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**Office Lease**

\_\_\_\_\_  
**Landlord**

**and**

\_\_\_\_\_  
**Tenant**

**Premises:**

**Date:**

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**Office Lease**

Lease dated \_\_\_\_\_, between \_\_\_\_\_, a  
\_\_\_\_\_ (“Landlord”), and \_\_\_\_\_, a  
\_\_\_\_\_ (“Tenant”).

**Article 1. Basic Terms and Definitions**

**Section 1.1** Broker. \_\_\_\_\_.

**Section 1.2** Electricity Factor. \$ \_\_\_\_\_ per annum, subject to adjustment as provided in this lease. This Basic Term is used only if electricity is provided by Rent Inclusion.

**Section 1.3** Expenses Base Year. The calendar year ending December 31, \_\_\_\_.

**Section 1.4** Fixed Rent. \$ \_\_\_\_\_ per annum. The Fixed Rent includes the Electricity Factor if electricity is provided by Rent Inclusion.

**Section 1.5** Fixed Rent Commencement Date. The date which is \_\_\_\_ days following the Commencement Date.

**Section 1.6** Guarantor. \_\_\_\_\_.

**Section 1.7** Landlord’s Work. The work, if any, described on Exhibit B to this lease.

**Section 1.8** Notice Address.

(a) Landlord. \_\_\_\_\_.

(b) Tenant. \_\_\_\_\_.

**Section 1.9** Premises. The portion of the \_\_\_\_ floor shown on Exhibit A to this lease in the building at \_\_\_\_\_, New York, New York (“Building”); the land used in connection with the Building is called “Land”). The Premises include any fixtures and improvements in the Premises on the Commencement Date, Landlord’s Work, if any, and any other fixtures and improvements installed in the Premises by Landlord after the Commencement Date.

**Section 1.10** Security. \$ \_\_\_\_\_.

**Section 1.11** Taxes Base Year. The 12-month period ending \_\_\_\_\_.

**Section 1.12** Tenant’s Share. \_\_\_\_ percent.

**Section 1.13** Term. The period commencing on the date (“Commencement Date”) which is the later of (a) \_\_\_\_\_ and (b) the date Landlord delivers to Tenant possession of the Premises with Landlord’s Work, if any, substantially complete (or the

date possession is deemed delivered and Landlord’s Work, if any, is deemed substantially complete as provided in this lease), or any earlier date on which Tenant first occupies any part of the Premises for the conduct of business, and ending on the date (the “Expiration Date”) which is the earlier of (i) last day of the month in which occurs the \_\_\_\_\_ anniversary of the day immediately preceding the Commencement Date (“Fixed Expiration Date”), and (ii) the date the term of this lease is terminated pursuant to this lease (“Earlier Expiration Date”).

**Section 1.14 Certain Definitions.** This Section lists each defined term appearing in more than one Article, other than the Basic Terms, and the Section in which it is defined. Any reference in this lease to (a) “legal action”, includes any suit, proceeding or other legal, arbitration or administrative process, (b) “person”, includes any individual or entity, and (c) “this lease”, includes Landlord’s Regulations and the Exhibits to this lease.

<u>Defined Term</u>	<u>Section</u>
Authority	11.1
Base Rate	19.1(e)
Business Days	9.1
Default	18.1
Default Rate	19.6
Expenses	7.1(a)
Laws	11.1
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Unavoidable Events	23.8

**Article 2. Demise; Rent**

**Section 2.1** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises, for the Term, at the Rent and on the other terms of this lease.

**Section 2.2** Tenant shall pay Landlord the Rent, without notice, deduction or offset (except as provided in this lease), in lawful money of the United States of America, by Tenant’s check or another method approved by Landlord, at Landlord’s Notice Address or another address Landlord designates, and as provided in this lease. The Fixed Rent shall be paid in equal monthly installments, in advance, on the first day of each calendar month during the Term, except that (a) Tenant shall not pay the Fixed Rent (other than the Electricity Factor, if applicable) until the Fixed Rent Commencement Date, if any, and (b) on the signing and delivery of this lease by Tenant, Tenant shall pay Landlord one full monthly installment of the Fixed Rent, to be applied to the first full monthly installment of the Fixed Rent due under this lease. If the Fixed Rent Commencement Date is not the first day of a month, the Fixed Rent for the month

in which the Fixed Rent Commencement Date occurs shall be apportioned according to the number of days in that month. All sums, other than the Fixed Rent, payable by Tenant to Landlord under this lease, including the payment of deficiencies in the Security, if any, are considered additional rent (and the Fixed Rent and all additional rent are collectively called “Rent”). Landlord’s delay in rendering, or failure to render, any statement required to be rendered by Landlord for any Rent for any period shall not waive Landlord’s right to render a statement or collect that Rent for that or any subsequent period. The rendering of an incorrect statement shall not waive Landlord’s right to render a corrected statement for the period covered by the incorrect statement and collect the correct amount of the Rent.

**Section 2.3** If at any time during the Term the Rent is not fully collectible by reason of any Law, Tenant shall enter into such agreements and take such other action (without additional expense or liability to Tenant) as Landlord reasonably requests and which is not prohibited by any Law, to permit Landlord to collect the maximum permissible Rent (but not in excess of the Rent). On the termination of that Law prior to the Expiration Date (a) the Rent shall be paid in accordance with this lease, and (b) Tenant shall pay to Landlord, if not prohibited by any Law, the Rent which would have been paid but for that Law, less the Rent paid by Tenant to Landlord during the period of that Law.

**Section 2.4** If Landlord fails to give Tenant possession of the Premises on any specific date, Landlord shall have no liability to Tenant and this lease shall remain in full force and effect according to its terms, but the Term and the Rent shall not commence until the Commencement Date (or, with respect to the Fixed Rent, the Fixed Rent Commencement Date, if applicable). This Section constitutes an express provision to the contrary pursuant to Section 223-a of the New York Real Property Law (or any similar Law), which Landlord and Tenant agree is inapplicable to this lease (and Tenant hereby waives any right to damages or to rescind this lease which Tenant might otherwise have under that Law).

### **Article 3. Use**

**Section 3.1** Tenant shall use the Premises only for offices (the “Permitted Use”), subject, however, to the provisions of this lease.

**Section 3.2** Tenant shall not (a) use any part of the Premises (i) in violation of this lease or the certificate of occupancy, if any, for the Premises or the Building (Landlord represents, however, that the Premises may be used for the Permitted Use) or (ii) for any of the following (or offices therefor): employment agency; travel agency; Authority; foreign government or any business owned in whole or in part by a foreign government; foreign airline; a place of public assembly; the rendering of any health or health-related services; a school or classroom; gambling; any business that, in Landlord’s reasonable judgment, may jeopardize the safety of the Building or its occupants; or the sale or preparation of any food or beverage (except for vending machines and warming food, in both cases solely for Tenant’s employees and invitees), (b) use any area outside the Premises within or adjacent to the Building for the sale or display of any merchandise, for solicitations or demonstrations or for any other activity, (c) store trash other than inside the Premises, (d) cause waste, or do anything which, in Landlord’s reasonable judgment, disturbs other occupants of the Building (including permitting music or other sounds in the Premises to be heard outside the Premises, equipment in the Premises to cause vibration or noise which is transmitted beyond the Premises, odors or fumes beyond the

Premises or its employees, invitees or deliverymen to loiter immediately outside the Premises or the Building or within the public areas of the Building) or is obscene, pornographic or lewd, (e) place any sign or other item outside the Premises or the Building, or on any window or door of the Premises, or in the Premises if it can be seen from outside the Premises, except a Building standard identification sign on Tenant's entrance door, Building standard window coverings or other sign or item expressly permitted by this lease, (f) park trucks or other vehicles which interfere with any part of the Building or the Land, (g) cause the release in or from the Premises of any hazardous material, or any other item which is deemed hazardous under any Law, (h) advertise in a manner which, if the Building is identified, in Landlord's reasonable judgment, impairs the reputation or desirability of the Building or (i) move any heavy or bulky items into or out of the Building without Landlord's consent, which shall not be unreasonably withheld or delayed (and (x) if any such item requires special handling, Tenant shall employ a person approved by Landlord for such purpose, which approval shall not be unreasonably withheld or delayed and (y) Landlord may inspect any items brought into or taken from the Building).

**Section 3.3** Tenant shall comply with the existing rules and regulations of the Building attached to this lease as Exhibit C, and any future rules and regulations adopted by Landlord in connection with the operation of, and construction work within, the Building which do not materially and adversely affect Tenant's rights under this lease or impose any material financial responsibility on Tenant (collectively, "Landlord's Regulations"), 10 days prior notice of which shall be given to Tenant. Landlord is not required to enforce Landlord's Regulations or any other lease and Landlord shall not be liable to Tenant for a violation of Landlord's Regulations or any other lease. Landlord's failure to enforce Landlord's Regulations against Tenant or any other occupant of the Building shall not be considered a waiver of Landlord's Regulations. Landlord shall not, however, enforce Landlord's Regulations against Tenant in a discriminatory manner. If there is any inconsistency between this lease and Landlord's Regulations, this lease shall control.

#### **Article 4. Condition of the Premises; Landlord's Work**

**Section 4.1** Tenant has examined the Premises and, subject to Landlord performing Landlord's Work, if any (a) Tenant shall accept possession of the Premises in its "AS IS" condition on the date of this lease, subject to normal wear and tear and the removal of the existing occupant's property, if any, and (b) Landlord has no obligation to perform any work, supply any materials, incur any expenses or make any installations to prepare the Premises for Tenant's occupancy.

**Section 4.2** Landlord shall, at its expense, in a Building standard manner, using Building standard materials, in accordance with all applicable Laws, as soon as practicable following the date of this lease, perform Landlord's Work, if any. If requested by Landlord or Tenant, Landlord and Tenant shall promptly sign and deliver a confirmation of the Commencement Date, the Fixed Rent Commencement Date, if any, the Fixed Expiration Date and any other dates referred to in this lease, but the failure to do so shall not change those dates.

**Section 4.3** Landlord's Work shall be deemed substantially complete when it is completed in accordance with this lease and all applicable Laws, except for minor details of construction, decoration and mechanical adjustments to be performed by Landlord (which shall be completed as soon as practicable), the noncompletion of which does not (and the completion

of which will not) materially interfere with Tenant's use of the Premises or the performance of Tenant's Work. If the substantial completion of Landlord's Work, if any, or delivery of possession of the Premises by Landlord to Tenant, is delayed due to any act or omission of Tenant or Tenant's employees, agents or contractors (a) Landlord's Work shall be deemed substantially complete and possession shall be deemed delivered on the date Landlord's Work would have been substantially complete or possession would have been delivered but for that act or omission and (b) Tenant shall reimburse Landlord for all additional costs incurred by Landlord as the result of the delay.

## **Article 5. Tenant's Work**

**Section 5.1** Except as may be expressly provided in this lease, Tenant shall not make any changes to the Premises, the Building, the Building systems, or any part thereof (collectively, "Tenant's Work"), without Landlord's consent. Landlord's consent shall not be unreasonably withheld or delayed provided that Tenant's Work (a) does not (i) affect any part of the Building outside the Premises, (ii) adversely affect any structural element of the Building (iii) adversely affect any Building system or (iv) require an amendment of the certificate of occupancy for the Premises or the Building, and (b) is performed only by contractors or subcontractors approved by Landlord (which shall not be unreasonably withheld or delayed, except that any Tenant's Work which affects any Building system shall be performed by a contractor or subcontractor designated by Landlord or then on Landlord's list, if any, of approved contractors and subcontractors for that work). Tenant's Work shall be performed, at Tenant's expense, in a professional manner using new materials of first class quality and in compliance with this lease, all Laws and Tenant's Plans (as defined in Section 5.2). If Tenant's Work consists solely of the installation of Tenant's Property in the Premises, a change affecting only Tenant's Property in the Premises or the painting, carpeting or decorating of the Premises, Landlord's consent shall not be required, provided (i) Tenant gives Landlord 10 days prior notice of such Tenant's Work (with reasonable details of the work to be performed), (ii) all of the other applicable provisions of this lease shall apply and (iii) such Tenant's Work does not violate clauses (a) or (b) of this Section.

