



Tuesday, October 21
2:30 pm-4:00 pm

602 Negotiation of Commercial Real Estate Leases

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Faculty Biographies

Michael F. Collins

Michael F. Collins is senior counsel for the Pennsylvania Real Estate Investment Trust (PREIT) in Philadelphia, Pennsylvania. His current duties include negotiating and drafting complex commercial leases between PREIT and national retail tenants, such as Abercrombie & Fitch, Coach, Zale Corporation, and Luxottica. In addition, Mr. Collins counsels PREIT's asset management, leasing, construction and tax departments on legal issues affecting leasing, development, and financing activity.

Prior to joining PREIT, Mr. Collins was associated with the law firm of Fox, Rothschild, O'Brien and Frankel where he was responsible for handling real estate and corporate matters for large commercial clients including a major regional supermarket chain and shopping center owner.

Mr. Collins earned his bachelor's, magna cum laude, from Saint Lawrence University where he was a member of Phi Beta Kappa, and his law degree from Georgetown University.

Allison Elko

Allison Elko is senior counsel with Windstream Corporation, an S&P 500 company with headquarters in Little Rock, Arkansas. Windstream Corporation provides voice, broadband, and entertainment services in 16 states with approximately 3.2 million access lines and \$3.3 billion in annual revenues.

Prior to joining Windstream Corporation, Ms. Elko practiced in the real estate department of Hughes & Luce, LLP (now K&L Gates) in Dallas, Texas, representing clients in office and industrial leasing; real estate acquisitions, dispositions and development; and construction financing.

Jeffrey D. Kaiser

Jeffrey D. Kaiser is assistant general counsel at Lehigh Gas Corporation, a leading provider of branded petroleum products and convenience retail services, where he represents Energy Realty OP, L.P., an affiliated real estate company that focuses on the ownership and leasing of real estate assets in the petroleum and convenience retail industry. Energy Realty OP, L.P. and its affiliates currently own or lease in excess of 170 sites in Delaware, Massachusetts, New Jersey, New York, Ohio, and Pennsylvania.

Mr. Kaiser previously served as assistant general counsel at a private real estate fund sponsor focusing on office building and shopping center development and management. Prior to that, he was an associate at Morgan, Lewis & Bockius LLP.

Mr. Kaiser is a member of the ABA and ACC, previously serving as chair of the ACC Financial Services Committee. In 2008, he was named as one of 35 Pennsylvania "Lawyers on the Fast Track" by *The Legal Intelligencer* and *Pennsylvania Law Weekly*.

He received a BA from Muhlenberg College and a JD from the University of Miami School of Law, where he served on the University of Miami Law Review.

Ellen S. Rosenberg

Ellen Rosenberg is senior counsel with Guitar Center, Inc., at its corporate office in Westlake Village, California.

Prior to joining Guitar Center, Ms. Rosenberg was in private practice for several years, after practicing law in the federal government in Washington, DC and Chicago. Ms. Rosenberg has extensive experience in all facets of a corporate legal department, including litigation, employment law, intellectual property, transactional work, and management of a legal department.

She is a member of the California Bar.

Ms. Rosenberg is a graduate of the The School of Business, University of Maryland and Catholic University's Columbus School of Law.

Commercial Real Estate Leasing

The Premises

- Determining Premises square footage
 - When to measure
 - Effect on Rent
 - Standard/Method of Measurement

The Premises

- Describe by reference to:
 - Store/office number
 - Floor
 - Lease outline drawing
 - Site plan
 - Legal description

The Premises

- Restrictions on Landlord's Right to Change Site Plan
 - Access
 - Visibility
 - Parking

The Premises

- Restrictions on Landlord's Right to Change Site Plan
 - Parking
 - Ratios
 - No Build Areas
 - Employee Parking
 - Zoning

The Premises

- Description of shopping center.
- Description of entire tract-many differ from description of shopping center.
- Square footage of shopping center or entire tract will affect pass-through costs.

The Premises

- Restrictions on Landlord's Right to Change Site Plan
 - Reciprocal Easement Agreements
 - No increase in Tenant obligations
 - No decrease in Tenant rights
 - Reciprocal use and parking
 - No effect on Tenant's use

The Premises

- Additional Premises – Exclusive Control
 - Storage Areas
 - Loading Docks
 - Basements
 - Corridors
 - Roofs
 - Exterior Walls

The Premises

- Additional Premises affects on:
 - Rent
 - Maintenance
 - Insurance
 - Signage
 - Communications/Roof Top Facilities

The Premises

- Expansion Option
- Contraction Option

The Premises

- Pad Site vs. In-line stores
 - Sidewalks
 - Landscaping
 - Parking
 - Easements

The Premises

- Relocation
 - Landlord's Right
 - Tenant's Requirements
 - Relocation Areas
 - Relocation Expenses
 - Tenant Improvements
 - Moving
 - Number of Relocations per Term
 - Time of Relocation

Description of Premises

Term

1. Commencement date.
 - c. Is term to start on that date?
 - d. Is occupancy to be rent free?

Term

1. Commencement date.
 - a. Premises to be delivered to tenant in condition required under lease.
 - b. Tenant generally to have fixturing period.

Term

2. Rent Commencement dates.
 - a. Generally earlier of specific date or when tenant actually opens.
 - b. Term generally commences on this date.
 - c. Rent, including all pass-throughs, begins on this date.

Term

- 2. Rent Commencement dates.
 - d. Term and rent commencement may be delayed if co-tenancy requirements are not satisfied.
 - e. Free rent periods.
 - f. See section VI of materials for discussion of construction of the premises and the effect on the commencement date and the rent commencement date if delivery is delayed.

Term

- Renewal options.
 - 2. In Major leases, not unusual to have a total term and renewals of 50+ years.

Term

- Renewal options.
 - 1. Only benefits tenant, not landlord.

Term

- Renewal options.
 - 3. Small tenants may not have a renewal options at all.

Term

- Renewal options.
 - 4. Tenant's right to renew to be conditioned upon tenant not being in default during the term, at the date notice is sent and/or the date that the renewal term commences.

Term

- 5. Key provisions.
 - d. Rent.
 - (i) Fixed.
 - (ii) Annual percentage increase.
 - (iii) CPI.

Term

- 5. Key Provisions.
 - a. Length of each renewal.
 - b. Number of renewals.
 - c. Specific notice requirements to renew (i.e. number of days in advance of commencement of renewal term).

Term

- 5. Key provisions.
 - d. Rent.
 - (iv) Fair market value.
 - (A) Determined by landlord.
 - (B) Determined by appraisal process.

Term

- (C) Effect if landlord and tenant cannot agree on the fair market value.
 - (I) Lease may provide for a maximum and a minimum to be considered by appraiser.
 - (II) Timing of appraisal.

Term

- Tenant cancellation rights.
 - 2. Generally only allowed if tenant's gross sales do not exceed a specific amount.

Term

- Tenant cancellation rights.
 - 1. Only available for very strong tenants.

Term

- Tenant cancellation rights.
 - 3. May also be allowed if tenant leaves a certain geographical area.

Term

- Tenant cancellation rights.
 4. If available, usually not exercisable until at least 36 months after rent commencement.

Term

- Expiration of the term.
 1. Tenant required to return premises in the condition required under the lease, generally excluding usual wear and tear and casualty.

Term

- Tenant cancellation rights.
 5. May require reimbursement to landlord for unamortized tenant improvement costs.

Term

- Expiration of the term.
 2. A lease may provide that tenant return premises to original condition (i.e. the condition tenant accepted before construction of tenant improvements).

The Premises

- Condition of premises at term commencement.
 1. AS-IS.
 2. Landlord work letter.
 3. Availability of tenant improvement allowance.

Construction of Premises/Tenant Improvements

2. Vanilla shell.
 - a. Most often used format where landlord delivers a shell with demising walls, but no interior partitions, mechanical, electrical, plumbing or other interior improvements.
 - b. The walls are usually spackled, ready to paint, with ceilings and lights, but no slab or floor covering.

Construction of Premises/Tenant Improvements

- Construction Methods.
 1. Turn key. Landlord constructs the entire premises, including all of the interior improvements necessary for tenant to commence its business except for movable trade fixtures.

Construction of Premises/Tenant Improvements

3. Warm vanilla shell. Landlord delivers a vanilla shell with mechanical and electrical, including heating ventilating and air conditioning, and roughed-in plumbing.

Construction of Premises/Tenant Improvements

- 4. Shell and allowance.
 - a. Landlord constructs the shell and also constructs the interior improvements based upon a specific dollar "allowance" amount.
 - b. If the costs of the improvements for the interior that are selected by tenant exceed the allowance, tenant must reimburse landlord for the extra costs.

Construction of Premises/Tenant Improvements

- 4. Shell and allowance.
 - d. Allowance monies received by tenant and not spent on improvements are probably going to be treated as income to the tenant.

Construction of Premises/Tenant Improvements

- 4. Shell and allowance.
 - c. If the cost to construct the interior improvements is less than the allowance, then landlord will either pay tenant the difference or may often reduce the rent by a formula that recognizes the cost savings to landlord as a result of not spending the entire allowance money.

Construction of Premises/Tenant Improvements

- 5. Landlord work/tenant work.
 - a. Generally, in a work letter or construction exhibit to the lease, the parties will spell out the extent of the work that landlord will be required to perform and the extent of the work that tenant will be required to perform.

Construction of Premises/Tenant Improvements

- 5. Landlord work/tenant work.
 - b. Some tenants prefer to do their own tenant improvement or interior work.
 - c. Landlord's will generally try to require tenants to use the landlord's architect and actually contract with the landlord, who will then hire the general contractor to perform the interior work required for the tenant.

Construction of Premises/Tenant Improvements

- Design.
 - 1. The building or landlord's work component of the project will generally be designed by landlord's architect, without any input by tenant or any required approvals from tenant.

Construction of Premises/Tenant Improvements

- 5. Landlord work/tenant work.
 - d. Some tenants are able to use their own general contractors to complete the interior of their space.

Construction of Premises/Tenant Improvements

- Design.
 - 2. The design of the interior work by tenant, or its architect, shall require the approval of the landlord.

Construction of Premises/Tenant Improvements

- Design.
 3. If the design of the tenant work requires any changes in the portions of the landlord's work that has already been designed; for example, duct work, sprinkler heads, plumbing and utility access points, then the redesign cost will generally be assessed to the tenant.

Construction of Premises/Tenant Improvements

- Design.
 5. Store front design.
 - a. The storefront design will usually be based on tenant's prototypical plans if it is a large national tenant so long as the prototypical plans are compatible with the remainder of the store fronts in the project.
 - b. Approval of the storefront plans by the landlord is generally always required.

Construction of Premises/Tenant Improvements

- Design.
 4. Tenant will be required to submit and re-submit its plans and specifications until it has obtained landlord's approval.

Construction of Premises/Tenant Improvements

- Process.
 1. Tenant has little or no role in the process of the construction of the landlord's work, but tenant may reserve the right to inspect landlord's work to make sure that it will properly fit or tie into the work to be performed by tenant.

Construction of Premises/Tenant Improvements

- Process.
 2. Tenant will perform tenant work if the landlord's work requirement is only that of a shell or a warm vanilla shell.

Construction of Premises/Tenant Improvements

- Process.
 4. Tenant will be responsible for the costs of any change orders to adjust its work or modify any of landlord's existing work in order to make all of the components fit together properly.

Construction of Premises/Tenant Improvements

- Process.
 3. Tenant work usually will be performed under the supervision and review of the landlord, for which landlord will charge a fee.

Construction of Premises/Tenant Improvements

- Process.
 5. Some tenants may be successful in requiring landlord to obtain three bids for the tenant work, but generally landlord has an agreement to sole source the work in its project to its original general contractor.

Construction of Premises/Tenant Improvements

- Process.
 6. Unit prices are sometimes available from the landlord's general contractor.

Construction of Premises/Tenant Improvements

- Tenant Improvement allowance.
 1. Either landlord or tenant can perform the tenant work with the landlord paying for the work in the nature of a "tenant improvement allowance".

Construction of Premises/Tenant Improvements

- Process.
 7. The cost of permits and utilities connections are usually borne by tenant.

Construction of Premises/Tenant Improvements

- Tenant improvement allowance.
 2. A tenant improvement allowance is usually an estimate of what it will cost to complete the interior and store front of the premises, with the exception of certain movable trade fixtures.

Construction of Premises/Tenant Improvements

- Tenant improvement allowance.
- 3. The amount of the allowance is factored in to the base rent. Generally, the landlord will amortize the allowance over the initial term of the lease at a return of somewhere between nine and twelve percent to the landlord.

Construction of Premises/Tenant Improvements

- Tenant improvement allowance.
- 4. The allowance will generally not be paid by the landlord until:
 - d. Tenant opens for business.

Construction of Premises/Tenant Improvements

- Tenant improvement allowance.
- 4. The allowance will generally not be paid by the landlord until:
 - a. The work is completed
 - b. The tenant is able to deliver a certificate of occupancy.
 - c. The tenant delivers lien releases or waivers from all contractors and subcontractors having worked on the tenant's work.

Construction of Premises/Tenant Improvements

- Tenant improvement allowance.
- 5. In some circumstances, the allowance may be paid monthly as construction progresses, with a ten percent retainage, or in two or three installments, with the retainage or final installment due and payable on the date that tenant opens for business.

Construction of Premises/Tenant Improvements

- Tenant improvement allowance.
 6. With a strong tenant, the tenant may have the right of a setoff or recoupment if the landlord does not promptly and properly fund the tenant improvement allowance.

Construction of Premises/Tenant Improvements

- Turnover/substantial completion.
 2. Some leases might require that the landlord provide the tenant with ample notice of the proposed date upon which substantial completion will likely be achieved so that tenant may commence preparation, either for the performance of tenant's work or for the ordering of trade fixtures and merchandise.

Construction of Premises/Tenant Improvements

- Turnover/substantial completion.
 1. Generally the landlord and tenant will have construction representatives conduct an inspection.

Construction of Premises/Tenant Improvements

- Turnover/substantial completion.
 3. Substantial completion is deemed achieved subject only to "punchlist" items. Punchlist items are generally items defined as minor incomplete or defectively constructed items that will not materially interfere with tenant's ability to commence tenant's work or its business operations in the premises.

Construction of Premises/Tenant Improvements

- Turnover/substantial completion.
- 4. Tenant usually requires that any punchlist items to be completed within a specified number of days.

Construction of Premises/Tenant Improvements

- Delayed delivery.
 1. Neither the term nor the rent commencement day will occur until landlord delivers to tenant exclusive use of the premises with all of the landlord's work complete.
 - b. For premises to be considered complete, tenant must also have full use of common areas.

Construction of Premises/Tenant Improvements

- Delayed delivery.
 1. Neither the term nor the rent commencement day will occur until landlord delivers to tenant exclusive use of the premises with all of the landlord's work complete.
 - a. Allow for substantial completion of the premises subject to punchlist items and latent defects.

Construction of Premises/Tenant Improvements

- Delayed delivery.
 1. Neither the term nor the rent commencement day will occur until landlord delivers to tenant exclusive use of the premises with all of the landlord's work complete.
 - c. Other conditions may need to be satisfied, such as co-tenancy requirement, before delivery is deemed to have occurred.

Construction of Premises/Tenant Improvements

- Delayed delivery.
- 2. Remedy for tenant if delivery is delayed.
 - a. Right to postpone opening, particularly if delayed opening will occur during a tenant black-out period.
 - b. Right to open without payment of rent, including pass-throughs.

Construction of Premises/Tenant Improvements


- Delayed delivery.
- 2. Remedy for tenant if delivery is delayed.
 - c. Right to terminate depending on length of delay.
 - d. Monetary damages.
 - 1. Holdover rent in tenant's existing space.
 - 2. Additional delivery and moving expenses.
 - 3. Lost profits.



Negotiation
of Commercial Real Estate
Leases
Performance Issues

By in-house counsel, for in-house counsel.SM

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(1) Maintenance and Repairs – Section 8 of Sample Office Lease

(A) Landlord Maintenance and Repairs

- Pass-through versus sole cost and expense – Tied to CAM exclusions
- Related to Landlord's obligations to provide Utilities and Services (Section 6 of Sample Office Lease)

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- Landlord's obligations to comply with applicable law (Section 7 of Sample Office Lease) also inform this analysis
- Structural
- Exterior walls and windows
- Exterior and Interior load-bearing walls
- Common areas
- Roof and roofing

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(B) Tenant Maintenance and Repairs

- Tenant's argument is that the bulk of the maintenance and repair obligations should fall on Landlord, because Landlord is in the business of leasing and managing commercial buildings
- Tenant may be required to notify Landlord of Tenant's receipt of actual knowledge of repairs and replacements required in the Premises
- Tenant's obligations to comply with applicable law (Section 7 of Sample Office Lease) also inform this analysis

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- All Building Mechanical Systems (electrical, plumbing, elevator)
- HVAC – repair and replacement
- Landlord responsible for matters attributable to building owners generally
- Landlord not responsible for anything caused by Tenant

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- Tenant's personal property and equipment specific to Tenant's Permitted Use
- Alterations/Tenant's Work and other improvements specifically installed by Tenant
- Interior
- Lighting Fixtures
- Wiring
- Plumbing from stub-out to interior of the Premises
- HVAC exclusively serving the Premises
- Tenant responsible for repairs due to damage caused by Tenant

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(2) Assignment and Subleasing - Section 13 of Sample Office Lease

- Generally not allowed without Landlord's consent
- Negotiate that Landlord's consent cannot be unreasonably withheld
- Landlord may require notice, a review period, and certain diligence items

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- Can generally get right to assign to affiliates, then negotiate definition of affiliate
- Do not want Landlord consent to be required for a corporate reorganization, merger, consolidation, stock sale, or other corporate event or change in control
- Landlord may not allow the assignment of certain "personal" rights (e.g. option to extend/renew, early termination rights, expansion options, rights of first refusal, etc.)

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- Negotiate when it is reasonable for Landlord to withhold its consent, e.g., exclusive rights of other tenants; reputation; use other than the Permitted Use; partial transfers; increased services required by Landlord; subtenant or assignee is already in talks with Landlord for expansion of existing tenancy or a new lease; financial wherewithal; or Tenant is in Default
- Landlord's rationale for restrictions is that Landlord wants to control tenant mix, and Landlord is in the real estate business, not Tenant

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- Landlord will seek to recover any profit Tenant might receive by assigning or subleasing - Section 13.3 of Sample Office Lease calls it a "Transfer Premium" - Consider negotiating a 50/50 split
- Landlord may want payment for its review of assignment/sublease documents - try to cap total charges
- Landlord recapture right

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(3) Default – Sections 15 and 21 of Sample Office Lease

(A) Tenant Default

- Can usually get notice and cure rights
- Monetary Default – written notice – if Landlord agrees, may limit to one (1) time a year
- Non-monetary Default – 30 days standard – ask for stretch period – Landlord may ask that notice requirements burn off after repeated Defaults

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(4) Remedies – Sections 15 and 21 of Sample Office Lease

(A) Tenant remedies for Landlord default

- May be statutory
- Ask for right of self help with right of reimbursement – Landlord may want to negotiate a cap on any rent credits
- Tenant typically not given termination rights, because it adversely affects Landlord's ability to finance the Building
- Landlord's limitation of liability – Section 32.12 of Sample Office Lease

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- Other types of Default – Tenant does not want abandonment or vacation of the Premises to be a Default, so long as Tenant is paying Rent
- Make sure a "Default" is not triggered until after expiration of the applicable notice and cure period

(B) Landlord Default

- 30 day notice and cure with stretch period for any breach

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(B) Landlord remedies for Tenant default

- Duty to mitigate
- No late fee, penalty or interest should accrue until [x] days after Landlord's written default notice to Tenant
- Accelerate rent
- Self-help with a right of reimbursement
- Reletting and costs of reletting
- Re-entry and Repossession
- Continued Liability

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- Liquidated Damages
- Specific Performance/Other Equitable Relief
- Removal and Storage Costs
- Late Charge/Interest
- Tenant may have some statutory protections – do not waive those rights
- Terminate
- Tenant may not get many changes here, often lender-driven, so Landlord may not have much flexibility

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(D) Attorneys' Fees, Jury Trial, Counterclaims and Venue
– Section 17 of Sample Office Lease

- Resist Arbitration
- Waiver of Jury Trial
- Prevailing Party Recovers Attorneys' Fees and Costs
- Governing Law and Venue

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(C) Mortgagee Rights

Ensure they do not enlarge cure rights (e.g. extend cure period to “until mortgagee has obtained legal possession of the Building”)

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(5) Indemnities – Section 22 of Sample Office Lease

Two (2) main types in lease negotiations

(A) Environmental – Landlord may want to specifically disclaim liability with respect to asbestos, etc. – other problems it knows about

- Landlord indemnifies for everything except what Tenant does
- Tenant indemnifies for its actions

(B) General – Limit to third party claims and make mutual

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NEGOTIATION of COMMERCIAL REAL ESTATE LEASES: RENT, OPERATING COSTS, SNDAS, ESTOPPELS

By in-house counsel, for in-house counsel.SM

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- Increases
 - Fixed increases calculations: anniversary date of delivery or anniversary of rent commencement
 - A definite amount or % increase

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Rent

- Calculation - amount per square feet of the premises per year
- Rent Commencement Date
 - Delivery
 - After fixturation period
 - After an abatement period

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Option rents

- Fixed rental increases
- Annual % increases
- CPI
- Fair Market Value
- Appraisal/Arbitration Procedures

Provided tenant gets the benefit of a lower market values

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Operating Costs

- Definition
 - Oftentimes incorrectly used interchangeably with Common Area Maintenance Provisions “CAMS” which are maintenance, repairs and replacements to common areas
 - Operating expenses are broader, covering CAM, insurance and taxes

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Common exclusions

1. Initial costs of equipment or construction
2. Costs of any capital additions or replacements
3. Expenses for which landlord will be reimbursed from another source
4. Structural repairs and replacements
5. Depreciation & amortization of the center or building
6. Charitable, lobbying, special interest
7. Costs of improving or renovating space for a specific tenant
8. Costs to correct original or latent defects in design or construction
9. Expenses incurred to comply with governmental regulations

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- Tenants should narrow the operating expenses
 - No pass-through of operating expenses
 - Negotiate a first year cap on operating expenses and/or cap on subsequent annual increases
 - Negotiate a detailed list of exclusions

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Hotly Contested Issues

- Administrative or management fees
- Capital Expenditures



Hints – Management Fees

- Avoid duplication of fees
- Limit administrative fee or management fees to no more than 10% and base on CAMS alone



Sample Lease Provision

• Common Area Operating Costs

(a) Common Area Operating Costs Defined. Landlord shall maintain and repair, or cause to be maintained or repaired, the Common Area serving the Premises. All costs and expenses incurred by Landlord with respect to the maintenance, repair, and operation of the Common Area are hereinafter referred to as the "Common Area Operating Costs" and/or "CAMs" and shall be limited to the following: external lighting, garbage removal, landscaping, the cost of maintenance and repair of the Common Areas, and water charges. In no event shall Common Area Operating Costs include any a) Capital Expenditures (as hereafter defined) to comply with applicable laws, or costs of a capital nature, including without limitation, capital improvements, capital replacements, renovations, capital repairs, capital equipment and capital tools, all as determined in accordance with generally accepted accounting principles, consistently applied, b) costs for investigation, monitoring, abatement, remediation or removal of Hazardous Materials, c) costs of utilities for other tenants in the Shopping Center, d) principal or interest payments on the loans secured by mortgages on the Shopping Center or any part thereof, e) depreciation or amortization of any improvements, f) costs for any special service provided to a tenant of the Shopping Center which is not provided generally to tenants of the Shopping Center, g) costs and expenses incurred in connection with leasing space in the Shopping Center, including but not limited to, leasing commissions, advertising and promotional expenses, legal fees for preparation of leases, rents payable with respect to any leasing office, court costs and legal fees incurred to enforce the obligations of tenants under leases of the Shopping Center, h) costs recoverable by Landlord pursuant to its insurance policies, i) costs resulting from defects in design, construction or workmanship of Landlord's Work or the materials used in same, or in the original construction of the Shopping Center, j) costs due to Landlord's default under this Lease, or k) costs due to the negligence of Landlord, its employees, agents, contractor or assigns, l) wages, salaries, or other compensation paid to any officer or employee of Landlord who is not engaged in the maintenance, management, or operation of the Shopping Center or for the time billed which such time is not spent directly on matters pertaining to the Shopping Center. "Capital Expenditures" means expenditures, which, in accordance with generally accepted accounting principles, are not fully chargeable to current expense in the year the expenditure is incurred.



Hints – Capital Expenditures

- Def: An expense made by a business to provide a long-term benefit
- Examples – costs incurred in acquiring, constructing, designing, equipping, replacing, altering the building or center.
 - Try to exclude capital costs
 - Provide that any such costs are to be depreciated or amortized instead of being fully charged in the year the cost is incurred.
 - Energy Saving Devices – Try to negotiate that the costs can be passed through to tenant only to the extent of the actual energy savings.



Allocation of Operating Expenses

- Proportionate Share

Rentable Area of Tenant's Premises

Total Rentable Area

- Review all exclusions from the denominator.
- Review all inclusions – lobby, mezzanine, basement, other tenants' premises
- Avoid landlord's discretion in allocation

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Audit

- A prudent tenant should be able to audit landlord's annual statements.
- Resist any contractual limitation on period of audit rights – min. 12 – 24 months to exercise audit rights.
- Avoid prohibitions against contingency-fee audits.

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Negotiating SNDAS

- SNDA condition precedent to rent commencement or contingency of lease
- Avoid subordination of lease to the mortgage – subordinate to the lien, not the terms of the mortgage – avoid unknowns
- Tenant will not be named or joined in a foreclosure action, unless required by law.
- Lease shall not be terminated, tenant's possession or rights under the lease will continue upon all the terms and conditions of the lease
- Condemnation awards and insurance proceeds will be applied and paid as provided in the lease

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Non-Disturbance and Subordination Agreements - SNDAS

- The Rights and Obligations of tenant, landlord and lender.
- Today's economic climate, tenant must avoid danger of lease termination in the event of landlord foreclosure

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Commonly Contested Issues

- Obligation that amendments to lease may not be made without lender's consent
 - Tenant should avoid or impose a materiality standard (only amendments or modifications that reduce the rent or materially reduce tenant's obligations)

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Commonly Contested Issues

- No liability for prior defaults of landlord
 - Tenant should insist that lender is at least responsible for continuing defaults
- No approval or consent without lender's consent
 - Tenant should impose a materiality standard
- Lender is to receive additional time to cure defects of landlord
 - Tenant can extend cure periods but not for emergencies, material defaults, monetary defaults.

