



**OFFICE LEASE**

**by and between**

**SP4 190 S. LASALLE, L.P.,  
a Delaware limited partnership,  
as Landlord**

**and**

\_\_\_\_\_,  
**a** \_\_\_\_\_,

**as Tenant,**

**Premises:  
190 South LaSalle Street,  
Suite \_\_\_\_\_  
Chicago, Illinois 60603**



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**OFFICE LEASE**

This Lease is dated for identification purposes only as of \_\_\_\_\_, 20\_\_\_\_, and is made by the parties hereinafter identified as Landlord and Tenant and upon the following terms and conditions:

**ARTICLE 1  
BASIC LEASE PROVISIONS**

- 1.01 Landlord and Address: SP4 190 S. LASALLE, L.P.  
c/o CB Richard Ellis Investors, LLC  
515 South Flower Street, Suite 3100  
Los Angeles, CA 90071  
Attn: Director of Asset Management
- With a copy of all notices going to: CB Richard Ellis, Inc.  
190 South LaSalle Street, 40<sup>th</sup> Floor  
Chicago, Illinois 60603  
Attn: General Manager
- Rent payment address: CBRE Investors AAF Strategic Partners IV  
190 South LaSalle  
23549 Network Place  
Chicago, IL 60673-1235
- 1.02 Tenant and Address for Notice: \_\_\_\_\_[]  
190 South LaSalle Street, Suite \_\_\_\_\_[]  
Chicago, Illinois 60603
- 1.03 Guarantor(s): \_\_\_\_\_ [None. [TO BE CONFIRMED BASED ON FINANCIALS.]]
- 1.04 Premises: Suite \_\_\_\_\_[], as shown on the floor plan attached hereto as **Exhibit A**. The Premises contains approximately \_\_\_\_\_ rentable square feet, which is the final agreement of the parties for the purpose of determining Base Rent.
- 1.05 Building: The building and improvements located at 190 South LaSalle Street, Chicago, Illinois 60603, together with the land parcel on which it is constructed and all appurtenances thereto.
- 1.06 Term: \_\_\_\_\_[] full calendar months and any partial month.
- 1.07 Commencement Date: the earlier of (a) \_\_\_\_\_, or (b) the Date of Substantial Completion, as provided in the Work Letter attached hereto as **Exhibit B**.
- 1.08 Expiration Date: \_\_\_\_\_, subject to modification as provided in the Work Letter. [The last day of the \_\_\_\_\_ ( ) full calendar month following the Commencement Date.
- 1.09 Base Rent:

<u>Dates</u>	<u>Approx. Annual Base Rent / RSF</u>	<u>Monthly Installment of Base Rent</u>
[]		\$0.00*

\* If the Commencement Date is other than the first day of a calendar month, then the rental abatement period shall be prorated for the partial months. Such abatement shall apply solely to payment of the monthly installments of Base Rent and Operating Expenses (including, without limitation, Taxes), but shall not be applicable to any other charges, expenses or costs payable by Tenant under this Lease. Landlord and Tenant agree that the abatement of rental and other payments contained in this Section is conditional and is made by Landlord in reliance upon Tenant's faithful and continued performance of the terms, conditions and covenants of this Lease and the payment of all monies due Landlord hereunder. In the event that Tenant defaults under the terms and conditions of the Lease beyond any applicable notice and cure period, the unamortized portion of all conditionally abated rental shall become fully liquidated and immediately due and payable (without limitation and in addition to any and all other rights and remedies available to Landlord provided herein or at law and in equity).

1.10 Tenant's Share: The fraction determined by dividing the number of rentable square feet within the Premises by the number of rentable square feet within the Building. The Building contains approximately 798,782 rentable square feet of space, which is the final agreement of the parties and not subject to adjustment. Additionally, Tenant shall pay the cost of electricity.

1.11 Base Year: None. There is a full pass through of Operating Expenses and Taxes as more fully set forth below.[CONFIRM]

1.12 Security Deposit: \_\_\_\_\_ Thousand \_\_\_\_\_ Hundred and No/100ths Dollars (\$\_\_\_\_\_).

1.13 Brokers: Landlord's Broker- CB Richard Ellis  
311 South Wacker Drive, Suite 400  
Chicago, IL 60606

Tenant's Broker- []  
\_\_\_\_\_  
\_\_\_\_\_

1.14 Allowance: \$\_\_\_\_\_ (see the Work Letter which sets forth additional terms regarding the Allowance and applicable dates and terms regarding the delivery of the Premises).

1.15 Permitted Uses: General office uses related to \_\_\_\_\_.

1.16 Parking Spaces: \_\_\_\_\_ parking spaces in such areas of the parking facilities associated with the Building as may be reasonably designated by Landlord from time to time. None of the Parking Spaces shall be assigned or reserved. In the event that Tenant surrenders any of the Parking Spaces, Tenant's right to re-lease the surrendered spaces shall be subject to availability. Tenant agrees to enter into any commercially reasonable agreement regarding the Parking Spaces required by any third-party vendor of Landlord (and Tenant shall cooperate with such vendor and comply with any commercially reasonable rules and regulations promulgated by such vendor that are generally applicable to all persons parking in the parking areas associated with the Building).

- 1.17 Monthly Parking Rent: Tenant shall pay the standard parking rate per Parking Space, which is currently \$\_\_\_\_\_ per month per Parking Space (subject to change upon thirty (30) days' advance written notice to Tenant), payable as Rent. Tenant shall be liable for any taxes on paid parking spaces.
- 1.18 Initial Payment: Simultaneously with the delivery of this Lease to Landlord, Tenant shall deliver to Landlord the following amounts:

<u>Item</u>	<u>Amount</u>
Security Deposit	\$[]
Base Rent for first full calendar month following any abatement:	\$[]
Operating Expenses and Taxes for first full calendar month following any abatement:	\$[]
Total due on execution:	<u>\$[]</u>

The words identified in this Article 1 shall have the meanings ascribed to them in this Article 1 for all purposes of this Lease.

## ARTICLE 2 DEMISE

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises in its present "as is" condition for the Term and upon the terms, covenants and conditions set forth in this Lease. This Lease shall be in full force and effect from the date it is signed and delivered by Landlord and Tenant. Tenant covenants as a material part of the consideration for this Lease to keep and perform each and all of the terms, covenants and conditions by it to be kept and performed. This Lease is made upon the condition of such performance.

## ARTICLE 3 TERM

The term of this Lease shall commence on the Commencement Date and expire on the Expiration Date unless sooner terminated as provided in this Lease and except as provided in the Work Letter attached hereto as **Exhibit B**. If Landlord shall be unable to deliver possession of the Premises to Tenant on the Commencement Date for any reason whatsoever, this Lease shall not be void or voidable and Landlord shall not be subject to any liability for the failure to deliver possession on said date nor shall such failure to deliver possession on the Commencement Date affect the validity of this Lease or the obligations of Tenant hereunder. Within thirty (30) days following the later of (i) the Commencement Date or (ii) Tenant's initial occupancy of the Premises, Tenant shall execute and deliver to Landlord a confirmation of certain dates applicable to this Lease substantially in the form attached hereto as **Exhibit C** and incorporated herein by this reference. Tenant's entry into or occupancy of the Premises prior to the Commencement Date for any purpose (including construction) shall be governed by the terms and conditions of this Lease.

## ARTICLE 4 RENT; OPERATING EXPENSES; TAXES

**4.01 Payment of Rent.** Tenant shall pay to Landlord's Management Agent, or such other person or entity or at such other place as Landlord may from time to time direct in writing, all amounts due Landlord from Tenant hereunder, including, without limitation, Base Rent, Expense Adjustment and Tax Adjustment (all amounts due hereunder being referred to collectively as "Rent"). Except as specifically provided in this Lease, Rent shall be paid without abatement, deduction or set off of any kind, it being the intention of the parties that, to the full extent permitted by law, Tenant's covenant to pay Rent shall be independent of all other covenants contained in this Lease, including Tenant's continued occupancy of the Premises. Tenant's obligation hereunder to pay Rent accruing during the Term (whether or not the amount thereof is determined or determinable as of the date of termination or expiration of this Lease) shall survive the termination of this Lease.

**4.02 Payment of Base Rent.** Base Rent shall be payable monthly, in advance, on the first day of each calendar month during the Term. If the Term commences on a day other than the first day of a calendar month, then Base Rent for such month will be prorated on a per diem basis based on a thirty (30) day month and the excess of the installment of Base Rent paid concurrently with the execution of this Lease by Tenant over such prorated amount for the first calendar month of the Term shall be applied against Base Rent for the first full calendar month of the Term.

**4.03 Operating Expense Inclusions.** "Operating Expenses" shall mean and include all amounts, expenses and costs of whatever nature that Landlord incurs or pays because of or in connection with the ownership, control, operation, repair, management, replacement or maintenance of the Building, all related improvements thereto or thereon and all machinery, equipment, landscaping, fixtures and other facilities, including personal property, as may now or hereafter exist in or on the Building. Operating Expenses shall be reasonably determined by Landlord substantially in accordance with sound accounting principles consistently applied and shall include, but shall not be limited to, the following:

- (1) Wages, salaries, fees, related taxes, insurance costs, benefits (including amounts payable under medical, pension and welfare plans and any amounts payable under collective bargaining agreements) and reimbursement of expenses of and relating to all personnel engaged in operating, repairing, managing and maintaining the Building;
- (2) All supplies and materials, including sales tax imposed in connection with the purchase thereof;
- (3) Legal and accounting fees and expenses (except for legal fees incurred in connection with the negotiation or the collection of amounts due under leases);
- (4) Cost of all utilities for the Building, including, without limitation, water, sewer, power, fuel, heating, lighting, air conditioning and ventilating, as well as the cost of changing utility providers;
- (5) Fees and other charges payable under or in respect of all maintenance, repair, janitorial, security and other service agreements for or pertaining to the Building;
- (6) Cost of all insurance, including deductibles, relating to the Building, or the ownership, its occupancy or operations thereof and the Property;
- (7) Cost of repairs and maintenance of the Building, excluding only such costs which are paid by the proceeds of insurance, by Tenant or by other third parties (other than payment by Tenant or other tenants of the Building of Expense Adjustment or similar reimbursement of Building costs and expenses);
- (8) Amortization of the cost (plus interest at the then current market rate on the unamortized portion of such cost from time to time) of capital repairs, replacements and improvements, including, without limitation, those that are for the purpose of reducing costs includible in the definition of Operating Expenses or that may be required by governmental authority, including but not limited to, pursuant to the Americans with Disabilities Act. All such costs shall be amortized over the reasonable useful life of the

capital investment items, with the reasonable useful life and amortization schedule being determined in accordance with sound management accounting principles;

(9) Management fees and reimbursed expenses of Landlord's Management Agent and administrative expenses not borne by Landlord's Management Agent; and

(10) Fees and charges under any declaration of covenants, easements or restrictions affecting the Building.

**4.04 Operating Expense Exclusions.** Notwithstanding the provisions of Section 4.03, above, Operating Expenses shall not include:

(1) Principal or interest payments with respect to mortgages against the Building;

(2) Ground lease payments or any other payments under any superior lease;

(3) Depreciation and amortizations, except as provided herein all as determined in accordance with generally accepted accounting principles and sound real estate practices, consistently applied, and when depreciation or amortization is permitted or required, the item shall be amortized over its reasonably anticipated useful life;

(4) Capital improvements or replacements to the extent not amortized over the applicable useful life;

(5) Charges for special items or services billed separately to (and in addition to Expense Adjustment Statements) and paid by tenants of the Building;

(6) Costs of any items to the extent Landlord receives reimbursement from insurance proceeds from Landlord's or Tenant's insurance carriers or from a third party;

(7) The cost of providing any service directly to and paid directly by any tenant (other than through Operating Expense pass through provisions), and the cost of services provided selectively to one or more tenants of the Building (other than Tenant) without reimbursement;

(8) Marketing costs, including leasing commissions, attorneys' fees (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 Building;

(9) Costs, including permit, license and inspection costs, incurred with respect to the installation of tenant improvements made for new tenants in the Building, or incurred in renovating or otherwise improving, modifying, decorating, painting or redecorating vacant space for occupancy by tenants or other occupants of the Building;

(10) Costs associated with the operation of the business of the ownership or entity which constitutes "Landlord", as the same are distinguished from the costs of operating the Building including, but not limited to, costs of defending any lawsuits with any mortgagee, legal fees incurred in the negotiation and enforcement of tenant leases and costs of selling, syndicating, financing, mortgaging or hypothecating any of Landlord's interest in the Building;

(11) The wages of any employee above the grade of building manager;

(12) The cost of services provided by Landlord's affiliates to the extent that such costs would exceed the costs of such services rendered by unaffiliated third parties on a competitive basis;

(13) Fines, penalties and interest incurred as a result of Landlord's negligence or willful misconduct;

(14) Any bad debt loss, rent loss, or reserves for bad debts or rent loss; or

(15) Landlord's cost of electricity and other services which it has sold to tenants and for which Landlord has been reimbursed.



**4.05 Gross Up of Operating Expenses.** If at any time the Building is not fully occupied or Landlord is not supplying services to all rentable areas of the Building during an entire calendar year, then Landlord may adjust actual Operating Expenses to Landlord's estimate of that amount, which would have been paid or incurred by Landlord as Operating Expenses had the Building been fully occupied or serviced, and the Operating Expenses as so adjusted shall be deemed to be the actual Operating Expenses for such calendar year. If Landlord does not furnish during any Adjustment Year any particular work or service (the cost of which, if performed by Landlord, would constitute an Operating Expense) to a tenant which has undertaken to perform such work or service in lieu of the performance thereof by Landlord, then Operating Expenses shall be deemed to be increased by an amount equal to the additional expense which would reasonably have been incurred during such Adjustment Year by Landlord if it had, at its cost, furnished such work or service to such tenant. The provisions of the preceding sentences will apply only to those Operating Expenses that either vary with occupancy or by reason of one or more tenants not receiving goods or services the cost of which constitutes all or part of such Operating Expenses.

**4.06 Taxes.** "Taxes" shall mean and include all federal, state and local government taxes, assessments and charges of any kind or nature, whether general, special, ordinary or extraordinary, paid by Landlord in a calendar year with respect to the Building; provided, real estate taxes and special assessments (except as provided below) shall be included in Taxes for a calendar year only to the extent such taxes and assessments are paid during such calendar year, regardless of when assessed. In addition, "Taxes" shall include, without limitation, real estate and transit district taxes and assessments, sales and use taxes (except to the extent included in Operating Expenses), ad valorem taxes, personal property taxes, any lease or lease transaction tax and all taxes, assessments and charges in lieu of, substituted for, or in addition to, any or all of the foregoing taxes, assessments and charges. Notwithstanding any provision of this Section to the contrary, Taxes shall not include any federal, state or local government income, franchise, capital stock, inheritance or estate taxes, except to the extent such taxes are in lieu of or a substitute for any of the taxes, assessments and charges previously described in this Section. "Taxes" shall also include the amount of all fees, costs and expenses (including, without limitation, reasonable attorneys' fees and court costs) paid or incurred by Landlord each calendar year in seeking or obtaining any refund or reduction of Taxes or for contesting or protesting any imposition of Taxes, whether or not successful and whether or not attributable to Taxes assessed, paid or incurred in such calendar year. If any special assessment payable in installments is levied against all or any part of the Property, then at Landlord's discretion, Taxes for the calendar year in which such assessment is levied and for each calendar year thereafter shall include only the amount of any installments of such assessment plus interest thereon paid or payable during such calendar year (without regard to any right to pay, or payment of, such assessment in a single payment). Tenant shall be solely liable for any taxes on its paid parking space(s), if any. In addition to all Taxes for which Tenant must reimburse Landlord as part of Operating Expenses, Tenant shall pay (either to the taxing authority directly or as a reimbursement to Landlord) when due, all taxes and impositions upon, measured by or reasonably attributable to (i) the cost or value of furniture, fixtures, equipment, or other personal property or improvements located within the Premises, (ii) the value of leasehold improvement to the Premises, (iii) the use or occupancy of the Premises, (iv) the operation of Tenant's business, or (v) Tenant's income, revenues, or employees.

**4.07 Adjustment Year; Expense Adjustment; Tax Adjustment.** "Adjustment Year" shall mean each calendar year or part thereof during the Term. In addition to Base Rent, Tenant shall pay with respect to each Adjustment Year (i) an amount equal to Tenant's Share of Operating Expenses for the Adjustment Year as reasonably estimated by Landlord ("Expense Adjustment") and (ii) an amount equal to Tenant's Share of Taxes for the Adjustment Year as reasonably estimated by Landlord ("Tax Adjustment"). As to any Adjustment Year during the Term which does not begin on January 1st or does not end on December 31st, Expense Adjustment and Tax Adjustment (hereinafter collectively, "Adjustments") with respect to such Adjustment Year shall be prorated on a per diem basis.

**4.08 Payment of Adjustments.** Adjustments with respect to each Adjustment Year shall be paid in monthly installments in advance on the first day of each calendar month during such Adjustment Year. If Landlord does not deliver a notice of the amount of such estimated Adjustments as most recently communicated by Landlord to Tenant prior to the commencement of any Adjustment Year, Tenant shall continue to pay estimated Adjustments. If, during any Adjustment Year, Landlord reasonably determines that Taxes or Operating Expenses for such Adjustment Year have increased or will increase, Landlord may deliver to Tenant an updated estimate of Adjustments for such Adjustment Year. In addition, Tenant shall pay to Landlord within twenty (20) days after receipt of any such estimate of Adjustments, the amount, if any, by which the aggregate installments of the Adjustments provided in such estimate of Adjustments exceeds the aggregate installments of the Adjustments paid by Tenant with respect to such prior months. Within one hundred twenty (120) days after the end of each Adjustment Year, or as soon thereafter as practicable, Landlord shall send to Tenant a statement (the "Final Adjustment Statement") showing (i) the calculation of the Adjustments for such Adjustment Year, (ii) the aggregate amount of the Adjustments previously paid by Tenant for such Adjustment Year, and (iii) the amount, if any, by which the aggregate amount of the installments of Adjustments paid by Tenant with respect to such Adjustment Year exceeds or is less than the actual Adjustments for such Adjustment Year. Tenant shall pay the amount of any deficiency to Landlord within twenty (20) days after the date of such statement. Any excess shall, at Landlord's option, either be credited against payments past or next due under this Lease or refunded by Landlord, provided Tenant is not then in default under this Lease.