**Section 5.2** Prior to performing any Tenant's Work which, pursuant to this Article, requires Landlord's consent, Tenant shall, at Tenant's expense (a) deliver to Landlord, detailed plans and specifications for Tenant's Work in form reasonably satisfactory to Landlord prepared and certified by a registered architect or licensed engineer, and suitable for filing with the applicable Authority, if filing is required by Law ("Tenant's Plans"), (b) obtain Landlord's approval of Tenant's Plans (which shall not be unreasonably withheld or delayed to the extent Landlord's consent to Tenant's Work shown on Tenant's Plans is not to be unreasonably withheld or delayed pursuant to this Article), (c) obtain (and deliver to Landlord copies of) all required authorizations of any Authority, (d) deliver to Landlord certificates (in form reasonably acceptable to Landlord) of worker's compensation insurance (covering all persons to be employed by Tenant, and all contractors and subcontractors performing any Tenant's Work), commercial general liability insurance (naming Landlord, Landlord's managing agent, if any, any Superior Landlord and any Mortgagee as additional insureds) and Builder's risk insurance (issued on a completed value basis), in form, with companies, for periods and in amounts reasonably required by Landlord, naming Landlord, Landlord's managing agent, if any, any Superior Landlord and any Mortgagee as additional insureds, and (e) with respect to any Tenant's Work costing more than \$50,000, deliver to Landlord security in an amount equal to the

total cost of such Tenant's Work and reasonably acceptable to Landlord securing Tenant's obligation to complete and pay for such Tenant's Work. Tenant shall promptly reimburse Landlord for any reasonable out-of-pocket expenses incurred by Landlord in connection with Landlord's review of Tenant's Plans and inspection of Tenant's Work, including outside experts retained by Landlord for that purpose. Following the completion of Tenant's Work, Tenant shall, at Tenant's expense, obtain and deliver to Landlord copies of all authorizations of any Authority required upon the completion of Tenant's Work and "as-built" plans and specifications for Tenant's Work prepared as reasonably required by Landlord.

**Section 5.3** If, in connection with Tenant's Work or any other act or omission of Tenant or Tenant's employees, agents or contractors, a mechanic's lien, financing statement or other lien or violation is filed against Landlord, or any part of the Premises, the Building or Tenant's Work, Tenant shall, at Tenant's expense, have it removed by bonding or otherwise within 30 days after Tenant receives notice of the filing.

**Section 5.4** Tenant shall not employ, or permit the employment of, any contractor, subcontractor or other worker in the Premises, whether in connection with Tenant's Work or otherwise, if such employment shall, in Landlord's reasonable judgment, interfere or cause conflict with other contractors, subcontractors or workers in the Building.

**Section 5.5** At Tenant's request, Landlord shall join in any applications for any authorizations required from any Authority in connection with Tenant's Work (to which Landlord has consented, if required pursuant to this Article), and otherwise cooperate with Tenant in connection with Tenant's Work, but Landlord shall not be obligated to incur any expense or obligation in connection with any such applications or cooperation.

**Section 5.6** Tenant shall not place a load on any floor of the Premises exceeding the floor load per square foot which the floor was designed to carry and which is allowed by any Law.

**Section 5.7** On or before the Expiration Date, Tenant shall, at Tenant's expense, remove from the Premises and the Building (a) Tenant's trade fixtures, equipment and personal property which are removable without material damage to the Premises or the Building ("Tenant's Property"), and (b) any Tenant's Work which is not an ordinary nonstructural office installation and which Landlord designates for removal in a notice given by Landlord to Tenant on or before the date which is 90 days prior to the Fixed Expiration Date (or five days prior to the Earlier Expiration Date, if applicable), and repair any damage to the Premises or the Building caused by the installation or removal of Tenant's Property or Tenant's Work. If, at the time Tenant requests Landlord's consent to Tenant's Plans, Tenant requests Landlord to designate the portions of Tenant's Work which must be removed pursuant to this Section, Landlord shall make that designation on the date Landlord gives Landlord's consent to Tenant's Plans. Except as expressly provided in this Section, Tenant's Work shall not be removed and shall, on the Expiration Date, become the property of Landlord. Any Tenant's Property or Tenant's Work (which Tenant was required to remove) which is not removed by Tenant by the Expiration Date shall be deemed abandoned and may, at Landlord's option, be retained as Landlord's property or disposed of by Landlord at Tenant's expense.



## **Article 6. Real Estate Taxes**

**Section 6.1** The following defined terms are used in this Article:

(a) Taxes. The aggregate of all real estate taxes, assessments (special or otherwise), and other charges (including business improvement district charges and payments in lieu of Taxes) of any Authority assessed against all or any part of the Building or the Land. If the method of taxation is changed so that in lieu of, as an addition to or as a substitute for all or any part of the real estate taxes, assessments or charges assessed against all or any part of the Building or the Land, there is assessed any other tax, assessment or charge, including one based on the rents received from the Building or the Land, all such taxes, assessments and charges shall be considered Taxes. Taxes shall not, however, include any franchise, gift, inheritance, estate, sales, transfer, general income or profit tax imposed on Landlord (unless it is considered part of Taxes pursuant to the preceding sentence). If in any Tax Year (including the Taxes Base Year) there is any abatement, exemption or discount of Taxes (or any assessment or rate which comprises Taxes), the abatement, exemption or discount shall not be taken into account, and Taxes shall be determined as if there were no abatement, exemption or discount.

(b) Tax Year. The 12-month period ending June 30 (or such other period as may be adopted by The City of New York as its fiscal year for Taxes).

(c) Tax Statement. A statement showing the calculation of Tenant's Tax Payment.

(d) Tenant's Tax Payment. Tenant's Share of the excess of Taxes for any Tax Year over Taxes for the Taxes Base Year.

**Section 6.2** If for any reason, foreseen or unforeseen (including increases in the tax rate or the assessed valuation of the Building or the Land for any reason, including changes in the method of assessment, reassessments occurring in the normal course or outside of the normal course or increases in assessments by reason of changes to the Building or the Land made by Tenant, other tenants, or Landlord), Taxes for any Tax Year, all or any part of which falls within the Term, exceed Taxes for the Taxes Base Year, Tenant shall pay to Landlord Tenant's Tax Payment within 15 days following Tenant's receipt of the Tax Statement for that Tax Year. At Tenant's request, Landlord shall deliver to Tenant a copy of the relevant bill for Taxes. If Taxes for any Tax Year are less than Taxes for the Taxes Base Year, Tenant shall not be entitled to any payment or credit. If Landlord requests, Tenant shall pay to Landlord Tenant's Tax Payment as reasonably estimated by Landlord from time to time in monthly or other periodic installments, in advance, on the first day of each calendar month or other period, so that on the date 30 days before the date Landlord is required (without interest or penalty) to pay Taxes for any Tax Year or part of a Tax Year Landlord shall have received from Tenant Tenant's Tax Payment for that Tax Year or that part of a Tax Year. If Landlord requests or revises the installments of Tenant's Tax Payment following the commencement of a Tax Year, Tenant shall (a) until a request is made, pay the installments of Tenant's Tax Payment for the prior Tax Year and (b) within 15 days following Tenant's receipt of Landlord's request or revision, pay the installments of Tenant's Tax Payment retroactive to the beginning of that Tax Year to the extent they exceed the payments previously made by Tenant for that Tax Year (or if they are less, Landlord shall credit the difference against the next payments under this lease). If 30 days

before the date Landlord is required (without interest or penalty) to pay Taxes for any Tax Year or any part of a Tax Year the aggregate amount collected by Landlord from Tenant is not sufficient to pay Tenant's Tax Payment for that Tax Year or that part of a Tax Year, Landlord shall give notice to Tenant, and Tenant shall pay to Landlord the deficiency within 15 days following Tenant's receipt of Landlord's request. If, however, the aggregate amount collected by Landlord from Tenant is greater than Tenant's Tax Payment, Landlord shall credit the excess against Tenant's next payments under this lease or, if any excess is due Tenant at the Expiration Date, Landlord shall promptly pay that excess to Tenant.

**Section 6.3** Landlord may, at Landlord's option, institute proceedings to reduce Taxes. Tenant may not institute such proceedings. If Taxes for the Taxes Base Year are reduced, Tenant's Tax Payment for all Tax Years subsequent to the Taxes Base Year shall be recomputed based on the reduced Taxes for the Taxes Base Year, and Tenant shall pay to Landlord, within 15 days following receipt of Landlord's request, the deficiency between the amount due as a result of the recomputations and the amount paid by Tenant. If Landlord receives a refund or credit of Taxes for any Tax Year for which Tenant made Tenant's Tax Payment, Landlord shall credit Tenant's Share of the refund or credit against Tenant's next payments under this lease (or, if any refund or credit is due Tenant at the Expiration Date, Landlord shall promptly pay that refund or credit to Tenant), after deducting from the refund or credit any reasonable expenses incurred by Landlord to obtain the refund or credit which have not been previously reimbursed to Landlord, but Tenant's Share of the refund or credit for any Tax Year shall not exceed Tenant's Tax Payment paid for that Tax Year.

**Section 6.4** If the Commencement Date or the Expiration Date is a date other than the first or last day of a Tax Year, Tenant's Tax Payment for that Tax Year shall be apportioned according to the number of days of that Tax Year within the Term. Tenant shall, to the extent not paid by Tenant to Landlord as part of Taxes, pay to Landlord, within 15 days following Tenant's receipt of Landlord's request, any occupancy, rent or other tax now or hereafter imposed on Tenant which (a) must be collected by Landlord, (b) is payable by Landlord if not paid by Tenant or (c) is a lien on any part of the Building or the Land.

**Section 6.5** Tenant shall pay to Landlord, within 15 days following Tenant's receipt of Landlord's invoice, Tenant's Share of the reasonable expenses incurred to contest any Taxes applicable to any part of the Term (prorated for any partial Tax Year within the Term) which have not been previously reimbursed to Landlord.

## **Article 7. Expenses**

**Section 7.1** The following defined terms are used in this Article:

(a) Expenses. All of Landlord's expenses in connection with operating, insuring, maintaining and repairing the Building or the Land, excluding (i) depreciation, (ii) interest on and amortization of borrowed funds, (iii) financing or refinancing expenses, (iv) expenses in connection with the sale of the Building or the Land or any interest in the Building or the Land, (v) rent under any Superior Lease, (vi) leasehold improvements for tenants (including Landlord's Work, if any), (vii) leasing commissions, (viii) capital expenditures other than capital expenditures required by any Law enacted or becoming effective after the date of this lease or which Landlord reasonably believes shall reduce Expenses, in both cases amortized

on a straight-line basis over the useful life of the capital item in question reported by Landlord for tax purposes, with interest at the Base Rate, (ix) the wages and fringe benefits of any employee above Building manager, (x) expenses incurred by reason of casualty or condemnation (except for the reasonable deductible portion of any insured casualty), (xi) expenses for services to tenants in the Building in excess of the services required by this lease to be provided to Tenant, (xii) expenses paid to any affiliate of Landlord in excess of the expenses which would have been paid to an unaffiliated person, (xiii) legal and accounting fees in connection with the leasing of the Building or any legal action with another occupant, (xiv) advertising and promotional expenses, (xv) Taxes and any exclusions from Taxes expressly set forth in this lease and (xvi) charitable contributions other than membership fees or dues of real estate related organizations. If a managing agent for the Building is not employed by Landlord, a management fee may be included in Expenses which does not exceed the then prevailing management fee for a managing agent that is not paid leasing commissions (unless it is the procuring cause) for buildings similar to the Building in the vicinity of the Building. Expenses for the Expenses Base Year and each calendar year shall be reasonably determined by Landlord as if the Building is 100% occupied and as if Landlord is required to provide to each tenant the same services as Landlord is required pursuant to this lease to provide to Tenant without additional charge. If this lease shall provide that an expense is to be paid by Landlord, that expense shall be deemed an Expense if it is not excluded from Expenses pursuant to this paragraph or another provision of this lease.

(b) Expense Statement. A reasonably detailed statement prepared by Landlord or, at Landlord's option, a third party, showing the calculation of Tenant's Expense Payment.

(c) Tenant's Expense Payment. Tenant's Share of the excess of Expenses for any calendar year over Expenses for the Expenses Base Year.

**Section 7.2** If Expenses for any calendar year all or any part of which falls within the Term exceeds Expenses for the Expenses Base Year, Tenant shall pay to Landlord Tenant's Expense Payment within 15 days following Tenant's receipt of the Expense Statement for that calendar year. If Expenses for any calendar year are less than Expenses for the Expenses Base Year, Tenant shall not be entitled to any payment or credit. If Landlord requests, Tenant shall pay to Landlord Tenant's Expense Payment as reasonably estimated by Landlord from time to time in monthly or other periodic installments, in advance, on the first day of each calendar month or other period. If Landlord requests or revises the installments of Tenant's Expense Payment following the commencement of a calendar year, Tenant shall (a) until a request is made, pay the installments of Tenant's Expense Payment for the prior calendar year and (b) within 10 days following Tenant's receipt of Landlord's request or revision, pay the installments of Tenant's Expense Payment retroactive to the beginning of that calendar year to the extent they exceed the payments previously made by Tenant for that calendar year (or if they are less, Landlord shall credit the difference against the next payments under this lease). Landlord shall, within 120 days following the end of each calendar year, deliver to Tenant an Expense Statement for that calendar year. If the aggregate amount collected by Landlord from Tenant for that calendar year is less than Tenant's Expense Payment shown on that Expense Statement, Tenant shall pay the deficiency to Landlord within 10 days following Tenant's receipt of that Expense Statement. If, however, the aggregate amount collected by Landlord from Tenant is greater,

Landlord shall credit the excess against Tenant's next payment under this lease or, if any excess is due Tenant at the Expiration Date, Landlord shall promptly pay that excess to Tenant.

