 7.07 hereof and provided that Tenant is not in default of any of Tenant's obligations under this lease, Landlord's consent (which must be in writing and in form satisfactory to Landlord) to the proposed assignment or sublease shall not be unreasonably withheld, provided and upon condition that:

(a) Tenant shall have complied with the provisions of Section 7.07 and Landlord shall not have exercised any of its options under said Section 7.07 within the time permitted therefor;

(b) In Landlord's judgment the proposed assignee or subtenant is engaged in a business and the Premises will be used in a manner that (i) is in keeping with the then standards of the Building, (ii) is limited to the use expressly permitted under this lease, and (iii) will not violate any negative covenant as to use contained in any other lease of space in the Building;

(c) The proposed assignee or subtenant is a reputable person or entity of good character and with sufficient financial worth considering the responsibility involved, and Landlord has been furnished with reasonable proof thereof;

(d) Neither (i) the proposed assignee or sublessee nor (ii) any person that, directly or indirectly, controls, is controlled by, or is under common control with, the proposed assignee or sublessee or any person who controls the proposed assignee or sublessee, is then an occupant of any part of the Building or any other building in the County of New York owned or operated under a ground or underlying lease by Landlord or any person that, directly or indirectly, controls, is controlled by, or is under common control with Landlord or any person who controls Landlord;

(e) The proposed assignee or sublessee is not a person with whom Landlord or Landlord's agent is then (either directly or through an agent or broker) negotiating to lease space in the Building;

(f) The form of the proposed sublease shall be reasonably satisfactory to Landlord and shall comply with the applicable provisions of this article;

(g) The amount of the aggregate rent to be paid by the proposed subtenant is not less than the then current market rent for the Premises as though the Premises were vacant and the rental and other terms and conditions of the sublease are the same as those contained in the proposed sublease furnished to Landlord pursuant to Section 7.07;

(h) Tenant shall reimburse Landlord on demand for any costs that may be incurred by Landlord in connection with said assignment or sublease, including, without limitation, the costs of making investigations as to the acceptability of the proposed assignee or subtenant, and legal costs incurred in connection with the granting of any requested consent;

(i) Tenant shall not have (i) advertised or publicized in any way the availability of the Premises without prior notice to and approval by Landlord, nor shall any advertisement state the name (as distinguished from the address) of the Building or the proposed rental, (ii) listed the Premises for subletting, whether through a broker, agent, representative, or otherwise at a rental rate less than the greater of (1) the Fixed Rent and Additional Charges then payable hereunder for such space, or (2) the Fixed Rent and Additional Charges at which Landlord is then offering to lease other space in the Building; and

(j) Tenant shall have utilized Landlord, or Landlord's designee, as Tenant's sole and exclusive agent in connection with such assignment or sublease, for which Landlord, or Landlord's designee, shall receive a commission in accordance with its standard rates.

7.11 In the event that (a) Landlord fails to exercise any of its options under Section 7.07, and consents to a proposed assignment or sublease, and (b) Tenant fails to execute and deliver the assignment or sublease to which Landlord consented within 45 days after the giving of such consent, then, Tenant shall again comply with all of the provisions and conditions of Section 7.07 before assigning this lease or subletting the Premises.

7.12 With respect to each and every sublease or subletting authorized by Landlord under the provisions of this lease, it is further agreed:

(a) No subletting shall be for a term (including any renewal or extension options contained in the sublease) ending later than one day prior to the expiration date of this lease.

(b) No sublease shall be valid, and no subtenant shall take possession of the Premises or any part thereof, until an executed counterpart of such sublease has been delivered to Landlord.

(c) Each sublease shall provide that it is subject and subordinate to this lease and to any matters to which this lease is or shall be subordinate, and that in the event of termination, reentry or dispossession by Landlord under this lease Landlord may, at its option, take over all of the right, title and interest of Tenant, as sublessor, under such sublease, and such subtenant shall, at Landlord's option, attorn to Landlord pursuant to the then executory provisions of such sublease, except that Landlord shall not be (i) liable for any previous act or omission of Tenant under such sublease, (ii) subject to any credit, offset, claim, counterclaim, demand or defense that such subtenant may have against Tenant, (iii) bound by any previous modification of such sublease or by any previous prepayment of more than the then current month's rent, (iv) bound by any covenant of Tenant to undertake or complete any construction of the Premise or any portion thereof, (v) required to account for any security deposit of the subtenant other than any security deposit actually delivered to Landlord by Tenant, (vi) bound by any obligation to make any payment to such subtenant or grant any credits, except for services, repairs, maintenance and restoration provided for under the sublease to be performed after the date of such attornment, (vii) responsible for any monies owing by Landlord to the credit of Tenant or (viii) required to remove any person occupying the Premises or any part thereof.

(d) Each sublease shall provide that the subtenant may not assign its rights thereunder or further sublet the space demised under the sublease, in whole or in part, without Landlord's consent and shall set forth the terms and provisions of Section 7.02(a) above, with the subtenant being subject to the restrictions in Section 7.02(a) applicable to Tenant.

(e) Each sublease shall comply with the provisions of Section 16.08 hereof.

7.13 (a) If Landlord shall consent to any assignment of this lease or to any sublease, Tenant shall in consideration therefor, pay to Landlord, as Additional Charges an amount equal to the Assignment Consideration (hereinafter defined) or Sublease Consideration (hereinafter defined), as the case may be.

(b) For purposes of this Section 7.13, the term "Assignment Consideration" shall mean an amount equal to all sums and other considerations paid to Tenant by the assignee for or by reason of such assignment (including, but not limited to, sums paid for the sale or rental of Tenant's fixtures, leasehold improvements, equipment, furniture, furnishings or other personal property, less, in the case of a sale thereof, the then net unamortized or undepreciated cost thereof determined on the basis of Tenant's federal income tax returns).

(c) For purposes of this Section 7.13, the term “Sublease Consideration” shall mean in any year of the term of this lease (i) any rents, additional charges or other consideration payable under the sublease to Tenant by the subtenant that is in excess of the Fixed Rent and Additional Charges accruing during such year of the term of this lease pursuant to the terms hereof and (ii) all sums paid for the sale or rental of Tenant’s fixtures, leasehold improvements, equipment, furniture or other personal property, less, in the case of the sale thereof, the then net unamortized or undepreciated cost thereof determined on the basis of Tenant’s federal income tax returns, which net unamortized amount shall be deducted from the sums paid in connection with such sale in equal monthly installments over the balance of the term of the sublease (each such monthly deduction to be in an amount equal to the quotient of the net unamortized amount, divided by the number of months remaining in the term of this lease). The sums payable under this Section 7.13 shall be paid to Landlord as and when paid by the subtenant to Tenant.

(d) Tenant covenants to exercise diligent efforts to collect from the assignee or sublessee, as the case may be, the sums and other consideration that comprise the Assignment Consideration and the rents, additional charges and other consideration that comprise the Sublease Consideration respectively, and to provide to Landlord promptly upon request a detailed accounting of all such items.

7.14 Except for any subletting by Tenant to Landlord or its designee pursuant to the provisions of this article, each subletting shall be subject to all of the covenants, agreements, terms, provisions and conditions contained in this lease. Notwithstanding any such subletting to Landlord or any such subletting to any other subtenant and/or acceptance of rent or additional rent by Landlord from any subtenant, Tenant shall and will remain fully liable for the payment of the Fixed Rent and Additional Charges due and to become due hereunder and for the performance of all the covenants, agreements, terms, provisions and conditions contained in this lease on the part of Tenant to be performed and all acts and omissions of any licensee or subtenant or anyone claiming under or through any subtenant that shall be in violation of any of the obligations of this lease, and any such violation shall be deemed to be a violation by Tenant. Tenant further agrees that notwithstanding any such subletting, no other and further subletting of the Premises by Tenant or any person claiming through or under Tenant (except as provided in Section 7.09) shall or will be made except upon compliance with and subject to the provisions of this article. If Landlord shall decline to give its consent to any proposed assignment or sublease, or if Landlord shall exercise any of its options under Section 7.07, Tenant shall indemnify, defend and hold harmless Landlord against and from any and all loss, liability, damages, costs and expenses (including reasonable counsel fees) resulting from any claims that may be made against Landlord by the proposed assignee or sublessee or by any brokers or other persons claiming a commission or similar compensation in connection with the proposed assignment or sublease.

7.15 If Tenant is a partnership (or is comprised of two (2) or more persons, individually and/or as co-partners of a partnership) or if Tenant's interest in this lease shall be assigned to a partnership (or to two (2) or more persons, individually and/or as co-partners of a partnership) pursuant to this article (any such partnership and such persons are referred to in this section as "Partnership Tenant"), the following provision of this section shall apply to such Partnership Tenant: (a) the liability of each of the parties comprising Partnership Tenant shall be joint and several, (b) each of the parties comprising Partnership Tenant hereby consents in advance to, and agrees to be bound by, any written instrument that may hereafter be executed, changing, modifying or discharging this lease, in whole or in part, or surrendering all or any part of the Premises to Landlord or renewing or extending this lease and by any notices, demands, requests or other communications that may hereafter be given, by Partnership Tenant or by any of the parties comprising Partnership Tenant, (c) any bills, statements, notices, demands, requests or other communications given or rendered to Partnership Tenant or to any of the parties comprising Partnership Tenant shall be deemed given or rendered to Partnership Tenant and to all such parties and shall be binding upon Partnership Tenant and all parties comprising Partnership Tenant, (d) if Partnership Tenant shall admit new partners, all of such new partners shall, by their admission to Partnership Tenant, be deemed to have assumed performance of all of the terms, covenants and conditions of this lease on Tenant's part to be observed and performed, (e) Partnership Tenant shall give prompt notice to Landlord of the admission of any part or partners, and upon demand of Landlord, shall cause each such partner to execute and deliver to Landlord an agreement in form satisfactory to Landlord, wherein each such new partner shall assume performance of all of the terms, covenant and conditions of this lease on Tenant's part to be observed and performed (but neither Landlord's failure to request any such agreement nor the failure of any such new partner to execute or deliver any such agreement to Landlord shall vitiate the provisions of subdivision (d) of this section ) and (f) on each anniversary of the Commencement Date, Partnership Tenant shall deliver to Landlord a list of all partners together with their current residential addresses.

## **ARTICLE 8**

### **Compliance with Laws**

8.01 Tenant shall give prompt notice to Landlord of any notice it receives of the violation of any law or requirement of any public authority with respect to the Premises or the use or occupation thereof. Tenant shall (a) at Tenant's expense, comply with all present and future laws and requirements of any public authorities in respect of the Premises or the use and occupation thereof, or the abatement of any nuisance in, on or about the Premises, and (b) be responsible for the cost of compliance with all present and future laws and requirements of any public authorities in respect of the Real Property arising from (i) Tenant's use of the Premises, (ii) the manner of conduct of Tenant's business or operation of its installations, equipment or other property therein, (iii) any cause or condition created by or at the instance of Tenant, or (iv) the breach of any of Tenant's obligations hereunder, whether or not such compliance requires work that is structural or non-structural, ordinary or extraordinary, foreseen or unforeseen; and Tenant shall pay all the costs, expenses, fines, penalties and damages that may be imposed upon Landlord or any Superior Lessor by reason of or arising out of Tenant's failure to fully and promptly comply with and observe the provisions of this section. Without limiting the generality of the foregoing, Tenant shall comply with all laws that require the installation, modification or maintenance within the Premises of any fire-rated partition, gas, smoke, or fire detector or alarm, any emergency lighting system or any sprinkler or other system to extinguish fires. Landlord, at its expense, shall comply with all other such laws and requirements of public authorities as shall affect the Premises, but may defer compliance so long as Landlord shall be contesting the validity or applicability thereof.

## **ARTICLE 9**

### **Insurance**

9.01 Tenant shall not violate, or permit the violation of, any condition imposed by any insurance policy then issued in respect of the Real Property and shall not do, or permit anything to be done, or keep or permit anything to be kept in the Premises that would subject Landlord, any Superior Lessor or any Superior Mortgagee to any liability or responsibility for personal injury or death or property damage, or that would increase any insurance rate in respect of the Real Property over the rate that would otherwise then be in effect or that would result in insurance companies of good standing refusing to insure the Real Property in amounts reasonably satisfactory to Landlord, or that would result in the cancellation of or the assertion of any defense by the insurer in whole or in part to claims under any policy of insurance in respect of the Real Property.

9.02 If, by reason of any failure of Tenant to comply with the provisions of this lease, the premiums on Landlord's insurance on the Real Property shall be higher than they otherwise would be, Tenant shall reimburse Landlord, on demand and as Additional Charges, for that part of such premiums attributable to such failure on the part of Tenant. A schedule or "make up" of rates for the Real Property or the Premises, as the case may be, issued by the New York Fire Insurance Rating Organization or other similar body making rates for insurance for the Real Property or the Premises, as the case may be, shall be conclusive evidence of the facts therein stated and of the several items and charges in the insurance rate then applicable to the Real Property or the Premises, as the case may be.



9.03 Tenant, at its expense, shall maintain at all times during the term of this lease (a) “all risk” property insurance covering all present and future Tenant’s Property and Tenant’s improvements and betterments to a limit of not less than the full replacement cost thereof and (b) comprehensive general liability insurance, including a contractual liability endorsement, and personal injury liability coverage, in respect of the Premises and the conduct or operation of business therein, with Landlord and its managing agent, if any, and each Superior Lessor and Superior Mortgagee whose name and address shall previously have been furnished to Tenant, as additional insureds, with limits of not less than Five Million Dollars (\$\$5,000,000) combined single limit for bodily injury and property damage liability in any one occurrence, (c) steam boiler, air conditioning or machinery insurance, if there is a boiler or pressure object or similar equipment in the Premises, with Landlord and its managing agent, if any, and each Superior Lessor and Superior Mortgagee whose name and address shall previously have been furnished to Tenant, as additional insureds, with limits of not less than Five Million Dollars (\$\$5,000,000) and (d) when Alterations are in process, the insurance specified in Section 11.05 hereof. The limits of such insurance shall not limit the liability of Tenant. Tenant shall deliver to Landlord and any additional insureds, at least ten (10) days prior to the Commencement Date, such fully paid-for policies or certificates of insurance, in form reasonably satisfactory to Landlord issued by the insurance company or its authorized agent. Tenant shall procure and pay for renewals of such insurance from time to time before the expiration thereof, and Tenant shall deliver to Landlord and any additional insureds such renewal policy or a certificate thereof at least thirty (30) days before the expiration of any existing policy. All such policies shall be issued by companies of recognized responsibility licensed to do business in New York State and rated by Best’s Insurance Reports or any successor publication of comparable standing and carrying a rating of A VIII or better or the then equivalent of such rating, and all such policies shall contain a provision whereby the same cannot be cancelled or modified unless Landlord and any additional insureds are given at least thirty (30) days’ prior written notice of such cancellation or modification. The proceeds of policies providing “all risk” property insurance of Tenant’s property and improvements and betterments shall be payable to Landlord, Tenant and each Superior Lessor and Superior Mortgagee as their interests may appear. Tenant shall cooperate with Landlord in connection with the collection of any insurance monies that may be due in the event of loss and Tenant shall execute and deliver to Landlord such proofs of loss and other instruments that may be required to recover any such insurance monies.