## **ARTICLE 5 SECURITY DEPOSIT**

As security for the performance of its obligations under this Lease, Tenant, on execution of this Lease, shall deposit with Landlord the Security Deposit, and agrees from time to time to pay Landlord within three (3) business days following receipt of a request therefor, any sum or sums of money paid or deducted therefrom by Landlord pursuant to the provisions of this Lease, in order that at all times during the Term there shall be continually deposited with Landlord, a sum which shall never be less than the amount originally deposited. The Security Deposit shall not be deemed an advance payment of Rent, nor a measure of damages for any default by Tenant under this Lease, nor shall the Security Deposit be a bar or a defense to any action that Landlord may commence against Tenant. In the event of any default by Tenant hereunder, Landlord shall have the right, but shall not be obligated, to apply or retain all or any portion of the Security Deposit in payment of Tenant's obligations hereunder, but any such application or retention shall not have the effect of curing any such default. Landlord shall not be obligated to hold the Security Deposit as a separate fund, but may commingle the same with its other funds. Upon expiration of the Term hereof, the Security Deposit (or the balance thereof remaining after payment out of the same or deductions therefrom as provided above) shall be returned to Tenant no later than sixty (60) days following such expiration. No interest shall be payable with respect to the Security Deposit. Landlord or any owner of the Building may transfer or assign the Security Deposit to any new owner of the Building or to any assignee or transferee of this Lease or may credit the Security Deposit against the purchase price of the Building and upon such transfer or credit all liability of the transferor or assignor of such security shall cease and come to an end. No Mortgagee (as hereinafter defined) or person or entity who acquires legal or beneficial title to the Building from such Mortgagee shall be liable for the return of the Security Deposit unless such funds are actually received by such Mortgagee or purchaser.

## **ARTICLE 6 USE OF PREMISES**

Tenant shall use and occupy the Premises solely for the Permitted Uses and for no other use or purpose. Tenant shall not commit, or suffer to be committed, any annoyance, waste, nuisance, act or thing against public policy, or which may disturb the quiet enjoyment of Landlord or any other tenant or occupant of the Building. Tenant agrees not to deface or damage the Building in any manner.

#### **ARTICLE 7 RULES AND REGULATIONS**

Tenant agrees to observe the reservations and rights reserved to Landlord in this Lease. Tenant shall comply, and shall cause its employees, agents, clients, customers, guests and invitees to comply, with the rules and regulations attached hereto as **Exhibit D**, and such revised or additional rules and regulations adopted by Landlord during the Term and applied generally to all office tenants of the Building. Any violation by Tenant or any of its employees, agents, clients, customers, guests or invitees of any of the rules and regulations so adopted by Landlord shall be a default by Tenant under this Lease and may be restrained by court injunction; but whether or not so restrained, Tenant acknowledges and agrees that it shall be and remain liable for all damages, loss, costs and expense resulting from any violation by Tenant or such other persons of any of said rules and regulations. Nothing contained in this Lease shall be construed to impose upon Landlord any duty or obligation to enforce said rules and regulations or the terms, covenants and conditions of any other lease against any other tenant or any other persons, and Landlord shall not be liable to Tenant for violation of the same by any other tenant, its employees, agents, guests, invitees, licensees, customers, clients, family members, or by any other person.

#### **ARTICLE 8 SERVICES PROVIDED**

**8.01 Landlord's Services.** Landlord shall furnish:

(a) Cooled or heated air in season to provide a temperature condition required, in Landlord's reasonable judgment, for comfortable occupancy of the Premises under normal business operations and in the absence of the use of equipment which affects the temperature or humidity which would otherwise be maintained in the Premises, daily from 8:00 a.m. to 6:00 p.m. (Saturdays 8:00 a.m. to 1:00 p.m.), Sundays and holidays recognized by the federal or state government excepted (unless chosen to be open by Landlord). If the use of heat generating equipment in the Premises affects the temperatures otherwise maintained by the air conditioning system for normal business operations, and thereby requires, in the reasonable judgment of Landlord, the modification of the air conditioning or ventilation systems (including installation of supplementary air conditioning units in the Premises) Landlord may elect to perform such modification, and the cost thereof shall be paid by Tenant to Landlord at the time of completion of such modification, or Landlord may elect to require Tenant to perform such modification, at Tenant's sole cost and expense. Any increased expense in maintaining or operating the system resulting, in Landlord's reasonable opinion, from such modification shall be paid by Tenant. In addition, Tenant shall, at Tenant's expense, perform all maintenance on any supplementary air conditioning units installed in accordance with this Section 8.01(a) unless, in the exercise of its right hereby expressly reserved, Landlord elects to perform part or all of such maintenance at Tenant's expense. Tenant agrees to keep and cause to be kept closed all windows in the Premises and at all times to cooperate fully with Landlord in the operation of said system and to abide by all reasonable regulations and requirements which Landlord may prescribe to permit the proper functioning and protection of said heating, ventilation and air conditioning systems.

(b) Washroom facilities, not within the Premises (unless Tenant leases an entire floor), for use by Tenant in common with other tenants in the Building.

(c) Janitor service in and about the Premises as customarily provided in similar office buildings in the City of Chicago, Illinois area, Saturdays, Sundays and Holidays excepted.

(d) Passenger elevator service in common with other tenants and occupants, daily from 8:00 A.M. to 6:00 P.M., Saturdays, Sundays and Holidays excepted. Such normal passenger elevator service, if furnished at other times, shall be optional with Landlord and shall never be deemed a continuing obligation. Landlord, however, shall provide limited passenger service daily at all times such normal passenger service is not furnished. Landlord shall provide limited freight elevator service at such times as Landlord shall determine.

**8.02 Government Restrictions.** Tenant agrees that compliance with any mandatory or voluntary energy conservation measures or other legal requirements instituted by any appropriate governmental authority shall not be considered a violation of any terms of this Lease and shall not entitle Tenant to terminate this Lease or require abatement or reduction of Rent hereunder.

**8.03 Metering.**

(a) Separate Metering. Tenant shall pay for the use of all electrical service to the Premises (other than the electrical service necessary for Landlord to fulfill its obligation to provide heating and air conditioning as provided herein) provided that Landlord can make satisfactory arrangements with the utility company supplying electricity to the Premises for separate metering and billing. Tenant shall be billed directly by such utility company and Tenant agrees to pay each bill promptly in accordance with its terms. In the event that for any reason Tenant cannot be billed directly, Landlord shall forward each bill received by it with respect to the Premises to Tenant and Tenant shall pay it promptly in accordance with its terms.

(b) Lack of Separate Metering. If the Premises cannot be separately metered for any reason, Tenant shall pay Landlord as Additional Rent, in monthly installments at the time prescribed for monthly installments of Rent, an amount, as estimated by Landlord from time to time, which Tenant would pay for such electricity if the same were separately metered to the Premises by the local electric utility company and billed to Tenant at such utility company's then current rates.

**8.04 Condenser Water.** Tenant shall pay Landlord, as Additional Rent, Landlord's standard charge for supplying condenser water for use at the Premises. As of the date of this Lease, Landlord's standard charge for condenser water is \$18.00 per ton per month, which charge is subject to increase as Landlord's costs in supplying condenser water increases.

**8.05 Energy Conservation.** Notwithstanding anything to the contrary in this Article 8 or elsewhere in this Lease, Landlord shall have the right to institute such policies, programs and measures as may be necessary or desirable, in Landlord's reasonable discretion, for the conservation and/or preservation of energy or energy related services, or as may be required to comply with any applicable codes, rules and regulations, whether mandatory or voluntary.

**8.06 Additional Services.** Landlord shall in no event be obligated to furnish any services or utilities, other than those specified in this Lease. If Landlord elects to furnish services or utilities requested by Tenant in addition to those specified in this Lease (including utility services at times other than those specified), Tenant shall pay to Landlord, Landlord's then prevailing rates for such services and utilities (the current rate for after hours HVAC service is \$30.00 per hour) within thirty (30) days after receipt of Landlord's invoices therefor. If Tenant shall fail to make any such payment, Landlord may, with ten (10) days' written notice to Tenant, and in addition to Landlord's other remedies under this Lease, discontinue any

or all of the additional services. Except as otherwise provided herein, no failure to furnish or discontinuance of any service pursuant to this Article 8 shall result in any liability of Landlord to Tenant or be deemed to be a constructive eviction or a disturbance of Tenant's use of the Premises.

**8.07 Interruption of Services.** Except for the limited abatement of Rent upon casualty or condemnation described below, Tenant agrees that Landlord shall not be liable in damages, by abatement of Rent or otherwise, for failure to furnish or delay in furnishing any service, or for any diminution in the quality or quantity thereof, when such failure or delay or diminution is occasioned, in whole or in part, by repairs, renewals, or improvements, by any strike, lockout or other labor trouble, by inability to secure electricity, gas or other fuel, or water, at the Building after reasonable effort so to do, by any accident or casualty whatsoever by act or default of Tenant or other parties, or by any cause beyond Landlord's reasonable control. Such failures or delays or diminution shall never be deemed to constitute an eviction or disturbance of Tenant's use and possession of the Premises or relieve Tenant from paying Rent or performing any of its obligations under this Lease. Notwithstanding anything to the contrary contained in this paragraph, if: (i) Landlord ceases to furnish any service in the Building for a period in excess of five (5) consecutive business days after Tenant provides written notice to Landlord of such cessation (the "Interruption Notice"); (ii) such cessation does not arise as a result of an act or omission of Tenant; (iii) such cessation is not caused by a casualty or condemnation (as more fully set forth below); (iv) the restoration of such service is reasonably within the control of Landlord; and (v) as a result of such cessation, the Premises or a material portion thereof, is rendered untenable and Tenant in fact ceases to use the Premises, or material portion thereof, then Tenant, as its sole remedy, shall be entitled to receive an abatement of Rent payable hereunder during the period beginning on the sixth (6th) consecutive business day of such cessation and ending on the day when the service in question has been restored. In the event the entire Premises has not been rendered untenable by the cessation in service, the amount of abatement that Tenant is entitled to receive shall be prorated based upon the percentage of the Premises so rendered untenable and not used by Tenant.

## **ARTICLE 9 LEASEHOLD IMPROVEMENTS; ALTERATIONS; SIGNAGE**

**9.01 Alterations.** Tenant shall not, without Landlord's prior written consent, permit any alteration, improvement, addition or installation in or to the Premises (all of which is collectively referred to as "Work"), including installation of telephone, computer or internal sound or paging systems or other similar systems, or the performance of any decorating, painting and other similar work in the Premises. In the event Landlord consents to any Work, Work shall be performed by contractors and subcontractors that meet the prior written approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. All Work shall comply with Landlord's reasonable requirements and Building standards, as well as any and all applicable municipal building codes and other applicable laws. Tenant shall pay the cost of preparation of the plans for the Work; all permit fees and the fees of said contractors and subcontractors. Except with respect to the Work described in the Work Letter, if any, Tenant shall pay to Landlord a construction management fee equal to five percent (5%) of the total cost of such Work. Before commencement of any Work or delivery of any materials into the Premises or the Building, Tenant shall furnish to Landlord, for its prior written approval, architectural plans and specifications certified by a licensed architect or engineer reasonably acceptable to Landlord, and such other documentation as Landlord shall reasonably request. Tenant agrees to hold Landlord, its beneficiaries and their respective agents, partners, officers, servants and employees forever harmless against all claims and liabilities of every kind, nature and description which may arise out of or in any way be connected with any such Work. At the request of Landlord, Tenant will deliver a written indemnity against claims or damages to tenants or occupants of any other premises affected by such Work. Tenant shall pay Landlord's reasonable costs of reviewing plans and materials submitted to Landlord for approval. Tenant shall pay the cost of all such Work and the cost of

decorating and altering the Premises and the Building occasioned by any such Work. Landlord shall have the right to require Tenant to deliver to Landlord cash or other security in an amount and form acceptable to Landlord to be held in escrow by Landlord to assure prompt payment for the cost of any such Work and to require Tenant's contractors to evidence workers compensation, general liability and other insurance coverage, as reasonably required by Landlord. Prior to the commencement of any work in or about the Premises, Tenant shall provide to Landlord a minimum of fifteen (15) days' prior written notice, post the Premises with a notice of non-responsibility in a form approved by Landlord, and shall take such other actions as are required to avail itself and Landlord of any statutory protections offered by the laws and statutes of Illinois. All alterations, improvements, additions and installations to or in the Premises at Landlord's election shall become part of the Premises at the time of installation.

**9.02 Tenant's Work.** In the event that Landlord permits Tenant to hire its own contractors for the performance of any Work, then in addition to the provisions of Section 9.01, the following shall apply: (i) prior to the commencement of the Work or the delivery of any materials to the Building, Tenant shall submit to Landlord for Landlord's approval, the names and addresses of all contractors, contracts, necessary permits and licenses, certificates of insurance (including, without limitation, Worker's Compensation, commercial general liability and adequacy of design insurance) and instruments of indemnification and waivers of lien against any and all claims, costs, expenses, damages and liabilities which may arise in connection with the Work, all in such form and amount as shall be satisfactory to Landlord; (ii) all such Work shall be done only by union contractors or mechanics approved by Landlord (which approval shall not be unreasonably withheld) and at such time and in such manner as Landlord may from time to time designate; (iii) upon completion of any Work, Tenant shall furnish Landlord with as-built plans, contractors' affidavits, full and final waivers of lien, receipted bills covering all labor and materials expended and used in connection with such Work, and (iv) all such Work shall comply with all insurance requirements, all laws, ordinances, rules and regulations of all governmental authorities, and all collective bargaining agreements applicable to the Building, and shall be done in a good and workmanlike manner and with the use of good grades of new materials. Without limitation to the generality of the foregoing, under no circumstances shall Tenant be allowed to access any risers, the roof, or any life-safety systems without the express written consent of Landlord, and Landlord may require that Tenant use Landlord's preferred contractor. At all times during the term of this Lease, Tenant shall ensure that all wiring and cabling that it installs within the Premises or Building complies with all provisions of local fire and safety codes, as well as with the National Electric Code. Further, upon the expiration or sooner termination of the Term, Tenant shall remove all wiring and cabling within the Premises and the Building (including the plenums, risers and rooftop) placed there by or at the direction of Tenant, unless excused in writing by Landlord. Without limitation to the remedies available to Landlord in the event that Tenant fails to comply with Tenant's cabling and wiring removal and disposal obligation, Tenant shall forfeit such sums from the Security Deposit (or otherwise pay to Landlord) an amount that Landlord reasonably believes necessary for the removal and disposal of any such wires and cabling.

**9.03 No Mechanic's Liens.** Without limitation of the provisions of Section 9.01, Tenant agrees not to suffer or permit any lien of any mechanic or materialman to be placed or filed against the Premises or the Building. In case any such lien shall be filed, Tenant shall immediately satisfy and release such lien of record, or, at Tenant's sole cost and expense, provide a lien and completion bond in an amount equal to one and one-half times the estimated cost of such improvements, to insure Landlord against any liability for mechanic's liens and to insure completion of the work. If Tenant shall fail to have such lien immediately satisfied and released of record, Landlord may, on behalf of Tenant, without being responsible for making any investigation as to the validity of such lien and without limiting or affecting any other remedies Landlord may have, pay the same and Tenant shall pay Landlord on demand the amount so paid by Landlord.

**9.04 Signage.** Landlord shall provide Building standard suite signage on multi-tenant floors as well as one Building standard directory strip on the skyway level at its sole cost upon initial occupancy. Subsequent changes shall be at the sole expense of Tenant and subject to Landlord's review and approval, not to be unreasonably withheld.

**9.05 Removal of Tenant's Property.** Subject to the rules and regulations, Tenant, at any time Tenant is not in default hereunder, may remove from the Premises its movable trade fixtures and personal property. Tenant shall repair any damage to the Premises caused by such removal, failing which Landlord may remove the same and repair the Premises and Tenant shall pay the cost thereof to Landlord on demand.

## **ARTICLE 10 CONDITION OF PREMISES**

**10.01 Premises Condition.** No agreements or representations, except such as are expressly contained herein and in the Work Letter attached hereto, if any, have been made to Tenant respecting the condition of the Premises. By taking possession, Tenant conclusively waives all claims relating to the condition of the Premises and accepts the Premises as being free from defects and in good, clean and sanitary order, condition and repair, and agrees to keep the Premises in such condition, ordinary wear and tear excepted.

**10.02 Care of the Premises.** Subject to Article 12, below, Tenant shall, at its own expense, keep the Premises clean and safe and in as good repair and condition as when all of the work described in the Work Letter was completed (or as to subsequent Work, as and when such Work was completed, ordinary wear and tear excepted) and shall promptly and adequately repair all damage to the Premises and the Building caused by Tenant or any of its employees, agents, guests or invitees, including replacing or repairing all damaged or broken glass, fixtures and appurtenances resulting from any such damage, under the supervision and with the approval of Landlord. If Tenant does not promptly and adequately make such repairs or replacements, Landlord may, but need not, make such repairs and replacements and Tenant shall pay Landlord the cost thereof on demand. Tenant, at its sole expense, shall comply with all laws, orders and regulations of federal, state, county and municipal authorities and with any directive of any public officer or officers pursuant to law which shall impose any violation, order or duty upon Landlord or Tenant with respect to the Premises or the use or occupation thereof. Tenant shall not do or permit to be done any act or thing in, on or about the Premises or store anything therein which (i) will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated, (ii) is not appropriate to the permitted use of the Premises, (iii) will in any way increase the existing rate of, or adversely affect, or cause a cancellation of, any fire or other insurance policies covering the Building or any of its contents, or (iv) constitutes a nuisance or will disturb or interfere with the quiet enjoyment by other tenants of their premises.

**10.03 Care of the Building.** Landlord, subject to Articles 12 and 14, shall be obligated only to maintain and make necessary repairs to the structural elements of the Building, the public corridors, public washrooms and lobby of the Building, the exterior windows of the Building, and subject to the provisions of Articles 8, 12 and 14, the electrical, plumbing, heating, ventilation and air conditioning systems of the Building.

## **ARTICLE 11 SURRENDER OF THE PREMISES**

**11.01 Surrender.** At the termination of this Lease, by lapse of time or otherwise, Tenant shall surrender possession of the Premises to Landlord and deliver all keys to the Premises and all locks therein to Landlord and make known to Landlord the combination of all combination locks in the Premises, and shall, subject to Articles 12 and 13, return the Premises and all equipment and fixtures of Landlord therein to Landlord in broom clean condition and in as good condition as when Tenant originally took possession, ordinary wear and tear excepted, failing which Landlord may restore the Premises and such equipment and fixtures to such condition and Tenant shall pay the cost thereof to Landlord on demand.

**11.02 Removal of Fixtures.** Upon termination of this Lease or of Tenant's right to possession of the Premises, by lapse of time or otherwise, all installations, additions, partitions, hardware, light fixtures, floor coverings, non-trade fixtures and improvements, temporary or permanent, whether placed there by Tenant or Landlord, shall be Landlord's property and shall remain upon the Premises, all without compensation, allowance or credit to Tenant; provided, however, that if prior to any such termination or within thirty (30) days thereafter Landlord so directs by notice, Tenant, at Tenant's sole expense, shall promptly remove such of the installations, additions, partitions, hardware, light fixtures, floor coverings, non-trade fixtures and improvements in or to the Premises by or on behalf of Tenant as are designated in such notice and repair any damage to the Premises caused by such removal, failing which Landlord may remove the same and repair the Premises, and Tenant shall pay the cost thereof to Landlord on demand.