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Estoppels - Hints

- Tenants should limit the amount and effect of the information in the estoppel
- Tenants should have established estoppel protocols for review and sign-offs.
- Confirm that all information provided is complete and accurate
- Provide limited information on the status of the lease
- Limit statements to "tenant's actual knowledge, adding that such statements are made without investigation and/or imputed or constructive knowledge
- Affirmation that nothing in the estoppel shall be deemed to amend, modify or alter the lease; in the event of conflict between the estoppel and lease, the lease shall prevail

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Estoppel Certificates

- Most financing transactions require a landlord to obtain and deliver tenant estoppels
- Landlords use when selling or financing properties to confirm status of leases.
- Best practice is to attach a pre-approved form of estoppel as an exhibit to the lease.



Sample Estoppel

- **TENANT ESTOPPEL CERTIFICATE**
- To: _____, its successors and/or assigns ("**Lender**")
- Re: Property Address: _____ ("**Property**"), Lease Date _____ Lease Amendments, if any: _____ Between: _____ ("**Landlord**") and _____ ("**Tenant**")
- Square Footage Leased: _____ Suite No./Floor: _____ ("**Premises**")
- Tenant understands that Lender is contemplating making a loan that would be secured in part by a Mortgage against the Property. Tenant, as the tenant under the above-referenced lease (as amended by the amendments, if any, listed above, the "**Lease**") hereby certifies to and agrees with Lender as follows.
- The Lease is in full force and effect and as of the date of this Estoppel Certificate, has not been modified, supplemented, or amended except by the amendment(s) listed above. The Lease represents the entire agreement between the parties as to the Property, and Lessee claims no rights with respect to the Property other than as set forth in the Lease.
- Tenant has paid rent for the Premises up to and including _____. The amount of fixed monthly rent is \$ ____; the percentage rent is ____; the monthly common area or other charges are \$ _____. The base year for operating expenses and real estate taxes, as defined in the Lease, is _____. No rent has been or will be paid more than one (1) month in advance of its due date, except: _____.
- Tenant has paid a security deposit of \$ _____. Tenant waives collection of the deposit against Lender or any purchaser at a foreclosure sale, unless Lender or such purchaser actually receives the deposit from Landlord.
- The commencement date of the Lease was _____. The Lease termination date is _____. Tenant has the following option(s) to renew or extend the Lease: _____.
- To the best of Tenant's knowledge, all work to be performed to the Premises for Tenant under the Lease has been performed in all material respects. All payments, free rent, or other credits, allowances or abatements required to be given under the Lease to Tenant with respect to work to be performed to the Premises have been received by Tenant. Tenant is in physical occupancy of the Premises and is operating its business in the Premises.

Estoppel

- To the best of Tenant's knowledge, as of the date hereof: (i) there exists no known breach, default, or event or condition which, with the giving of notice or the passage of time or both, would constitute a breach or default by Tenant or Landlord under the Lease; and (ii) Tenant has no known existing claims, defenses or offsets against rental due or to become due under the Lease.
- As of the date hereof, Tenant has not assigned any of its rights under the Lease or sublet all or any portion of the Premises. Tenant does not hold the Premises under assignment or sublease.
- Tenant has no right or option to purchase all or any part of the Premises or the building of which the Premises is a part. Tenant has no right to occupy any additional space at the Property.
- To the best of Tenant's knowledge, no actions, whether voluntary or otherwise, are pending against Tenant under the bankruptcy laws of the United States or any state.
- The person executing this certificate on behalf of Tenant is duly authorized to execute this certificate. Executed by Tenant on _____, 2008.
- TENANT:
- _____
- By: _____
- Its: _____



Sample SNDA

- SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT
- THIS AGREEMENT, made this ____ day of _____, 2008, by and between _____ with principal offices at _____ ("Tenant") and _____ and/or _____ its insurance company affiliates or designees who are holders of the Mortgage (defined below), with a mailing address _____ (collectively referred to as "Lender").
- WITNESSETH:
- WHEREAS, by Lease dated _____ as amended (hereinafter referred to as the "Lease"), _____ ("Landlord") leased and rented to Tenant certain premises located in _____ (the "Property") a more particular description of which Property appears in Exhibit A, attached hereto and by this reference made a part hereof; and
- WHEREAS, the Property is or is to be encumbered by a mortgage, deed of trust, deed to secure debt or other similar security agreement (the "Mortgage") in favor of or to be assigned to Lender; and
- WHEREAS, Lender does not wish to make the loan secured by the Mortgage or to consent to Tenant's Lease, unless Tenant subordinates the Lease and Tenant's rights thereunder to the lien and provisions of the Mortgage; and
- WHEREAS, Tenant has requested that Lender agree not to disturb Tenant's occupancy of the Premises in the event Lender exercises any of its remedies under the Mortgage and Lender is willing to so agree in accordance with the terms of this agreement; and
- WHEREAS, Tenant and Lender desire hereby to establish certain rights, safeguards, obligations and priorities with respect to their respective interests by means of the following Subordination, Non-Disturbance and Attornment Agreement:
 1. Subject to the non-disturbance provisions herein, Tenant agrees that the Lease and the rights of Tenant thereunder are and shall be subject and subordinate to the lien of the Mortgage, to all advances made or to be made thereunder, to the full extent of the principal sum and interest thereon from time to time secured thereby, and to any renewal, substitution, extension, modification or replacement thereof, including any increase in the indebtedness secured thereby or any supplements thereto. In the event that Lender or any other person acquires title to the Property pursuant to the exercise of any



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- her person acquires title to the Property pursuant to the exercise of any remedy provided for in the Mortgage or by reason of the acceptance of a deed in lieu of foreclosure (the Lender, any other such person and their participants, successors and assigns being referred to herein as the "Purchaser"), Tenant covenants and agrees to attorn to and recognize and be bound to Purchaser as its new Landlord, and the Lease shall continue in full force and effect as a direct Lease between Tenant and Purchaser upon the same terms and conditions as are set forth in the Lease.
- 2. So long as the Lease is in full force and effect and Tenant is not in default under any provision of the Lease or if such an event of default shall exist, so long as the Tenant's time to cure the default as provided in the Lease shall not have expired and no event has occurred which has continued to exist for a period of time (after notice, if any, required by the Lease) as would entitle Landlord to terminate the Lease or would cause without further action by Landlord, the termination of the Lease or would entitle Landlord to dispossess the Tenant thereunder:
- a. the right of occupancy of Tenant to the leased premises nor right of quiet enjoyment shall not be affected, terminated or disturbed by any steps or proceedings taken by Lender in the exercise of any of its rights under the Mortgage or the indebtedness secured thereby; and
- b. the Lease shall not be terminated or affected by said exercise of any remedy provided for in the Mortgage, and Lender hereby covenants that any sale by it of the Property, pursuant to the exercise of any rights and remedies under the Mortgage or otherwise, shall be made subject to the Lease and the rights of Tenant thereunder.
- 3. In no event shall Lender or any other Purchaser be:
 - a. liable for any act or omission of Landlord or any prior landlord, except for continuing defaults under the terms of the Lease of which Lender was given notice in accordance with the terms of Paragraph 4 of this agreement;
 - b. liable for the return of any security deposit unless such deposit has been delivered to Lender;
 - c. subject to any offsets or defenses which the Tenant might have against Landlord or any prior landlord, except for continuing defaults under the terms of the Lease of which Lender was given notice in accordance with the terms of Paragraph 4 of this agreement;
 - d. bound by any payment of rent or additional rent which Tenant might have paid to Landlord or any prior landlord for more than the current month;



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- e. bound by any amendment, modification, surrender or termination of the Lease made after the date hereof without Lender's or such other Purchaser's prior written consent provided, however, that with respect to any such amendment or modification of the Lease, such consent shall not be unreasonably withheld, conditioned or delayed, and further provided that Tenant shall not have to seek Lender's consent for any surrender or termination or other right granted to Tenant under the Lease which does not require Landlord's consent;
- f. personally liable under the Lease, Lender's liability being limited to Lender's interest in the Property, including rents, issues and profits; or
- 4. During any time that the Lender has not succeeded to the interest of Landlord under the Lease, Tenant agrees to give prompt written notice to Lender of any default by Landlord under the Lease which would entitle Tenant to cancel the Lease or abate the rent payable thereunder, and agrees that notwithstanding any provision of the Lease, no notice of cancellation thereof given on behalf of Tenant shall be effective unless Lender has received said notice and has failed within the same amount of time Landlord is afforded in the Lease to cure Landlord's default. Tenant further agrees to give such notices to any successor of Lender, provided that such successor shall have given written notice to Tenant of its acquisition of Lender's interest in the Mortgage and designated the address to which such notices are to be sent.
- 5. Tenant acknowledges that Landlord will execute and deliver to Lender an Assignment of Leases and Rents conveying the rentals under the Lease as additional security for the loan secured by the Mortgage, and Tenant hereby expressly consents to such Assignment and has no notice of a prior assignment of the Lease or the rents thereunder. Landlord has agreed under the Loan Documents that rentals payable under the Lease shall be paid directly by Tenant to Lender upon an event of default by Landlord under the Mortgage and Landlord hereby grants its irrevocable consent to Tenant's compliance with this Paragraph 5, and Landlord further acknowledges that Tenant shall be relieved of any liability to Landlord for any payment made directly to Lender in compliance with this Paragraph 5. After receipt of written notice from Lender to Tenant (at the address set forth above) that rents under the Lease should be paid to Lender, tenant shall pay to Lender all monies due to landlord under the Lease.
- 6. Tenant agrees that it will not, without the prior written consent of Lender subordinate or permit subordination of the Lease to any lien subordinate to the Mortgage.
- 7. Tenant agrees to certify in writing to Lender, upon written request, whether or not any default on the part of Landlord exists under the Lease and the nature of any such default.
- 8. The provisions hereof shall be self-operative and effective without the execution of any further instruments on the part of either party hereto. However, Tenant



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- execution of any further instruments on the part of either party hereto. However, Tenant agrees to execute and deliver to Lender or to any person to whom Tenant herein agrees to attorn such other reasonable instruments as either shall request in writing in order to effectuate said provisions.
- 9. From and after payment in full of the loan secured by the Mortgage and the recording of a release or satisfaction thereof, without the transfer of the Property to Lender as a Purchaser, this Agreement shall become void and of no further force or effect.
- 10. The agreements herein contained shall be binding upon and shall inure to the benefit of the parties hereto, their respective participants, successors, and assigns, and, without limiting such, the agreements of Lender shall specifically be binding upon any Purchaser of the Property at foreclosure or at a sale under power.
- 11. This agreement may not be modified other than by an agreement in writing signed by the parties hereto or their respective successors.
- 12. This agreement may be signed in counterparts.
- 13. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remaining terms and provisions hereof shall not be affected thereby, but each term and provision hereof shall be valid and enforceable to the fullest extent permitted by law.
- IN WITNESS WHEREOF, Tenant and Lender have caused this instrument to be executed under seal as of the day and year first above written.

THIS LEASE AGREEMENT ("Lease") dated as of October 21, 2008, between _____, a _____, with its principal offices at _____ ("Landlord"), and _____, a _____, with its principal offices at _____ ("Tenant"). Landlord and Tenant hereby agree as follows:

1. BASIC DEFINITIONS

As used in this Lease, the following terms shall have the following meanings:

Leased Premises: Suite _____ in the Building as outlined on Exhibit "A".

Building: That [] story building having an address of _____, also known as Building 101, being part of a complex of first-class office buildings and property owned by Landlord, known as "_____ Corporate Park" ("Complex"). The legal description of the real property parcel upon which the Complex is situated ("Land") is attached hereto as Exhibit "_____."

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Commencement Date: _____, subject to Article 3.

Expiration Date: _____, subject to Article 3.

Rentable Area: The Rentable Area of the Leased Premises is _____ square feet, and the Rentable Area of the Building is _____ square feet, subject to Article 33. The foregoing measurements of the Rentable Area were calculated in accordance with the Building Owners and Managers Association International Standard Method for Measuring Floor Area in Office Buildings, ANSI/BOMA Z65.1-1996 ("BOMA").

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Deleted: Tenant acknowledges that the "Rentable Area of the Leased Premises" under this Lease includes the usable area, without deduction for columns or projections, multiplied by a load or conversion factor, to reflect a share of certain areas, which may include lobbies, corridors, mechanical, utility, janitorial, boiler and service rooms and closets, restrooms, and other public, common and service areas. Except as provided expressly to the contrary herein, the "Rentable Area of the Property" shall include all Rentable Area of all space leased or available for lease at the Property, which Landlord may reasonably re-determine from time to time, to reflect re-configurations, additions or modifications to the Property.

Tenant's Share: "Tenant's Share" shall mean that proportion of which the Rentable Area of the Leased Premises bears to the Rentable Area of the Building, and expressed as a percentage. Y As of the Commencement Date, Tenant's Share is _____ %.

Base Rent **Lease Year** **Rate** **Annual Base Rent** **Monthly Base Rent**

Period	Annual Base Rent	Monthly Base Rent	Base Rent Per Sq. Ft. (*)
First Lease Year through Fifth Lease Year			

First Lease Year through Fifth Lease Year

* Plus Tenant's electrical usage.
** Base Rent shall abate for the first three (3) full calendar months of the first Lease Year

Base Year: 2008 calendar year.

Permitted Use: Executive and administrative offices, including all uses incidental thereto, subject to Article 7.

Security Deposit: \$ N/A

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Broker: _____

Guarantor: N/A

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Landlord's Notice Address (subject to Article 25):

Attention: _____

with a required copy to:

Attention: _____

Tenant's Notice Address (subject to Article 25):

Attention: _____

with a required copy to:

Attention: _____

2. LEASED PREMISES

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Leased Premises subject to the provisions herein contained. ~~The Leased Premises are leased together with a non-exclusive right in common with others to use the lobbies, elevators, stairs, walkways, parking areas, and other common areas of the Building.~~

~~Tenant shall have the right to utilize the Building's parking facilities, as depicted on the drawing attached as Exhibit " " on a non-exclusive basis with other tenants of the Building, in compliance with the Rules and Regulations (defined in Section 7.3) that may from time to time be established by Landlord. Landlord agrees to provide Tenant with parking ("Tenant's Parking") in a ratio of not less than parking spaces per One Thousand (1,000) square feet of Rentable Area of Leased Premises ("Tenant's Parking Ratio") at no charge throughout the Term.~~

3. TERM

3.1 Term. The term ("Term") of this Lease shall commence on the Commencement Date and end on the Expiration Date, unless sooner terminated as provided herein. Promptly following the Commencement Date, Landlord and Tenant shall execute a confirmation of the Commencement Date, the Expiration Date and other matters in substantially the form of Exhibit "B" hereto. The Commencement Date shall be advanced to such earlier date as Landlord substantially completes (as defined below) any Landlord's Work under this Lease to an extent that Tenant is able to occupy the Leased Premises for the Permitted Use, and Landlord delivers possession thereof to Tenant after prior notice. Tenant shall be permitted to enter the Leased Premises prior to the Commencement Date for purposes other than to occupy the same and perform Tenant's business operations (e.g., to perform Tenant's Work) but Tenant shall comply with all terms and provisions of this Lease, except those provisions requiring the payment of Base Rent. ~~As used herein, "substantially complete" shall mean that all of the following conditions have been satisfied: (i) Landlord has delivered to Tenant the required certificate of occupancy (or the substantial equivalent under state or local law) to permit full use of the Leased Premises for the purpose of conducting Tenant's ordinary business activities; (ii) improvements to the Leased Premises have been completed in accordance with the Plans and Specifications (as defined in Section 5.1), as reasonably determined by both Landlord and Tenant, subject only to normal "punch list items" which will not interfere with Tenant's normal business use of the Leased Premises; and (iii) a certification by the Building architect, approved by Landlord, has been delivered to Tenant stating that the proper federal, state, county, regional, and local authorities, including those having jurisdiction over applicable zoning, building, health, safety, and environmental regulations, have issued all licenses, permits, and approvals necessary for the construction and lawful occupancy by Tenant of the Leased Premises. Unless due to Tenant Delay (as defined below), if Landlord for any reason whatsoever cannot deliver possession of the Leased Premises to Tenant (with the Landlord's Work substantially completed in accordance with the Plans and Specifications) by March 1, 2009 (the "Target Commencement Date"), this Lease shall not be void or voidable nor shall Landlord be liable to Tenant for any loss or damage resulting therefrom; but in that event, then Tenant shall receive two (2) days of free Base Rent for every day after March 1, 2009 that the Landlord is unable to deliver the Tenant the Leased Premises (the "Delay Period"), such free Base Rent shall be in addition to the fact that Tenant shall not be responsible for the payment of Base Rent during the Delay Period. Landlord shall act diligently and in good faith to complete the work that is necessary to allow Landlord to deliver the Leased Premises to Tenant as specified above. Notwithstanding the foregoing, or~~

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Deleted: or (ii) Tenant, with Landlord's consent, otherwise commences occupying the Leased Premises
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~~anything herein to the contrary, if Landlord does not deliver possession of the Leased Premises, with the Landlord's Work substantially completed, to Tenant within sixty (60) days of the Target Commencement Date, or within sixty (60) days of the Target Commencement Date plus any adjustment due solely to Tenant Delay, the Tenant shall have the right to terminate this Lease, without any further liability or obligation hereunder, by delivering written notice to Landlord of such termination. Any "punch list items" which are not repaired by Landlord within thirty (30) days of Substantial Completion, may be repaired by Tenant on behalf and for the account of Landlord, and, at Tenant's election, (i) Landlord shall reimburse Tenant upon demand for all actual and reasonable out-of-pocket expenses incurred by Tenant in performing such obligation, or (ii) Tenant may deduct the costs thereof from Rent.~~

3.2 Delays. The Commencement Date shall be postponed for the period Tenant is unable to occupy the Leased Premises because Landlord is delayed in substantially completing the Landlord's Work to the extent that Tenant, its contractors, agents or employees directly contribute to any such delay including without limitation, (i) Tenant's failure to deliver to Landlord Tenant's final space plan by November 15, 2002, (ii) delay resulting from any change order regarding Landlord's Work requested by Tenant which was not attributable to the fault of Landlord or Landlord's contractors; or (iii) delay caused by Tenant unreasonably interfering with the progress of Landlord's Work. ("Tenant Delay"). Any delay in the Commencement Date caused by Tenant Delay shall not subject Landlord to liability for loss or damage resulting therefrom, Tenant's sole recourse being the postponement of Rent. If the Commencement Date is postponed as described in this Section 3.2, the Expiration Date set forth in Article 1 shall be extended to the last day of the month during which such period of delay occurs.

3.3 Quiet Enjoyment. Landlord agrees that if Tenant timely pays the Rent and performs the terms and provisions hereunder, Tenant shall hold the Leased Premises during the Term, free of all claims by Landlord or any party, subject to all other terms and provisions of this Lease.

4. RENT

4.1 Base Rent. Tenant shall pay Landlord monthly Base Rent in advance on or before the first day of each calendar month during the Term. Base Rent shall abate for the first three full months of the First Lease Year.

4.2 Additional Rent. Tenant shall pay Landlord, as Additional Rent, an amount equal to Tenant's Share of (i) Taxes in excess of Taxes for the Base Year, and (ii) Expenses in excess of the amount of Expenses for the Base Year, as follows:

(a) Landlord shall, from time to time after the Base Year, reasonably estimate the amounts Tenant shall owe for Taxes and Expenses for full or partial calendar years of the Term (i.e., the "Estimated Additional Rent"). Upon Tenant's request, Landlord will give Tenant reasonably detailed documentation supporting Landlord's estimates. Following Landlord's estimate thereof, Tenant shall pay Estimated Additional Rent monthly, together with Tenant's payment of Base Rent, as below provided.

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(b) No later than March 15 of each calendar year, Landlord shall provide a statement ("Operating Statement") to Tenant showing, in reasonable detail sufficient for verification by Tenant: (i) the amount of Taxes and Expenses for such calendar year broken down by component expenses, (ii) any payments of Estimated Additional Rent by Tenant during such calendar year, and (iii) any revision of the amount of Estimated Additional Rent for the then current calendar year. If Landlord does not furnish Tenant with the Operating Statement by March 15 of the calendar year, then Landlord shall be deemed to have waived forever any and all claims for reimbursement from Tenant for underpayment of Taxes and Expenses for such calendar year, in addition to any other rights and remedies to which Tenant may be entitled under this Lease.

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(c) If an Operating Statement shows that Tenant's actual Estimated Additional Rent payments were less than Tenant's actual obligations for Tenant's Share of Taxes and Expenses for the applicable year, then Tenant shall pay the shortfall within thirty (30) days after Tenant's receipt of the Operating Statement.

(d) If an Operating Statement shows an increase in the amount of Estimated Additional Rent for the current calendar year, Tenant shall: (i) pay the difference between the new and former estimates for the period from the date of the last adjustment of Estimated Additional Rent through the month in which the Operating Statement is dated, which payment shall be made within thirty (30) days after Tenant's receipt of the Operating Statement, and (ii) thereafter pay the new Estimated Additional Rent amount until any subsequent adjustment the next calendar year.

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(e) If an Operating Statement shows that Tenant's payments of Estimated Additional Rent exceeded Tenant's actual obligations for Taxes and Expenses, Landlord shall credit the excess against payment of Estimated Additional Rent next due, or refund the excess to Tenant within thirty (30) days after Landlord's receipt of Tenant's demand therefor. If the Term shall have expired and no further Rent shall be due, Landlord shall provide a refund or a credit against unpaid Base Rent of such excess at the time Landlord sends the Operating Statement.

(f) Landlord reserves the right to reasonably change, from time to time, the manner and timing of the computation of Additional Rent, provided that the amount and timing of Tenant's payments of Additional Rent shall not result in an increase of Additional Rent due by Tenant under this Lease and Landlord has notified Tenant of such change in the manner and timing of the computation of Additional at least three (3) months in advance. In lieu of providing one Operating Statement covering all items of Taxes and Expenses, Landlord may provide separate statements, at the same or different times, including separate statements for Taxes after bills are received provided, however, that any amounts that were paid by Landlord and not billed to Tenant as Additional Rent within one (1) year of such payment shall be deemed to have been waived by Landlord.

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4.3 Fiscal Years. If Landlord now or hereafter uses a fiscal year other than a calendar year, then, at Landlord's option: (i) all references to calendar years herein shall refer to such fiscal years, (ii) all references to January 1 and December 31 herein shall refer, respectively, to the first and last days of such fiscal years as the context requires, and (iii) if Landlord changes fiscal years, subject to Section 4.2 above, Landlord shall make appropriate prorations such that

Tenant's obligations hereunder are not unreasonably affected. Landlord shall include in Taxes each year hereunder: (a) in general, the Tax amounts levied, assessed or imposed for such year, whether paid or payable in another year, (b) for personal property Taxes, the amounts paid during such year, and (c) for Taxes paid in installments over more than one year, the amounts paid each year, and any interest thereon. If any taxing authority uses a fiscal year other than a calendar year, Landlord may elect from time to time, consistent with sound accounting and management practices, to require payments by Tenant based on: (aa) amounts paid or payable during each calendar year without regard to such fiscal years, (bb) amounts paid or payable during each calendar year, averaging the bills for each calendar year based on the number of days or months of such calendar year included in each fiscal tax year, or (cc) amounts paid or payable for or during each fiscal tax year.

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4.4 Tax Refunds. Landlord shall each year: (i) credit against Taxes Tenant's share of any net refunds (i.e., net of reasonable legal fees and other direct costs incurred from reasonable collection efforts, if any) received by Landlord of Taxes previously paid by Tenant, (ii) include in Taxes any additional amount paid during such year involving an adjustment to Taxes for a prior year (but not any adjustments attributable to Taxes before the Commencement Date), due to error by the taxing authority, supplemental assessment, or other reason, (iii) include in Taxes or Expenses, any reasonable fees for attorneys, consultants and experts, and other costs paid during such year in successfully protesting, appealing or reducing Taxes (but only to the extent that the direct benefit derived therefrom by Tenant exceeds the cost of any such fees, costs, and disbursements), and (iv) credit against Expenses the cost of any item previously included in Expenses, to the extent that Landlord receives a net reimbursement (i.e., net of reasonable legal fees and other direct costs incurred from reasonable collection efforts, if any) from insurance proceeds or a third party during such year (excluding tenant payments for Taxes and Expenses and except to the extent refundable to prior tenants of the Property). Notwithstanding the foregoing or anything contained in this Lease to the contrary, Landlord shall not include in Taxes any income, franchise, gross receipts, corporation, capital levy, excess profits, revenue, rent, inheritance, gift, estate, payroll or stamp tax or any increase in tax (or any tax protest) arising out of a reassessment on all or part of the Building, Property, or Land upon the sale, transfer or assignment of Landlord's title or estate, which at any time may be assessed against or become a lien upon all or any part of the Leased Premises or this leasehold. In addition, Landlord shall exclude from Taxes any liens or taxes, penalties or interest that are levied or assessed against the Premises for any time prior to the Term. If at any time during the Term the laws concerning the methods of real property taxation prevailing at the commencement of the Term are changed so that a tax or excise on rents or any other such tax, however described, is levied or assessed against Landlord as a statutorily verifiable direct substitute in whole or in part for any Taxes, before delinquency the substitute tax or excise on rents shall be deemed to be Taxes. (but only to the extent that it can be ascertained that there has been a substitution and that as a result Tenant has been relieved from the payment of Taxes it would otherwise have been obligated to pay).

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4.5 Grossing Up. If the Building is not fully occupied during all or a portion of any calendar year, Landlord may, in accordance with generally accepted management practices, determine the amount of Expenses that would have been paid had the Building been ninety five percent (95%) occupied, and the amount so determined shall be deemed to have been the amount of Expenses for such year, in which case, Landlord shall also make a comparable adjustment for the Base Year.

4.6 Adjustments. Landlord may separately determine Taxes and Expenses for the various buildings located at the Complex. If any Taxes or Expenses (or components thereof) apply to such various buildings (such as, without limitation, costs of shared parking facilities and other common areas, a shared management office, etc.), Landlord shall allocate the same in accordance with generally accepted management practices. In the alternative, Landlord shall have the right to determine, in accordance with generally accepted management practices, Tenant's Share of Taxes and Expenses (or components thereof) based upon the combined total of the same for all or any such comparable first-class office buildings, in which event Tenant's Share shall be based on the ratio of the Rentable Area of the Leased Premises to the Rentable Area of such buildings.

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4.7 Prorations. If the Term commences on a day other than the first day of a calendar month or ends on a day other than the last day of a calendar month, the Base Rent and any other amounts payable on a monthly basis shall be prorated on a per diem basis for such partial calendar months. If the Base Rent is scheduled to increase under Article 1 other than on the first day of a calendar month, the amount for such month shall be prorated on a per diem basis to reflect the number of days of such month at the then current and increased rates, respectively. If the Term commences other than on January 1, or ends other than on December 31, Tenant's obligations to pay amounts towards Taxes and Expenses for such first or final calendar years shall be prorated on a per diem basis to reflect the portion of such years included in the Term.