9.04 Each party agrees to have included in each of its insurance policies (insuring the Building in case of Landlord, and insuring Tenant's Property (hereinafter defined) and improvements and betterments in the case of Tenant, against loss, damage or destruction by fire or other casualty) a waiver of the insurer's right of subrogation against the other party during the term of this lease or, if such waiver should be unobtainable or unenforceable, (i) an express agreement that such policy shall not be invalidated if the assured waives the right of recovery against any party responsible for a casualty covered by the policy before the casualty or (ii) any other form of permission for the release of the other party. If such waiver, agreement or permission shall not be, or shall cease to be, obtainable from either party's then current insurance company, the insured party shall so notify the other party promptly after learning thereof, and shall use its best efforts to obtain the same from another insurance company described in Section 9.03 hereof. Each party hereby releases the other party, with respect to any claim (including a claim for negligence) that it might otherwise have against the other party, for loss, damage or destruction with respect to its property occurring during the term of this lease to the extent to which it is, or is required to be, insured under a policy or policies containing a waiver of subrogation or permission to release liability, as provided in the preceding subdivisions of this section. Nothing contained in this Section shall be deemed to relieve either party of any duty imposed elsewhere in this lease to repair, restore or rebuild or to nullify any abatement of rents provided for elsewhere in this lease.

9.05 Landlord may from time to time require that the amount of insurance to be maintained by Tenant under Section 9.03 hereof be increased, so that the amount thereof adequately protects Landlord's interest.

## **ARTICLE 10**

### **Rules and Regulations**

10.01 Tenant and its employees and agents shall faithfully observe and comply with the rules and regulations annexed hereto as Exhibit C, and such reasonable changes therein (whether by modification, elimination or addition) as Landlord at any time or times hereafter may make and communicate to Tenant, that, in Landlord's judgment, shall be necessary for the reputation, safety, care and appearance of the Real Property, or the preservation of good order therein, or the operation or maintenance of the Real Property, and that do not unreasonably affect the conduct of Tenant's business in the Premises (such rules and regulations as changed from time to time being herein called "Rules and Regulations"); provided, however, that in case of any conflict or inconsistency between the provisions of this lease and any of the Rules and Regulations, the provisions of this lease shall control.

10.02 Nothing in this lease contained shall be construed to impose upon Landlord any duty or obligation to enforce the Rules and Regulations against Tenant or any other tenant or any employees or agents of Tenant or any other tenant, and Landlord shall not be liable to Tenant for violation of the Rules and Regulations by another tenant or its employees, agents, invitees or licensees.

## **ARTICLE 11**

## Alterations

11.01 Neither Tenant nor anyone claiming by, through or under Tenant, shall make any improvements, changes, decorations, additions or alterations in or to the Premises (“Alterations”) of any nature without Landlord’s prior written approval in each instance. Any Alterations performed by or on behalf of Tenant in order to prepare the Premises for Tenant’s initial occupancy thereof are sometimes referred to herein as “Initial Alterations” and shall be performed in accordance with the provisions of this Article. Provided Tenant shall be in compliance with the applicable provisions of this article and is not in default under this lease, Tenant may, at Tenant’s sole expense, upon obtaining Landlord’s written approval, which approval shall not be unreasonably withheld, undertake Alterations that are not Material Alterations. A “Material Alteration” is an Alteration that (a) is not limited to the interior of the Premises or that affects the exterior (including the appearance) of the Building, (b) is structural in nature or affects the strength of the Building, (c) affects the usage or the proper functioning of the mechanical, electrical, sanitary, heating, ventilating, air-conditioning or other service system of the Building, (d) has a cost greater than Fifty Thousand Dollars (\$50,000) or (e) requires the consent of any Superior Mortgagee or Superior Lessor.

11.02 (a) Before proceeding with any Alteration, Tenant shall submit to Landlord, for Landlord’s approval, plans and specifications for the Alterations, and Tenant shall not proceed with such Alterations until it obtains Landlord’s written approval of such plans and specifications.

(b) Tenant shall pay to Landlord upon demand, as Additional Charges, Landlord’s reasonable costs and expenses (including, without limitation, the fees of any architect or engineer employed by Landlord or any Superior Lessor or Superior Mortgagee for such purpose) for (i) reviewing said plans and specifications and (ii) inspecting the Alterations to determine whether the Alterations are being performed in accordance with the approved plans and specifications, the requirements of any Superior Lease or Superior Mortgage and all laws and requirements of public authorities. In addition, Tenant shall pay to Landlord an amount equal to fifteen percent (15%) of the cost of any Alterations for field supervision, coordination of Tenant’s contractors and subcontractors and other costs of general conditions.

(c) Tenant agrees that any review or approval by Landlord of any plans and/or specifications with respect to any Alterations or any review or approval of any work performed in connection therewith is solely for Landlord’s benefit, and without any representation or warranty whatsoever to Tenant with respect to the adequacy, correctness or efficiency thereof or otherwise.

11.03(a) Before proceeding with any Alteration that will cost more than Ten Thousand Dollars (\$10,000) (exclusive of the costs of decorating work and items constituting Tenant's Property), as estimated by a reputable contractor designated by Landlord (it being agreed by Landlord and Tenant that such contractor may be an affiliate of Landlord), Tenant shall furnish to Landlord one of the following (as selected by Landlord): (i) a cash deposit or (ii) a performance bond and a labor and materials payment bond (issued by a corporate surety licensed to do business in New York reasonably satisfactory to Landlord), or (iii) an irrevocable, unconditional, negotiable letter of credit, issued by and drawn on a bank or trust company that is a member of the New York Clearing house Association in a form reasonably satisfactory to Landlord; each to be in an amount equal to one hundred twenty-five percent (125%) of the cost of the Alteration, estimated as set forth above. Any such letter of credit shall be for one year and shall be renewed by Tenant each and every year until the Alteration in question is completed and shall be delivered to Landlord not less than thirty (30) days prior to the expiration of the then current letter of credit. Failure to deliver such new letter of credit on or before said date shall be a material breach of this lease and Landlord shall have the right, *inter alia* and without waiving any other rights or remedies available to Landlord, to present the then current letter of credit for payment. In the event that the issuer of any letter of credit shall fail or refuse for any reason whatsoever, to honor a presentation of a Letter of Credit for payment, such event shall also be deemed a material breach of this lease, entitling Landlord to exercise any or all of its remedies hereunder or at law.

(b) Upon (i) the completion of the Alteration in accordance with the terms of this article and (ii) the submission to Landlord of proof evidencing the payment in full for said Alteration, the security deposited with Landlord (or the balance of the proceeds thereof, if Tenant has furnished cash or a letter of credit and if Landlord has drawn on the same shall be returned to Tenant).

(c) Upon the Tenant's failure to properly perform, complete and fully pay for the said Alteration, as determined by Landlord, Landlord shall be entitled to draw on the security deposited under this article to the extent it deems necessary in connection with the said Alteration, the restoration and/or protection of the Premises or the Real Property and the payment or satisfaction of any costs, damages or expenses in connection with the foregoing and/or Tenant's obligations under this article.

11.04 Tenant, at its expense, shall obtain (and furnish true and complete copies to Landlord of) all necessary governmental permits and certificates for the commencement and prosecution of Alterations prior to the commencement thereof and for final approval thereof upon completion, and shall cause Alterations to be performed in compliance therewith, with all applicable laws and requirements of public authorities, with all applicable requirements of insurance bodies, with the plans and specifications approved by Landlord and with all Superior Instruments. Alterations shall be diligently performed in a good and workmanlike manner, using new materials and equipment at least equal in quality and class to the better of (i) the original installations of the Building or (ii) the then standards for the Building established by Landlord. Alterations shall be performed by contractors first approved by Landlord; provided, however, that any Alterations in or to the mechanical, electrical, sanitary, heating, ventilating, air-conditioning, life safety or other systems of the Building shall be performed only by the contractor(s) designated by Landlord. Alterations shall be performed in such manner as not to unreasonably interfere with or delay and as not to impose any additional expense upon Landlord in the construction, maintenance, repair or operation of the Building or with the use and enjoyment by other tenants of other tenant space in the Building; and if any such additional expense shall be incurred by Landlord as a result of Tenant's performance of any Alterations, Tenant shall pay such additional expense upon demand as Additional Charges. Throughout the performance of Alterations, Tenant, at its expense, shall carry, or cause to be carried, worker's compensation insurance in statutory limits, "all risk" Builders Risk coverage and general liability insurance, with completed operation endorsement, for any occurrence in or about the Real Property, under which Landlord and its agent and any Superior Lessor and Superior Mortgagee whose name and address shall previously have been furnished to Tenant shall be named as parties insured, in such limits as Landlord may reasonably require, with insurers reasonably satisfactory to Landlord. Tenant shall furnish Landlord with reasonably satisfactory evidence that such insurance is in effect prior to the commencement of Alterations and, on request, at reasonable intervals thereafter during the continuance of Alterations. No Alterations shall involve the removal of any fixtures, equipment or other property in the Premises that are not Tenant's Property without Landlord's prior written consent, unless such fixtures, equipment or other property shall be promptly replaced at Tenant's expense with new fixtures, equipment or other property of like utility and at least equal value.

11.05 Tenant agrees that the exercise of its rights pursuant to the provisions of Article 11 or of any other provisions of this lease or the Exhibits hereto shall not be done in a manner that would violate Landlord's union contractors affecting the Real Property, or create any work stoppage, picketing, labor disruption or dispute or any interference with the business of Landlord or any tenant or occupant of the Building. Tenant shall immediately stop work or other activity if Landlord notifies Tenant that continuing such work or activity would violate Landlord's union contractors affecting the Real Property, or create any work stoppage, picketing, labor disruption or dispute or any interference with the business of Landlord or any tenant or occupant of the Building.

11.06 Tenant, at its expense, and with diligence and dispatch, shall procure the cancellation or discharge of all notices of violation arising from or otherwise connected with Alterations, or any other work, labor, services or materials done for or supplied to Tenant, or any person claiming through or under Tenant, that shall be issued by the Department of Buildings of the City of New York or any other public authority having or asserting jurisdiction. Tenant shall defend, indemnify and save harmless Landlord from and against any and all mechanic's and other liens and encumbrances filed in connection with Alterations, or any other work, labor, services or materials done for or supplied to Tenant, or any person claiming through or under Tenant, including, without limitation, security interests in any materials, fixtures or articles so installed in and constituting part of the Premises and against all costs, expenses and liabilities incurred in connection with any such lien or encumbrance or any action or proceeding brought thereon; Tenant, at its expense, shall procure the satisfaction or discharge of record of all such liens and encumbrances within twenty (20) days after the filing thereof and Tenant's failure to do so shall be deemed a default hereunder entitling Landlord to all of the rights and remedies provided for herein or at law.

11.07 Tenant will promptly upon the completion of an Alteration deliver to Landlord "as-built" drawings of any Alterations Tenant has performed or caused to be performed in the Premises, and (a) if any Alterations by Tenant are then proposed or in progress, Tenant's drawings and specifications, if any, for such Alterations and (b) if any Alterations by Landlord for Tenant were performed or are then proposed or in progress, the "as-built" drawings, if any, or the drawings and specifications, if any, as the case may be, for such Alterations, in Tenant's possession.

11.08 All fixtures and equipment installed or used by Tenant in the Premises shall be fully paid for by Tenant in cash and shall not be subject to conditional bills of sale, chattel mortgage or other title retention agreements.

11.09 Tenant shall keep records of Tenant's Alterations costing in excess of \$\_\_\_\_\_ and of the cost thereof. Tenant shall, within forty-five (45) days after demand by Landlord, furnish to Landlord copies of such records and cost if Landlord shall require same in connection with any proceeding to reduce the assessed valuation of the Real Property, or in connection with any other proceeding or for any other reason or purpose.

11.10 Tenant may not claim any sales or other tax exemption solely by virtue of the ownership of the Land by the City of New York.

## **ARTICLE 12**

### **Landlord's and Tenant's Property**

12.01 All fixtures, equipment, improvements and appurtenances attached to or built into the Premises prior to, at the commencement of or during the term of this lease, whether or not by or at the expense of Tenant, shall be and remain a part of the Premises, shall, upon the expiration or sooner termination of this lease, be deemed the property of Landlord and shall not be removed by Tenant, except as provided in Section 12.02. Further, any carpeting or other personal property in the Premises on the Commencement Date, unless installed and paid for by Tenant, shall be and shall remain Landlord's property and shall not be removed by Tenant. Notwithstanding the foregoing provisions, upon notice to Tenant no later than thirty (30) days prior to the Expiration Date or within ten (10) days after any earlier expiration of the term of this lease, Landlord may require Tenant to remove all or part of the foregoing fixtures, equipment, improvements and appurtenances attached to or built into the Premises during the term of this lease. In such event Tenant shall remove the foregoing from the Premises prior to the expiration of this lease at Tenant's expense. Upon such removal Tenant shall immediately and at its expense, repair and restore the Premises to the condition existing prior to installation and repair any damage to the Premises or the Building due to such removal.