**11.03 Survival.** All obligations of Tenant under this Article 11 shall survive the termination of this Lease, by lapse of time or otherwise.

## **ARTICLE 12 DAMAGE OR DESTRUCTION**

**12.01 Minor Insured Damage.** In the event the Premises or the Building, or any portion thereof, is damaged or destroyed by any casualty that is covered by the insurance maintained by Landlord, then Landlord shall rebuild, repair and restore the damaged portion thereof, provided that (i) the amount of insurance proceeds available to Landlord equals or exceeds the cost of such rebuilding, restoration and repair, (ii) such rebuilding, restoration and repair can be completed within one hundred eighty (180) days after the work commences in the opinion of a registered architect or engineer appointed by Landlord, (iii) the damage or destruction has occurred more than twelve (12) months before the expiration of the Term and (iv) such rebuilding, restoration, or repair is then permitted, under applicable governmental laws, rules and regulations, to be done in such a manner as to return the damaged portion thereof to substantially its condition immediately prior to the damage or destruction, including, without limitation, the same net rentable floor area.

To the extent that insurance proceeds must be paid to a mortgagee or beneficiary under, or must be applied to reduce any indebtedness secured by, a mortgage or deed of trust encumbering the Premises or Building, such proceeds, for the purposes of this subsection, shall be deemed not available to Landlord unless such mortgagee or beneficiary permits Landlord to use such proceeds for the rebuilding, restoration, and repair of the damaged portion thereof. Notwithstanding the foregoing, Landlord shall have no obligation to repair any damage to, or to replace any of, Tenant's personal property, furnishings, trade fixtures, equipment or other such property or effects of Tenant.

**12.02 Major or Uninsured Damage.** In the event the Premises or the Building, or any portion thereof, is damaged or destroyed by any casualty to the extent that Landlord is not obligated, under Section 12.01 above, to rebuild, repair or restore the damaged portion thereof, then Landlord shall within sixty (60) days after such damage or destruction, notify Tenant of its election, at its option, to either (i) rebuild, restore and repair the damaged portions thereof, in which case Landlord's notice shall specify the time period within which Landlord estimates such repairs or restoration can be completed; or (ii) terminate this Lease effective as



of the date the damage or destruction occurred. If Landlord does not give Tenant written notice within sixty (60) days after the damage or destruction occurs of its election to rebuild or restore and repair the damaged portions thereof, Landlord shall be deemed to have elected to terminate this Lease. Notwithstanding the foregoing, if Landlord does not elect to terminate this Lease, Tenant may terminate this Lease if either (i) Landlord notifies Tenant that such repair or restoration cannot be completed within three hundred and sixty-five (365) days after the work is commenced or (ii) the damage or destruction occurs within the last twelve (12) months of the Term, unless Tenant's actions or omissions are the cause of the damage. If Tenant has the right to terminate the Lease in accordance with the above provisions, Tenant may so elect by written notice to Landlord which must be given within fifteen (15) days after Tenant's receipt of Landlord's notice of its election to rebuild. Upon Landlord's receipt of such notice, the termination shall be effective as of the date the destruction occurred.

**12.03 Abatement of Rent.** There shall be an abatement of rent by reason of damage to or destruction of the Premises or the Building, or any portion thereof, to the extent that (i) Landlord receives insurance proceeds for loss of rental income attributable to the Premises and (ii) the floor area of the Premises cannot be reasonably used by Tenant for conduct of its business, in which event the Base Rent shall abate proportionately according to (i) or (ii) above, as appropriate, commencing on the date that the damage to or destruction of the Premises or Building has occurred, and except that, if Landlord or Tenant elects to terminate this Lease as provided in Paragraph 12.02 above, no obligation shall accrue under this Lease after such termination. Notwithstanding the provisions of this Section, if any such damage is due to the fault or neglect of Tenant, any person claiming through or under Tenant, or any of their employees, suppliers, shippers, servants, customers or invitees, then there shall be no abatement of rent by reason of such damage, unless and until Landlord is reimbursed for all of such abatement pursuant to any rental insurance policy that Landlord may, in its sole discretion, elect to carry. Tenant's right to terminate this Lease in the event of any damage or destruction to the Premises or Building, is governed by the terms of this Section and therefore Tenant hereby expressly waives the provisions of any and all laws, whether now or hereafter in force, and whether created by ordinance, statute, judicial decision, administrative rules or regulations, or otherwise, that would cause this Lease to be terminated, or give Tenant a right to terminate this Lease, upon any damage to or destruction of the Premises or Building that occurs.

**12.04 Waiver.** Tenant waives the provisions of any present or future laws or case decisions regarding damage, destruction, repair or restoration of the Premises and/or Building and agrees that the provisions of this Article 12 shall control to the same effect. Upon completion of such repair or restoration, Tenant shall promptly refixture the Premises substantially to the condition they were in prior to the casualty and shall reopen for business if closed by the casualty.

## **ARTICLE 13 EMINENT DOMAIN**

**13.01 Condemnation of the Premises.** In the event that the whole or a substantial part of the Premises shall be condemned or taken in any manner for any public or quasi-public use (or sold under threat of such taking), and as a result thereof, the remainder of the Premises cannot be used for the same purpose as prior to such taking, the Lease shall terminate as of the date possession is taken; provided, however, if Landlord elects to make comparable space in the Building available to Tenant under the same Rent and terms as herein provided, Tenant shall accept such space and this Lease shall then apply to such space.

**13.02 Partial Condemnation of the Premises.** If less than a substantial part of the Premises shall be so condemned or taken (or sold under threat thereof) and after such taking the Premises can be used for the same purposes as prior thereto, the Lease shall cease only as to the part so taken as of the date possession shall

be taken by such authority, and Tenant shall pay full Rent up to that date (with appropriate refund by Landlord of such Rent attributable to the part so taken as may have been paid in advance for any period subsequent to the date possession is taken) and thereafter Base Rent and Adjustments shall be equitably adjusted to reflect the reduction in the Premises by reason of such taking, Landlord shall, at its expense, make all necessary repairs or alterations to the Building so as to constitute the remaining Premises a complete architectural unit, provided that Landlord shall not be obligated to undertake any such repairs or alterations if the cost thereof exceeds the award resulting from such taking.

**13.03 Building Condemnation.** If part of the Building shall be so condemned or taken (or sold under threat thereof), or if any adjacent property or street shall be condemned or improved by a public or quasi-public authority in such a manner as to alter the use of any part of the Premises or the Building and, in the opinion of Landlord, the Building or any part thereof should be altered, demolished or restored in such a way as to materially alter the Premises, Landlord may terminate this Lease by notifying Tenant of such termination within sixty (60) days following the taking of possession by such public or quasi-public authority, and this Lease shall expire on the date specified in the notice of termination, which shall be not less than sixty (60) days after the giving of such notice, as fully and completely as if such date were the date hereinbefore set forth as the expiration of the Term, and the Base Rent and Adjustments hereunder shall be apportioned as of such date.

**13.04 Award.** Landlord shall be entitled to receive the entire award, including the damages for the property taken and damages to the remainder, with respect to any condemnation proceedings affecting the Building. Tenant agrees not to make any claim against Landlord or the condemning authority for any portion of such award or compensation, whether attributable to the value of any unexpired portion of the Term, the loss of profits, goodwill, leasehold improvements or otherwise, Tenant irrevocably assigning any and all such claims to Landlord.

## **ARTICLE 14 RELEASE, WAIVER AND INDEMNIFICATION**

**14.01 Release.** To the extent not expressly prohibited by law, Tenant releases Landlord, its beneficiaries, mortgagees, stockholders, agents (including, without limitation, management agents), partners, officers, servants and employees, and their respective agents, partners, officers, servants and employees (“Related Parties”), from and waives all claims for damages to person or property sustained by Tenant or by any occupant of the Premises or the Building, or by any other person, resulting directly or indirectly from fire or other casualty, any existing or future condition, defect, matter or thing in the Premises, the Building or any part thereof, or from any equipment or appurtenance therein, or from any accident in or about the Building, or from any act of neglect of any tenant or other occupant of the Building or of any other person, other than Landlord or its agents.

**14.02 Tenant’s Indemnification.** To the extent not expressly prohibited by law, Tenant agrees to hold harmless and indemnify Landlord and Landlord’s Related Parties from and against claims and liabilities, including reasonable attorneys’ fees, (i) for injuries to all persons and damage to or theft or misappropriation or loss of property occurring in or about the Premises arising from Tenant’s occupancy of the Premises or the conduct of its business, or from activity, work, or thing done, permitted or suffered by Tenant, its employees, agents, guests or invitees in or about the Premises and the Building, or (ii) from any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed pursuant to the terms of this Lease, or (iii) due to any other act or omission of Tenant, its agents, employees, guests or invitees, or (iv) if any person, not a party to this Lease, shall institute an action against Tenant in which Landlord or Landlord’s Related Parties shall be made a party. Landlord may, at its option, repair such

damage or replace such loss, and Tenant shall upon demand by Landlord reimburse Landlord for all costs of such repairs, replacement and damages in excess of amounts, if any, paid to Landlord under insurance covering such damages. In the event any action or proceeding is brought against Landlord or Landlord's Related Parties by reason of any such claims, then, upon notice from Landlord, Tenant covenants to defend such action or proceeding by counsel reasonably satisfactory to Landlord.

**14.03 Tenant's Fault.** If any damage to the Building or any equipment or appurtenance therein, whether belonging to Landlord or to other tenants in the Building, results from any act or neglect of Tenant, its agents, employees, guests or invitees, Tenant shall be liable therefor and Landlord may, at Landlord's option repair such damage, and Tenant shall, upon demand by Landlord, reimburse Landlord the total cost of such repairs and damages to the Building. If Landlord elects not to repair such damage, Tenant shall promptly repair such damages at its own cost and in accordance with the provisions of Sections 9.02 and 9.03 as if such repair constituted Work under such Sections. If Tenant occupies space in which there is exterior or interior glass, then Tenant shall be responsible for the damage, breakage or repair of such glass, except to the extent such loss or damage is recoverable under Landlord's insurance, if any.

**14.04 Landlord's Indemnification.** Subject to applicable waivers of subrogation, releases, and limitations on liability, Landlord shall defend and hold Tenant and its officers, directors, partners and employees harmless from and against all liabilities, losses, demands, actions, expenses or claims, including reasonable attorneys' fees and court costs but excluding consequential damages, for injury to or death of any person or for damage to any property to the extent such are determined to be caused by the gross negligence or willful misconduct of Landlord, its agents, employees, or contractors in or about the Premises or Building. None of the events or conditions set forth in this paragraph shall be deemed a constructive or actual eviction or entitle Tenant to any abatement or reduction of Rent.

**14.05 Limitation on Landlord's Liability.** Tenant agrees that in the event Tenant shall have any claim against Landlord or Landlord's Related Parties under this Lease arising out of the subject matter of this Lease, Tenant's sole recourse shall be against Landlord's interest in the Building, for the satisfaction of any claim, judgment or decree requiring the payment of money by Landlord or Landlord's Related Parties as a result of a breach hereof or otherwise in connection with this Lease, and no other property or assets of Landlord, Landlord's Related Parties or their successors or assigns, shall be subject to the levy, execution or other enforcement procedure for the satisfaction of any such claim, judgment, injunction or decree. Under no circumstances shall Landlord be liable for, and Tenant hereby waives, consequential, punitive, special, or exemplary damages, or any damages similar thereto.

## **ARTICLE 15 INSURANCE; WAIVER OF SUBROGATION**

**15.01 Tenant's Liability Insurance.** Tenant shall procure and maintain at its own cost an occurrence form commercial general liability policy with such limits as may be reasonably requested by Landlord from time to time (which as of the date hereof shall be not less than \$3,000,000 under a combined single limit of coverage, \$5,000,000 aggregate and \$5,000,000 umbrella) insuring Landlord, Landlord's Related Parties and Tenant from claims, demands or actions for injury to or death of any person or persons and for damage to property made by, or on behalf of, any person or persons, firm or corporation, arising from, related to or connected with the Premises. The insurance shall name Landlord and Landlord's Managing Agent (and, if requested by Landlord or any mortgagee, include any mortgagee) and their respective agents and employees as additional insureds. Tenant's insurance shall be primary to Landlord's insurance and Landlord's insurance shall be excess to and not contribute with Tenant's insurance. Certificates of insurance, copies of additional insured endorsements evidencing the coverage required and satisfactory evidence of

payment of the premium shall be provided to Landlord prior to the commencement of the Term and each renewal thereof not less than thirty (30) days prior to the expiration of the policy.

**15.02 Tenant's Property Insurance.** Tenant shall carry insurance of the type typically referred to as "all risks" insurance that is at least as broad in scope as the ISO Causes of Loss – Special Form (CP 10 30) covering the full replacement cost of alterations, betterments and tenant improvements in the Premises and its interest in all its personal property and trade fixtures located on or within the Building, including, without limitation, its office furniture, equipment and supplies. Tenant shall also carry business interruption insurance in an amount reasonably acceptable to Landlord.

**15.03 Additional Coverage.** Tenant shall also carry a policy of Workers' Compensation insurance that satisfies all legal requirements of the State in which the Premises is located. Additionally, Landlord may require that Tenant carry other forms of insurance; provided that the same are commercially reasonable and in keeping with the insurance requirements of owners of similar properties in the applicable submarket in which the Premises is located.

**15.04 Increase in Coverage.** Landlord may, by notice to Tenant, require an increase in coverage if, in the reasonable opinion of Landlord, the insurance specified in this Article 15 is no longer considered adequate to maintain a reasonable level of insurance protection. If Tenant fails to maintain and secure the insurance coverage required under this Article then Landlord shall have, in addition to all other remedies provided herein and by law, the right, but not the obligation, to procure and maintain such insurance, the cost of which shall be due and payable to Landlord by Tenant within ten (10) business days after written demand.

**15.05 Waiver of Subrogation.** Notwithstanding any other provision of this Lease to the contrary, Landlord and Tenant each hereby waive all rights of action against the other for loss or damage to the Premises, or the Building and property of Landlord and Tenant in the Building, which loss or damage is insured or is required pursuant to this Lease to be insured by valid and collectible insurance policies to the extent of the proceeds collected or collectible under such insurance policies, subject to the condition that this waiver shall be effective only when the waiver is permitted by such insurance policies or when, by the use of good faith effort, such waiver could have been permitted in the applicable insurance policies.

**15.06 Acceptable Insurers.** All insurance policies shall be in forms reasonably satisfactory to Landlord and any mortgagee of the building and placed with insurers admitted in the State where the property is located. All insurance shall be issued by insurers with an A. M. Best rating of A-, VII or better.

**15.07 Cancellation.** The aforesaid insurance policies shall provide at least thirty (30) days' prior written notice of cancellation (unless such cancellation is due to non-payment of premiums, in which event ten (10) days' prior written notice shall be required). If Tenant receives notice of cancellation, Tenant shall notify the Landlord and Landlord's Management Agent in writing within five (5) business days of receiving such notice.

**15.08 Increased Costs.** Tenant shall not conduct or permit to be conducted by its employees, agents, guests or invitees any activity, or place any equipment in or about the Premises or the Building that will in any way increase the cost of fire insurance or other insurance on the Building. If any increase in the cost of fire insurance or other insurance is stated by any insurance company or by the applicable Insurance Rating Bureau, if any, to be due to any activity or equipment of Tenant in or about the Premises or the Building, such statement shall be conclusive evidence that the increase in such cost is due to such activity or equipment and, as a result thereof, Tenant shall be liable for the amount of such increase. Tenant shall reimburse Landlord for such amount upon written demand from Landlord and any such sum shall be

considered additional Rent payable hereunder. Tenant, at its sole expense, shall comply with any and all requirements of any insurance organization or company necessary for the maintenance of reasonable fire and public liability insurance covering the Premises and the Building.

## **ARTICLE 16 LANDLORD'S RIGHT OF ACCESS**

**16.01 Entry into Premises.** Landlord and its contractors and representatives shall have the right to enter the Premises at all reasonable times to perform janitorial and cleaning services and, after verbal notice (except in the case of emergencies), to inspect the same, to make repairs, alterations and improvements, to maintain the Premises and the Building, specifically including, but without limiting the generality of the foregoing, to make repairs, additions or alterations within the Premises to mechanical, electrical and other facilities serving other premises in the Building, to post such reasonable notices as Landlord may desire to protect its rights, to exhibit the Premises to mortgagees and purchasers, and, during the one hundred eighty (180) days prior to the expiration of the Term, to exhibit the Premises to prospective tenants. In the event the Premises' are vacant, Landlord may place upon the doors or in the windows of the Premises any usual or ordinary "To Let," "To Lease," or "For Rent" signs. Tenant shall permit Landlord to erect, use, maintain and repair pipes, cables, conduit, plumbing, vents and wires, in, to and through the Premises to the extent Landlord may now or hereafter deem necessary or appropriate for the proper operation, maintenance and repair of the Building and any portion of the Premises.

**16.02 Landlord's Repairs.** Landlord shall also have the right to take all material into the Premises that may be required for the purposes set forth in the foregoing Section 16.01 without the same constituting a constructive eviction of Tenant, in whole or in part, and Rent shall not abate (except as provided in Article 12) while said repairs, alterations, improvements or additions are being made, by reason of loss or interruption of business of Tenant, or otherwise. If Tenant shall not be personally present to open and permit entry into the Premises, at any time, when for any reason entry therein shall be necessary or desirable, Landlord or Landlord's agents may enter the Premises by a master key, or may forcibly enter the same, without rendering Landlord or such agents liable therefor (if during such entry Landlord or Landlord's agents shall accord reasonable care to Tenant's property), and without in any manner affecting the obligations and covenants of this Lease.

**16.03 Minimize Interference.** In exercising its rights under this Article 16, Landlord will use reasonable efforts to minimize any interference with Tenant's use or occupancy of the Premises, provided that Landlord will not be obligated to provide overtime labor or perform work after regular Building hours.