4.8 Payments After Lease. Except as otherwise provided in this Lease, Tenant's obligations to pay Taxes and Expenses (or any other amounts) and Landlord's obligation to credit or repay same, accruing during, or relating to, the period prior to expiration or earlier termination of this Lease shall survive such expiration or termination. Landlord shall use good faith and best efforts to reasonably estimate all or any of such obligations within a reasonable time before or after such expiration or termination. Tenant shall pay the full amount of such estimate, and any additional amount due after the actual amounts are determined, in each case within thirty (30) days after Landlord sends a statement therefor. If the actual amount is less than the amount Tenant pays as an estimate, Landlord shall refund the difference within thirty (30) days after such determination is made.

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4.9 Landlord's Accounting Practices and Records. Landlord shall maintain records respecting Taxes and Expenses and determine the same in accordance with generally accepted accounting principles, consistently applied. Landlord may from time to time use a full accrual system of accounting, or a modified cash basis of accounting with accrual adjustments to ensure that each year includes substantially the same major recurring items, provided they were accounted for and included in the Taxes and Expenses for the Base Year. Tenant or its audit representatives shall have the right to inspect and audit Landlord's books and records with respect to this Lease to verify actual Taxes and Expenses. Tenant shall have the right to retain a copy of the audit for its records. If Tenant's audit of the Taxes and Expenses reveals an overcharge of more than five percent (5%), Landlord promptly shall reimburse Tenant for the cost of the audit including Tenant staff billed at the hourly payroll cost of those employees (including benefits) plus reasonable travel costs. Any overcharge or underpayment of Taxes and Expenses shall be due from one party to the other within thirty (30) days after the amount of the overcharge or underpayment has been corrected. The foregoing rights also shall apply with respect to verification of any amounts charged by Landlord to Tenant for utility costs and other

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amounts billed by Landlord arising from this Lease. Pending resolution of any such exceptions, Tenant shall pay Tenant's Share of Taxes and Expenses in the amounts shown on such Statement, subject to credit, refund or additional payment after any such exceptions are resolved.

4.10 Base Year Adjustments. Landlord shall exclude from Base Year Expenses any non-recurring items, including capital expenditures otherwise permitted under Article 33 of the Lease (and shall only include the amortization of such expenditures in subsequent year Expenses to the extent permitted under Article 33, including any remaining amortization of permitted capital expenditures made prior to or after the Commencement Date). If Landlord eliminates from any subsequent year Expenses a recurring category of expenses previously included in Base Year Expenses, Landlord may subtract such category from Base Year Expenses commencing with such subsequent year.

4.11 General Payment Provisions. Base Rent, Taxes, Expenses, and any other amounts which Tenant is or becomes obligated to pay Landlord under this Lease are sometimes herein referred to collectively as "Rent," and all remedies applicable to the non-payment of rent shall be applicable thereto. Rent shall be paid in good, immediately available funds and legal tender of the United States of America. Except as otherwise provided herein, Tenant shall pay Rent without any deduction, recoupment, set-off or counterclaim, and without relief from any valuation or appraisal laws. Rent obligations hereunder are independent covenants. Tenant shall pay Rent at such office or offices as Landlord may designate from time to time and notify Tenant pursuant to Article 25.

4.12 Limitation on Increases. Notwithstanding anything contained in this Lease to the contrary, in no event shall (i) Taxes and Expenses, collectively, be more than \$ _____ per rentable square foot during the first Lease Year, and (ii) controllable components of Expenses increase by more than four percent (4%) in the aggregate over the prior calendar year. For purposes hereof, "controllable" Expenses shall include all Expenses except utilities, insurance costs (provided they are competitively bid annually), and snow removal. Landlord shall competitively bid, not less frequently than once every two (2) years, all material service contracts and, to the extent consistent with the standards of first-class office buildings in the [City, State] metropolitan area, award each such contract to the lowest qualified bidder, unless Landlord determines in its reasonable judgment the lowest bid is not in the best interest of the Building. Upon Tenant's request, Landlord shall furnish information and documentation evidencing Landlord's compliance with the provisions of this Section 4.12.

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5. LANDLORD'S WORK

5.1 Allowance. At Landlord's expense, Landlord agrees to construct the Leased Premises in Landlord's building standard manner and in material accordance with (i) Tenant's space plan and specifications (identified as Exhibit "A" Program Analysis attached as part of the Cushman and Wakefield RFP dated July 31, 2008 and that certain space plan (SP-1) prepared by TEH Architects and dated August 20, 2008 (with the following inclusions and clarifications: (a) addition of two private offices in storage area, (b) all 14 private offices to have side lighting, (c) Tenant to choose between a 30 ounce cut pile or a 26 ounce level loop carpeting, (d) Tenant may request Landlord to install a 6" raised computer floor in the LAN room (of approximately 260 square feet in area) only if Tenant provides Landlord a written request for such flooring by

November 15, 2009, (e) mailroom improvements to include lower cabinets with counter tops (as shown on space plan) but with laminated shelves on brackets and tracks above instead of cupboards, and (f) Tenant shall add six furniture workstations to bull pen area) containing finish sections, equipment cut sheets and other information necessary for construction and which are attached hereto as Exhibit "C" (collectively, "Tenant's Drawings"), and (ii) architectural and mechanical, electrical and plumbing construction documents, which Landlord shall use its best efforts to be prepared by its architect and engineer following Landlord's receipt of full and complete Tenant's Drawings, (i) and (ii) above being herein referred to as the "Plans and Specifications", and the construction work specified therein to be performed by Landlord being herein referred to as the "Landlord's Work"). Landlord represents to Tenant that based on Landlord's review of the Plans and Specifications, to the best of Landlord's knowledge as of the date of execution of this Lease, Landlord is capable of substantially completing the Landlord's Work on or before the Target Commencement Date. If any Tenant Delay (defined in Section 3.2) increase the cost estimate to construct Landlord's Work, then Landlord may, in its discretion, require Tenant to pay Landlord the entire amount of such excess, in a lump sum (such amount being referred to herein as the "Estimated Excess Payment"), as a condition to Landlord's obligation to commence performing any of the changes requested by Tenant to be performed by Landlord under this Article 5. Tenant shall be responsible for the cost of installing Tenant's voice/data/communications/security equipment/furniture/other Tenant fixtures, including, without limitation, all associated cabling and wiring and any system furniture.

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5.2 Excess Payment. Tenant shall pay Landlord the entire amount of the Estimated Excess Payment, in a lump sum, within thirty (30) days after Landlord's billing therefor.

6. UTILITIES AND SERVICES

6.1 Standard Landlord Utilities and Services. Landlord shall provide only the following utilities and services (the cost of which shall be included in Expenses, except as provided below):

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(a) Heat and air-conditioning from 8:00 a.m. until 6:00 p.m. Monday through Friday, and from 8:00 a.m. until 1:00 p.m. on Saturdays, excluding all Holidays. Heating and air conditioning required by Tenant at other times shall be supplied following Tenant's reasonable prior notice, and shall be paid by Tenant, within thirty (30) days of Tenant's receipt of Landlord's billing, at such reasonable building-standard rates as Landlord shall establish from time to time. Heating and air conditioning shall be provided at a design capacity ("Normal HVAC Capacity") of 1 tons per 450 square feet of Leased Premises and shall, within tolerances normal in first-class office buildings, be capable of maintaining in office areas 72 degrees Fahrenheit when outdoor conditions are 91 degrees Fahrenheit and 72 degrees Fahrenheit when the outdoor temperature is minus 10 degrees Fahrenheit.

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(b) Water from municipal mains for drinking, lavatory and toilet purposes only, at those points of supply provided for nonexclusive general use of tenants at the Property, or points of supply in the Leased Premises installed by Landlord or with Landlord's written consent for such purposes.

(c) Cleaning and trash removal service that is customary for first-class office buildings in the greater [City, State] metropolitan area Monday through Friday, excluding Holidays, in accordance with the janitorial schedule attached hereto as Exhibit " " . Any and all additional or specialized cleaning service that is not listed on Exhibit " " may be contracted for separately by Tenant and the cost and payment thereof shall be the sole responsibility of Tenant.

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(d) Passenger elevator service. Subject to Landlord's reasonable approval and Tenant's reasonable use, Tenant shall have use of the freight elevator at no charge.

(e) Electricity for building-standard overhead office lighting fixtures, and electrical outlets for equipment and accessories customary for offices, where: (a) the connected electrical load of all of the same does not exceed an average of 5 watts per rentable square foot of the Leased Premises, (b) the electricity for outlets is at nominal 120 volts, single phase (or 110 volts, depending on available service in the Building), and (c) the Systems and Equipment are suitable and the safe and lawful capacity thereof is not exceeded. Electricity consumed at the Leased Premises will be computed by Landlord in accordance with sound management and accounting practices and billed to Tenant monthly, and shall be paid by Tenant within thirty (30) days of billing. To the extent waivable under applicable Law, Tenant waives all rights under utility deregulation and similar Laws allowing electricity consumers to select suppliers or other options, and agrees that Landlord alone shall have all rights and options pursuant to such Laws. If Landlord elects to purchase electricity from a provider other than the local utility, in no event shall Landlord be entitled to recover from Tenant any portion of any charge imposed on Landlord for termination of service with the local utility (whether for so-called "stranded costs" or otherwise). Any amounts billed by Landlord shall be at the actual rates then being charged by such supplier without any markup for profit or administrative expense. Landlord may, at any time, require that special, high electricity consumption installations of Tenant (such as computer room or reproduction facilities) be separately sub metered for electrical consumption, which sub-meters shall be installed by Landlord, and the reasonable costs thereof shall be payable by Tenant within thirty (30) days after invoicing.

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(f) Normal maintenance, repair, and replacement (if necessary) of the Building mechanical, HVAC, electrical and plumbing systems that serve the Leased Premises (excluding maintenance and repair of any non-building standard fixtures, equipment or other improvements installed or made by or at the request of Tenant requiring maintenance or repair of a type or nature not customarily provided by Landlord to office tenants of the Building and excluding any necessary replacements of non-building standard fixtures or improvements), and all maintenance and repairs to exterior windows and glass. In the event that any repair is required by reason of the negligence or abuse of Tenant's employees, Landlord shall make such repair and the cost thereof shall be payable by Tenant within thirty (30) days after invoicing, unless and to the extent Landlord shall have actually recovered such cost through insurance proceeds.

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(g) Normal maintenance and repair of the Leased Premises, excluding Tenant's personal property, any Tenant's Work and any damage caused by the abuse or misuse of Leased Premises or any breach by Tenant of any of its obligations hereunder.

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6.2 **Additional Utilities and Services.** Landlord shall not be responsible for inadequate air conditioning, ventilation, electricity or other service described above to the extent that the same occurs because Tenant: (i) uses or permits the use of any item, or concentrated group, of equipment beyond its standard rated capacity or design condition, or (ii) occupies or permits the Leased Premises to be occupied with concentrations of personnel greater than one person per 250 rentable square feet. In any such case, or in the event Tenant's use of the Leased Premises is in excess of 5 watts per rentable square foot of the Leased Premises, then Landlord may elect to install, operate, maintain and replace such supplemental HVAC electrical equipment during the Term, at Tenant's expense (or require that Tenant arrange for the same as Tenant's Work under Article 9). Charges for supplemental HVAC are currently Thirty-five Dollars (\$35.00) per hour per unit.

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6.3 **Interruptions.** Except and to the extent of Landlord's negligence or willful tortious acts, Landlord shall have no liability for interruptions, variations, shortages, failures, changes in quality, quantity, character or availability of any utilities or services caused by repairs, maintenance, replacements, alterations (including any refrigerant gas retrofit work), labor controversies, accidents, inability to obtain services, utilities or supplies, governmental or utility company acts or omissions, requirements, guidelines or requests, or other causes beyond Landlord's reasonable control. Under no circumstances whatsoever shall any of the foregoing be deemed an eviction or disturbance of Tenant's use and possession of the Leased Premises or any part thereof, serve to abate Rent, or relieve Tenant from performance of Tenant's obligations under this Lease. Landlord in no event shall be liable for damages by reason of loss of profits, business interruption or other consequential damages in connection with the foregoing events. Nevertheless, in any such events after receiving notice, Landlord shall use reasonable efforts to restore such utilities or services required to be provided hereunder to reasonable levels.

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Notwithstanding the forgoing or anything else herein to the contrary, if for any reason, any service or utility is interrupted for five (5) consecutive business days or more, all Rent shall abate until such service or utility is restored. If for any reason any service or utility is interrupted for thirty (30) consecutive calendar days or more, Tenant may terminate this Lease upon notice to Landlord without penalty and shall be relieved of all obligation or liability hereunder.

7. **USE, COMPLIANCE WITH LAWS, AND RULES**

7.1 **Use of Leased Premises.** Tenant shall use the Leased Premises only for the Permitted Use identified in Article 1, and no other purpose whatsoever. Landlord represents and warrants that (i) the Leased Premises are zoned for the Permitted Use and (ii) no restrictions contained in any leases of other tenants in the Complex do or shall prohibit, restrict, conflict with or adversely affect Tenant's use and occupancy of the Leased Premises or the intended use of the rights and easements granted to Tenant in this Lease.

7.2 **Laws and Other Requirements.** Tenant shall comply with all Laws (i) regarding the physical condition of nonstructural portions of the Premises to the extent such laws pertain to the particular manner in which Tenant uses the Leased Premises, or (ii) that relate to the lawful use of the Leased Premises and with which only the occupant can comply. Tenant's obligations to comply with Laws shall include, without limitation: (a) obtaining all permits, licenses, certificates and approvals to conduct its business in the Leased Premises, or any necessary waivers or variances (except to the extent Landlord is required to obtain the same in substantially

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completing the Leased Premises), without thereby subjecting Landlord, the Building or other occupants of the Building to any costs, requirements, liabilities or restrictions, (b) any work performed by Tenant to or for the Leased Premises (or any systems or equipment installed by Tenant and exclusively serving the Leased Premises, including any refrigerant gas retrofitting work for such exclusive systems and equipment) required by Laws, and (c) any work performed by Tenant outside the Leased Premises (if Landlord permits such work) required by Laws based on Tenant's use of, work within, or systems or equipment installed by Tenant and exclusively serving, the Leased Premises, whether any such work is deemed structural, involves a capital expenditure or results in a benefit extending beyond the Term. Any work hereunder shall be deemed "Tenant's Work" subject to (and as defined in) Article 9.

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7.3 **Rules and Regulations.** Tenant shall comply with the Rules and Regulations set forth in Exhibit "D" hereto ("Rules and Regulations"). Landlord shall have the right, by prior written notice to Tenant, to reasonably amend such Rules and Regulations and supplement the same with other reasonable Rules and Regulations relating to the Property, for the promotion of safety, care, efficiency, cleanliness or good order therein. Nothing herein shall be construed to give Tenant or any other Person any claim, demand or cause of action against Landlord arising out of the violation of such Rules and Regulations by any other tenant or visitor of the Property or any other Person, or out of the enforcement, modification or waiver of the Rules and Regulations by Landlord in any particular instance provided the Rules and Regulations are reasonable, non-discriminatory, and uniformly applied to all occupants of the Property. In the event of a conflict between the Rules and Regulations and this Lease, the provisions of this Lease shall control.

8. **MAINTENANCE AND REPAIRS**

8.1 **Tenant's Obligations.** Subject to Landlord's obligations under Article 6, and casualty damage to be repaired by Landlord under Article 11, Tenant shall keep and maintain Tenant's furniture and fixtures in the Leased Premises in good and sanitary condition, working order and repair, in compliance with all applicable Laws to the extent required by Article 7, and as required under other provisions of this Lease, including the Rules and Regulations. Tenant agrees to promptly notify Landlord upon Tenant's actual knowledge of repairs and replacements required in the Leased Premises and arrange for the same through Landlord. Tenant shall pay Landlord for any repairs to areas of the Property outside the Leased Premises caused by moving Tenant's furniture, fixtures or other property to or from the Leased Premises.

9. **ALTERATIONS**

9.1 **Alterations.** (A) Tenant shall not attach any fixtures, equipment or other items to the Leased Premises, or paint or make any other additions, changes, alterations or improvements to the Leased Premises or the Systems and Equipment serving the Leased Premises (all such work is referred to collectively herein as the "Tenant's Work"), without the prior written consent of Landlord in each instance. Landlord shall not unreasonably withhold, condition or delay consent, except that Landlord reserves the right to withhold or condition its consent in Landlord's sole but reasonable discretion for Tenant's Work affecting the Building structure, security of the Property, or the Systems and Equipment. In seeking approval, Tenant shall

provide Landlord with notice of whether the Tenant's Work will involve or affect any Hazardous Materials.

(B) Notwithstanding the foregoing, Tenant shall have the right, without Landlord's consent but with prior notice to Landlord, to make "Cosmetic Improvements" to the Leased Premises (i.e., improvements that do not affect the Building structure, security of the Property, or the Systems and Equipment).

9.2 **Approval.** Landlord reserves the right to impose reasonable requirements as a condition of such consent or otherwise in connection with Tenant's Work, including requirements that Tenant: use contractors contained on Landlord's then-approved list (if reputable and competitively priced) or submit for Landlord's prior written approval the names, and addresses concerning other contractors Tenant proposes to use; submit for Landlord's written approval detailed plans and specifications prepared by licensed and competent architects and engineers; obtain and post all required permits; provide to Landlord bonds, additional insurance, submit architect, engineer, contractor, subcontractor and supplier affidavits of payment and recordable lien waivers in compliance with all applicable Laws; and permit Landlord or its representatives to inspect the Tenant's Work at all reasonable times so long as Landlord's inspection does not interfere with the construction of Tenant's Work.

9.3 **Performance of Work.** All Tenant's Work shall be performed: (a) in a professional and workmanlike manner, (b) only with materials that are new, at least as good a quality of design and materials as the Landlord's Work and of the amenities installed by Landlord before the Term of this Lease commenced, (c) strictly in accordance with the plans, specifications, parties and other matters approved by Landlord pursuant to Section 9.2, (d) so as not to adversely impair the Systems and Equipment or the structure of the Property, (e) diligently to completion and so as to minimize any disturbance, disruption or inconvenience to other tenants and the operation of the Property, (f) in compliance with all Laws, the Rules and Regulations and other provisions of this Lease. Any floor, wall or ceiling coring work or penetrations or use of noisy or heavy equipment which may interfere with the conduct of business by other tenants at the Property shall, at Landlord's option, be performed at times other than Landlord's and other such tenants' normal business hours (at Tenant's sole cost). If Tenant fails to perform the Tenant's Work as required herein or in compliance with the specifications approved by Landlord, and Tenant fails to cure such failure within forty-eight (48) hours after notice by Landlord (except notice shall not be required in emergencies), Landlord shall have the right to stop the Tenant's Work until such failure is cured (which shall not be in limitation of Landlord's other remedies and shall not serve to abate the Rent or Tenant's other obligations under this Lease). Upon completion of any Tenant's Work hereunder, Tenant shall provide Landlord with "as built" plans, copies of all construction contracts, proof of payment for all labor and materials, and guaranties from all major contractors in favor of Landlord and Tenant (jointly and separately) against defects and deficiencies in materials and workmanship appearing within one year of full completion of the Work, and requiring the correction of the same upon demand of Landlord and Tenant, at the expense of such contractors.

9.4 **Liens.** Tenant shall pay all costs for Tenant's Work when due. Tenant shall keep the Property, Leased Premises and this Lease free from any mechanic's, materialman's, architect's, engineer's or similar liens or encumbrances, and any claims therefor, or stop or

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violation notices, in connection with any Tenant's Work. Tenant shall give Landlord notice at least ten (10) days prior to the commencement of any Tenant's Work, and shall include therewith, to the fullest extent permitted by applicable law, unconditional waivers of mechanics' and other such liens by each contractor or other party who will be performing any Tenant's Work which may give rise to any such lien, all in recordable form satisfactory to Landlord. Nothing contained in this Lease shall authorize Tenant to do any act which shall subject Landlord's title to, or any Lender's interest in, the Property, Leased Premises or this Lease to any such claims, liens or encumbrances, or stop or violation notices, whether claimed pursuant to statute or other Law or express or implied contract.

9.5 **Landlord's Fees and Costs.** For any Tenant's Work in which Landlord's prior consent is required, Tenant shall pay Landlord: (a) a fee for reviewing, scheduling, monitoring, supervising, and providing access for or in connection with Tenant's Work, in an amount equal to five percent (5%) of the total cost of such Tenant's Work, not to exceed One Thousand Dollars (\$1,000.00), plus (b) Landlord's reasonable out-of-pocket costs to the extent such costs are directly attributable to the Tenant's Work and not paid for by Tenant, including any costs for security, utilities, trash removal, temporary barricades, janitorial, engineering, architectural or consulting services, and other matters in connection with Tenant's Work, which payments shall be made by Tenant from time to time within thirty (30) days after billed by Landlord.

10. INSURANCE AND WAIVER OF CLAIMS

10.1 **Tenant Required Insurance.** Tenant shall maintain at its expense during the Term with respect to the Leased Premises and Tenant's use thereof and of the Property:

(i) Worker's Compensation Insurance in the amounts required by statute, and Employer Liability Insurance in the following amounts: (a) Bodily Injury by Accident - \$500,000 per accident, (b) Bodily Injury by Disease - \$500,000 per employee, and (c) Aggregate Limit - \$1,000,000 per policy year.

(ii) Property Damage Insurance for the protection of Tenant and Landlord, as their interests may appear, covering any alterations or improvements in excess of any work provided or paid for by Landlord under this Lease, Tenant's personal property, business records, fixtures and equipment, and other insurable risks in amounts not less than the full insurable replacement cost of such property and full insurable value of such other interests of Tenant, with coverage at least as broad as the then current editions published by Insurance Services Office, Inc. or any successor organization ("ISO"), of: (a) Building and Personal Property Coverage Form (CP0010), (b) Business Income Coverage Form (CP0030), covering at least one year of anticipated income, (c) Boiler and Machinery Coverage Form (BM0025), (d) Causes of Special Loss Form (CP1030), and (e) Sprinkler Leakage - Earthquake Extension (CP1039).

(iii) Commercial General Liability Insurance ("CGL") at least as broad as the most recent ISO edition of Commercial General Liability Coverage Form (CG0001) with limits of the following amounts: (a) Death or Bodily Injury - \$3,000,000, (b) Property Damage or Destruction (including loss of use thereof) - \$1,000,000, (c) Products/Completed Operations - \$3,000,000, (d) Personal or Advertising injury - \$1,000,000, (e) Each Occurrence Limit -

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\$2,000,000, and (f) General Aggregate Limit - \$3,000,000 per policy year. Such policy shall include endorsements: (1) for contractual liability covering Tenant's indemnity obligations under this Lease, and (2) adding Landlord as Additional Insured, on a form at least as broad as the most recent edition of Additional Insured - Manager or Lessor of Leased Premises Endorsement Form (CG2011) published by ISO.

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Tenant may self-insure any of its insurance coverage obligations hereunder so long as its tangible net worth is in excess of \$ _____ Dollars (\$ _____). Such net worth shall be evidenced by annual financial statements as computed in accordance with generally accepted accounting principles or by reports published in accordance with the Securities and Exchange Commission's reporting requirements for publicly traded companies. In the event that Tenant elects to self-insure, it agrees to protect, defend, indemnify, and hold Landlord harmless from all loss, liability, expense, or damage from which Landlord would have been indemnified and protected against under the required insurance policies Tenant is required to maintain pursuant to this Lease. Likewise, Tenant hereby waives any defense available to it with respect to such indemnify which would not be available to an insurer of a policy issued consistent with the requirements of this Lease. Tenant shall give written notice to Landlord of its election to self-insure as provided herein. Such notice shall be deemed conclusive of Tenant's full acceptance of the provisions of this paragraph.

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10.2 Landlord Requirement Insurance. Landlord shall maintain property damage insurance covering the full replacement cost of the Building, other improvements in the Complex, and personal property owned by Landlord with coverage for perils as set forth under the Causes of Loss-Special Form, with coverage extended for the perils of flood and earthquake, in an amount equal to 100% of the full replacement cost. Landlord may, but is not obligated to, maintain such other insurance and additional coverage as it may deem necessary, including, but not limited to, commercial liability insurance and rent loss insurance. Landlord shall maintain Commercial General Liability Insurance, including Contractual Liability Insurance coverage, covering Landlord's operations on the Complex, with combined single limits of not less than \$ _____ per occurrence for bodily injury or property damage, naming Tenant as an additional insured. All such insurance shall be included as part of the Expenses charged to Tenant. The Project to building may be included in a blanket policy (in which case the cost of such insurance allocable to the Project or Building will be determined by Landlord based upon the insurer's cost calculations). Tenant shall also reimburse Landlord for any increased premiums or additional insurance if directly resulting from Tenant's use of the Premises.

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10.3 Subrogation and Other Matters. Tenant shall provide Landlord with certificates evidencing the coverage required hereunder prior to the Commencement Date, or Tenant's entry to the Leased Premises for construction of improvements or any other purpose (whichever first occurs). Such certificates shall: (i) be on ACORD Form 27 or such other form approved or required by Landlord, (ii) state that such insurance coverage may not be adversely changed, canceled or non-renewed without at least thirty (30) days' prior written notice to Landlord, and (iii) include, as attachments, originals of the Additional Insured endorsements to Tenant's CGL policy required above. Tenant shall provide renewal certificates to Landlord at least thirty (30) days of the expiration of such policies. Except as expressly provided to the contrary herein, coverage hereunder shall apply to events occurring during the policy year regardless of when a claim is made. Any increase of the aforementioned coverage shall be mutually agreeable

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between Tenant and Landlord. Except as provided to the contrary herein, any insurance carried by Landlord or Tenant shall be for the sole benefit of the party carrying such insurance. If Tenant obtains insurance under "blanket policies," Tenant shall obtain an endorsement providing that the insurance limits required hereunder are not subject to reduction or impairment by claims or losses at other locations. Tenant's insurance policies shall be primary to all policies of Landlord and any other Additional Insureds (whose policies shall be deemed excess and non-contributory). All insurance required hereunder shall be provided by responsible insurers licensed in the State where the Property is located, and shall have a general policy holder's rating of at least A- and a financial rating of at least Class VII in the then current edition of Best's Insurance Reports. The parties mutually hereby waive all rights and claims against each other for all losses covered by their respective insurance policies, and waive all rights of subrogation of their respective insurers. The parties agree that their respective insurance policies are now, or shall be, endorsed such that said waiver of subrogation shall not affect the right of the insured to recover thereunder. Landlord disclaims any representation as to whether the foregoing coverages will be adequate to protect Tenant, and Tenant agrees to carry such additional coverage as may be necessary or appropriate.