12.02 All movable partitions, business and trade fixtures, machinery and equipment, communications equipment and office equipment, whether or not attached to or built into the Premises, that are installed in the Premises by or for the account of Tenant without expense to Landlord and can be removed without structural damage to the Building, and all furniture, furnishings and other articles of movable personal property owned by Tenant and located in the Premises (herein collectively called "Tenant's Property") shall be and shall remain the property of Tenant and may be removed by Tenant at any time during the term of this lease; provided that if any of Tenant's Property is removed, Tenant shall repair or pay the cost of repairing any and all damage to the Premises and/or to the Building resulting from the installation and/or removal thereof. Any equipment or other property for which Landlord shall have granted any allowance or credit to Tenant shall not be deemed to have been installed by or for the account of Tenant without expense to Landlord, shall not be considered Tenant's Property and shall be deemed to the property of Landlord.

12.03 At or before the Expiration Date of this lease (or within 15 days after any earlier termination of this lease) Tenant, at its expense, shall remove from the Premises all of Tenant's Property (except such items thereof as Landlord shall have expressly permitted to remain, which property shall become the property of Landlord), and Tenant shall repair any and all damage to the Premises and pay the cost of repairing any and all damage to the Building resulting from any installation and/or removal of Tenant's Property.

12.04 Any other items of Tenant's Property that shall remain in the Premises after the Expiration Date of this lease, or within 15 days following an earlier termination date, may at the option of Landlord, be deemed to have been abandoned, and in such case such items may be retained by Landlord as its property or disposed of by Landlord, without accountability, in such manner as Landlord shall determine, at Tenant's expense.

## **ARTICLE 13**

## **Repairs and Maintenance**

13.01 Tenant shall, at its expense, throughout the term of this lease, take good care of and maintain in good order and condition the Premises and the fixtures and improvements therein including, without limitation, the property that is deemed Landlord's pursuant to Section 12.01 and Tenant's Property. Tenant shall be responsible for all repairs, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen or unforeseen, in and to the Premises, and shall be responsible for the cost of all repairs, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen or unforeseen, in and to the Building and the facilities and systems thereof, the need for which arises out of (a) the performance or existence of Alterations, (b) the installation, use or operation of the property that is deemed Landlord's, pursuant to Sections 12.01 and 12.02 and Tenant's Property, (c) the moving of the property that is deemed Landlord's pursuant to Sections 12.01 and 12.02 and Tenant's Property in or out of the Building, (d) the act, omission, misuse or neglect of Tenant or any of its subtenants or its or their employees, agents, contractors or invitees or (e) design flaws in any of Tenant's plans and specifications regardless of the fact that such Tenant's plans may have been approved by Landlord. Tenant, at its expense, shall promptly replaced all scratched, damaged or broken doors, glass, windows and solar film attached to window glass in and about the Premises, including, without limitation, entrance doors and shall be responsible for all repairs, maintenance and replacement of wall and floor coverings in the Premises and for all the repair, maintenance and replacement of all horizontal portions of the systems and facilities of the Building within or exclusively serving the Premises (except the perimeter hearing system), including without limitation the sanitary and electrical fixtures and equipment therein. All repairs in and to the Premises for which Tenant is responsible shall be promptly performed by Tenant in a manner that will not interfere with the use of the Building by others. Any repairs in or to the Building and the facilities and systems thereof for which Tenant is responsible may be performed by Landlord at Tenant's expense; but Landlord may, at its option, before commencing any such work or at any time thereafter, require Tenant to furnish to Landlord such security, in form and amount as Landlord shall deem necessary to assure the payment for such work by Tenant.

13.02 Tenant shall give Landlord prompt notice of any defective condition in any plumbing, heating, air-conditioning or ventilation system or electrical lines or other mechanical systems located in, servicing or passing through the Premises. Following such notice, Landlord shall remedy the conditions, but at the expense of Tenant if Tenant is responsible for same under the provisions of this article.

13.03 Except as otherwise expressly provided in this lease, Landlord shall have no liability to Tenant, nor shall Tenant's covenants and obligations under this lease be reduced or abated in any manner whatsoever, by reason of any inconvenience, annoyance, interruption or injury arising from Landlord's making any repairs or changes that Landlord is required or permitted by this lease, or required by law, to make in or to the fixtures, equipment or appurtenances of the Building or the Premises.

## **ARTICLE 14**



### **Electric Energy**

14.01 Tenant shall obtain electric energy for all of Tenant's electrical needs in the Premises, including but not limited to the air conditioning system servicing the Premises, directly from the public utility company furnishing electric service to the Building. The costs of such service shall be paid by Tenant directly to such public utility, but a default by Tenant in the payment of any bill or charge of such company shall be deemed a default by Tenant under this lease.

14.02 Tenant covenants and agrees that at all times its installations and use of electricity shall never exceed the capacity of existing feeders to the Building or the risers or wiring serving the Premises. If (i) in Landlord's reasonable opinion Tenant's installation overloads the electrical vaults or any riser(s) and/or switches in or serving the Building or (ii) Tenant requests additional power in addition to that which is being supplied by the public utility company on the date of initial occupancy, then if and to the extent unallocated power is available in the Building for use by Tenant without resulting in allocation to Tenant of a disproportionate amount of unallocated power, Landlord shall, at Tenant's cost and expense, provide and install, in compliance with all laws, an additional riser or risers and/or any and all switch or switches to connect additional power to the Premises, and Tenant agrees to pay to Landlord, within ten (10) days after rendition by Landlord of a bill therefor, its then established connection charge for each additional amp of power or portion thereof so supplied to the Premises, together with the cost of installing such additional risers, switches and related equipment.

14.03 Landlord shall not in any way be liable or responsible to Tenant for any loss, damage or expense that Tenant may sustain or incur if (i) the supply of electric energy to the Premises is temporarily interrupted or (ii) the quantity or character of electric service is changed or is no longer available or suitable for Tenant's requirements, or (iii) by reason of any requirement of the public utility serving the Building or (iv) for any other reason whatsoever.

14.04 At Landlord's option, Landlord shall furnish and install all replacement lighting, tubes, lamps, bulbs and ballasts required in the Demised Premises; and in such event, Tenant shall pay to Landlord or its designated contractor upon demand the then established reasonable charges therefor of Landlord or its designated contractor, as the case may be.

## **ARTICLE 15**

### **Landlord's Services**

15.01 (a) After the term of this lease shall have commenced and Tenant shall have taken occupancy of the Premises for the conduct of business, Landlord will provide the following services to the Premises in the manner hereinafter more particularly set forth: (i) heat, ventilation and condenser water for the air conditioning; (ii) elevator service; (iii) domestic hot and cold water; and (iv) cleaning.

(b) As used herein, the terms “Business Hours” shall mean the hours between 8:00 a.m. and 9:00 p.m. and “Business Days” shall mean all days except Saturdays, Sundays, New Year’s Day, Washington’s Birthday, Columbus Day, Martin Luther King Day, Memorial Day, Independence Day, Thanksgiving, the day following Thanksgiving, Christmas and any other days that shall be either (i) observed by both the federal and the state governments as legal holidays or (ii) designated as a holiday by the applicable Building Service Union Employee Service contract or by the applicable Operating Engineers contract.

15.02(a) Landlord, during Business Hours on Business days, shall furnish heat, ventilation and condenser water to the air handling system on the floor on which the Premises are located as may be reasonably required (except as otherwise provided in this lease and except for any special requirements of Tenant arising from its particular use of the Premises).

(b) (i) Landlord shall provide passenger elevator service to each floor of the Premises at all times during Business Hours of Business Days and at least one of such passenger elevators shall be subject to call at all other times. Landlord shall provide freight elevator service to the Premises on a first come-first served basis (i.e., no advance scheduling) during Business Hours of Business Days. Freight elevator service shall also be provided to the Premises on a reserved basis at all other times, upon the payment of Landlord’s then established charges therefor, which shall be Additional Charges hereunder. The use of all elevators shall be on a non-exclusive basis and shall be subject to the Rules and Regulations.

(ii) At any time or times all or any of the elevators in the Building may, at the option of Landlord, be manual and/or automatic elevators, and Landlord shall be under no obligation to furnish an elevator operator for any automatic elevator. If Landlord shall at any time or times furnish any elevator operator for any automatic elevator, Landlord may discontinue furnishing such elevator operator without any diminution, reduction or abatement of rent.

(c) Landlord shall furnish reasonable quantities of hot and cold water to the floor(s) on which the Premises are located for core lavatory and cleaning purposes only. If Tenant shall require water for any other purpose, Landlord need only furnish cold water at the Building core riser through a capped outlet on the floor on which the Premises is located (within the core of the Building), and the cost of heating such water, as well as the cost of piping and supplying such water to the Premises, shall be paid by Tenant. Landlord may install and maintain, at Tenant’s expense, meters to measure Tenant’s consumption of cold water and/or hot water for such other purposes. Tenant shall reimburse Landlord for the quantities of cold water and hot water shown on such meters (including Landlord’s standard charge for the production of such hot water (if produced by Landlord), on demand).

(d) (i) Landlord shall cause the Premises, including the exterior and the interior of the windows thereof, to be cleaned in accordance with and subject to the specifications and provisions set forth in Exhibit E annexed hereto and made a part hereof. Tenant covenants and agrees to sort and/or segregate at its sole cost and expense any refuse and rubbish to the extent required by applicable law(s) and/or requirement(s).

(ii) Landlord, its cleaning contractor and their respective employees shall have access to the Premises after 6:00 p.m. and before 8:00 a.m. and shall have the right to use, without charge therefor, all light, power and water in the Premises reasonably required to clean the Premises as required under this subsection (d).

(iii) Tenant shall not clean, nor require, permit, suffer or allow any windows in the Premises to be cleaned, from the outside in violation of Section 202 of the Labor Law, or any other applicable law.

15.03 Except as otherwise expressly provided above, Landlord shall not be required to provide any services to the Premises.

15.04 Only Landlord or persons approved by Landlord shall be permitted to furnish or sell laundry, linen, towels, drinking water, ice, food, beverages, bootblacking, barbering and other similar supplies and services to tenants. Landlord may fix the circumstances under which such supplies and services are to be furnished or sold. Landlord expressly reserves the right at any time to act as or to designate an exclusive supplier of all or any one or more of said supplies and services, provided that the quality thereof and the charges therefor shall be reasonably comparable to that of other suppliers in the midtown area of Manhattan in the City of New York. Landlord expressly reserves the right to exclude from the Building any person not so designated by Landlord. However, Tenant, its regular office employees or invitees may personally bring food or beverages into the Building for consumption within the Premises solely by Tenant, its regular office employees or invitees.

## **ARTICLE 16**

### **Access and Name of Building**

16.01 Except for the space within the inside surfaces of all walls, hung ceilings, floors, windows and doors bounding the Premises, all of the Building, including, without limitation, exterior Building walls, core corridor walls, beams, columns and doors and any core corridor entrance, any terraces or roofs adjacent to the Premises, and any space in or adjacent to the Premises used for shafts, stacks, pipes, conduits, fan rooms, ducts, electric or other utilities, sinks or other Building facilities, and the use thereof, as well as access thereto through the Premises for the purposes of operation, maintenance, decoration and repair, are reserved to Landlord and persons authorized by Landlord.

16.02 Landlord reserves the right, and Tenant shall permit Landlord and persons authorized by Landlord, to install, erect, use and maintain pipes, ducts and conduits in and through the Premises.

16.03 Landlord and persons authorized by Landlord shall have the right to enter and/or pass through the Premises at any time or times (a) to examine the Premises and to show them to actual and prospective Superior Lessors, Superior Mortgagees, or prospective purchasers, mortgagees or lessees of the Building; (b) to make such repairs, alterations, additions and improvements in or to the Premises and/or in or to the Building or its facilities and equipment as Landlord or persons authorized by Landlord is or are required or desires to make, and (c) to read any utility meters located therein. Landlord and such authorized persons shall be allowed to take all materials into and upon the Premises that may be required in connection therewith, without any liability to Tenant and without any reduction of Tenant's covenants and obligations hereunder.

16.04 If at any time any windows of the Premises are either temporarily darkened or obstructed by reason of any repairs, improvements, maintenance and/or cleaning in or about the Building (or permanently darkened or obstructed if required by law) or covered by any translucent material for the purpose of energy conservation, or if any part of the Building, other than the Premises, is temporarily or permanently closed or inoperable, the same shall be without liability to Landlord and without any reduction or diminution of Tenant's obligations under this lease.

16.05 During the time period referred to in subsection 7.07(a) and during the period of twenty-four (24) months prior to the expiration date of this lease, Landlord and persons authorized by Landlord may exhibit the Premises to prospective tenants.

16.06 Landlord reserves the right, at any time, without it being deemed a constructive eviction and without incurring any liability to Tenant therefor, or affecting or reducing any of Tenant's covenants and obligations hereunder, to make or permit to be made such changes, alterations, additions and improvements in or to the Building and the fixtures and equipment thereof, as well as in or to the street entrances, doors, halls, passages, elevators, escalators and stairways thereof, and other public parts of the Building, as Landlord shall deem necessary or desirable.

16.07 Landlord reserves the right to name the Building and to change the name or address of the Building at any time and from time to time. Neither this lease nor any use by Tenant shall give Tenant any easement or other right in or to the use of any door or any passage or any concourse or any plaza connecting the Building with any subway or any other building or to any public conveniences, and the use of such doors, passages, concourses, plazas and conveniences may without notice to tenant, be regulated or discontinued at any time by Landlord.

16.08 Tenant shall not use the words "\_\_\_\_\_" in any advertising or for any other promotional or profit-making purpose (except by way of a solely geographical reference or a reference to the name of the Building or Landlord) and any sublease that Tenant may enter into pursuant to the provisions of Article 7 hereof shall contain a provision identical to this Section 16.08.

16.09 If Tenant shall not be personally present to open and permit an entry into the Premises at any time when for any reason an entry therein shall be urgently necessary by reason of fire or other emergency, Landlord or Landlord's agents may forcibly enter the same without rendering Landlord or Landlord's agents shall accord reasonable care to Tenant's property) and without in any manner affecting the obligations and covenants of this lease.