## **ARTICLE 17 RIGHTS RESERVED TO LANDLORD**

Landlord shall have the following rights exercisable without notice and without liability to Tenant for damage or injury to property, person or business (all claim's for damage being hereby waived and released by Tenant) and without effecting an eviction or disturbance of Tenant's use or possession or giving rise to any claim for set-offs or abatement of Rent:

- (a) To change the name or street address of the Building or the suite number of the Premises;
- (b) To install and maintain signs on the exterior and interior of the Building;
- (c) To designate all sources furnishing sign painting and lettering, towels, coffee cart service, vending machines or toilet supplies used or consumed on the Premises and the Building;
- (d) To have pass keys to the Premises;

(e) To grant to anyone the exclusive right to conduct any business or render any service in the Building, provided such exclusive right shall not operate to exclude Tenant from the use expressly permitted by this Lease;

(f) To make repairs, additions or alterations to the Building which may change, eliminate or remove common areas, parking areas, if any, or the method of ingress to or egress from the Building and such areas, to convert common areas into leasable areas, or otherwise alter, repair or reconstruct the common areas or change the use thereof, to change the arrangement or location of entrances or passageways, doors and doorways, corridors, elevators, stairs, toilets or other public parts of the Building, and to close entrances, doors, corridors, elevators, plaza or other facilities, and to perform any acts related to the safety, protection, preservation, reletting, sale or improvement of the Premises or the Building;

(g) To have access to all mail chutes or boxes according to the rules of the United States Postal Service;

(h) To require all persons entering or leaving the Building during such hours as Landlord may from time to time reasonably determine to identify themselves to security personnel by registration or otherwise, and to establish their right to enter or leave and to exclude or expel any peddler, solicitor or beggar at any time from the Premises or the Building; and

(i) To close the Building at 6:00 p.m. on weekdays, 1:00 p.m. on Saturdays, and all day on Sundays and Holidays, or at such other reasonable times as Landlord may determine, subject, however, to Tenant's right to admittance under such regulations as shall be prescribed from time to time by Landlord in its sole discretion.

#### **ARTICLE 18 ABANDONMENT**

Tenant shall not abandon the Premises at any time during the Term. Any re-entry by Landlord following abandonment by Tenant shall not, unless Landlord so elects in a written notice to Tenant, constitute or be deemed to constitute acceptance by Landlord of a surrender of this Lease, but rather, upon such abandonment, Tenant's right to possession of the Premises shall cease, but Tenant shall remain liable for all of its obligations under this Lease. Without limitation of the foregoing, upon any such abandonment, Landlord shall have the remedies provided for in Article 21 below. If Tenant shall abandon or surrender the Premises or be dispossessed by process of law or otherwise during the Term or at termination of the Term, any personal property left on the Premises shall be deemed to be abandoned at the option of Landlord, and title thereto shall pass to Landlord under this Lease as a bill of sale. For purposes of this Lease, and at the option of Landlord, the Premises shall be deemed vacated or abandoned if Tenant, or an agent or employee of Tenant, shall not have conducted Tenant's ordinary business upon the Premises during any period of fifteen (15) consecutive days or shall have transferred all or substantially all of its personnel, furniture and fixtures from the Premises without replacement.

#### **ARTICLE 19 TRANSFER OF LANDLORD'S INTEREST**

As used in this Lease, the term "Landlord" means only the current owner of the fee title to the Building or the leasehold estate under a ground lease of the Building at the time in question. Each Landlord is obligated to perform the obligations of Landlord under this Lease only during the time such Landlord owns such interest or title. Any Landlord who transfers its title or interest in the Building is relieved of all liabilities for the obligations of Landlord under this Lease to be performed on or after the date of transfer. Tenant agrees to look solely to the transferee with respect to all matters in connection with this Lease.

#### **ARTICLE 20**

## **TRANSFER OF TENANT'S INTEREST**

**20.01 Landlord's Consent.** Tenant shall not sell, assign, encumber, mortgage or transfer this Lease or any interest therein, sublet or permit the occupancy or use by others of the Premises or any part thereof, or allow any transfer hereof of any lien upon Tenant's interest by operation of law or otherwise (collectively, a "Transfer") without the prior written consent of Landlord, which consent shall not be unreasonably withheld. Without limiting Landlord's right to withhold such consent, the withholding of such consent may be based upon, but not limited to, the following:

- (a) In the reasonable judgment of Landlord, the subtenant or assignee (A) is, of a character or engaged in a business or proposes to use the Premises in a manner which is not in keeping with the standards of Landlord for the Building or (B) has an unfavorable reputation or credit standing;
- (b) Either the area of the Premises to be sublet or the remaining area of the Premises is not regular in shape with appropriate means of ingress or egress suitable for normal renting purposes;
- (c) Tenant is in Default under this Lease;
- (d) The proposed assignee or subtenant or any person or entity which directly or indirectly controls, is controlled by or is under common control with the proposed assignee or subtenant, is then an occupant or tenant of any other space in the Building;
- (e) The proposed sublessee or assignee is a person or entity with whom Landlord is then negotiating to lease space in the Building; or
- (f) The proposed assignment or sublease instrument does not have the substance or form which is reasonably acceptable to Landlord.

If Landlord consents to such sublet or assignment, such consent shall be expressly contingent upon Tenant's payment to Landlord, as Rent, Landlord's costs and expenses incurred in connection therewith, including, but not limited to, reasonable attorney's fees and Landlord's construction supervision fee, if applicable. Any Transfer which is not in compliance with the provisions of this Article 20 shall, at the option of Landlord, be void and of no force or effect.

**20.02 Notice to Landlord.** Tenant shall provide written notice of the proposed assignee, sublettee or transferee, as applicable, which notice shall provide Landlord with (i) the name and address of the proposed subtenant, assignee, pledgee, mortgagee or transferee, (ii) a reasonably detailed description of such person or entity's business, (iii) detailed financial references for such person or entity, (iv) a true and complete copy of the proposed sublease, assignment, pledge, mortgage or other conveyance and all related documentation, and (v) such other information as Landlord may reasonably require.

**20.03 Landlord's Right of Recapture.** Tenant shall, by written notice in the form specified in the following sentence, advise Landlord of Tenant's intention on a stated date (which shall not be less than thirty (30) days after date of Tenant's notice) to sublet, assign, mortgage or otherwise Transfer any part or all of the Premises or its interest therein for the balance or any part of the Term, and, in such event, Landlord shall have the right, to be exercised by giving written notice to Tenant within ten (10) business days after receipt of Tenant's notice, to recapture the space described in Tenant's notice and such recapture notice shall, if given, cancel and terminate this Lease with respect to the space therein described as of the date stated in Tenant's notice. If Tenant's notice shall cover all of the space hereby demised, and Landlord shall elect to give the aforesaid recapture notice with respect thereto, then the Term shall expire and end on the date stated in Tenant's notice as fully and completely as if that date had been herein definitely fixed for the expiration of the Term. If, however, this Lease is terminated pursuant to the foregoing with respect to less than the entire Premises, the Base Rent and Adjustments then in effect shall be adjusted on the basis of the number of rentable square feet retained by Tenant in proportion to the original Rentable Area of the Premises, and this

Lease as so amended shall continue thereafter in full force and effect. In such event, Tenant shall pay the cost of erecting demising walls and public corridors and making other required modifications to physically separate the portion of the Premises remaining subject to this Lease from the rest of the Premises. If Landlord, upon receiving Tenant's notice that it intends to sublet or assign any such space, shall not exercise its right to recapture the space described in Tenant's notice, Landlord will, as hereinabove provided, determine whether to approve Tenant's request to sublet or assign the space covered by its notice.

**20.04 Excess Rent.** If Tenant individually, or as debtor or debtor in possession or if a trustee in bankruptcy acting on behalf of Tenant pursuant to the Bankruptcy Code, 11 U.S.C. 101 et seq., shall sublet or assign the Premises or any part thereof or assign any interest in this Lease at a rental rate (or additional consideration) in excess of the then current Base Rent and Adjustments per rentable square foot, said excess Rent (or additional consideration) shall be and become the property of Landlord and shall be paid to Landlord as it is received by Tenant, less Tenant's reasonable brokerage (excluding commissions paid to brokers who are Tenant's affiliates), legal and other expenses ("Tenant's Costs") incurred in connection with such assignment or, in the case of a sublease, less the monthly pro rata share of such Tenant's Costs as determined by dividing such Tenant's Costs by the number of months in the term of such sublease. If Tenant shall sublet the Premises or any part thereof, Tenant shall be responsible for all actions and neglect of the subtenant and its officers, partners, employees, agents, guests and invitees as if such subtenant and such persons were employees of Tenant. Nothing in this Section shall be construed to relieve Tenant from the obligation to obtain Landlord's prior written consent to any proposed sublease.

**20.05 Included Transfers.** If Tenant is a partnership, a withdrawal or change, whether voluntary, involuntary or by operation of law or in one or more transactions, of partners owning a controlling interest in Tenant shall be deemed a voluntary assignment of this Lease and subject to the provisions of this Article 20. If Tenant is a corporation, any dissolution, merger, consolidation or other reorganization of Tenant, or the sale, transfer or redemption of a controlling interest of the capital stock of Tenant in one or more transactions, shall be deemed a voluntary assignment of this Lease and subject to the provisions of this Article 20. However, the preceding sentence shall not apply to corporations the stock of which is traded through a national or regional exchange or over-the-counter. Neither this Lease nor any interest therein nor any estate created thereby shall pass by operation of law or otherwise to any trustee, custodian or receiver in bankruptcy of Tenant or any assignee for the assignment of the benefit of creditors of Tenant.

**20.06 Marketing.** Tenant hereby agrees to list the Premises (or portion thereof) for subleasing or assignment through a broker or real estate agent designated by Landlord and no other broker or real estate agent.

**20.07 Options.** Tenant acknowledges and agrees that any and all options granted under this Lease, if any (including, without limitation, options regarding termination, renewal, extension, expansion, offer and/or refusal), shall be deemed to be personal to Tenant and if Tenant subleases, assigns or otherwise transfers any interest hereunder prior to the exercise of such option, such option shall lapse and be of no further force or effect.

## **ARTICLE 21 DEFAULT; LANDLORD'S RIGHTS AND REMEDIES**

**21.01 Default.** The occurrence of any one or more of the following matters constitutes a default ("Default") by Tenant under this Lease:



- (a) Failure by Tenant to pay, within five (5) days after the due date, any Rent or any other amounts due and payable by Tenant under this Lease;
- (b) Failure by Tenant to observe or perform any of the covenants in this Lease in respect to assignment and subletting;
- (c) Abandonment or vacation of the Premises as prohibited in Article 18;
- (d) Failure by Tenant to cure forthwith, after notice thereof from Landlord or another tenant acquiring knowledge thereof, any hazardous condition that Tenant has created in violation of law or of this Lease;
- (e) Failure by Tenant to observe or perform any other covenant, agreement, condition or provision of this Lease, if such failure shall continue for fifteen (15) days after written notice thereof to Tenant by Landlord;
- (f) The levy upon execution of the attachment by legal process of the leasehold interest of Tenant, or the filing or creation of a lien in respect of such leasehold interest;
- (g) Tenant or any guarantor of this Lease becomes insolvent or bankrupt or admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, or applies for or consents to the appointment of a trustee or receiver for itself or for all or a part of its property;
- (h) Proceedings for the appointment of a trustee, custodian or receiver of Tenant or any guarantor of this Lease or for all or a part of Tenant's or such guarantor's property are filed against Tenant or such guarantor and are not dismissed within thirty (30) days;
- (i) Proceedings in bankruptcy, or other proceedings for relief under any law for the relief of debtors, are instituted by or against Tenant or any guarantor of this Lease, and, if instituted against Tenant or such guarantor, are allowed against either or are consented to by either or are not dismissed within sixty (60) days thereof; and
- (j) Tenant shall repeatedly default in the timely payment of Rent or any other charges required to be paid, or shall repeatedly default in keeping, observing or performing any other covenant, agreement, condition or provision of this Lease, whether or not Tenant shall timely cure any such payment or other default. For the purposes of this subsection, the occurrence of similar defaults three (3) times during any twelve (12) month period shall constitute a repeated default.

Any notice periods provided for under this Article 21.01 shall run concurrently with any statutory notice periods, and any notice given hereunder may be given simultaneously with or incorporated into any such statutory notice.

**21.02 Landlord's Remedies.** If a Default occurs, Landlord shall have the following rights and remedies, which shall be distinct, separate and cumulative, and which may be exercised by Landlord concurrently or consecutively in any combination and which shall not operate to exclude or deprive Landlord of any other right or remedy which Landlord may have at law or in equity:

(a) Landlord may terminate this Lease by giving to Tenant notice of Landlord's intention to do so, in which event the Term shall end, and all right, title and interest of Tenant hereunder shall expire, on the date stated in such notice;

(b) Landlord may terminate the right of Tenant to possession of the Premises by any lawful means, without terminating this Lease. In such event, Tenant's obligations under this Lease shall continue in full force and effect and Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default, not limited to those set forth herein; and

(c) Landlord may enforce the provisions of this Lease and may enforce and protect the rights of Landlord hereunder by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy, including injunctive relief and recovery of all moneys due or to become due from Tenant under any of the provisions of this Lease.

**21.03 Surrender of Possession.** If Landlord exercises either of the remedies provided for in subparagraphs (a) and (b) of Article 21.02, Tenant shall surrender possession and vacate the Premises immediately and deliver possession thereof to Landlord, and Landlord may then, or at any time thereafter, re-enter and take complete and peaceful possession of the Premises, full and complete license so to do being granted to Landlord, and Landlord may remove all property therefrom, without being deemed in any manner guilty of trespass, eviction or forcible entry and detainer and without relinquishing Landlord's right to Rent or any other right given to Landlord hereunder or by operation of law.

**21.04 Damages.** If Landlord terminates the right of Tenant to possession of the Premises without terminating this Lease, such termination of possession shall not release Tenant, in whole or in part, from Tenant's obligation to pay the Rent hereunder for the full stated Term, and Landlord shall have the right to the immediate recovery of all such amounts. Alternatively, at Landlord's option, Landlord shall have the right, from time to time, to recover from Tenant, and Tenant shall remain liable for, all Base Rent and Adjustments and any other sums then due under this Lease during the period from the date of such notice or termination of possession to the end of the Term. Landlord may file suit from time to time to recover any such sums and no suit or recovery by Landlord of any such sums or portion thereof shall be a defense to any subsequent suit brought for any other sums due under this Lease. Alternatively, if Landlord elects to terminate this Lease, Landlord shall be entitled to recover from Tenant all Base Rent and Adjustments accrued and unpaid for the period up to and including such termination date, as well as all other additional sums payable by Tenant hereunder. In addition, Landlord shall be entitled to recover, as damages for loss of the benefit of its bargain and not as a penalty, the sum of (x) the unamortized cost to Landlord, computed and determined in accordance with generally accepted accounting principles, of any tenant improvements provided by Landlord at its expense, (y) the aggregate sum which at the time of such termination represents the excess, if any, or the present value of the aggregate Base Rent and Adjustments (as reasonably estimated by Landlord) for the remainder of the Term over the then present value of the then aggregate fair rental value of the Premises for the balance of the Term, immediately prior to such termination, such present worth to be computed in each case on the basis of a six percent (6%) per annum discount from the respective dates upon which rentals would have been payable hereunder had the Term not been terminated, and (z) any damages in addition thereto, including reasonable attorneys' fees and court costs, which Landlord shall have sustained by reason of the breach of any of the covenants of this Lease other than for the payment of Rent.

**21.05 Reletting.** In the event Landlord terminates the right of Tenant to possession of the Premises without terminating this Lease as aforesaid, Landlord shall use reasonable efforts to relet the Premises or any part thereof for the account of Tenant for such rent, for such time (which may be for a term extending beyond

the Term) and upon such terms as Landlord in Landlord's sole discretion shall determine (including concessions of free rent and other inducements to prospective tenants), and Landlord shall not be required to accept any tenant offered by Tenant or to observe any instructions given by Tenant relative to such reletting and may give the leasing of any unleased space in the Building priority over the reletting of the Premises. Also, in any such event, Landlord may make repairs, alterations and additions in or to the Premises and redecorate the same to the extent deemed by Landlord necessary, and, in connection therewith, change the locks to the Premises, and Tenant shall upon demand pay the cost thereof together with Landlord's expenses of reletting. Landlord may collect the rents from any such reletting and apply the same first to the payment of the expenses of re-entry, redecoration, repair and alterations and the expense of reletting (including without limitation brokers' commissions and reasonable attorneys' fees) and second to the payment of Rent herein provided to be paid by Tenant. Any excess or residue shall operate only as an offsetting credit against the amount of Rent as the same theretofore became or thereafter becomes due and payable hereunder, but the use of such offsetting credit to reduce the amount of Rent due Landlord, if any, shall not be deemed to give Tenant any right, title or interest in or to such excess or residue and any such excess or residue shall belong solely to Landlord. No such re-entry or repossession, repairs, alterations and additions, or reletting shall be construed as an eviction or ouster of Tenant, an election on Landlord's part to terminate this Lease or an acceptance of a surrender of this Lease, unless a written notice of such intention be given to Tenant, or shall operate to release Tenant in whole or in part from any of Tenant's obligations hereunder. Landlord may, at any time and from time to time, sue and recover judgment for any deficiencies remaining after the application of the proceeds of any such reletting.

**21.06 Removal of Tenant's Property.** All property removed from the Premises by Landlord pursuant to any provisions of this Lease or of law shall be handled, removed or stored by Landlord at the cost, expense and risk of Tenant, and Landlord, shall in no event be responsible for the value, preservation or safekeeping thereof. Tenant shall pay Landlord upon demand for all expenses incurred by Landlord in such removal and storage.

**21.07 Costs.** Tenant shall pay all costs, charges and expenses, including, without limitation, court costs and reasonable attorneys' fees incurred by Landlord or its beneficiaries in enforcing Tenant's obligations under this Lease, in the exercise by Landlord of any of its remedies in the event of a default, in any litigation, negotiation or transactions in which Tenant causes Landlord, without Landlord's fault, to become involved or concerned, or in consideration of any request for approval of or consent to any action by Tenant which is prohibited by this Lease or which may be done only with Landlord's approval or consent, whether or not such approval or consent is given.

**21.08 Late Charges.** At the option of Landlord, Landlord may impose a late payment fee equal to ten percent (10%) of the amount due if any payment of Rent is paid more than five (5) days after its due date. In addition, any amount due hereunder shall bear interest after default in the payment thereof at the annual rate of eighteen percent (18%), provided that in no event shall such interest rate exceed the highest legal interest rate for business loans. Further, to partially compensate Landlord for banking, administrative and accounting costs, Tenant shall pay to Landlord a fee of \$40.00 (which may be increased from time to time, upon prior written notice) per occurrence for any check received for payments under this Lease that is not immediately honored for any reason whatsoever (including, with out limitation, insufficient funds), which fee shall be in addition and without limitation to any other amounts claimed by Landlord.

**21.09 Landlord's Right to Perform Tenant's Duties.** If Tenant fails timely to perform any of its duties under this Lease, Landlord shall have the right (but not the obligation), after the expiration of any grace period specifically provided by this Lease, to perform such duty on behalf and at the expense of Tenant without further notice to Tenant, and all sums expended or expenses incurred by Landlord in performing such

duty shall be deemed to be Rent under this Lease and shall be due and payable to Landlord upon demand by Landlord.