**Section 7.3** If the Commencement Date or the Expiration Date is a date other than the first or last day of a calendar year, Tenant's Expense Payment for that calendar year shall be apportioned according to the number of days of that calendar year within the Term.

**Section 7.4** Tenant shall have the right, at Tenant's expense, during normal business hours, on notice to Landlord, to examine, at Landlord's office (or at Landlord's option, the office of Landlord's managing agent or independent certified public accountant), Landlord's books and records which are relevant to the determination of the Expenses shown on any Expense Statement, provided (a) there is no Default on the date of the examination, (b) the examination is conducted on one or more dates mutually convenient for Landlord and Tenant and concluded within 120 days following Tenant's receipt of the Expense Statement in question (if Landlord has provided Tenant with reasonable access during that period), (c) the person examining Landlord's books and records is not a person who is paid based in whole or in part on the amount of any reduction of the Expense Payment resulting from the examination (and, prior to making an examination both Tenant and the person retained by Tenant to make the examination shall certify to Landlord that the person making the examination is not to be paid any sum based in whole or in part on the reduction of Expense Payment), and (d) any information obtained by Tenant or the person examining Landlord's books and records shall be kept confidential, except for disclosure to Tenant's legal counsel and other advisors and any independent person designated to resolve any dispute between Landlord and Tenant relating to an Expense Payment or as required by any Law.

**Section 7.5** An Expense Statement shall be binding and conclusive on Tenant unless Tenant, within 180 days following Tenant's receipt of that Expense Statement, gives notice to Landlord disputing its accuracy and setting forth the particular respects in which that Expense Statement is claimed to be inaccurate. If Tenant timely disputes an Expense Statement and Landlord and Tenant have not settled the dispute by agreement within 30 days following Landlord's receipt of Tenant's notice of dispute, Landlord and Tenant shall, within 60 days following Landlord's receipt of Tenant's notice of dispute, designate one independent person to resolve the dispute, who must have not less than 10 years' experience as an independent certified public accountant in connection with commercial office buildings in The City of New York. If Landlord and Tenant fail to designate that person within 60 days following Landlord's receipt of Tenant's notice of dispute, that person shall be designated by the New York City office of the American Arbitration Association (or any successor organization) under its then expedited rules at the request of either Landlord or Tenant. The determination of that person (which shall be requested within 30 days) shall be binding and conclusive on Landlord and Tenant. Landlord and Tenant shall each pay their own expenses of this procedure, except the fees and expenses of the independent person and the American Arbitration Association (or any successor organization) shall be paid 50 percent by Landlord and 50 percent by Tenant. Pending the resolution of any dispute, Tenant shall pay to Landlord Tenant's Expense Payment shown on that Expense Statement. Landlord shall credit against the next payments under this lease any Expense Payment paid by Tenant in excess of that determined by agreement or by the independent person designated to resolve a dispute. Tenant shall not be permitted to dispute an Expense Statement if there is a Default on the date of Tenant's notice of dispute.

## **Article 8. Electricity - Direct**

**Section 8.1** Landlord shall have no obligation to provide electricity to Tenant or the Premises. Tenant shall, at Tenant's expense (a) arrange for electricity to be furnished to the Premises, including the furnishing and installing of all meters and other components of the electrical system serving only the Premises, (b) provide electricity in the Premises to Landlord, or Landlord's employees, agents or contractors performing any work in the Premises (including cleaning services), (c) maintain and promptly make all repairs, ordinary and extraordinary, to all components of the electrical system serving only the Premises, including all meters, and (d) pay, as and when due, for electricity used in the Premises. Tenant shall not overload the electrical system serving the Premises.

## **Article 8. Electricity - Rent Inclusion**

**Section 8.1** Subject to the provisions of this Article, Landlord shall provide electricity to the Premises through the existing electrical system of the Building for reasonable use for lighting and normal office equipment. Landlord shall not be liable to Tenant for any failure, defect or interruption of electric service for any reason. Tenant's use of electricity in the Premises shall not at any time exceed the capacity of the electrical system within or serving the Premises and Tenant shall not overload any component of such system. Tenant shall, at Tenant's expense, furnish and install all lighting tubes, lamps, bulbs and ballasts required in the Premises. Landlord shall select (and may from time to time change) the utility or other supplier providing electricity to the Building and the Premises. Tenant shall comply with all rules, regulations and other requirements of the utility or other supplier.

**Section 8.2** Landlord may, at any time, cause Landlord's electric consultant to survey the lighting and equipment in the Premises and to estimate the annual cost of the electrical usage in the Premises (including the electrical usage of all components, serving only the Premises, of the Building's heating, ventilating and air-conditioning systems), considering consumption, demand and all other relevant factors and based on the electric rate schedule pursuant to which Landlord purchases electricity for the Building, applied as if Tenant's usage were the only usage in the Building. If the annual cost estimated by Landlord's consultant exceeds the Electricity Factor then in effect, the Electricity Factor and the Fixed Rent shall be increased by the amount of such excess, effective as of the date of the survey or, if performed in connection with Tenant's initial occupancy of the Premises, as of the Commencement Date. The amount of any increase for the period from the effective date of the increase to the last day of the month in which Tenant receives notice of the increase shall be paid within 10 days following Tenant's receipt of Landlord's statement.

**Section 8.3** If at any time the electric rates on the schedule pursuant to which Landlord purchases electricity for the Building are increased (including by reason of Landlord changing the electricity supplier for the Building), Landlord may cause Landlord's electric consultant to estimate the resulting increase in Landlord's annual cost to supply electricity to the Premises and, effective on the date of the increase in the electric rates, the Electricity Factor and the Fixed Rent shall be increased by the amount estimated. The amount of the increase for the period from the effective date of the increase to the last day of the month in which Tenant receives notice of the increase shall be paid within 10 days following Tenant's receipt of Landlord's statement.

**Section 8.4** Any determination of Landlord's electric consultant under this Article shall be binding and conclusive on Tenant unless within 90 days after Tenant's receipt of the determination Tenant notifies Landlord that Tenant disputes the determination, identifies in Tenant's notice Tenant's electric consultant and delivers to Landlord a copy of Tenant's electric consultant's determination. Tenant shall not, however, be permitted to dispute the determinations of Landlord's electric consultant if there is a Default at the date of Tenant's notice of dispute. If Landlord's electric consultant and Tenant's electric consultant fail to agree on the determination in question within 30 days following Landlord's receipt of Tenant's notice of dispute, Landlord's electric consultant and Tenant's electric consultant shall, within 40 days following Landlord's receipt of Tenant's notice of dispute, designate an independent electric consultant to select either the determination of Landlord's electric consultant or the determination of Tenant's electric consultant, whichever the independent electric consultant believes is more accurate. The independent electric consultant must be a person having not less than 10 years' experience as an electric consultant for commercial office buildings in the City of New York. If the independent electric consultant is not designated within 40 days following Landlord's receipt of Tenant's notice of dispute, the independent electric consultant shall be designated by the New York City office of the American Arbitration Association (or any successor organization) under its then expedited rules at the request of either Landlord or Tenant. The determination of the independent electric consultant shall be binding and conclusive on Landlord and Tenant. Landlord and Tenant shall each pay their own expenses of this procedure, except the fees and expenses of the independent electric consultant or the American Arbitration Association (or any successor organization) shall be paid 50 percent by Landlord and 50 percent by Tenant. Pending the resolution of any dispute, Tenant shall pay to Landlord any increase in the Electricity Factor and the Fixed Rent determined by Landlord's electric consultant. If it is determined that the increase is less than the increase determined by Landlord's electric consultant, Landlord shall credit the overpayment against the Tenant's next payments under this lease or if any overpayment is due Tenant at the Expiration Date, Landlord shall promptly pay that overpayment to Tenant.

**Section 8.5** Landlord may at any time, by notice to Tenant, elect to submeter the electricity provided to the Premises (including the electrical usage of all components, serving only the Premises, of the Building's heating, ventilating and air-conditioning systems). If Landlord gives that notice this lease shall continue in full force and effect unaffected thereby, except that (a) Landlord shall, at Landlord's expense, furnish, install and maintain any submeter and other equipment in order for Tenant's electricity to be separately measured, and (b) from and after the date the submeter and equipment are placed in service (i) the Electricity Factor and the Fixed Rent shall be reduced by the Electricity Factor then in effect and (ii) Tenant shall pay to Landlord for Tenant's electricity usage, for any submeter billing period, within 15 days following Tenant's receipt of Landlord's statement, the sum of (A) an amount determined by applying Tenant's consumption of and demand for electricity as measured by the submeter to the rate schedule pursuant to which Landlord purchases electricity for the Building ("Base Electric Charge"), and (B) Landlord's administrative charge for overhead and supervision equal to 10% of the Base Electric Charge (not to exceed, however, any limitation imposed on that charge by any Law); provided, however, that if the submeter does not measure demand for electricity then the Base Electric Charge shall be equal to the product of Tenant's consumption of electricity as measured by the submeter multiplied by the average cost (including consumption-related and demand-related charges) of the electricity purchased by Landlord for the utility billing period most closely corresponding to such submeter billing period. If more than one submeter measures

Tenant's electricity, the electricity supplied through each submeter may be computed and billed separately in accordance with this Section.

**Section 8.6** Landlord may at any time, by notice to Tenant, elect to discontinue providing electricity to the Premises (including the electricity for all components, serving only the Premises, of the Building's heating, ventilating and air-conditioning systems). If Landlord gives that notice this lease shall continue in full force and effect unaffected thereby, except that (a) Tenant shall, at Tenant's expense, diligently arrange to obtain electricity from the utility or other supplier providing electricity to the Building by means of the existing Building electrical system to the extent it is available, suitable and safe for such purpose, as reasonably determined by Landlord, (b) Landlord shall, at Landlord's expense, furnish and install any additional equipment (including any meters) required in order for Tenant to obtain electricity directly from the utility or other supplier, and (c) from and after the date Tenant receives electricity from the utility or other supplier, Landlord shall not be required to provide electricity to the Premises and the Electricity Factor and the Fixed Rent shall be reduced by the Electricity Factor then in effect.

**Section 8.7** If any tax or other charge is imposed on Landlord's receipt of Rent under this Article, Tenant shall pay such tax or other charge to Landlord within 15 days following receipt of Landlord's statement, and Landlord shall remit same to the appropriate Authority.

**Section 8.8** Landlord and Tenant shall sign, acknowledge and deliver to each other an agreement in such form as Landlord reasonably requires to reflect each change in the Electricity Factor and the Fixed Rent under this Article, but no delay or failure to do so shall change the effective date of the increase.

### **Article 8. Electricity - Submeter**

**Section 8.1** Subject to the provisions of this Article, Landlord shall provide electricity to the Premises through the existing electrical system of the Building for reasonable use in connection with lighting and normal office equipment. Landlord shall not be liable to Tenant for any failure, defect or interruption of electric service for any reason. Tenant's use of electricity in the Premises shall not at any time exceed the capacity of the electrical system within or serving the Premises and Tenant shall not overload any component of such system. Tenant shall, at Tenant's expense, furnish and install all lighting tubes, lamps, bulbs and ballasts required in the Premises. Landlord shall select (and may from time to time change) the utility or other supplier providing electricity to the Building and the Premises). Tenant shall comply with all rules, regulations, and other requirements of the utility or other supplier.

**Section 8.2** Tenant shall pay to Landlord for Tenant's electricity usage (including the electricity for all components, serving only the Premises, of the Building's heating, ventilating and air-conditioning system), for any submeter billing period, within 15 days following Tenant's receipt of Landlord's statement, the sum of (a) an amount determined by applying Tenant's consumption of and demand for electricity as measured by the submeter measuring Tenant's electricity usage to the rate schedule pursuant to which Landlord purchases electricity for the Building ("Base Electric Charge"), and (b) Landlord's administrative charge for overhead and supervision equal to 10% of the Base Electric Charge (not to exceed, however, any limitation imposed on that charge by any Law); provided, however, that if the submeter does

not measure demand for electricity, then the Base Electric Charge shall be equal to the product of Tenant's consumption of electricity as measured by the submeter multiplied by the average cost (including consumption-related and demand-related charges) of the electricity purchased by Landlord for the utility billing period most closely corresponding to such submeter billing period. If more than one submeter measures Tenant's electricity, the electricity rendered through each submeter may be computed and billed separately in accordance with this Section.