## ARTICLE 17

### **Notice of Occurrences**

17.01 Tenant shall give prompt notice to Landlord of (a) any occurrence in or about the Premises for which Landlord might be liable, (b) any fire or other casualty in the Premises, (c) any damage to or defect in the Premises, including the fixtures, equipment and appurtenances thereof, for the repair of which Landlord might be responsible, and (d) any damage to or defect in any part or appurtenances of the Building's sanitary, electrical, heating, ventilating, air-conditioning, elevator or other systems located in or passing through the Premises or any part thereof.

## ARTICLE 18

### **Non-Liability and Indemnification**

18.01 Neither Landlord, any Superior Lessor or any Superior Mortgagee, nor any partner, director, officer, shareholder, principal, Agent, servant or employee of Landlord, any Superior Lessor or any Superior Mortgagee (in any case whether disclosed or undisclosed), shall be liable to Tenant for any loss, injury or damage to Tenant or to any other person, or to its or their property, irrespective of the cause of such injury, damage or loss, nor shall the aforesaid parties be liable for any damage to property of Tenant or of others entrusted to employees of Landlord nor for loss of or damage to any such property by theft or otherwise unless caused by or resulting from the sole negligence of Landlord, its agents, servants or employees in the operation or maintenance of the Premises or the Building, without contributory negligence on the part of Tenant or any of its subtenants or licensees, or its or their employees, agents or contractors. Further, neither Landlord, any Superior Lessor or any Superior Mortgagee, nor any partner, director, officer, agent, servant or employee of Landlord, any Superior Lessor or any Superior Mortgagee, shall be liable (a) for any such damage caused by other tenants or persons in, upon or about the Building, or caused by operations in construction of any private, public or quasi-public work; or (b) even if negligent, for consequential damages arising out of any loss of use of the Premises or any equipment, facilities or other Tenant's Property therein by Tenant or any person claiming through or under Tenant.

18.02 Tenant shall indemnify and hold harmless Landlord and all Superior Lessors and Superior Mortgagees and its and their respective partners, directors, officers, agents and employees from and against any and all claims (including claims by Superior Lessors and Superior Mortgagees) arising from or in connection with (a) the conduct or management of the Premises or of any business therein, or any work or thing whatsoever done, or any condition created (other than by Landlord) in or about the Premises during the term of this lease or during the period of time, if any, prior to the Commencement Date that Tenant may have been given access to the Premises; (b) any act, omission or negligence of Tenant or any of its subtenants or licensees or its or their partners, directors, officers, agents, employees, invitees or contractors; (c) any accident, injury or damage whatever (unless caused solely by Landlord's negligence) occurring in, at or upon the Premises; and (d) any breach or default by Tenant in the full and prompt payment and performance of Tenant's obligations under this lease; together with all costs, expenses and liabilities incurred in or in connection with each such claim or action or proceeding brought thereon, including, without limitation, all attorneys' fees and expenses. In case any action or proceeding be brought against Landlord and/or any Superior Lessor or Superior Mortgagee and/or its or their partners, directors, officers, agents and/or employees by reason of any such claim, Tenant, upon notice from Landlord or such Superior Lessor or Superior Mortgagee, shall resist and defend such action or proceeding (by counsel reasonably satisfactory to Landlord or such Superior Lessor or Superior Mortgagee).

## **ARTICLE 19**

### **Damage or Destruction**

19.01 If the Building or the Premises shall be partially or totally damaged or destroyed by fire or other casualty (and if this lease shall not be terminated as in this article hereinafter provided), (a) Landlord shall repair the damage to and restore and rebuild the Building and the Premises (including Tenant's improvements and betterments but excluding the property that is deemed Tenant's Property pursuant to Section 12.02) with reasonable dispatch after notice to Landlord of the damage or destruction and the collection of the insurance proceeds attributable to such damage and (b) Tenant shall repair the damage to and restore and repair the property that is deemed Tenant's Property pursuant to Section 12.02 with reasonable dispatch after such damage or destruction. Such work by Tenant shall be deemed Alterations for the purposes of Article 11. The proceeds of policies providing coverage for Tenant's improvements and betterments shall be paid to Landlord. Concurrently with the collection of any insurance proceeds attributable to the damage of Tenant's improvements and betterments, and as a condition precedent to Landlord's obligation to commence those repairs required to be performed by Landlord pursuant to this Section 19.01, Tenant shall pay to Landlord (i) the amount of any deductible under the policy insuring Tenant's improvements and betterments and (ii) the amount, if any, by which the cost of repairing and restoring Tenant's improvements and betterments as estimated by a reputable contractor designated by Landlord exceeds the available insurance proceeds therefor. Tenant shall also pay to Landlord, upon demand, the amount by which the cost of repairing and restoring Tenant's improvements and betterments exceeds the amount described in the immediately preceding sentences. The amounts due in accordance with the two immediately preceding sentences shall be Additional charges under this lease and payable by Tenant to Landlord upon demand.

19.02 Subject to the provisions of Section 19.05, if all or part of the Premises shall be damaged or destroyed or rendered completely or partially untenable on account of fire or other casualty, the Fixed Rent and the Additional Charges under Article 3 hereof shall be abated in the proportion that the untenable area of the Premises bears to the total area of the Premises, for the period from the date of the damage or destruction to (i) the date the damage to the Premises shall be substantially repaired (provided, however, that if in Landlord's judgment such repairs would have been substantially completed at an earlier date but for Tenant's having failed to reasonably cooperate with Landlord in effecting such repairs, then the Premises shall be deemed to have been repaired substantially on such earlier date and any reduction or abatement shall cease) or (ii) if the Building and not the Premises is so damaged or destroyed, the date on which the Premises shall be made tenantable; provided, however, should Tenant or any of its subtenants reoccupy a portion of the Premises during the period the repair work is taking place and prior to the date that the Premises are substantially repaired or made tenantable, the Fixed Rent and the Additional Charges allocable to such reoccupied portion, based upon the proportion that the area of the reoccupied portion of the Premises bears to the total area of the Premises, shall be payable by Tenant from the date of such occupancy.

19.03 If (i) the Building shall be totally damaged or destroyed by fire or other casualty, or if the Building shall be so damaged or destroyed by fire or other casualty (whether or not the Premises are damaged or destroyed) that its repair or restoration requires more than two hundred seventy (270) days or the expenditure of more than twenty percent (20%) of the full insurable value of the Building immediately prior to the casualty or (ii) if the Premises shall be totally or substantially (i.e., for this purpose, more than thirty percent (30%)) damaged or destroyed (as estimated in any such case by a reputable contractor, registered architect or licensed professional engineer designated by Landlord), then in any such case Landlord may terminate this lease by giving Tenant notice to such effect within one hundred eighty (180) days after the date of the casualty. For the purpose of this Section only, "full insurable value" shall mean replacement cost less the cost of footings, foundations and other structures below the street and first floors of the Building.

19.04 Tenant shall not be entitled to terminate this lease and Landlord shall have no liability to Tenant for inconvenience, loss or business or annoyance arising from any repair or restoration of any portion of the Premises or of the Building pursuant to this article. Landlord shall use reasonable efforts to make such repair or restoration promptly and in such manner as not unreasonably to interfere with Tenant's use and occupancy of the Premises, but Landlord shall not be required to do such repair or restoration work except during Business Hours of Business Days.

19.05 Notwithstanding any of the foregoing provisions of this article, if by reason of some act or omission on the part of Tenant or any of its subtenants or its or their partners, directors, officers, servants, employees, agents or contractors, either (a) Landlord or any Superior Lessor or any Superior Mortgagee shall be unable to collect all of the insurance proceeds (including, without limitation, rent insurance proceeds) applicable to damage or destructions of the Premises or the Building by fire or other casualty, or (b) the Premises or the Building shall be damaged or destroyed or rendered completely or partially untenable on account of fire or other casualty, then, without prejudice to any other remedies that may be available against Tenant, there shall be no abatement or reduction of Fixed Rent or Additional Charges. Further, nothing contained in this article shall relieve Tenant from any liability that may exist as a result of any damage or destruction by fire or other casualty.

19.06 Landlord will not carry insurance of any kind on Tenant's Property or on Tenant's improvements or betterments and shall not be obligated to repair any damage to or replace Tenant's Property and Tenant agrees to look solely to its insurance for recovery of any damage to or loss of Tenant's Property. If Tenant shall fail to maintain such insurance, Landlord shall have the right to obtain such insurance and the cost thereof shall be Additional Charges under this lease and payable by Tenant to Landlord on demand.

19.07 The provisions of this article shall be deemed an express agreement governing any case of damage or destruction of the Premises by fire or other casualty, and Section 227 of the Real Property Law of the State of New York, providing for such a contingency in the absence of an express agreement, and any other law of like import, now or hereafter in force, shall have no application in such case.



## **ARTICLE 20**

### **Eminent Domain**

20.01 If the whole of the Building or the Premises shall be taken by condemnation or in any other manner for any public or quasi-public use or purpose, this lease and the term and estate hereby granted shall terminate as of the date of vesting of title on such taking (herein called "Date of the Taking"), and the Fixed Rent and Additional Charges shall be prorated and adjusted as of such date.

20.02 If any part of the Building or the land shall be so taken, this lease shall be unaffected by such taking, except that (a) Landlord may, at its option, terminate this lease by giving Tenant notice to that effect within ninety (90) days after the Date of the Taking, and (b) if twenty (20) percent or more of the rentable area of the Premises shall be so taken and the remaining rentable area of the Premises shall not be reasonably sufficient for Tenant to continue feasible operation of its business, Tenant may terminate this lease by giving Landlord notice to that effect within 90 days after the Date of the Taking. This lease shall terminate on the date that such notice from Landlord or Tenant to the other shall be given, and the Fixed Rent and Additional Charges shall be prorated and adjusted as of such termination date. Upon such partial taking and this lease continuing in force as to any part of the Premises, the Fixed Rent and Tenant's Share shall be adjusted in the proportion that the area of the Premises taken bears to the total area of the Premises.

20.03 Landlord shall be entitled to receive the entire award or payment in connection with any taking without reduction therefrom for any estate vested in Tenant by this lease or any value attributable to the unexpired portion of the term of this lease and Tenant shall receive no part of such award except as hereinafter expressly provided in this article. Tenant hereby expressly assigns to Landlord all of its right, title and interest in and to every such award or payment and waives any right to the value of the unexpired portion of the term of this lease.

20.04 If the temporary use or occupancy of all or any part of the Premises shall be taken by condemnation or in any other manner for any public or quasi-public use or purpose during the term of this lease, Tenant shall be entitled, except as hereinafter set forth, to receive that portion of the award or payment for such taking that represents compensation for the use and occupancy of the Premises, for the taking of Tenant's Property and for moving expenses, and Landlord shall be entitled to receive that portion that represents reimbursement for the cost of restoration of the Premises. This lease shall be and remain unaffected by such taking and Tenant shall continue responsible for all of its obligations hereunder insofar as such obligations are not affected by such taking and shall continue to pay in full the Fixed Rent and Additional Charges when due. If the period of temporary use or occupancy shall extend beyond the Expiration Date of this lease, that part of the award that represents compensation for the use and occupancy of the Premises (or a part thereof) shall be divided between Landlord and Tenant so that Tenant shall receive so much thereof as represents the period up to and including such Expiration Date and Landlord shall receive so much thereof as represents the period after such Expiration Date. All monies paid as, or as part of, an award for temporary use and occupancy for a period beyond the date to which the Fixed Rent and Additional Charges have been paid shall be received, held and applied by Landlord as a trust fund for payment of the Fixed Rent and Additional Charges becoming due hereunder.

20.05 In the event of a taking of less than the whole of the Building and/or the Land that does not result in termination of this lease, or in the event of a taking for a temporary use or occupancy of all or any part of the Premises that does not result in a termination of this lease, (a) Landlord, at its expense, and whether or not any award or awards shall be sufficient for the purpose, shall proceed with reasonable diligence to repair the remaining parts of the Building and the Premises (other than those parts of the Premises that are deemed Landlord's property pursuant to Section 12.01 and Tenant's Property) to substantially their former condition to the extent that the same may be feasible (subject to reasonable changes that Landlord shall deem desirable) and so as to constitute a complete and rentable Building and Premises and (b) Tenant, at its expense, and whether or not any award or awards shall be sufficient for the purpose, shall proceed with reasonable diligence to repair the remaining parts of the Premises that are deemed Landlord's property pursuant to Section 12.01 and Tenant's Property, to substantially their former condition to the extent that the same may be feasible, subject to reasonable changes that shall be deemed Alterations.

## **ARTICLE 21**

### **Surrender**

21.01 On the Expiration Date or upon any earlier termination of this lease, or upon any reentry by Landlord upon the Premises, Tenant shall quit and surrender the Premises to Landlord "broom-clean" and in good order, condition and repair, except for ordinary wear and tear and such damage or destruction as Landlord is required to repair or restore under this lease, and Tenant shall remove all of the Tenant's Property therefrom except as otherwise expressly provided in this lease.

21.02 No act or thing done by Landlord or its agents shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such surrender shall be valid unless in writing and signed by Landlord and each Superior Lessor and Superior Mortgagee whose lease of mortgage, as the case may be, provides that no such surrender may be accepted without its consent.

## **ARTICLE 22**

### **Conditions of Limitation**

22.01 This lease and the term and estate hereby granted are subject to the limitation that whenever Tenant, or any guarantor of Tenant's obligations under this lease, shall make an assignment for the benefit of creditors, or shall file a voluntary petition under any bankruptcy or insolvency law, or whenever a petition shall be filed by or against Tenant or such guarantor under the reorganization provisions of the United States Bankruptcy Code or under the provisions of any law of like import, or whenever a petition shall be filed by Tenant, or such guarantor, under the arrangement provisions of the United States Bankruptcy Code or under the provisions of any law or like import, or whenever a permanent receiver of Tenant, or such guarantor, or of or for the property of Tenant, or such guarantor, shall be appointed, then Landlord (a) if such event occurs without the acquiescence of Tenant, or such guarantor, as the case may be, at any time after the event continues for sixty (60) days, or (b) in any other case at any time after the occurrence of any such event, may give Tenant a notice of intention to end the term of this lease at the expiration of five days from the date of service of such notice of intention, and upon the expiration of said five-day period this lease and the term and estate hereby granted, whether or not the term shall theretofore have commenced, shall terminate with the same effect as if that day were the expiration date of this lease, but Tenant shall remain liable for damages as provided in Article 24.