**21.10 Cumulative Rights.** All of Landlord's rights and remedies under this Lease shall be cumulative with and in addition to any and all rights and remedies which Landlord may have at law or in equity. Any specific remedy provided for in any provision of this Lease shall not preclude the concurrent or consecutive exercise of a remedy provided for in any other provision hereof.

## **ARTICLE 22 WAIVER OF COUNTERCLAIMS AND JURY TRIAL**

**22.01 Waiver of Counterclaims.** Except for compulsory or mandatory counterclaims, Tenant hereby waives any right to plead any counterclaim, offset or affirmative defense in any action or proceedings brought by Landlord against Tenant pursuant to Illinois forcible eviction and detainer laws or otherwise, for the recovery of possession based upon the non-payment of Rent or any other Default. This shall not, however, be construed as a waiver of Tenant's right to assert any claim in a separate action brought by Tenant against Landlord, subject, however, to the terms and conditions of Article 14 above.

**22.02 WAIVER OF JURY TRIAL.** TO THE EXTENT PERMITTED BY LAW, LANDLORD AND TENANT AND THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES AGREE THAT EACH SHALL, AND DO HEREBY, WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY, BETWEEN OR AGAINST THE PARTIES HERETO OR THEIR SUCCESSORS OR ASSIGNS OR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES ON ANY MATTERS ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, AND/OR TENANT'S USE OR OCCUPANCY OF THE PREMISES. THIS WAIVER IS MADE FREELY AND VOLUNTARILY, WITHOUT DURESS AND ONLY AFTER EACH OF THE PARTIES HERETO HAS HAD THE BENEFIT OF ADVICE FROM LEGAL COUNSEL ON THIS SUBJECT.

## **ARTICLE 23 HOLDING OVER**

If Tenant retains possession of the Premises or any part thereof after the termination of the Term or any extension thereof, by lapse of time or otherwise, Tenant, unless Landlord otherwise elects, shall become a tenant at sufferance and shall pay Landlord monthly Rent at one hundred fifty percent (150%) of the rate of Base Rent and Adjustments in effect for the month immediately preceding said holding over, computed on a per month basis, for each month or part thereof (without reduction for any such partial month) that Tenant thus remains in possession. The provisions of this Article 23 do not exclude Landlord's right of reentry or any other right hereunder. Additionally, Tenant shall be liable for all consequential damages if Tenant holds over for more than thirty (30) days following Landlord's delivery of a written notice to vacate.

## **ARTICLE 24 SUBORDINATION; ATTORNMENT; ESTOPPEL CERTIFICATE**

**24.01 Subordination.** Landlord may have heretofore encumbered or may hereafter encumber with a mortgage or trust deed the Building, or any interest therein, and may have heretofore sold and leased back or may hereafter sell and lease back the land on which the Building is located, and may have heretofore encumbered or may hereafter encumber the leasehold estate under such lease with a mortgage or trust deed. (Any such mortgage or trust deed is herein called a "Mortgage" and the holder of any such mortgage or the

beneficiary under any such trust deed is herein called a "Mortgagee." Any such lease of the underlying land is herein called a "Ground Lease", and the lessor under any such lease is herein called a "Ground Lessor." Any Mortgage which is a first lien against the Building, the land on which the Building is located, the leasehold estate or the lessor under a Ground Lease (if the property is not then subject to an unsubordinated mortgage) is herein called a "First Mortgage" and the holder or beneficiary of or Ground Lessor under any First Mortgage is herein called a "First Mortgagee." This Lease is, or shall be, subject and subordinate to any First Mortgage now or hereafter encumbering the Building. This provision shall be self-operative, and no further instrument of subordination shall be required to effectuate such subordination. If requested by a First Mortgagee, Tenant will either (i) subordinate its interest in this Lease to said First Mortgage, and to any and all advances made thereunder and to the interest thereon, and to all renewals, replacements, supplements, amendments, modifications and extensions thereof, or (ii) make certain of Tenant's rights and interest in this Lease superior thereto; and Tenant will promptly execute and deliver such agreement or agreements as may be reasonably required by such Mortgagee or Ground Lessor; provided, however, Tenant covenants it will not subordinate this Lease to any Mortgage or Ground Lease other than a First Mortgage (including a Ground Lease defined as a First Mortgage hereunder) without the prior written consent of the First Mortgagee. Tenant agrees that Landlord may assign the rents and interests in this Lease to the holder of any Mortgage or Ground Lease. In conjunction with the foregoing provisions, following written request, Tenant hereby agrees to complete and execute any Subordination, Non-Disturbance and Attornment Agreement and/or Lease Estoppel Certificate attached as exhibits to this Lease, if any.

**24.02 Attornment.** It is further agreed that (a) if any Mortgage shall be foreclosed, or if any Ground Lease be terminated, (i) the liability of the Mortgagee or purchaser at such foreclosure sale or the liability of a subsequent owner designated as Landlord under this Lease shall exist only so long as such Mortgagee, purchaser or owner is the owner of the Building or the land on which the Building is located, and such liability shall not continue or survive after further transfer of ownership; and (ii) upon request of the Mortgagee, if the Mortgage shall be foreclosed, Tenant will attorn, as Tenant under this Lease, to the purchaser at any foreclosure sale under any Mortgage or upon request of the Ground Lessor, if any Ground Lease shall be terminated, Tenant will attorn as Tenant under this Lease to the Ground Lessor, and Tenant will execute such instruments as may be necessary or appropriate to evidence such attornment; (b) this Lease may not be modified or amended so as to reduce the Rent or shorten the Term provided hereunder, or so as to adversely affect in any other respect to any material extent the rights of Landlord or its successor, nor shall this Lease be canceled or surrendered, without the prior written consent, in each instance, of the First Mortgagee; and (c) Tenant waives the provisions of any statute or rule of law, now or hereafter in effect, that may give or purport to give Tenant any right to terminate or otherwise adversely affect Landlord's interest in this Lease or reduce or limit the obligations of Tenant hereunder in the event of the prosecution or completion of any such foreclosure proceeding. No Mortgagee or any purchaser at a foreclosure sale shall be liable for any act or omission of Landlord which occurred prior to such sale or conveyance, nor shall Tenant be entitled to any offset against or deduction from Rent due after such date by reason of any act or omission of Landlord prior to such date. Further, Tenant agrees that no Mortgagee shall be bound by the prepayment of Rent made in excess of thirty (30) days before the date on which such payment is due.

**24.03 Mortgagee Requirements.** Should any prospective First Mortgagee require a modification or modifications of this Lease, which modification or modifications will not cause an increased cost or expense to Tenant or in any other way materially and adversely change the rights and obligations of Tenant hereunder, in the reasonable judgment of Tenant, then and in such event, Tenant agrees that this Lease may be so modified and agrees to execute whatever documents are required therefor and deliver the same to Landlord within ten (10) days following the request therefor. Should any prospective Mortgagee or Ground Lessor require execution of a short form of lease for recording (containing, among other customary provisions, the names of the parties, a description of the Premises and the Term of this Lease), Tenant agrees to execute such

short form of Lease and deliver the same to Landlord within ten (10) days following the request therefor. Should any prospective First Mortgagee notify Tenant in writing that said First Mortgagee has terminated Landlord's license to collect rents and other monetary amounts under this Lease, Tenant shall thereafter remit all rent (and other monetary amounts required to be paid by Tenant under this Lease to Landlord, if any) directly to such First Mortgagee, and Landlord waives any right, claim, or demand it may have against Tenant by reason of Tenant's payment of said sums to such First Mortgagee.

**24.04 Mortgagee's Notice and Cure Rights.** Tenant agrees to give any First Mortgagee, by registered or certified mail, a copy of any notice or claim of default served upon Landlord by Tenant, provided that prior to such notice Tenant has been notified in writing (by way of service on Tenant of a copy or an assignment of Landlord's interests in leases, or otherwise) of the address of such First Mortgagee. Tenant further agrees that if Landlord shall have failed to cure such default within thirty (30) days after such notice to Landlord (or if such default cannot be cured or corrected within that time, then such additional time as may be necessary if Landlord has commenced within such thirty (30) days and is diligently pursuing the remedies or steps necessary to cure or correct such default), then the First Mortgagee shall have an additional thirty (30) days within which to cure or correct such default (or if such default cannot be cured or corrected within that time, then such additional time as may be necessary if such First Mortgagee has commenced within such thirty (30) days and is diligently pursuing the remedies or steps necessary to cure or correct such default, including the time necessary to obtain possession if possession is necessary to cure or correct such default) before Tenant may exercise any right or remedy which it may have on account of any such default of Landlord.

**24.05 Estoppel Certificate.** Tenant agrees that from time to time, upon not less than seven (7) days' prior written request by Landlord, Tenant will, and Tenant will cause any subtenant, licensee, concessionaire or other occupant of the Premises to, promptly complete, execute and deliver to Landlord or any party or parties designated by Landlord a statement in writing certifying: (i) that this Lease is unmodified and in full force and effect (or if there have been modifications that the same are in full force and effect as modified and identifying the modifications); (ii) the dates to which the Rent and other charges have been paid; (iii) that the Premises have been unconditionally accepted by Tenant (or if not, stating with particularity the reasons why the Premises have, not been unconditionally accepted); (iv) the amount of any Security Deposit held hereunder; (v) that, so far as the party making the certificate knows, Landlord is not in default under any provisions of this Lease, if such is the case, and if not, identifying all defaults with particularity; and (vi) any other matter reasonably requested by Landlord. Any purchaser or Mortgagee of any interest in the Building shall be entitled to rely on said statement. Failure to give such a statement within seven (7) days after said written request shall be conclusive evidence, upon which Landlord and any such purchaser or Mortgagee shall be entitled to rely, that this Lease is in full force and effect and Landlord is not in default and Tenant shall be estopped from asserting against Landlord or any such purchaser or Mortgagee any defaults of Landlord existing at that time but Tenant shall not thereby be relieved of the affirmative obligation to give such statement. Moreover, if Tenant fails to deliver or cause to be delivered such statement within said seven (7) day period, Landlord shall be entitled to collect from Tenant upon demand, as liquidated damages occasioned by such delay and not as a penalty (the actual damages resulting from such delay being impossible to ascertain), a sum equal to one-fifteenth of the Base Rent for each day, up to fifteen (15) days, after the expiration of said seven (7) day period that Tenant fails to deliver such statement. If such failure persists after such fifteen (15) day period, Landlord shall be entitled to pursue any and all remedies it may have with respect to such Default, including termination of this Lease or Tenant's right to possession and collection of damages, including consequential damages, arising by reason of such Default.

**24.06 Quiet Enjoyment.** Upon payment by Tenant of the rents herein provided, and upon the observance and performance of all the covenants, terms and conditions on Tenant's part to be observed and

performed, Tenant shall peaceably and quietly hold and enjoy the Premises for the Term without hindrance or interruption by Landlord or any other person or persons lawfully or equitably claiming by, through or under Landlord, subject, nevertheless, to the terms and conditions of this Lease, and any mortgage and/or deed of trust to which this Lease is subordinate.

## **ARTICLE 25 HAZARDOUS MATERIALS**

Tenant covenants and agrees that it shall not cause or permit any Hazardous Material (as defined below) to be brought upon, kept, or used in or about the Premises or Building by Tenant, its agents, employees, contractors or invitees. The foregoing covenant shall not extend to substances typically found or used in general office applications so long as (i) such substances and any equipment which generates such substances are maintained only in such quantities as are reasonably necessary for Tenant's operations in the Premises, (ii) such substances are used strictly in accordance with the manufacturers' instructions therefor, (iii) such substances are not disposed of in or about the Building in a manner which would constitute a release or discharge thereof, and (iv) all such substances and any equipment which generates such substances are removed from the Building by Tenant upon the expiration or earlier termination of this Lease. Any use, storage, generation, disposal, release or discharge by Tenant of Hazardous Materials in or about the Building as is permitted pursuant to this Paragraph shall be carried out in compliance with all applicable federal, state and local laws, ordinances, rules and regulations. Moreover, no Hazardous Materials resulting from any operations by Tenant shall be stored or maintained by Tenant in or about the Building for more than ninety (90) days prior to removal by Tenant. Tenant shall, annually within thirty (30) days after Tenant's receipt of Landlord's written request therefor, provide to Landlord a written list identifying any Hazardous Materials then maintained by Tenant in the Building, the use of each such Hazardous Material and the approximate quantity of each such Hazardous Material so maintained by Tenant, together with written certification by Tenant stating, in substance, that neither Tenant nor any person for whom Tenant is responsible has released or discharged any Hazardous Materials in or about the Building.

In the event that Tenant proposes to conduct any use or to operate any equipment which will or may utilize or generate a Hazardous Material other than as specified in the first paragraph of this subsection, Tenant shall first in writing submit such use or equipment to Landlord for approval. No approval by Landlord shall relieve Tenant of any obligation of Tenant pursuant to this subsection, including the removal, clean-up and indemnification obligations imposed upon Tenant by this subsection. Tenant shall, within five (5) days after receipt thereof, furnish to Landlord copies of all notices or other communications received by Tenant with respect to any actual or alleged release or discharge of any Hazardous Material in or about the Premises or the Building and shall, whether or not Tenant receives any such notice or communication, notify Landlord in writing of any discharge or release of Hazardous Material by Tenant or anyone for whom Tenant is responsible in or about the Premises or the Building. In the event that Tenant is required to maintain any Hazardous Materials license or permit in connection with any use conducted by Tenant or any equipment operated by Tenant in the Premises, copies of each such license or permit, each renewal or revocation thereof and any communication relating to suspension, renewal or revocation thereof shall be furnished to Landlord within five (5) days after receipt thereof by Tenant. Compliance by Tenant with the two immediately preceding sentences shall not relieve Tenant of any other obligation of Tenant pursuant to this subsection.

Upon any violation of the foregoing covenants, Tenant shall be obligated, at Tenant's sole cost, to clean-up and remove from the Building all Hazardous Materials introduced into the Building by Tenant or any person or entity for whom Tenant is responsible. Such clean-up and removal shall include all testing and investigation required by any governmental authorities having jurisdiction and preparation and implementation of any remedial action plan required by any governmental authorities having jurisdiction. All

such clean-up and removal activities of Tenant shall, in each instance, be conducted to the satisfaction of Landlord and all governmental authorities having jurisdiction. Landlord's right of entry pursuant to Article 16 above shall include the right to enter and inspect the Premises for violations of Tenant's covenants herein.

Notwithstanding and in addition to the provisions of Article 14 above, Tenant shall indemnify, defend and hold harmless Landlord and Landlord's Related Parties from and against any and all claims, liabilities, losses, actions, costs and expenses (including reasonable attorneys' fees and costs of defense) incurred by such indemnified persons, or any of them, as the result of (i) the introduction into or about the Building by Tenant or anyone for whom Tenant is responsible of any Hazardous Materials, (ii) the usage, storage, maintenance, generation, disposition or disposal by Tenant or anyone for whom Tenant is responsible of Hazardous Materials in or about the Building, (iii) the discharge or release in or about the Building by Tenant or anyone for whom Tenant is responsible of any Hazardous Materials, (iv) any injury to or death of persons or damage to or destruction of property resulting from the use, introduction, maintenance, storage, generation, disposal, disposition, release or discharge by Tenant or anyone for whom Tenant is responsible of Hazardous Materials in or about the Building, and (v) any failure of Tenant or anyone for whom Tenant is responsible to observe the foregoing covenants of this subsection.

Upon any violation of the foregoing covenants, Landlord shall be entitled to exercise all remedies available to a landlord against a defaulting tenant, including but not limited to those set forth in Article 21 above. Without limiting the generality of the foregoing, Tenant expressly agrees that upon any such violation Landlord may, at its option, (i) immediately terminate this Lease or (ii) continue this Lease in effect until compliance by Tenant with its clean-up and removal covenant notwithstanding any earlier expiration date of the term of this Lease. No action by Landlord hereunder shall impair the obligations of Tenant pursuant to this subsection.

As used in this subsection, "Hazardous Materials" is used in its broadest sense and shall include any petroleum based products, pesticides, paints and solvents, polychlorinated biphenyl, lead, cyanide, DDT, acids, ammonium compounds and other chemical products and any substance or material defined or designated as hazardous or toxic, or other similar term, by any federal, state or local environmental statute, regulation, or ordinance affecting the Premises or Building presently in effect or that may be promulgated in the future, as such statutes, regulations and ordinances may be amended from time to time, including but not limited to the following statutes: Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq.; Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq.; Clean Air Act, 42 U.S.C. § 7401-7626; Water Pollution Control Act (Clean Water Act of 1977), 33 U.S.C. § 1251 et seq.; Insecticide, Fungicide, and Rodenticide Act (Pesticide Act of 1987), 7 U.S.C. § 135 et seq.; Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; Safe Drinking Water Act, 42 U.S.C. § 300(f) et seq.; National Environmental Policy Act (NEPA) 42 U.S.C. § 4321 et seq.; Refuse Act of 1899, 33 U.S.C. § 407 et seq.; Tenant acknowledges that incorporation of any material containing asbestos into the Premises is absolutely prohibited. Tenant agrees, represents and warrants that it shall not incorporate or permit or suffer to be incorporated, knowingly or unknowingly, any material containing asbestos into the Premises.

## **ARTICLE 26 RELOCATION OF TENANT**

Landlord may, at any time, relocate Tenant to another area of the Building (herein referred to as "new premises") providing the new premises shall be similar to the Premises in rentable square footage and use for Tenant's purposes. If Tenant is already occupying the Premises at the time Landlord exercises the rights granted by this Article 26, Landlord agrees to pay all reasonable moving expenses of Tenant incident to such substitution and for improving the new premises so that they are substantially similar to the Premises.



Landlord shall give Tenant at least thirty (30) days' notice before making such change. Tenant shall cooperate with Landlord in all reasonable ways to facilitate the move. If Tenant fails to so cooperate, Landlord shall be relieved of all responsibility for damage or injury to Tenant or its property during such move, except as caused by Landlord's actual negligence.

**ARTICLE 27  
NOTICES AND DEMANDS**

All notices, demands, approvals, consents, requests for approval or consent or other writings in this Lease provided to be given, made or sent by either party hereto to the other ("Notice") shall be in writing and shall be deemed to have been fully given, made or sent when made by personal service, nationally-recognized overnight courier, or two (2) business days after deposit in the United States mail, certified or registered and postage prepaid and properly addressed as follows:

- |              |   |
|--------------|---|
| To Landlord: | To Landlord at the address set forth in Article 1 above, with a copy to Landlord's Management Agent at the address set forth in Article 1 above.  |
| To Tenant:   | If any Notice is to be given Tenant prior to occupancy, to the address set forth in Section 1.02. If any Notice is to be given Tenant after occupancy, to the Premises; provided, however, if the Premises shall have been vacated, Notice may be posted on the door to the Premises, and to the address set forth in Section 1.02. |

The address to which any Notice should be given, made or sent to either party may be changed by written notice given by such party as above provided. Any notice, demand, request or consent to be made by or required of Landlord, may be made and given by Landlord's Management Agent with the same force and effect as if made and given by Landlord.