10.4 Waiver of Claims. Except for claims arising from Landlord's negligence or intentional tortious acts or for Landlord's failure to perform its obligations required under this Lease, Tenant waives all claims against Landlord for injury or death to persons, damage to property or to any other interest of Tenant sustained by Tenant or any party claiming by or through Tenant resulting from: (i) any occurrence in or upon the Leased Premises, (ii) leaking of roofs, bursting, stoppage or leaking of water, gas, sewer or steam pipes or equipment, including sprinklers, (iii) wind, rain, snow, ice, flooding (including flooding of basements and other subsurface areas), freezing, fire, explosion, earthquake, excessive heat or cold, dampness, fire or other casualty, and (iv) vandalism, malicious mischief, theft, misappropriation or other acts or omissions of any parties including Tenant's employees, other tenants, and their respective agents, employees, invitees and contractors (and Tenant shall give Landlord immediate notice of any such occurrences). Subject to the foregoing, to the extent that Tenant is required to or does carry insurance hereunder, Tenant agrees that Tenant's property loss risks shall be borne by such insurance, and Tenant agrees to seek recovery only from its insurance carriers in the event of such losses. This provision is in addition to, and not in limitation of, other provisions of this Lease limiting Landlord's liability.

11. CASUALTY DAMAGE

11.1 Restoration. Tenant shall promptly notify Landlord of any damage to the Leased Premises or Tenant's Parking by fire or other casualty. If the Leased Premises or any common areas of the Property providing access thereto shall be damaged by fire or other casualty, Landlord shall use available insurance proceeds to restore the same. Such restoration shall be to substantially the same condition prior to the casualty, except for modifications required by applicable Laws or by any Lender, any other modifications to the common areas deemed desirable by Landlord (provided access to the Leased Premises is not materially impaired), and except that Landlord shall not be required to repair or replace any of Tenant's furniture, furnishings, fixtures or equipment, or any alterations or improvements in excess of any work provided or paid for by Landlord under this Lease. Landlord shall not be liable for any inconvenience or annoyance to Tenant or its visitors, or injury to Tenant's business resulting in

any way from such damage or the repair thereof. Promptly following completion of Landlord's restoration work, Tenant shall repair and replace Tenant's furniture, furnishings, fixtures, equipment, and any alterations or improvements made by Tenant in excess of those provided or paid for by Landlord, subject to and in compliance with the other provisions of this Lease.

11.2 Abatement of Rent. Rent shall abate from the date of the casualty through the date that Landlord substantially completes Landlord's repair obligations hereunder (or the date that Landlord would have substantially completed such repairs, but for delays by Tenant or any other occupant of the Leased Premises, or any of their agents, employees, invitees, Transferees and contractors), provided such abatement: (i) shall apply only to the extent the Leased Premises are untenantable for the purposes permitted under this Lease and not used by Tenant as a result thereof, based proportionately on the square footage of the Leased Premises so affected and not used, and (ii) shall not apply if Tenant or any other occupant of the Leased Premises, or any of their agents, employees, invitees, Transferees or contractors caused the damage.

11.3 Termination of Lease. Notwithstanding the foregoing to the contrary, in lieu of performing the restoration work, either party may elect to terminate this Lease by notifying the other party of such termination within ninety (90) days after the date of damage (such termination notice to include a termination date at least thirty (30) days from the date of such notice), if the Property shall be materially damaged by Tenant or its employees or agents, or if the Property shall be damaged by fire or other casualty or cause such that: (a) repairs to the Leased Premises and access thereto cannot reasonably be completed within one hundred twenty (120) days after the casualty, (b) more than fifty percent (50%) of the Leased Premises is affected by the damage and fewer than twenty-four (24) months remain in the Term, or any material damage occurs to the Leased Premises during the last twelve (12) months of the Term, or (c) any Lender shall require that the insurance proceeds or any portion thereof be used to retire the Mortgage debt. Tenant agrees that the abatement of Rent or right of termination provided herein shall be Tenant's sole recourse in the event of such damage, and waives any other rights Tenant may have under any applicable Law to perform repairs or terminate the Lease by reason of damage to the Leased Premises or Property.

12. CONDEMNATION

If at least fifty percent (50%) of the Rentable Area of the Leased Premises shall be taken by power of eminent domain or condemned by a competent authority or by conveyance in lieu thereof for public or quasi-public use (each, a "Condemnation"), including any temporary taking for a period of one year or longer, this Lease shall terminate on the date possession for such use is so taken. If: (i) less than fifty percent (50%) of the Leased Premises is taken, but the taking includes or affects a material portion of the Building or Property, or the economical operation thereof or affects a material portion of Tenant's Parking, or (ii) the taking is temporary and will be in effect for less than one year but more than sixty (60) days, then in either such event, either party may elect to terminate this Lease upon at least thirty (30) days' prior notice to the other party. The parties further agree that: (a) if this Lease is terminated, all Rent shall be apportioned as of the date of such termination or the date of such taking, whichever shall first occur, (b) if the taking is temporary, Rent shall be abated for the period of the taking, and (c) if this Lease is not terminated but any part of the Leased Premises is permanently taken, the Rent shall be proportionately abated based on the square footage of the Leased Premises so taken. Landlord

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shall be entitled to receive the entire award or payment in connection with such Condemnation, except that Tenant shall have the right to file any separate claim available to Tenant for the unamortized portion of Tenant's improvements (including Tenant's Work), and for moving expenses and any taking of Tenant's personal property, provided such award is separately payable to Tenant and does not diminish the award available to Landlord or any Lender.

13. ASSIGNMENT AND SUBLETTING

13.1 Transfers. Except for Permitted Transfers which is governed by Section 13.7 below, Tenant shall not, without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed as further described below: (i) assign, mortgage, pledge, hypothecate, encumber, or permit any lien to attach to, or otherwise transfer, this Lease or any interest hereunder, (ii) sublet the entire Leased Premises, or (iii) permit the use of the Leased Premises by any Persons other than Tenant and its employees (all of the foregoing are hereinafter sometimes referred to collectively as "Transfers" and any Person to whom any Transfer is made or sought to be made is hereinafter sometimes referred to as a "Transferee"). If Tenant shall desire Landlord's consent to any Transfer, Tenant shall notify Landlord in writing, which notice shall include: (a) the proposed effective date (which shall not be less than thirty (30) nor more than one hundred eighty (180) days after Tenant's notice), (b) the terms of the proposed Transfer and the consideration therefor, the name, address and background information concerning the proposed Transferee, and a true and complete copy of all proposed Transfer documentation, and (c) in the case of an assignment, financial statements (balance sheets and income/expense statements for the current and prior three (3) years) of the proposed Transferee, in form and detail reasonably satisfactory to Landlord, audited and certified to be complete, true and correct in all material respects by an independent certified public accountant or by the chief financial officer or owner of the Transferee, and any other information to enable Landlord to determine the financial responsibility, character, and reputation of the proposed Transferee, nature of such Transferee's business and proposed use of the Leased Premises, and such other information as Landlord may reasonably require. Any Transfer made without complying with this Article shall at Landlord's option be null, void and of no effect, or shall constitute a Default under this Lease. Whether or not Landlord shall grant consent, Tenant shall pay any reasonable credit check charges and legal fees actually incurred by Landlord (not to exceed \$2,000.00) within thirty (30) days after written request by Landlord.

13.2 Approval. Landlord will not unreasonably withhold or delay its consent to any proposed Transfer of the Leased Premises to the Transferee on the terms specified in Tenant's notice. The parties hereby agree that it shall be reasonable under this Lease and under any applicable Law for Landlord to withhold consent to any proposed Transfer where one or more of the following applies (without limitation as to other reasonable grounds for withholding consent): (i) the Transferee intends to use the Leased Premises for purposes which are not permitted under this Lease, (ii) the proposed Transferee is an occupant of the Property or has negotiated to lease space in the Property from Landlord during the prior six (6) months, (iii) the proposed Transferee does not have, in Landlord's sole good faith determination, satisfactory references or a reasonable financial condition in relation to the obligations to be assumed in connection with the Transfer, (iv) the Transfer involves a partial or collateral assignment, or a mortgage, pledge, hypothecation, or other encumbrance or lien on this Lease, or a Transfer by operation of Law, (v) the proposed Transfer would cause Landlord to be in violation of any Laws

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or any other lease, Mortgage or agreement to which Landlord is a party, would give a tenant of the Property a right to cancel this lease, or would create adverse tax consequences for Landlord, or (v) Tenant has committed and failed to cure a Default at the time Tenant requests consent.

13.3 Transfer Premiums. If Landlord consents to a Transfer, as a condition thereto which the parties hereby agree is reasonable, Tenant shall pay Landlord fifty percent (50%) of any Transfer Premium derived by Tenant from such Transfer after deducting Tenant's reasonable third-party brokerage fees, legal fees, and architectural fees paid or to be paid in connection with such transaction and any actual costs incurred by Tenant in separately demising the subleased or assigned portion of the Leased Premises. "Transfer Premium" shall mean, for a lease assignment, all consideration paid or payable therefor in excess of the remaining Rent payable by Tenant under this Lease (i.e., after the date of such assignment and excluding any unexercised options). "Transfer Premium" shall mean, for a sublease, all rent, additional rent or other consideration paid by such Transferee in excess of the remaining Rent payable by Tenant under this Lease after the date of such sublease, excluding any unexercised options (on a monthly basis during the Term). The percentage of the Transfer Premium due Landlord hereunder shall be paid within thirty (30) days after Tenant receives any Transfer Premium from the Transferee.

13.4 Recapture. Landlord shall have the option, by giving notice to Tenant within thirty (30) days after receipt of Tenant's notice of any proposed Transfer, to recapture the Leased Premises. Such recapture notice shall cancel and terminate this Lease with respect to the Leased Premises as of the date stated in Tenant's notice as the effective date of the proposed Transfer (or at Landlord's option, shall cause the Transfer to be made to Landlord or its agent or nominee, in which case the parties shall execute reasonable Transfer documentation promptly thereafter). provided, however, Tenant shall have the right to withdraw its request for consent to the assignment or subletting within ten (10) days after receipt of Landlord's termination notice, whereupon Landlord's termination attempt shall be ineffective. Tenant shall surrender and vacate the Leased Premises when required hereunder in accordance with Article 23 and any failure to do so shall be subject to Article 24.

13.5 Terms of Consent. If Landlord consents to a Transfer: (i) the terms and conditions of this Lease, including Tenant's liability under this Lease for matters accruing prior to the effective date of the Transfer, including without limitation its liability for the Leased Premises, shall in no way be deemed to have been waived or modified, (ii) such consent shall not be deemed consent to any further Transfer by either Tenant or a Transferee, (iii) Tenant shall deliver to Landlord promptly after execution, an original executed copy of all documentation pertaining to the Transfer in form reasonably acceptable to Landlord, and (iv) Tenant shall furnish a complete statement, certified by an independent certified public accountant or an authorized representative of Tenant, setting forth in detail the computation of any Transfer Premium that Tenant has derived and may derive from such Transfer. Any sublease hereunder shall be subordinate and subject to the provisions of this Lease, and if this Lease shall be terminated during the term of any sublease, Landlord shall have the right to: (a) deem such sublease as merged and canceled and repossess the Leased Premises by any lawful means, or (b) deem such termination as an assignment of such sublease to Landlord and not as a merger, and require that such subtenant attorn to and recognize Landlord as its landlord under any such sublease.

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13.7 Permitted Transfers. Notwithstanding any of the foregoing provisions of this Article, Tenant shall have the right, upon written notice to Landlord but without the requirement that Landlord grant its consent, to assign this Lease to, or to sublet the Leased Premises or any part thereof to, any Affiliate of Tenant. As used in this Article, the term "Affiliate" means (i) any other person or entity directly or indirectly controlling, controlled by, or under common control with Tenant, (ii) any corporation, limited partnership, limited liability partnership, limited company or other business organization (a) in or with which Tenant merges or consolidates or (b) acquiring all or substantially all of the assets or capital stock of Tenant. For purposes of the foregoing, "control" means controlling more than fifty percent (50%) of the outstanding voting securities of an entity. Any such permitted assignee must agree in writing (Tenant shall provide a copy of such writing to Landlord at the same time that Tenant gives Landlord notice of the permitted assignment) to assume, in full, the obligations of Tenant under this Lease; and in the case of Tenant's assignment to an Affiliate, Tenant shall be of any of its obligations under this Lease. Notwithstanding anything to the contrary contained herein, no transfer or assignment of any kind (other than a Transfer to an Affiliate) shall relieve Tenant of its obligations under the terms of this Lease.

14. PERSONAL PROPERTY, RENT AND OTHER TAXES

Tenant shall pay prior to delinquency all taxes, charges or other governmental impositions assessed against or levied upon Tenant's trade fixtures, furnishings, personal property, _____ Whenever possible, Tenant shall cause all such items to be assessed and billed separately from the other property of Landlord. In the event any such items shall be assessed and billed with the other property of Landlord, Tenant shall pay Landlord Tenant's share of such taxes, charges or other governmental impositions within thirty (30) days after Landlord delivers a statement and a copy of the assessment or other documentation showing the amount of impositions applicable to Tenant's property.

15. LANDLORD'S REMEDIES

15.1 Default. The occurrence of any one or more of the following events shall constitute a "Default" by Tenant and shall give rise to Landlord's remedies set forth below: (i) failing to make when due any payment of Rent, and such failure is not cured within five (5) days after written notice from Landlord; (ii) failing to observe or perform any term or condition of this Lease other than the payment of Rent (or the other matters expressly described herein this Section 15.1), and such failure is not cured within any period of time following notice expressly provided with respect thereto in other Articles hereof, or otherwise within a reasonable time, but in no event more than thirty (30) days following notice (provided, if the nature of Tenant's failure is such that more time is reasonably required in order to cure, Tenant shall not be in Default if Tenant commences to cure promptly within such period, diligently keeps Landlord reasonably advised of efforts to cure such failure to completion, and completes such cure as promptly as practicable or (ii) (a) making any general assignment for the benefit of creditors, (b) filing by or for reorganization or arrangement under any Law relating to bankruptcy or insolvency (unless, in the case of a petition filed against Tenant, the same is dismissed or contested within ninety (90) days), (c) appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located in the Leased Premises or of Tenant's interest in this

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Lease, where possession is not restored to Tenant within thirty (30) days, (d) attachment, execution or other judicial seizure of substantially all of Tenant's assets located in the Leased Premises or of Tenant's interest in this Lease, (e) Tenant's convening of a meeting of its creditors or any class thereof for the purpose of effecting a moratorium upon or composition of its debts, or (f) Tenant's admission of an inability to pay debts as they mature.

15.2 Remedies. If a Default occurs, Landlord shall have the rights and remedies hereinafter set forth, which shall be distinct, separate and cumulative with and in addition to any other right or remedy allowed under any Law or other provision of this Lease:

(i) accelerate and declare to be immediately due and payable, and sue for and recover, all unpaid Rent for the unexpired period of the Term (including all Expenses and Taxes to the extent the amount(s) of same can reasonably be estimated) as if by the terms of this Lease the same were payable in advance (and, for the purposes of determining in the first instance accelerated Expenses and Taxes payable by Tenant, the monthly estimated charges for Expenses and Taxes, as billed to Tenant, for the month in which the Default occurred, shall be deemed to continue in such amounts throughout the period to which the acceleration applies; and any over or under payment shall be adjusted following Tenant's payment of the accelerated amount, as the actual amounts are determined pursuant to the applicable provisions of this Lease), and

(ii) whether or not Landlord has elected to accelerate Rent in accordance with clause (i), or whether or not Landlord has elected to terminate this Lease in accordance with clause (iii), below, distraint, collect and bring an action for such Rent as then being rent in arrears, or enter judgment therefor in an action as herein elsewhere provided for in case of rent in arrears, or file a Proof of Claim in any bankruptcy or insolvency proceeding for such Rent, or institute any other proceedings, whether similar or dissimilar to the foregoing, to enforce payment thereof, and

(iii) terminate this Lease and the Term by giving written notice thereof to Tenant, whereupon the Term and the estate hereby granted shall expire and terminate with the same force and legal effect as though the date of such notice was the Expiration Date, and all rights of Tenant hereunder shall expire and terminate, and Tenant shall thereupon quit and surrender the Leased Premises to Landlord in the condition specified in this Lease, and Tenant shall remain liable as hereinafter provided.

15.3 Re-Entry. If a Default occurs, at any time thereafter and in addition to all available legal or equitable rights and remedies, Landlord may, whether or not the Term has been terminated by Landlord, terminate or suspend Tenant's right to possession of the Leased Premises and re-enter upon and repossess the Leased Premises or any part thereof by itself, summary proceedings, ejectment or otherwise, remove all persons and property therefrom, and have, hold and enjoy the Leased Premises and the rents and profits therefrom. Landlord shall be under no liability for or by reason of any such entry, repossession or removal; and no such entry or taking of possession of the Leased Premises by Landlord shall be construed as an election on Landlord's part to terminate the Term unless a written notice of such intention is given to Tenant pursuant to Section 15.2 (iii) or unless the termination of this Lease is decreed by a court of competent jurisdiction.

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Deleted: unless prohibited by the law of the state in which the Leased Premises is located, Tenant hereby authorizes and empowers any prothonotary or attorney of any court of record to appear for Tenant in any and all actions which may be brought for Rent and other sums due by Tenant, and to sign for Tenant an agreement for entering into any competent court an action or actions for the recovery of said rental and other sums, and in said suit or action, to confess judgment against Tenant for all or any part of said rental and aid other sums, including the amounts due from Tenant to Landlord under paragraphs (i) and (ii), and for interest and costs, together with attorneys' fees for collection, of five percent (5%) of said amount, but in no event less than Five Thousand Dollars (\$5,000.00). In the alternative, said prothonotary or attorney of any court of record may appear for Tenant and to sign any agreement for entering in any competent court action in ejectment and judgment against Tenant and all persons claiming by, through, or under Tenant and therein confess judgment for the recovery by Landlord of possession of the Leased Premises, for which this Lease shall be sufficient warrant; thereupon if Landlord so desires, an appropriate writ of possession may issue forthwith, without any prior writ or proceeding whatsoever, and provided that if for any reason after such action shall have been commenced, it shall be determined and possession of the Premises remain in or be restored to Tenant, Landlord shall have the right, for the same Default and upon any subsequent Default or Defaults, or upon the termination of this Lease or Tenant's right of possession as hereinbefore set forth, to bring one or more further action as hereinbefore set forth to recover possession of the Premises and confess judgment as hereinbefore provided. Such authority shall not be exhausted by any one exercise thereof, but judgment may be confessed as aforesaid from time to time as often as any of said rental and other sums shall fall due or be in arrears and such powers may be exercised, as well, after the expiration of the initial Term of this Lease and during any extended or renewal term of this Lease and after the expiration of any extended or renewal term of this Lease.
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15.4 Relletting. At any time or from time to time after the repossession of the Leased Premises or any part thereof pursuant to Section 15.3, whether or not the Term shall have been terminated pursuant to Section 15.2 (iii), Landlord shall use commercially reasonable efforts to mitigate its losses and, in its own name as agent for Tenant if the Term has not been terminated, or on its own behalf if this Lease has been terminated, to relet all or any part of the Leased Premises for the account of Tenant for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term) and on such conditions and provisions (which may include concessions or free rent) as Landlord, in its reasonable discretion, may determine, and Landlord may collect and receive any rents payable by reason of such relletting. Notwithstanding the foregoing:

(i) Landlord shall not be required to (a) observe any instruction given by Tenant about such relletting, (b) endeavor to relet if Landlord has other space available or which will become available elsewhere in the Property, or (c) relet to any tenant whose business or proposed use would be inconsistent or not compatible, in Landlord's reasonable opinion, with the overall leasing, use and occupancy of the Property or whose financial responsibility or standing is insufficient. No relletting shall be deemed to be a surrender and acceptance of the Leased Premises.

(ii) Rent received by Landlord from any third party tenant as a result of relletting the Leased Premises during or attributable to the period ending on the Expiration Date, shall be credited against the Rent otherwise payable by Tenant during the remainder of the Term, in inverse order against the last Rent payments to be made under the provisions of this Lease.

15.5 Continuing Liability. No expiration or termination of the Term pursuant to Section 15.2 (iii), no repossession of the Leased Premises or any part thereof pursuant to Section 15.3, and no relletting of the Leased Premises or any part thereof pursuant to Section 15.4, shall relieve Tenant of any of its liabilities and obligations hereunder, all of which shall survive such expiration, termination, repossession or relletting. In the event of any expiration or termination of this Lease or any repossession of the Leased Premises or any part thereof by reason of a Default, where Landlord has not elected to accelerate Rent pursuant to Section 15.2 (i), Tenant shall pay to Landlord the Rent (including Taxes and Expenses), and all other sums required to be paid by Tenant hereunder to and including the date of such expiration, termination or repossession; and, thereafter, Tenant shall, until the end of what would have been the expiration of the Term in the absence of such expiration, termination or repossession, and whether or not the Leased Premises or any part thereof shall have been relet, be liable to Landlord for, and shall pay to Landlord, as liquidated and agreed current damages, the Rent (including Taxes and Expenses), and all other sums which would have been payable by Tenant to Landlord under this Lease in the absence of such expiration, termination or repossession, less the net proceeds, if any, of any relletting effected for the account of Tenant pursuant to Section 15.4. Tenant shall pay such current damages to Landlord on the days on which the Rent would have been payable under this Lease in the absence of such expiration, termination or repossession, and Landlord shall be entitled to recover the same from Tenant on each such day.

15.6 Liquidated Damages. In the event of any expiration or termination of this Lease or any repossession of the Leased Premises or any part thereof by reason of a Default, whether or

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not Landlord shall have collected any current damages pursuant to Section 15.5, Landlord shall be entitled to recover from Tenant, and Tenant shall pay to Landlord on demand, unless Tenant has paid the whole accelerated Rent pursuant to Section 15.2 (i), as and for liquidated and agreed final damages for Tenant's Default and in lieu of current damages beyond the date of such demand (it being agreed that it would be impracticable or extremely difficult to fix the actual damages), an amount equal to the excess, if any, of (a) the Rent (including Expenses and Taxes, based on the monthly amounts then being billed to Tenant) and all other sums which would be payable under the Lease for the remainder of the Term from the date of such demand (or, if it be earlier, the date to which Tenant shall have satisfied in full its obligations under Section 15.5 to pay current damages), to the date that would have been the Expiration Date of the Term in the absence of such expiration, termination or repossession, discounted at the rate of six percent (6%) per annum, less (b) the then fair rental value of the Leased Premises for the same period, discounted at the rate of six percent (6%) per annum. If any Law shall validly limit the amount of such liquidated final damages to an amount that is less than the amount above agreed upon, Landlord shall be entitled to the maximum amount allowable under such Law.

15.7 ~~Intentionally deleted.~~

15.8 Late Charges, Interest, and Returned Checks. Tenant shall pay, as Additional Rent, a service charge of one percent (1%) of the delinquent amount, whichever is greater, if any portion of Rent is not received when due. In addition, any Rent not paid when due shall accrue interest from the due date at the Default Rate until payment is received by Landlord. Such service charges and interest payments shall not be deemed consent by Landlord to late payments, nor a waiver of Landlord's right to insist upon timely payments at any time, nor a waiver of any remedies to which Landlord is entitled as a result of the late payment of Rent.

15.9 Landlord's Cure of Tenant Defaults. If Tenant fails to perform any obligation beyond all applicable notice and cure periods (except that only such notice as is reasonably practicable under the circumstances shall be required in emergencies), Landlord shall have the right (but not the duty), to perform such obligation on behalf and for the account of Tenant. In such event, Tenant shall reimburse Landlord upon demand, as additional Rent, for all actual and reasonable out-of-pocket expenses incurred by Landlord in performing such obligation, and interest thereon at the Default Rate from the date such expenses were incurred. Landlord's performance of Tenant's obligations hereunder shall not be deemed a waiver or release of Tenant therefrom.

15.10 Other Matters. No re-entry or repossession, repairs, changes, alterations and additions, reletting, or any other action or omission by Landlord shall be construed as an election by Landlord to terminate this Lease or Tenant's right to possession, nor shall the same operate to release Tenant in whole or in part from any of Tenant's obligations hereunder, unless express notice of such intention is sent by Landlord to Tenant. Landlord may bring suits for amounts owed by Tenant hereunder or any portions thereof, as the same accrue or after the same have accrued, and no suit or recovery of any portion due hereunder shall be deemed a waiver of Landlord's right to collect all amounts to which Landlord is entitled hereunder, nor shall the same serve as any defense to any subsequent suit brought for any amount not therefor reduced to judgment. Landlord may pursue one or more remedies against Tenant and need not make an election of remedies until findings of fact are made by a court of competent jurisdiction. All rent

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Deleted: Specific Performance and Collection of Rent. Landlord shall at all times have the right without prior demand or notice except as required by applicable Law to: (i) seek any declaratory, injunctive or other equitable relief, and specifically enforce this Lease or restrain or enjoin a violation of any provision hereof, and Tenant hereby waives any right to require that Landlord post a bond or other security in connection therewith, and (ii) distrain, sue for and collect any unpaid Rent which has accrued.

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and other consideration paid by any replacement tenants shall be applied at Landlord's option: (i) first, to the actual and reasonable out-of-pocket costs of reletting, (ii) second, to the payment of all costs of enforcing this Lease against Tenant, (iii) third, to the payment of all interest and service charges accruing hereunder, (iv) fourth, to the payment of Rent theretofore accrued, and (v) with the residue, if any, to be held by Landlord and applied to the payment of Rent and other obligations of Tenant as the same become due (and with any remaining residue to be retained by Landlord). Landlord shall be under no obligation to observe or perform any provision of this Lease on its part to be observed or performed which accrues while Tenant is in Default hereunder but Landlord's recovery shall be reduced by the amount of losses Landlord could have avoided by commercially reasonable efforts to mitigate Landlord's damages and claims against Tenant. The times set forth herein for the curing of Defaults by Tenant are of the essence of this Lease. No receipt of money by Landlord from Tenant after the termination of this Lease or after the service of any notice or after the commencement of any suit, or after final judgment for possession of the Leased Premises shall reinstate, continue or extend the Term or affect any such notice, demand or suit or imply consent for any action for which Landlord's consent is required.

15.11 Removed Property. Any and all property which may be removed from the Leased Premises by Landlord pursuant to the authority of this Lease or of Law, to which Tenant is or may be entitled, may be handled, removed or stored by Landlord at the sole risk, cost and expense of Tenant, and Landlord shall in no event be responsible for the value, preservation or safekeeping thereof. Tenant shall pay to Landlord, upon demand, any and all actual and reasonable out-of-pocket expenses incurred in such removal and all reasonable storage charges against such property so long as the same shall be in Landlord's possession or under the Landlord's control. Any such property of Tenant not removed from the Leased Premises or retaken from storage by Tenant within thirty (30) days after the end of the Term or of Tenant's right to possession of the Leased Premises, however terminated, shall be conclusively deemed to have been forever abandoned by Tenant and either may be retained by Landlord as its property or may be disposed of in such manner as Landlord may see fit.