22.02 This lease and the term and estate hereby granted are subject to the further limitations that:

- (a) If Tenant shall default in the payment of any Fixed Rent or Additional Charges, and such default shall continue for five (5) days after notice, or

- (b) If Tenant shall, whether by action or inaction, be in default of any of its obligations under this lease (other than a default in the payment of Fixed Rent or Additional Charges) and such default shall continue and not be remedied as soon as practicable and in any event within fifteen (15) days after Landlord shall have given to Tenant a notice specifying the same, or, in the case of a default that cannot with due diligence be cured within a period of fifteen (15) days and the continuance of which for the period required for cure will not (i) subject Landlord or any Superior Lessor or any Superior Mortgagee to prosecution for a crime or any other fine or charge, (ii) subject the Premises or any part thereof or the Building or Land, or any part thereof, to being condemned or vacated, (iii) subject the Building or Land, or any part thereof, to any lien or encumbrance, or (iv) result in the termination of any Superior Lease or foreclosure of any Superior Mortgage, if Tenant shall not (x) within said fifteen (15) day period advise Landlord of Tenant's intention to take all steps necessary to remedy such default, (y) duly commence within said 15-day period, and thereafter diligently prosecute to completion all steps necessary to remedy the default and (z) complete such remedy within a reasonable time after the date of said notice of Landlord, or
- (c) If any event shall occur or any contingency shall arise whereby this lease or the estate hereby granted or the unexpired balance of the term hereof would, by operation of law or otherwise, devolve upon or pass to any person, firm or corporation other than Tenant, except as expressly permitted by Article 7, or
- (d) If Tenant shall vacate or abandon the Premises (and the fact that any of Tenant's Property remains in the Premises shall not be evidence that Tenant has not vacated or abandoned the Premises), or
- (e) If there shall be any default by Tenant (or any person that, directly or indirectly, controls, is controlled by, or is under common control with Tenant) under any other lease with Landlord (or any person that, directly or indirectly, controls is controlled by, or is under common control with Landlord) that shall not be remedied within the applicable grace period, if any, provided therefor under such other lease, or
- (f) If a default of the kind set forth in subsection 22.02(a) or (b) shall occur and if either (i) Tenant shall cure such default within the applicable grace period or (ii) Landlord shall, in its sole discretion, permit Tenant to cure such default after the applicable grace period has expired, and if a similar default shall occur more than once within the next three hundred sixty-five (365) days, whether or not such similar default or defaults is or are cured within the applicable grace period.

then in any of said cases Landlord may give to Tenant a notice of intention to end the term of this lease at the expiration of five (5) days from the date of the service of such notice of intention, and upon the expiration of said five (5) days this lease and the term and estate hereby granted, whether or not the term shall theretofore have commenced, shall terminate with the same effect as if that day was the day herein definitely fixed for the end and expiration of this lease, but Tenant shall remain liable for damages as provided in Article 24.

22.03 (a) If Tenant shall have assigned its interest in this lease, and this lease shall thereafter be disaffirmed or rejected in any proceeding under the United States Bankruptcy Code or under the provisions of any Federal, state or foreign law of like import, or in the event of termination of this lease by reason of any such proceeding, the assignor or any of its predecessors in interest under this lease, upon request of Landlord given within ninety (90) days after such disaffirmance or rejection shall (a) pay to Landlord all Fixed Rent and Additional Charges then due and payable to Landlord under this lease to and including the date of such disaffirmance or rejection and (b) enter into a new lease as lessee with Landlord of the Premises for a term commencing on the effective date of such disaffirmance or rejection and ending on the Expiration Date, unless sooner terminated as in such lease provided, at the same Fixed Rent and Additional Charges and upon the then executory terms, covenants and conditions as are contained in this lease, except that (i) the rights of the lessee under the new lease, shall be subject to any possessory rights of the assignee in question under this lease and any rights of persons claiming through or under such assignee, (ii) such new lease shall require all defaults existing under this lease to be cured by the lessee with reasonable diligence, and (iii) such new lease shall require the lessee to pay all Additional Charges that, had this lease not been disaffirmed or rejected, would have become due after the effective date of such disaffirmance or rejection with respect to any prior period. If the lessee shall fail or refuse to enter into the new lease within ten (10) days after Landlord's request to do so, then in addition to all other rights and remedies by reason of such default, under this lease, at law or in equity, Landlord shall have the same rights and remedies against the lessee as if the lessee had entered into such new lease and such new lease had thereafter been terminated at the beginning of its term by reason of the default of the lessee thereunder.

(b) If pursuant to the Bankruptcy Code Tenant is permitted to assign this lease in disregard of the restrictions contained in Article 7 (or if this lease shall be assumed by a trustee), the trustee or assignee shall cure any default under this lease and shall provide adequate assurance of future performance by the trustee or assignee including (i) the source of payment of rent and performance of other obligations under this lease, for which adequate assurance shall mean the deposit of cash security with Landlord in an amount equal to the sum of one year's Fixed Rent then reserved hereunder plus an amount equal to all Additional Charges payable under Article 3 for the calendar year preceding the year in which such assignment is intended to become effective, which deposit shall be held by Landlord, without interest, for the balance of the term as security for the full and faithful performance of all of the obligations under this lease on the part of Tenant yet to be performed, and that any such assignee of this lease shall have a net worth exclusive of good will, computed in accordance with generally accepted accounting principles, equal to at least ten (10) times the aggregate of the annual Fixed Rent reserved hereunder plus all Additional Charges for the preceding calendar year as aforesaid and (ii) that the use of the Premises shall in no way diminish the reputation of the Building as a first-class office building or impose any additional burden upon the Building or increase the services to be provided by Landlord. If all defaults are not cured and such adequate assurance is not provided within 60 days after there has been an order for relief under the Bankruptcy Code, then this lease shall be deemed rejected, Tenant or any other person in possession shall vacate the Premises, and Landlord shall be entitled to retain any rent or security deposit previously received from Tenant and shall have no further liability to Tenant or any person claiming through Tenant or any trustee. If Tenant receives or is to receive any valuable consideration for such an assignment of this lease, such consideration, after deducting therefrom (a) the brokerage commissions, if any, and other expenses reasonably incurred by Tenant for such assignment and (b) any portion of such consideration reasonably designed by the assignee as paid for the purchase of Tenant's Property in the Premises, shall be and become the sole exclusive property of Landlord and shall be paid over to Landlord directly by such assignee.

(c) If Tenant's trustee, Tenant or Tenant as debtor-in-possession assumes this lease and proposes to assign the same (pursuant to Title 11 U.S.C. Section 365, as the same may be amended) to any person, including, without limitation, any individual, partnership or corporate entity, who shall have made a bona fide offer to accept an assignment of this lease on terms acceptable to the trustee, Tenant or Tenant as debtor-in-possession, then notice of such proposed assignment, setting forth (x) the name and address of such person, (y) all of the terms and conditions of such offer, and (z) the adequate assurance to be provided Landlord to assure such person's future performance under this lease, including, without limitation, the assurances referred to in Title 11 U.S.C. Section 365(b)(3) (as the same may be amended), shall be given to Landlord by the trustee, Tenant or Tenant as debtor-in-possession no later than twenty (20) days after receipt by the trustee, Tenant or Tenant as debtor-in-possession of such offer, but in any event no later than ten (10) days prior to the date that the trustee, Tenant or Tenant as debtor-in-possession shall make application to a court of competent jurisdiction for authority and approval to enter into such assignment and assumption, and Landlord shall thereupon have the prior right and option, to be exercised by notice to the trustee, Tenant or Tenant as debtor-in-possession, given at any time prior to the effective date of such proposed assignment, to accept an assignment of this lease upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such person, less any brokerage commissions that may be payable out of the consideration to be paid by such person, less any brokerage commissions that may be payable out of the consideration to be paid by such person for the assignment of this lease.

## **ARTICLE 23**

### **Reentry by Landlord**

23.01 If Tenant shall default in the payment of any Fixed Rent or Additional Charges, and such default shall continue for five (5) days, or if this lease shall terminate as provided in Article 22, Landlord or Landlord's agents and employees may immediately or at any time thereafter reenter the Premises, or any part thereof, either by summary dispossess proceedings or by any suitable action or proceeding at law, or by force or otherwise, without being liable to indictment, prosecution or damages therefor, and may repossess the same, and may remove any person therefrom, to the end that Landlord may have, hold and enjoy the Premises. The word "reenter," as used herein, is not restricted to its technical legal meaning. If this lease is terminated under the provisions of Article 22, or if Landlord shall reenter the Premises under the provisions of this article, or in the event of the termination of this lease, or of reentry, by or under any summary dispossess or other proceeding or action or any provision of law by reason of default hereunder on the part of Tenant, Tenant shall thereupon pay to Landlord the Fixed Rent and Additional Charges payable up to the time of such termination of this lease, or of such recovery of possession of the Premises by Landlord, as the case may be, and shall also pay to Landlord damages as provided in Article 24.

23.02 In the event of a breach or threatened breach by Tenant of any of its obligations under this lease, Landlord shall also have the right of injunction. The special remedies to which Landlords may resort hereunder are cumulative and are not intended to be exclusive of any other remedies to which Landlord may lawfully be entitled at any time and Landlord may invoke any remedy allowed at law or in equity as if specific remedies were not provided for herein.

23.03 If this lease shall terminate under the provisions of Article 22, or if Landlord shall reenter the Premises under the provisions of this article, or in the event of the termination of this lease, or of reentry by or under any summary dispossession or other proceeding or action or any provision of law by reason of default hereunder on the part of Tenant, Landlord shall be entitled to retain all monies, if any, paid by Tenant to Landlord, whether as advance rent, security or otherwise, but such monies shall be credited by Landlord against any Fixed Rent or Additional Charges due from Tenant at the time of such termination or reentry or, at Landlord's option, against any damages payable by Tenant under Article 24 or pursuant to law.

## **ARTICLE 24**

### **Damages**

24.01 If this lease is terminated under the provisions of Article 22, or if Landlord shall reenter the Premises under the provisions of Article 23, or in the event of the termination of this lease, or of reentry, by or under any summary dispossession or other proceeding or action or any provision of law by reason of default hereunder on the part of Tenant, Tenant shall pay to Landlord as damages, at the election of Landlord, either:

- (a) A sum that at the time of such termination of this lease or at the time of any such re-entry by Landlord, as the case may be, represents the then value of the excess, if any, of (i) the aggregate amount of the Fixed Rent and the Additional Charges under Article 3 that would have been payable by Tenant (conclusively presuming the average monthly Additional Charges under Article 3 to be the same as were payable for the last 12 calendar months, or if less than 12 calendar months have then elapsed since the Commencement Date, all of the calendar months immediately preceding such termination or reentry) for the period commencing with such earlier termination of this lease or the date of any such reentry, as the case may be, and ending with the date contemplated as the expiration date hereof if this lease had not so terminated or if Landlord had not so reentered the Premises, over (ii) the aggregate rental value of the Premises for the same period, or



- (b) sums equal to the Fixed Rent and the Additional Charges under Article 3 that would have been payable by Tenant had this lease not so terminated, or had Landlord not so reentered the Premises, payable upon the due dates therefor specified herein following such termination or such reentry and until the date completed as the expiration date hereof if this lease had not so terminated or if Landlord had not so reentered the Premises, provided, however, that if Landlord shall relet the Premises during said period, Landlord shall credit Tenant with the net rents received by Landlord from such reletting, such net rents to be determined by first deducting from the gross rents as and when received by Landlord from such reletting the expenses incurred or paid by Landlord in terminating this lease or in reentering the Premises and in securing possession thereof, as well as the expenses of reletting, including, without limitation, altering and preparing the Premises for new tenants, brokers' commissions, legal fees, and all other expenses properly chargeable against the Premises and the rental therefrom, it being understood that any such reletting may be for a period shorter or longer than the remaining term of this lease; but in no event shall Tenant be entitled to receive any excess of such net rents over the sums payable by Tenant to Landlord hereunder, nor shall Tenant be entitled in any suit for the collection of damages pursuant to this subdivision to a credit in respect of any net rents from a reletting, except to the extent that such net rents are actually received by Landlord. If the Premises or any part thereof should be relet in combination with other space, then proper apportionment on a square foot basis shall be made of the rent received from such reletting and of the expenses of reletting.

If the Premises or any part thereof be relet by Landlord for the unexpired portion of the term of this lease, or any part thereof, before presentation of proof or such damages to any court, commission or tribunal, the amount of rent reserved upon such reletting shall, prima facie, be the fair and reasonable rental value for the Premises, or part thereof, so relet during the term of the reletting. Landlord shall not be liable in any way whatsoever for its failure or refusal to relet the Premises or any part thereof, or if the Premises or any part thereof are relet, for its failure to collect the rent under such reletting, and no such refusal or failure to relet or failure to collect rent shall release or affect Tenant's liability for damages or otherwise under this lease.

24.02 Suit or suits for the recovery of such damages, or any installments thereof, may be brought by Landlord from time to time at its election, and nothing contained herein shall be deemed to require Landlord to postpone suit until the date when the term of this lease would have expired if it had not been so terminated under the provisions of Article 22, or had Landlord not reentered the Premises. Nothing herein contained shall be construed to limit or preclude recovery by Landlord against Tenant of any sums or damages to which, in addition to the damages particularly provided above, Landlord may lawfully be entitled by reason of any default hereunder on the part of Tenant. Nothing herein contained shall be construed to limit or prejudice the right of Landlord to prove for and obtain as damages by reason of the termination of this lease or reentry on the Premises for the default of Tenant under this lease an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved whether or not such amount be greater than any of the sums referred to in Section 24.01.

24.03 In addition, if this lease is terminated under the provisions of Article 22, or if Landlord shall, reenter the Premises under the provisions of Article 23, Tenant agrees that:

(a) The Premises then shall be in the condition in which Tenant has agreed to surrender the same to Landlord at the expiration of the term hereof;

(b) Tenant shall have performed prior to any such termination any covenant of Tenant contained in this lease for the making of any Alterations or for restoring or rebuilding the Premises or the Building, or any part thereof; and

(c) For the breach of any covenant of Tenant set forth above in this Section 24.03, Landlord shall be entitled immediately, without notice or other action by Landlord, to recover, and Tenant shall pay, as and for liquidated damages therefor, the cost of performing such covenant (as estimated by an independent contractor selected by Landlord).