**Section 8.3** Landlord may at any time, by notice to Tenant, elect to discontinue providing electricity to the Premises (including the electrical usage of all components, serving only the Premises, of the Building's heating, ventilating and air-conditioning systems). If Landlord makes that election, this lease shall continue in full force and effect unaffected thereby, except that (a) Tenant shall, at Tenant's expense, diligently arrange to obtain electricity from the utility or other supplier providing electricity to the Building by means of the existing Building electrical system to the extent it is available, suitable and safe for such purpose, as reasonably determined by Landlord, (b) Landlord shall, at Landlord's expense, furnish and install any additional equipment (including any meters) required in order for Tenant to obtain electricity directly from the utility or other supplier, and (c) from and after the date Tenant receives electricity from the utility or other supplier, Landlord shall not be required to provide electricity to the Premises and Tenant shall not be required to pay to Landlord any charge for electricity usage pursuant to Section 8.2.

**Section 8.4** If any tax or other charge is imposed on Landlord's receipt of Rent under this Article, Tenant shall pay such tax or other charge to Landlord within 15 days following Tenant's receipt of Landlord's statement, and Landlord shall remit same to the appropriate Authority.

## **Article 9. Services**

**Section 9.1 Elevators**. Landlord shall (unless the Premises are on street level) provide (a) nonexclusive passenger elevator service on all days, excluding Saturdays, Sundays, and holidays observed by the State of New York, the Federal Government or the labor unions servicing the Building ("Business Days"), from 8:00 a.m. to 6:00 p.m. ("Business Hours"), (b) at least one passenger elevator at all other times and (c) a nonexclusive freight elevator on Business Days from 9:00 a.m. to 12 noon and from 1:00 p.m. to 5:00 p.m. Landlord may change the manner of operation of any of the elevators, but shall not reduce the hours of operation provided in this Section (unless required by Law).

**Section 9.2 Heat, Ventilation and Air Conditioning**. Landlord shall provide to the Premises through the existing Building system, when and as required for the comfortable occupancy of the Premises (as reasonably determined by Landlord), heat, ventilation and air conditioning, on Business Days during Business Hours. Landlord makes no representation and shall have no obligation or liability with respect to the performance of the Building system by reason of (a) the use of the Premises, or any part thereof, in a manner exceeding the design criteria of the system, (b) the arrangement of any partitioning or the ceiling distribution system in the Premises which interferes with normal operation of the system, (c) the use of any machines or equipment in the Premises, except for ordinary office machines which do not produce excess heat, (d) Tenant's failure to comply with this lease which affects the



performance of the system, (e) Tenant's Work, (f) any other act of Tenant or Tenant's employees or contractors, or (g) any Law.

**Section 9.3 Cleaning.** Landlord shall after Business Hours on every Business Day provide cleaning service for the Premises in a manner which is then standard for the Building, excluding any portions of the Premises used for the storage, preparation, service or consumption of food or beverages or duplicating (except for any area used for a single duplicating machine). Tenant shall pay to Landlord or Landlord's cleaning contractor, within 15 days following Tenant's receipt of a bill, the cost of removing Tenant's refuse and rubbish from the Premises and the Building to the extent it exceeds waste basket refuse and rubbish. Tenant shall, at Tenant's expense, cause all portions of the Premises used for the storage, preparation, service or consumption of food or beverages or duplicating (except for any area used for a single duplicating machine) to be cleaned by Landlord's cleaning contractor, in a manner reasonably satisfactory to Landlord.

**Section 9.4 Water; Lavatories.** Landlord shall provide to the Premises domestic water for ordinary drinking, pantry and lavatory purposes. If Tenant requires domestic water for any other purpose, and domestic water is available for that purpose from the existing Building system, Landlord shall provide that domestic water, but may install a meter to measure Tenant's domestic water consumption for all purposes (or, at Landlord's option, to measure Tenant's consumption of only the additional domestic water), in which event Tenant shall (a) pay to Landlord the cost of the meter and its installation, (b) at Tenant's expense, keep the meter in good working order and repair, and (c) pay to Landlord, within 15 days following Tenant's receipt of a bill, the cost incurred by Landlord to supply domestic water to the Premises as measured by the water meter (including any sales or other taxes).

**Section 9.5 Access.** Tenant shall have access to the Premises 24 hours each day, seven days each week pursuant to procedures established by Landlord (but Landlord shall have no obligation to Tenant to remove any snow, ice or other obstructions except on Business Days during Business Hours). Landlord may exclude from the Building (a) any employee of Tenant not presenting a pass to the Building authorized by Landlord and (b) any visitor of Tenant who is not on a list provided to Landlord by Tenant or otherwise authorized by Tenant to enter the Building pursuant to procedures established by Landlord. Landlord may impose, temporarily from time to time, or permanently, security procedures.

**Section 9.6 Directory Listing.** Landlord shall list Tenant's name and the name of any permitted subtenant on the Building's main tenant directory, at Tenant's expense. The listing of any other name on the door of the Premises, the Building directory, or otherwise, shall not vest in that person any right or interest in this lease or in the Premises, nor shall it be considered Landlord's consent to any assignment of this lease or any sublease or occupancy of the Premises.

**Section 9.7 Overtime, Extra or Outside Services.** If Tenant shall give Landlord reasonable advance notice that Tenant requires heating, ventilation, air conditioning, or a freight elevator, during hours or on days other than those set forth in this lease, Landlord shall provide that service (unless, with respect to a freight elevator, it is not available during the requested hours or on the requested days) and Tenant shall pay Landlord, within 15 days following Tenant's receipt of a bill, Landlord's then established charge for that service. If, upon

Tenant's request, Landlord provides Tenant with any service which Landlord is not required to furnish pursuant to this lease, Tenant shall pay to Landlord, within 10 days following Tenant's receipt of a bill, Landlord's then established charge for that service. Any outside service providers (other than those used by Tenant in connection with Tenant's business) may be excluded from the Building if in Landlord's reasonable determination the presence of that service provider is detrimental to the Building or any tenant.

**Section 9.8 No Warranty by Landlord.** Landlord shall have no obligation to provide to Tenant or the Premises any services except as specifically set forth in this lease. Landlord does not warrant that any Building system or service to be provided by Landlord, or any other systems or services which Landlord may provide (a) shall be adequate for Tenant's particular purposes or (b) shall be free from interruption or reduction. Building systems and services, including access, may be interrupted or reduced by reason of Laws, repairs or changes which are, in Landlord's judgment, necessary or desirable, or Unavoidable Events, in which event such interruption or reduction shall not, unless otherwise provided in this lease (i) constitute an actual or constructive eviction, or a disturbance of Tenant's use of the Premises, (ii) entitle Tenant to any compensation or abatement of the Rent, (iii) relieve Tenant from any obligation under this lease, or (iv) impose any obligation or liability on Landlord.

#### **Article 10. Repairs**

**Section 10.1** Landlord shall, at Landlord's expense, maintain and repair the Building (including the Building systems) and the Land, except to the extent of Tenant's responsibility set forth in this Article.

**Section 10.2** Tenant shall, at Tenant's expense, subject to the provisions of this lease, including Article 5, as if part of Tenant's Work, maintain and repair the Premises (including any lavatories within the Premises) and all Building systems within and serving only the Premises, subject to reasonable wear and tear and damage for which Tenant is not responsible pursuant to this lease. If the Premises are on street level with an entry from the street directly into the Premises, Tenant shall, at Tenant's expense (a) maintain and repair the sidewalks abutting the Premises and (b) keep those sidewalks free of rubbish, snow, ice and other obstructions, and otherwise in a safe and clean condition, subject to reasonable wear and tear and damage for which Tenant is not responsible pursuant to this lease. Subject to Section 13.4, all damage to the Building (including the Building systems) or the Land resulting from any act or omission of Tenant or Tenant's employees or contractors, shall be repaired, at Tenant's expense, by Tenant to the reasonable satisfaction of Landlord or, at Landlord's option, by Landlord. Tenant shall give prompt notice to Landlord if any portion of the Premises or any Building system within the Premises requires repair. Tenant shall, at Tenant's expense, cause vermin within the Premises to be exterminated (as reasonably required by Landlord).

**Section 10.3** Landlord shall have no liability to Tenant, there shall be no abatement of the Rent and there shall not be deemed to be any actual or constructive eviction of Tenant arising from Landlord performing any repairs or other work to any portion of the Building (including the Premises or the Building systems). Landlord shall perform such repairs or other work in a manner which minimizes interference with the conduct of Tenant's business in the Premises and damage to the Premises, Tenant's Work and Tenant's Property (all of which

shall promptly be repaired by Landlord, at its expense), but Landlord is not required to employ overtime labor or incur additional expenses.

### **Article 11. Laws**

**Section 11.1** Tenant shall, at Tenant's expense, subject to the provisions of this lease, including Article 5, as if part of Tenant's Work, comply with all present and future laws, rules, regulations, orders, ordinances, judgments, requirements and (if Landlord adopts same) recommendations (collectively, "Laws"), of the United States of America, the State of New York, the City of New York or any present or future subdivision, court, agency, department, commission, board, bureau or instrumentality thereof, and any fire insurance rating body (collectively, "Authority") applicable to Tenant's occupancy of the Premises, Tenant's Work, Tenant's Property or the Premises. If, however, compliance requires structural work to the Premises or any work to the Building systems within and serving only the Premises, Tenant shall comply, at Tenant's expense, only if the obligation to comply arises from Tenant's Work, Tenant's Property or Tenant's manner of using the Premises (and, in such event, Landlord may, at Landlord's option, perform the work, at Tenant's expense, to be paid within 15 days following Tenant's receipt of a bill). If Tenant's manner of using the Premises requires work outside the Premises or to any Building system serving areas outside the Premises, Tenant shall cease that manner of using the Premises unless Landlord, at Landlord's option, agrees to perform that work, at Tenant's expense, to be paid within 15 days following Tenant's receipt of a bill.

**Section 11.2** Tenant shall promptly deliver to Landlord a copy of any communication or other materials relating to the Premises, the Building (including the Building systems), Tenant's Property or Tenant's Work received by Tenant from, or sent by Tenant to, any Authority.

**Section 11.3** Landlord shall promptly cure any violation of Law affecting the Building or the Premises to the extent the violation interferes with Tenant's occupancy of the Premises or the performance of Tenant's Work.

### **Article 12. Subordination; Estoppel Certificates**

**Section 12.1** This lease, and the rights of Tenant under this lease, are subject and subordinate in all respects to all present and future underlying leases of the Building, including all modifications, extensions and replacements thereof ("Superior Leases") and all present and future mortgages on any Superior Lease or on the Building, including all modifications, extensions, supplements, consolidations and replacements thereof ("Mortgages"), and all advances under any Mortgage. This Section is self-operative and no further instrument of subordination is required. Tenant shall, within 15 days following receipt of Landlord's request, sign, acknowledge and deliver any instrument that Landlord, any landlord under a Superior Lease ("Superior Landlord") or any mortgagee under a Mortgage ("Mortgagee") may request to evidence that subordination.

**Section 12.2** If any act or omission of Landlord gives Tenant the right, immediately or after a period of time, to terminate this lease, or to claim a partial or total eviction, Tenant shall not exercise that right until (a) Tenant gives notice of the act or omission to each Mortgagee and Superior Landlord whose name and address has been provided to Tenant in writing, and (b) unless the act or omission is Landlord's failure to substantially complete a

repair within the time periods provided in Section 14.4, the period of time necessary for any Mortgagee or any Superior Landlord acting diligently to remedy the act or omission has elapsed following that notice, provided the Mortgagee or Superior Landlord, within a reasonable time, gives Tenant notice of its intention to remedy such act or omission.

**Section 12.3** If any Mortgagee or any Superior Landlord (or a designee thereof) succeeds to the rights of Landlord under this lease, then at the request of the successor, Tenant shall attorn to the successor as Tenant's landlord under this lease, and shall, within 15 days following Tenant's receipt of a request, sign, acknowledge and deliver any instrument that the successor requests to evidence the attornment. Upon such attornment, this lease shall continue in full force and effect as a direct lease between the successor and Tenant on all of the terms of this lease, except that the successor shall not be (a) liable for any previous act or omission of Landlord under this lease, (b) subject to any offset, not expressly provided in this lease, (c) bound by any modification of this lease made after the date of the Mortgage or the Superior Lease in question, or by any prepayment of more than one month's Rent, unless the modification or prepayment has been approved in writing by the Mortgagee or the Superior Landlord in question, (d) required to incur any costs to repair any damage caused by a fire, other casualty or condemnation in excess of the insurance proceeds or condemnation award, or (e) liable for the return of any Security except to the extent the Security was received by the successor.