15.12 Remedies are Cumulative and Concurrent. All remedies available to Landlord hereunder and at Law (and in equity) shall be cumulative and concurrent. No termination of this Lease or taking or recovery of possession of the Leased Premises shall deprive Landlord of any remedies or actions against Tenant for Rent, other charges or damages for the breach of any covenant or condition herein contained, nor shall the bringing of any such action or the resort to any other remedy or right for the recovery of same be construed as a waiver or release of the right to insist upon the forfeiture and to obtain possession.

15.13 Remedies Available Against Assignees and Subtenants. All of the rights and remedies of Landlord shall be applicable to and available against any and all assignees or subtenants of Tenant.

16. SECURITY DEPOSIT

[NOTE: The easiest way to deal with this provision is to take it out altogether. If this was not specifically negotiated for in the LOI, then it will be difficult to get the Landlord to agree to take this out. These markings are based on Tenant's best and first draft efforts.]

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Deleted: Tenant hereby irrevocably waives any right otherwise available under any Law to redeem or reinstate this Lease, or Tenant's right to possession, after this Lease, or Tenant's right to possession, is terminated based on a Default by Tenant. Tenant hereby waives all errors and defects of a procedural nature in any proceedings brought against it by Landlord under this Lease. Tenant further waives the right to any notices to quit or otherwise as may be specified in 2A N.J.S.A. §18-53 (et seq.), as the same may have been or may hereafter be amended, including, but not limited to, the three (3) months and fifteen (15) or thirty (30) days notices, and agrees that the notices provided in this Lease shall be sufficient in any case where a longer period may be statutorily specified.

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Tenant shall deposit with Landlord the amount set forth in Article 1 ("Security Deposit") ~~at the same time Tenant makes the first payment of Base Rent.~~ The Security Deposit shall serve as security for the prompt, full and faithful performance by Tenant of the terms and provisions of this Lease. If Tenant commits a Default, Landlord may, ~~upon at least five (5) days prior written notice to Tenant,~~ use or apply the Security Deposit, to the extent necessary, for the payment of Tenant's obligations hereunder. ~~In the event the Security Deposit is reduced by such use or application, Tenant shall deposit with Landlord within thirty (30) days after notice, an amount sufficient to restore the full amount of the Security Deposit.~~ Landlord shall not be required to keep the Security Deposit separate from Landlord's general funds or pay interest on the Security Deposit ~~but Landlord shall account for the Security Deposit in accordance with generally accepted accounting principles, consistently applied.~~ Any remaining portion of the Security Deposit shall be returned to Tenant ~~within thirty (30) days after Tenant has vacated the Leased Premises in accordance with the applicable provisions of this Lease.~~ If the Leased Premises shall be expanded at any time, or if the Term shall be extended at an increased rate of Rent, the Security Deposit shall thereupon be proportionately increased. Tenant shall not assign, pledge or otherwise transfer any interest in the Security Deposit except as part of an assignment of this Lease approved by Landlord hereunder, and any attempt to do so shall be null and void. ~~Notwithstanding anything contained in this Article 16 to the contrary, Landlord shall promptly return the Security Deposit within thirty (30) days after the expiration of the first Lease Year provided no Default has been committed by Tenant in the first Lease Year of the Term of this Lease.~~

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17. ATTORNEYS' FEES, JURY TRIAL, COUNTERCLAIMS AND VENUE

In the event of any litigation between the parties relating to this Lease, the Leased Premises or Property (including pretrial, trial, appellate, administrative, bankruptcy or insolvency proceedings), the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs as part of the judgment, award or settlement therein. ~~If either party or any of its officers, directors, trustees, beneficiaries, partners, agents, affiliates or employees shall be made a party to any litigation commenced by or against the other party and is not at fault, the other party shall pay all costs, expenses and reasonable attorneys' fees incurred by such parties in connection with such litigation.~~ IN THE INTEREST OF OBTAINING A SPEEDIER AND LESS COSTLY HEARING OF ANY DISPUTE, LANDLORD AND TENANT HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER ARISING OUT OF OR RELATING TO THIS LEASE, THE PREMISES OR THE PROPERTY. Although such jury waiver is intended to be self-operative and irrevocable, Landlord and Tenant each further agree, if requested, to confirm such waivers in writing at the time of commencement of any such action, proceeding or counterclaim. Any action or proceeding brought by either party against the other for any matter arising out of or in any way relating to this Lease, the Leased Premises or the Property, shall be heard in the court having jurisdiction located closest to the Property.

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18. SUBORDINATION, ATTORNMEN T AND LENDER PROTECTION

This Lease is subject and subordinate to all Mortgages now or hereafter placed upon the Property, and all other encumbrances and matters of public record applicable to the Property. Whether before or after any foreclosure or power of sale proceedings are initiated or completed by any Lender or a deed in lieu is granted (or any ground lease is terminated), Tenant agrees

upon written request of any such Lender or any purchaser at such sale, to attorn and pay Rent to such party, and recognize such party as Landlord (provided such Lender or purchaser shall agree ~~to assume and perform all of Landlord's obligations and~~ not to disturb Tenant's occupancy so long as Tenant does not Default hereunder, on a form reasonably acceptable to Tenant). However, in the event of attornment, no Lender shall be: (i) liable for any act or omission of Landlord, or subject to any offsets or defenses which Tenant might have against Landlord (arising prior to such Lender becoming Landlord under such attornment) ~~except to the extent such act or omission continues to occur after Lender has succeeded to the interest of Landlord under the Lease,~~ (ii) liable for any security deposit or bound by any prepaid Rent not actually received by such Lender ~~(but this shall not be deemed to prohibit Tenant from receiving, as provided herein, any refunds or credits with respect to any overpaid Rent),~~ Any Lender may elect to make this Lease prior to the lien of its Mortgage by written notice to Tenant, and if the Lender of any prior Mortgage shall require, this Lease shall be prior to any subordinate Mortgage; such elections shall be effective upon written notice by Landlord to Tenant, or shall be effective as of such earlier or later date set forth in such notice. Except as expressly provided to the contrary herein, the provisions of this Article shall be self-operative; however Tenant shall execute and deliver, within ~~twenty (20) days~~ after requested, such reasonable documentation as Landlord or any Lender may request from time to time, whether prior to or after a foreclosure or power of sale proceeding is initiated or completed, a deed in lieu is delivered, or a ground lease is terminated, in order to further confirm or effectuate the matters set forth in this Article in recordable form, ~~provided such documentation is approved by Tenant.~~

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19. ESTOPPEL CERTIFICATES

Tenant shall from time to time, within ~~fifteen (15) days~~ after written request from Landlord, execute, acknowledge and deliver a statement certifying: (i) that this Lease is unmodified and in full force and effect or, if modified, stating the nature of such modification and certifying that this Lease as so modified, is in full force and effect (or specifying the ground for claiming that this Lease is not in force and effect), (ii) the dates to which the Rent has been paid, and the amount of any Security Deposit, (iii) that Tenant is in possession of the Leased Premises, and paying Rent on a current basis ~~and to the best of Tenant's knowledge, no event or occurrence had occurred which would create any~~ offsets, defenses or claims, or specifying the same if any are claimed, (iv) that there are not, to ~~the best of~~ Tenant's knowledge, any unsecured defaults on the part of Landlord or Tenant which are pertinent to the request, or specifying the same if any are claimed, and (v) certifying such other matters ~~as to the status of this Lease.~~ Any such statement may be relied upon by any such parties. If Tenant shall fail to execute and return such statement within the time required herein, ~~and such failure continues for another five (5) days after Tenant's receipt of Landlord's written demand thereof,~~ Tenant shall be deemed to have agreed with the matters set forth therein.

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20. RIGHTS RESERVED BY LANDLORD

20.1 General Matters. Except to the extent expressly limited herein, Landlord reserves full rights to control the Property (which rights may be exercised without subjecting Landlord to claims for constructive eviction, abatement of Rent, damages or other claims of any kind), including more particularly, but without limitation, the following rights to: (i) change the name or street address of the Property or designation of the Leased Premises ~~(provided, that (a) Landlord shall give Tenant ninety (90) days written notice, (b) Landlord shall pay the reasonable,~~

out-of-pocket costs of replacing Tenant's stationery and business cards, and (c) as of the date of execution of this Lease by Landlord, Landlord represents that it currently has no plans in place to make any such changes), (ii) install and maintain signs on the exterior and interior of the Property, and grant any other Person the right to do so [if applicable: (provided such signage does not deprive Tenant of the material benefits of Tenant's signage rights granted herein)], (iii) retain at all times, and use in appropriate instances (but subject to Section 20.2 below), keys to all doors within and into the Leased Premises, (iv) grant to any Person the right to conduct any business or render any service at the Property, whether or not the same are similar to the use permitted Tenant by this Lease so long as Tenant is not deprived of the intended benefits and rights granted herein, (v) grant any Person the right to use security personnel and systems respecting access to their premises, (vi) have access for Landlord and other tenants of the Property to any mail chutes located on the Leased Premises according to the rules of the United States Postal Service (and to install or remove such chutes), provided Landlord will indemnify Tenant for any damage or injury arising from such access by Landlord and other tenants, and (vii) in case of fire, invasion, insurrection, riot, civil disorder, public excitement or other dangerous condition, or threat thereof: (a) limit or prevent access to the Property, (b) shut down elevator service, (c) activate elevator emergency controls, and (d) otherwise take such action or preventative measures deemed necessary by Landlord for the safety of tenants of the Property or the protection of the Property and other property located thereon or therein (but this provision shall impose no duty on Landlord to take such actions, and no liability for actions taken in good faith).

20.2 **Access To Leased Premises.** Landlord shall have the right, from time to time (but upon at least forty-eight (48) hours prior written notice and, at Tenant's election, with a Tenant escort), to enter the Leased Premises in order to: (i) inspect, (ii) supply cleaning service or other services to be provided Tenant hereunder, (iii) show the Leased Premises to current and prospective Lenders, insurers, purchasers, tenants, brokers and governmental authorities, and (iv) perform any work or take any other actions under Section 20.3 below, or exercise other rights of Landlord under this Lease or applicable Laws. However, Landlord shall: (a) provide reasonable advance (but not less than forty-eight (48) hours) written notice to Tenant for matters which will involve a significant disruption to Tenant's business (except in emergencies in which case notice shall be given as soon as practicable under the circumstances), (b) take reasonable steps to minimize any significant disruption to Tenant's business, and following completion of any work, return Tenant's leasehold improvements, fixtures, property and equipment to the original locations and condition to the fullest extent reasonably possible, and (c) not change the configuration or reducing the square footage of the Leased Premises, unless required by Laws or other causes beyond Landlord's reasonable control (and in the event of any permanent material reduction, the Rent and other rights and obligations of the parties based on the square footage of the Leased Premises shall be proportionately adjusted). Tenant shall remove partitions, furniture or other obstructions in the Leased Premises which Tenant has been notified by Landlord will prevent or impair Landlord's access to the Systems and Equipment for the Property or the systems and equipment for the Leased Premises.

20.3 **Changes To The Property.** Landlord shall have the right, from time to time, to: (i) paint and decorate, (ii) perform repairs or maintenance, (iii) add land, buildings, easements or other interests to, or sell or eliminate the same from, the Property and grant interests and rights in the Property to other parties, and convert common areas to Rentable Areas and Rentable Areas to

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Deleted: (iv) decorate, remodel or alter the Leased Premises if Tenant shall abandon the Leased Premises at any time, or shall vacate the same during the last one hundred twenty (120) days of the Term (without thereby terminating this Lease).
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common areas, and (iii) make replacements, restorations, renovations, alterations, additions and improvements, structural or otherwise (including freon retrofit work), in and to the Property or any part thereof, including any adjacent building, structure, facility, land, street or alley, or change the uses thereof (other than Tenant's permitted use), including changes, reductions or additions of corridors, entrances, doors, lobbies, parking facilities and other areas, structural support columns and shear walls, elevators, stairs, escalators, mezzanines, solar tint windows or film, kiosks, planters, sculptures, displays, and other amenities and features therein, and changes relating to the connection with or entrance into or use of the Property or any other adjoining or adjacent building or buildings, now existing or hereafter constructed. In connection with such matters, Landlord may among other things erect scaffolding, barricades and other structures, open ceilings, close entry ways, restrooms, elevators, stairways, corridors, parking and other areas and facilities, and take such other actions as Landlord deems appropriate. Notwithstanding the foregoing, Landlord represents and warrants that any actions taken pursuant to this Section 20.3 shall not unreasonably interfere with Tenant's use or enjoyment of, or access to, the Leased Premises, or create unreasonable cost or burden to Tenant. Landlord certifies that, as of the date of execution of this Lease, Landlord has no plans in place to undertake any such actions contemplated in this Section 20.3.

20.4 **Intentionally deleted.**

21. **LANDLORD'S RIGHT TO CURE AND TENANT'S REMEDIES**

The occurrence of any one or more of the following events shall constitute a "Default" by Landlord: (a) the failure to perform any obligation under this Lease required to be performed by Landlord, and such failure shall have continued for a period of thirty (30) days after notice thereof by Tenant (provided, if the nature of Landlord's failure is such that more time is reasonably required in order to cure, Landlord shall not be in default if Landlord commences to cure within such period, diligently keeps Landlord reasonably advised of efforts to cure such failure to completion, and thereafter diligently seeks to cure such failure to completion), (b) making any general assignment for the benefit of creditors, or (c) filing by or for reorganization or arrangement under any Law relating to bankruptcy or insolvency (unless, in the case of a petition filed against Landlord, the same is dismissed or contested within ninety (90) days). If Landlord shall be in Default, Tenant, in addition to such rights and remedies as may be available to Tenant under applicable Laws, may do any of the following: (i) Tenant shall have the right (but not the duty), to perform such obligation on behalf and for the account of Landlord, and Landlord shall reimburse Tenant upon demand for all actual and reasonable out-of-pocket expenses incurred by Tenant in performing such obligation, and interest thereon at the Default Rate from the date such expenses were incurred; (ii) abate rent for the portion of the Leased Premises rendered unusable for Tenant's purposes; or (iii) terminate this Lease if Landlord's Default substantially interferes with or prevents Tenant's use and enjoyment for a material portion of the Leased Premises. All remedies available to Tenant hereunder and at Law (and in equity) shall be cumulative and concurrent. No termination of this Lease shall deprive Tenant of any remedies or actions against Landlord for damages for the breach of any covenant or condition herein contained, nor shall the bringing of any such action or the resort to any other remedy or right for the recovery of same be construed as a waiver or release of the right to insist upon the forfeiture and to obtain possession. All of the rights and remedies of Tenant shall be

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Deleted: However, Landlord shall: (a) take reasonable steps to minimize or avoid any material interruption of access to the Leased Premises, except when necessary on a temporary basis, and (b) in connection with entering the Leased Premises shall comply with Section 20.2 above.
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Deleted: New Leased Premises. Landlord shall have, on one occasion only, the right to substitute for the Leased Premises other premises (herein referred to as the "New Premises") in the Property, provided: (i) the New Premises shall be similar to the Leased Premises in size (up to 10% larger or smaller with the Rent and any other rights and obligations of the parties based on the square footage of the Leased Premises adjusted proportionately to reflect the increase or decrease), (ii) Landlord shall provide the New Premises in a condition substantially comparable to the Leased Premises at the time of the substitution (and Tenant shall diligently cooperate in the preparation or approval of any plans or specifications for the new premises as requested by Landlord or Landlord's representatives), (iii) the parties shall execute an appropriate amendment to the Lease confirming the change within thirty (30) days after Landlord requests, and (iv) if Tenant shall already have taken possession of the Leased Premises: (a) Landlord shall pay the direct, out-of-pocket, reasonable expenses of Tenant in moving from the Leased Premises to the New Premises, based upon Tenant's submission of paid receipts, and (b) Landlord shall give Tenant reasonable notice prior to Tenant's move into the New Premises, and such move shall be made during evenings, weekends, or otherwise so as to incur the least inconvenience to Tenant. Tenant shall surrender and vacate the Leased Premises in such ninety (90) days after notice from Landlord, in the condition and as required under Article 23, and any failure to do so shall be subject to Article 24.
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applicable to and available against any and all assignees or other successors of Landlord's interest in the Leased Premises.

22. INDEMNIFICATION

22.1. Except for the negligence of Landlord, its employees, agents, or contractors, Tenant shall defend, indemnify and hold Landlord harmless from and against any and all demands, losses, penalties, fines, fees, charges, assessments, liabilities, damages, judgments, orders, decrees, actions, administrative or other proceedings, costs and expenses (including court costs, attorneys' fees, and expert witness fees) arising from third party claims, which directly relate to: (i) any violation or breach of this Lease or applicable Law by any Tenant Parties, (ii) damage, loss or injury to persons, property or business occurring in, about or from the Leased Premises, (iii) damage, loss or injury to persons, property or business directly or indirectly arising out of any Tenant Party's use of the Leased Premises or Property, or out of any other act or omission of any Tenant Parties. For purposes of this provision, "Tenant Parties" shall mean Tenant, any other occupant of the Leased Premises and any of their respective agents, contractors, employees, invitees, transferees and contractors. Without limiting the generality of the foregoing, Tenant specifically acknowledges that the undertaking herein shall apply to claims in connection with or arising out of any Tenant's Work as described in Article 9, the installation, maintenance, use or removal of any Lines as described in Article 29, the transportation, use, storage, maintenance, generation, manufacturing, handling, disposal, release, discharge, spill or leak of any Hazardous Material as described in Article 30, and violations of Tenant's responsibilities respecting the Disabilities Acts as described in Article 31 (whether or not any of such matters shall have been theretofore approved by Landlord).

22.2. Landlord agrees to Tenant shall defend, indemnify and hold Landlord harmless from and against any and all demands, losses, penalties, fines, fees, charges, assessments, liabilities, damages, judgments, orders, decrees, actions, administrative or other proceedings, costs and expenses (including court costs, attorneys' fees, and expert witness fees) arising from third party claims, which directly relate to: (i) any violation or breach of this Lease or applicable Law by Landlord, its employees, agents, or contractors; and (ii) damage, loss or injury to persons, property or business occurring in the common area of the Building.

23. RETURN OF POSSESSION

At the expiration or earlier termination of this Lease or Tenant's right of possession of the Leased Premises, Tenant shall vacate and surrender possession of the entire Leased Premises in the condition required under Article 8 and the Rules and Regulations, ordinary wear and tear, and damage by casualty, acts of God, and Landlord's negligence excepted, shall surrender all keys and key cards, and any parking transmitters, stickers or cards, to Landlord, and shall remove all personal property and office and trade fixtures that may be readily removed without damage to the Leased Premises or Property. All improvements, fixtures and other items, including ceiling light fixtures, HVAC equipment, plumbing fixtures, hot water heaters, fire suppression and sprinkler systems, "Lines" under Article 29, interior stairs, wall coverings, carpeting and other flooring, blinds, drapes and window treatments, in or serving the Leased Premises, whether installed by Tenant or Landlord, shall be Landlord's property and shall remain

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upon the Leased Premises, all without compensation, allowance or credit to Tenant, unless Landlord elects otherwise with respect to Tenant's Work as provided herein. Unless removal at the end of the Term is required by the Tenant as a condition to Landlord's consent, Tenant shall have the right, but not the obligation, to remove any improvement or fixture installed by Tenant, including Tenant's Work, provided Tenant can do so without obligation to the structural integrity of the Building and Tenant restores the affected areas of the Leased Premises to good condition, reasonable wear and tear excepted. All improvements made by Tenant that do not constitute Tenant's tangible personal property or trade fixtures and are not removed by Tenant at the termination of the Lease will become the property of Landlord. If Tenant shall fail to perform any repairs or restoration Landlord may do so and Tenant shall pay Landlord's actual, reasonable, out-of-pocket costs therefor upon demand.

24. HOLDING OVER

If possession of the Leased Premises is not surrendered to Landlord upon the termination or expiration of this Lease, such "holding over" shall be construed as a month-to-month extension, and Tenant shall pay Landlord one hundred twenty-five percent (125%) of the amount of Base Rent then applicable, prorated on a per diem basis, for each day Tenant shall fail to vacate or surrender possession of the Leased Premises or any part thereof after expiration or earlier termination of this Lease or Tenant's right of possession. Tenant shall pay such amounts on demand, and, in the absence of demand, monthly in advance. The foregoing provisions, and Landlord's acceptance of any such amounts, shall not serve as permission for Tenant to hold-over, nor serve to extend the Term (although Tenant shall remain a tenant-at-sufferance bound to comply with all provisions of this Lease until Tenant properly vacates the Leased Premises, and shall be subject to the provisions of Article 23). As consideration for Tenant's covenant to pay the increased Base Rent as provided herein, Landlord agrees in no event shall Tenant be liable for any consequential damages arising from any such "holding over."

25. NOTICES

Except as expressly provided to the contrary in this Lease, every notice or other communication to be given by either party to the other with respect hereto or to the Leased Premises or the Property, shall be in writing and shall not be effective for any purpose unless the same shall be served personally or by a reputable, national overnight courier service that requires a written receipt (e.g., Federal Express), or United States certified mail, return receipt requested, postage prepaid, to the parties at the addresses set forth in Article 1, or such other address or addresses as Tenant or Landlord may from time to time designate by notice given as above provided. Every notice or other communication hereunder shall be deemed to have been given as of any earlier date evidenced by a receipt from such national air courier service or the United States Postal Service) or immediately if personally delivered. Notices not sent in accordance with the foregoing shall be of no force or effect until received by the foregoing parties at such addresses required herein.

26. REAL ESTATE BROKERS

Tenant represents that Tenant has dealt only with the Broker, if any, designated in Article 1 (whose commission, if any, shall be paid by Landlord to such Broker pursuant to separate agreement heretofore entered into by Landlord and such Broker) as broker, agent or finder in connection with this Lease, and agrees to indemnify and hold Landlord harmless from all

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Deleted: All property removed from the Leased Premises by Landlord pursuant to any provisions of this Lease or any Law may be handled or stored by Landlord at Tenant's expense, and Landlord shall in no event be responsible for the value preservation or safekeeping thereof. All property not removed from the Leased Premises or retaken from storage by Tenant within thirty (30) days after expiration or earlier termination of this Lease or Tenant's right to possession, shall at Landlord's option be conclusively deemed to have been conveyed by Tenant to Landlord as if by bill of sale without payment by Landlord. Unless prohibited by applicable Law, Landlord shall have a lien against such property for the costs incurred in removing and storing the same. Tenant hereby waives any statutory notices to vacate or quit the Leased Premises upon expiration of this Lease.

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damages, judgments, liabilities and expenses (including reasonable attorneys' fees) arising from any claims or demands of any other broker, agent or finder with whom Tenant has dealt for any commission or fee alleged to be due in connection with its participation in the procurement of Tenant or the negotiation with Tenant of this Lease. Landlord warrants to Tenant that no broker(s) have been retained in connection with this Lease on behalf of Landlord. Landlord covenants and agrees that Landlord shall pay all commissions, fees, and amounts owing to Broker in connection with this Lease. Landlord agrees to indemnify and hold Tenant harmless from all damages, judgments, liabilities and expenses (including reasonable attorneys' fees) arising from any claims or demands of any other broker, agent or finder with whom Landlord has dealt for any commission or fees alleged to be in connection with its participation in the procurement of Tenant or the negotiation with Tenant of this Lease.

27. NO WAIVER

No provision of this Lease will be deemed waived by either party unless expressly waived in writing and signed by the waiving party. No waiver shall be implied by delay or any other act or omission of either party. No waiver by either party of any provision of this Lease shall be deemed a waiver of such provision with respect to any subsequent matter relating to such provision, and the consent or approval respecting any action by either party shall not constitute a waiver of the requirement for obtaining Landlord's consent or approval respecting any subsequent action. Acceptance of Rent by Landlord directly or through any agent or lock-box arrangement shall not constitute a waiver of any breach by Tenant of any term or provision of this Lease (and Landlord reserves the right to return or refund any untimely payments if necessary to preserve Landlord's remedies). No acceptance of a lesser amount of Rent shall be deemed a waiver of Landlord's right to receive the full amount due, nor shall any endorsement or statement on any check or payment or any letter accompanying such check or payment be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the full amount due. The acceptance of Rent or of the performance of any other term or provision from, or providing directory listings or services for, any Person other than Tenant shall not constitute a waiver of Landlord's right to approve any Transfer. No delivery to, or acceptance by, Landlord or its agents or employees of keys, nor any other act or omission of Tenant or Landlord or their agents or employees, shall be deemed a surrender, or acceptance of a surrender, of the Leased Premises or a termination of this Lease, unless stated expressly in writing by Landlord.

28. SAFETY AND SECURITY DEVICES, SERVICES AND PROGRAMS

The parties acknowledge that safety and security devices, services and programs provided by Landlord, if any, while intended to deter crime, may not, under any circumstances, deter crime or prevent theft or other criminal acts, or ensure safety of persons or property. The risk that any safety or security device, service or program may not be effective at all, or may malfunction, or be circumvented by a criminal, is assumed by Tenant with respect to Tenant's personal property and interests. Tenant shall obtain insurance coverage against such losses resulting and criminal acts, as may be further described in Article 10. Tenant agrees to cooperate in any reasonable safety or security program developed by Landlord or required by Law.

29. TELECOMMUNICATION LINES

29.1 Telecommunication Lines. Subject to Landlord's continuing right of supervision and approval, and the other provisions hereof, Tenant shall separately obtain, install and pay for any and all communications and data transmission services for the Leased Premises. In connection therewith, Tenant may: (i) install telecommunication lines ("Lines") connecting the Leased Premises to any terminal designated by Landlord, or (ii) use any such Lines as may currently exist and as are designated for Tenant's use in the Plans and Specifications and already connect the Leased Premises to any such terminal block. Landlord disclaims any representations, warranties or understandings concerning the existence, availability, location, capacity, design or suitability of any such terminal, any riser Lines, any main distribution frames ("MDF") for the Property, or related equipment. Tenant shall not install any equipment outside of the Leased Premises. If there is, or will be, more than one tenant on any floor, at any time, Landlord may allocate, and periodically reallocate, connections to any terminal block and MDF based on the proportion of square feet each tenant occupies on such floor, or the type of business operations or requirements of such tenants, in Landlord's reasonable discretion. Landlord may arrange for an independent contractor to review Tenant's requests for approval hereunder, monitor or supervise Tenant's installation, connection and disconnection of Lines, and provide other such services, or Landlord may provide the same. In each case, Tenant shall pay Landlord's fees and costs therefor as provided in Article 9.