## **ARTICLE 25**

### **Affirmative Waivers**

25.01 Tenant, on behalf of itself and any and all persons claiming through or under Tenant, does hereby waive and surrender all right and privilege that it, they or any of them might have under or by reason of any present or future law, to redeem to the Premises or to have a continuance of this lease after being dispossessed or ejected therefrom by process of law or under the terms of this lease or after the termination of this lease or after the termination of this lease as provided in this lease.

25.02 If Tenant is in arrears in payment of Fixed Rent or Additional Charges, Tenant waives Tenant's right, if any, to designate the items to which any payments made by Tenant are to be credited, and Tenant agrees that Landlord may apply any payments made by Tenant to such items as Landlord sees fit, irrespective of and notwithstanding any designation or request by Tenant as to the items that any such payments shall be credited.

25.03 Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either against the other on any matter whatsoever arising out of or in any way connected with this lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, including, without limitation, any claim of injury or damage, and any emergency and other statutory remedy with respect thereto.

25.04 Tenant shall not interpose any counterclaim of any kind in any action or proceeding commenced by Landlord to recover possession of the Premises.

## **ARTICLE 26**

### **No Waivers**

26.01 The failure of either party to insist in any one or more instances upon the strict performance of any one or more of the obligations of this lease, or to exercise any election herein contained, shall not be construed as a waiver or relinquishment for the future of the performance of such one or more obligations of this lease or of the right to exercise such election, and such right to insist upon strict performance shall continue and remain in full force and effect with respect to any subsequent breach, act or omission. The receipt by Landlord of Fixed Rent or partial payments thereof or Additional Charges or partial payments thereof with knowledge of breach by Tenant of any obligation of this lease shall not be deemed a waiver of such breach.

26.02 If there be any agreement between Landlord and Tenant providing for the cancellation of this lease upon certain provisions or contingencies and/or an agreement for the renewal hereof at the expiration of the term, the right to such renewal or the execution of a renewal agreement between Landlord and Tenant prior to the expiration of the term shall not be considered an extension thereof or a vested right in Tenant to such further term so as to prevent Landlord from cancelling this lease and any such extension thereof during the remainder of the original term; such privilege, if and when so exercised by Landlord, shall cancel and terminate this lease and any such renewal or extension; any right herein contained on the part of Landlord to cancel this lease shall continue during any extension or renewal hereof; any option on the part of Tenant herein contained for an extension or renewal hereof shall not be deemed to give Tenant any option for a further extension beyond the first renewal or extended term.

## **ARTICLE 27**

### **Curing Tenant's Defaults**

27.01 If Tenant shall default in the performance of any of Tenant's obligations under this lease, Landlord, any Superior Lessor or any Superior Mortgagee without thereby waiving such default, may (but shall not be obligated to) perform the same for the account and at the expense of Tenant, without notice in a case of emergency, and in any other case only if such default continues after the expiration of the applicable grace period, if any. If Landlord effects such cure by bonding any lien that Tenant is required to bond or otherwise discharge, Tenant shall obtain and substitute a bond for Landlord's bond at its sole cost and expense and reimburse Landlord for the cost of Landlord's bond.

27.02 Bills for any expenses incurred by Landlord or any Superior Lessor or any Superior Mortgagee in connection with any such performance by it for the account of Tenant, and bills for all costs, expenses and disbursements of every kind and nature whatsoever, including reasonable counsel fees, involved in collecting or endeavoring to collect the Fixed Rent or Additional Charges or any part thereof or enforcing or endeavoring to enforce any rights against Tenant or Tenant's obligations hereunder, under or in connection with this lease or pursuant to law, including any such cost, expense and disbursement involved in instituting and prosecuting summary proceedings or in recovering possession of the Premises after default by Tenant or upon the expiration or sooner termination of this lease, and interest on all sums advanced by Landlord or such Superior Lessor or Superior Mortgagee under this Section and/or Section 27.01 (at the Interest Rate or the maximum rate permitted by law, whichever is less) may be sent by Landlord or such Superior Lessor or Superior Mortgagee to Tenant monthly, or immediately, at its option, and such amounts shall be due and payable as Additional Charges in accordance with the terms of such bills.

## **ARTICLE 28**

### **Broker**

28.01 Tenant covenants, warrants and represents that no broker except Newmark Real Estate Services, Inc. (the "Broker") was instrumental in bringing about or consummating this lease and that Tenant had no conversations or negotiations with any broker except the Broker concerning the leasing of the Premises. Tenant agrees to indemnify and hold harmless Landlord against and from any claims for any brokerage commissions and all costs, expenses and liabilities in connection therewith, including, without limitation, attorneys' fees and expenses, arising out of any conversations or negotiations had by Tenant with any broker other than the Broker.

## **ARTICLE 29**

### **Notices**

29.01 Any notice, statement, demand, consent, approval or other communication required or permitted to be given, rendered or made by either party to this lease or pursuant to any applicable law or required of public authority (collectively, “notices”) shall be in writing (whether or not so stated elsewhere in this lease) and shall be deemed to have been properly given, rendered or made only if sent by registered or certified mail, return receipt requested, posted in a United States post office station or letter box in the continental United States, addressed to the other party at the address hereinabove set forth (except that after the Commencement Date, Tenant’s address, unless Tenant shall give notice to the contrary, shall be the Building), and shall be deemed to have been given, rendered or made on the day so mailed, unless mailed outside of the State of New York, in which case it shall be deemed to have been given, rendered or made on the first Business Day after the day so mailed. Either party may, by notice as aforesaid, designate a different address or addresses for notices intended for it. Notwithstanding the foregoing, with respect to an occurrence presenting imminent danger to the health or safety of persons or damage to property in, on or about the Building or during a postal strike, notices may be hand delivered to a part at the address to which notices to that party are to be sent, provided that the same notice is also sent in the manner set forth above.

29.02 Notices hereunder from Landlord may be given by Landlord’s managing agent, if one exists, or by Landlord’s attorney.

### **ARTICLE 30**

#### **Estoppel Certificates**

Each party agrees, at any time and from time to time, on or prior to the tenth day following a written request by the other party, to execute and deliver to the other a statement certifying that this lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), certifying the Commencement Date, Expiration Date and the dates to which the Fixed Rent and Additional Charges have been paid, certifying whether or not any security deposit has been delivered in connection herewith and the amount thereof, stating whether or not, to the best of the signer, the other party is in default in performance of any of its obligations under this lease, and, if so, specifying each such default of which the signer shall have knowledge and stating whether or not, to the best of the signer, any event has occurred that with the giving of notice or passage of time, or both, would constitute such a default, and, if so, specifying each such event, it being intended that any such statement delivered pursuant hereto shall be deemed a representation and warranty to be relied upon by the party requesting the certificate and by others with whom such party may be dealing, regardless of independent investigation. Tenant also shall include or confirm in any such statement such other information concerning this lease as Landlord may reasonably request. Tenant also shall execute and deliver such a statement to any Superior Party within ten (10) days after request by any such Superior Party therefor, and to include or confirm any such statement such other information concerning this lease as such Superior Party may reasonably request.

## ARTICLE 31

### **Intentionally Omitted**

## ARTICLE 32

### **No Representation by Landlord**

32.01 Tenant expressly acknowledges and agrees that Landlord has not made and is not making, and Tenant, in executing and delivering this lease, is not relying upon, any warranties, representations, promises or statements, except to the extent that the same are expressly set forth in this lease or in any other written agreement that may be made between the parties concurrently with the execution and delivery of this lease and shall expressly refer to this lease. All understandings and agreements heretofore had between the parties are merged in this lease and any other written agreement(s) made concurrently herewith, which alone fully and completely express the agreement of the parties and which are entered into after full investigation, neither party relying upon any statement or representation not embodied in this lease or any other written agreement(s) made concurrently herewith.

## ARTICLE 33

### **Intentionally Omitted**

## ARTICLE 34

### **Holdover**

34.01 (a) In the event the lease is not renewed or a new lease is not entered into between the parties, and if Tenant shall then hold over after the expiration of the term of this lease, and if Landlord shall then not proceed to remove Tenant from the Premises in the manner permitted by law (or shall not have given written notice to Tenant that Tenant must vacate the Premises) irrespective of whether or not Landlord accepts rent from Tenant for a period beyond the Expiration Date, the parties hereby agree that Tenant's occupancy of the Premises after the expiration of the term shall be under a month-to-month tenancy commencing on the first day after the expiration of the term, which tenancy shall be upon all of the terms set forth in this lease except Tenant shall pay on the first day of each month of the holdover period as Fixed Rent, an amount equal to three (3) times one-twelfth of the sum of the Fixed Rent and Additional Charges payable by Tenant during the last year of the term of this lease (i.e., the year immediately prior to the holdover period). Further, Landlord shall not be required to perform any work, furnish any materials or make any repairs within the Premises during the holdover period. It is further stipulated and agreed that if Landlord shall, at any time after the expiration of the original term or after the expiration of any term created thereafter, proceed to remove Tenant from the Premises as a holdover, the Fixed Rent for the use and occupancy of the Premises during any holdover period shall be calculated in the same manner as set forth above. In addition to the foregoing, Landlord shall be entitled to recover from Tenant any losses or damages arising from such holdover.

(b) Anything to the foregoing notwithstanding, the acceptance of any rent paid by Tenant pursuant to subsection (a) above shall not preclude Landlord from commencing and prosecuting a holdover or summary eviction proceeding, and the preceding sentence shall be deemed to be an “agreement expressly providing otherwise” within the meaning of Section 232-c of the Real Property Law of the State of New York.

(c) If Tenant shall hold over or remain in possession of any portion of the Premises beyond the Expiration Date or sooner termination of this lease, Tenant shall be subject not only to summary proceeding and all damages related thereto, but also to any damages arising out of any lost opportunities (and/or new leases) by Landlord to re-let the Premises (or any part thereof). All damages to Landlord by reason of such holding over by Tenant may be the subject of a separate action and need not be asserted by Landlord in any summary proceedings against Tenant.

## **ARTICLE 35**

### **Miscellaneous Provisions and Definitions**

35.01 No agreement shall be effective to change, modify, waive, release, discharge, terminate or effect an abandonment of this lease, in whole or in part, including, without limitation, this Section 35.01, unless such agreement is in writing, refers expressly to this lease and is signed by the party against whom enforcement of the change, modification, waiver, release, discharge, termination or effectuation of the abandonment is sought. If Tenant shall at any time request Landlord to sublet the Premises for Tenant’s account, Landlord or its agent is authorized to receive keys for such purposes without releasing Tenant from any of its obligations under this lease, and Tenant hereby releases Landlord of any liability for loss or damage to any of the Tenant’s Property in connection with such subletting.

35.02 Except as otherwise expressly provided in this lease, the obligations of this lease shall bind and benefit the successors and assigns of the parties hereto with the same effect as if mentioned in each instance where a party is named or referred to; provided, however, that (a) no violation of the provisions of Article 7 shall operate to vest any rights in any successor or assignee of Tenant and (b) the provisions of this article shall not be construed as modifying the conditions of limitation contained in Article 22.

35.03 Tenant shall look only to Landlord’s estate and property in the Land and the Building for the satisfaction of Tenant’s remedies, for the collection of a judgment (or other judicial process) requiring the payment of money by Landlord in the event of any default by Landlord hereunder, and no other property or assets of Landlord or its partners, officers, directors, shareholders or principals, disclosed or undisclosed, shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant’s remedies under or with respect to this lease, the relationship of Landlord and Tenant hereunder or Tenant’s use or occupancy of the Premises.

35.04 The obligations of Tenant hereunder shall be in no wise affected, impaired or excused, nor shall Landlord have any liability whatsoever to Tenant, nor shall it be deemed a constructive eviction, nor shall Tenant be entitled to any diminution or abatement of rent or other compensation, nor shall this lease be affected because (a) Landlord is unable to fulfill, or is delayed in fulfilling, any of its obligations under this lease by reason of accidents, strike, work slowdown, lock-out or other labor trouble, inability to secure a proper supply of fuel, gas, steam, water, electricity, labor or supplies, governmental preemption of priorities or other controls in connection with a national or other public emergency or shortages of fuel, supplies or labor resulting therefrom, or any other cause, whether similar or dissimilar, beyond Landlord's reasonable control; or (b) of the stoppage or interruption of any heating, elevator, escalator, lighting, ventilating, air-conditioning, steam, power, electricity, water, cleaning or other service to be furnished hereunder and/or the stoppage or interruption of the use of any Building facilities or systems at such times as may be necessary and for as long as may reasonably be required by reason of any of the causes set forth in clause (a) of this sentence, or the making of repairs, alterations or improvements; or (c) of any failure or defect in the supply, quantity or character of electricity or water furnished to the Premises, by reason of any requirement, act or omission of the public utility or others serving the Building with electric energy, steam, oil, gas or water, or for any other reason whether similar or dissimilar, beyond Landlord's reasonable control.

35.05 For the purposes of this lease, the following terms have the meanings indicated:

(a) The term "mortgage" shall include a mortgage and/or a deed of trust, and the term "holder of a mortgage" or "mortgagee" or words of similar import shall include a mortgagee of a mortgage or a beneficiary of a deed of trust.

(b) The term "laws and requirements of any public authorities" and words of a similar import shall mean laws and ordinances of any or all of the federal, state, city, town, county, borough and village governments and rules, regulations, orders and directives of any and all departments, subdivisions, bureaus, agencies or offices thereof, and any other governmental, public or quasi-public authorities having jurisdiction over the Building and/or the Premises, and the direction of any public officer pursuant to law, whether now or hereafter in force.

(c) The term "requirements of insurance bodies" and words of similar import shall mean rules, regulations, orders and other requirements of the New York Board of Underwriters and/or the New York Fire Insurance Rating Organization and/or any other similar body performing the same or similar functions and having jurisdiction or cognizance over the Building and/or the Premises, whether now or hereafter in force.