**ARTICLE 28  
CONSTRUCTION OF LEASE**

The language in all parts of this Lease shall in all cases be construed as a whole according to its fair meaning and neither strictly for nor against either Landlord or Tenant. Article and Section headings in this Lease are for convenience only and are not to be construed as part of this Lease or in any way defining, limiting, amplifying, construing, or describing the provisions hereof. Time is of the essence of this Lease and every term, covenant and condition hereof. The words "Landlord" and "Tenant," as herein used, shall include the plural as well as the singular. The neuter gender includes the masculine and feminine. In the event there is more than one person or entity which executes this Lease as Tenant, the obligations to be performed and liability of all such persons and entities shall be joint and several. All of the covenants of Tenant hereunder shall be deemed and construed to be "conditions" as well as "covenants" as though the words specifically expressing or importing conditions were used in each separate instance. Landlord and Tenant agree that in the event any term, covenant or condition herein contained (other than with respect to the payment of Rent) is held to be invalid or void by any court of competent jurisdiction, the invalidity of any such term, covenant or condition shall in no way affect any other term, covenant or condition herein contained.

**ARTICLE 29  
REAL ESTATE BROKERS**

Landlord and Tenant represent and warrant unto each other that each has directly dealt with and only with Landlord's Management Agent and the Brokers, if any, identified in Article 1 of this Lease as broker in connection with this Lease, and agree to indemnify and hold harmless each other from and against any and all claims or demands, damages, liabilities and expenses of any type or nature whatsoever arising by reason of the incorrectness or breach of the aforesaid representation or warranty.

### **ARTICLE 30 MISCELLANEOUS**

**30.01 Benefit.** Subject to the provisions of Articles 19 and 20 hereof, all terms, covenants and conditions on this Lease shall be binding upon and inure to the benefit of and shall apply to the respective heirs, executors, administrators, successors, assigns and legal representatives of Landlord and Tenant.

**30.02 Execution and Delivery.** The execution of this Lease by Tenant and delivery of the same to Landlord or Landlord's Management Agent do not constitute a reservation of or option to lease the Premises or an agreement by Landlord to enter into a Lease, and this Lease shall become effective only if and when Landlord executes and delivers a counterpart hereof to Tenant. If Tenant is a corporation, it shall deliver to Landlord concurrently with the delivery to Landlord of an executed Lease, a certified resolution of Tenant's directors authorizing execution and delivery of this Lease and the performance by Tenant of its obligations hereunder. If Tenant is a partnership, it shall deliver to Landlord concurrently with the delivery to Landlord of an executed Lease, a certified copy of its partnership agreement or other satisfactory evidence of execution and performance authority. Tenant shall not record this Lease or any memorandum or other evidence hereof.

**30.03 Defaults under Other Lease Agreement.** If the term of any lease (other than this Lease) made by Tenant for any demised premises in the Building or any other agreement with Landlord shall be terminated or terminable after the making of this Lease, because of any default by Tenant under such other lease or agreement, such fact shall empower Landlord, at Landlord's sole option, to declare this Lease to be in default by written notice to Tenant.

**30.04 Applicable Law.** This Lease shall be governed by and construed in accordance with the laws of the state in which the Building is located.

**30.05 Landlord's Consent.** Unless otherwise specifically provided herein, wherever Landlord's consent is required, such consent may be withheld by Landlord at Landlord's sole discretion.

**30.06 Non-Waiver of Defaults.** No waiver of any provision of this Lease shall be implied by any failure of Landlord to enforce any remedy on account of the violation of such provision, even if such violation be continued or repeated subsequently, and no express waiver shall affect any provision other than the one specified in such waiver and in that event only for the time and in the manner specifically stated. No receipt of monies by Landlord from Tenant after the termination of this Lease will in any way alter the length of the Term of Tenant's right of possession hereunder or, after the giving of any notice, shall reinstate, continue or extend the Term or affect any notice given Tenant prior to the receipt of such monies, it being agreed that after the service of notice or the commencement of a suit or after final judgment for possession of the Premises, Landlord may receive and collect any Rent due, and the payment of Rent shall not waive or affect said notice, suit or judgment, nor shall any such payment be deemed to be other than on account of the amount due, nor shall the acceptance of Rent be deemed a waiver of any breach by Tenant of any term, covenant or condition of this Lease. No endorsement or statement on any check or any letter accompanying any check or payment of Rent shall be deemed an accord and satisfaction. Landlord may accept any such check or payment without prejudice to Landlord's right to recover the balance due of any installment or

payment of Rent or pursue any other remedies available to Landlord with respect to any existing Defaults. None of the terms, covenants or conditions of this Lease can be waived by either Landlord or Tenant except by appropriate written instrument.

**30.07 Force Majeure.** Landlord shall not be deemed in default with respect to the failure to perform any of the terms, covenants and conditions of this Lease on Landlord's part to be performed, if such failure is due in whole or in part to any strike, lockout, labor dispute (whether legal or illegal), civil disorder, inability to procure materials, failure of power, restrictive governmental laws and regulations, riots, insurrections, war, fuel shortages, accidents, casualties, Acts of God, acts caused directly or indirectly by Tenant (or Tenant's agents, employees, guests or invitees), acts of other tenants or occupants of the Building or any other cause beyond the reasonable control of Landlord. In such event, the time for performance by Landlord shall be extended by an amount of time equal to the period of the delay so caused. No interruption of service resulting from any of the causes described in the first sentence of the Section 30.07 shall relieve Tenant of any of its obligations under this Lease or render Landlord liable for damages. Landlord shall not be liable to Tenant for any expense, injury, loss or damage resulting from work done in or upon, or the use of, any adjacent or nearby building, land, street, alley or underground vault or passageway.

**30.08 Counterparts.** This Lease may be executed in several duplicate counterparts, each of which shall be deemed an original of this Lease for all purposes.

**30.09 Work Letters and Exhibits.** Any and all work letters and exhibits attached hereto are hereby incorporated in this Lease by reference.

**30.10 Financial Statements.** Tenant shall, when requested by Landlord from time to time, furnish a true and accurate audited statement of its financial condition prepared in conformity with generally accepted accounting principles and in a form reasonably satisfactory to Landlord.

**30.11 Relationship of Parties.** Nothing contained in this Lease shall create any relationship between the parties hereto other than that of Landlord and Tenant, and it is acknowledged and agreed that Landlord shall not be deemed to be a partner of Tenant in the conduct of its business, or a joint venturer or a member of a joint or common enterprise with Tenant.

**30.12 Amendments.** This Lease contains and embodies the entire agreement of the parties hereto, and no representation, inducements or agreements, oral or otherwise, not contained in this Lease shall be of any force or effect. This Lease may not be modified in whole or in part in any manner other than by an instrument in writing duly signed by both parties hereto.

**30.13 Irrevocable Offer.** Tenant acknowledges and agrees that by executing and delivering this Lease to Landlord or Landlord's agent Tenant has made an offer to Landlord which offer may not be revoked, altered or modified for a period of ten (10) business days and, thereafter, only if Landlord has failed to countersign a copy of this Lease prior to Landlord's receipt of a written revocation.

**30.14 Bankruptcy.** Landlord and Tenant understand that, notwithstanding certain provisions to the contrary contained herein, a trustee or debtor in possession under the United States Bankruptcy Code ("Code") may have certain rights to assume or assign this Lease. Landlord and Tenant further understand that, in such event, Landlord is entitled under the Code to adequate assurances of future performance of the terms and provisions of this Lease. The parties hereto agree that, with respect to any such assumption or assignment, the term "adequate assurance" shall include at least the following: (1) since the financial condition and resources of Tenant were a material inducement to Landlord in entering into this Lease, in order

to assure Landlord that the proposed assignee will have the resources with which to pay all Rent payable pursuant to the terms hereof, any proposed assignee must have, as demonstrated to Landlord's satisfaction, a net worth (as defined in accordance with generally accepted accounting principles consistently applied) of not less than the net worth of Tenant on the date this Lease became effective, increased by seven percent (7%), compounded annually, for each year from the Commencement Date through the date of the proposed assignment; (2) since Landlord's asset will be substantially impaired if the trustee in bankruptcy or any assignee of this Lease makes any use of the Premises other than the Permitted Use, any proposed assignee must have been engaged in the conduct of business for the five (5) years prior to any such proposed assignment, which business does not violate the Permitted Use, and such proposed assignee shall continue to engage in the Permitted Use; and (3) any proposed assignee of this Lease must assume and agree to be personally bound by the terms, covenants and provisions of this Lease.

**30.15 Confidentiality.** Tenant shall at all times keep the terms and conditions of this Lease confidential and shall not disclose the terms thereof to any third party, except for its accountants, attorneys and other professionals who have a legitimate business reason to know the terms of this Lease. Without limitation to the generality of the foregoing, Tenant shall specifically not release any information about lease rates, concessions, options or rights to any current or prospective tenant or occupant of the Building. Tenant hereby acknowledges that Landlord may suffer damages in the event of the breach of this paragraph.

**[30.16 Guaranty.** It is understood and agreed that concurrently with Tenant's execution of this Lease, Tenant shall cause the form of Guaranty annexed hereto as **Exhibit G** to be executed by the persons and/or entities named herein as Guarantor(s).]

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, the parties hereto have executed this Lease as of the day and year first above written.

**LANDLORD:**

SP4 190 S. LASALLE, L.P.,  
a Delaware limited partnership  
By: SP 190 S. LASALLE GP, L.L.C.,  
a Delaware limited liability company,  
its general partner

By: \_\_\_\_\_  
Mark Zikakis, Vice President

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TENANT:**

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
**(Floor Plan of Premises)**

[To be attached]

## EXHIBIT B

### (Work Letter)

The terms used herein shall have the meanings ascribed to them in the Lease, unless otherwise specifically stated herein.

#### 1. Defined Terms.

1.01 Allowance. The lesser of (a) \_\_\_\_\_ Thousand \_\_\_\_\_ Hundred and \_\_\_/100ths Dollars (\$ \_\_\_\_\_), or (b) the actual cost of Landlord's Work. Landlord's standard construction management fee of five percent of all hard and soft costs relating to Landlord's work shall be deducted from the Allowance.

1.02 Space Plans. [To be prepared and attached]. [Those certain space plans prepared by \_\_\_\_\_ and dated \_\_\_\_\_, a copy of which is attached hereto as Exhibit D.]

2. Construction of the Premises. Landlord and Tenant agree that their respective rights and obligations in reference to the construction of the Premises shall be as follows:

#### 2.01 Preparation of Construction Documents.

(a) Landlord shall cause to be prepared detailed architectural, telephone, mechanical and engineering plans, including all dimensions and specifications for all work to be performed by Landlord in the Premises, [substantially in accordance with the Space Plan] ("Plans").

(b) Tenant shall cooperate as necessary in connection with the preparation of the Plans, in a complete and timely manner, and without limiting the foregoing, shall provide to Landlord all information as shall be required by Landlord's engineers to prepare mechanical plans pursuant to Section 1.02 hereof, which information shall include, but not be limited to, the following:

(1) any special floor-loading conditions which may exceed the structural weight limits of the floor;

(2) specifications of any heat emanating equipment to be installed by Tenant which may require special air conditioning;

(3) electrical specifications of any equipment that requires non-standard electrical power outlets; and

(4) complete specifications of any data-line wiring required, including cable routing, conduit size, cable type and similar items.

(c) The Plans shall be delivered to Tenant for its review and consideration as soon as reasonably possible. Tenant shall inform Landlord of any required changes as soon as possible, but in no event later than five (5) business days following Tenant's receipt of the Plans. Any change or modification of such date Plans shall not be valid or binding unless consented to by Landlord in writing.

2.02 Landlord's Work. Landlord shall furnish and install substantially in accordance with the Plans the materials and items described therein ("Landlord's Work"). The Plans and Landlord's Work shall be at Tenant's sole cost and expense, provided that Tenant shall be entitled to a credit against the cost of the Plans and Landlord's Work in an amount equal to the Allowance. Unless otherwise specifically stated herein or in the Plans, all materials shall be of Building standard quality and color.

2.03 Cost Estimate. If Landlord determines that the cost of Landlord's Work will exceed the Allowance, then prior to commencement of Landlord's Work, Landlord will submit to Tenant a cost estimate for Landlord's Work ("Cost Estimate") which Tenant shall approve or reject within five (5) days after receipt thereof. It is understood that the cost of Landlord's Work shall include Landlord's construction supervision costs at fifteen percent (15%) of the actual hard construction costs. Tenant's failure to reject the Cost Estimate within said five (5) day period shall be deemed to be an acceptance thereof. If Tenant rejects the Cost Estimate, Tenant shall, together with such rejection, propose such changes to the Plans as will cause the Cost Estimate to be acceptable. If the accepted Cost Estimate exceeds the Allowance, then Tenant shall pay to Landlord the amount of such excess within ten (10) business days after receipt by Tenant of a bill therefor, but in no event later than the Commencement Date.

2.04 Extra Work; Omissions.

(a) Tenant may request substitutions, additional or extra work and/or materials over and above Landlord's Work ("Extra Work") to be performed by Landlord, provided that the Extra Work, in Landlord's judgment, (1) shall not delay completion of Landlord's Work or the Commencement Date of the Lease; (2) shall be practicable and consistent with existing physical conditions in the Building and any other plans for the Building which have been filed with the appropriate municipality or other governmental authorities having jurisdiction thereover; (3) shall not impair Landlord's ability to perform any of Landlord's obligations hereunder or under the Lease or any other lease of space in the Building; and (4) shall not affect any portion of the Building other than the Premises. All Extra Work shall require the installation of new materials at least comparable to Building standards and any substitution shall be of equal or greater quality than that for which it is substituted.

(b) In the event Tenant requests Landlord to perform Extra Work and if Landlord accedes to such request, then and in that event, prior to commencing such Extra Work, Landlord shall submit to Tenant a written estimate ("Estimate") for said Extra Work to be performed. Within five (5) days after Landlord's submission of the Estimate, Tenant shall, in writing, either accept or reject the Estimate. Tenant's failure either to accept or reject the Estimate within said five (5) day period shall be deemed rejection thereof. In the event that Tenant rejects the Estimate or the Estimate is deemed rejected, Tenant shall within five (5) days after such rejection propose to Landlord such necessary revisions of the Plans so as to enable Landlord to proceed as though no such Extra Work had been requested. Should Tenant fail to submit such proposals regarding necessary revisions of the Plans within said five (5) day period, Landlord, in its sole discretion, may proceed to complete Landlord's Work in accordance with the Plans already submitted, with such variations as in Landlord's sole discretion may be necessary so as to eliminate the Extra Work.

(c) Tenant may request the omission of an item of Landlord's Work, provided that such omission shall not delay the completion of Landlord's Work and Landlord thereafter shall not be obligated to install the same. Credits for items deleted or not installed shall be granted in amounts equal to credits obtainable from subcontractors or materialmen. In no event shall there be any cash credits.

(d) In the event Landlord performs Extra Work hereunder, Tenant shall pay to Landlord, upon acceptance of the Estimate a sum equal to twenty percent (20%) of the Estimate to the extent the



Estimate together with the amount set forth in the Cost Estimate exceeds the Allowance. In the event of any such excess, Tenant shall pay to Landlord such excess cost for the Extra Work within five (5) days after receipt by Tenant of a bill therefor but in no event shall the entire balance be paid later than the completion of the Extra Work.

3. Punch List. When Landlord is of the opinion that Landlord's Work is complete, then Landlord shall so notify Tenant. Tenant agrees that upon such notification, Tenant promptly (and not later than two (2) business days after the date of Landlord's said notice) will inspect the Premises and furnish to Landlord a written statement that Landlord's Work has been completed and are complete as required by the provisions of this Exhibit and the Lease with the exception of certain specified and enumerated items (hereinafter referred to as the "Punch List"). Tenant agrees that at the request of Landlord from time to time thereafter, Tenant will promptly furnish to Landlord revised Punch Lists reflecting any completion of any prior Punch List items.

4. Substantial Completion Date. It is mutually agreed that if the Punch List or any revised Punch List consists only of items which would not materially impair Tenant's use or occupancy of the Premises, then, in such event, Tenant will acknowledge in writing that Landlord's Work is complete and accept possession of the Premises ("Substantial Completion Date" or "Date of Substantial Completion"); provided, however, that such acknowledgment of acceptance shall not relieve Landlord of its obligations to promptly complete all such Punch List items. Notwithstanding the foregoing, in no event shall Landlord be obligated to repair latent defects, not originally listed on the Punch List, beyond a period of six (6) months after the Substantial Completion Date, as defined below. Promptly after the Substantial Completion Date, the parties will execute an instrument in the form attached hereto as Exhibit \_\_, confirming the Substantial Completion Date, the Commencement Date and the Expiration Date.

5. Delay of Commencement Date. Tenant will take possession of the Premises as of and on the Commencement Date. Landlord has not agreed or represented that the Premises will be substantially ready for occupancy on a specific date. This Lease shall continue in full force and effect, and no liability shall arise against Landlord, because of any delay in the completion of Landlord's Work; provided, however, that all Rent due hereunder shall abate on a per diem basis and the Commencement Date shall be deferred until the Substantial Completion Date. Notwithstanding anything contained in this Work Letter to the contrary, there shall be no abatement of Rent and no deferral of the Commencement Date if Landlord's Work is not substantially complete due to any special equipment, fixtures or materials, changes, alterations or additions requested by Tenant or the delay or failure of Tenant in supplying information or approving or authorizing any applicable plans, specifications, estimates or other matters, or any other act or omission of Tenant ("Tenant's Delay"). In the event the Substantial Completion Date is delayed due to one or more Tenant Delays, then the Substantial Completion Date shall be modified to be the earlier of the Substantial Completion Date or the date Landlord's Work would have been complete but for any Tenant Delays and Monthly Base Rent and Adjustments will commence accordingly. If Tenant shall occupy all or any part of the Premises prior to the Commencement Date, all of the covenants and conditions of this Lease, including the obligation to pay Rent, shall be binding upon the parties hereto in respect to such occupancy as if the first day of the Term had been the date when Tenant began such occupancy.