29.2 Installation. Tenant may, at its expense, install and use Tenant's Lines and make connections and disconnections at the terminals described above, provided Tenant shall: (i) obtain Landlord's prior written approval of all aspects thereof, (ii) use an experienced and qualified contractor designated or approved in writing in advance by Landlord (whom Landlord may require to enter an access and indemnity agreement mutually agreeable to Tenant and Landlord), (iii) comply with such inside wire standards as Landlord may adopt from time to time, and all other provisions of this Lease, including Article 9 respecting Tenant's Work, and the Rules and Regulations respecting access to the wire closets, (iv) not install Lines in the same sleeve, chaseway or other enclosure in close proximity with electrical wire, and not install PVC-coated Lines under any circumstances, (v) thoroughly test any riser Lines to which Tenant intends to connect any Lines to ensure that such riser Lines are available and are not then connected to or used for telephone, data transmission or any other purpose by any other party (whether or not Landlord has previously approved such connections), and not connect to any such unavailable or connected riser Lines, and (vi) not connect any equipment to the Lines which may create an electromagnetic field exceeding the normal insulation ratings of ordinary twisted pair riser cable or cause radiation higher than normal background radiation, unless the Lines therefor (including riser Lines) are appropriately insulated to prevent such excessive electromagnetic fields or radiation (and such insulation shall not be provided by the use of additional unused twisted pair Lines). Unless expressly required by Landlord in writing at the time of installation, Tenant shall not be required to remove any Lines installed in the Leased Premises at the termination of this Lease.

29.3 Limitation of Liability. Unless due to Landlord's intentional misconduct or negligent acts, Landlord shall have no liability of any nature with respect to the Lines or the capacity of suitability thereof, and Landlord does not warrant that the Tenant's use of the Lines will be free, from the following (collectively called "Line Problems"): (i) any eavesdropping, wire-tapping or theft of long distance access codes by unauthorized parties, (ii) any failure of terminals, Lines, the MDF or other equipment to satisfy Tenant's requirements, or (iii) any

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capacitance, attenuation, cross-talk or other problems with the Lines, any misdesignation of the Lines in the MDF room or wire closets, or any shortages, failures, variations, interruptions, disconnections, loss or damage caused by or in connection with the installation, maintenance, replacement, use or removal of any other Lines or equipment at the Property by or for other tenants at the Property, by any failure of the environmental conditions at or the power supply for the Property to conform to any requirements of the Lines or any other problems associated with any Lines or by any other cause. Unless due to Landlord's intentional misconduct or negligent acts, no Line Problems shall be deemed an actual or constructive eviction of Tenant, render Landlord liable to Tenant for abatement of any Rent or other charges under the Lease, or relieve Tenant from performance of Tenant's obligations under the Lease as amended herein. Except when caused by Landlord's intentional misconduct or negligent acts, Landlord in no event shall be liable for damages by reason of loss of profits, business interruption or other consequential damage arising from any Line Problems.

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30. HAZARDOUS MATERIALS

30.1 Hazardous Materials Generally Prohibited. Tenant shall not transport, use, store, maintain, generate, manufacture, handle, dispose, release, discharge, spill or leak any Hazardous Material, or permit Tenant's employees, agents, contractors, or other occupants of the Leased Premises to engage in such activities on or about the Property. However, the foregoing provisions shall not prohibit the transportation to and from, and use, storage, maintenance and handling within, the Leased Premises of substances customarily and lawfully used in the business which Tenant is permitted to conduct in the Leased Premises under this Lease, but only as an incidental and minor part of such business, and provided: (i) such substances shall be properly labeled, contained, used and stored only in small quantities reasonably necessary for such permitted use of the Leased Premises and the ordinary course of Tenant's business therein, strictly in accordance with applicable Laws, highest prevailing standards, and the manufacturers' instructions therefor, and as Landlord shall reasonably require, (ii) Tenant shall provide Landlord with ten (10) days advance notice and current Material Safety Data Sheets ("MSDSs") therefor, and Landlord reserves the right to prohibit or limit such substances in each such instance, (iii) such substances shall not be disposed of, released, discharged or permitted to spill or leak in or about the Leased Premises or the Property (and under no circumstances shall any Hazardous Material be disposed of within the drains or plumbing facilities in or serving the Leased Premises or Property or in any other public or private drain or sewer, regardless of quantity or concentration), (iv) if any applicable Law or Landlord's trash removal contractor requires that any such substances be disposed of separately from ordinary trash, Tenant shall make arrangements at Tenant's expense for such disposal in approved containers directly with a qualified and licensed disposal company at a lawful disposal site, (v) any remaining such substances shall be completely, properly and lawfully removed from the Property upon expiration or earlier termination of this Lease, and (vi) for purposes of removal and disposal of any such substances, Tenant shall be named as the owner, operator and generator, shall obtain a waste generator identification number, and shall execute all permit applications, manifests, waste characterization documents and any other required forms.

30.2 Notifications and Records. Tenant shall promptly notify Landlord upon Tenant's actual knowledge of: (i) any inspection, enforcement, cleanup or other regulatory action taken or threatened by any regulatory authority with respect to any Hazardous Material on or from the

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Leased Premises or the migration thereof from or to other property, (ii) any demands or claims made or threatened by any Person relating to any loss or injury claimed to have resulted from any Hazardous Material on or from the Leased Premises, (iii) any release, discharge, spill, leak, disposal or transportation of any Hazardous Material on or from the Leased Premises in violation of this Article, and any damage, loss or injury to persons, property or business resulting or claimed to have resulted therefrom, and (iv) any matters where Tenant is required by Law to give a notice to any regulatory authority respecting any Hazardous Materials on or from the Leased Premises. Landlord shall have the right (but not the obligation) to notify regulatory authorities concerning actual and claimed violations of this Article. Tenant shall immediately upon written request from time to time provide Landlord with copies of all MSDSs, permits, approvals, memos, reports, correspondence, complaints, demands, claims, subpoenas, requests, remediation and cleanup plans, and all papers of any kind filed with or by any regulatory authority and any other books, records or items pertaining to Hazardous Materials that are subject to the provisions of this Article (collectively referred to herein as "Tenant's Hazardous Materials Records").

30.3 Clean Up Responsibility. If any Hazardous Material is released, discharged or disposed of, or permitted to spill or leak, in violation of the foregoing provisions, Tenant shall promptly and properly clean up and remove the Hazardous Materials from the Leased Premises, Property, and any other affected property and clean or replace any affected personal property (whether or not owned by Landlord) in compliance with applicable Laws and then prevailing industry practices and standards, at Tenant's expense (without limiting Landlord's other remedies therefor). Such clean up and removal work ("Tenant Remedial Work") shall be considered Tenant's Work under Article 9 and subject to the provisions thereof, including Landlord's prior written approval (except in emergencies), and any testing, investigation, feasibility and impact studies, and the preparation and implementation of any remedial action plan required by any court or regulatory authority having jurisdiction or reasonably required by Landlord. In connection therewith, Tenant shall provide documentation evidencing that all Tenant Remedial Work or other action required hereunder has been properly and lawfully completed (including a certificate addressed to Landlord from an environmental consultant reasonably acceptable to Landlord, in such detail and form as Landlord may reasonably require). If any Hazardous Material is released, discharged, or disposed of, on or about the Property and is not caused by Tenant or other occupants of the Leased Premises, or their agents, employees, Transferees, or contractors, such release, discharge, disposal, spill or leak shall be deemed casualty damage under Article 11 to the extent that the Leased Premises and Tenant's use thereof is affected thereby; in such case, Landlord and Tenant shall have the obligations and rights respecting such casualty damage provided under this Lease.

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30.4 Hazardous Material Defined. The term "Hazardous Material" for purposes hereof shall include, but not be limited to: (i) any flammable, explosive, toxic, radioactive, biological, corrosive or otherwise hazardous chemical, substance, liquid, gas, device, form of energy, material or waste or component thereof, (ii) petroleum-based products, diesel fuel, paints, solvents, lead, radioactive materials, cyanide, biohazards, infectious or medical waste and "sharps", printing inks, acids, DDT, pesticides, ammonia compounds, and any other items which now or subsequently are found to have an adverse effect on the environment or the health and safety of persons or animals or the presence of which require investigation or remediation under any Law or governmental policy, and (iii) any item defined as a "hazardous substance", "hazardous material", "hazardous waste", "regulated substance" or "toxic substance" under the

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Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq., Hazardous Material s Transportation Act, 49 U.S.C. §1801, et seq., Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901 et seq., Clean Water Act, 33 U.S.C. §1251, et seq., Safe Drinking Water Act, 14 U.S.C. §300f, et seq., Toxic Substances Control Act, 15 U.S.C. §2601, et seq., Atomic Energy Act of 1954, 42 U.S.C. §2014 et seq., the **[Insert Washington State Specific Environmental Laws]**, the Toxic Substance Control Act (15 U.S.C. 2601, et seq.), the Emergency Planning Community Right to Know Act (42 U.S.C. 11001, et seq.), and any similar federal, state or local Laws, and all regulations, guidelines, directives and other requirements thereunder, all as may be amended or supplemented from time to time.

30.5 Fees, Taxes, Fines and Remedies. Tenant shall pay, prior to delinquency, any and all fees, taxes (including excise taxes), penalties and fines arising from or based on Tenant's activities involving Hazardous Material on or about the Leased Premises or Property, and shall not allow such obligations to become a lien or charge against the Property or Landlord. If Tenant violates any provision of this Article with respect to any Hazardous Materials, Landlord may: (i) require that Tenant immediately remove all Hazardous Materials from the Leased Premises and discontinue using, storing and handling Hazardous Materials in the Leased Premises, and/or (ii) pursue such other remedies as may be available to Landlord under this Lease or applicable Law.

30.6 Landlord Warranties and Obligations. Landlord represents and warrants to Tenant that: (a) Landlord has not and will not use, generate, manufacture, produce, store, release, or dispose of on, under or about the Leased Premises any Hazardous Materials; (b) no underground storage tanks have been removed from the Leased Premises, and no underground storage tanks are located on the Leased Premises; (c) no tenant or occupant in the Building or Property currently use, generate, manufacture, produce, store, release, or dispose of on, under or about the Building or Property, any Hazardous Substance; and (d) Landlord will promptly notify Tenant upon Landlord's knowledge of any of the foregoing items. Landlord further agrees to protect, indemnify, defend and hold Tenant harmless from any loss, damage, cost, expense or liability (including reasonable attorneys' fees and costs) directly or indirectly arising out of or attributable to Landlord's use, generation, manufacture, production, storage, release, discharge, disposal, or presence of Hazardous Materials on, under or about the Leased Premises or a breach of any representation, warranty, or agreement contained in this Section 30.6 including, without limitation, the costs of any required or necessary repairs, cleanup or detoxification of the Leased Premises and the preparation and implementation of any closure, remedial or other required plans.

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31. **DISABILITIES ACTS**

The parties acknowledge that the Americans With Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) and regulations and guidelines promulgated thereunder ("ADA"), and any similarly motivated state and local Laws ("Local Barriers Acts"), as the same may be amended and supplemented from time to time (collectively referred to herein as the "Disabilities Acts") establish requirements for business operations, accessibility and barrier removal, and that such requirements may or may not apply to the Leased Premises or Property depending on, among other things: (i) whether Tenant's business is deemed a "public accommodation" or "commercial

facility", (ii) whether such requirements are "readily achievable", and (iii) whether a given alteration affects a "primary function area" or triggers "path of travel" requirements. Landlord shall perform any required ADA Title III and related Local Barriers Acts compliance in the common areas and in constructing the Leased Premises. Tenant shall perform any required ADA Title III and related Local Barriers Acts compliance in the Leased Premises, excluding compliance in connection with the initial construction of the Leased Premises. Following such initial construction, Landlord may perform, or require that Tenant perform, and Tenant shall be responsible for the cost of, ADA Title III and related Local Barriers Acts "path of travel" and other requirements triggered by any public accommodation or other use of, or alterations in, the Leased Premises. Tenant shall be responsible for ADA Title I and related Local Barriers Acts requirements relating to Tenant's employees, and Landlord shall be responsible for ADA Title I and related Local Barriers Acts requirements relating to Landlord's employees.

32. **MISCELLANEOUS**

32.1 Intentionally deleted.

32.2 Captions and Interpretation. The captions of the Articles and Sections of this Lease, and any computer highlighting of changes from earlier drafts, are for convenience of reference only and shall not be considered or referred to in resolving questions of interpretation. Tenant acknowledges that it has read this Lease and that it has had the opportunity to confer with counsel in negotiating this Lease; accordingly, this Lease shall be construed neither for nor against Landlord or Tenant, but shall be given a fair and reasonable interpretation in accordance with the meaning of its terms. The neuter shall include the masculine and feminine, and the singular shall include the plural. The term "including" shall be interpreted to mean "including, but not limited to."

32.3 Survival of Provisions. All obligations (including indemnity, Rent and other payment obligations) or rights of either party arising during or attributable to the period prior to expiration or earlier termination of this Lease shall survive such expiration or earlier termination.

32.4 Severability. If any term or provision of this Lease or portion thereof shall be found invalid, void, illegal, or unenforceable generally or with respect to any particular party, by a court of competent jurisdiction, it shall not affect, impair or invalidate any other terms or provisions or the remaining portion thereof, or its enforceability with respect to any other party.

32.5 Intentionally deleted.

32.6 Recording. Neither this Lease nor any memorandum of lease or short form lease shall be recorded in any public land records.

32.7 Light, Air and Other Interests. This Lease does not grant any legal rights to "light and air" outside the Leased Premises nor any particular view visible from the Leased Premises, nor any easements, licenses or other interests unless expressly contained in this Lease.

32.8 Authority. The Person or Persons executing this Lease on behalf of its respective company represents and warrants that: (a) the individual executing this Lease on behalf of the company has full power and authority under the company's governing documents to execute and

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Deleted: No Offer. The submission and negotiation of this Lease shall not be deemed an offer to enter the same by Landlord (nor an option or reservation for the Leased Premises), but the solicitation of such an offer by Tenant. Tenant agrees that its execution of this Lease constitutes a firm offer to enter the same which may not be withdrawn for a period of seven (7) days after delivery to Landlord. During such period and in reliance on the foregoing, Landlord may, at Landlord's option, deposit any Security Deposit and Rent, proceed with any plans, specifications, alterations or improvements, and permit Tenant to enter the Leased Premises, but such acts shall not be deemed an acceptance of Tenant's offer to enter this Lease, and such acceptance shall be evidenced only by Landlord signing and delivering this Lease to Tenant.

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Deleted: Failure to Commence. If the Commencement Date is delayed in accordance with Article 3 for more than one hundred eighty (180) days, Landlord may declare this Lease terminated by notice to Tenant, and if the Commencement Date is so delayed for more than one (1) year, this Lease shall thereupon be deemed terminated without further action by either party.

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Deleted: If Tenant is any form of corporation, partnership, limited liability company or partnership, association or other organization, Tenant and all Persons signing for Tenant below hereby represent that this Lease has been fully authorized and no further approvals are required, and Tenant is duly organized, in good standing and legally qualified to do business in the Leased Premises (and has any required certificates, licenses, permits and other such items).

~~deliver this Lease in the name of, and behalf of, the company and to cause the company to perform its obligations under the Lease; (b) the company is duly organized and in good standing under the laws of the State of its formation; and (c) the company has the power and authority under applicable law and its governing documents to execute and deliver this Lease and to perform its obligations under this Lease.~~

32.9 **Partnership Tenant.** If Tenant is a partnership, all current and new general partners shall be jointly and severally liable for all obligations of Tenant hereunder and as this Lease may hereafter be modified, whether such obligations accrue before or after admission of future partners or after any partners die or leave the partnership.

32.10 **Financial Statements.** Tenant shall, within twenty (20) days after requested in writing from Landlord from time to time (but not more than once every twelve (12) months), deliver to Landlord financial statements (including balance sheets and income/expense statements) for Tenant's then most recent full and partial fiscal year preceding such request, certified by an independent certified public accountant or Tenant's chief financial officer, [NOTE: If Tenant is a publicly-held company, this provision should be deleted.]

32.11 **Successors and Assigns; Transfer of Property and Security Deposit.** Each of the terms and provisions of this Lease shall be binding upon and inure to the benefit of the parties' respective heirs, executors, administrators, guardians, custodians, successors and assigns, subject to Article 13 respecting Transfers and Article 18 respecting rights of Lenders. Subject to Article 18, if Landlord shall convey or transfer the Property or any portion thereof in which the Leased Premises are contained to another party, such party shall thereupon be and become landlord hereunder and shall be deemed to have fully assumed all of Landlord's obligations under this Lease accruing during such party's ownership, including the return of any Security Deposit (provided Landlord shall have turned over such Security Deposit to such party), and Landlord shall be free of all such obligations accruing from and after the date of conveyance or transfer.

32.12 **Limitation of Landlord's Liability.** Tenant agrees to look solely to Landlord's interest in the Complex for the enforcement of any judgment, award, order or other remedy under or in connection with this Lease or any related agreement, instrument or document or for any other matter whatsoever relating thereto or to the Property or Leased Premises. As used herein, liability satisfied by Landlord's "interest in the Complex" shall mean (a) by offset against Rent, (b) out of the proceeds of sale received upon execution of the judgment and levied thereon against the right, title, and interest of Landlord in the Leased Premises, Property, and Complex, (c) out of rents, issues, or other income receivable by Landlord, (d) out of the consideration received by Landlord from the sale or other disposition of all or any part of Landlord's right, title, and interest in the Leased Premises, Property, and Complex, (e) out of insurance or condemnation proceeds receivable or received by Landlord. Nothing contained herein shall limit or affect any right that Tenant might otherwise have to obtain injunctive relief or other remedies or actions against Landlord that do not involve the personal liability of Landlord of the persons that comprise Landlord to respond to monetary damage from property other than Landlord's interest in the Leased Premises, Property, or Complex.

32.13 **Confidentiality.** Tenant shall keep the content and all copies of this Lease, related documents or amendments now or hereafter entered, and all proposals, materials, information

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Deleted: Tenant shall cause each new partner to sign and deliver to Landlord written confirmation of such liability, in form and content satisfactory to Landlord, but failure to do so shall not avoid such liability.

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Deleted: Under no circumstances shall any present or future, direct or indirect, principals or investors, general or limited partners, officers, directors, shareholders, trustees, beneficiaries, participants, advisors, managers, employees, agents or affiliates of Landlord, or of any of the other foregoing parties, or any of their heirs, successors or assigns have any liability for any of the foregoing matters.

and matters relating thereto strictly confidential, and shall not disclose, disseminate or distribute any of the same, or permit the same to occur, except to the extent reasonably required for proper business purposes by Tenant's employees, attorneys, insurers, auditors, lenders and Transferees (and Tenant shall obligate any such parties to whom disclosure is permitted to honor the confidentiality provisions hereof), and except as may be required by Law or court proceedings.

32.14 **Counterparts.** This Lease may be executed in separate counterparts, all of which, when executed and delivered by the parties, shall constitute one and the same Lease.

32.15 **Entire Agreement.** This Lease, together with the Riders, Exhibits and other documents listed in Article 1 (which collectively are hereby incorporated where referred to herein and made a part hereof as though fully set forth), contain all the terms and provisions between Landlord and Tenant relating to the matters set forth herein and no prior or contemporaneous agreement or understanding pertaining to the same shall be of any force or effect, except any such contemporaneous agreement specifically referring to and modifying this Lease, signed by both parties. Neither this Lease, nor any Riders or Exhibits referred to above may be modified, except in writing signed by both parties.

33. **ADDITIONAL DEFINITIONS**

As used in this Lease, the following terms shall have the following meanings:

(C) "**Business Day**" shall mean any day other than a Saturday, a Sunday, or a federal holiday recognized by the Federal Reserve Bank of New York.

(D) "**Default Rate**" shall mean ten percent (10%) per annum.

(E) "**Expenses**" shall mean all expenses, costs and amounts (other than Taxes) of every kind and nature relating to the ownership, management, repair, maintenance, replacement, insurance and operation of the Property, including any amounts paid for: (i) utilities for the Property, including electricity (which shall be charged to Expenses at the then current rate actually charged to Landlord by the utility company providing electric service), power, gas, steam, oil or other fuel, water, sewer, lighting, heating, air conditioning and ventilating, (ii) permits, licenses, inspections, warrants and certificates necessary to operate, manage and lease the Property, (iii) costs of complying with Laws, including any refrigerant gas retrofitting and compliance with the Disabilities Acts (as described in Article 31), (iv) insurance applicable to the Property, not limited to that required under this Lease, and which may include earthquake, boiler, rent loss, workers' compensation and employers' liability, builders' risk, automobile and other coverages, including a reasonable allocation of costs under any blanket policies, (v) supplies, materials, tools, equipment, uniforms, and vehicles used in the operation, repair, maintenance, security, and other services for the Property, including rental, installment purchase and financing agreements therefor and interest thereunder, and any sales, use, value-added or other taxes on supplies or services for the Property, (vi) accounting, legal, inspection, consulting, concierge, alarm monitoring, landscaping, janitorial, trash removal, snow and ice removal, pest control and other services, (vii) management company fees not to exceed 3.5% of Base Rent, (viii) wages, salaries and other compensation and benefits (including health, life and disability insurance, savings, retirement and pension programs, and the fair value of any parking privileges, including those provided through collective bargaining agreements) for the Building

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Deleted: Without limitation as to the generality of the foregoing, Tenant hereby acknowledges and agrees that Landlord's leasing agents and field personnel are only authorized to show the Leased Premises and negotiate terms and conditions for leases subject to Landlord's final approval, and are not authorized to make any agreements, representations, understandings or obligations, binding upon Landlord, respecting the condition of the Leased Premises or Property, suitability of the same for Tenant's business, the current or future amount of Taxes or Expenses or any component thereof, the amount of rent or other terms applicable under other leases at the Property, whether Landlord is furnishing the same utilities or services to other tenants at all, on the same level or on the same basis, or any other matter, and no such agreements, representations, understandings or obligations not expressly contained herein or in such contemporaneous agreement shall be of any force or effect. EXCEPT FOR LANDLORD'S REPRESENTATIONS AND WARRANTIES EXPRESSED HEREIN, TENANT HAS RELIED ON TENANT'S INSPECTIONS AND DUE DILIGENCE IN ENTERING THIS LEASE, AND NOT ON ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE HABITABILITY, CONDITION OR SUITABILITY OF THE PREMISES OR PROPERTY FOR ANY PARTICULAR PURPOSE OR ANY OTHER MATTER NOT EXPRESSLY CONTAINED HEREIN.

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manager and other personnel or parties engaged in the operation, repair, maintenance, or other services for the Property, and employer's FICA contributions, unemployment taxes or insurance, any other taxes which may be levied on such wages, salaries, compensation and benefits, and data or payroll processing expenses relating thereto (if the manager or other personnel handle other properties, the foregoing expenses shall be allocated appropriately between the Property and such other properties), (ix) payments pursuant to any easement, cross or reciprocal easement, operating agreement, tunnel agreement, development or parking rights agreement, declaration, covenant, or other agreement or instrument pertaining to the payment for or sharing costs of common areas or other matters, (x) parking surcharges or fees that may result from any environmental or other Law or guideline, (xi) the costs of operating and maintaining any on-site office at the Property or an adjoining property (such costs to be appropriately allocated between the Property and any such adjoining property served by such office), including the fair rental value thereof, telephone charges, postage, stationery and photocopying expenses, and telephone directory listings, (xii) the costs and expenses associated with all repairs, maintenance and service agreements on equipment, including without limitation alarm service, heating, air conditioning, ventilating, roof repair, electrical, elevator (where applicable) and window cleaning and maintenance, and the costs and expenses incurred in the maintenance and repair of the Property heating, air-conditioning, ventilating, plumbing, electrical and elevator (where applicable) systems of the Property and the costs of labor, material, supplies, and equipment used in connection with all of the aforesaid, and (xiii) operation, maintenance, repair, installation, replacement, inspection, testing, painting, decorating and cleaning of the Property, and any items located off-site but installed for the benefit of the Property, including: (a) Property identification and pylon signs, directional signs, traffic signals and markers, flagpoles and canopies, (b) sidewalks, curbs, stairways, parking structures, lots, loading and service areas and driveways, (c) storm and sanitary drainage systems, including disposal plants, lift stations and detention ponds and basins, (d) irrigation systems, (e) elevators, escalators, "Lines" under Article 29, and other Systems and Equipment, (f) interior and exterior flowers and landscaping, and (g) all other portions, facilities, features and amenities of the Property, including common area fixtures, equipment and other items therein or thereon, floors, floor coverings, corridors, ceilings, foundations, walls, wall coverings, restrooms, lobbies, trash compactors, doors, locks and hardware, windows, gutters, downspouts, roof flashings and roofs. The foregoing provision is for definitional purposes only and shall not be construed to impose any obligation upon Landlord to incur such expenses. Landlord may retain independent contractors (or affiliated contractors at market rates) to provide any services or perform any work, in which case the costs thereof shall be deemed Expenses. Notwithstanding the foregoing or anything in this Lease to the contrary, Expenses shall not, however, include:

(1) Any ground lease rental;

(2) Costs of items considered capital repairs, replacements, improvements and equipment under generally accepted accounting principles consistently applied or otherwise ("Capital Items"), except for (a) the annual amortization (amortized over the useful life) of costs, including financing costs, if any, incurred by Landlord after the Commencement Date for any capital improvements installed or paid for by Landlord and required by any new (or change in) laws, rules or regulations of any governmental or quasi-governmental authority which are enacted after the Commencement Date, (b) the annual amortization (amortized over the useful life) of costs, including financing costs, if any, or any equipment, device or capital improvements

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 <#>depreciation, interest and amortization on any Mortgages and other debt costs or ground lease payments (except interest on the cost of capital expenditures to the extent permitted below, and ground lease payments for Taxes and Expenses); legal fees in connection with leasing; real estate brokers' leasing commissions; improvements or alterations to tenant spaces; the cost of providing any service directly to, and paid directly by, any tenant; costs of any items to the extent Landlord receives reimbursement from insurance proceeds or from a third party (excluding payments by tenants for Taxes and Expenses); and
 <#>capital expenditures, except those: (i) made primarily to reduce Expenses, or to comply with Laws or insurance requirements imposed after the Property was constructed, or (ii) for replacements or upgrades of nonstructural items located in the common areas of the Property required to keep such areas in first class condition. To the extent that any such permitted capital expenditure exceeds \$5,000, such excess shall be amortized for purposes of this Lease over the shorter of: (x) the period during which the reasonably estimated savings in Expenses equals the expenditure, (y) the shortest period over which Landlord may depreciate such item under the Federal Tax Code then in effect, or (z) the useful life of the item, but in no event more than ten (10) years; provided, Landlord may elect any longer period in Landlord's discretion. In each such case, Landlord may include interest on the unamortized amount at the prevailing loan rate available to Landlord when the cost was incurred. Expenses shall include any remaining amortization of such permitted capital expenditures made prior to the date of this Lease.
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purchased or incurred as a labor-saving measure or to affect other economics in the operation or maintenance of the Property (provided the annual amortized costs do not exceed the actual cost savings realized and such savings do not redound primarily to the benefit of any particular tenant other than Tenant); or minor capital improvements, tools, or expenditures to the extent each such improvement or acquisition costs less than five thousand dollars (\$5,000.00);

(3) Rentals for items (except when needed in connection with normal repairs and maintenance of permanent systems) which if purchased, rather than rented, would constitute a Capital Item which is specifically excluded under Subsection (ii) above (excluding, however, equipment not affixed to the Building which is used in providing janitorial or similar services);

(4) Costs incurred by Landlord for the repair of damage to the Property, to the extent that Landlord is reimbursed by insurance proceeds, and costs of all capital replacements, regardless of whether such repairs are covered by insurance (except if permitted under subsection (ii) above) and cost of earthquake repairs in excess of twenty-five thousand dollars (\$25,000) per earthquake (which for this purpose, an earthquake is defined collectively as the initial earthquake and the aftershocks that relate to such initial earthquake);

(5) Costs, including permit, license and inspection costs, incurred with respect to the installation of tenants' or other occupants' improvements in the Property or incurred in renovating or otherwise improving, decorating, painting or redecorating vacant space for tenants or other occupants of the Property;

(6) Depreciation, amortization and interest payments, except as provided herein and except on materials, tools, supplies and vendor-type equipment purchased by Landlord to enable Landlord to supply services Landlord might otherwise contract for with a third party where such depreciation, amortization and interest payments would otherwise have been included in the charge for such third party's services" all as determined in accordance with generally accepted accounting principles consistently applied, and when depreciation or amortization is permitted or required, the item shall be amortized over its reasonably anticipated useful life.