**Section 12.4** If any Mortgagee or Superior Landlord requires any modifications of this lease, or that any Mortgage or Superior Lease be subordinate to this lease, Tenant shall, within 15 days following Tenant's receipt of a request, sign, acknowledge and deliver to Landlord instruments in form and substance reasonably requested by Landlord providing for those modifications (provided they do not materially adversely affect Tenant) or that subordination.

**Section 12.5** Landlord and Tenant shall, at any time and from time to time, within 15 days following its receipt of a request from the other party, sign, acknowledge and deliver to the requesting party or any other person designated by that party a certification (a) that this lease is in full force and effect and has not been modified (or, if modified, setting forth all modifications), (b) the date to which the Rent has been paid, (c) stating whether or not, to the best of its knowledge, there is then a Default or any event has occurred which, with the serving of notice or the passage of time, or both, would give rise to a Default, or if Landlord is in default under this lease, and if so, setting forth the specific nature of same, and (d) to the best of its knowledge, any other factual matters reasonably requested by the other party or any person designated by the other party. Any certification delivered pursuant to this Section may be relied upon by the requesting party or any other person designated by the other party.

### **Article 13. Insurance**

**Section 13.1** Tenant shall, at Tenant's expense, maintain at all times during the Term and at all times when Tenant is in possession of the Premises (a) commercial general liability insurance in respect of the Premises, on an occurrence basis, with a combined single limit (annually and per occurrence and location) of not less than \$3,000,000 (which may consist of primary coverage of not less than \$1,000,000 and umbrella coverage), naming as additional insureds Landlord and any other person designated by Landlord, in compliance with this Article, (b) property insurance in an amount equal to 100 percent of full replacement value (with a

deductible not exceeding \$10,000) covering Tenant's Work, Tenant's Property and the property of third parties located in the Premises, against fire and other risks included in the standard New York form of property insurance, including business interruption, and (c) such other insurance as Landlord may reasonably require. Landlord shall have the right at any time and from time to time, but not more frequently than once every two years, to require Tenant to increase the amount of the commercial general liability insurance required to be maintained by Tenant under this lease provided the amount shall not exceed the amount then generally required of tenants occupying similar premises in similar buildings in the general vicinity of the Building.

**Section 13.2** Tenant shall deliver to Landlord and each additional insured (a) certificates in form reasonably acceptable to Landlord evidencing the insurance required by this lease to be maintained by Tenant before the Commencement Date (and with respect to any insurance required pursuant to Article 5, before the commencement of any Tenant's Work), and at least 15 days before the expiration of any such insurance, and (b) upon request, a copy of each insurance policy. All required insurance (including insurance required pursuant to Article 5) shall be primary, issued by companies reasonably satisfactory to Landlord and contain a provision whereby it cannot be canceled unless Landlord and any additional insureds are given at least 30 days' prior written notice of the cancellation. Tenant shall not carry separate or additional commercial general liability insurance, concurrent in form or contributing with any insurance required under this lease unless the parties required by this lease to be named as additional insureds are also named as additional insureds in such separate additional insurance policy. Tenant may carry any required insurance under a blanket policy if that policy complies with the requirements of this lease.

**Section 13.3** Landlord shall maintain property insurance, in an amount not less than the amount which avoids any coinsurance provisions of the insurance, covering the Building (including the Premises, but not including the property required to be insured by Tenant pursuant to this Article), against fire and the other risks included in the standard New York form of property insurance (including rent insurance), with such companies and with such deductibles as Landlord selects. Tenant shall not do or permit to be done any act which shall invalidate or be in conflict with Landlord's insurance policies, or increase the rates of insurance applicable to the Building. If, as the result of a Default, the insurance rates for the Building increase, in addition to any other obligation or liability of Tenant or any right or remedy of Landlord, Tenant shall reimburse Landlord for the increased premiums, within 15 days following Tenant's receipt of Landlord's request.

**Section 13.4** Landlord and Tenant shall, to the extent obtainable, each procure a clause in, or endorsement on, any property insurance carried by it, pursuant to which the insurance company waives its right of subrogation against the other party to this lease and its agents and employees or consents to a waiver of the right of recovery against the other party to this lease and its agents and employees. If an additional premium is required for the waiver or consent, the other party shall be advised of that amount and may, but is not obligated to, pay the same. If that party elects not to pay the additional premium, the waiver or consent shall not be required in favor of that party. Provided its right of full recovery under its insurance policy is not adversely affected, Landlord and Tenant each hereby releases the other (and its agents and employees) with respect to any claim (including a claim for negligence) it may have against the other for damage or loss covered by its property insurance (including business interruption and loss of rent).

**Section 13.5** The provisions of this Article shall apply to any subtenant or other occupant of the Premises.

#### **Article 14. Casualty**

**Section 14.1** If (a) the Premises is damaged by fire or other casualty, or (b) the Building (including any Building system) is damaged by fire or other casualty so that Tenant is deprived of reasonable access to the Premises or any part of the Premises, or the Premises or any part of the Premises, is unusable by Tenant for the reasonable conduct of Tenant's normal business in the Premises, Tenant shall give prompt notice to Landlord. Subject to the provisions of this Article (a) Landlord shall, at Landlord's expense, repair the damage, excluding the damage to Tenant's Work or Tenant's Property and (b) Tenant shall, at Tenant's expense, promptly remove Tenant's Property from the Premises to the extent required by Landlord in connection with Landlord's repair of the damage. Until the repairs to be performed by Landlord are substantially completed, the Rent shall be reduced in proportion to the area of the Premises to which Tenant shall not have reasonable access or which is unusable by Tenant for the reasonable conduct of Tenant's normal business in the Premises.

**Section 14.2** If the cost of repairing any damage to the Building by fire or other casualty exceeds 25 percent of the replacement cost of the Building as reasonably estimated by a reputable contractor, architect or engineer selected by Landlord, then, whether or not the Premises are damaged, Landlord shall have the right, by notice to Tenant within 60 days following the date of the damage, to terminate this lease, provided Landlord simultaneously terminates all other leases in the Building which under the circumstances may then be terminated by Landlord. If this lease is terminated pursuant to this Section, the Term shall expire on the 30th day after the notice is given (and any Rent paid by Tenant to Landlord for any period after that date shall be promptly refunded by Landlord to Tenant).

**Section 14.3** If a fire or other casualty results in the reduction of Rent pursuant to Section 14.1 with respect to 50 percent or more of the Premises, Landlord shall, within 30 days following the fire or other casualty, deliver to Tenant an estimate by a reputable contractor, architect or engineer selected by Landlord of the time required to substantially complete the repair of the Premises. If (a) the estimate exceeds one year following the fire or other casualty (or the remaining Term is less than one year) and (b) there is then no Default, Tenant shall have the right, by notice to Landlord within 15 days following the date Tenant receives the estimate, to terminate this lease effective the date which is 60 days following the date of its notice, in which event Tenant shall pay the Rent to the date of termination (or the date of the fire or other casualty for that part of the Premises with respect to which the Rent is reduced pursuant to Section 14.1), and the Term shall expire on that date.

**Section 14.4** If (a) this lease is not terminated as provided in this Article, (b) the repair required by this Article to be performed by Landlord is not substantially complete one year following the fire or other casualty (or, if Section 14.3 applies, within the period set forth in the estimate), and (c) there is then no Default. Tenant shall have the right, by notice to Landlord within 10 days following the end of that period, to terminate this lease effective the date which is 30 days following the date of its notice, in which event Tenant shall pay the Rent to the date of termination (or the date of the fire or other casualty for that part of the Premises with respect to which the Rent is reduced pursuant to Section 14.1), and the Term shall expire on that date.

**Section 14.5** This Article constitutes an express agreement governing any damage to or destruction of the Premises or the Building by fire or other casualty, and Section 227 of the Real Property Law of the State of New York, and any other similar Law shall have no application to a fire or other casualty.

#### **Article 15. Condemnation**

**Section 15.1** If as the result of a taking by condemnation or similar legal action of an Authority (a) all of the Premises, or so much thereof as renders the Premises wholly unusable by Tenant, is taken, (b) a portion of the Building or the Land is taken, resulting in Tenant no longer having reasonable access to or use of the Premises, (c) all or substantially all of the Building or the Land is taken or (d) a portion of the Building is taken resulting in Landlord's determination to demolish the Building, the Term shall expire on the date of the vesting of title. In that event, the Rent shall be apportioned as of the date of termination and any Rent paid by Tenant to Landlord for any period after that date shall be promptly refunded by Landlord to Tenant.

**Section 15.2** In the event of any such taking of all or any part of the Premises, the Building or the Land, Landlord shall be entitled to receive the entire award. Tenant shall have no claim against Landlord or any Authority for the value of the unexpired portion of the Term or Tenant's Work, and Tenant hereby assigns to Landlord all of its right in and to any such award. Tenant may, however, at Tenant's expense, make a separate claim to the appropriate Authority for the value of Tenant's Property and for moving expenses, provided such claim and award, if any, do not result in a reduction of the award which would otherwise be paid to Landlord.

**Section 15.3** If a taking does not result in the termination of this lease (a) Landlord shall, at Landlord's expense, as soon as practicable, restore that part of the Premises, the Building or the Land not taken, so that the Premises are usable, and (b) from and after the date of the vesting of title, the Rent shall be reduced in the same proportion as the area of the Premises, if any, which was taken.

#### **Article 16. Assignment and Subletting**

**Section 16.1** Except as provided in this Article, Tenant shall not, without Landlord's consent (a) assign (by operation of law or otherwise), encumber or otherwise transfer this lease or any interest in this lease, or (b) sublet or permit others to occupy all or any part of the Premises (whether for desk space, mailing privileges or otherwise). The transfer, redemption or issuance (by one or more transactions) of ownership interests of Tenant, any Guarantor or any direct or indirect parent of Tenant or any Guarantor which results in 50 percent or more of the ownership interests of that person being held by persons who did not hold 50 percent or more of those ownership interests on the date of this lease shall be considered an assignment of this lease which requires Landlord's consent, unless such ownership interests are publicly traded on a national stock exchange or over the counter market. Landlord's consent to an assignment, subletting or occupancy shall not relieve Tenant from any liability under this lease or from obtaining Landlord's consent to any further assignment, subletting or occupancy.

**Section 16.2** If Tenant desires to assign this lease or sublet all or substantially all of the Premises, Tenant shall give Landlord notice of Tenant's desire and the desired effective

date. Tenant's notice shall be an offer from Tenant to Landlord whereby Landlord may, at Landlord's option, by notice to Tenant at any time within 30 days after Landlord's receipt of Tenant's notice, terminate this lease. If Landlord timely exercises its option to terminate this lease, the term of this lease shall expire effective on the later of (a) the effective date set forth in Tenant's notice or (b) 120 days following Landlord's receipt of Tenant's notice. Landlord's option set forth in this Section to terminate this lease shall not apply to any assignment of this lease in connection with a merger or consolidation, the transfer of all or substantially all of a person's assets or the transfer, redemption or issuance (by one or more transactions) of ownership interests, unless this lease is the primary asset of the assignor.

**Section 16.3** If (a) Landlord does not timely exercise Landlord's option pursuant to Section 16.2, and Tenant, within 180 days following Tenant's notice under Section 16.2, desires to consummate an assignment of this lease or a sublease of all or substantially all of the Premises (any such transaction following that 180 day period shall first require another offer pursuant to Section 16.2), or (b) Tenant desires to sublet less than substantially all of the Premises (provided the Premises is not on the street level), or (c) Tenant desires to assign this lease in connection with a transaction excluded from Landlord's option set forth in Section 16.2, Tenant shall give Landlord notice of Tenant's desire, accompanied by (i) an executed original of the proposed assignment (with an assumption of this lease signed by the assignee) or sublease, the effective or commencement date of which must be at least 30 days after the giving of Tenant's notice, and all other documents related to the assignment or sublease, (ii) a reasonably detailed description of the proposed assignee or subtenant and its principals, the nature of its business and its proposed use of the Premises, and (iii) current financial information with respect to the proposed assignee or subtenant, including its most recent financial statements (and Tenant shall promptly deliver to Landlord such additional information as Landlord reasonably requests). Landlord's consent to the proposed assignment or sublease shall not be unreasonably withheld or delayed (and if not given or denied within 30 days following Landlord's receipt of Tenant's notice and the required information shall be deemed given), if:

(A) There is then no Default.