6. Tenant's Entry Prior to Completion Date. Landlord may permit Tenant or its agents or laborers to enter the Premises at Tenant's sole risk prior to the Commencement Date in order to perform through Tenant's own contractors such work as Tenant may desire, at the same time that Landlord's contractors are working in the Premises. The foregoing license to enter prior to the Commencement Date, however, is conditioned upon Tenant's labor not interfering with Landlord's contractors or with any other tenant or its labor. If at any time such entry shall cause disharmony, interference or union disputes of any nature whatsoever, or if Landlord shall, in Landlord's sole judgment, determine that such entry, such work or the

continuance thereof shall interfere with, hamper or prevent Landlord from proceeding with the completion of the Building or Landlord's Work at the earliest possible date, this license may be withdrawn by Landlord immediately upon written notice to Tenant. Such entry shall be deemed to be under and subject to all of the terms, covenants and conditions of the Lease, and Tenant shall comply with all of the provisions of the Lease which are the obligations or covenants of Tenant, including, but not limited to, the provisions of Article [\_\_] of the Lease, except that the obligation to pay Rent shall not commence until the Commencement Date. In the event that Tenant's agents or laborers incur any charges from Landlord, including, but not limited to, charges for use of construction or hoisting equipment on the Building site, such charges shall be deemed an obligation of Tenant and shall be collectible as Rent pursuant to the Lease, and upon default in payment thereof, Landlord shall have the same remedies as for a default in payment of Rent pursuant to the Lease.

7. Landlord's Entry after Substantial Completion. At any time after the Commencement Date, Landlord may enter the Premises to complete Punch List items, and such entry by Landlord, its agents, servants, employees or contractors for such purpose shall not constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution of Rent, or relieve Tenant from any obligation under this Lease, or impose any liability upon Landlord or its agents. Tenant hereby accepts any and all reasonable disturbances associated with such entry and agrees to fully cooperate with Landlord (and such cooperation shall include, without limitation, moving furniture as necessary).

8. Delays. Landlord and Tenant mutually acknowledge that Landlord's construction process in order to complete the Premises requires a coordination of activities and a compliance by Tenant without delay of all obligations imposed upon Tenant pursuant to this exhibit and that time is of the essence in the performance of Tenant's obligations hereunder and Tenant's compliance with the terms and provisions of this exhibit.

9. Provisions Subject to Lease. The provisions of this exhibit are specifically subject to the provisions of the Lease.

**[EXHIBIT B-1  
SPACE PLAN]**

**[NOTE: IF PARTIES HAVE AGREED ON SPACE PLAN PRIOR TO LEASE PREPARATION,  
ATTACH COPY HERE]**

**EXHIBIT C**

**CONFIRMATION OF LEASE TERMS AND DATES**

Re: Office Building Lease (the "Lease") dated \_\_\_\_\_, 20\_\_ between SP4 190 S. LASALLE, L.P., a Delaware limited partnership ("Landlord"), and \_\_\_\_\_, a \_\_\_\_\_ corporation ("Tenant") for the premises located at 190 South LaSalle Street, Suite \_\_\_\_\_[], Chicago, Illinois 60603 ("Premises")

The undersigned, as Tenant, hereby confirms as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, the following:

1. The Substantial Completion Date is hereby deemed to be \_\_\_\_\_
2. The Commencement Date is hereby deemed to be \_\_\_\_\_
3. The Expiration Date is hereby deemed to be: \_\_\_\_\_
4. The rent schedule is:

[Insert Rent Schedule]

5. All alterations and improvements required to be performed by Landlord pursuant to the terms of the Lease to prepare the entire Premises for Tenant's initial occupancy have been satisfactorily completed. As of the date hereof, Landlord has fulfilled all of its obligations under the Lease. The Lease is in full force and effect and has not been modified, altered, or amended. There are no defaults by Landlord or offsets or credits against Rent.

**TENANT:**

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **EXHIBIT D**

### **(Rules and Regulations)**

1. Any sign, lettering, picture, notice, or advertisement installed on or in any part of the Premises and visible from the exterior of the Building, or visible from the exterior of the Premises, shall be installed at Tenant's sole cost and expense, and in such manner, character and style as Landlord may approve in writing. In the event of a violation of the foregoing by Tenant, Landlord may remove the same without any liability and may charge the expense incurred by such removal to Tenant.
2. No awning or other projection shall be attached to the outside walls of the Building. No curtains, blinds, shades, or screens visible from the exterior of the Building or visible from the exterior of the Premises, shall be attached to or hung in, or used in connection with any window or door of the Premises without the prior written consent of Landlord. Such curtains, blinds, shades, screens, or other fixtures must be of a quality, type, design and color, and attached in the manner approved by Landlord.
3. Tenant, its servants, employees, customers, invitees, and guests shall not obstruct sidewalks, entrances, passages, corridors, vestibules, halls, elevators, or stairways in and about the Building which are used in common with other tenants and their servants, employees, customers, guests, and invitees, and which are not a part of the Premises of Tenant. Tenant shall not place objects against glass partitions or doors or windows which would be unsightly from the Building corridors or from the exterior of the Building and will promptly remove any such objects upon notice from Landlord.
4. Tenant shall not make excessive noises, cause disturbances or vibrations or use or operate any electrical or mechanical devices that emit excessive sound or other waves or disturbances or create obnoxious odors, any of which may be offensive to the other tenants and occupants of the Building, or that would interfere with the operation of any device, equipment, radio, television broadcasting or reception from or within the Building or elsewhere and shall not place or install any projections, antennas, aerials, or similar devices inside or outside of the Premises or on the Building.
5. Tenant shall not waste electricity, water, or air conditioning and shall cooperate fully with Landlord to insure the most effective operation of the Building's heating and air conditioning systems and shall refrain from attempting to adjust any controls other than unlocked room thermostats, if any, installed for Tenant's use. Tenant shall keep corridor doors closed.
6. Tenant assumes full responsibility for protecting its space from theft, robbery, and pilferage, which includes keeping doors locked and other means of entry to the Premises closed and secured after normal business hours.
7. No person or contractor not employed by Landlord shall be used to perform janitorial work, window washing, cleaning, maintenance, repair, or similar work in the Premises without the written consent of Landlord which consent shall not be unreasonably withheld.
8. In no event shall Tenant bring into the Building firearms, inflammables, such as gasoline, kerosene, naphtha and benzine, or explosives, or any other article of intrinsically dangerous nature. If, by reason of the failure of Tenant to comply with the provisions of this subparagraph, any insurance premium for all or any part of the Building shall at any time be increased, Tenant shall make immediate payment of the whole of the increased insurance premium, without waiver of any of Landlord's other rights at law or in equity for Tenant's breach of this Lease.
9. Tenant shall comply with all applicable federal, state, and municipal laws, ordinances, and regulations, and building rules and shall not directly or indirectly make any use of the Premises which may be prohibited by any of the foregoing or which may be dangerous to persons or property or may increase the cost of insurance or require additional insurance coverage.
10. Landlord shall have the right to prohibit any advertising by Tenant which in Landlord's reasonable opinion tends to impair the reputation of the Building or its desirability as a building for office use, and upon written notice from Landlord, Tenant shall refrain from or discontinue such advertising.
11. The Premises shall not be used for cooking, lodging, sleeping, or for any immoral or illegal purpose, except that Tenant shall have the right to operate microwave ovens and coffee makers exclusively for the benefit of its employees.
12. Tenant and Tenant's servants, employees, agents, visitors, and licensees shall observe faithfully and comply strictly with the foregoing rules and regulations and such other and further appropriate rules and regulations as Landlord or Landlord's agent may from time to time adopt. Reasonable notice of any additional reasonable and nondiscriminatory rules and regulations shall be given in such manner as Landlord may reasonably elect.

13. Unless expressly permitted by the Landlord, no additional locks or similar devices shall be attached to any door or window and no keys other than those provided by the Landlord shall be made for any door. If additional keys are required by the Tenant after Tenant's initial occupancy, the Landlord may provide the same upon payment by the Tenant. Upon termination of this Lease or of the Tenant's possession, the Tenant shall surrender all keys of the Premises and shall explain to the Landlord all combination locks on safes, cabinets and vaults.
14. Any carpeting cemented down by Tenant shall be installed with a releasable adhesive. In the event of a violation of the foregoing by Tenant, Landlord may charge the expense incurred by such removal to Tenant.
15. The water and wash closets, drinking fountains, and other plumbing fixtures shall not be used for any purpose other than those for which they were constructed, and no sweepings, rubbish, rags, coffee grounds, or other substances shall be thrown therein. All damages resulting from any misuse of the fixtures shall be borne by the Tenant who, or whose servants, employees, agents, visitors, or licensees shall have caused the same. No person shall waste water by interfering or tampering with the faucets or otherwise.
16. No electric circuits for any purpose shall be brought into the leased premises without Landlord's written permission specifying the manner in which same may be done.
17. No bicycle or other vehicle, and no dog or other animal (other than guide dogs for sightless people) shall be allowed in offices, halls, corridors, or elsewhere in the building, except as required by law.
18. Tenant shall not throw anything out of the door or windows, or down any passageways or elevator shafts.
19. All loading, unloading, receiving, or delivery of goods or supplies, or disposal of garbage or refuse shall be made only through entryways and freight elevators provided for such purposes and indicated by Landlord. Tenant shall be responsible for any damage to the building or the property of its employees or others and injuries sustained by any person whomsoever resulting from the use or moving of such articles in or out of the Premises, and shall make all repairs and improvements required by Landlord or governmental authorities in connection with the use or moving of such articles.
20. All safes, equipment, or other heavy articles shall be carried in or out of the Premises only at such time and in such manner as shall be prescribed in writing by Landlord, and Landlord shall in all cases have the right to specify the proper position of any such safe, equipment, or other heavy article, which shall only be used by Tenant in a manner which will not interfere with or cause damage to the Premises or the Building in which they are located, or to the other tenants or occupants of said Building. Tenant shall be responsible for any damage to the Building or the property of its employees or others and injuries sustained by any person whomsoever resulting from the use or moving of such articles in or out of the Premises, and shall make all repairs and improvements required by Landlord or governmental authorities in connection with the use or moving of such articles.
21. Canvassing, soliciting, and peddling in the Building is prohibited and each Tenant shall cooperate to prevent the same.
22. Vending machines shall not be installed without permission of the Landlord, except for those vending machines used exclusively by Tenant's employees.
23. Wherever in these Building Rules and Regulations the word "tenant" occurs, it is understood and agreed that it shall mean Tenant's associates, agents, clerks, servants, and visitors. Wherever the word "Landlord" occurs, it is understood and agreed that it shall mean Landlord's assigns, agents, clerks, servants, and visitors.
24. Landlord shall have the right to enter upon the Premises at all reasonable hours for the purpose of inspecting the same.
25. Landlord shall have the right to enter the Premises at hours convenient to the Tenant for the purpose of exhibiting the same to prospective tenants within the one year period prior to the expiration of this Lease.
26. Tenant, its servants, employees, customers, invitees, and guests shall, when using the common parking facilities, if any, in and around the Building, observe and obey all signs regarding fire lanes and no parking zones, and when parking always park between the designated lines. Landlord reserves the right to tow away, at the expense of the owner, any vehicle which is improperly parked or parked in a no parking zone. All vehicles shall be parked at the sole risk of the owner, and Landlord assumes no responsibility for any damage to or loss of vehicles. No vehicles shall be parked overnight.
27. At all times the Building shall be in charge of Landlord's employee in charge and (a) persons may enter the Building only in accordance with Landlord's regulations, (b) persons entering or departing from the Building may be questioned as to their business in the Building, and the right is reserved to require the use of an identification card or other access device and the registering of such persons as to the hour of entry and departure, nature of visit, and other information deemed necessary for the protection of the Building, and (c) all entries into and departures from the Building will take place through such one or more entrances as Landlord shall from time to time designate; provided, however,

anything herein to the contrary notwithstanding, Landlord shall not be liable for any lack of security in respect to the Building whatsoever. Landlord will normally not enforce clauses (a), (b), and (c) above from 7:00 a.m. to 6:00 p.m., Monday through Friday, and from 8:00 a.m. to noon on Saturdays, but it reserves the right to do so or not to do so at any time at its sole discretion. In case of invasions, mob, riot, public excitement, or other commotion, Landlord reserves the right to prevent access to the Building during the continuance of the same by closing the doors or otherwise, for the safety of the tenants or the protection of the Building and the property therein. Landlord shall in no case be liable for damages for any error or other action taken with regard to the admission to or exclusion from the Building of any person.

28. All entrance doors to the Premises shall be locked when the Premises is not in use. All corridor doors shall also be closed during times when the air conditioning equipment in the Building is operating so as not to dissipate the effectiveness of the system or place an overload thereon.

29. Landlord reserves the right at any time and from time to time to rescind, alter, or waive, in whole or in part, any of these Rules and Regulations when it is deemed necessary, desirable, or proper, in Landlord's judgment, for its best interest or for the best interest of the tenants of the Building.

30. Tenant, its servants, employees, customers, invitees, and guests shall not smoke in the Building.

31. Tenant may install a Wireless Fidelity Network (or similar system) ("Wi-Fi Network") for intranet, internet, or communications purposes within its Premises. Such Wi-Fi Network may not interfere with the use of any other space within the Building. Should any interference occur, Tenant shall take all necessary steps as soon as commercially practicable and no later than three calendar days following such occurrence to correct such interference. Tenant acknowledges that Landlord has granted and/or may grant leases, licenses and/or other rights to other tenants and occupants of the Building and to telecommunication service providers.

32. Tenant shall fully cooperate with Landlord in any programs in which Landlord may elect to participate relating to the Building's (i) energy efficiency, management, and conservation; (ii) water conservation and management; (iii) environmental standards and efficiency; (iv) recycling and reduction programs; and/or (v) safety, which participation may include, without limitation, the Leadership in Energy and Environmental Design (LEED) program and related Green Building Rating System promoted by the U.S. Green Building Council. All carbon tax credits and similar credits, offsets and deductions are the sole and exclusive property of Landlord.

33. At all times during the term of this Lease, Tenant shall ensure that all wiring and cabling that it installs within the Premises or Building complies with all provisions of local fire and safety codes, as well as with the National Electric Code. Further, upon the expiration or sooner termination of the Term, Tenant shall remove all wiring and cabling within the Premises and the Building (including the plenums, risers and rooftop) placed there by or at the direction of Tenant, unless excused in writing by Landlord.

34. Tenant will ensure that all deliveries to the Premises are coordinated with property management and made through such entrances, elevators and corridors and at such times as may from time to time be designated by Landlord. Such deliveries may not be made through any of the main entrances to the Building with Landlord's prior permission. Tenant will use or cause to be used, in the Building, hand trucks or other conveyances equipped with rubber tires and rubber side guards to prevent damage to the Building or property in the Building. Tenant will promptly pay Landlord the cost of repairing any damage to the Building caused by any person making deliveries to the Premises.

35. Tenant will ensure that furniture and equipment and other bulky matter being moved to or from the Premises are moved through such entrances, elevators and corridors and at such times as may from time to time be designated by Landlord, and by movers or a moving company reasonably approved by Landlord. Tenant will promptly pay Landlord the cost of repairing any damage to the Building caused by any person moving any such furniture, equipment or matter to or from the Premises.

36. Tenant requirements and requests for services or work will be considered only following written application to property management. Building employees shall not be requested to perform, and shall not be requested by any tenant to perform, any work outside of regular duties, unless under specific instructions from Landlord.

#### **Parking Rules**

- (a) Cars must be parked entirely within the stall lines painted on the floor.
- (b) All directional signs and arrows must be observed.
- (c) The speed limit shall be five (5) miles per hour.
- (d) Parking is prohibited in areas not striped for parking, aisles, areas where "No Parking" signs are posted, in cross hatched areas and in such other areas as may be designated by Landlord or Landlord's agent(s) including, but not limited to, areas designated as "Visitor Parking" or reserved spaces not rented under this Agreement.

- (e) Every Patron is required to park and lock his own car. All responsibility for damage to cars or persons or loss of personal possessions is assumed by the Patron.
- (f) Spaces which are designated for small, intermediate or full-sized cars shall be so used. No intermediate or full-size cars shall be parked in parking spaces limited to compact cars.
- (g) No overnight parking is allowed without the prior written consent of the Landlord.
- (h) Tenant and patron(s) will immediately vacate the Parking Facilities and remove all vehicles upon Landlord's request in order to facilitate evacuations during severe weather or other times of danger.



**EXHIBIT E**

**(Subordination, Non-disturbance and Attornment Agreement)**

RECORDING REQUESTED  
BY AND WHEN  
RECORDED RETURN TO:  
  
\_\_\_\_\_, Esq.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SUBORDINATION,  
NONDISTURBANCE  
AND ATTORNMENT AGREEMENT

**NOTICE: THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT RESULTS IN YOUR LEASEHOLD ESTATE IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.**

DEFINED TERMS

<b>Execution Date:</b>
<b>Lender &amp; Address:</b> Metropolitan Life Insurance Company, a New York corporation, and its affiliates, as applicable 10 Park Avenue Morristown, New Jersey 07962 Attn: Senior Vice President Real Estate Investments
with a copy to:
Metropolitan Life Insurance Company _____ _____ Attn: _____ _____

<b>Tenant &amp; Address:</b>
<b>Landlord &amp; Address:</b>
<b>Loan:</b> A first mortgage loan in the original principal amount of \$ from Lender to Landlord.
<b>Note:</b> A Promissory Note executed by Landlord in favor of Lender in the amount of the Loan dated as of
<b>Mortgage:</b> A Mortgage, Security Agreement and Fixture Filing dated as of executed by Landlord, to Lender securing repayment of the Note to be recorded in the records of the County in which the Property is located.
<b>Lease and Lease Date:</b> The lease entered into by Landlord and Tenant dated as of covering the Premises. [Add amendments]
<b>Property:</b> [Property Name] [Street Address 1] [City, State, Zip]  The Property is more particularly described on <u>Exhibit A</u> .

**THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT** (the “Agreement”) is made by and among Tenant, Landlord, and Lender and affects the Property described in Exhibit A. Certain terms used in this Agreement are defined in the Defined Terms. This Agreement is entered into as of the Execution Date with reference to the following facts:

A. Landlord and Tenant have entered into the Lease covering certain space in the improvements located in and upon the Property (the “Premises”).

B. Lender has made or is making the Loan to Landlord evidenced by the Note. The Note is secured, among other documents, by the Mortgage.

C. Landlord, Tenant and Lender all wish to subordinate the Lease to the lien of the Mortgage.

D. Tenant has requested that Lender agree not to disturb Tenant's rights in the Premises pursuant to the Lease in the event Lender forecloses the Mortgage, or acquires the Property pursuant to the power of sale contained in the Mortgage or receives a transfer of the Property by a conveyance in lieu of foreclosure of the Property (collectively, a "Foreclosure Sale") but only if Tenant is not then in default under the Lease and Tenant attorns to Lender or a third party purchaser at the Foreclosure Sale (a "Foreclosure Purchaser").

NOW THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties agree as follows:

1. Subordination. The Lease and the leasehold estate created by the Lease and all of Tenant's rights under the Lease are and shall remain subordinate to the Mortgage and the lien of the Mortgage, to all rights of Lender under the Mortgage and to all renewals, amendments, modifications and extensions of the Mortgage.