(d) The term “Tenant” shall mean the Tenant herein named or any assignee or other successor in interest (immediate or remote) of the Tenant herein named, which at the time in question is the owner of the Tenant’s estate and interest granted by this lease; but the foregoing provisions of this subsection shall not be construed to permit any assignment of this lease or to relieve the Tenant herein named or any assignee or other successor in interest (whether immediate or remote) of the Tenant herein named from the full and prompt payment, performance and observance of the covenants, obligations and conditions to be paid, performed and observed by Tenant under this lease.

(e) The term “Landlord” shall mean only the owner, at the time in question, of the Building or that portion of the Building of which the Premises are a part, or of a lease of the Building or that portion of the Building of which the Premises are a part, so that in the event of any transfer or transfers of title to the Building or of Landlord’s interest in a lease of the Building or such portion of the Building, the transferor shall be and hereby is relieved and freed of all obligations of Landlord under this lease accruing after such transfer, and it shall be deemed, without further agreement, that such transferee has assumed and agreed to perform and observe all obligations of Landlord herein during the period it is the holder of Landlord’s interest under this lease.

(f) The term “City Lease” shall mean \_\_\_\_\_

(g) The term “\_\_\_\_\_ Lease” shall mean \_\_\_\_\_

(h) The term “\_\_\_\_\_ Leases” shall mean the City Lease and the Carnegie Hall Tower Lease, collectively.

(i) The term “Restrictive Declaration” shall mean \_\_\_\_\_, as same may be amended from time to time.

(j) The term “Imposition” or “Impositions” shall mean “Imposition” or “Impositions,” respectively, as defined in and as required to be paid under the \_\_\_\_\_.

(k) The terms “herein,” “hereof,” and “hereunder,” and words of similar import, shall be construed to refer to this lease as a whole, and not to any particular article or section, unless expressly so stated.

(l) The term “and/or” when applied to one or more matters or things shall be construed to apply to any one or more or all thereof as the circumstances warrant at the time in question.

(m) The term “person” shall mean any natural person or persons, a partnership, a corporation, and any other form of business or legal association or entity.

(n) The terms “Landlord shall have no liability to Tenant” or “the same shall be without liability to Landlord” or “without incurring any liability to Tenant therefor,” or words of similar import shall mean that Tenant is not entitled to terminate this lease, or to claim actual or constructive eviction, partial, or total, or to receive any abatement or diminution of rent, or to be relieved in any manner of any of its other obligations hereunder, or to be compensated for loss or injury suffered or to enforce any other right or kind of liability whatsoever against Landlord under or with respect to this lease or with respect to Tenant’s use or occupancy of the Premises.

(o) The term “Interest Rate,” when used in this lease, shall mean an interest rate equal to two percent (2%) above the so-called annual “Base Rate” of interest established and approved by Citibank, N.A., New York, New York, from time to time, as its interest rate charged for unsecured loans to its corporate customers, but in no event greater than the highest lawful rate from time to time in effect.

35.06 Upon the expiration or other termination of this lease neither party shall have any further obligation or liability to the other except as otherwise expressly provided in this lease and except for such obligations as 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; and, in any event, unless otherwise expressly provided in this lease, any liability for a payment (including, without limitation, Additional Charges under Article 3) that shall have accrued to or with respect to any period ending at the time of expiration or other termination of this lease shall survive the expiration or other termination of this lease.

35.07 If Tenant shall request Landlord’s consent and Landlord shall fail or refuse to give such consent, Tenant shall not be entitled to any damages for any withholding by Landlord of its consent, it being intended that Tenant’s sole remedy shall be an action for specific performance or injunction, and that such remedy shall be available only in those cases where Landlord has expressly agreed in writing not to unreasonably withhold its consent or where as a matter of law Landlord may not unreasonably withhold its consent.

35.08 If any Superior Mortgagee shall require any modification(s) of this lease, Tenant shall, at Landlord’s request, promptly execute and deliver to Landlord such instruments effecting such modification(s) as Landlord shall require, provided that such modification(s) do not adversely affect in any material respect any of Tenant’s rights under this lease.

35.09 If an excavation shall be made upon land adjacent to or under the Building, or shall be authorized to be made, Tenant shall afford to the person causing or authorized to cause such excavation, license to enter the Premises for the purpose of performing such work as said person shall deem necessary or desirable to preserve and protect the Building from injury or damage to support the same by proper foundations, without any claim for damages or liability against Landlord and without reducing or otherwise affecting Tenant’s obligations under this lease.

35.10 Tenant shall not place a load upon any floor of the Premises that violates applicable law or the certificate of occupancy of the Building or that exceeds the floor load per square foot that such floor was designated to carry. All heavy material and/or equipment must be placed by Tenant, at Tenant's expense, so as to distribute the weight. Business machines and mechanical equipment shall be placed and maintained by Tenant, at Tenant's expense, in settings sufficient in Landlord's reasonable judgment to absorb and prevent vibration, noise and annoyance. If the Premises be or become infested with vermin as a result of the use or any misuse or neglect of the Premises by Tenant, its agents, employees, visitors or licensees, Tenant shall at Tenant's expense cause the same to be exterminated from time to time to the reasonable satisfaction of Landlord and shall employ such exterminators and such exterminating company or companies as shall be reasonably approved by Landlord.

35.11 The submission by Landlord of the lease in draft form shall be deemed submitted solely for Tenant's consideration and not for acceptance and execution. Such submission shall have no binding force or effect and shall confer no rights nor impose any obligations, including brokerage obligations, on either party unless and until both Landlord and Tenant shall have executed the lease and duplicate originals thereof shall have been delivered to the respective parties.

35.12 Irrespective of the place of execution or performance, this lease shall be governed by and construed in accordance with the laws of the State of New York. If any provisions of this lease or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this lease and the application of that provision to other persons or circumstances shall not be affected but rather shall be enforced to the extent permitted by law. The table of contents, captions, headings and titles in this lease are solely for convenience of references and shall not affect is interpretation. This lease shall be construed without regard to any presumption or other rule requiring construction against the party causing this lease to be drafted. Each covenant, agreement, obligation or other provision of this lease on Tenant's part to be performed, shall be deemed and construed as a separate and independent covenant of Tenant, not dependent on any other provision of this lease. All terms and words used in this lease, shall be deemed to include any other number and any other gender as the context may require.

35.13 If under the terms of this lease Tenant is obligated to pay Landlord a sum in addition to the Fixed Rent under the lease and no payment period therefor is specified, Tenant shall pay Landlord the amount due within 10 days after being billed.

35.14 All bills, invoices or statements rendered to Tenant pursuant to the terms of this lease shall be deemed binding and conclusive if, within sixty (60) days of receipt of the same, Tenant fails to notify landlord, in writing, of its intention to dispute such bill, invoice or statement.

35.15 Notwithstanding anything to the contrary contained in this lease, during the continuance of any default by Tenant, (a) Tenant shall not be entitled to exercise any rights or options, or to receive any funds or proceeds being held, under or pursuant to this lease; and (b) Landlord shall not be obligated to furnish to Tenant or the Premises any services outside of Business Hours on Business Days, and the discontinuance of any one or more such services shall be without liability by Landlord to Tenant and shall not reduce, diminish or otherwise affect any of Tenant's covenants and obligations under this lease.

35.16 Tenant covenants for itself and any assignee, subtenant or other occupant claiming by, through or under Tenant, (i) to complete and return to the Public Development Corporation ("PDC") of the City of New York (the "City") within 30 days after execution of this lease a questionnaire on the form prescribed by PDC (the "Questionnaire") with respect to employment to be created at the Premises; (ii) in good faith to consider such proposals as the City or City-related entities may make with regard to filling employment opportunities created at the Premises; (iii) to provide the City or such entities with the opportunity (A) to refer candidates who are city residents having the requisite experience for the opportunities question, and (B) to create a program to train City residents for those opportunities; and (iv) until the 15th anniversary of the substantial completion of the Building and within 30 days after demand (A) to report to PDC, on an annual basis, the actual number of jobs then created at the Premises and Tenant's response to any proposals, personnel referrals and training programs made and/or created by the City, as described in clauses (ii) and (iii) above, and (B) to deliver to PDC all forms reasonably required to be delivered pursuant to the Questionnaire; and (2) a reasonably explicit acknowledgment by Tenant that the covenants referred to in clause (1) above are made for the benefit of PDC and the City.

35.17 Tenant represents and warrants that Tenant is not affiliated with Doubleday Books and Company.

35.18 Tenant acknowledges that it has no rights to any development rights, "air rights" or comparable rights appurtenant to the Real Property, and consents, without further consideration, to any utilization of such rights by landlord and agrees to promptly execute and deliver any instruments that may be requested by Landlord, including instruments merging zoning lots, evidencing such acknowledgement and consent. The provisions of this Section 35.18 shall be deemed to be and shall be construed as an express waiver by Tenant of any interest Tenant may have as a "party in interest" (as such quoted term is defined in Section 12-10 Zoning Lot of the Zoning Resolution of the City of New York) in the Real Property.

35.19 If any sales or other tax is payable with respect to any cleaning or other services that Tenant obtains or contracts for directly from any third party or parties, Tenant shall file any required tax returns and shall pay any such tax, and Tenant shall indemnify and hold Landlord harmless from and against any loss, damage or liability suffered or incurred by Landlord on account thereof.

35.20 Tenant shall not record this lease or any memorandum thereof.

35.21 The rights in favor of Landlord and Tenant set forth in this lease shall be for the exclusive benefit of Landlord and Tenant, respectively, it being the express intention of the parties that in no event shall such rights be conferred upon or for the benefit of any third party.

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

LANDLORD:

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

\_\_\_\_\_

TENANT:

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

\_\_\_\_\_

Tenant's Federal Tax

I.D. No.:

\_\_\_\_\_

\_\_\_\_\_

**EXHIBIT A**  
**DESCRIPTION OF THE LAND**  
**(Client Specific)**

**EXHIBIT B**  
**FLOOR PLAN OF THE PREMISES**  
**(Client Specific)**

**EXHIBIT C**  
**RULES AND REGULATIONS**

1. The rights of each tenant in the entrances, corridors, elevators and escalators servicing the Building are limited to ingress to and egress from such tenant's premises for the tenant and its employees, licensees and invitees, and no tenant shall use, or permit the use of, the entrances, corridors, escalators or elevators for any other purpose. No tenant shall invite to the tenant's premises, or permit the visit of, persons in such numbers or under such conditions as to interfere with the use and enjoyment of any of the plazas, entrances, corridors, escalators, elevators and other facilities of the Building by any other tenants. Fire exits and stairways are for emergency use only, and they shall not be used for any other purpose by the tenants, their employees, licensees or invitees. No tenant shall encumber or obstruct, or permit the encumbrance or obstruction of any of the sidewalks, plazas, entrances, corridors, escalators, elevators, fire exits or stairways of the Building. Landlord reserves the right to control and operate the public portions of the Building and the public facilities, as well as facilities furnished for the common use of the tenants, in such manner as it in its reasonable judgment deems best for the benefit of the tenants generally.

2. Landlord may refuse admission to the Building outside of Business Hours on Business Days (as such terms are defined in the lease to which this Exhibit is attached) to any person not known to the security guard in charge or not having a pass issued by Landlord or the tenant whose premises are to be entered or not otherwise properly identified, and Landlord may require all persons admitted to or leaving the Building outside of Business Hours on Business Days to provide appropriate identification. Tenant shall be responsible for all persons for whom it issues any such pass and shall be liable to Landlord for all acts or omissions of such persons. Any person whose presence in the Building at any time shall, in the judgment of Landlord, be prejudicial to the safety, character or reputation of the Building or of its tenants may be denied access to the Building or may be ejected therefrom. During any invasion, riot, public excitement or other commotion, Landlord may prevent all access to the Building by closing the doors or otherwise for safety of the tenants and protection of property in the Building.

3. No tenant shall obtain or accept for use in its premises ice, drinking water, food, beverage, towel, barbering, bootblackening, floor polishing, cleaning or other similar services from any persons reasonably prohibited by Landlord in writing from furnishing such services. Such services shall be furnished only at such hours, and under such reasonable regulations, as may be fixed by Landlord from time to time.

4. The cost of repairing any damage to the public portions of the Building or the public facilities or to any facilities used in common with other tenants, caused by a tenant or its employees, agents, contractors, licensees or invitees, shall be paid by such tenant.



5. No awnings or other projections shall be attached to the outside walls of the Building. No curtains, blinds, shades or screens that are different from the standards adopted by Landlord for the Building shall be attached to or hung in, or used in connection with, any exterior window or door of the premises of any tenant, without the prior written consent of Landlord. Such curtains, blinds, shades or screens must be of a quality, type, design and color, and attached in the manner approved by Landlord.

6. No lettering, sign, advertisement, notice or object shall be displayed in or on the exterior windows or doors, or on the outside of any tenant's premises, or at any point inside any tenant's premises where the same might be visible outside of such premises, without the prior written consent of Landlord. In the event of the violation of the foregoing by any tenant, Landlord may remove the same without any liability, and may charge the expense incurred in such removal to the tenant violating this rule. Interior signs, elevator cab designations and lettering on doors and the Building directory shall, if and when approved by Landlord, be inscribed, painted or affixed for each tenant by Landlord at the expense of such tenant, and shall be of a size, color and style acceptable to Landlord.

7. The sashes, sash doors, skylights, windows and doors that reflect or admit light and air into the halls, passageways or other public places in the Building shall not be covered or obstructed by any tenant, nor shall any bottles, parcels or other articles be placed on the window sills or on the peripheral air conditioning enclosures, if any.

8. No showcases or other articles shall be put in front of or affixed to any part of the exterior of the Building, nor placed in the halls, corridors or vestibules.

9. No bicycles, vehicles, animals, fish or birds of any kind shall be brought into or kept in or about the premises of any tenant or the Building.

10. No noise, including, but not limited to, music or the playing of musical instruments, recordings, radio or television, that, in the judgment of Landlord, might disturb other tenants in the Building, shall be made or permitted by any tenant. Nothing shall be done or permitted in the premises of any tenant that would impair or interfere with the use or enjoyment by any other tenant of any other space in the Building.

11. No tenant, nor any tenant's contractors, employees, agents, visitors or licensees, shall at any time bring into or keep upon the premises or the Building any inflammable, combustible, explosive or otherwise dangerous fluid, chemical or substance.