(B) The proposed assignee or subtenant (a) shall use the Premises for the Permitted Use and for no other purpose (but the proposed assignee or subtenant need not be in the same business as Tenant), and otherwise in accordance with this lease, and (b) in Landlord's reasonable judgment, is engaged in a business which is in keeping with the then standards of the Building, shall not violate any negative covenant contained in any other lease in the Building, is reputable, has sufficient financial worth considering the responsibility involved and would not cause excessive use of the Building or any Building system or service.

(C) The proposed assignee or subtenant, and any person which, directly or indirectly, controls, is controlled by, or is under common control with, the proposed assignee or subtenant, is not (a) then an occupant of any part of the Building (other than the Premises), or (b) a person with whom Landlord is then negotiating (or with whom Landlord has within the prior six-month period negotiated) a lease in the Building, provided Landlord has, or reasonably anticipates having within 180 days, available space in the Building substantially the same size as the Premises (or the space to be sublet, if less than substantially all of the Premises) for a comparable term;



(D) The proposed assignment or sublease complies with the provisions of this Article;

(E) Tenant reimburses Landlord for any reasonable costs that Landlord incurs in connection with the assignment or sublease, including reasonable attorney's fees and disbursements;

(F) Tenant has not advertised the availability of the Premises without prior notice to Landlord (and no advertisement shall state the proposed rental or other financial terms of the proposed assignment or sublease);

(G) The proposed sublease is for a term ending not later than one day prior to the Fixed Expiration Date, and provides as follows: (a) the sublease is subject and subordinate to this lease and to the matters to which this lease is or shall be subject and subordinate; (b) the sublease may not be changed or extended (but may be terminated or reduced in term), assigned or encumbered, or the subleased space further sublet or occupied by others; (c) the subtenant shall not, without Landlord's consent or approval, take any action, which, if to be taken by Tenant, would require Landlord's consent or approval; (d) the subtenant shall, upon notice by Landlord that Tenant is then in Default, pay the rent under the sublease directly to Landlord to be applied to the Rent under this lease (and Tenant hereby consents to that payment); (e) the subtenant shall, with respect to the subleased space and the subtenant's property, carry the insurance and furnish to Landlord the evidence thereof required by this lease to be carried and furnished by Tenant, and shall name Landlord and any other party designated by Landlord as additional insureds on its commercial general liability insurance, and the provisions of Section 13.4 shall apply between Landlord and the subtenant; and (f) in the event of any termination, re-entry or dispossession by Landlord under this lease, the subtenant shall vacate the sublet premises, unless Landlord, at Landlord's option, elects to take over all right, title and interest of Tenant, as sublandlord, under the sublease, in which event the subtenant shall, at Landlord's option, attorn to Landlord pursuant to the then executory provisions of the sublease, except that Landlord shall not be (i) liable for any previous act or omission of Tenant under the sublease, (ii) subject to any offset not expressly provided in the sublease, or (iii) bound by any change (other than a termination or a reduction in term) or extension of the sublease or prepayment of more than one month's rent to which Landlord did not consent; and

(H) No more than two occupants (including Tenant) shall occupy the Premises at any one time (but if the Premises consist of space on more than one floor, this restriction shall apply separately to the space on each floor).

**Section 16.4** Tenant shall be responsible for any act or omission of any assignee or subtenant (or anyone claiming through any assignee or subtenant) which violates this lease, and that violation shall be considered a violation by Tenant. If Landlord denies consent to a proposed assignment or sublease, or if Landlord exercises Landlord's option under Section 16.2, Tenant shall indemnify, defend and hold harmless Landlord and Landlord's managing agent, if any, 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 or Landlord's managing agent, if any, by any proposed assignee or subtenant or by any brokers or

other person claiming a commission or similar compensation in connection with the proposed assignment or sublease.

**Section 16.5** Tenant shall pay Landlord, within 15 days following payment to Tenant, 50% of: (a) all sums and other consideration in connection with an assignment, after Tenant recovers therefrom all reasonable costs incurred by Tenant in connection with that assignment which have been paid or are then due and payable; and (b) the excess, if any, of the rents, additional charges or other consideration in connection with a sublease over the Rent allocable to the subleased premises (which Rent shall be allocated equally throughout the Premises) accruing during the term of that sublease after Tenant recovers therefrom all reasonable costs incurred by Tenant in connection with that sublease which have been paid or are then due and payable. This Section shall not apply to an assignment excluded from Landlord's option set forth in Section 16.2 or an assignment or a sublease described in Section 16.6.

**Section 16.6** Tenant may, without Landlord's consent and without complying with Section 16.2, assign this lease or sublet all or any part of the Premises to any person which, directly or indirectly, controls, is controlled by, or is under common control with Tenant (which means the ownership, directly or indirectly, of more than 50 percent of all voting ownership interests or the possession, directly or indirectly, of the power to direct management), or permit any such person to occupy all or any part of the Premises, provided that (a) there is then no Default, (b) Landlord is given not less than 15 days prior notice of the assignment, sublet or occupancy, including an executed original of all related documents, including an original assignment (with an assumption signed by the assignee), sublease or permission, and proof reasonably satisfactory to Landlord of the requisite control and (c) the Premises is not further demised, and no demising walls, barriers, separate entrances, public corridors or like installations are constructed in the Premises.

## **Article 17. Access**

**Section 17.1** Landlord shall have the right, without the same constituting an eviction or constructive eviction of Tenant in whole or in part and without any abatement of the Rent or liability to Tenant, to (a) place (and have access to) concealed ducts, pipes and conduits through the Premises (without a material reduction or reconfiguration of the useable area of the Premises), (b) enter the Premises at reasonable times on reasonable prior notice, which may be oral (but prior notice shall not be required in an emergency), to inspect the Premises, to show the Premises to others or to perform any work Landlord deems necessary or desirable to the Premises or the Building (including the Building systems) or for the purpose of complying with Laws, (c) alter, maintain or repair the Building (including the Building systems) or the Land, and change the arrangement or location of entrances, corridors, doorways, elevators, stairs, toilets, or other public portions of the Building or the Land (provided that Tenant shall have reasonable access to the Premises and toilets on the same floor as the Premises and, as a result thereof, there shall be no material reduction in the services which Landlord is required by this lease to provide to Tenant), (d) change the name, number or designation by which the Building is known and (e) take all material into the Premises that may be required in connection with any of the matters described in this Section. If Tenant is not present when Landlord desires to enter the Premises, Landlord or Landlord's contractors may enter the Premises (by force, in the event of an emergency) without liability to Tenant.

**Section 17.2** If there is to be any excavation or construction adjacent to the Building, Tenant shall permit Landlord or any other person to enter the Premises to perform such work as Landlord or that person deems necessary to protect the Building, without any abatement of the Rent or liability to Tenant.

**Section 17.3** Except as may be provided in this lease, all walls, windows and doors bounding the Premises (including exterior walls of the Building, core corridor walls, and exterior doors and entrances, other than surfaces facing the interior of the Premises and doors and entrances servicing only the Premises), balconies, terraces, vaults, Building systems and all other portions of the Building are reserved to Landlord for Landlord's use, are not part of the Premises, and Landlord may have access thereto through the Premises.

**Section 17.4** Landlord shall exercise Landlord's rights under this Article in a manner which minimizes interference with the conduct of Tenant's business in the Premises and damage to the Premises, Tenant's Work and Tenant's Property (all of which shall promptly be repaired by Landlord, at its expense), but Landlord is not required to employ overtime labor or incur additional expenses.

#### **Article 18. Default**

**Section 18.1** Each of the following is a "Default" by Tenant under this lease:

(a) Tenant fails to pay when due any Rent and the failure continues for five days following Landlord's notice (which notice shall also be considered any demand required by any Law). If, however, Landlord gives such a notice twice in any 12-month period, any additional failure to pay any Rent when due within that 12-month period shall be considered a Default (without the requirement of any notice by Landlord).

(b) Tenant fails to comply with Article 16.

(c) Tenant fails to comply with any other term of this lease and the failure continues for 30 days following Landlord's notice. If, however, compliance cannot, with diligence, reasonably be fully accomplished within that 30-day period, Tenant shall have as long as is reasonably necessary to fully comply, provided Tenant commences compliance within that 30-day period and thereafter pursues compliance to completion with diligence.

(d) Tenant or any Guarantor, institutes, or has instituted against it any legal action seeking any relief from its debts under any Law which is not dismissed within 60 days, or a receiver, trustee, custodian or other similar official is appointed for it or for all or a substantial portion of its assets, or commits any other act indicating insolvency.

(e) Tenant fails to comply with any term of any other lease in the Building, or any Guarantor fails to comply with any term of its Guaranty, and in either instance the failure continues beyond the applicable cure period.

**Section 18.2** If a Default occurs, Landlord may at any time during the continuance of the Default give notice to Tenant that this lease shall terminate on the date specified in that notice, which date shall not be less than five days after Landlord's notice to

Tenant. If Landlord gives that notice, the Term shall expire on the date set forth in that notice (but Tenant shall remain liable as provided in this lease).

**Section 18.3** If Tenant is in arrears in the payment of the Rent, Tenant waives Tenant's right, if any, to designate the items against which any payments made by Tenant are to be credited, and Landlord may apply any payments made by Tenant to any items Landlord sees fit.

## **Article 19. Remedies**

**Section 19.1** If this lease is terminated pursuant to Article 18 or Landlord reenters or obtains possession of the Premises by summary proceedings or any other legal action (which Landlord may do without further notice and without liability or obligation to Tenant or any occupant of the Premises), all of the provisions of this Section shall apply (in addition to any other applicable provisions of this lease).

(a) Tenant (and all other occupants) shall vacate and surrender to Landlord the Premises in accordance with this lease.

(b) Landlord, at Landlord's option, may (i) relet the Premises, or any portion of the Premises, from time to time, in the name of Landlord, Tenant or otherwise, as determined by Landlord, to any person and on any terms, but Landlord shall have no obligation to relet the Premises, or any portion of the Premises, or to collect any rent (and the failure to relet the Premises, or any portion of the Premises, or to collect any rent shall not impose any liability or obligation on Landlord or relieve Tenant of any obligation or liability under this lease), and (ii) make any changes to the Premises as Landlord, in Landlord's judgment, considers advisable or necessary in connection with a reletting, without imposing any liability or obligation on Landlord or relieving Tenant of any obligation or liability under this lease.

(c) Tenant shall pay Landlord all Rent payable to the date on which this lease is terminated or Landlord reenters or obtains possession of the Premises.

(d) Tenant shall also pay to Landlord, as damages, any deficiency between (i) the aggregate Rent for the period which otherwise would have constituted the unexpired portion of the Term (conclusively presuming the additional rent for each year thereof to be the same as was payable for the year immediately preceding the termination, re-entry or obtaining of possession) and any expenses incurred by Landlord in connection with the termination, reentry or obtaining of possession, and the reletting of the Premises, including all repossession costs, brokerage commissions, reasonable attorneys' fees and disbursements, alteration costs and other expenses of preparing the Premises for reletting and (ii) the rents, if any, applicable to that period collected under any reletting of any portion of the Premises. Tenant shall pay any deficiency in monthly installments on the days specified in this lease for payment of installments of the Fixed Rent, and Landlord shall be entitled to recover from Tenant each monthly deficiency as the same arises. No suit to collect the deficiency for any month shall prejudice Landlord's right to collect the deficiency for any subsequent month. Tenant shall not be entitled to any rents payable (whether or not collected) under any reletting, whether or not those rents exceed the Rent.

(e) Landlord may recover from Tenant, and Tenant shall pay Landlord, on request, in lieu of any further deficiency pursuant to paragraph (d) of this Section (as liquidated

damages) the amount by which (i) the unpaid Rent for the period which otherwise would have constituted the unexpired portion of the Term (conclusively presuming the additional rent for each year thereof to be the same as was payable for the year immediately preceding the termination, re-entry or obtaining of possession) exceeds (ii) the then fair and reasonable rental value of the Premises, including the additional rent for the same period, both discounted to present value at the annual rate of interest (the “Base Rate”) publicly announced by Citibank, N.A., New York, New York (or any successor thereto) as its “base rate” on the date of the Default in question, or such other term as may be used by Citibank, N.A. from time to time for that rate (and if no longer publicly announced, then a similar rate selected by Landlord). If, before presentation of proof of liquidated damages, Landlord relets the Premises or any portion of the Premises for any period pursuant to a bona fide lease with an unrelated third party, the net rents payable in connection with the reletting shall be considered to be the fair and reasonable rental value for the Premises or the portion of the Premises relet during the term of the reletting. If Landlord relets the Premises, or any portion of the Premises, together with other space in the Building, the rents collected under the reletting and the expenses of the reletting shall be equitably apportioned for the purposes of this Article.