2. Acknowledgements by Tenant. Tenant agrees that: (a) Tenant has notice that the Lease and the rent and all other sums due under the Lease have been or are to be assigned to Lender as security for the Loan. In the event that Lender notifies Tenant of a default under the Mortgage and requests Tenant to pay its rent and all other sums due under the Lease to Lender, Tenant shall pay such sums directly to Lender or as Lender may otherwise request. (b) Tenant shall send a copy of any notice or statement under the Lease to Lender at the same time Tenant sends such notice or statement to Landlord. (c) This Agreement satisfies any condition or requirement in the Lease relating to the granting of a nondisturbance agreement.

3. Foreclosure and Sale. In the event of a Foreclosure Sale,

(a) So long as Tenant complies with this Agreement and is not in default under any of the provisions of the Lease, the Lease shall continue in full force and effect as a direct lease between Lender and Tenant, and Lender will not disturb the possession of Tenant, subject to this Agreement. To the extent that the Lease is extinguished as a result of a Foreclosure Sale, a new lease shall automatically go into effect upon the same provisions as contained in the Lease between Landlord and Tenant, except as set forth in this Agreement, for the unexpired term of the Lease. Tenant agrees to attorn to and accept Lender as landlord under the Lease and to be bound by and perform all of the obligations imposed by the Lease, or, as the case may be, under the new lease, in the event that the Lease is extinguished by a Foreclosure Sale. Upon Lender's acquisition of title to the Property, Lender will perform all of the future obligations imposed on the Landlord by the Lease except as set forth in this Agreement; provided, however, that Lender shall not be: (i) liable for any act or omission of a prior landlord (including Landlord); or (ii) subject to any offsets or defenses that Tenant might have against any prior landlord (including Landlord); or (iii) bound by any rent or additional rent which Tenant might have paid in advance to any prior landlord (including Landlord) for a period in excess of one month or by any security deposit, cleaning deposit or other sum that Tenant may have paid in advance to any prior landlord (including Landlord); or (iv) bound by any amendment, modification, assignment or

termination of the Lease made without the written consent of Lender; (v) obligated or liable with respect to any representations, warranties or indemnities contained in the Lease; or (vi) liable to Tenant or any other party for any conflict between the provisions of the Lease and the provisions of any other lease affecting the Property which is not entered into by Lender.

(b) Upon the written request of Lender after a Foreclosure Sale, the parties shall execute a lease of the Premises upon the same provisions as contained in the Lease between Landlord and Tenant, except as set forth in this Agreement, for the unexpired term of the Lease.

(c) Notwithstanding any provisions of the Lease to the contrary, from and after the date that Lender acquires title to the Property as a result of a Foreclosure Sale, (i) Lender will not be obligated to expend any monies to restore casualty damage in excess of available insurance proceeds; (ii) tenant shall not have the right to make repairs and deduct the cost of such repairs from the rent without a judicial determination that Lender is in default of its obligations under the Lease; (iii) in no event will Lender be obligated to indemnify Tenant, except where Lender is in breach of its obligations under the Lease or where Lender has been actively negligent in the performance of its obligations as landlord; and (iv) other than determination of fair market value, no disputes under the Lease shall be subject to arbitration unless Lender and Tenant agree to submit a particular dispute to arbitration.

**Delete if Not Applicable** [(d) If Lender acquires title to the Property as a result of a Foreclosure Sale, the Lease shall be automatically amended as set forth in Exhibit B.]

4. **Subordination and Release of Purchase Options.** Tenant represents that it has no right or option of any nature to purchase the Property or any portion of the Property or any interest in the Borrower. To the extent Tenant has or acquires any such right or option, these rights or options are acknowledged to be subject and subordinate to the Mortgage and are waived and released as to Lender and any Foreclosure Purchaser.

5. **Acknowledgment by Landlord.** In the event of a default under the Mortgage, at the election of Lender, Tenant shall and is directed to pay all rent and all other sums due under the Lease to Lender.

6. **Construction of Improvements.** Lender shall not have any obligation or incur any liability with respect to the completion of tenant improvements for the Premises. [**Note, add the following if applicable** —, except with respect to tenant improvements for renewal and/or expansion as set forth in Section \_\_\_\_\_ of the Lease.]

7. **Notice.** All notices under this Agreement shall be deemed to have been properly given if delivered by overnight courier service or mailed by United States certified mail, with return receipt requested, postage prepaid to the party receiving the notice at its address set forth in the Defined Terms (or at such other address as shall be given in writing by such party to the other

parties) and shall be deemed complete upon receipt or refusal of delivery.

8. Miscellaneous. Lender shall not be subject to any provision of the Lease that is inconsistent with this Agreement. Nothing contained in this Agreement shall be construed to derogate from or in any way impair or affect the lien or the provisions of the Mortgage. This Agreement shall be governed by and construed in accordance with the laws of the State of in which the Property is located.

9. Liability and Successors and Assigns. In the event that Lender acquires title to the Premises or the Property, Lender shall have no obligation nor incur any liability [beyond Lender's then equity interest in the Premises and Tenant shall look solely to Lender's then equity interest for the payment and performance of any obligations imposed upon Lender under this Agreement or under the Lease.][in an amount in excess of \$3,000,000 and Tenant's recourse against Lender shall in no extent exceed the amount of \$3,000,000.] This Agreement shall run with the land and shall inure to the benefit of the parties and, their respective successors and permitted assigns including a Foreclosure Purchaser. If a Foreclosure Purchaser acquires the Property or if Lender assigns or transfers its interest in the Note and Mortgage or the Property, all obligations and liabilities of Lender under this Agreement shall terminate and be the responsibility of the Foreclosure Purchaser or other party to whom Lender's interest is assigned or transferred. The interest of Tenant under this Agreement may not be assigned or transferred except in connection with an assignment of its interest in the Lease which has been consented to by Lender.

**IN WITNESS WHEREOF**, the parties have executed this Subordination, Nondisturbance and Attornment Agreement as of the Execution Date.

**IT IS RECOMMENDED THAT THE PARTIES CONSULT WITH THEIR ATTORNEYS PRIOR TO THE EXECUTION OF THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT.**

**LENDER:** METROPOLITAN LIFE INSURANCE COMPANY,  
a New York corporation

By \_\_\_\_\_

Its \_\_\_\_\_

**TENANT:** \_\_\_\_\_  
a \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

**LANDLORD:** \_\_\_\_\_  
a \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

EXHIBIT A  
**PROPERTY DESCRIPTION**

## EXHIBIT B

In the event of foreclosure of the Mortgage, or upon a sale of the Property pursuant to the power of sale contained therein, or upon a transfer of the Property by conveyance in lieu of the foreclosure, the Lease shall be amended as follows:



State of \_\_\_\_\_

County of \_\_\_\_\_

On \_\_\_\_\_, 200\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

The undersigned Guarantor to the Lease hereby consents to the foregoing Subordination, Nondisturbance and Attornment Agreement and reaffirms that the Guaranty of Lease dated \_\_\_\_\_ remains in full force and effect as of the date of the foregoing Subordination, Nondisturbance and Attornment Agreement.

**GUARANTOR:**

\_\_\_\_\_

a \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

**EXHIBIT F**

**LEASE ESTOPPEL CERTIFICATE**

Landlord: SP4 190 S. LASALLE, L.P., a Delaware limited partnership  
Tenant: []  
Premises: 190 South LaSalle Street, Suite \_\_\_\_\_ [], Chicago, Illinois 60603  
Area: Approximately \_\_\_\_\_ Rentable Square Feet  
Lease Date: []

The undersigned Landlord and Tenant of the above-referenced lease (the "Lease") hereby ratify the Lease and certify to Lender as mortgagee of the Real Property of which the premises demised under the Lease (the "Premises") is a part, as follows:

1. That the term of the Lease commenced on \_\_\_\_\_, 20\_\_ and Tenant is in full and complete possession of the Premises demised under the Lease and has commenced full occupancy and use of the Premises, such possession having been delivered by the original landlord and having been accepted by Tenant.
2. That the Lease calls for monthly rent installments of \$\_\_\_\_\_ which Tenant last paid on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.
3. That no advance rental or other payment has been made in connection with the Lease, except rental for the current month, there is no "free rent" or other concession under the remaining term of the Lease and the rent has been paid to and including \_\_\_\_\_, 20\_\_.
4. That a security deposit in the amount of \$\_\_\_\_\_ is being held by Landlord, which amount is not subject to any set-off or reduction or to any increase for interest or other credit due to Tenant.
5. That all obligations and conditions under said Lease to be performed to date by Landlord or Tenant have been satisfied, free of defenses and set-offs including all construction work in the Premises.
6. That the Lease is a valid lease and in full force and effect and represents the entire agreement between the parties; that there is no existing default on the part of Landlord or Tenant in any of the terms and conditions thereof and no event has occurred which, with the passing of time or giving of notice or both, would constitute an event of default; and that said Lease has: (initial one)

( ) not been amended, modified, supplemented, extended, renewed or assigned.

( ) been amended, modified, supplemented, extended, renewed or assigned as follows by the following described agreements:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

7. That the Lease commenced on \_\_\_\_\_ The Lease term will expire on \_\_\_\_\_, and there are no renewal options. Tenant has no

purchase options or rights of first refusal under the Lease to purchase the Project. Tenant has no rights of first offer or first refusal or other right to lease additional space in the Project. Tenant has no cancellation rights (except with respect to Landlord's default) under the Lease.

8. That Landlord has not rebated, reduced or waived any amounts due from Tenant under the Lease, either orally or in writing, nor has Landlord provided financing for, made loans or advances to, or invested in the business of Tenant.

9. That, to the best of Tenant's knowledge, there is no apparent or likely contamination of the Real Property or the Premises by Hazardous Materials, and Tenant does not use, nor has Tenant disposed of, Hazardous Materials, and Tenant does not use, nor has Tenant disposed of, Hazardous Materials in violation of Environmental Laws on the Real Property or the Premises.

10. Additional rent for operating, maintenance, repair expenses, property taxes and assessments and other such expenses and charges (collectively, the "Operating Expenses") is payable as provided in the Lease and has been paid in accordance with Landlord's rendered bills through \_\_\_\_\_. Tenant is required to pay \_\_\_\_\_% of all Operating Expenses. The next payment of estimated Operating Expenses is due on \_\_\_\_\_ in the amount of \$\_\_\_\_\_.

11. That there are no actions, voluntary or involuntary, pending against Tenant under the bankruptcy laws of the United States or any state thereof.

12. That this certification is made knowing that Lender is relying upon the representations herein made.

**LANDLORD:**

**TENANT:**

SP4 190 S. LASALLE, L.P.,  
a Delaware limited partnership  
By: SP 190 S. LASALLE GP, L.L.C.,  
a Delaware limited liability company,  
its general partner

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Mark Zikakis, Vice President

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Authorized Signatory

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT G

### (Guaranty)

In consideration of, and as an inducement to \_\_\_\_\_, Inc. ("Landlord") to enter that certain lease of even date herewith (the "Lease") with \_\_\_\_\_ ("Tenant") for **[a portion of]** the \_\_\_\_\_ (\_\_\_\_\_) floor of the building known as Suite(s) \_\_\_\_\_, and in further consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the undersigned, **[jointly and severally] [collectively,]** "Guarantor", hereby guarantees, absolutely and unconditionally, to Landlord the full and prompt performance of all terms, covenants, conditions and agreements to be performed and observed by Tenant under the Lease and any and all amendments, modifications and other instruments relating thereto, whether now or hereafter existing, and the full and prompt payment of all damages, costs and expenses which shall at any time be recoverable by Landlord from Tenant by virtue of the Lease and any amendments, modifications and other instruments relating thereto (hereinafter called "Liabilities of Tenant"); and Guarantor hereby covenants and agrees to and with Landlord, its successors and assigns, that if Tenant, its successors and assigns, shall default at any time in the payment of Rent (as defined in the Lease), or any other sums or charges payable by Tenant under the Lease or in the performance of any of the terms, covenants, provisions or conditions contained in the Lease, Guarantor will forthwith pay to Landlord, its successors and assigns, such Rent and other sums and charges and will forthwith faithfully perform and fulfill all of such terms, covenants, conditions and provisions of the Lease and will forthwith faithfully pay to Landlord all damages that may arise in consequence of any such default by Tenant; **[provided, however, that the liability of Guarantor under this Guaranty shall not exceed the sum of \$\_\_\_\_\_].**

Guarantor agrees that, with or without notice or demand, Guarantor will reimburse Landlord, to the extent that such reimbursement is not made by Tenant, for all expenses (including reasonable attorneys' fees and disbursements) incurred by Landlord in connection with any default by Tenant under the Lease or the default by Guarantor under this Guaranty **[subject, however, to the limitation of the amount of the liability of Guarantor under this Lease as set forth in the first paragraph hereof].**

All moneys available to Landlord for application in payment or reduction of the Liabilities of Tenant may be applied by Landlord, in such manner and in such amounts and at such time or times as it may see fit, to the payment or reduction of such of the Liabilities of Tenant as Landlord may elect.

This Guaranty shall be a continuing guaranty, and the liability of the Guarantor hereunder shall in no way be affected, modified or diminished by reason that any security for the Liabilities of Tenant is exchanged, surrendered or released or the Lease or any other obligation of Tenant is changed, altered, renewed, extended, continued, surrendered, compromised, waived or released in whole or in part, or that any default with respect thereto is waived, whether or not notice thereof is given to Guarantor, and it is understood and agreed that Landlord may fail to set off and may release, in whole or in part, any credit on its books in favor of Tenant, and may extend further credit in any manner whatsoever to Tenant, and generally deal with Tenant or any such security as Landlord may see fit; and Guarantor shall remain bound under this Guaranty notwithstanding any such exchange, surrender, release, change, alteration, renewal, extension, continuance, comprise, waiver, inaction, extension of further credit or other dealing.

Notwithstanding any provision to the contrary contained herein, Guarantor hereby unconditionally and irrevocably waives (a) any and all rights of subrogation (whether arising under contract, 11 U.S.C. ' 509 or otherwise) to the claims, whether existing now or arising hereafter, Landlord may have against Tenant, and (b) any and all rights of reimbursement, contribution or indemnity against Tenant which may have heretofore

arisen or may hereafter arise in connection with any guaranty or pledge or grant of any lien or security interest made in connection with the Lease. Guarantor hereby acknowledges that the waiver contained in the preceding sentence (the "Subrogation Waiver") is given as an inducement to Landlord to enter into the Lease and, in consideration of Landlord's willingness to enter into the Lease, Guarantor agrees not to amend or modify in any way the Subrogation Waiver without Landlord's prior written consent. If any amount shall be paid to Guarantor by Tenant on account of any claim set forth at any time when all the Liabilities of Tenant shall not have been paid in full, such amount shall be held in trust by Guarantor for Landlord's benefit, shall be segregated from the other funds of Guarantor and shall forthwith be paid over to Landlord to be applied in whole or in part by Landlord against the Liabilities of Tenant, whether matured or unmatured. Nothing herein contained is intended or shall be construed to give to Guarantor any rights of subrogation or right to participate in any way in Landlord's right, title or interest in the Lease, notwithstanding any payments made by Guarantor to or toward any payments due from Guarantor under this Guaranty, all such rights of subrogation and participation being hereby expressly waived and released.

Guarantor hereby expressly waives (a) notice of acceptance of this Guaranty; (b) presentment and demand for payment of any of the Liabilities of Tenant; (c) protest and notice of dishonor or default to Guarantor or to any other party with respect to any of the Liabilities of Tenant; (d) all other notice to which Guarantor might otherwise be entitled; and (e) any demand for payment under this Guaranty; and Guarantor hereby expressly agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall not be terminated, affected or impaired by reason of the assertion or the failure to assert by Landlord against Tenant, or Tenant's successors and assigns, of any of the rights or remedies reserved to Landlord pursuant to provisions of the Lease.

This is an absolute and unconditional guaranty of payment and not of collection and Guarantor further waives any right to require that any action be brought against Tenant or any other person or entity or to require that resort be had to any security or to any balance of any deposit account or credit on the books of Landlord in favor of Tenant or any other person or entity. Successive recoveries may be had hereunder. No invalidity, irregularity or unenforceability of all or any part of the Lease shall affect, impair or be a defense to this Guaranty and this Guaranty shall constitute a primary obligation of the undersigned.

Each reference herein to Landlord shall be deemed to include its successors and assigns, in whose favor the provisions of this Guaranty shall also inure. Each reference herein to Guarantor shall be deemed to include the heirs, distributees, executors, administrators, legal representatives, successors and assigns of Guarantor, all of whom shall be bound by the provisions of this Guaranty.

No delay on the part of Landlord in exercising any rights hereunder or failure to exercise the same shall operate as a waiver of such rights; no notice to or demand on Guarantor shall be deemed to be a waiver of the obligation of Guarantor or of the right of Landlord to take further action without notice or demand as provided herein; nor in any event shall any modification or waiver of the provisions of this Guaranty nor any termination hereof be effective unless in writing signed by Landlord, nor shall any waiver be applicable except in the specific instance for which given.

This Guaranty shall continue to be effective or be reinstated, as the case may be, if any payment of Guarantor on account of the Liabilities of Tenant must be returned by Landlord upon the insolvency, bankruptcy or reorganization of Tenant, Guarantor, or otherwise, as though such payment had not been made.

This Guaranty is, and shall be deemed to be, a contract entered into under and pursuant to the laws of the state in which the Premises is located and shall be in all respects governed, construed, applied and enforced in accordance with the laws of such state; and no defense given or allowed by the laws of any other

state or country shall be interposed in any action or proceeding hereon unless such defense is also given or allowed by the laws of the state in which the Premises is located. In any action or proceeding arising out of this Guaranty, Guarantor agrees to submit to personal jurisdiction in the state in which the Premises is located. Guarantor agrees to pay all costs and expenses, including, without limitation, reasonable attorneys' fees, which are incurred by Landlord in the enforcement of this Guaranty.

This Guaranty may be executed in one or more counterparts, each of which counterparts shall be an original.

All of Landlord's rights and remedies under the Lease or under this Guaranty are intended to be distinct, separate and cumulative and no such right and remedy therein or herein mentioned is intended to be in exclusion of or a waiver of any of the others.

As a further inducement to Landlord to accept the Lease and in consideration thereof Landlord and Guarantor covenant and agree that in any action or proceeding brought on, under or by virtue of this Guaranty, Landlord and the Guarantor shall and do hereby waive trial by jury.

This Guaranty shall not be affected by any assignment of the Lease by Tenant.

IN WITNESS WHEREOF, the undersigned has executed this Guaranty as of the \_\_\_\_ day of \_\_, 20\_\_.

**GUARANTOR:**

a \_\_\_\_\_ corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Fed Tax ID No.: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_