(7) Marketing costs including without limitation leasing commissions, attorneys' fee in connection with the negotiation and preparation of letters, deal memos, letters of intent, leases, subleases and/or assignments, space planning costs and other costs and expenses incurred in connection with lease, sublease, and/or assignment negotiations and transactions with present or prospective tenants or other occupants of the Property;

(8) Expenses in connection with services or other benefits which are not offered to Tenant or for which Tenant is charged for directly but which are provided to another tenant or occupant of the Property;

(9) Overhead and profit increment paid to Landlord or to subsidiaries or affiliates of Landlord for goods and/or services in the Property to the extent the same exceeds the costs of such goods and/or services rendered by unaffiliated third parties on a competitive basis for comparable buildings;

(10) Interest, principal, points and fees on debts or amortization on any mortgage or mortgages or any other debt instrument encumbering the Building or the Land (except as permitted in subsection (ii) above);

(11) Landlord's general corporate overhead and general and administrative expenses;

(12) Any compensation paid to clerks, attendants, or other persons in commercial concessions operated by Landlord and/or all fees paid to any parking facility operator (on or off site);

(13) Rentals or other related expenses incurred in leasing HVAC systems, elevators or other equipment ordinarily considered to be Capital Items, except for: (a) expenses in connection with making repairs on or keeping Systems and Equipment in operation while repairs are being made and (b) costs of equipment not affixed to the Building which is used in providing janitorial or similar services;

(14) Advertising and promotional expenditures and costs of signs in or on the Building identifying the owner of the Property or other tenant's signs;

(15) The cost of any electric power used by any tenant in the Property in excess of the Building-standard amount, or electric power costs for which any tenant directly contracts with the local public service company or of which any tenant is separately metered or sub-metered and pays Landlord directly; provided, however, that if any tenant in the Property contracts directly for electric power service or is separately metered or sub-metered during any portion of the relevant period, the total electric power costs for the building shall be "grossed up" to reflect what those costs would have been had each tenant in the Property used the Building-standard amount of electric power;

(16) Services and utility provided, taxes attributable to, and costs incurred in connection with the operation of the retail, parking (to the extent the same services the retail operations of the Complex), and restaurant operations in the Complex, except to the extent the square footage of such operations are included in the rentable square feet of the Property and do not exceed the services, utility and tax costs which would have been incurred had the retail and/or restaurant space had been used for general office purposes;

(17) Costs incurred in connection with upgrading the Property to comply with the current interpretation of disability, life, fire and safety codes, ordinances, statutes, or other laws in effect prior to the Commencement Date, including, without limitation, the ADA, including penalties or damages incurred due to such non-compliance;

(18) Tax penalties incurred as a result of Landlord's negligence, inability or unwillingness to make payments and/or file any tax or informational returns when due;

(19) Costs for which Landlord has been compensated by a management fee, and any management fees in excess of those management fees which are normally and customarily charged by comparable landlord's of comparable buildings;

(20) Costs arising from the negligence or fault of other tenants or Landlord;

(21) Notwithstanding any contrary provision of the Lease, including, without limitation, any provision relating to capital expenditures, other than normal and customary office building maintenance materials and office supplies, any and all costs arising from the release of Hazardous Materials in effect on the date the Lease is executed) in or about the Leased Premises, the Property, or the Land in violation of applicable law including, without limitation, Hazardous Materials in the ground water or soil, not placed in the Leased Premises, the Property, or the Land by Tenant;

(22) Costs arising from Landlord's charitable or political contributions;

(23) Costs arising during the contractual warranty period from construction defects in the base, shell or core of the Building or improvements installed by Landlord;

(24) Costs arising from any mandatory or voluntary special assessment on the Building or the Land by transit district authority or any other governmental entity having authority to impose such assessment in connection with the initial construction of the Building;

(25) Costs for sculpture, paintings or other objects of art;

(26) Costs (including in connection therewith all attorneys' fees and costs of settlement judgments and payments in lieu thereof) arising from claims, disputes or potential disputes in connection with potential or actual claims, litigation, or arbitration pertaining to the Landlord and/or the Property and/or the Land;

(27) Costs associated with the operation of the business of the partnership or entity which constitutes Landlord as the same are distinguished from the costs of operation of the Property, including partnership accounting and legal matters, costs of defending any lawsuits with any mortgagee (except as the actions of Tenant may be issue), costs of selling, syndicating, financing, mortgaging or hypothecating any of Landlord's interest in the Property, costs of any disputes between Landlord and its employees (if any) not engaged in Property operation, disputes of Landlord with Property management, or outside fees paid in connection with disputes with other tenants;

(28) Costs of any "tap fees" or any sewer or water connection fees for the benefit of any particular tenant in the Building;

(29) Any expenses incurred by Landlord for use of any portions of the Complex to accommodate events including, but not limited to shows, promotions, kiosks, displays, filming, photography, private events or parties, ceremonies and advertising beyond the normal expenses otherwise attributable to providing Property services, such as lighting and HVAC to such public portions of the Building in normal operations during standard Building hours of operation;

(30) Any entertainment, dining or travel expenses of Landlord for any purpose;

~~(31) Any flowers, gifts, balloons, etc., provided to any entity whatsoever, including, but not limited to, Tenant, other tenants, employees, vendors, contractors, prospective tenants and agents;~~

~~(32) Any "validated parking for any entity;~~

~~(33) Any "finders fees," brokerage commissions, job placement costs or job advertising cost, other than with respect to a receptionist or secretary in the Property office, once per year;~~

~~(34) Any "above-standard" cleaning, including but not limited to construction cleanup or special cleanings associated with parties/events and specific Tenant requirements in excess of service provided to tenant, including related trash collection, removal, hauling, and dumping;~~

~~(35) The cost of any "tenant relations" parties, events or promotion not consented to by an authorized representative of Tenant in writing;~~

~~(36) "In-house" legal and/or accounting fees;~~

~~(37) Any other expenses which, in accordance with generally accepted accounting principles, consistently applied, would not normally be treated as Expenses by comparable landlords of comparable buildings;~~

~~(38) To the extent that an expenses included in Expenses includes an expense related to the Complex and not the Property, then the word "Building" utilized in these exclusions shall mean and be extended to including, the Complex.~~

(F) "Holidays" shall mean all federal holidays, and holidays observed by the national banks in the state where the Property is located, including New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day,

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(G) "Law" or "Laws" shall mean all federal, state, county and local governmental and municipal laws, statutes, ordinances, rules, regulations, codes, decrees, orders and other such requirements, applicable equitable remedies and decisions by courts in cases where such decisions are considered binding precedents in the state in which the Property is located, and decisions of federal courts applying the Laws of such state at the time in question. This Lease shall be interpreted and governed by the Laws of the state in which the Property is located.

(H) "Lease Year" shall mean each consecutive twelve (12) calendar month period, beginning with the Commencement Date, provided that if the Commencement Date is not the first day of a calendar month, then the first Lease Year shall commence the first day of the first month following the Commencement Date, and shall include the days between (and including) the Commencement Date and first day of the first month thereafter.

(I) "Lender" shall mean the holder of any Mortgage at the time in question, and where such Mortgage is a ground lease, such term shall refer to the ground lessor (and the term

"ground lease" although not separately capitalized is intended throughout this Lease to include any superior or master lease).

(J) "Mortgage" shall mean all mortgages, deeds of trust, ground leases, synthetic leases, sale-leasebacks and other such encumbrances now or hereafter placed upon the Property or Building, or any part thereof, and all renewals, modifications, consolidations, replacements or extensions thereof, and all indebtedness now or hereafter secured thereby and all interest thereon.

(K) "Person" shall mean an individual, trust, partnership, limited liability company, joint venture, association, corporation, governmental body and any other entity.

(L) "Property" shall include the Building, and any common or public areas or facilities, easements, corridors, lobbies, sidewalks, loading areas, driveways, landscaped areas, air rights, development rights, parking rights, skywalks, underground passageways, parking garages and lots, and any and all other rights, structures or facilities operated or maintained in connection with or for the benefit of the Building, and all parcels or tracts of land on which all or any portion of the Building or any of the other foregoing items are located, and any fixtures, machinery, apparatus, Systems and Equipment, furniture and other personal property located thereon or therein and used in connection therewith.

(M) "Systems and Equipment" shall mean any plant, machinery, transformers, duct work, cable, wires, and other equipment, facilities, and systems designed to supply light, heat, ventilation, air conditioning or any other services or utilities, or comprising or serving as any component or portion of the electrical, gas, steam, plumbing, sprinkler, communications, alarm, or fire/life/safety systems or equipment, or any elevators, escalators or other mechanical, electrical, electronic, computer or other systems or equipment for the Property, except to the extent that any of the same serves particular tenants exclusively (and "systems and equipment" without capitalization may refer to such of the foregoing items serving particular tenants exclusively).

(N) "Taxes" shall mean all amounts (unless required by Landlord to be paid under Article 14) for federal, state, county, or local governmental, special district, improvement district, municipal or other political subdivision taxes, fees, levies, assessments, charges or other impositions in connection with the ownership, leasing and operation of the Property, whether foreseen or unforeseen, general, special, ordinary or extraordinary (including real estate and ad valorem taxes, general and special assessments, interest on special assessments paid in installments, transit taxes, water and sewer rents, license and business license fees, use or occupancy taxes, special service district taxes and assessments, personal property taxes, and taxes or charges for fire protection, streets, sidewalks, road maintenance, refuse or other services). If the method of taxation of real estate prevailing at the date of this Lease shall be, or has been, altered so as to cause the whole or any part of the Taxes now, hereafter or heretofore levied, assessed or imposed on real estate to be levied, assessed or imposed on Landlord, wholly or partially, as a capital stock levy or otherwise, or on or measured by the rents, income or gross receipts received therefrom, then such new or altered taxes attributable to the Property shall be included within the term "Taxes," except that the same shall not include any portion of such tax attributable to other income of Landlord not relating to the Property. "Taxes" include increases in Taxes as a result of increases in tax rates, reduction or elimination of any rollbacks or other

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deductions available under current law, scheduled reductions of any tax abatement, as a result of the elimination, or the invalidity or withdrawal of any tax abatement. If Taxes are reduced by, or credited with, any abatement or exemption issued by a taxing authority to help finance or reimburse Landlord for costs incurred to comply with Laws or otherwise, Taxes hereunder shall be computed without regard to such abatement or exemption, except to the extent that Landlord includes such costs in Expenses under this Lease. Notwithstanding the foregoing or anything contained in this Lease to the contrary, the term "Taxes" shall exclude all excess profits taxes, franchise taxes, gift taxes, capital stock taxes, inheritance and succession taxes, estate taxes, federal, state, or local income taxes, and other taxes to the extent applicable to Landlord's general or net income or gross receipts (as opposed to rents, receipts or income attributable to operations at the Property). In addition, "Taxes" shall exclude any liens or taxes, penalties or interest that are levied or assessed against the Property for any time prior to the Term.

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34. RIGHT OF FIRST OFFER

On a continuing basis throughout the Term of this Lease, but subject to any prior rights of other tenants in effect as of the date of this Lease, Tenant shall have the right to expand the Leased Premises by leasing any vacant space located on the third floor of the Building which is located adjacent to the Leased Premises (the "First Offer Space"), such right to be subject to the provisions of this Article.

Landlord shall give Tenant prior written notice when Landlord is about to begin negotiations to lease all or a portion of the First Offer Space to a third party, which notice shall contain the material terms and conditions of Landlord's offer, including Landlord's reasonable estimate of the fair market rental for the First Offer Space based on the prevailing rental rate for similar space located in the Property. Such notice shall constitute an offer by Landlord, irrevocable for fifteen (15) business days, to lease all (but not less than all) of the First Offer Space specified in the notice on the terms and conditions set forth therein.

In order to accept Landlord's offer, Tenant shall, before the expiration of the aforesaid fifteen (15) business day period, give an irrevocable written notice to Landlord that Tenant has elected to accept Landlord's offer in whole, with no modifications. If Tenant fails to give such a notice within such period, Tenant shall be deemed to have rejected Landlord's offer and to have declined to exercise its right of first offer with respect to the specified First Offer Space. If Tenant is deemed to have rejected Landlord's offer and to have declined to exercise its right of first offer with respect to the specified First Offer Space, Tenant shall have no further right of first offer under this Article with respect to the First Offer Space, unless the same shall again become available or in the event Landlord offers the First Offer Space to any other tenant.

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Notwithstanding the foregoing, if Landlord does not lease the First Offer Space on the terms and conditions set forth in the written notice of Landlord's offer in whole, with no modifications, within six (6) months of Tenant's rejection or deemed rejection of Tenant's right to the First Offer Space, or if Landlord intends to lease the First Offer Space on terms that are, in the aggregate, more favorable than those terms set forth in Landlord's notice by five percent (5%) or more, then Tenant's right of first offer shall revive and Landlord shall again offer the First Offer Space to Tenant.

In the event that Tenant exercises its right to lease the specified First Offer Space in accordance with the provisions of this Article, Landlord and Tenant shall, within thirty (30) days after such

exercise by Tenant, execute an amendment to this Lease pursuant to which the First Offer Space shall be added to the Leased Premises on the terms, conditions and provisions of the offer accepted by Tenant. Such amendment shall be in a form that is reasonably acceptable to Landlord and Tenant. Except as may be set forth in the offer accepted by Tenant, Tenant shall accept the specified First Offer Space pursuant to the terms offered and Landlord shall have no obligation at any time to make any alterations or improvements to the such specified First Offer Space, except as the parties may mutually agree at such time.

The rights afforded to Tenant by the foregoing provisions of this Section shall not be exercisable by or available to Tenant nor shall Landlord be obligated to first offer the First Offer Space to Tenant before leasing all or part of same to a third party if at the time when such rights would otherwise be exercised by Tenant, (A) any Default by Tenant shall have occurred and be continuing, or (B) the subject space is encumbered by any options to lease, rights of first refusal, rights of first offer and other rights to lease any portion of the First Offer Space that have been granted by Landlord or its predecessors in interest to third parties before the date of this Lease.

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35. OPTION TO EXTEND

Provided and upon the conditions that at the time Tenant exercises its right and option (described below) to extend the term and immediately prior to the commencement date of the extension term, the Lease shall be in full force and effect and Tenant shall not be in breach of any of the provisions of this Lease beyond any applicable notice and cure periods, Tenant shall have the right and option, exercisable prior to the commencement date of the extension term, or before the date which is twelve (12) months prior to the Expiration Date, to extend the Term of this Lease for one (1) extension term of five (5) years, commencing on the day immediately following the applicable Expiration Date and expiring on the fifth anniversary of the Expiration Date, at an annual Base Rent (expressed as an annual amount per square foot of the total rentable square feet of the Leased Premises) equal to the greater of (i) ninety-five percent (95%) of the then current Fair Market Rent (defined below) as of the commencement date of the extension term, or (ii) the annual Base Rent (expressed as an annual amount per square foot of the total rentable square feet of the Leased Premises) payable by Tenant to Landlord under the Lease during the 12-month period ending on the Expiration Date, but otherwise upon the same terms, conditions and provisions contained in this Lease including, without limitation, the obligation of Tenant to pay Additional Rent (except that, unless otherwise agreed in writing between the parties, (A)

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Landlord shall have no obligation to perform any improvements to the Leased Premises or provide any contribution therefor, (B) there shall be no waiver or abatement of Rent, and (C) there shall be no further right and option to extend except as provided herein). The Fair Market Rent shall mean the annual base rent, per square foot (with a tenant to pay additional rent of the same types described in this Lease), for a lease term equivalent to the extension term, at which landlords are leasing comparable office space in buildings that are comparable to the Building and located in the Building's market (with appropriate adjustments to take account of variations in location, size and tenant fit-up costs undertaken by such landlords) to tenants similar to Tenant in credit quality, size, and reputation. In determining the Fair Market Rent, the Landlord shall, within thirty (30) days after Tenant has given Landlord notice of its intent to exercise its right and option to extend, notify Tenant of the Fair Market Rent as reasonably established by Landlord. Should Tenant dispute Landlord's determination, then the Tenant shall be free to, at

the Tenant's sole cost and expense, employ the services of an appraiser familiar with buildings similar to the Building and located within the [City, State] metropolitan area comparable to the Building, who shall be members of The Appraisal Institute ("MAI") and who shall render an appraisal. If the Landlord and the Tenant's appraiser cannot agree on the Fair Market Rent, or, in such case, on an independent appraiser acceptable to both, either party may request the American Arbitration Association of _____, to appoint such independent appraiser who shall be a member of MAI familiar with buildings in the area of the Building and in such event the judgment of a majority of the two appraisers shall be final and binding upon the parties. The parties shall share equally in the cost of any such independent appraiser.

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36. ROOF SPACE

Tenant shall be entitled to install satellite and antenna equipment on the roof of the Building. The size and location must be mutually agreed upon by the parties, provided, however, the cabling route to and from the Leased Premises shall be the lease expensive functional route given the Building's characteristics. Tenant shall not be charged any additional rent or fees in connection with such roof-top space, but Tenant shall be responsible for the costs associated with the installation, maintenance and removal of such equipment.

37. REASONABLENESS

In determining the reasonableness of the decision made, action taken, or consent given or withheld by a party, the following standards and covenants shall apply: (a) no party shall challenge the validity or enforceability of any provision in this Lease requiring it to act reasonably in its decisions and actions and not to unreasonably withhold consents or approvals; (b) common sense shall be applied in determining whether a party was reasonable; (c) what is reasonable in a commercial leasing context shall be taken into account; and (d) it shall be deemed unreasonable to withhold consent or approval because of the failure of one party to pay or provide something of value to the other party where this Lease does not require the same as a condition of approval or consent.

38. LANDLORD REPRESENTATIONS AND WARRANTIES

To induce Tenant to execute this Lease, and in addition to other representations and warranties of Landlord contained in this Lease, Landlord warrants and represents that:

- (a) Landlord is the owner in fee simple of the Building;
- (b) Landlord has good and marketable title to the Building and Land, free and clear of all liens, easements, restrictions or encumbrances upon the Building, the Land, or the income accruing;
- (c) No restrictions contained in any leases of other tenants at the Complex does or shall prohibit, restrict, conflict with or adversely affect Tenant's use and occupancy of the Premises or the intended use of the rights and easements granted to Tenant in this Lease;
- (d) Access to the Building and/or Complex is by public roadways, and occupants of the Building have access to the Building over the existing roads, paths, walks and drives on the land owned by Landlord or by virtue of nonterminable easements appurtenant benefiting the land;

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(e) All utility lines and appurtenances necessary to the maintenance and operation of the Building and/or the Complex are located in public ways with appropriate consents and authorizations from the authorities, agencies and bodies having jurisdiction having been obtained and not subject to termination.

(f) The Leased Premises Rentable Area and Building Rentable Area are true and correct using BOMA standards and the legal description of the Land attached as Exhibit "_____" is true and correct;

(g) There are no restrictions or impediments imposed by Laws (including applicable zoning and building ordinances that would prevent Tenant from using the Premises for the uses specified in Article 7, or from using the parking facilities and access roads;

(h) This Lease, the Leased Premises, and the Landlord's Work, when or as constructed, do not and shall not violate (i) the provisions of Laws (including without limitation zoning, building and energy codes) applicable to the Land, Building or Property on the Commencement Date, or (ii) the provisions of any instrument executed by Landlord or any other instrument that places any restrictions or burdens on the Land or Building;

(i) Landlord has obtained all necessary easements for access and utilities and these are appurtenant to the Land;

(j) The Building is fully sprinklered, with smoke detectors throughout; and

(k) Landlord has full right and lawful authority to enter into and perform each and every one of Landlord's obligations under this Lease.

In addition to any other right or remedy, if any representation or warranty in this Article 38 or contained elsewhere in this Lease is breached by Landlord, Landlord shall be responsible for and reimburse Tenant on demand for cost of curing the breach.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first set forth above.

LANDLORD:

a _____

By: _____
Name:
Title:

TENANT:

a _____

By: _____
Name:
Title:

EXHIBIT A
Leased Premises

EXHIBIT "B"

CONFIRMATION OF COMMENCEMENT DATE AND EXPIRATION DATE

THIS CONFIRMATION OF COMMENCEMENT DATE AND EXPIRATION DATE is made as of the ____ day of _____, ____ between _____, a _____, having its principal offices at _____ ("Landlord") and _____, a _____, having its principal offices at _____ ("Tenant").

WITNESSETH

WHEREAS, Landlord and Tenant entered into a written Lease Agreement dated as of _____, ____ ("Lease"), for Suite _____ in the building known as _____ Corporate Park and located in _____ (capitalized terms used but not defined herein shall have the meanings assigned to them in the Lease);

WHEREAS, Article 3 of the Lease provides that Landlord and Tenant shall execute a confirmation of the actual Commencement Date and Expiration Date of the Term when such dates have been determined;

NOW THEREFORE, the parties hereto, intending to be legally bound hereby, agree that notwithstanding the provisions of Article 1 or any other provisions of the Lease to the contrary, the Commencement Date is _____, ____ and the Expiration Date is _____.

Tenant acknowledges that it is in possession of the Leased Premises; and the Lease is in full force and effect.

Except as specifically modified hereby, all of the provisions of the Lease are hereby ratified and confirmed to be in full force and effect.

IN WITNESS WHEREOF, this CONFIRMATION OF COMMENCEMENT DATE AND EXPIRATION DATE has been executed as of the day and year first above written.

[LANDLORD]

By: _____
Name:
Title:

[TENANT]

By: _____
Name:
Title:

EXHIBIT "C"
LANDLORD WORK

EXHIBIT "D"
RULES AND REGULATIONS

(1) Access to Property. On Saturdays, Sundays and Holidays, and on other days between the hours of 6:00 P.M. and 8:00 A.M. the following day, or as Landlord shall determine from time to time, access to and within the Property and/or to the passageways, lobbies, entrances, exits, loading areas, corridors, elevators or stairways and other areas in the Property may be restricted and access gained by use of a key to the outside doors of the Property, or pursuant to such security procedures Landlord may from time to time impose. Landlord shall in all cases retain the right to control and prevent access to such areas by Persons engaged in activities which are illegal or violate these Rules, or whose presence in the judgment of Landlord shall be prejudicial to the safety, character, reputation and interests of the Property and its tenants (and Landlord shall have no liability in damages for such actions taken in good faith). No Tenant and no employee or invitee of Tenant shall enter areas reserved for the exclusive use of Landlord, its employees or invitees or other Persons. Tenant shall keep doors to corridors and lobbies closed except when persons are entering or leaving.

(2) Signs. Tenant shall not paint, display, inscribe, maintain or affix any sign, placard, picture, advertisement, name, notice, lettering or direction on any part of the outside the Leased Premises, or on any part of the inside of the Leased Premises which can be seen from the outside of the Leased Premises, without the prior consent of Landlord, and then only such name or names or matter and in such color, size, style, character and material, and with professional designers, fabricators and installers as may be first approved or designated by Landlord in writing. Landlord shall prescribe the suite number and identification sign for the Leased Premises (which shall be prepared and installed by Landlord, at Tenant's expense). Landlord reserves the right, without notice to Tenant, to remove at Tenant's expense all matter not so installed or approved.

(3) Window and Door Treatments. Tenant shall not place anything or allow anything to be placed in the Leased Premises near the glass of any door, partition, wall or window which may be unsightly from outside the Leased Premises, and Tenant shall not place or permit to be placed any article of any kind on any window ledge or on the exterior walls. Blinds, shades, awnings or other forms of inside or outside window ventilators or similar devices, shall not be placed in or about the outside windows or doors in the Leased Premises except to the extent, if any, that the design, character, shape, color, material and make thereof is first approved or designated by the Landlord. Tenant shall not install or remove any solar tint film from the windows.

(4) Walls and Floors. Tenant shall use carpet protectors for all desk chairs. Tenant shall not install linoleum, tile, carpet, wall-paper or other floor or wall covering which is affixed to prevent easy removal, without Landlord's express written approval in each case (notwithstanding anything to the contrary contained in this Lease). Tenant shall not mark, drive nails into, or screw or drill into, any walls, partitions, woodwork or plaster, or in any other way deface the Leased Premises or any part thereof.

(5) Lighting and General Appearance of Leased Premises. Landlord reserves the right to designate and/or approve in writing all internal lighting that may be visible from the public, common or exterior areas. The design, arrangement, style, color, character, quality and general appearance of the portion of the Leased Premises visible from public, common and exterior areas, and contents of such portion of the Leased Premises, including furniture, fixtures, signs, art work, wall coverings, carpet and decorations, and all changes, additions and replacements thereto shall at all times have a neat, professional, attractive, first class office appearance.

(6) Property Tradename, Likeness, Trademarks. Tenant shall not in any manner use the name of the Property for any purpose, or use any tradenames or trademarks used by Landlord, any other tenant, or its affiliates, or any picture or likeness of the Property for any purpose other than that of the business address of Tenant, in any letterheads, envelopes, circulars, notices, advertisements, containers, wrapping or other material.