(f) Nothing contained in this lease shall be considered to limit or preclude the recovery by Landlord from Tenant of the maximum amount allowed to be obtained as damages or otherwise by any Law.

**Section 19.2** Tenant hereby waives (a) the service of any notice of intention to re-enter or obtain possession of the Premises or to institute any legal action in connection therewith, except as provided in this lease and (b) on its own behalf and on behalf of all persons claiming under Tenant, including all creditors, any rights Tenant and all such persons might otherwise have under any Law to redeem the Premises, to re-enter or repossess the Premises, or to restore this lease, after (i) Tenant is dispossessed pursuant to any Law or by any Authority, (ii) Landlord reenters or obtains possession of the Premises pursuant to any legal action, or (iii) the Expiration Date, whether by operation of law or pursuant to this lease (including the occurrence of the Expiration Date by Landlord terminating this lease pursuant to Section 18.2). The words “re-enter,” “re-entry” and “re-entered” as used in this lease shall not be considered to be restricted to their technical legal meanings. Landlord shall have the right to enjoin any Default and the right to invoke any remedy allowed by any Law in addition to any remedies provided in this lease. All remedies provided in this lease are cumulative and Landlord’s right to invoke, or invocation of, any remedy shall not preclude Landlord from invoking any other remedy.

**Section 19.3** Landlord and Tenant each hereby waive trial by jury in any legal action brought by either party against the other in connection with this lease. If Landlord commences any summary proceeding against Tenant, Tenant shall not interpose any counterclaim in that proceeding (unless the failure to impose the counterclaim would preclude Tenant from asserting in a separate legal action the claim which is the subject of the counterclaim), and shall not seek to consolidate the proceeding with any other legal action.

**Section 19.4** If there is then a Default, or if Tenant fails to comply with any obligation under this lease which, in Landlord’s reasonable opinion creates an emergency, Landlord may, but is not obligated to, cure the Default or, without notice, cure the failure to comply, for the account of Tenant. All amounts incurred by Landlord in that connection, and any amounts (including reasonable attorneys’ fees and disbursements) in instituting, prosecuting

or defending any legal action by or against Tenant, or in connection with any dispute under this lease, in which Landlord prevails, with interest thereon at the Default Rate, shall be paid by Tenant to Landlord within 15 days following Tenant's receipt of Landlord's request. Landlord shall promptly reimburse Tenant for any reasonable attorneys' fees and disbursements incurred by Tenant in connection with any legal action or other dispute with Landlord under this lease, in which Tenant prevails.

**Section 19.5** The failure of Landlord to seek redress for a Default, or of Landlord or Tenant to insist upon the strict performance of any term of this lease, shall not prevent Landlord from redressing a subsequent Default or Landlord or Tenant from thereafter insisting on strict performance. The receipt by Landlord of the Rent with knowledge of a Default or Tenant's failure to strictly perform under this lease shall not be deemed a waiver of the Default or failure. No term of this lease shall be considered waived by Landlord or Tenant unless the waiver is in a writing signed by the waiving party. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent shall be considered other than on account of the next installment of the Rent, or as Landlord may elect to apply same. No endorsement or statement on any check or letter accompanying any check or payment shall prevent Landlord from cashing the check or otherwise accepting the payment, without prejudice to Landlord's right to recover the balance of the Rent or pursue any other remedy.

**Section 19.6** If Tenant fails to pay any installment of the Fixed Rent on the first day of the month or any additional rent when due, in addition to any other right or remedy of Landlord, Tenant shall pay to Landlord within 15 days following Landlord's notice (a) a late charge equal to 4% of the amount unpaid and (b) interest at the rate (the "Default Rate") which is the lesser of the rate of 4% per annum above the Base Rate or the maximum legal interest rate permitted under the circumstances, on the amount unpaid, from the date the payment was first due to and including the date paid.

**Section 19.7** (a) All legal actions relating to this lease shall be adjudicated in the state courts of the State of New York, or the federal courts, in either case having jurisdiction in the county in which the Building is located. Tenant irrevocably consents to the personal and subject matter jurisdiction of those courts in any legal action relating to this lease. This consent to jurisdiction is self-operative and no further instrument or legal action, other than service of process in any manner permitted by Law or this Section, is necessary in order to confer jurisdiction upon the person of Tenant and the subject matter in question in any such court.

(b) Tenant irrevocably waives and shall not assert, by way of motion, as a defense or otherwise (i) any objection to any such court being the venue of any legal action relating to this lease, (ii) any claim that any legal action relating to this lease brought in any such court has been brought in an inconvenient forum or (iii) any claim that Tenant is not personally subject to the jurisdiction of that court.

(c) Service in any legal action relating to this lease may be made by delivery of the summons and complaint, or the petition and notice of petition, by certified or registered mail, return receipt requested, sent to Tenant at Tenant's Notice Address or sent to Landlord at Landlord's Notice Address.

(d) Tenant, for itself and all of its agencies and instrumentalities, hereby waives any sovereign immunity from jurisdiction that Tenant or any such agency or instrumentality might otherwise possess with respect to any legal action relating to this lease, and waives any sovereign immunity from attachment prior to entry of judgment and from attachment in aid of execution that any of Tenant's property, or the property of any such agency or instrumentality, might otherwise have, irrespective of the use or intended use of the Premises.

## **Article 20. Security**

**Section 20.1** Tenant has deposited with Landlord, as security for Tenant's compliance with this lease, the Security, in cash or, if requested by Landlord or Tenant, by a standby letter of credit on the terms, and substantially in the form, attached to this lease as Exhibit D, issued by a bank that is a member of the New York Clearing House Association, L.L.C. having its principal office in the City of New York and otherwise acceptable to Landlord (the "Letter of Credit"). If there is a Default, Landlord may use all or any portion of the Security to cure the Default or for the payment of any other amount due and payable from Tenant to Landlord in accordance with this lease. Tenant shall, within 15 days following Landlord's notice, deposit with Landlord in cash or by a Letter of Credit an amount sufficient to restore the full amount of the Security (without giving consideration to any interest accrued on the Security). Landlord shall not, unless required by any Law, pay interest to Tenant on the Security, and if Landlord is required to maintain the Security in an interest bearing account or pay any interest to Tenant, Landlord shall retain the maximum amount of interest permitted under any Law (which Landlord may withdraw and retain annually or at any other times). Tenant shall not assign (other than to a permitted assignee of this lease) or encumber the Security, and no prohibited assignment or encumbrance by Tenant of the Security shall bind Landlord. Landlord shall not be required to exhaust its remedies against Tenant or the Security before having recourse to Tenant, any Guarantor, the Security or any other security held by Landlord, or before exercising any right or remedy, and recourse by Landlord to any one of them, or the exercise of any right or remedy, shall not affect Landlord's right to pursue any other right or remedy or Landlord's right to proceed against the others. If there is then no uncured Default, the Security and any accrued and unpaid interest thereon, or any balance, shall be paid or delivered to Tenant promptly after the Expiration Date and Tenant's vacating of the Premises in accordance with this lease. If Landlord's interest in the Building is sold or leased, Landlord shall transfer the Security and any accrued and unpaid interest thereon, or any balance, to the new Landlord and, upon such transfer, the assignor shall thereupon be automatically released by Tenant from all liability for the return of the Security or any interest (and Tenant agrees to look solely to the assignee for the return of the Security or any interest).

**Section 20.2** If the Security is by a Letter of Credit, the following provisions of this Section shall apply (in addition to the other provisions of this Article):

(a) If the bank issuing the Letter of Credit shall notify Landlord that the term of the Letter of Credit shall not be renewed, Tenant shall, at least 30 days prior to the expiration date of the Letter of Credit, replace the Letter of Credit with a new Letter of Credit, having an initial expiration date at least one year from the date of the new Letter of Credit.

(b) If, for any reason other than Landlord's failure to comply with the requirements of the Letter of Credit, the bank issuing the Letter of Credit shall fail or

refuse to honor any demand, Tenant shall within 15 days following Landlord's notice to Tenant of such failure or refusal, at Landlord's option, either (i) deposit with Landlord the Security in cash or (ii) replace the Letter of Credit with a new Letter of Credit (having an initial expiration date at least one year from the date of the new Letter of Credit).

(c) If Landlord shall transfer its interest in the Building, Tenant shall, at the request of the transferor or transferee, replace or amend the Letter of Credit within 10 days following such request, so that the transferee is named as the beneficiary. Any transfer fee or charge imposed by the bank issuing the Letter of Credit shall be reimbursed to Landlord (or, at Landlord's option, paid) by Tenant within 15 days following Landlord's request.

(d) If there shall be a Default, in addition to any other right or remedy of Landlord, Landlord shall have the right immediately to draw the full amount of the Letter of Credit and hold the cash as the Security.

### **Article 21. Broker**

**Section 21.1** Tenant represents to Landlord that Tenant dealt with no broker in connection with this lease other than the Broker. Tenant shall indemnify, defend and hold harmless Landlord from and against any claims for any brokerage commissions or other compensation which are made by any broker other than the Broker alleging to have dealt with Tenant in connection with this lease, and all costs, expenses, liabilities and damages in connection therewith, including reasonable attorneys' fees. Landlord shall pay any commission due the Broker pursuant to a separate agreement between Landlord and the Broker.

### **Article 22. Notices**

**Section 22.1** Except as may be provided in this lease, all notices and other communications under this lease must be in writing and sent by nationally recognized overnight courier service or registered or certified mail (return receipt requested), addressed to Landlord or Tenant at its Notice Address.

**Section 22.2** Any notice or other communication sent as provided in this Article shall be effective (a) on the date received (or rejected) if sent overnight courier service, or (b) two Business Days after mailing by registered or certified mail.

**Section 22.3** Any notice or other communication given by Landlord to Tenant in accordance with this Article may be signed and given by Landlord's managing agent, if any, with the same force and effect as if signed and given by Landlord.

### **Article 23. Representations and Liability**

**Section 23.1** Neither Landlord nor Landlord's managing agent, if any, has made any warranties, representations, statements or promises with respect to the Premises, the Building, the Land, the Building systems, any additional rent, any Law or any other matter, unless expressly set forth in this lease. This lease contains the entire agreement between Landlord and Tenant with respect to the subject matter of this lease, and any previous agreements between Landlord and Tenant are merged in this lease, which alone expresses their agreement. Tenant is entering into this lease after full investigation, and is not relying on any



warranties, representations, statements or promises made by Landlord or any other person not expressly set forth in this lease, and is not acquiring any rights of any nature, by implication or otherwise, except as expressly set forth in this lease.

**Section 23.2** No act or omission of Landlord or Tenant, or their respective employees, agents or contractors, including the delivery or acceptance of keys, shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such surrender shall be valid unless it is in a writing signed by Landlord. Any employee of Landlord, Landlord's managing agent, if any, or the Building to whom any property is entrusted by or on behalf of Tenant shall be deemed to be acting as Tenant's agent with respect to that property and neither Landlord nor Landlord's managing agent, if any, shall be liable for any damages to or loss of property of Tenant or others entrusted to employees, agents or contractors of Landlord, Landlord's managing agent, if any, or the Building.

**Section 23.3** Neither Landlord nor Landlord's managing agent, if any, shall be liable for any injury, damage or loss to Tenant, Tenant's Property, Tenant's Work, Tenant's business or to any other person or property resulting from any cause, except to the extent caused by the negligence or willful misconduct of Landlord, Landlord's managing agent, if any, or their respective employees, agents or contractors, subject to Section 13.4.

**Section 23.4** If, at any time or from time to time, any windows of the Premises are temporarily closed, blocked or darkened for any reason, or permanently closed, blocked or darkened if required by any Law or due to any construction on property adjacent to the Building by any person, including Landlord or any person in which Landlord has an interest (a) Landlord shall not be liable for any loss or damage Tenant may sustain thereby, (b) Tenant shall not be entitled to any compensation or abatement of the Rent, (c) Tenant shall not be relieved of its obligations under this lease and (d) it shall not constitute an eviction or constructive eviction of Tenant from the Premises.

**Section 23.5** In the event of a transfer or lease of the Building (a) the transferor or lessor shall be and hereby is relieved of all obligations and liabilities of Landlord under this lease accruing after the effective date of the transfer or lease, and (b) the transferee or lessee shall be deemed to have assumed all of Landlord's obligations and liabilities under this lease effective from and after the effective date of the transfer or lease.