12. Additional locks or bolts of any kind that shall not be operable by the Grand Master Key for the Building shall not be placed upon any of the doors or windows by any tenant, nor shall any changes be made in locks or the mechanism thereof that shall make such locks inoperable by said Grand Master Key. Additional keys for a tenant's premises and toilet rooms shall be procured only from Landlord who may make a reasonable charge therefor. Each tenant shall, upon the termination of its tenancy, turn over to Landlord all keys of stores, offices and toilet rooms, either furnished to, or otherwise procured by such tenant, and in the event of the loss of any keys furnished by Landlord, such tenant shall pay to Landlord the cost thereof.

13. All removals, or the carrying in or out of any safes, freight, furniture, packages, boxes, crates or any other object or matter of any description must take place during such hours and in such elevators, and in such manner as Landlord or its agent may determine from time to time. The persons employed to move safes and other heavy objects shall be reasonably acceptable to Landlord and, if so required by law, shall hold a Master Rigger's license. Arrangements will be made by Landlord with any tenant for moving large quantities of furniture and equipment into or out of the Building. All labor and engineering costs incurred by Landlord in connection with any moving specified in this rule, including a reasonable charge for overhead and profit, shall be paid by tenant to Landlord, on demand.

14. Landlord reserves the right to inspect all objects and matter to be brought into the Building and to exclude from the Building all objects and matter that violate any of these Rules and Regulations or the lease of which this Exhibit is a part. Landlord may require any person leaving the Building with any package or other object or matter to submit a pass, listing such package or object or matter, from the tenant from whose premises the package or object or matter is being removed, but the establishment and enlargement of such requirement shall not impose any responsibility on Landlord for the protection of any tenant against the removal of property from the premises of such tenant. Landlord shall in no way be liable to any tenant for damages or loss arising from the admission, exclusion or ejection of any person to or from the Premises or the Building under the provisions of this Rule or of Rule 2 hereof.

15. No tenant shall occupy or permit any portion of its premises to be occupied as an office for a public stenographer or public typist, or for the possession, storage, manufacture, or sale of liquor, narcotics, dope, tobacco in any form, or as a barber, beauty or manicure shop, or as a school. No tenant shall use or permit its premises or any part thereof to be used, for manufacturing, or the sale at retail or auction of merchandise, goods or property of any kind.

16. Landlord shall have the right to prohibit any advertising or identifying sign by any tenant that, in Landlord's reasonable judgment, tends to impair the reputation of the Building or its desirability as a building for others, and upon written notice from Landlord, such tenant shall refrain from and discontinue such advertising or identifying sign.

17. Landlord shall have the right to prescribe the weight and position of safes and other objects of excessive weight, and no safe or other object whose weight exceeds the lawful load for the area upon which it would stand shall be brought into or kept upon any tenant's premises. If, in the judgment of Landlord, it is necessary to distribute the concentrated weight of any heavy object, the work involved in such distribution shall be done at the expense of the tenant and in such manner as Landlord shall determine.

18. No machinery or mechanical equipment other than ordinary portable business machines may be installed or operated in any tenant's premises without Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed, and in no case (even where the same are of a type so excepted or as so consented to by Landlord) shall any machines or mechanical equipment be so placed or operated as to disturb other tenants; but machines and mechanical equipment that may be permitted to be installed and used in a tenant's premises shall be so equipped, installed and maintained by such tenant as to prevent any disturbing noise, vibration or electrical or other interference from being transmitted from such premises to any other area of the Building.

19. Landlord, its contractors, and their respective employees, shall have the right to use, without charge therefor, all light, power and water in the premises of any tenant while cleaning or making repairs or alterations in the premises of such tenant.

20. No premises of any tenant shall be used for lodging or sleeping or for any immoral or illegal purpose.

21. The requirements of tenants will be attended to only upon application at the office of the Building Employees of Landlord shall not perform any work or do anything outside of their regular duties, unless under special instructions from Landlord.

22. Canvassing, soliciting and peddling in the Building are prohibited and each tenant shall cooperate to prevent the same.

23. No tenant shall cause or permit any unusual or objectionable odors to emanate from its premises that would annoy other tenants or create a public or private nuisance. No cooking shall be done in the premises of any tenant except as is expressly permitted in such tenant's lease.

24. Nothing shall be done or permitted in any tenant's premises, and nothing shall be brought into or kept in any tenant's premises, that would impair or interfere with any of the Building's services or the proper and economic heating, ventilating, air conditioning, cleaning or other servicing of the Building or the premises, or the use of enjoyment by any other tenant of any other premises, nor shall there be installed by any tenant any ventilating, air-conditioning, electrical or other equipment of any kind that, in the reasonable judgment of Landlord, might cause any such impairment or interference.

25. No acids, vapors or other materials shall be discharged or permitted to be discharged into the waste lines, vents or flues of the Building that may damage them. The water and wash closets and other plumbing fixtures in or serving any tenant's premises shall not be used for any purpose other than the purposes for which they were designed or constructed, and no sweepings, rubbish, rags, acids or other foreign substances shall be deposited therein. All damages resulting from any misuse of the fixtures shall be borne by the tenant who, or whose servants, employees, agents, visitors or licensees shall have, caused the same. Any cuspidors or containers or receptacles used as such in the premises of any tenant or for garbage or similar refuse, shall be emptied, cared for and cleaned by and at the expense of such tenant.

26. All entrance doors in each tenant's premises shall be left locked and all windows shall be left closed by the tenant when the tenant's premises are not in use. Entrance doors shall not be left open at any time. Each tenant, before closing and leaving its premises at any time, shall turn out all lights.

27. Hand trucks not equipped with rubber tires and side guards shall not be used within the Building.

28. All windows in each tenant's premises shall be kept closed, and all blinds therein above the ground floor shall be lowered as reasonably required because of the position of the sun, during the operation of the Building air-conditioning system to cool or ventilate the tenant's premises. If Landlord shall elect to install any energy saving film on the windows of the Premises or to install energy saving windows in place of the present windows, Tenant shall cooperate with the reasonable requirements of Landlord in connection with such installation and thereafter the maintenance and replacement of the film and/or windows and permit Landlord to have access to the Tenant's Premises at reasonable times during Business Hours to perform such work.

29. Landlord reserves the right to rescind, alter or waive any rule or regulation at any time prescribed for the Building when, in its reasonable judgment, it deems it necessary, desirable or proper for its best interest and for the best interests of the tenants generally, and no alteration or waiver of any rule or regulation in favor of one tenant shall operate as an alteration or waiver in favor of any other tenant. Landlord shall not be responsible to any tenant for the non-observance or violation by any other tenant of any of the rules and regulations at any time prescribed for the Building.

**EXHIBIT D**  
**WORKLETTER**

(a) Landlord shall perform Landlord's Work as set forth in Schedule A annexed to this Workletter ("Landlord's Work"); provided, however, that Landlord shall have the right to make any changes in Landlord's Work required by any governmental department or bureau having jurisdiction over the Building. Landlord's Work shall be performed by Landlord only once, it being understood that Landlord's obligation to perform Landlord's Work is a single, non-recurring obligation.

(b) (i) Landlord and Tenant hereby acknowledge and agree that prior to the execution of this lease, Tenant delivered to Landlord complete drawings, plans and specifications (herein collectively referred to as "Tenant's Initial Work Plan") setting forth, but not limited to, the layouts of partitions (including openings), ceilings, lights and such other layouts as are necessary to complete the Premises in accordance with Tenant's requirements, [Tenant's Initial Work Plan shall be fully detailed, shall show complete dimensions, shall not be in conflict with Landlord's basic plans for the Building or Landlord's Standard Work, shall not require any changes in the structure of the Building, including exterior walls or windows, elevator or other shafts, utility closets or fire stairs, and shall not be in violation of any Superior Instruments or any laws, orders, rules or regulations of any governmental department or bureau having jurisdiction over the Premises or the Building.]

(ii) Tenant hereby agrees that if Tenant makes any changes in Tenant's Initial Work Plan subsequent to and if Landlord consents to such changes, Tenant shall pay to Landlord or Landlord's designee as Additional Charges, whether or not the Commencement Date has occurred, the actual cost and expense incurred by Landlord in supplying and installing such changes plus ten percent (10%) of such cost and expense for overhead, plus ten percent (10%) of the resulting total as a supervisory fee (collectively, the "Change Costs"). Landlord shall have no obligation to perform any Additional Work until Tenant pays in advance to Landlord twenty-five percent (25%) of the estimated Change Costs. Notwithstanding said twenty-five percent (25%) advance payment, Tenant shall, as the changes are performed, pay Landlord or Landlord's designee on a monthly basis the actual Change Costs upon being billed therefor. The amount of said twenty-five percent (25%) advance payment shall only be credited by Landlord against the last remaining monthly installments due to Landlord in accordance with the foregoing. In the event all amounts received by Landlord on account of change Costs exceed the actual amount thereof, Landlord shall refund such excess to Tenant.

(c) Landlord's Work shall be deemed to have been substantially completed even though minor details or adjustments may not then be completed, provided that such uncompleted work shall not materially and adversely interfere with Tenant's use of the Premises. The taking of possession of the Premises by Tenant shall be deemed a delivery of the Premises by Landlord, substantial completion of Landlord's Work and an acceptance by Tenant of the Premises.

(d) (i) Tenant hereby acknowledges that the Commencement Date hereunder is indeterminate and shall occur only as provided in Section 1.05(a) hereof and Tenant, therefore, waives any right to rescind this lease under Section 223(a) of the Real Property Law of the State of New York. Tenant further waives any damages that may result from any delay in the substantial completion of the aforementioned work or delivery of possession of the Premises on or by any particular date or dates.

(ii) Notwithstanding anything to the contrary contained herein or in the lease, in the event that the Commencement Date is delayed by reason of Tenant's Delay (as hereinafter defined), Tenant (in addition to paying the actual increased costs to Landlord for labor and materials in completing Landlord's Work that Landlord may sustain by reason of delays occasioned by Tenant) agrees that the Commencement Date shall be, and Tenant's obligations, including Tenant's obligation to pay Fixed Rent and Additional Charges, shall commence, on the date that Landlord's Standard Work would have been substantially completed, but for such Tenant's Delay.

(e) The term "Tenant's Delay" shall mean any delay that Landlord may encounter in the performance of Landlord's Work or Landlord's other obligations pursuant to this Workletter by reason of any act, neglect, failure or omission by Tenant, its agents, servants, employees, contractors or subcontractors, or in the performance of Tenant's obligations under this Workletter, including without limitation:

(i) Any delay due to changes or corrections made by or on behalf of Tenant in Tenant's Initial Work Plan previously submitted to and approved by Landlord; and

(ii) Any delay due to work performed by Tenant in the Premises pursuant to clause (f) of this Workletter.

(f) It is contemplated by the parties that any work undertaken by Tenant in the Premises shall be performed by Tenant after the Commencement Date. However, if in accordance with good construction practice and scheduling, any installation by Tenant involves work to be performed in conjunction with the performance of Landlord's Work, then Landlord may permit Tenant and its agents to enter the Premises prior to the Commencement Date, in order that Tenant may perform such work through its own contractors at the same time that Landlord's contractors are working in the Premises. The foregoing right is conditioned upon Tenant's workers and mechanics working in harmony and not interfering with the labor employed by Landlord and is subject to the provisions of Article 11 of the lease in respect to Tenant's Work. If at any time such entry shall cause disharmony or interfere with the working being performed by Landlord and such interference or disharmony does not end within 24 hours after Tenant's receipt of notice thereof (which notice may be delivered by hand to a responsible representative of Tenant, or Tenant's architect), such right may be withdrawn by Landlord and Tenant's workers and mechanics may be prevented from entering the Building.

**EXHIBIT E**  
**CLEANING SPECIFICATIONS**

1. General

All linoleum, rubber, asphalt tile and other similar types of flooring (that may be waxed) to be swept nightly, using approved dust-check type of mop.

All carpeting and rugs to be carpet swept nightly and vacuum cleaned weekly.

Hand dust and wipe clean all furniture, fixtures and window sills nightly; wash sills when necessary.

Empty and clean all ash trays and screen all sand urns nightly.

Empty all waste receptacles and remove wastepaper. Change liners as necessary (Tenant to supply receptacles and liners).

Wash clean all water fountains and coolers nightly.

Hand dust all door and other ventilating louvers within reach, quarterly.

Dust all telephones as necessary.

Sweep all private stairway structures nightly.

2. Lavatories in the Core

Sweep and wash all lavatory floors nightly using proper disinfectants. Wash and polish all mirrors, powder shelves, bright work enameled surfaces in all lavatories, nightly.

Wash, scour and disinfect all toilet seats, nightly.

Empty paper towel receptacles and transport wastepaper to designated area in basements, nightly (towels and soap to be furnished by Tenant).

Fill toilet tissue holders nightly.

Empty sanitary disposal receptacles, nightly.

Thoroughly wash and polish all wall tile and stall surfaces once per month.

3. High Dusting

Dust all window blinds, frames, charges, graphs and similar wall hangings and vertical surfaces not reached in nightly cleaning, quarterly.

4. Glass

Exterior windows to be cleaned inside and outside approximately once every quarter, weather permitting.

5. Conditions

As herein used "nightly" means nightly on Business Days.

Tenant shall pay to Landlord on demand the costs incurred by Landlord for (x) extra cleaning work in the Premises required because of (i) carelessness, indifference, misuse or neglect on the part of Tenant or its subtenants or its or their employees or visitors, (ii) interior glass partitions or unusual quantity of interior glass surfaces and (iii) non-building standard materials or finishes installed by Tenant or at its request, (y) removal from the Premises and the Building of any refuse and rubbish of Tenant in excess of that ordinarily accumulated in business office occupancy, including, without limitation, kitchen refuse, or at times other than Landlord's standard cleaning times, or that requires special handling or disposal and (z) the use of the Premises by Tenant other than during Business Hours on Business Days.

Notwithstanding the foregoing, Landlord shall not be required to clean any portions of the Premises used for preparation, serving or consumption of food or beverages, training rooms, data processing or reproducing operations, private lavatories or toilets or other special purposes requiring greater or more difficult cleaning work than office areas and Tenant agrees, at Tenant's expense, to retain Landlord's cleaning contractor to perform such cleaning.