(7) Deliveries and Removals. Furniture, freight and other large or heavy articles, and all other deliveries may be brought into the Property only at times and in the manner designated by Landlord, and always at the Tenant's sole responsibility and risk. Tenant shall not take or permit to be taken in or out of other entrances or elevators of the Property, any item normally taken, or which Landlord otherwise reasonably requires to be taken, in or out through service doors or on freight elevators. Landlord may impose reasonable requirements for the use of freight elevators and loading areas. Any hand-carts used at the Property shall have rubber wheels and sideguards, and no other material handling equipment may be brought upon the Property without Landlord's prior written approval.

(8) Outside Vendors. Tenant shall not obtain for use upon the Leased Premises ice, drinking water, vending machine, towel, janitor or other services, except from Persons designated or approved by Landlord. Any Person engaged by Tenant to provide any other services shall be subject to scheduling and direction by the manager or security personnel of the Property. Vendors must use freight elevators and service entrances.

(9) Overloading Floors, Vaults. Tenant shall not overload any floor or part thereof in the Leased Premises, or Property, including any public corridors or elevators therein bringing in or removing any large or heavy articles, and Landlord may prohibit, or direct and control the location and size of, safes and all other heavy articles and require at Tenant's expense supplementary supports of such material and dimensions as Landlord may deem necessary to properly distribute the weight.

(10) Locks and Keys. Tenant shall use such standard key system designated by Landlord on all keyed doors to and within the Leased Premises, excluding any permitted vaults or safes (but Landlord's designation shall not be deemed a representation of adequacy to prevent unlawful entry or criminal acts, and Tenant shall maintain such additional insurance as Tenant deems advisable for such events). Tenant shall not attach or permit to be attached additional locks or similar devices to any door or window, change existing locks or the mechanism thereof, or make or permit to be made any keys for any door other than those provided by Landlord. If more than two keys for one lock are desired, Landlord will provide them upon payment of Landlord's reasonable charges. For each 300 rentable square feet of space in the Leased

Premises, Landlord shall provide Tenant with a maximum of ten (10) keys. Landlord shall also provide Tenant with one (1) key or one (1) card key to the main entrance door governing access to the Building. In the event of loss of any card keys or keys furnished by Landlord, or if Tenant desires additional card keys or keys, Tenant shall pay Landlord's reasonable charges therefor and shall post a reasonable deposit with Landlord therefor. The term "key" shall include mechanical, electronic or other keys, cards and passes.

(11) Utility Closets and Connections. Landlord reserves the right to control access to and use of, and monitor and supervise any work in or affecting, the "wire" or telephone, electrical, plumbing or other utility closets, the Systems and Equipment, and any changes, connections, new installations, and wiring work relating thereto (or Landlord may engage or designate an independent contractor to provide such services). Tenant shall obtain Landlord's prior written consent for any such access, use and work in each instance, and shall comply with such requirements as Landlord may impose, and the other provisions of Article 6 respecting electric installations and connections, Article 29 respecting telephone Lines and connections, and Article 9 respecting Work in general. Tenant shall have no right to use any broom closets, storage closets, janitorial closets, or other such closets, rooms and areas whatsoever. Tenant shall not install in or for the Leased Premises any equipment which requires more electric current than Landlord is required to provide under this Lease, without Landlord's prior written approval, and Tenant shall ascertain from Landlord the maximum amount of load or demand for or use of electrical current which can safely be permitted in and for the Leased Premises, taking into account the capacity of electric wiring in the Property and the Leased Premises and the needs of tenants of the Property, and shall not in any event connect a greater load than such safe capacity.

(12) Plumbing Equipment. The toilet rooms, urinals, wash bowls, drains, sewers and other plumbing fixtures, equipment and lines shall not be misused or used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein.

(13) Trash. All garbage, refuse, trash and other waste shall be kept in the kind of container, placed in the areas, and prepared for collection in the manner and at the times and places specified by Landlord, subject to Article 30 respecting Hazardous Materials. Landlord reserves the right to require that Tenant participate in any recycling program designated by Landlord.

(14) Alcohol, Drugs, Food and Smoking. Landlord reserves the right to exclude or expel from the Property any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of these Rules. Tenant shall not at any time manufacture, sell, use or give away, any spirituous, fermented, intoxicating or alcoholic liquors on the Leased Premises, nor permit any of the same to occur. Tenant shall not at any time cook, sell, purchase or give away, food in any form by or to any of Tenant's agents or employees or any other parties on the Leased Premises, nor permit any of the same to occur (other than in microwave ovens and coffee makers properly maintained in good and safe working order and repair in lunch rooms or kitchens for employees as may be permitted or installed by Landlord, which does not violate any Laws or bother or annoy any other tenant). Tenant and its employees shall not smoke tobacco on any part of the Property

(including exterior areas) except those areas, if any, that are designated or approved as smoking areas by Landlord.

(15) Use of Common Areas; No Soliciting. Tenant shall not use the common areas, including areas adjacent to the Leased Premises, for any purpose other than ingress and egress, and any such use thereof shall be subject to the other provisions of this Lease, including these Rules. Without limiting the generality of the foregoing, Tenant shall not allow anything to remain in any passageway, sidewalk, court, corridor, stairway, entrance, exit, elevator, parking or shipping area, or other area outside the Leased Premises. Tenant shall not use the common areas to canvass, solicit business or information from, or distribute any article or material to, other tenants or invitees of the Property. Tenant shall not make any room-to-room canvass to solicit business or information or to distribute any article or material to or from other tenants of the Property and shall not exhibit, sell or offer to sell, use, rent or exchange any products or services in or from the Premise unless ordinarily embraced within the Tenant's use of the Leased Premises expressly permitted in the Lease.

(16) Energy and Utility Conservation. Tenant shall not waste electricity, water, heat or air conditioning or other utilities or services, and agrees to cooperate fully with Landlord to assure the most effective and energy efficient operation of the Property and shall not allow the adjustment (except by Landlord's authorized Property personnel) of any controls. Tenant shall not obstruct, alter or impair the efficient operation of the Systems and Equipment, and shall not place any item so as to interfere with air flow. Tenant shall keep corridor doors closed and shall not open any windows, except that if the air circulation shall not be in operation, windows which are openable may be opened with Landlord's consent. If reasonably requested by Landlord (and as a condition to claiming any deficiency in the air-conditioning or ventilation services provided by Landlord), Tenant shall close any blinds or drapes in the Leased Premises to prevent or minimize direct sunlight.

(17) Unattended Leased Premises. Before leaving the Leased Premises unattended, Tenant shall close and securely lock all doors or other means of entry to the Leased Premises and shut off all lights and water faucets in the Leased Premises (except heat to the extent necessary to prevent the freezing or bursting of pipes).

(18) Going-Out-Of-Business Sales and Auctions. Tenant shall not use, or permit any other party to use, the Leased Premises for any distress, fire, bankruptcy, close-out, "lost our lease" or going-out-of-business sale or auction. Tenant shall not display any signs advertising the foregoing anywhere in or about the Leased Premises. This prohibition shall also apply to Tenant's creditors.

(19) Labor Harmony. Tenant shall not use (and upon notice from Landlord shall cease using) contractors, services, workmen, labor, materials or equipment, or labor and employment practices that, in Landlord's good faith judgment, may cause strikes, picketing or boycotts or disturb labor harmony with the workforce or trades engaged in performing other work, labor or services in or about the Property.

(20) Prohibited Activities. Tenant shall not: (i) use strobe or flashing lights in or on the Leased Premises, (ii) install or operate any internal combustion engine, boiler, machinery,

refrigerating, heating or air conditioning equipment in or about the Leased Premises, (iii) use the Leased Premises for housing, lodging or sleeping purposes or for the washing of clothes, (iv) place any radio or television antennae other than inside of the Leased Premises, (v) operate or permit to be operated any musical or sound producing instrument or device which may be heard outside the Leased Premises, (vi) use any source of power other than electricity, (vii) operate any electrical or other device from which may emanate electrical, electromagnetic, x-ray, magnetic resonance, energy, microwave, radiation or other waves or fields which may interfere with or impair radio, television, microwave, or other broadcasting or reception from or in the Property or elsewhere, or impair or interfere with computers, faxes or telecommunication lines or equipment at the Property or elsewhere, or create a health hazard, (viii) bring or permit any bicycle or other vehicle, or dog (except in the company of a blind person or except where specifically permitted) or other animal or bird in the Property, (ix) make or permit objectionable noise, vibration or odor to emanate from the Leased Premises, (x) do anything in or about the Leased Premises or Property that is illegal, immoral, obscene, pornographic, or anything that may in Landlord's good faith opinion create or maintain a nuisance, cause physical damage to the Leased Premises or Property, interfere with the normal operation of the Systems and Equipment, impair the appearance, character or reputation of the Leased Premises or Property, create waste to the Leased Premises or Property, cause demonstrations, protests, loitering, bomb threats or other events that may require evacuation of the Building, (xi) advertise or engage in any activities which violate the spirit or letter of any code of ethics or licensing requirements of any professional or business organization, (xii) throw or permit to be thrown or dropped any article from any window or other opening in the Property, (xiii) use the Leased Premises for any purpose, or permit upon the Leased Premises or Property anything, that may be dangerous to persons or property (including firearms or other weapons (whether or not licensed or used by security guards) or any explosive or combustible articles or materials) (xiv) place vending or game machines in the Leased Premises, except vending machines for employees, (xv) adversely affect the indoor air quality of the Leased Premises or Property, or (xvi) do or permit anything to be done upon the Leased Premises or Property in any way tending to disturb, bother, annoy or interfere with Landlord or any other tenant at the Property or the tenants of neighboring property, or otherwise disrupt orderly and quiet use and occupancy of the Property. Without limiting the generality of the foregoing, Tenant shall not have or use the following equipment in or about the Leased Premises: (1) x-ray equipment, (2) electrical arcwelding devices, (3) electrical equipment for the repair of radio transmitters as a business, (4) radar, (5) pulse generators, (6) displays utilizing neon or strobe lighting, (7) citizens band radios, and amateur or other radios, walky-talkies or other communication devices, if such use would interfere with the operation of any radio station or any other equipment or communication devices at or near the Property.

(21) Transportation Management. Tenant shall comply with all present or future programs intended to manage parking, transportation or traffic in and around the Property, and in connection therewith, Tenant shall take responsible action for the transportation planning and management of all employees located at the Leased Premises by working directly with Landlord, any governmental transportation management organization or any other transportation-related committees or entities. Such programs may include, without limitation: (i) restrictions on the number of peak-hour vehicle trips generated by Tenant; (ii) increased vehicle occupancy; (iii) implementation of an in-house ridesharing program and an employee transportation coordinator; (iv) working with employees and any Property or area-wide ridesharing program manager; (v)

instituting employer-sponsored incentives (financial or in-kind) to encourage employees to rideshare; and (vi) utilizing flexible work shifts for employees.

(ii) Parking shall be available in areas designated by Landlord from time to time. Parking for Tenant and its employees and visitors shall be on a "first come, first served," unassigned basis, in common with Landlord and other tenants at the Property, and their employees and visitors, and other Persons to whom Landlord shall grant the right or who shall otherwise have the right to use the same. However, in no event shall Tenant and Tenant's employees and visitors use more spaces than the number derived by applying Tenant's Share (as defined in the Lease) to the total number of unassigned spaces in the area or areas designated by Landlord from time to time to serve the Leased Premises. In addition, Landlord reserves the right to: (x) adopt additional requirements or procedures pertaining to parking, including systems with charges favoring carpooling, and validation systems, (y) assign specific spaces, and reserve spaces for small and other size cars, disabled persons, and other tenants, customers of tenants or other parties, and (z) restrict or prohibit full size vans and other large vehicles. The parking facilities are currently designed to accommodate approximately five (5) parking spaces for every 1,000 square feet of office space at the Property.

(iii) In case of any violation of these rules, Landlord may also refuse to permit the violator to park, and may remove the vehicle owned or driven by the violator from the Property without liability whatsoever, at such violator's risk and expense. Landlord reserves the right to close all or a portion of the parking areas or facilities in order to make repairs or perform maintenance services, or to alter, modify, re-stripe or renovate the same, or if required by casualty, strike, condemnation, act of God, Law or governmental requirement or guideline, termination or modification of any lease or other agreement by which Landlord obtained parking rights, or any other reason beyond Landlord's reasonable control.

(iv) Hours shall be reasonably established by Landlord or its parking operator from time to time; cars must be parked entirely within the stall lines, and only small or other qualifying cars may be parked in areas reserved for such cars; all directional signs, arrows and speed limits must be observed; spaces reserved for disabled persons must be used only by vehicles properly designated; washing, waxing, cleaning or servicing of any vehicle is prohibited; every parker is required to park and lock his own car; parking is prohibited in areas: (a) not striped or designated for parking, (b) aisles, (c) where "no parking" signs are posted, (d) on ramps, and (e) loading areas and other specially designated areas. Delivery trucks and vehicles shall use only those areas designated therefor.

(v) There shall be no overnight parking at the Property, and at the end of each day Tenant shall, and shall cause its personal and visitors to, remove their automobiles from the parking garages, structures, facilities and areas at or serving the Property. If any automobile owned by Tenant or by its personnel or visitors remains in any such parking garage, structure, facility or area overnight and the same interferes with the cleaning or maintenance thereof (snow or otherwise), any costs or liabilities incurred by Landlord in removing said automobile to effectuate cleaning or maintenance, or any damages resulting to said automobile or to Landlord's equipment or equipment owned by others by reason of the presence of or removal of said automobile during such cleaning or maintenance shall be paid by Tenant to Landlord, as additional rent on the rent payment date next following the submission of a bill therefor.

(vi) Parking stickers, key cards or any other devices or forms of identification or entry shall remain the property of Landlord. Such devices must be displayed as requested and may not be mutilated in any manner. The serial number of the parking identification device may not be obliterated. Devices are not transferable and any device in the possession of an unauthorized holder will be void. Loss or theft of parking identification, key cards or other such devices must be reported to Landlord or any garage manager immediately. Any parking devices reported lost or stolen which are found on any unauthorized car will be confiscated and the illegal holder will be subject to prosecution. Lost or stolen devices found by Tenant or its employees must be reported to Landlord or the office of the garage immediately.

(22) Fire Drills. Tenant shall cooperate with Landlord in connection with, and shall participate in (including all of Tenant's employees and invitees who are in the Leased Premises at the time of any fire drill), fire drills for the Building that are organized by or on behalf of Landlord from time to time. Landlord shall give Tenant reasonable advance notice of each fire drill.

(23) Responsibility for Compliance. Tenant shall be responsible for ensuring compliance with these Rules, as they may be amended, by Tenant's employees and as applicable, by Tenant's agents, invitees, contractors, subcontractors, and suppliers. Tenant shall cooperate with any reasonable program or requests by Landlord to monitor and enforce the Rules, including providing vehicle numbers and taking appropriate action against such of the foregoing parties who violate these provisions.

EXHIBIT “__”
LEGAL DESCRIPTION OF PROPERTY

EXHIBIT “__”
JANITORIAL SCHEDULE

EXHIBIT “__”
PARKING LOT

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Tenant’s Lease Checklist

Due Diligence	Confirm signatory is fee holder	_____
	Verify entity status in state of organization	_____
	Is layout of Premises attached as exhibit?	_____
	Check state law re: execution of leases ¹	_____
Premises	Have Premises been adequately described? (e.g. square footage, floor, suite #, etc.) and drawing attached as exhibit?	_____
	Method of measurement identified? ²	_____
	Rentable square footage of the Building ³	_____
	Legal description of property attached as Exhibit	_____
Common Areas	Leased areas include all appurtenances thereto and other rights in common with other tenants, such as lobbies, elevators, stairs, sidewalks, parking lots, and other common areas.	_____
Parking	What is the Parking Ratio?	_____
	Parking lot drawing is attached as Exhibit	_____
	Condemnation/Destruction provisions should also consider loss of use of parking lot or reduction in Parking Ratio	_____
Base Rent	Are base rent calculations correct?	_____

¹ Some states require two witnesses for terms longer than 3 years. Other states may require a notary certification, in which case, you should also make sure the notarial certificate meets the requirements of the particular state. For example, in Virginia the notary certification must appear on the same page as the signature.

² The most commonly used method is the Building Owners and Managers Association International standards, namely the “Standard Method for Measuring Floor Area in Office Buildings – American National Standard,” ANSI Z65.1-1996 (Revisions of ANSI Z65.1 – 1980) approved June 1, 1996 by American National Standards Institute, Inc. (“BOMA Standard”). Whatever method is used, Tenant should try to get Landlord to represent/warrant that the calculations are correct. If Landlord resists, then Tenant should have the ability to re-measure and verify that the square footage is correct and allow for appropriate adjustments to the Premises, Base Rent, Tenant’s Pro Rata Share, and Tenant’s Parking Ratio.

³ This is especially important if Tenant is paying its pro rata share of expenses. The method of measurement for the Building should be the same method used for measuring the Premises.

How is escalation of base rent calculated?⁴ _____

Additional Rent Is there a Base Year? _____

Tenant's Pro Rata Share is automatically adjusted if change in size of Premises or Building _____

Right to audit/verify Operating Expenses _____

Cap on controllable operating expenses _____

Waive any amounts that weren't timely billed _____

Operating Expenses must exclude: _____

1. penalties and expenses due to Landlord's violation of laws _____
2. costs associated with any other tenant's violation of terms and conditions of their lease _____
3. ground rents _____
4. advertising and marketing costs _____
5. costs which Landlord is entitled to be reimbursed under any insurance policy or by any other party _____
6. costs arising from the negligence of Landlord or any other party _____
7. costs which are capital in nature (in which case, they should be treated as a capital expenditure and amortized over the useful life) _____
8. increase in taxes from reassessment due to sale or transfer of Property/Building _____
9. Landlord's income taxes _____
10. Depreciation _____
11. Landlord's financing costs _____

What were Operating Expenses and Taxes for previous period? _____

Landlord will send reconciliation statement within [60] days of end of Landlord's fiscal year _____

Landlord's reconciliation statement should be reasonably detailed to be verified by Tenant _____

Tenant receives refund or Rent⁵ credit if Tenant may exceed estimated payments _____

[If possible] Any charges not included on Operating Expense Statement for year in which it should have been billed is waived by Landlord. _____

Permitted Uses "General office use and all uses incidental thereto" (Better: "Any lawful use except [retail] use") _____

Delivery of Premises Landlord will deliver Premises in compliance with existing laws _____

No ADA responsibility for existing Premises If turnkey, build-to-suit, or other arrangement where Landlord is performing the construction: _____

1. As of Commencement Date, Premises will be in compliance with existing laws, including ADA _____
2. Landlord will perform the construction in accordance with all laws _____
3. The Premises will be substantially complete⁶ by [Date] (the "Target Commencement Date") and Tenant has right to terminate if not delivered within [30] days of Target Commencement Date _____
4. Landlord must fix punch list items within [30] days; otherwise Tenant may fix and deduct from Rent. _____

If there is construction to be performed by both Tenant and Landlord (e.g. Landlord will deliver Building Shell and Tenant installs Tenant finishes): _____

1. Same as above except replace "Premises" with "Landlord's Work" or other term describing Landlord's construction _____

"Rent" as Base Rent and Additional Rent. Likewise, when agreeing to abate Rent (such as in the case of casualty or interruption of services), the Landlord will want to limit such abatement to only Base Rent.

⁶ A sample definition of Substantial Completion:
 As used herein, "Substantial Completion" and "Substantially Complete" shall mean that all of the following conditions have been satisfied: (i) Landlord has delivered to Tenant the required certificate of occupancy (or the substantial equivalent under state or local law) to permit full use of the Premises for the purpose of conducting Tenant's ordinary business activities; (ii) improvements to the Premises have been completed in accordance with the Tenant Improvement Plans and Specifications attached hereto as Exhibit __, as reasonably determined by both Landlord and Tenant, subject only to normal "Punch List Items" which will not interfere with Tenant's normal business use of the Premises; and (iii) a certification by the Building architect, approved by Landlord, has been delivered to Tenant stating that the proper federal, state, county, regional, and local authorities, including those having jurisdiction over applicable zoning, building, health, safety, and environmental regulations, have issued all licenses, permits, and approvals necessary for the construction and lawful occupancy by Tenant of the Premises.

⁴ Normally, the parties will have agreed on the rent increases for the initial Term, in which case, this should be laid out in a schedule so that the rent per square foot, base annual rent, and monthly base rent payments are known in advance.

⁵ As used herein, "Rent" means Base Rent and Additional Rent. Careful attention should be placed on the definition of "Rent" in the context of the parties' rights throughout the Lease. Depending on the circumstances, the parties should try to broaden or limit the definition of "Rent." For example, when agreeing to a termination right upon the payment of [3] months Rent, the Landlord will seek to define

	obligations			Tenant's indemnification should not be overly broad (such as "arising from this tenancy")	_____
	2. Tenant has early access right to perform construction so long as does not unreasonably interfere with timely performance of Landlord's Work			Landlord's indemnification of Tenant includes:	_____
	If "As-Is" and Landlord has no responsibility to perform any build-out:			1. Landlord's negligence	_____
	1. Upon Commencement Date, Landlord warrants the Premises will be in compliance with all existing laws, including the ADA, and with its mechanical, electrical, and life safety systems functioning in a good and operable manner, and shall remove any improvements that are not of a character typically found in a first class office buildings in the [City, State] metropolitan area.	_____	Hazardous Materials	2. Incidents occurring in common areas	_____
	2. "As-Is" acceptance does not apply to unknown or latent defects and shall not be construed to alter or limit Landlord's maintenance, repair and replacement obligations or Landlord's representations as to the condition of the Premises and Building.	_____		Does Tenant have right to self-insure?	_____
Improvement Allowance	Any unused Allowance will be refunded to Tenant or may be credited against Rent	_____		Landlord warrants no Hazardous Materials on property	
Insurance	Has Risk Management Dept. reviewed Tenant required coverages? Landlord's property insurance for "full replacement value" If Tenant is paying pro rata share of premium:	_____		Landlord's indemnification of Tenant applies to all Hazardous Materials on property, except those caused solely by Tenant	_____
	• Premium not higher than for similar facilities in area	_____	Holdover	Tenant has right to terminate if Hazardous Materials not remediated within [90] days	_____
	• Premium does not include increased costs attributable to extra hazards of other Building occupants	_____		Make sure excludes exposure to consequential damages. If LL absolutely will not agree, try the following:	
Indemnification	Tenant's indemnification specifically excludes:	_____		1. Allow a short time period to go by (e.g. 3-4 months) before exposure to consequential damages	
	• Landlord's negligence or intentional misconduct	_____	Landlord's Access	2. Negotiate for a Short Term extension (e.g. 3-4 months) with 30-60 days notice to Landlord	_____
	• Matters from Landlord's failure to perform lease obligations	_____		Should not interfere with Tenant's use of Premises Upon prior written notice and, at Tenant's option, with Tenant's escort	_____
	• [If possible] Matters that Landlord is insured against	_____	Utilities	Landlord should provide following services:	
				1. Adequate HVAC (try to get ASHRAE or some other standard)	_____
				2. Electricity—clearly define the building's electrical capacity (i.e. "1.7 watts per square foot for lighting; 4 watts per square foot for general power")	_____
				3. sufficient water for drinking, lavatory, and sewage purposes	_____
				4. cleaning services (try to get cleaning schedule and attach as exhibit)	_____
				5. [elevator service]	_____
				Rent abatement after [5] continuous days of interruption; Tenant has right to terminate after [30] continuous days.	_____

	Are Building Hours acceptable? ⁷	_____		If non-monetary default, need written notice from Landlord and reasonable time period to cure ⁹	_____
Maintenance and Repairs	Landlord's maintenance includes structural components, including roof and roofing, exterior walls and windows, and interior load bearing walls, piping, all building mechanical systems, and common areas	_____		Landlord has duty to mitigate	_____
	Tenant's maintenance includes Tenant's property and alterations ⁸	_____		No late fee, penalty or interest accrues until [X] days after Landlord's written notice to Tenant	_____
		_____		Abandonment/vacating Premises is not default so long as Tenant still paying rent	_____
Broker	Need mutual indemnities for broker	_____		If any representation or warranty made by Landlord is untrue, or if Landlord fails to perform obligations under Lease, and fails to remedy within [X] days after Tenant's notice, Tenant has right to remedy and deduct from rent and/or terminate	_____
Landlord Warranties	1. No Hazardous Materials on the property	_____	Relocation	Best case scenario: Relocation not permitted	_____
	2. Premises are zoned for Permitted Use	_____		Compromise: Landlord has right to relocate if :	_____
	3. Landlord's covenant of title	_____		1. comparable space in quality, size, convenience to tenant	_____
	4. Landlord has authority to enter into this Lease and perform all of the obligations hereunder	_____		2. Landlord pays all costs of moving and build-out to same condition as old Premises	_____
	5. Premises and Building comply with all laws	_____		3. Landlord gives Tenant at least [4] months notice	_____
	6. No other restrictions, covenants, or conditions prevent Tenant's use or other rights granted by Landlord	_____		4. Landlord reimburses Tenant for costs to replace business stationary	_____
Alterations	Tenant does not need to obtain approval for minor alterations that cost less than \$25,000	_____	Mortgagee provisions	Ensure they do not enlarge cure rights (e.g. extend cure period to "until mortgagee has obtained legal possession of building")	_____
	Landlord must notify Tenant at time of consent whether alterations must be removed at end of lease term, otherwise at Tenant's election to remove them.	_____		Tenant's agreement to attorn is conditioned on mortgagee's agreement that tenancy will not be disturbed so long as Tenant is not in default beyond all notice and cure periods.	_____
	Tenant has no obligation to remove wiring installed by Tenant	_____			_____
Default	If monetary default, not "Event of Default" until [X] days after Landlord's written notice to Tenant	_____			_____

⁷ Landlord will want to charge for after-hour use and the then-current rates should be clearly identified in the Lease and consistent with the rates charged in comparable buildings in the [City, State] metropolitan area. Landlord may want the right to adjust the rates from time to time but they should not be binding on Tenant unless Tenant has received at least [X] days prior notice.

⁸ Oftentimes, the Landlord will try to get the Tenant to agree to maintain items that are specifically included in the Premises which may include an HVAC unit exclusively serving the Premises, plumbing, wiring, and lighting fixtures. The general idea, however, is that Landlord, not Tenant, is in the business of leasing and managing commercial buildings, and therefore, the onus should be on Landlord to maintain all components of the Building, whether inside or outside the Premises, and Tenant only needs to be responsible for those improvements that were specifically installed by Tenant.

⁹ A typical provision (with tenant-friendly provisions in brackets) will say:
 Any of the following shall be an "Event of Default": . . . (ii) Tenant fails to perform or observe any other term, condition, covenant or obligation required under this Lease for a period of thirty (30) days after written notice thereof from Landlord [*specifying the nature of Tenant's failure and the reasonable steps Landlord expects Tenant to take to remedy the same*]; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required to cure, then such default shall be deemed to have been cured if Tenant commences such performance within said thirty (30) day period and thereafter diligently completes the required action within a reasonable time.