**Section 23.6** Landlord, its partners, members, shareholders, officers, directors and principals, disclosed or undisclosed, have no personal liability under or in connection with this lease. Tenant shall look only to Landlord's interest in the Building and the Land for the satisfaction of Tenant's remedies or to collect any judgment requiring the payment of money by Landlord under or in connection with this lease, and no other assets of Landlord or such persons shall be subject to lien, levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies or the collection of any judgment under or in connection with this lease. If Tenant acquires a lien on such other property or assets by judgment or otherwise, Tenant shall promptly release that lien by signing, acknowledging and delivering to Landlord any instrument, prepared by Landlord, required for the lien to be released.

**Section 23.7** (a) If Tenant requests Landlord's consent or approval under this lease and Landlord denies or delays Landlord's consent or approval, Landlord shall have no

liability therefor and Tenant shall not be entitled to any damages. Tenant's sole remedy shall be as provided in paragraph (b) of this Section, and that remedy shall be available only if Landlord has in this lease, with respect to the subject of the request, agreed not to unreasonably withhold or delay Landlord's consent or approval. However, if any such consent or approval is deemed given pursuant to the provisions of this lease, then that shall be Tenant's sole remedy. Except as otherwise expressly set forth in this lease, Landlord's consent or approval, to be effective, must be in a writing signed by Landlord.

(b) If (i) Tenant requests Landlord's consent or approval, (ii) Landlord denies or delays its consent or approval, (iii) this lease provides that such consent or approval shall not be unreasonably withheld or delayed and (iv) within 30 days following Landlord's denial or, if Landlord delays its consent or approval, within 45 days following Tenant's request, Tenant gives notice to Landlord that Tenant considers same unreasonable, the dispute shall be settled in the county in which the Building is located by arbitration administered by the American Arbitration Association ("AAA") under the AAA's Commercial Arbitration Rules, Expedited Procedures (to the extent then in effect). A judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction. If the arbitrator determines that Landlord's consent or approval was unreasonably withheld or delayed, Landlord shall be considered to have given its consent or approval but Landlord shall not be liable for, and the arbitrator shall not award, any costs, expenses, damages or losses whatsoever in connection with or arising out of Landlord's denial or delay. The determination of the arbitrator shall be binding and conclusive on Landlord and Tenant. Landlord and Tenant shall each pay their own expenses of this procedure, except the fees and expenses of the AAA and the arbitrator shall be paid 50 percent by Landlord and 50 percent by Tenant.

**Section 23.8** This lease and the obligations of Tenant to pay the Rent and perform Tenant's other obligations under this lease shall not be waived, delayed or otherwise affected in any manner, and Landlord shall have no liability, if Landlord is unable to comply with, or is delayed in complying with, any of Landlord's obligations under this lease by reason of any strike, labor trouble, accident, Law or other cause beyond Landlord's control ("Unavoidable Events").

**Section 23.9** Tenant shall not perform or permit to be performed any act which may subject Landlord or Landlord's managing agent, if any, to any liability. Tenant shall, to the extent not caused by the negligence or willful misconduct of Landlord or its contractors or agents, indemnify, defend and hold harmless Landlord and Landlord's managing agent, if any, from and against (a) all claims arising from any act or omission of Tenant, its contractors, agents, employees, invites or visitors, (b) all claims arising from any accident, injury or damage to any person or property in the Premises during the Term or when Tenant is in possession of the Premises, and (c) Tenant's failure to comply with Tenant's obligations under this lease (whether or not a Default), and all liabilities, damages, losses, fines, costs and expenses (including reasonable attorneys' fees and disbursements) incurred in connection with any such claim or failure.

## **Article 24. End of Term**

**Section 24.1** On the Expiration Date (a) Tenant (and all other occupants) shall vacate and surrender the Premises, broom clean and in good order and condition, except for ordinary wear and tear and damage for which Tenant is not responsible under this lease, and otherwise as may be required by this lease, and (b) Tenant shall remove all of Tenant's Property and any Tenant's Work required to be removed pursuant to this lease. If the last day of the Term is not a Business Day, this lease shall expire on the immediately preceding Business Day. Tenant waives, for itself and for any person claiming under Tenant, any right which Tenant or any such person may have under Section 2201 of the New York Civil Practice Law and Rules or under any similar Law.

**Section 24.2** If the Premises are not vacated and surrendered in accordance with this lease, on the date required by this lease, Tenant shall be liable to Landlord for (a) all losses, costs, liabilities and damages which Landlord incurs by reason thereof, including reasonable attorneys' fees, and Tenant shall indemnify, defend and hold harmless Landlord against all claims made by any succeeding tenants against Landlord or otherwise resulting from the failure of Tenant (and all other occupants) timely to vacate and surrender the Premises in accordance with this lease, and (b) per diem use and occupancy in respect of the Premises equal to twice the Rent payable under this lease for the last year of the Term (which Landlord and Tenant presently agree is the Rent to which Landlord would be entitled, is presently contemplated by them as being fair and reasonable under such circumstances and is not a penalty). In no event, however, shall this Section be construed as permitting Tenant (and all other occupants) to remain in possession of the Premises after the Expiration Date.

**Section 24.3** If during the last 90 days of the Term, Tenant removes substantially all of Tenant's Property from the Premises, Landlord or any person designated by Landlord may immediately enter and change the Premises, without (a) abatement of the Rent, (b) releasing Tenant from any obligation or liability under this lease, (c) incurring any liability or obligation to Tenant or (d) causing any actual or constructive eviction.

**Section 24.4** Any obligation of Landlord or Tenant under this lease which by its nature or under the circumstances can only be, or by the terms of this lease may be, performed after the Expiration Date and any liability for a payment with respect to any period ending on or before the Expiration Date, unless otherwise set forth in this lease, shall survive the Expiration Date.

## **Article 25. Miscellaneous**

**Section 25.1** (a) This lease shall be governed by the law of the State of New York.

(b) Tenant shall not record this lease or any memorandum of this lease.

(c) Subject to the provisions of this lease, this lease shall bind and inure to the benefit of Landlord and Tenant and their respective legal representatives, successors and assigns.

(d) This lease may not be changed or terminated, in whole or in part, except in a writing signed by Landlord and Tenant.

(e) Notwithstanding any provision of this lease, or any Law, to the contrary, or the execution of this lease by Tenant, this lease shall not bind or benefit Landlord or Tenant, unless and until this lease is signed and delivered by Landlord and Tenant.

(f) Tenant shall hold in confidence and shall not disclose to third parties other than its officers, directors, partners, members, employees, representatives, brokers, lenders, attorneys, accountants and advisors, and shall cause its officers, directors, partners, members, employees, representatives, brokers, lenders, attorneys, accountants and advisors to hold in confidence and not disclose to third parties, the terms of this lease, except to the extent any such terms (i) must be disclosed pursuant to any Law, (ii) are publicly known or become publicly known other than through the acts of Tenant, or any of its officers, directors, partners, members, employees, representatives, brokers, lenders, attorneys, accountants or advisors, or (iii) are disclosed by Tenant in connection with any financing or any proposed financing, any proposed sale of Tenant or its business, any proposed subletting of the Premises, or any proposed assignment of this lease. Notwithstanding the provisions of this paragraph or any other provision of this lease, each party to this lease (and each of its employees, representatives or agents) may disclose to any person, without limitation of any kind, the tax treatment and tax structure of any transactions contemplated by this lease and all materials of any kind (including opinions or other tax analyses) that are or have been provided to any party to this lease (or to its employees, representatives or agents) relating to such tax treatment or tax structure, provided, however, that this authorization of disclosure shall not apply to restrictions reasonably necessary to comply with securities laws. This authorization of disclosure is retroactively effective immediately upon commencement of the first discussions regarding the transactions contemplated by this lease, and the parties to this lease aver and affirm that this tax disclosure authorization has been given on a date which is no later than 30 days from the first day that any party to this lease (or its employees, representatives or agents) first made or provided a statement as to the potential tax consequences that may result from the transactions contemplated hereby.

(g) The Exhibits to this lease, if any, are a part of this lease, but, in the event of an inconsistency between this lease and the Exhibits, this lease shall control.

(h) Each obligation of Tenant under this lease is a separate and independent covenant of Tenant, not dependent on any other provision of this lease.

(i) The captions in this lease are for reference only and do not define the scope of this lease or the intent of any term. All Article and Section references in this lease shall, unless the context otherwise specifically requires, be deemed references to the Articles and Sections of this lease.

(j) If any provision of this lease, or the application thereof to any person or circumstance, is invalid or unenforceable, then in each such event the remainder of this lease or the application of such provision to any other person or any other circumstance (other than those as to which it is invalid or unenforceable) shall not be affected, and each provision hereof shall remain valid and enforceable to the fullest extent permitted by Law.

(k) There shall be no presumption against Landlord because Landlord drafted this lease or for any other reason.

(l) If there is then no Default, Tenant may peaceably and quietly enjoy the Premises without hindrance by Landlord or any person lawfully claiming under Landlord, subject however, to the terms of this lease.

(m) Tenant hereby waives any rights Tenant may have in connection with any zoning lot merger or subdivision or transfer of development rights with respect to the Building or any Land, including any rights Tenant may have to be a party to or to execute or contest any instrument providing for such merger, subdivision or transfer.

(n) If (i) Tenant is comprised of two or more persons, or (ii) Tenant's interest in this lease is assigned to any person as permitted by this lease, "Tenant," as used in this lease, shall mean each of those persons, and the liability of those persons under this lease shall be joint and several. Wherever appropriate in this lease, personal pronouns shall be considered to include the other gender and the singular to include the plural.

(o) If required in order to comply with the rule against perpetuities, if

the Commencement Date shall not occur within 21 years following the date of this lease, this lease shall be deemed cancelled.

**In Witness Whereof**, Landlord and Tenant have executed this lease on the date of this lease.

Landlord

\_\_\_\_\_

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

Name:

Title:

Tenant

\_\_\_\_\_

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

Name:

Title:

**Exhibit A**  
**The Premises**

**Exhibit B**

**Landlord's Work**



## Exhibit C

### Landlord's Regulations

1. Tenant shall not obstruct, or use for any purpose other than ingress and egress, the public areas of the Building (other than the bathrooms).
2. Tenant shall not use the bathrooms and other Building systems for any purpose or in any manner other than for the purposes and in the manner they were intended to be used.
3. Tenant shall not use the fire exits and stairways of the Building for any purpose other than emergency ingress and egress.
4. Tenant shall not obstruct, or place articles on, or discharge any fumes or vapors into, any heating, ventilating and air-conditioning units, vents or ducts, or any other Building systems.
5. Tenant shall not place any articles on window sills.
6. Tenant shall not open any window, except for windows which were specifically designed to be opened and closed for ventilation and then only when the heating, ventilating and air conditioning system is not in operation.
7. Tenant shall not bring into the Premises any vehicles (including bicycles) or animals (except seeing eye dogs).
8. Tenant shall not install any additional locks, bolts or other access inhibiting devices on the entrance door or windows of the Premises or on any electrical, telephone or mechanical closets.
9. All bulky deliveries, and all hand trucks or similar devices, must enter the Building through the freight entrance of the Building and be taken to the Premises by use of the freight elevator. No hand trucks or similar devices may be used for moving articles in or out of the Premises, except those equipped with rubber tires, side guards and such other safeguards as Landlord requires.
10. Landlord may inspect any packages entering or exiting the Building.
11. Tenant shall keep all entrance doors to the Premises locked when the Premises are not in use. Entrance doors to the Premises may not be kept open at any time, except on a floor occupied only by Tenant.

**Exhibit D**

**Standby Letter of Credit**

[Date]

Standby Letter of Credit No. \_\_\_\_\_

Beneficiary: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Applicant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Ladies and Gentlemen:

We hereby agree to pay the Beneficiary or the last transferee Beneficiary the sum of \$\_\_\_\_\_ in the currency of the United States of America, at sight, upon the presentation of a copy of this Standby Letter of Credit and a written demand on us containing the date of the demand, the amount of the demand and the number of this Standby Letter of Credit.

This Standby Letter of Credit may be transferred by the Beneficiary and any transferee Beneficiary.

If this Standby Letter of Credit is lost, stolen, mutilated or destroyed we shall replace it.

This Standby Letter of Credit shall be automatically extended for periods of one (1) year from the then relevant expiry date through [three months following the Fixed Expiration Date], unless you are notified by us in writing at least sixty (60) days prior to each annual expiry date that this Standby Letter of Credit shall not be extended.

We hereby agree that demands made in accordance with this Standby Letter of Credit shall be duly honored if presented at our office at [must be in the City of New York], no later than [one year and three months following the Target Commencement Date], unless this date is automatically extended pursuant to this Standby Letter of Credit, in which event such date shall be the then relevant expiry date.

This Letter of Credit is subject to the International Standby Practices 1998, as the same may be amended after the date of this Letter of Credit.

Very truly yours,

\_\_\_\_\_  
Authorized Signature

